Attachment No. 4

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October 8, 2025

Via Email and Overnight Mail
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Chair Linda Lopez and Commissioners
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Re: Agenda Item No. 2: Precise Development Plan No. 2023-06 and Recirculated Final MND for the 14830 Carmenita Road Warehouse Project (SCH No. 2024101066)

Dear Chair Lopez, Commissioners, Director Hamilton, and Ms. Wong:

On behalf of the Coalition for Responsible Equitable Economic Development ("CREED LA"), we submit these comments on Agenda Item No. 2, the Precise Development Plan No. 2023-06 and the Recirculated Final Mitigated Negative Declaration for the 14830 Carmenita Road Warehouse Project ("RIS/MND"), also known as the Rexford Industrial Project (SCH No. 2024104066) ("Project") proposed by Rexford Industrial ("Applicant"). The Planning Commission ("Commission") is scheduled to consider approval of the Project's RIS/MND and Precise Development Plan at a public hearing on October 8, 2025.

The Project proposes to demolish two existing multi-tenant industrial warehouse buildings totaling 89,870 square feet (SF) and to construct an approximately 138,972 SF industrial warehouse building with a parking lot, ornamental landscaping, and associated infrastructure on the 7.03-acre lot.[1] The

[1] RIS/MND, p. 21.

proposed building would include 132,227 SF of warehouse space, 3,715 SF of ground floor office space, and 3,030 SF of mezzanine space.[2] The Project would be located in southeastern Los Angeles County at 14830 Carmenita Road, Norwalk, California 90650 and consists of Assessor's Parcel Number 8069-002-085.[3]

On November 12 and December 11, 2024, CREED LA submitted comments on the Project's original Draft Initial Study/Mitigated Negative Declaration ("IS/MND"). CREED LA's comments included expert reports which presented the City with substantial evidence supporting a fair argument that the Project may result in significant air quality, public health, transportation, energy, and public utility impacts that were not disclosed or mitigated in the original IS/MND. For example, the City underestimated emissions of criteria air pollutants and toxic air contaminants ("TACs"), underestimated and failed to disclose significant public health impacts resulting from exposure to these contaminants, and failed to consider significant cumulative emissions impacts from nearby warehouses. The City also underestimated the Project's VMT levels that led to the City improperly screening the Project from a VMT analysis. The City also failed to provide any evidence to show that the Project will have adequate fire flow as required by CEQA and the City's own general plan. These impacts required the City to prepare an environmental impact report ("EIR") for the Project to comply with the California Environmental Quality Act[4] ("CEQA").

Instead of preparing an EIR, as required by CEQA, the City subsequently prepared written responses to CREED LA's comments and revised some of its environmental analysis in the Final IS/MND,[5] then proceeded to prepare the instant RIS/MND. We reviewed the RIS/MND with air quality and hazards expert

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[2] *Id.*
[3] *Id.* at p. 4.
[4] Pub. Resources Code, §§ 21000 et seq.; 14 Cal. Code Regs. §§ 15000 et seq. ("CEQA Guidelines").
[5] Finial Initial Study and Mitigated Negative Declaration (January 2025), available at: https://www.norwalk.org/Documents/Departments%20&%20Services/Community%20Development/Carmenita%20Warehouse%20Final%20MND.pdf?t=202501071938090; Response to Comment Letter O1: Adams Broadwell Joseph & Cardozo (representing the Coalition for Responsible Equitable Economic Development "CREED LA") (responding to November 12, 2024 comments), available at; https://norwalk.primegov.com/api/compilemeetingattachmenthistory/historyattachment/?historyId=fd3b0aa3-977b-4e2b-a6fe-a5a183c3224e; EPD Solutions, Response to Letter L1: CREED LA, dated December 11, 2024 (responding to December 11, 2024 comments), available at: https://norwalk.primegov.com/api/compilemeetingattachmenthistory/historyattachment/?historyId=b2c07dae-ddde-4dc7-ad44-cebf2a4dd739.

Dr. James Clark, Ph.D.,[6] noise expert Jack Meighan,[7] and transportation expert, Norm Marshall,[8] Our review finds that the RIS/MND still fails to comply with CEQA.

These comments address legal and factual deficiencies in the RIS/MND and the Staff Report, and include expert evidence from air quality and hazards expert Dr. James Clark, Ph.D., noise expert, Jack Meighan, and transportation expert, Norm Marshall. These experts provides substantial evidence supporting a fair argument that the Project may result in significant air quality, health risk, noise, and transportation impacts that are not adequately disclosed and are not reduce to less than significant levels by the mitigation measures proposed in the RIS/MND.

In particular, Dr. Clark provides substantial evidence supporting a fair argument that the Project may result in significant, unmitigated cumulative air quality impacts from DPM emissions. He also demonstrates that the City lacks substantial evidence that the Project will not result in significant operational emissions of NOx and CO2.

Mr. Meighan provides substantial evidence supporting a fair argument that the Project may have significant, unmitigated operational and construction noise impacts. Mr. Meighan further explains that the RIS/MND fails to establish accurate baseline noise levels, underestimates operation noise impacts from HVAC units, and fails to analyze the Project's construction noise increase over ambient noise levels as required by CEQA.

Mr. Marshall provides substantial evidence supporting a fair argument that the Project may have significant transportation impacts. Mr. Marshall further explains that the City underestimates the trip generation from the existing uses on the Project site and improperly screens the Project from a VMT analysis.

In sum, substantial evidence supports a fair argument that the Project may result in significant and unmitigated environmental impacts. The City cannot approve the Project until the City complies with CEQA by preparing an EIR which fully discloses and mitigates all of the Project's potentially significant impacts. The

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[6] Exhibit A, James Clark, *Comments on the Staff Report and RIS/MND for the Rexford Industrial Project* (hereinafter "Clark Comments").
[7] Exhibit C, Jack Meighan, Review and *Comments on the RIS/MND for the Rexford Industrial Project* (hereinafter "Meighan Comments").
[8] Exhibit B, Norm Marshall, *Comments on the Staff Report and RIS/MND for the Rexford Industrial Project* (hereinafter "Marshall Comments").

Commission also lacks substantial evidence to support the findings require to approve the Projects' Precise Development Plan ("PDP") under Section 17.02.205.D of the City's municipal code.[9]

We respectfully request that the Commission continue the hearing until after the City has prepared and circulated an EIR that fully complies with CEQA and.

I. STATEMENT OF INTEREST

CREED LA is a non-profit organization formed to ensure that the construction of major urban projects in the Los Angeles region proceeds in a manner that minimizes public and worker health and safety risks, avoids or mitigates environmental and public service impacts, and fosters long-term sustainable construction and development opportunities. The organization's members include Norwalk residents Alejandro Lopez, Wilfredo Gutirrez, and Phillip Templeton, the Sheet Metal Workers Local 105, International Brotherhood of Electrical Workers Local 11, Southern California Pipe Trades District Council 16, and District Council of Iron Workers of the State of California, and their members, their families, and other individuals who live and work in and around the City of Norwalk and the Los Angeles region.

Individual members of CREED LA live, work, recreate, and raise their families in the City of Norwalk and surrounding communities. Accordingly, they would be directly affected by the Project's environmental and health and safety impacts. Individual members may also work on the Project itself. They will be first in line to be exposed to any health and safety hazards that exist onsite.

CREED LA has an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for business and industry to expand in the region, and by making the area less desirable for new businesses and new residents. Indeed, continued environmental degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduce future employment opportunities.

[9] Norwalk Municipal Code ("NMC") Section 17.02.205.D.1 requires the Commission to find that the proposed development will not be detrimental to the public health, safety and welfare, and will not adversely affect the present and future development of surrounding areas.

CREED LA supports the development of commercial, mixed use, and medical office projects where properly analyzed and carefully planned to minimize impacts on public health, climate change, and the environment. These projects should avoid adverse impacts to air quality, public health, climate change, noise, and traffic, and must incorporate all feasible mitigation to ensure that any remaining adverse impacts are reduced to the maximum extent feasible. Only by maintaining the highest standards can commercial development truly be sustainable.

II. AN EIR IS REQUIRED BECAUSE THERE IS SUBSTANTIAL EVIDENCE SUPPORTING A FAIR ARGUMENT THAT THE PROJECT MAY HAVE SIGNIFICANT UNMITIGATED IMPACTS

CEQA is designed to inform decision-makers and the public about the potential, significant environmental effects of a project.[10] "CEQA's fundamental goal [is] fostering informed decision-making."[11]

The EIR is the very heart of CEQA because it acts as an "environmental 'alarm bell' whose purpose is to alert the public and its responsible officials to environmental changes before they have reached the ecological points of no return."[12] The EIR aids an agency in identifying, analyzing, disclosing, and, to the extent possible, avoiding a project's significant environmental effects through implementing feasible mitigation measures.[13] The EIR also serves "to demonstrate to an apprehensive citizenry that the Agency has analyzed and considered the ecological implications of its action."[14] Thus, an EIR "protects not only the environment but also informed self-government."[15]

In limited circumstances, an agency may avoid preparing an EIR. However, because "[t]he adoption of a negative declaration…has a terminal effect on the environmental review process" by allowing the agency to dispense with the duty to prepare an EIR, negative declarations are allowed only in cases that satisfy the fair argument standard.[16]

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[10] CEQA Guidelines § 15002.
[11] *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 406; Public Resources Code § 21100.
[12] *Dunn-Edwards v. Bay Area Air Quality Management Dist.* (1992) 9 Cal.App.4th 644, 652; *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1220.
[13] Pub. Res. Code § 21002.1(a); CEQA Guidelines § 15002(a), (f).
[14] *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 86.
[15] *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.
[16] *Citizens of Lake Murray v. San Diego* (1989) 129 Cal.App.3d 436, 440; Pub. Res. Code

The "fair argument" standard is an exceptionally "low threshold" favoring environmental review in an EIR rather than a negative declaration.[17] Under the fair argument standard, a lead agency "shall" prepare an EIR whenever substantial evidence in the whole record before the agency supports a fair argument that a project may have a significant effect on the environment.[18] The phrase "significant effect on the environment" is defined as "a substantial, or potentially substantial, adverse change in the environment."[19] "Substantial evidence" required to support a fair argument is defined as "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached."[20]As a matter of law, substantial evidence includes both expert and lay opinion.[21]

Accordingly, a mitigated negative declaration may be prepared only when, after preparing an initial study, a lead agency determines that a project may have a significant effect on the environment, but:

> (1) Revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review ***would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would***, and (2) there is ***no substantial evidence*** in light of the whole record before the public agency that the project, as revised, ***may*** have a significant effect on the environment.[22]

With respect to this Project, the RIS/MND fails to satisfy the basic purposes of CEQA. The RIS/MND fails to adequately disclose, investigate, and analyze the Project's potentially significant impacts during construction and operation, and fails to provide substantial evidence to support a fair argument that impacts will be mitigated to a less than significant level.[23] Additionally, as discussed in detail

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§§ 21100, 21064.

