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Via Email & Overnight Delivery

Kathleen King, City Planner
City of Los Angeles
Department of City Planning 221 N. Figueroa
Street, Suite 1350 Los Angeles, CA 90012
Email: kathleen.king@lacity.org

Re: 6000 Hollywood Boulevard Project (SCH No. 2023050659; Environmental Case No. ENV-2022-6688-EIR)

Dear Ms. King:

We are writing on behalf of Coalition for Responsible Equitable Economic Development Los Angeles ("CREED LA") regarding the Draft Environmental Impact Report ("DEIR") prepared by the City of Los Angeles ("City") for the 6000 Hollywood Boulevard Project (SCH No. 2023050659; Environmental Case No. ENV-2022-6688-EIR) ("Project"), proposed by 6000 Hollywood Blvd Associates LLC ("Applicant").

The Project proposes a mixed-use development comprised of 350 residential units (of which 44 units will be reserved for Very Low Income households), 136,000 square feet (sf) of office uses, 18,004 sf of retail uses, 4,038 sf of restaurant uses, and 500 sf of storage space (total floor area of 501,185 sf). The proposed uses would be in three primary buildings, Buildings A, B, and C, and 11 low-rise structures dispersed throughout the Site. Building A would be a 136,000 sf, six-story office and retail building; Building B would be a 289,079 SF, 35-story residential tower; Building C would be a 23,560 sf, four-story residential building; and 11 low-rise structures ranging from two to four stories would be interspersed throughout the Site. The Project Site encompasses the following addresses: 5950, 5960, 5962, 6000, 6004, 6010, 6016, 6020, 6024, 6024½, 6030, 6038, 6044, and 6048 West Hollywood Boulevard and 6037 West Carlton Way, in the City of Los Angeles, California (Assessor's Parcel Numbers: 5545-006-029; 005-005; 005-022).

L7627-004acp

We reviewed the DEIR with the assistance of air quality expert Dr. James Clark¹ and noise expert Patrick Faner.²

Based upon our review of the DEIR and supporting documentation, we conclude that the DEIR fails to comply with the requirements of the California Environmental Quality Act (“CEQA”).³ In summary, the DEIR’s project description is inadequate because the DEIR fails to analyze impacts from construction of a deep foundation, thus failing to analyze impacts from all reasonably foreseeable consequences of the Project. The DEIR’s impacts analysis is inadequate because it fails to conduct a quantitative health risk analysis, despite the fact that the Project site is bordered by a preschool and numerous multifamily homes. Dr. Clark prepared a health risk analysis demonstrating that incremental cancer risk of these sensitive receptors would be 40.5 in one million, which exceeds the City’s 10 in one million significance threshold. The DEIR also fails to adequately analyze the Project’s cumulative health risk and air quality impacts in light of the community’s existing pollution burden resulting from similar projects.

The DEIR fails to analyze impacts associated with the Project’s provision of 894 parking spaces, which is in excess of the zero parking spaces required by law. These impacts include air quality, GHG, energy, and transportation. The DEIR fails to adequately analyze geotechnical impacts on the Metro B (Red) Line tunnel near the Project site. The DEIR fails to analyze all impacts associated with construction of infrastructure improvements. The DEIR also fails to adequately analyze noise and vibration impacts by failing to adequately characterize existing conditions, include all sensitive receptors in its analysis, and identify all feasible mitigation measures for impacts deemed significant and unavoidable.

As a result of its shortcomings, the DEIR lacks substantial evidence to support its conclusions, violates CEQA’s disclosure and analytical requirements, and fails to properly mitigate the Project’s significant environmental impacts. CREED LA urges the City to remedy the deficiencies in the DEIR by preparing a legally adequate revised DEIR and recirculating it for public review and comment. CREED LA reserves the right to provide supplemental comments at any and all later proceedings related to this Project.⁴

¹ Dr. Clark’s technical comments and curricula vitae are attached hereto as **Exhibit A**.

² Mr. Faner technical comments and curricula vitae are attached hereto as **Exhibit B**.

³ PRC § 21100 et seq.

⁴ Gov. Code § 65009(b); PRC § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.

I. STATEMENT OF INTEREST

CREED LA is an unincorporated association of individuals and labor organizations 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 association includes Los Angeles residents Thomas Brown, John Bustos, Gery Kennon, 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, along with their members, their families, and other individuals who live and work in the City of Los Angeles and Los Angeles County.

Individual members of CREED LA live in the City of Los Angeles, and work, recreate, and raise their families in the City 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 on site.

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. Continued environmental degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduce future employment opportunities.