[17] *Consolidated Irrigation District v. City of Selma* (2012) 204 Cal.App.4th 187, 207; *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 928.

[18] Pub. Res. Code §§21080(d), 21082.2(d); 14 Cal. Code Reg. §§ 15002(k)(3), 15064(f)(1), (h)(1); *Laurel Heights Improvement Assn. v. Regents of the Univ. of Cal.* (1993) 6 Cal.4th 1112, 1123; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 82; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-151; *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1601-1602.

[19] Pub. Resources Code, § 21068.

[20] CEQA Guidelines § 15384(a).

[21] Pub. Resources Code, § 21080, subd. (e)(1); CEQA Guidelines, § 15064, subd. (f)(5).

[22] Pub. Resources Code § 21064.5 (emphasis added).

[23] Pub. Ressources Code § 21064.5.

below, there is substantial evidence that supports a fair argument that the Project may result in several potentially significant impacts. Therefore, the City must prepare an EIR.

III. THE RIS/MND'S DESCRIPTION OF THE ENVIRONMENTAL SETTING IS INADEQUATE

The RIS/MND fails to adequately describe the environmental setting against which the Project's environmental impacts are to be measured. This contravenes the fundamental purpose of the environmental review process, which is to determine whether there is a potentially substantial, adverse change compared to the existing setting.[24] CEQA requires that a lead agency include a description of the physical environmental conditions, or "baseline," in the vicinity of the project as they exist at the time environmental review commences.[25] As the courts have repeatedly held, the impacts of a project must be measured against the "real conditions on the ground."[26] The description of the environmental setting constitutes the "baseline" physical conditions against which the lead agency assesses the significance of a project's impacts.[27] An environmental setting is required "to give the public and decision makers the most accurate and understandable picture practically possible of the project's likely near-term and long-term impacts.[28]

As discussed below, the RIS/MND fails to accurately describe the existing uses on the Project site resulting in an overestimated trip generation and fails to establish accurate baseline noise levels against which to compare the Project's noise impacts.

A. The RIS/MND Fails to Accurately Describe Existing Uses Related to Trip Generation

The Project site is currently developed with two multi-tenant buildings totaling 89,870 SF, which are currently occupied by RV Storage Depot, an RV self-

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[24] CEQA Guidelines § 15063(d).
[25] CEQA Guidelines § 15125(a); *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal. 4th 310, 321.
[26] *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal. 4th 310, 321.; *Save Our Peninsula Com. V. Monterey County Bd. Of Supervisors* (2001) 87 Cal.App.4th 99, 121-22; *City of Carmel-by-the-Sea v. Bd. Of Supervisors of Monterey County* (986) 183 Cal.App.3d 229, 246.
[27] CEQA Guidelines § 15125(a); *Communities for a Better Environment v. South Coast Air Quality Management Dist.*, 48 Cal. 4th at 321.
[28] CEQA Guidelines § 15125(a).

storage company.[29] The RIS/MND estimates that the existing uses of these facilities generate 154 daily vehicle trips.[30] However, the City uses an incorrect trip generation rate that is not representative of the existing uses on the Project site and it mischaracterizes the existing RV storage uses as 24/7 operations.

The RIS/MND improperly uses ITE warehousing trip generation rate category 150 to estimate the number of daily trips the existing use generates.[31] As Mr. Marshall explains, the existing use at the Project site does not store materials, and therefore does not fall under the list of uses defined for the warehousing category, and does not generate truck trips related to transport of materials.[32] In fact, Mr. Marshall comments that the current use of the Project as a self-storage facility does not match any of the categories in the ITE *Trip Generation Manual*.[33] Given that there is no appropriate trip generation rate for the existing use, Mr. Marshall recommends a traffic count be conducted at the Project site to accurately capture Project's trip generation. This would likely result in a much lower trip generation rate than the one used in the RIS/MND.[34] This is because the passive storage operations of the current RV Storage Depot generate little truck traffic and likely no 4+-axle trucks compared to the "warehousing" use analyzed in the RIS/MND.[35] Use of a more accurate trip generate rate may also reveal significant impacts that were not disclosed or mitigated.

The Staff Report claims that the existing buildings on the Project site are accurately represented by the ITE 150 trip generation rate because they are permitted for warehousing uses and are utilized for storage.[36] The City refers to pictures of the interior of each building located on pages 53 to 56 of Appendix G of the RIS/MND as evidence that each building is utilized for warehouse storage.[37]

Mr. Marshall explains that the Staff Report fails to adequately address the RIS/MND's misapplication of the ITE warehousing trip generation rate for several reasons. First, the RIS/MND fails to describe the "existing conditions" in the Project vicinity as required by CEQA. [38] The photos referenced in the Phase 1

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[29] RIS/MND, p. 4.
[30] *Id.*
[31] RIS/MND, p. 111.
[32] Marshall Comments, p. 2, 5.
[33] Marshall Comments, p. 4.
[34] Marshall Comments, p. 4.
[35] Marshall Comments, p. 5.
[36] Staff Report, Response L1.10, p. 183; Staff Report, Response L1.25, p. 188.
[37] Staff Report, Response L1.10, p. 183; Staff Report, Response L1.25, p. 188.
[38] 14 Cal Code Regs §15125(a).

Environmental Site Assessment dated May 25, 2017, show past warehouse uses.[39] Although the exact date of the images are unknown, it is likely that they were taken in 2017–the same year as the environmental impact report. Because the uses of the Project site in 2017 may differ greatly from the existing uses–RV storage–this fails to provide an accurate baseline against which to measure the significance of the Project's environmental impacts.

Second, the RIS/MND fails to provide any information about how much of the Project site is allocated for each use (i.e., RV storage, self-storage, storage of materials).[40] This is important because, as Mr. Marshall explains, the RV storage facility was operating in 2017 and thus it is possible that most of the site was used for RV storage/self-storage even then.[41] As discussed above, the use of the Project site as a self-storage facility does not match any of the categories in the ITE *Trip Generation Manual* and underestimates the Project's true impacts. Therefore, the RIS/MND still lacks substantial evidence to support a fair argument that its use of the ITE 150 warehouse category to calculate the Project's baseline trip generation, rendering the RIS/MND's assessment of baseline conditions unsupported.

The RIS/MND also mischaracterizes the existing uses on the Project site as 24/7 operations.[42] Because of this, the City claims that the implementation of the proposed Project would not differ from the current uses on the Project site because both uses operate 24 hours a day.[43] However, as Mr. Marshall explains, the RV Storage Depot is not open to the public 24/7.[44] By characterizing the existing use as a 24/7 operation, this overestimates the existing trip rate.[45] The Staff Report attempts to justify the RIS/MND's mischaracterization by stating that, even though the RV Storage Depot is not open to the public 24/7, "existing onsite operations and site lighting occurs 24 hours a day."[46] However, this fails to adequately address Mr. Marshall's comment. As Mr. Marshall explains, because the "onsite operations" are not specified, they could be as limited as a single security guard.[47] Having a lighted parking lot and a single employee onsite does not meet the definition of 24/7 operations.[48] Furthermore, these existing "24/7 operations" are very different from

[39] Marshall Comments, p. 5.
[40] *Id.*
[41] *Id.*
[42] RIS/MND, p. 37.
[43] *Id.*
[44] Marshall Comments, p. 5.
[45] *Id.* at p. 5.
[46] Staff Report, Response L1.10, pp. 183-184; Staff Report, Response1.25, p. 188.
[47] Marshall Comments, p. 5.
[48] *Id.*

the 24/7 operations proposed at the Project site, which may be used for parcel hub or fulfillment center uses. For instance, Parcel Hub and Fulfillment Centers often involve delivery trucks bringing products to the warehouse during the day and night. In contrast, the existing site generates little traffic and likely no 4+-axle trucks at all.[49] Thus, it is misleading to describe the existing uses on the Project site as operating 24 hours a day similar to the proposed Project.

For these reasons, the RIS/MND overestimates the existing trip generation at the Project site and thus does not have an accurate baseline against which to measure the Project's significant impacts. The City must prepare an EIR that establishes an accurate baseline trip generation rate and mitigates any significant impacts found.

B. The RIS/MND Fails to Establish Accurate Baseline Noise Levels at the Project Site

The RIS/MND fails to accurately establish the baseline noise levels on the Project site. Mr. Meighan's comments explain that environmental noise can vary widely throughout the day (perhaps +/- 10 dBA or more for areas with intermittent local traffic).[50] Thus, an accurate noise baseline is critical to a meaningful assessment of a project's impacts.[51]

Here, the RIS/MND's noise analysis improperly relies on three short-term measurements – each of less than an hour in duration.[52] Mr. Meighan identifies two errors in relying on these measurements.[53] First, each measurement in the RIS/MND was likely about 15 minutes in length, which only represents 1% of a 24-hour period.[54] Second, the RIS/MND lacks evidence showing that the three short-term measurements relied upon are representative of the rest of the day or even of worst case (quietest conditions).[55]

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[49] *Id.*
[50] Meighan Comments, p. 3.
[51] *Communities for a Better Env't v. South Coast Air Quality Mgmt. Dist.* (2010) 48 CA4th 310, 336; *Save Our Peninsula Comm. v. Monterey County Bd. Of Supervisors* (2001) 87 CA4th 99, 119.
[52] Meighan Comments, p. 2.
[53] *Id.*
[54] *Id.*
[55] *Id.* at p. 3.

To correct these errors, Mr. Meighan explains that, because the RIS/MND states that the proposed Project will be operated 24 hours a day, baseline noise levels must be established for evening and nighttime conditions.[56] Without this data, Mr. Meighan states that "it is not possible to evaluate the significance of noise based on increases over ambient levels" as required by CEQA.[57] In order to determine a Project's existing noise levels, Appendix E of the Federal Transit Administrations' Transit Noise and Vibration Impact Assessment Manual ("FTA Manual") recommends a minimum of three one-hour Leq noise measures to estimate the 24-hour Ldn/CNEL during three distinct timeframes: peak-hour roadway traffic, midday, and nighttime.[58] The City does not conduct a similar noise study despite this industry standard regulatory guidance. Because of the high variability in noise levels throughout the day, the RIS/MND's current baseline noise measurements may overestimate the existing noise at the Project site, effectively masking potentially significant increases in noise that the Project may cause.[59]

Therefore, substantial evidence supports a fair argument that the Project may result in significant noise impacts. An EIR should be prepared that establishes accurate baseline noise levels and reanalyzes the Project's expected noise levels against this baseline.

IV. THE RIS/MND FAILS TO ANALYZE REASONABLY FORESEEABLE WAREHOUSE USES

The Project is proposed as a speculative warehouse without specific end uses or tenants.[60] CEQA requires an environmental review document to include all relevant parts of a project, including future actions that will foreseeably result from project approval.[61] Here, the RIS/MND fails to analyze impacts related to potential parcel hub or sort fulfillment center uses, which are not prohibited and thus reasonably foreseeable uses of the Project.

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[56] Meighan Comments, p. 2.
[57] Meighan Comments, p. 2; *King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 887, 893; *Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714, 733 (holding that increase in noise level must be considered, not just absolute noise level).
[58] Meighan Comments, p. 2.
[59] Meighan Comments, p. 3.
[60] RIS/MND, p. 21.
[61] *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376; *City of Santee v. County of San Diego* (1989) 214 CA3d 1438; 14 CCR § 15126.

Under CEQA, all phases of a project must be considered when evaluating its impact on the environment, including: planning, acquisition, development, and operations.[62] An analysis of the environmental effects of future actions must be included if (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant.[63] In *Laurel Heights Improvement Assn. v. Regents of University of California*, the Supreme Court discussed the issue of what circumstances require consideration of future action related to the proposed project.[64] There, the EIR acknowledged that the University of California in San Francisco in relocating the biomedical research facilities of its school of pharmacy would someday occupy more of the Laurel Heights building moved into than that portion identified in the EIR.[65] The Supreme Court held that, since the remainder of the Laurel Heights building would at some future time be occupied by UCSF, the future expansion was a reasonably foreseeable future use, even if the precise use of the remainder of the building was then unknown; the future use needed to be discussed in the EIR.[66]

Similar to *Laurel Heights*, the RIS/MND fails to analyze reasonably foreseeable end uses of the proposed Project. Instead, the RIS/MND limits its analysis of the Project's impacts, including in particular, transportation impacts, to only low-intensity warehouse uses.[67] Specifically, in order to determine the trips generated by the proposed Project, the RIS/MND utilizes statistics published in the Institute of Transportation Engineers ("ITE") Trip Generation Manual for the proposed Project's land uses.[68] The RIS/MND derived the daily trip generation rate for this Project by applying two different trip generation rates: warehousing and general light industrial.[69] Warehousing is one of the lowest trip generation rates among several trip generation rates available for warehouses.[70] Mr. Marshall explains that because this Project is proposed as a speculative warehouse, if the Project site is used for parcel hub or sort fulfillment uses actual trip generation could be significantly higher than assumed in the RIS/MND.[71]

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[62] 14 CCR § 15126.
[63] *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 396.
[64] Id.
[65] *Id.*
[66] *Id.* at p. 398.
[67] RIS/MND, p. 111.
[68] RIS/MND, p. 111.
[69] RIS/MND, p. 111; Marshall Comments, p. 5.
[70] Marshall Comments, p. 6.
[71] Marshall Comments, p. 7.

In response to CREED LA's comments filed on December 11, 2024, the City claims that the Project would not include parcel hub or sort fulfillment uses.[72] However, the City has not imposed any binding restrictions on these warehouse uses that would prevent them from occurring after Project buildout. One of the Project's proposed Conditions of Approval ("COA") states that "the proposed project may be designated for Warehouse use (ITE Land Use Code 150)."[73] But, as Mr. Marshall explains, this designation does not prevent the future use of the Project as a parcel hub or fulfillment center, nor does it restrict the truck and vehicle trips generated from these type of uses.[74] ITE Land Use Code 150 is defined as a warehouse "primarily devoted to the storage of materials, but it may also include office and maintenance areas."[75] The parcel hub and fulfillment center warehouse categories, which have higher trip generation rates, also satisfy this generic definition of a "warehouse."[76] Therefore, the Project could reasonably be used as a parcel hub or fulfillment center. This would result in a significantly higher trip generation that needs to be disclosed and analyzed in an EIR.[77]

Due to the self-described "speculative" nature of the Project's proposed end uses and the City's failure to impose binding restrictions limiting the types of warehouse uses that may occur after Project buildout, it is reasonably foreseeable that the Project may operate as a high-intensity warehouse. High intensity use would result in a higher trip generation rate than analyzed in the RIS/MND, resulting in potentially significant transportation impacts than discussed in the RIS/MND.

The City has a duty to analyze the impacts of *all* reasonably foreseeable warehouse uses of the Project site under CEQA. In this case, that includes higher intensity uses, such as parcel hub and fulfillment center uses. By omitting an analysis of these common warehouse uses, the RIS/MND fails to disclose and mitigate the more severe air quality, transportation, energy, and noise impacts that would result from these foreseeable uses, as required by CEQA.[78] Further, adoption of a mitigation measure or COA does not excuse the City from its duty to analyze the potentially significant impacts that would result from parcel hub and fulfillment center uses. Rather, CEQA requires separate analysis of the Project's unmitigated

[72] Staff Report Attachment H, Response L1.7, p. 182
[73] Resolution No. 25-13, Condition of Approval #13.
[74] Marshall Comments, p. 2.
[75] Marshall Comments, p. 2.
[76] Marshall Comments, p. 2.
[77] Marshall Comments, p. 2.
[78] Marshall Comments, p. 2.

and mitigated impacts.[79] The City must prepare an EIR that properly analyzes the Project's reasonably foreseeable end uses and mitigates any potentially significant impacts identified.

V. THERE IS SUBSTANTIAL EVIDENCE SUPPORTING A FAIR ARGUMENT THAT THE PROJECT WILL HAVE SIGNIFICANT, UNMITIGATED AIR QUALITY IMPACTS

Dr. Clark provides substantial evidence supporting a fair argument that the Project may result in significant, unmitigated construction and operation-related air quality impacts from emissions of nitrogen oxides ("NOx") and carbon dioxide ("CO2") which the RIS/MND fails to accurately analyze . Dr. Clark also provides substantial evidence supporting a fair argument that the Project will result in significant cumulative health risks to nearby residences that the RIS/MND failed to mitigate.

A. Substantial Evidence Supports a Fair Argument that the Project May Result in Significant Operational NOx and CO2 Emissions

The RIS/MND fails to accurately calculate the number of forklifts that will be utilized onsite, leading to an underestimation of the Project's potential operational emissions impacts. Dr. Clark's comments provide substantial evidence supporting a fair argument that NOx and CO2 emitted by forklifts during Project operation may result in significant impacts that must be disclosed and mitigated in an EIR.[80]

The City's air quality analysis estimates that one compressed natural gas forklift will be used per 10,000 SF for operational purposes, leading to a total of fourteen forklifts.[81] These fourteen forklifts are estimated to generate 1.61 tons of NOx and 323 tons of CO2.[82] However, as Dr. Clark explains, this calculation relies on the lowest rate of forklift usage referenced in the South Coast Air Quality Management District ("SCAQMD") High-Cube Warehouse Truck Trip Study White Paper Summary of Business Results ("Summary").[83] The SCAQMD Summary

[79] *Lotus v. Dept of Transportation* (2014) 223 Cal. App. 4th 645, 656; .
[80] Clark Comments, p. 2.
[81] RIS/MND Appendix A, p. 2.
[82] Clark Comments, p. 2.
[83] *Id.*

actually references a range of forklift usage rates, from a low of .2 forklifts per 10,000 sf to 4 forklifts per 10,000 sf.[84] By only using the lower end of this range, the RIS/MND fails to analyze potentially significant operational impacts that could result after Project buildout.[85]

For instance, using the upper end of the range of forklifts reported by SCAQMD, Dr. Clark calculates that the Project could have as many as forty-six forklifts onsite.[86] These thirty-two additional forklifts would generate an additional 3.68 tons of NOx and 608 tons of CO2 per year, resulting in potentially significant emissions.[87] These emissions were not included in the RIS/MND's emissions calculations, nor is mitigation proposed to ensure these emissions would remain below significance thresholds.

Because there is substantial evidence supporting a fair argument that the Project may result in significant operational impacts from emissions of NOx and CO2, the City must prepare an EIR.

B. Substantial Evidence Supports a Fair Argument that the Project May Result In Significant Cumulative Air Quality Impacts

The RIS/MND fails to adequately analyze the Project's potentially significant cumulative air quality emissions by failing to consider the Project's impacts in conjunction with existing warehouses near the Project site. Instead, the RIS/MND asserts that any projects that result in daily emissions that exceed any SCAQMD thresholds would have both an individually (project-level) and cumulatively significant air quality impact, while emissions that fall below those thresholds are considered less-than-significant.[88] As a result, the RIS/MND concludes that the Project's construction and operational emissions would be less-than-significant because they would not exceed the project-level thresholds.[89] This approach is inadequate because it fails to analyze the Project's cumulative effects with the existing and proposed development near the Project site in violation of CEQA, Attorney General warehouse guidance, and updated SCAQMD guidance.