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. LEGAL BACKGROUND

CEQA requires public agencies to analyze the potential environmental impacts of their proposed actions in an EIR.⁵ “The foremost principle under CEQA is that the Legislature intended the act to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.”⁶

CEQA has two primary purposes. First, CEQA is designed to inform decisionmakers and the public about the potential significant environmental effects of a project.⁷ “Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR ‘protects not only the environment but also informed self-government.’”⁸ The EIR has been described as “an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.”⁹ As the CEQA Guidelines explain, “[t]he EIR serves not only to protect the environment but also to demonstrate to the public that it is being protected.”¹⁰

Second, CEQA requires public agencies to avoid or reduce environmental damage when “feasible” by requiring consideration of environmentally superior alternatives and adoption of all feasible mitigation measures.¹¹ The EIR serves to provide agencies and the public with information about the environmental impacts of a proposed project and to “identify ways that environmental damage can be avoided or significantly reduced.”¹² If the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has “eliminated or substantially lessened all significant effects on the environment” to

⁵ PRC § 21100.

⁶ *Laurel Heights Improvement Assn. v. Regents of Univ. of Cal* (“*Laurel Heights I*”) (1988) 47 Cal.3d 376, 390 (internal quotations omitted).

⁷ Pub. Resources Code § 21061; CEQA Guidelines §§ 15002(a)(1); 15003(b)-(e); *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 517 (“[T]he basic purpose of an EIR is to provide public agencies and the public in general with detailed information about the effect [that] a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.”).

⁸ *Citizens of Goleta Valley*, 52 Cal.3d at p. 564 (quoting *Laurel Heights I*, 47 Cal.3d at 392).

⁹ *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810; see also *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm’rs.* (2001) 91 Cal.App.4th 1344, 1354 (“*Berkeley Jets*”) (purpose of EIR is to inform the public and officials of environmental consequences of their decisions *before* they are made).

¹⁰ CEQA Guidelines § 15003(b).

¹¹ CEQA Guidelines § 15002(a)(2), (3); see also *Berkeley Jets*, 91 Cal.App.4th at 1354; *Citizens of Goleta Valley*, 52 Cal.3d at p. 564.

¹² CEQA Guidelines § 15002(a)(2).

the greatest extent feasible and that any unavoidable significant effects on the environment are “acceptable due to overriding concerns.”¹³

While courts review an EIR using an “abuse of discretion” standard, “the reviewing court is not to ‘uncritically rely on every study or analysis presented by a project proponent in support of its position. A clearly inadequate or unsupported study is entitled to no judicial deference.’”¹⁴ As the courts have explained, a prejudicial abuse of discretion occurs “if the failure to include relevant information precludes informed decision-making and informed public participation, thereby thwarting the statutory goals of the EIR process.”¹⁵ “The ultimate inquiry, as case law and the CEQA guidelines make clear, is whether the EIR includes enough detail ‘to enable who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.’”¹⁶

III. THE PROJECT DESCRIPTION IS INADEQUATE

The DEIR does not meet CEQA’s requirements because it fails to include an accurate and complete Project description, rendering the entire analysis inadequate. California courts have repeatedly held that “an accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR.”¹⁷ CEQA requires that a project be described with enough particularity that its impacts can be assessed.¹⁸ Without a complete project description, the environmental analysis under CEQA is impermissibly limited, thus minimizing the project’s impacts and undermining meaningful public review.¹⁹ Accordingly, a lead

¹³ PRC § 21081(a)(3), (b); CEQA Guidelines §§ 15090(a), 15091(a), 15092(b)(2)(A), (B); *Covington v. Great Basin Unified Air Pollution Control Dist.* (2019) 43 Cal.App.5th 867, 883.

¹⁴ *Berkeley Jets*, 91 Cal.App.4th at p. 1355 (emphasis added) (quoting *Laurel Heights I*, 47 Cal.3d at 391, 409, fn. 12).

¹⁵ *Berkeley Jets*, 91 Cal.App.4th at p. 1355; see also *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 722 (error is prejudicial if the failure to include relevant information precludes informed decision making and informed public participation, thereby thwarting the statutory goals of the EIR process); *Galante Vineyards*, 60 Cal.App.4th at p. 1117 (decision to approve a project is a nullity if based upon an EIR that does not provide decision-makers and the public with information about the project as required by CEQA); *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 946 (prejudicial abuse of discretion results where agency fails to comply with information disclosure provisions of CEQA).

¹⁶ *Sierra Club*, 6 Cal.5th at p. 516 (quoting *Laurel Heights I*, 47 Cal.3d at 405).

¹⁷ *Stopthemillenniumhollywood.com v. City of Los Angeles* (2019) 39 Cal.App.5th 1, 17; *Communities for a Better Environment v. City of Richmond* (“*CBE v. Richmond*”) (2010) 184 Cal.App.4th 70, 85–89; *County of Inyo v. City of Los Angeles* (3d Dist. 1977) 71 Cal.App.3d 185, 193.

¹⁸ 14 CCR § 15124; see, *Laurel Heights I*, *supra*, 47 Cal.3d 376, 192-193.

¹⁹ *Id.*

agency may not hide behind its failure to obtain a complete and accurate project description.²⁰

CEQA Guidelines section 15378 defines “project” to mean “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.”²¹ “The term “project” refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term project does not mean each separate governmental approval.”²² Courts have explained that a complete description of a project must “address not only the immediate environmental consequences of going forward with the project, but also all “*reasonably foreseeable* consequence[s] of the initial project.”²³ “If a[n]...EIR...does not adequately apprise all interested parties of the true scope of the project for intelligent weighing of the environmental consequences of the project, informed decisionmaking cannot occur under CEQA and the final EIR is inadequate as a matter of law.”²⁴

A. The DEIR Fails to Describe Impacts Associated with Construction of a Deep Foundation

The DEIR assumes that the Project would rely on a mat foundation, but the Initial Study’s Preliminary Geotechnical Report states that the 35-story residential tower may require a deep foundation.²⁵ A deep foundation is a type of foundation which is placed at a greater depth below the ground surface and transfers structure loads to the earth at depth. However, there is no evidence that the DEIR analyzed the impacts associated with construction of a deep foundation. The FEIR’s failure to analyze impacts associated with construction of a deep foundation is a failure to analyze the whole of the action proposed by the Project. A deep foundation is reasonably foreseeable for this Project because the Preliminary Geotechnical Report identifies it as a potentially necessary design due to adjacent with the Metro B Line.

The failure to analyze impacts associated with a deep foundation undermines the assumptions in the DEIR. The DEIR assumes that the maximum depth of ground-disturbing activities for the Project is 40 feet below ground surface (bgs) due

²⁰ *Sundstrom v. County of Mendocino* (“*Sundstrom*”) (1988) 202 Cal.App.3d 296, 311.

²¹ CEQA Guidelines § 15378.

²² *Id.*, § 15378(c).

²³ *Laurel Heights I*, 47 Cal. 3d 376, 398 (emphasis added); *see also Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal. 4th 412, 449-50.

²⁴ *Riverwatch v. Olivenhain Municipal Water Dist.* (2009) 170 Cal. App. 4th 1186, 1201.

²⁵ DEIR, Appendix A, PDF pg. 191, 193.

to construction of the 3-level subterranean garage.²⁶ The DEIR must be revised to evaluate the potential depth of ground-disturbing activities for the Project should a deep foundation be required. Because deep foundations require construction at a greater depth, more earth may be required to be excavated from the Project site than assumed in the DEIR (210,000 cubic yards).²⁷ A deep foundation may require different construction equipment than required for a mat foundation. Because deep foundations require construction at a deeper depth, deep foundations are more time-consuming to construct.²⁸ There is no evidence that the time to construct a deep foundation is incorporated in the DEIR's assumption that construction would require 44 months.²⁹

Because the DEIR does not evaluate impacts associated with the whole of the Project, which includes potential construction of a deep foundation, the DEIR's environmental impacts analyses underestimate potentially significant environmental impacts. Project construction emissions are underestimated because the DEIR underestimates the equipment required for the foundation, underestimates the construction schedule, and underestimates the number of haul trips necessary to remove excavated earth. The Project's noise study analyzes impacts of a mat foundation – the analysis is not supported by substantial evidence because it does not clearly reflect impacts generated by construction of a deep foundation. The Project's Paleontological Resources Assessment must also be revised to analyze impacts associated with deeper ground-disturbing activities, as currently it assumes that the maximum depth would be 40 ft bgs for the subterranean garage. The Initial Study concluded that no dewatering would occur because construction activities would not occur deeper than 30-40 feet for the subterranean garage, and the historical high groundwater below the Project site is 80 feet bgs.³⁰ Ground-disturbing activities may occur at a greater depth should a deep foundation be required.

In sum, the DEIR's project description is inadequate because it fails to include the whole of the Project. As a result of the inadequate project description, the DEIR's impacts analyses that rely on a 44-month construction schedule or assume that 210,000 cubic yards of soil would be excavated are not supported by substantial evidence.

²⁶ DEIR, pg. II-25, Appendix E, pg. i.

²⁷ DEIR, pg. II-25.