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[84] *Id.*
[85] *Id.*
[86] Clark Comments, p. 2.
[87] Clark Comments, p. 2
[88] RIS/MND, pp. 43, 125.
[89] RIS/MND, p. 43.

Additionally, Dr. Clark provides substantial evidence supporting a fair argument that the Project may result in significant cumulative impacts when Project emissions are considered together with the emissions of nearby warehouses.[90]

Under CEQA, an environmental review document must evaluate a cumulative impact if the project's incremental effect combined with the effects of other projects is "cumulatively considerable."[91] This determination is based on an assessment of the project's incremental impacts "viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects."[92] Proper cumulative impact analysis is vital because "the full environmental impact of a proposed project cannot be gauged in a vacuum. One of the most important environmental lessons that has been learned is that environmental damage often occurs incrementally from a variety of small sources. These sources appear insignificant when considered individually, but assume threatening dimensions when considered collectively with other sources with which they interact."[93]

The RIS/MND's approach has been rejected by the courts for failing to comply with CEQA's requirement that a project mitigate impacts that are "cumulatively considerable."[94] A leading case on this issue is *Kings County Farm Bureau v. City of Hanford*.[95] In *Kings County*, the city prepared an EIR for a 26.4-megawatt coal-fired cogeneration plant. Notwithstanding the fact that the EIR found that the project region was out of attainment for PM_{10} and ozone, the city failed to incorporate mitigation for the project's cumulative air quality impacts from project emissions because it concluded that the Project would contribute "less than one percent of area emissions for all criteria pollutants."[96] The city reasoned that, because the project's air emissions were small in ratio to existing air quality problems, that this necessarily rendered the project's "incremental contribution" minimal under CEQA. The court rejected this approach, finding it "contrary to the intent of CEQA." The court stated:

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[90] Clark Comments, pp. 2-3.
[91] CEQA Guidelines § 15130(a).
[92] CEQA Guidelines §§ 15065(a)(3), 15355(b).
[93] *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 114.
[94] Pub. Res. Code § 21083(b)(2); CEQA Guidelines § 15130; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 719-21.
[95] *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal. App. 3d 692 ("Kings County"); *see also, Friends of Oroville v. City of Oroville* (2013) 219 Cal. App. 4th 832, 841-42.
[96] *Kings County, supra,* at 719.

> We find the analysis used in the EIR and urged by GWF avoids analyzing the severity of the problem and allows the approval of projects which, when taken in isolation, appear insignificant, but when viewed together, appear startling. Under GWF's "ratio" theory, the greater the over-all problem, the less significance a project has in a cumulative impacts analysis. We conclude the standard for a cumulative impacts analysis is defined by the use of the term "collectively significant" in Guidelines section 15355 and *the analysis must assess the collective or combined effect* of energy development. The EIR *improperly focused upon the individual project's relative effects and omitted facts relevant to an analysis of the collective effect this and other sources will have upon air quality*.[97]

The RIS/MND's analysis is similarly flawed because it improperly focuses on the individual project's relative effects and omits facts relevant to an analysis of the *collective* effect this and other sources will have upon air quality. The Staff Report attempts to justify this omission by claiming that they are merely relying on SCAQMD's recommended methodology because there is currently "no methodology to quantify the cumulative areawide or localized health risks within a community-wide area."[98]

These assertions are specious, ignore standard air quality analysis methodology used in CEQA documents throughout the State, including in the City of Norwalk, and are not supported by substantial evidence. First, it is well established that an adequate discussion of cumulative impacts must consider the Project's incremental impact in combination with past, present, and foreseeable

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[97] *Id.* at 721 (emphasis added) ; *see also People of the State of California v. City of Fontana,* Case No. CIVSB2121829, Petition for Writ of Mandate, available at https://climatecasechart.com/wp-content/uploads/case-documents/2021/20210723_docket-CIVSB2121829_petition-for-writ-of-mandate.pdf ("The MND's cumulative air quality impact analysis does not account for—or even acknowledge—the multitude of other warehouses near the Project. Rather than consider the environmental setting within which the Project will be situated, the MND simply states that the Project will not result in a cumulatively considerable increase in emissions because the Project's individual air quality impacts will be less than significant. The MND even applies this reasoning to its analysis of health impacts from localized emissions, despite making no attempt to determine or disclose the severity of the existing health impacts from localized emissions in the community")

[98] Staff Report, Response L1.16, p. 185; Staff Report, Response L1.32, p. 190.

future projects within the Project's vicinity.[99] Therefore, the RIS/MND's failure to consider the Project's impacts in addition to impacts from existing warehouses within the Project's vicinity violates the CEQA Guidelines.

Second, CEQA Guidelines state that "[c]ompliance with [a threshold of significance] does not relieve a lead agency of the obligation to consider substantial evidence indicating that the project's environmental effects may still be significant."[100] Dr. Clark provides substantial evidence supporting a fair argument that the Project may result in significant cumulative air quality impacts.[101] Specifically, Dr. Clark identifies 19 existing warehouse projects within 5 kilometers of the Project site.[102] Data from the Redford Conservancy at Pitzer College and Radical Research LLC shows that the existing projects generate 1,000 daily truck trips, producing 1.4 pounds (lbs) of DPM per day and 156 lbs of oxides of nitrogen (NO_x) per day.[103] Dr. Clark calculates that this would contribute .2 tons of DPM, which would be nearly 1.10 lbs of DPM per day.[104] This essentially doubles the amount of DPM being released in the community, which is already in the top 7% of all communities in the State of California impacted by pollution.[105] The City's cumulative impact analysis does not discuss this fact and does not propose mitigation to address the Project's further exacerbation of an already severe rate of exposure to pollutants in the area. The City's failure to address these potentially significant cumulative health risks in the RIS/MND violates CEQA and the legal precedent of *Kings County Farm Bureau*.

The approach used in the RIS/MND also directly conflicts with the recent Attorney General guidance document setting forth best practices for evaluating the environmental impacts of warehouse projects, like this one, under CEQA.[106] With respect to cumulative air quality and GHG emissions analysis, the Attorney

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[99] CEQA Guidelines § 15130; *Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act* (updated September 2022) (, available at: https://oag.ca.gov/system/files/media/warehouse-best-practices.pdf.
[100] Cal. Code Regs. Tit. 14, § 15064(b)(2).
[101] Clark Comments, pp. 2-3.
[102] *Id.* at p. 2.
[103] *Id.*
[104] *Id.* at p. 3.
[105] *Id.* at pp. 3-4.
[106] CEQA Guidelines § 15130; *Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act*, p. 7 (Updated September 2022) ("[w]hen analyzing cumulative impacts, thoroughly considering the project's incremental impact in combination with past, present, and reasonably foreseeable future projects, even *if the project's individual impacts alone do not exceed the applicable significance threshold*."), available at: https://oag.ca.gov/system/files/media/warehouse-best-practices.pdf

General's guidance states that best practices include "[w]hen analyzing cumulative impacts, thoroughly considering the project's incremental impact in combination with past, present, and reasonably foreseeable future projects, *even if the project's individual impacts alone do not exceed the applicable significance threshold*."[107]

Third, the RIS/MND attempts to argue that pursuant to CEQA Guidelines Section 15130(d)[108], additional cumulative impacts analysis is not required because the City of Norwalk General Plan EIR thoroughly analyzed "areawide cumulative impacts related to industrial development in the City."[109] However, the proposed project analyzed in the City's General Plan EIR included "only the unincorporated area of Los Angeles County."[110] Here, the proposed Project is located within Norwalk, CA, which is an incorporated area of Los Angeles County.[111] Therefore, the Norwalk General Plan EIR did not analyze the areawide cumulative impacts of the area that encompasses the proposed Project site and must conduct a separate cumulative impacts analysis for the Project as required by CEQA.

Therefore, there is substantial evidence supporting a fair argument that the Project may result in cumulatively significant air quality impacts. To comply with CEQA, the City must (1) prepare an EIR that analyzes the Project's impacts in combination with the 19 existing Projects identified and (2) mitigate any significant impacts to the greatest extent feasible.

C. Substantial Evidence Supports a Fair Argument that the Project May Have Significant, Unmitigated Cumulative Air Quality and Public Health Impacts Under the Draft SCAQMD Thresholds

The RIS/MND's cumulative impacts analysis relies on a 2003 SCAQMD guidance document titled White Paper on Potential Control Strategies to Address Cumulative Impacts from Air Pollution.[112] The City of Fontana was recently sued

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[107] *Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act* (updated September 2022) (, available at: https://oag.ca.gov/system/files/media/warehouse-best-practices.pdf.

[108] CEQA Guidelines § 15130(d) ("No further cumulative impacts analysis is required when a project is consistent with a general…plan where the lead agency determines that the regional or areawide cumulative impacts of the proposed project have already been adequately addressed.").

[109] RIS/MND, p. 125.

[110] City of Norwalk General Plan EIR (2014), p. 1-5.

[111] Auditor-Controller: Los Angeles County, *Incorporated Areas Cities*, available at: https://auditor.lacounty.gov/incorporated-areas-cities/; County of Los Angeles, *Cities within the County of Los Angeles*, available at: https://redistricting.lacounty.gov/wp-content/uploads/2021/01/1043530_09-10CitiesAlpha.pdf.