²⁸ [https://www.geoengineer.org/education/foundation-design-construction/deep-foundations#:~:text=A%20deep%20foundation%20is%20a,greater%20than%204%20to%205.](https://www.geoengineer.org/education/foundation-design-construction/deep-foundations#:~:text=A%20deep%20foundation%20is%20a,greater%20than%204%20to%205.;); <https://www.understandconstruction.com/types-of-foundations.html>; <https://www.bigrentz.com/blog/types-of-foundations>.

²⁹ DEIR, pg. II-25, IV.A-68.

³⁰ DEIR, Appendix A, PDF pg. 62.

IV. THE DEIR FAILS TO DISCLOSE, ANALYZE AND MITIGATE POTENTIALLY SIGNIFICANT IMPACTS

An EIR must fully disclose all potentially significant impacts of a Project and implement all feasible mitigation to reduce those impacts to less than significant levels. The lead agency's significance determination with regard to each impact must be supported by accurate scientific and factual data.³¹ An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.³²

Even when the substantial evidence standard is applicable to agency decisions to certify an EIR and approve a project, reviewing courts will not 'uncritically rely on every study or analysis presented by a project proponent in support of its position. A clearly inadequate or unsupported study is entitled to no judicial deference.'"³³

Moreover, the failure to provide information required by CEQA is a failure to proceed in the manner required by CEQA.³⁴ Challenges to an agency's failure to proceed in the manner required by CEQA, such as the failure to address a subject required to be covered in an EIR or to disclose information about a project's environmental effects or alternatives, are subject to a less deferential standard than challenges to an agency's factual conclusions.³⁵ In reviewing challenges to an agency's approval of an EIR based on a lack of substantial evidence, the court will "determine de novo whether the agency has employed the correct procedures, scrupulously enforcing all legislatively mandated CEQA requirements."³⁶

Additionally, CEQA requires agencies to commit to all feasible mitigation measures to reduce significant environmental impacts.³⁷ In particular, the lead agency may not make required CEQA findings, including finding that a project impact is significant and unavoidable, unless the administrative record

³¹ CEQA Guidelines § 15064(b).

³² *Kings Cty. Farm Bur. v. Hanford* (1990) 221 Cal.App.3d 692, 732.

³³ *Berkeley Jets*, 91 Cal.App.4th at 1355.

³⁴ *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236.

³⁵ *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.

³⁶ *Id.*, *Madera Oversight Coal., Inc. v. County of Madera* (2011) 199 Cal. App. 4th 48, 102.

³⁷ CEQA Guidelines § 15002(a)(2).

demonstrates that it has adopted all feasible mitigation to reduce significant environmental impacts to the greatest extent feasible.³⁸

A. The DEIR Fails to Disclose and Mitigate Significant Health Risk Impacts

1. The DEIR Fails to Quantify Health Risk Impacts

The DEIR fails to adequately analyze health risk impacts from Project emissions by failing to quantify health risk impacts. Project construction and operation would generate Diesel Particulate Matter (“DPM”), a type of toxic air contaminant (“TAC”).³⁹ The DEIR acknowledges that DPM would be emitted during construction by heavy equipment and diesel trucks and during operations by delivery trucks and diesel backup generators.⁴⁰ DPM has been linked to a range of serious health problems including an increase in respiratory disease, lung damage, cancer, and premature death. The Project’s emissions of DPM would impact numerous sensitive receptors near the Project site. Sensitive receptors that would be directly affected by the Project’s emissions include the Shir Hashirim Montessori School and multi-family apartment buildings, many of which abut the Project site.⁴¹ Despite the Project’s proximity to these receptors, the DEIR fails to quantify the health risk impacts from exposure to TACs.

CEQA requires analysis of human health impacts. CEQA Guidelines Section 15065(a)(4) provides that the City is required to find a project will have a significant impact on the environment and prepare an EIR if the environmental effects of a project will cause a substantial adverse effect on human beings.⁴² The Supreme Court has also explained that CEQA requires the lead agency to disclose the health consequences that result from exposure to a project’s air emissions.⁴³ Courts have held that an environmental review document must disclose a project’s potential health risks to a degree of specificity that would allow the public to make the correlation between the project’s impacts and adverse effects to human health.⁴⁴

³⁸ PRC § 21081(a)(3), (b); CEQA Guidelines §§ 15090, 15091; *Covington v. Great Basin Unified Air Pollution Control Dist.* (2019) 43 Cal.App.5th 867, 883.

³⁹ SCAQMD, Classification of Diesel PM as a Carcinogen, <https://www.aqmd.gov/home/rules-compliance/compliance/toxic-hot-spots-ab-2588/iws-facilities/dice/dice-b2>; OEHHA, Health Effects of Diesel Exhaust (May 21, 2001), <https://oehha.ca.gov/media/downloads/calenviroscreen/indicators/diesel4-02.pdf>.

⁴⁰ *Id.*; DEIR, pg. IV.A-9, 70.

⁴¹ DEIR, Figure IV.A-4.

⁴² PRC § 21083(b)(3), (d).

⁴³ *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 516, 523.

⁴⁴ *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184.

In *Bakersfield Citizens for Local Control v. City of Bakersfield*, the court found that the EIR's description of health risks were insufficient and that after reading them, "the public would have no idea of the health consequences that result when more pollutants are added to a nonattainment basin."⁴⁵ Likewise, in *Sierra Club*, the California Supreme Court held that the EIR's discussion of health impacts associated with exposure to the named pollutants was too general and the failure of the EIR to indicate the concentrations at which each pollutant would trigger the identified symptoms rendered the report inadequate.⁴⁶ Some connection between air quality impacts and their direct, adverse effects on human health must be made. As the Court explained, "a sufficient discussion of significant impacts requires not merely a determination of whether an impact is significant, but some effort to explain the nature and magnitude of the impact."⁴⁷ CEQA mandates discussion, supported by substantial evidence, of the nature and magnitude of impacts of air pollution on public health.⁴⁸

For development projects like this one, the Office of Environmental Health Hazard Assessment's ("OEHHA") risk assessment guidelines also recommend a formal health risk analysis ("HRA") for short-term construction exposures to TACs lasting longer than 2 months and exposures from projects lasting more than 6 months should be evaluated for the duration of the project.⁴⁹ In an HRA, lead agencies must first quantify the concentration released into the environment at each of the sensitive receptor locations through air dispersion modeling, calculate the dose of each TAC at that location, and quantify the cancer risk and hazard index for each of the chemicals of concern.⁵⁰ Following that analysis, then the City can make a determination of the relative significance of the emissions. Here, the DEIR states that exposure to TACs would be significant if it would result in an incremental cancer risk of 10 in one million or greater.⁵¹

Here, the DEIR fails to quantify the magnitude of TACs that would be emitted by the Project's operations and construction. The DEIR also fails to

⁴⁵ *Id.* at 1220.

⁴⁶ *Sierra Club*, at 521.

⁴⁷ *Id.* at 519, citing *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 514–515.

⁴⁸ *Sierra Club*, 6 Cal.5th at 518–522.

⁴⁹ Office of Environmental Health Hazard Assessment (OEHHA), Risk Assessment Guidelines: Guidance Manual for Preparation of Health Risk Assessments, February 2015 (OEHHA 2015), Section 8.2.10: Cancer Risk Evaluation of Short Term Projects, pp. 8-17/18; <https://oehha.ca.gov/media/downloads/crnrr/2015guidancemanual.pdf>; <https://oehha.ca.gov/air/crnrr/notice-adoption-air-toxics-hot-spots-program-guidance-manual-preparation-health-risk-0>.

⁵⁰ *Id.*

⁵¹ DEIR, pg. IV.A-36, Table IV.A-4.

quantify sensitive receptors' exposure to TACs and whether the 10 in one million significance threshold would be exceeded. As such, the DEIR fails to adequately connect the Project's emissions and their direct, adverse effects on human health.⁵²

The DEIR reasons that Project emissions would not exceed applicable Localized Significance Thresholds ("LSTs").⁵³ But compliance with LSTs does not mean compliance with SCAQMD's 10 in one million cancer risk threshold. There are no LSTs for DPM and other TACs that would be emitted by the Project.⁵⁴ LSTs are based on the number of pounds of emissions per day that can be generated by a project that would cause or contribute to adverse localized air quality impacts. But LSTs only apply to four criteria pollutants: NO_x, CO, PM₁₀, and PM_{2.5}. LSTs do not apply to DPM and other TACs, which contain carcinogenic compounds not found in criteria pollutants, and thus do not disclose the magnitude of the Project's health impacts from exposure to the Project's air emissions. Thus, the DEIR's analysis of LSTs does not answer the question required by CEQA Appendix G as to whether the Project would "expose sensitive receptors to substantial pollutant concentrations"⁵⁵ and is no substitute for the DEIR's failure to analyze health risk impacts from exposure to TACs.