[112] RIS/MND, Appendix B, p. 8.

by the State Attorney General for erroneous reliance on this guidance.[113] The Attorney General's petition explained: "[t]o the extent that the 2003 SCAQMD White Paper asserts that any project with less than significant individual air quality impacts also necessarily has less than significant cumulative air quality impacts, it is inconsistent with CEQA."[114] The Attorney General's litigation resulted in a settlement which requires compliance with an ordinance adopted on April 12, 2022 that establishes sustainability standards for warehouses in Fontana, including standards intended to address cumulative air quality impacts. For example, the standards include requirements that rooftop solar panels supply 100% of power for non-refrigerated portions of facilities with buildings over 400,000 square feet, trees in automobile parking areas, zero emission motorized operational equipment, other equipment electrification requirements, and solar-ready building roofs.[115]

SCAQMD is in the process of updating its guidance to reflect modern science and CEQA's requirements, specifically referencing the City of Fontana case.[116] SCAQMD's November 6, 2024, Working Group's draft cumulative impacts guidance recommends that agencies lower the cancer risk significance threshold to better reflect cumulative impacts.[117] The draft SCAQMD protocols lower the cancer risk threshold from 10 in one million if certain factors reflecting high pollution burden are met.[118] These factors include determining (1) the background cancer risk affecting the Project area via the SCAQMD Multiple Air Toxics Exposure Study (MATES), (2) if there are 951 daily heavy-duty truck trips or more that would traverse the truck route, and (3) if the Project is located in a SB 535 disadvantaged community or an AB 617 community.[119] The RIS/MND's failure to consider pollution burden in its analysis of cumulative health risks thus violates CEQA.

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[113] *People of the State of California v. City of Fontana,* Case No. CIVSB2121829, Petition for Writ of Mandate, available at https://climatecasechart.com/wp-content/uploads/case-documents/2021/20210723_docket-CIVSB2121829_petition-for-writ-of-mandate.pdf.
[114] *Id.*
[115] *Id.*, Stipulation For Entry Of Final Judgment On Consent, available at https://climatecasechart.com/wp-content/uploads/case-documents/2022/20220414_docket-CIVSB2121605-CIVSB2121829_stipulation.pdf.
[116] SCAQMD, Working Group Meeting #6, Cumulative Impacts from Air Toxics for CEQA Projects, November 6, 2024, https://www.aqmd.gov/docs/default-source/ceqa/documents/wgm-6-20241106.pdf?sfvrsn=405a8561_13, pg. 4; *see* SCAQMD, Analyzing Cumulative Impacts from Air Toxics in CEQA Documents, https://www.aqmd.gov/home/rules-compliance/ceqa/ceqa-policy-development-(new).
[117] https://www.aqmd.gov/home/rules-compliance/ceqa/ceqa-policy-development-(new); https://www.aqmd.gov/docs/default-source/ceqa/documents/wgm-6-20241106.pdf?sfvrsn=405a8561_13.
[118] *Id.*
[119] SCAQMD, Comments on Draft Environmental Impact Report (DEIR) for the Proposed DJT4 Parcel Delivery Facility Project (Proposed Project) (SCH No. 2023070241) (December 20, 2024), pp.

There is substantial evidence supporting a fair argument that the Project's health risk impacts would exceed SCAQMD's draft cumulative impacts significance thresholds. Although new protocols have not yet been formally adopted, SCAQMD comments on similar warehouse projects recommending that the draft protocols be applied.[120] This demonstrates that the new thresholds are supported by substantial evidence, unlike the outdated 2003 guidance.

The draft SCAQMD protocols include a flowchart lowering the cancer risk significance threshold (from 10 in one million) if certain factors reflecting high pollution burden are met.[121] Dr. Clark applied the SCAQMD flowchart protocols and found that the Project's impacts would be significant.[122]

Step 1 of the flowchart is to determine the background cancer risk affecting the Project area via the SCAQMD Multiple Air Toxics Exposure Study ("MATES"). Per the MATES V Data Visualization Tool, the location of the Project site is in the 85th percentile of highest cancer risks in the South Coast Air Basin ("SCAB"), with a cancer risk of 546 in one million.[123] Per the draft thresholds, areas experiencing a background excess cancer risk in the 90th to 50th percentile would result in a drop of the Cancer Risk Threshold from 10 in one million to 5 in one million.[124]

Step 2 of the WG 6 flow diagram is to determine if there are 951 daily heavy-duty truck trips or more that would traverse the truck route to the freeway with Existing + Project + Future volumes.[125] As currently analyzed in the RIS/MND, the Project would not exceed 951 heavy duty truck trips.[126]

Step 3 is to determine if the Project is located in an SB535 disadvantage community or an AB617 community. If the project is within such an area, then the threshold would be reduced from 5 in one million to 3 in one million.[127] Dr. Clark

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2-62–2-63, available at: https://www.cityofbrea.gov/DocumentCenter/View/17864/DJT4-Parcel-Delivery-Facility-Final-EIR-.

[120] *Id.*

[121] SCAQMD, Working Group Meeting #6, Cumulative Impacts from Air Toxics for CEQA Projects, November 6, 2024.

[122] Clark Comments, pp. 5-6.

[123] *Id.*

[124] Clark Comments, p. 8.; SCAQMD, Working Group Meeting #6, Cumulative Impacts from Air Toxics for CEQA Projects, November 6, 2024, pg. 8.

[125] *Id.*

[126] RIS/MND, Appendix B, pdf p. 297; Clark Comments, p. 9.

[127] Clark Comments, p. 9.

demonstrates that the Project is located in an SB535 community.[128] This lowers the significance threshold from 5 in one million to 3 in one million.

The RIS/MND calculates that the cancer risk from the Project's DPM emissions during operation would be as high as 6.22 in one million for the residences near the Project site, while the Project's combined construction and operational cancer risk would be as high as 6.5 in one million.[129] These health risk impacts would exceed the 3 in one million significance threshold applicable to the Project and require mitigation.

The City fails to propose any mitigation that would ensure cumulative health risks are reduced to less than significant levels. In order to mitigate these impacts, Dr. Clark recommends that the City require Tier 4 final construction equipment.[130] Dr. Clark also provides a list of other mitigation measures that should be implemented to ensure impacts are reduced, including, but not limited to: anti-idling rules, installing zero-emission truck charging/fueling stations, and lower speed limits within the vicinity of the Project.[131]

This constitutes substantial evidence supporting a fair argument that the Project may result in significant impacts that require disclosure and mitigation in an EIR.

VI. THERE IS SUBSTANTIAL EVIDENCE SUPPORTING A FAIR ARGUMENT THAT THE PROJECT WILL HAVE SIGNIFICANT, UNMITIGATED NOISE IMPACTS

A. Substantial Evidence Supports a Fair Argument That The Project May Have Significant, Unmitigated Construction Noise Impacts

The RIS/MND fails to analyze the Project's construction noise impacts to identify the increase above ambient noise levels in violation of CEQA.[132] This also violates the FTA guidelines, which state that "Project construction criteria should

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[128] *Id.*
[129] RIS/MND, Appendix B, p. 26.
[130] Clark Comments, p. 10.
[131] *Id.* at p. 11.
[132] *King & Gardiner Farms, LLC v County of Kern* (2020) 45 CA5th 814, 887,893; *Keep Our Mountains Quiet v County of Santa Clara* (2015) 236 CA4th 714, 733 (holding that increase in noise level must be considered, not just absolute noise level).

account for the existing noise environment, the absolute noise levels during construction activities, the duration of the construction, and the adjacent land use."[133]

Section 9.04.140(B) of the City's Noise Ordinance states that a measured noise level exceeding the ambient noise level at the property line of any residential land by more than 5 dB is a violation of the noise regulations. Here, the projected construction noise level is only evaluated against the FTA guideline criteria of 80 dBA.[134] As discussed above, the measured ambient noise level may not be representative of the rest of the day.[135] Because of this, a more accurate baseline noise level may reveal an increase in ambient noise above the City's 5 dB threshold. This renders the City's conclusion that the Project would not result in significant noise impacts unsupported[136] This also constitutes substantial evidence that supports a fair argument that the Project may result in a significant noise impact that must be evaluated in an EIR.

Additionally, the RIS/MND improperly states that the Norwalk Noise Ordinance exempts construction related activities from noise regulations provided the activities take place during the hours of 7:00 a.m. to 6:00 p.m. or sunset, whichever is later.[137] Municipal Code Section 9.04.150(E) does not state that construction activities conducted during certain hours are exempt from noise regulations. Section 9.04.150(E) provides that construction activities are unlawful if conducted "other than between the hours of 7:00 a.m. and 6:00 p.m. or sunset" unless the Applicant receives a permit from the Building Official or Director of Community Development.[138] Therefore, the general noise regulations in Municipal Code Section 9.04.140 do apply and must be used to ensure the Project does not result in significant, unmitigated impacts.[139]

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[133] Meighan Comments, p. 3.
[134] RIS/MND, p. 98; Meighan Comments, p. 3.
[135] Meighan Comments, p. 2.
[136] RIS/MND, p. 97; Meighan Comments, p. 3.
[137] RIS/MND, p. 98.
[138] Norwalk Municipal Code § 9.04.150(E).
[139] Municipal Code § 9.04.140(B) ("Prima Facie Violation. An average noise level reading measured pursuant to Section 9.04.130 which exceeds the ambient noise level at the property line of any residential land (or if a condominium or apartment house, within any adjoining apartment) by more than five decibels shall be deemed to be prima fade evidence of a violation of the provisions of this article.").

Therefore, there is substantial evidence supporting a fair argument that the Project may have significant, unmitigated construction noise impacts. The City must prepare an EIR that properly analyzes the Project's noise impacts and mitigates any significant impacts to the greatest extent feasible.

B. Substantial Evidence Supports a Fair Argument that the Project May Have Significant, Unmitigated Operational Noise Impacts

The RIS/MND relies on unrealistic equipment assumptions, resulting in underestimation of the Project's operational noise impacts. Mr. Meighan's comments provide substantial evidence supporting a fair argument that the Project may have significant, unmitigated operational noise impacts that must be analyzed in an EIR.