The DEIR also reasons that health risks from exposure to TACs emitted from construction activities would be less than significant because construction activities would be of short duration.⁵⁶ Specifically, the DEIR argues that "health effects from carcinogen air toxics are usually described in terms of individual cancer risk, which is the likelihood that a person continuously exposed to concentrations of TACs over a 70-year lifetime will contract cancer... Given the short-term construction schedule of approximately 44 months, the Project would not result in a long-term (i.e. 70-year) source of TAC emissions."⁵⁷ The DEIR's reasoning is incorrect, as it assumes that exposure to TACs over a term shorter than 70 years cannot result in significant health effects. The DEIR itself acknowledges that "[l]ung impairment can persist for two to three weeks after exposure to high levels of particulate matter."⁵⁸ The Project's 44-month (3.6 year) construction schedule exceeds the two-month

⁵² *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184.

⁵³ DEIR, pg. IV.A-67-68, 69.

⁵⁴ SCAQMD, Localized Significance Thresholds, <http://www.aqmd.gov/home/rules-compliance/ceqa/air-quality-analysis-handbook/localized-significance-thresholds>; SCAQMD, Final Localized Significance Threshold Methodology (June 2003, revised June 2008), available at www.aqmd.gov/docs/default-source/ceqa/handbook/localized-significance-thresholds/final-lst-methodology-document.pdf?sfvrsn=2.

⁵⁵ CEQA Appendix G, III(d).

⁵⁶ DEIR, pg. IV.A-68.

⁵⁷ DEIR, pg. IV.A-68-69.

⁵⁸ DEIR, pg. IV.A-6.

threshold recommended by OEHHA. OEHHA's guidance explains that exposure to TACs is a function of the breathing rate, the exposure frequency, and the concentration of a substance in the air.⁵⁹ The exposure frequency and concentration of TACs near sensitive receptors increase the closer construction activities occur to sensitive receptors.⁶⁰ Because emissions of TACs during construction would occur across the property line from residences, sensitive receptors' exposure to TACs is potentially significant.

The City also reasons that a health risk analysis is not required for this Project because the South Coast Air Quality Management District ("SCAQMD") has not adopted a rule requiring health risk assessments for short-term construction emissions.⁶¹ This reasoning ignores that SCAQMD has adopted significance thresholds for evaluating the health risk from exposure to project-related TAC emissions:

South Coast AQMD Air Quality Significance Thresholds⁶²

TACs (including carcinogens and non-carcinogens)

Maximum Incremental Cancer Risk ≥ 10 in 1 million
Cancer Burden > 0.5 excess cancer cases (in areas ≥ 1 in 1 million)
Chronic & Acute Hazard Index ≥ 1.0 (project increment)

By failing to quantify the cancer risk, the DEIR lacks substantial evidence to conclude that the 10 in one million significance threshold would not be exceeded. The DEIR's reasoning also ignores that the City must comply with CEQA's analytical requirements even if the air district has not established a blanket requirement for quantitative analysis.

The DEIR thus fails to meet CEQA's information and analytical requirements, and the Project's health risk impacts remain potentially significant and unmitigated. These potentially significant impacts must be analyzed and

⁵⁹ OEHHA, Risk Assessment Guidelines: Guidance Manual for Preparation of Health Risk Assessments, pg. 5-23.

⁶⁰ *Id.* at 1-3 ("The process by which Districts identify priority facilities for risk assessment involves consideration of potency, toxicity, quantity of emissions, and proximity to sensitive receptors such as hospitals, daycare centers, schools, work-sites, and residences.").

⁶¹ *Id.*

⁶² See South Coast AQMD Air Quality Significance Thresholds (March 2023), available at <https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKewjn5Mev7qEAXVtFDQIHdCsAPcQFnoECBQQAQ&url=https%3A%2F%2Fwww.aqmd.gov%2Fdocs%2Fdefault-source%2Fceqa%2Fhandbook%2Fsouth-coast-aqmd-air-quality-significance-thresholds.pdf%3Fsfvrsn%3D25&usg=AOvVaw07n1OZu8Nvvtfq0AnstLMG&opi=89978449> (last visited 2/20/24).

mitigated in a revised EIR. The EIR must evaluate the combined lifetime risk of exposure to both the Project's construction and operational TAC emissions.

2. Health Risks from Exposure to Project Emissions Would Be Significant

Substantial evidence shows that health risks from exposure to the Project's emissions of TACs would be significant.

Dr. Clark prepared a health risk analysis using AERMOD, the US EPA's preferred air dispersion model, in accordance with OEHHA guidance.⁶³ This quantitative analysis relied on data and assumptions in the DEIR's own air quality analysis.⁶⁴ The results of Dr. Clark's air model and the health risk analysis are attached as an appendix to this letter. Dr. Clark found that the cancer risk to the most sensitive population, infants less than 3 years old, would be 40.5 in 1,000,000.⁶⁵ This health risk exceeds SCAQMD's 10 in 1,000,000 cancer risk threshold, resulting in a significant impact. The City must revise the EIR to include analysis and mitigation of the Project's significant health risk impacts.