First, the RIS/MND assumes that the Project will use rooftop HVAC units to only cool the office areas of the proposed warehouse.[140] The RIS/MND lacks substantial evidence to support this assumption because the Project is a speculative warehouse, which means that more HVAC units may be required depending on what the actual end uses are.[141] For instance, according to the American Society of Heating Refrigerating, and Air Conditioning Engineers, the minimum ventilation rate for warehouses is .06 CFM per square foot, per person, which must be adjusted for occupancy rates, indoor air quality, and other factors.[142] Based on the Project's square footage of 138,972 and expected employees of 107, Mr. Meighan calculates that the Project would need at least twenty-two 25-ton units (spread out across the roof) to properly ventilate the space.[143] Accordingly, Mr. Meighan found that the projected operational noise level expected from twenty-two HVAC units is 41-51 dBA at a distance of 1,020 feet, which is 21 to 31 dB higher than the RIS/MNDS's 20 dB projection for rooftop noise.[144]

Second, the RIS/MND says that part of the warehouse may be used for cold storage[145], but fails to adequately analyze the cooling equipment needs for this use. Cold storage has significantly different needs than office spaces.[146] Because of this, Mr. Meighan explains that if a portion of the warehouse space is used for cold

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[140] Meighan Comments, p .3.
[141] *Id.* at p. 3; RIS/MND, p. 21.
[142] Meighan Comments, pp. 3-4.
[143] *Id.* at p. 4.
[144] *Id.*
[145] RIS/MND, p. 21.
[146] Meighan Comments, p. 3.

storage, air cooled chillers would be required in addition to standard HVAC units.[147] The RIS/MND fails to analyze the potential impacts that would result from the use of both air-cooled chillers and standard HVAC units. The typical sound power level for an air-cooled scroll chiller ("chiller units") can be up to 100 dBA.[148] If four of the twenty-two 25-ton HVAC units are replaced with chiller units (approximately 20% of the rooftop units), then the projected noise level from the rooftop units is 49 to 52 dBA at a distance of 1,020 feet.[149] This is 29 to 32 dBA higher than the RIS/MND's 20 dB projection for rooftop noise.[150]

Third, Mr. Meighan highlights that the RIS/MND did not measure the nighttime ambient noise level for the Project and thus it is unknown.[151] Because of this, it is also unknown whether the noise levels due to the rooftop HVAC equipment would be higher than the existing ambient noise levels.[152] Mr. Meighan explains that the City must analyze this because high nighttime HVAC equipment noise levels can be disruptive and disturb sleep, which poses a potentially significant impact that the RIS/MND failed to analyze.[153]

Furthermore, as discussed above, the City's Noise Ordinance states that a significant operational noise impact would occur with a 5 dB increase in ambient noise.[154] Mr. Meighan provides substantial evidence supporting a fair argument that this threshold may be exceeded, resulting in a significant, unmitigated noise impact.[155] The City of Norwalk Municipal Code presumes an ambient noise level no lower than 45 dBA at night and 55 dBA during the day for residential zones.[156] The RIS/MND currently projects HVAC equipment noise levels of 20 dBA at the nearest residential receiver, below the nighttime ambient noise level of 45 dBA.[157] But, if the projected noise level due to rooftop HVAC equipment uses more realistic equipment assumptions, noise levels due to rooftop HVAC units could be as high as 51 dBA.[158] This is more than 5 dB above the presumed ambient noise level, which is a significant impact that the RIS/MND fails to disclose and mitigate.[159] Similarly, if

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[147] *Id.* at p. 4.
[148] *Id.*
[149] *Id.*
[150] *Id.*
[151] *Id.* at p. 5.
[152] *Id.*
[153] *Id.*
[154] Norwalk Municipal Code § 9.04.140(B).
[155] Meighan Comments, p. 5.
[156] Norwalk Municipal Code § 9.04.120(B); Meighan Comments p. 5.
[157] Meighan Comments, p. 5.
[158] *Id.*
[159] *Id.*

the projected noise level due to both rooftop HVAC and chiller units uses more realistic equipment assumptions, Mr. Meighan calculates that the noise level could be as high as 52 dBA.[160] This is more than 6 dB above the presumed ambient noise level, which is also a significant impact that the RIS/MND fails to disclose and mitigate.[161]

Therefore, substantial evidence supports a fair argument that the Project may result in significant operational noise impacts. To comply with CEQA, the City must prepare an EIR that properly analyzes and mitigates these potentially significant impacts.

C. Substantial Evidence Supports a Fair Argument that the Project's Roadway Noise Impacts May be Significant and Unmitigated

The RIS/MND lacks substantial evidence to support a fair argument that the Project's traffic noise impacts will be less than significant.[162] The Project's traffic noise impacts are underestimated and potentially significant because they rely on inaccurate trip generation data. The level of traffic noise depends on three primary factors: (1) the volume of traffic, (2) the speed of traffic, and (3) the number of trucks in the flow of traffic.[163]

Here, the RIS/MND's analysis of the Project's potential offsite traffic noise impacts focused on the noise impacts associated with the change of volume of traffic that would occur with development of the proposed Project.[164] However, as discussed above, the RIS/MND overestimates the average daily trips ("ADT") from the existing land uses on the Project site. Without an accurate baseline trip generation rate, it is impossible to accurately establish the volume of traffic that would result from the Project. If a traffic count is conducted at the existing land use, the real trip generation rate would likely be much lower than assumed in the RIS/MND. Because estimating the level of traffic noise relies on traffic volume, the RIS/MND's offsite traffic noise impact is underestimated and potentially significant.

In addition to masking the net daily trips generated by the Project by overestimating trips from the existing use, the RIS/MND underestimates the gross number of trips generated by the Project by low-intensity categories of warehouse uses. As Mr. Marshall's chart below demonstrates, the RIS/MND assumes a trip

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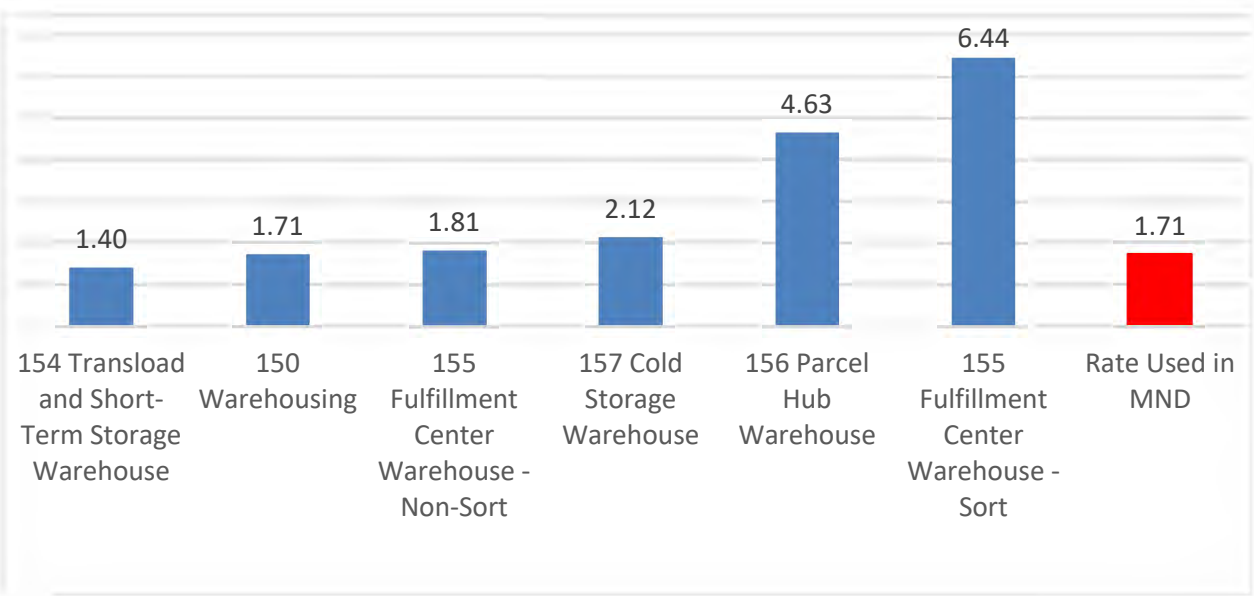
[160] *Id.*
[161] *Id.*
[162] RIS/MND, p. 100.
[163] RIS/MND, p. 100.
[164] RIS/MND, p. 100.

generation rate of 1.71 per 1,000 sf for warehousing, which is lower than many other categories of warehouse uses possible for the Project.[165] For example, the Project would have a trip generation rate of 4.63 if used as a parcel hub or 6.44 if used as a fulfillment center. Because the RIS/MND underestimates the gross daily trips generated by the Project, traffic noise is underestimated and potentially significant.



Furthermore, Mr. Meighan identified an error in the RIS/MND's analysis of the Project's offsite traffic noise impacts.[166] The RIS/MND states that "[i]n order for project-generated vehicular traffic to increase the noise level on any of the nearby roads…by 1.5 dBA, the ADT would have to increase by 50 percent."[167] Mr. Meighan explains that this is incorrect and that a 50 percent increase in the ADT would increase the noise level by 1.76 dBA.[168] This error further calls into question the validity of the RIS/MND's noise analysis.

For these reasons, there is substantial evidence supporting a fair argument that the Project may result in potentially significant roadway noise impacts, requiring preparation of an EIR. The City must (1) analyze the Project's potential traffic noise impacts using accurate baseline trip generation data and calculations and (2) mitigate any significant impacts found prior to Project approval.

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[165] RIS/MND, p. 111.
[166] Meighan Comments, p. 5.
[167] RIS/MND, p. 100.
[168] Meighan Comments, p. 5.