3. The Project Conflicts with Applicable Policies Regarding Air Quality and Health Risk

The CEQA Guidelines provide that a significant air quality impact would occur when a project "[c]onflict[s] with or obstruct implementation of the applicable air quality plan."⁶⁶ Further, the Guidelines provide that a significant impact would occur if a project conflicts with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project adopted for the purpose of avoiding or mitigating an environmental effect.⁶⁷

The Project is inconsistent with mitigation measures adopted in the Citywide Housing Element 2021-2029 and Safety Element Updates EIR.⁶⁸ The 2021-2029 Housing Element is applicable to this Project as it was adopted by the Los Angeles City Council on November 24, 2021, and will be in effect through 2029.⁶⁹ Mitigation Measure 4.2-3 ("Construction TAC Reduction Measures") of the EIR's Mitigation

⁶³ Clark Comments, pg. 5.

⁶⁴ Clark Comments, pg. 6.

⁶⁵ Clark Comments, pg. 12.

⁶⁶ CEQA Guidelines, Appendix G, subd. III.

⁶⁷ CEQA Guidelines, Appendix G, subd. X.

⁶⁸ SCH No. 2021010130.

⁶⁹ <https://planning.lacity.gov/plans-policies/housing-element>. This Project's planning application was filed on July 6, 2022.

Monitoring Program requires projects to either quantify health risks or use Tier 4 Final equipment:

For discretionary projects with an anticipated construction duration of greater than 18- months and located within 500 feet of a residence or other sensitive receptor, prior to issuance of a permit to construct, the applicant shall provide to the City an Air Quality Impact Analysis, prepared by a qualified air quality analyst, that includes a construction health risk assessment. If the analysis shows incremental cancer risk would exceed 10 persons in one million at a sensitive receptor or the calculated Hazard Index for chronic or acute risks would exceed a value of 1.0 at a sensitive receptor, the air quality analyst shall prepare a mitigation plan subject to City review and approval that reduce TACs to less than SCAQMD thresholds. The applicant shall comply with all mitigation measures in the mitigation plan. Alternatively, no Air Quality Impact Analysis, health risk assessment, and mitigation plan shall be required for discretionary projects conditioned to use construction equipment that meets the CARB Tier 4 Final or USEPA Tier 4 off-road emissions for all equipment rated 50 horsepower or greater. A copy of each unit's certified tier specification or model year specification and CARB or SCAQMD operating permit (if applicable) shall be available upon request at the time of mobilization of each applicable unit of equipment.⁷⁰

The Project is inconsistent with this measure because the DEIR fails to either quantify incremental cancer risk or require Tier 4 Final equipment.

Policy 1.3.1 of the City of Los Angeles' General Plan Air Quality Element provides: "[m]inimize particulate emissions from construction sites." And Policy 5.3.1 of the Air Quality Element provides: "Support the development and use of equipment powered by electric or low-emitting fuels." Here, the Project does not attempt to minimize DPM emissions from the Project's construction, or even set minimum emissions standards for construction equipment. Use of construction equipment that meets CARB Tier 4 standards can result in significant DPM emissions reductions over Tier 2 and 3 equipment.⁷¹ The Project does not provide evidence that such particulate emissions controls are infeasible or ineffective. Thus, the Project fails to "minimize" PM emissions within the meaning of Policy 1.3.1 and

⁷⁰ MMRP available at https://planning.lacity.gov/eir/HEU_2021-2029_SEU/Feir/files/5-Mitigation%20Monitoring%20Program.pdf.

⁷¹ San Francisco Clean Construction Ordinance Implementation Guide for San Francisco Public Projects." August 2015, *available at*: https://www.sfdph.org/dph/files/EHSdocs/AirQuality/San_Francisco_Clean_Construction_Ordinance_2015.pdf, pg. 6.

fails to analyze the feasibility of using low-emitting fuels. And because the failure to require emissions controls contributes to the Project's significant health risk impacts, the Project is inconsistent with these general plan policies.

4. The DEIR Fails to Adequately Analyze and Mitigate the Project's Significant Cumulative Health Risk Impacts

The DEIR concludes that the Project's cumulative health risk and air quality impacts would be less than significant.⁷² The DEIR reasons that projects that do not exceed SCAQMD's significance thresholds for project-level impacts would not be cumulatively considerable.⁷³ The DEIR's conclusion is not supported by substantial evidence because the DEIR failed to quantify the project-level incremental cancer risk and compare it to the SCAQMD 10 in one million threshold. Because Dr. Clark's HRA demonstrates that the Project's health risk impact of 40.5 in one million exceeds the 10 in one million threshold, the Project's health risk impact is cumulatively considerable.