D. SUBSTANTIAL EVIDENCE SUPPORTS A FAIR ARGUMENT THAT THE PROJECT MAY RESULT IN SIGNIFICANT, UNMITIGATED TRANSPORTATION IMPACTS

The City improperly concludes that a transportation VMT analysis does not need to be prepared for the Project.[169] To support this conclusion, the City relies on Section 3.1.2.3 of the Los Angeles County guidelines, which states that non-retail projects that generate fewer than 110 net daily passenger trips are generally exempt from preparing a VMT analysis.[170] The RIS/MND claims that the Project screens out of a VMT analysis because the Project would only generate 99 net new trips per day.[171]

However, this calculation is based on the assumption that the existing land use on the Project site generates 112 passenger trips per day.[172] As discussed more fully above and in Mr. Marshall's comments, the RIS/MND mischaracterizes the existing uses on the Project site and utilizes an incorrect trip generation rate. As a result, the trip generation from the existing land uses on the Project site are overestimated.[173]

Additionally, the RIS/MND underestimates the trips that would be generated by the new Project by relying on a low, unsupported trip generation rate.[174] If a more accurate trip generation rate was used, the proposed Project would likely be found to generate more than the threshold of 110 net new trips per day, which requires a full VMT analysis.[175] For example, if the Parcel Hub trip generation rate of 4.63 daily trips per day is substituted for the warehouse rate applied in the RIS/MND, the Project would generate 678 daily trips instead of the currently estimated 339 daily trips.[176] This new trip generation includes 603 passenger vehicle trips, which when subtracted from the current existing use passenger trip estimate of 112, would result in a new net passenger trip generation rate of 491.[177] This far exceeds the 110 net daily passenger trips screening threshold and requires a VMT analysis to be conducted.[178]

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[169] RIS/MND, p. 110.
[170] RIS/MND, p. 110.
[171] RIS/MND, p. 110.
[172] Marshall Comments, p. 7.
[173] Marshall Comments, p. 7.
[174] *Id.*
[175] *Id.*
[176] Marshall Comments, pp. 7-8.
[177] *Id.*
[178] *Id.*

Mr. Marshall further explains that the site plan supports a much higher trip generation than assumed in the RIS/MND.[179] For instance, the RIS/MND estimates that the Project would generate 339 daily trips including 211 passenger vehicle trips per day.[180] This equates to 105.5 daily round trips.[181] In contrast, the Project includes 141 passenger car parking spaces.[182] This would mean that the parking lot would never be more than 75% full.[183] And, because of the nature of typical warehouse operations, which includes things like drop-offs, pick-ups, or business service visits, Mr. Marshall explains that the parking lot would likely have much more excess capacity than 25%.[184] Therefore, the Project could generate more than 110 net trips a day.[185]

For these reasons, the RIS/MND lacks substantial evidence to support a fair argument that the Project would not result in significant VMT impacts. The City must prepare an EIR that conducts a VMT analysis and mitigates any significant impacts found.

E. THE RIS/MND IMPERMISSIBLY DEFERS ANALYSIS OF THE PROJECT'S FIRE FLOW CAPACITY

The RIS/MND fails to adequately analyze whether the Project meets applicable fire flow requirements and instead defers this analysis until after Project approval in violation of CEQA. Fire flow refers to the rate of a water supply that is available at surrounding fire hydrants for firefighting purposes.

Under CEQA, a public utilities impact is considered significant if a project would "[r]equire or result in the relocation or construction of new or expanded water, wastewater treatment or storm water drainage, electric power, natural gas, or telecommunications facilities the construction or relocation of which could cause significant environmental effects."[186]

Additionally, Norwalk General Plan Utility Policy 3-3 requires "the provision of adequate fire flow rates in all new development." Thus, failure to ensure adequate fire flow is inconsistent with the City's own General Plan.

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[179] *Id.* at p. 8.
[180] Marshall Comments, p. 8; RIS/MND, Appendix L, Table 1, p. 8.
[181] Marshall Comments, p. 8.
[182] Marshall Comments, p. 8; RIS/MND, p. 27.
[183] Marshall Comments, p. 8.
[184] *Id.*
[185] *Id.*
[186] CEQA Guidelines, Appendix G ("Utilities and Service Systems").

The RIS/MND states that "the Project would install 590 linear feet of a 12-inch water line… for fire water service."[187] The RIS/MND goes on to state that "[t]he analysis of the construction activities related to the proposed water service line is included as a part of the Project and would not result in any physical environmental effects beyond those identified throughout this [RIS/MND]."[188] This conclusion is not supported by substantial evidence that supports a fair argument of no significant impacts because the RIS/MND fails to analyze the Project's fire flow requirement or the ability of existing infrastructure to supply adequate fire flow.

The City claims that the Los Angeles County Fire Department ("LACoFD") reviewed and approved the proposed water line along with a fire flow assessment.[189] However, the City fails to attach the fire flow assessment to its response, or include any other evidence of LACoFD's approval. Thus, the City lacks the substantial evidence to support a fair argument that the Project will have adequate fire flow. In fact, the City's own Conditions of Approval ("COA") indicate that this analysis has not been conducted and is instead planned for after Project approval. Specifically, COA 29 states:

> prior to issuance of any development plans, the applicant is required to contact Los Angeles County Fire Department…and obtain the fire flow and access requirements for any proposed development. The applicant will also be required to contact the City of Norwalk Water Division to determine the existing fire flow rate in this area. If the existing fire flow capabilities are below the required minimum, the applicant shall provide the necessary means for meeting the fire flow rates required by the Fire Department.[190]

This violates CEQA's prohibition against deferred analysis. "By deferring environmental assessment to a future date, the conditions run counter to that policy of CEQA which requires environmental review at the earliest feasible stage in the planning process. [191] CEQA documents should be prepared with enough analysis to provide decisionmakers with the information necessary to make an informed decision that considers the environmental consequences.[192] While the evaluation of environmental effects need not be exhaustive, the sufficiency of an CEQA analysis is assessed based on what is reasonably feasible.[193] A lead agency may determine

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[187] RIS/MND, pp. 22, 89, 116.
[188] RIS/MND, p. 116.
[189] RIS/MND, pp. 89, 105.
[190] Norwalk Planning Commission Resolution No. 25-13, p. 10.
[191] *Sundstrom* (1998) 202 Cal.App.3d 296, 305.
[192] CEQA Guidelines § 15151.
[193] *Id.*

that an impact is too speculative for evaluation after considering whether a reasonably feasible analysis of the impact can be conducted.[194] However, when a standard, accepted methodology is available to assess a significant impact, the agency must evaluate that impact unless a reasoned basis for not doing so is provided.[195]

Therefore, the City must conduct this analysis before the Project can be considered for approval. This is particularly important because if the 12-inch water line planned for the Project is inadequate to provide the requisite fire flow, it may need to be upsized. These improvements would result in construction-related impacts greater than analyzed in the RIS/MND. Additionally, inadequate fire flow would result in increased fire severity, limiting firefighting capabilities, increased loss of life and property, and increased risk of fire spread—a significant impact under CEQA. Without an evaluation of the Project's fire flow, this Project's public utility impact remains unanalyzed and potentially significant.

F. SUBSTANTIAL EVIDENCE SUPPORTS A FAIR ARGUMENT THAT THE PROJECT MAY RESULT IN SIGNIFICANT, UNMITIGATED ENERGY IMPACTS

The RIS/MND concludes that the construction and operational energy impacts of the Project would be less than significant.[196] This conclusion is not supported by substantial evidence because it fails to comply with CEQA's requirement to analyze energy conservation measures that might be available or appropriate for the Project.

CEQA requires an environmental document to discuss mitigation measures for significant environmental impacts, including "measures to reduce the wasteful, inefficient, and unnecessary consumption of energy."[197] The CEQA Guidelines require discussion of energy conservation measures when relevant, and provide the following examples in Appendix F:

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[194] CEQA Guidelines §§ 15144, 15145; *East Oakland Stadium Alliance v. City of Oakland* (20230 89 CA5th 1226, 1249-1251; *City of Long Beach v. Los Angeles Unified Sch. Dist.* (2009) 176 CA4th 889, 914; *Anderson First Coalition v. City of Anderson* (2005) 130 CA4th 1173, 1182.
[195] *Berkeley Jet* (2001) 91 CA4th 1344, 1370.
[196] RIS/MND, pp. 58-59.
[197] Pub. Res. Code § 21100(b)(3); *Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 912, 930.

- Potential measures to reduce wasteful, inefficient and unnecessary consumption of energy during construction, operation, maintenance and/or removal. The discussion should explain why certain measures were incorporated in the project and why other measures were dismissed.
- The potential of siting, orientation, and design to minimize energy consumption, including transportation energy, increase water conservation and reduce solid waste.
- The potential for reducing peak energy demand.
- Alternate fuels (particularly renewable ones) or energy systems.
- Energy conservation which could result from recycling efforts.[198]

Courts have rejected CEQA documents that fail to include adequate analysis investigation into energy conservation measures that might be available or appropriate for a project.[199] In *California Clean Energy Commission v. City of Woodland* ("*CCEC*"), the Court of Appeal reviewed an EIR for a shopping center on undeveloped agricultural land.[200] The EIR in *CCEC* concluded that, due to the proposed project's compliance with Title 24 guidelines and regulations, the project would be expected to have a less-than-significant impact regarding the wasteful, inefficient, or unnecessary consumption of energy.[201] But the lead agency's EIR did not include discussion regarding the different renewable energy options that might be available or appropriate for the project.[202] The Court held "the City's EIRs failed to comply with the requirements of Appendix F to the Guidelines by not discussing or analyzing renewable energy options."[203] The lead agency argued that compliance with the Building Code sufficed to address energy impact concerns for the project.[204] But the Court explained:

> Although the Building Code addresses energy savings for components of a new commercial construction, it does not address many of the considerations required under Appendix F of the CEQA Guidelines… These considerations include whether a building should be constructed at all, how large it should be, where it should be located, whether it should incorporate renewable energy resources, or anything else external to the building's envelope. Here, a

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[198] CEQA Guidelines § 15126.4(a)(1)(C) (stating "'Energy conservation measures, as well as other appropriate mitigation measures, shall be discussed when relevant.").
[199] *Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 CA4th 256; *Spring Valley Lake Ass'n v. City of Victorville* (2016) 248 CA4th 91.
[200] *CCEC* (2014) 225 CA4th 173.
[201] *Id.* at 184.
[202] *Id.* at 213.
[203] *Id.* at 213.
[204] *Id.* at 210, 211.

> requirement that Gateway II comply with the Building Code does not, by itself, constitute an adequate assessment of mitigation measures that can be taken to address the energy impacts during construction and operation of the project.[205]

The Supreme Court agreed with the *CCEC* court's decision in *League to Save Lake Tahoe Mtn. Area Preservation Found. v County of Placer* ("*League to Save Lake Tahoe*"), holding that even projects that find a less-than-significant energy impact must "discuss whether any renewable energy features could be incorporated into the project."*[206]* In *Save Lake Tahoe*, the Court considered an EIR for a land use specific plan and rezoning to permit residential and commercial development and preserve forest land near Truckee and Lake Tahoe.[207] The EIR did not consider whether it was feasible to power the project on 100 percent renewable electrical energy or some lesser percentage, nor evaluate strategies for reducing reliance on fossil fuels, increasing reliance on renewable resources, reducing peak loads, and reducing the impacts of relying on remote generation facilities.[208] The lead agency reasoned that this analysis was not required because energy impacts would be less than significant.[209] Citing CEQA Guidelines Section 15126.2, subdivision (b) and the decision in *CCEC*, the Court held that when an EIR analyzes the project's energy use to determine if it creates significant effects, it should discuss whether any renewable energy features could be incorporated into the project.[210] The Court found that the EIR violated CEQA for not discussing whether the project could increase its reliance on renewable energy sources to meet its energy demand.[211]

Here, the RIS/MND concludes that the Project's construction and operational energy impacts would be less than significant because the building would be designed and constructed in accordance with the State's Title 24 guidelines and regulations.[212] As the case's above demonstrate, compliance with Title 24 regulations alone does not support a conclusion that energy impacts are less than significant. Additionally, similar to *League to Save Lake Tahoe*, the City does not discuss any renewable energy features that could be incorporated into the Project. For example, use of Tier 4 engines during construction or installing solar panels.

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[205] *Id.* at 211.
[206] *League to Save Lake Tahoe* (2022) 75 CA5th 63, 167–68.
[207] *Id.* at 70.
[208] *Id.* at 165-166.
[209] *Id.* at 166.
[210] *Id.* at 167-168.
[211] *Id.* at 168.
[212] RIS/MND, pp. 58-59.

The Staff Report attempts to justify this omission by claiming that the analysis in the RIS/MND provides an adequate discussion of renewable energy features because the Project would be designed to achieve LEED Gold certification and would be designed with a solar-ready roof.[213] But the City's response is inadequate for several reasons. First, the requirement to achieve LEED Gold Certification is not included as a mitigation measure, a condition of approval, or in the Project's mitigation monitoring or reporting program. Therefore, these requirements are not binding.

Second, stating that the Project would meet LEED Gold Certification fails to provide any specifics about the different types of renewable energy options that are available for the Project. LEED Gold Certification is obtained through achieving points through the use of renewable energy and energy efficient systems.[214] There are no requirements for what renewable energy and energy efficient systems must be implemented. Rather, the only requirement to obtain Gold Certification is that a total of 60-79 points be earned.[215] Thus, this does not guarantee that the measures chosen will go beyond what is already required by Title 24 and it fails to satisfy CEQA's requirement that a Project's energy impacts analysis include a discussion regarding the different renewable energy options that might be available or appropriate for the Project.[216]

Third, including a solar-ready roof, which suggests that solar panels could be installed after the Project is constructed, does not guarantee subsequent installation and the RIS/MND lacks a discussion of whether these or any other renewable energy features could be incorporated into the Project in order to meet the energy demand as required by CEQA.[217] For example, the RIS/MND fails to consider installing solar panels during Project construction or discuss why installing solar panels as part of the Project is not being considered.

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[213] Staff Report Attachment H, Responses L1.19 and L1.20, p. 187; RIS/MND pp. 58-59, 88.
[214] U.S. Green Building Council, Inc., Guide to LEED Certification: Commercial (last visited 2/2/25), available at: https://www.usgbc.org/tools/leed-certification/commercial.
[215] U.S. Green Building Council, Inc., Guide to LEED Certification: Commercial (last visited 2/2/25), available at: https://www.usgbc.org/tools/leed-certification/commercial.
[216] CEQA Guidelines § 15126.4(a)(1)(C) (stating "'Energy conservation measures, as well as other appropriate mitigation measures, shall be discussed when relevant."); *California Clean Energy Commission v. City of Woodland* (2014) 225 Cal.App.4th 173; *League to Save Lake Tahoe* (2022) 75 Cal.App.5th 63.
[217] *League to Save Lake Tahoe* (2022) 75 CA5th 63, 167–68 (holding that when an EIR analyzes the project's energy use to determine if it creates significant effects, it should discuss whether any renewable energy features could be incorporated into the project that could increase the Project's reliance on renewable energy sources to meet its energy demand).

The City also fails to discuss other potentially available renewable energy technology, such as incorporating a battery energy storage system, using biofuels for construction vehicles and generators, or using electric or hybrid construction equipment. Additionally, the City deleted the original IS/MND's proposed mitigation measure AQ-1, which would have required Tier 4 construction equipment be used. Tier 4 equipment are more energy efficient then lower tiers of construction equipment.[218] The City did not explain why this measure was deleted or provide any evidence to support a conclusion that it is no longer a feasible energy conservation measure. Failure to include a discussion about potential renewable energy options, even when a Project's energy impacts would be less than significant, violates CEQA.[219]

Fourth, Appendix F of the CEQA Guidelines provides that a project may result in significant energy impacts depending on "the degree to which the project complies with existing energy standards."[220]

The RIS/MND states that the Project would comply with existing energy standards because it would comply with Title 24 standards, but fails to evaluate the feasibility of meeting voluntary standards described in Appendix A5, Nonresidential Voluntary Measures, of the 2022 California Green Building Standards Code ("CALGreen"). These standards include energy consumption measures applicable to this project. Appendix A4 A5 describes two tiers of voluntary measures – Tier 1 and Tier 2. Tier 2 standards would result in greater reductions in energy consumption. CALGreen Section A5.106.5.1.2 calls for 50% spaces to be reserved for clean air vehicles. CALGreen Section A5.106.5.3 calls for an increased number of EV capable spaces, depending on the total number of spaces.[221] Tier 2 standards require large projects with 201 or more parking spaces to provide 45% EV capable spaces.[222] CALGreen Section A5.203.1.2 sets energy budgets that are less than permitted by the mandatory Title 24 energy standards.[223] CALGreen Section A5.303.2.3 calls for reductions in water consumption by requiring plumbing fixtures and fixture fittings that would reduce the use of potable water by 20% in the case of Tier 2 standards.[224] These measures and others in Appendix A5 are potentially applicable to Project.

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[218] Sustainable Nine, Energy Efficiency Tier Rating: What you Need to Know, available at: https://sustainable9.com/news/energy-efficiency-tier-rating#:~:text=Tier%20Two%2C%20Three%2C%20and%20Four,CEE%20Energy%20Rating.
[219] *League to Save Lake Tahoe* (2022) 75 Cal.App.5th 63, 167-68.
[220] CEQA Guidelines, Appendix F, subd. II (C)(4).
[221] CALGreen, Table A5.106.5.3.1 Tier 1
[222] Table A5.106.5.3.1, A5.106.5.3.2.
[223] CALGreen Sections A5.203.1.2.1, A5.203.1.2.2.
[224] CALGreen Sections A5.303.2.3.1, A5.303.2.3.2

The RIS/MND's statement that it would meet LEED Gold standards does not address consistency with the CalGreen voluntary standards. The RIS/MND's analysis is thus incomplete and not supported by substantial evidence that supports a fair argument because it does not contain any evidence that these measures are inapplicable to the Project or would be infeasible to implement.

In sum, the RIS/MND's energy analysis fails to adequately analyze measures that would reduce the wasteful, inefficient, and unnecessary consumption of energy, and fails to meaningfully address Appendix F's considerations of whether a building should be constructed at all, how large it should be, where it should be located, whether it should incorporate renewable energy resources, or anything else external to the building's envelope.[225] This analysis must be provided in an EIR.

G. THE CITY CANNOT MAKE THE REQUISITE FINDINGS TO APPROVE THE PROJECT'S ENTITLEMENTS

The Project requires the City to approve the RIS/MND and PDP.[226] However, as discussed herein, the RIS/MND fails to adequately analyze or mitigate several significant environmental impacts. As a result, the City cannot make the requisite findings to approve the Project's PDP.

A PDP may only be approved if it complies with the Norwalk Municipal Code and will not be detrimental to the public health, safety and welfare or adversely affect property values or the present and future development of surrounding areas.[227] If the proposed development is found to substantially depreciate property values or interfere with the use or enjoyment of property in the vicinity—due to excessive dissimilarity or inappropriateness of design in relation to the surrounding vicinity—such findings may endanger the public health, safety, convenience and welfare and may be cause for denial of a PDP.[228]

As detailed herein, and in the expert consultant reports attached hereto, the Project has significant, unmitigated impacts which cause inconsistencies with the Municipal Code. In particular, the City violates the Municipal Code by failing to analyze whether the Project increases the existing noise levels by more than 5dB.[229]

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[225] *Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 CA4th 256, 264.
[226] RIS/MND, p. 23.
[227] Norwalk Municipal Code § 17.02.205(D).
[228] *Id.*
[229] Norwalk Municipal Code § 9.04.140(B).

There is also substantial evidence that supports a fair argument that the Project will result in detriment to the health, safety, and welfare of the public by interfering with the use or enjoyment of property in the Project's vicinity. Specifically, the Project may result in significant, unmitigated related to (1) health risk from DPM emissions, (2) excessive construction noise, and (3) heightened VMT, and (4) inadequate fire flow. The City therefore cannot make the necessary findings to support approval of the Project's entitlements, absent additional analysis and mitigation of the Project's significant environmental impacts in an EIR.

H. CONCLUSION

For the reasons discussed above, there is substantial evidence supporting a fair argument that the Project may result in potentially significant air quality, noise, transportation, public utility, and energy impacts that were not adequately analyzed or mitigated in the RIS/MND. In order to comply with CEQA, the City must prepare and circulate an EIR that provides legally adequate analysis of, and mitigation for, all of the Project's potentially significant impacts.

CREED LA respectfully requests that the Commission continue the hearing on the Project, and remand the Project to staff to prepare an EIR. Until an EIR has been prepared and circulated, the City may not lawfully approve the Project.

Thank you for your consideration of these comments. Please include them in the record of proceedings for the Project.

Sincerely,

Alaura McGuire

ARM:ljl