The DEIR's analysis is also flawed because it improperly focuses upon 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.⁷⁴ CEQA requires an EIR to evaluate a cumulative impact if the project's incremental effect combined with the effects of other projects is cumulatively considerable.⁷⁵ This determination is based on an assessment of the project's incremental impacts "viewed in connection with the effects of past project, the effects of other current projects, and the effects of probable future projects."⁷⁶ Here, the effects of other projects are not considered in the DEIR's analysis of construction emissions. The DEIR's analysis ignores that the Project's construction emissions could combine with construction of concurrent projects to result in heightened health risk impacts. Table III-1 of the DEIR identifies several projects with potentially concurrent construction schedules, such as 6400 Sunset Boulevard, but does not employ this information in its analysis of cumulative health impacts. The DEIR must be revised to reflect the cumulative health risk impact of this Project in combination with other nearby projects.

⁷² DEIR, pg. IV.A-72.

⁷³ DEIR, pg. IV.A-72.

⁷⁴ *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.

⁷⁵ CEQA Guidelines § 15130(a).

⁷⁶ *Id.*, §§ 15065(a)(3), 15355(b).

The DEIR's analysis of operational emissions is similarly inadequate. The DEIR reasons that operational TAC emissions would not be cumulatively considerable because "[n]either the Project nor any of the 44 related projects (which are largely residential, retail/commercial, and office in nature) would represent a substantial source of TAC emissions... Substantial TAC emissions are associated with large-scale industrial, manufacturing, and transportation hub facilities."⁷⁷ This discussion ignores that the purpose of a cumulative impacts analysis is to evaluate the impacts of "projects which, when taken in isolation, appear insignificant, but when viewed together, appear startling."⁷⁸ The DEIR's discussion ignores that the Project census tract, which includes a preschool and multifamily homes, has an CalEnviroScreen score of 99.3.⁷⁹ A high score (greater than 50) reflects a higher pollution burden compared to other census tracts in the state, with a maximum score of 100.⁸⁰ Thus, sensitive receptors near the Project site have close to the highest pollution burden in the state. And contrary to the suggestion in the DEIR that substantial TAC emissions are only associated with large-scale industrial, manufacturing, and transportation hub facilities, this highly burdened census tract is primarily developed with residential, retail/commercial, and office uses.⁸¹ Because the project-level threshold relied on by the DEIR fails to reflect the context in which this Project is proposed, the DEIR's cumulative impacts analysis violates CEQA.

In sum, the DEIR's cumulative air quality impacts analysis fails to comply with CEQA. The City must prepare a revised EIR that properly evaluates and mitigates such impacts.

B. The DEIR Fails to Analyze Impacts Associated with the Project's Excess Parking

The Project would provide 894 vehicle parking spaces.⁸² This parking is in excess of what is required by law. Assembly Bill (AB) 2097 provides that mixed-use projects located within 0.5 miles of a Major Transit Stop are not required to provide any parking. Impacts associated with induced VMT from the Project's parking facilities were identified in the California Department of Transportation's June 8, 2023, comment letter on the Project's Initial Study (which also stated the Project would provide 894 spaces):

⁷⁷ DEIR, pg. IV.A-72-73.

⁷⁸ *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal. App. 3d 692, 721

⁷⁹ DEIR, Appendix B, PDF pg. 54.

⁸⁰ *Id.*

⁸¹ General Plan Land Use Map, <https://planning.lacity.gov/odocument/17308382-2458-45c4-a327-54cd9593955a/hwdplanmap.pdf>.

⁸² DEIR, pg. II-1.

The Project was not required to provide parking due to AB 2097, but the resulting design suggests that the City should seriously consider adopting parking maximums. This project location is an excellent candidate for reduced car parking due to its infill location and proximity to high-quality transit infrastructure. Research looking at the relationship between land-use, parking, and transportation indicates that the amount of car parking supplied can undermine a project's ability to encourage public transit and active modes of transportation.⁸³

The Los Angeles County Metropolitan Transportation Authority's ("Metro") comments also encourage the reduction or removal of minimum parking requirements.⁸⁴ Despite these recommendations, the DEIR fails to reduce parking or analyze the environmental impacts associated with the Project's increased provision of parking. As will be discussed below, these impacts include inconsistency with GHG plans and unnecessary consumption of energy.

1. The Project Would Result in a Potentially Significant GHG Impacts

Appendix G of the CEQA Guidelines provides that an EIR must analyze whether a Project would "[c]onflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases."⁸⁵ The DEIR does not adopt a quantitative GHG significance threshold, and concludes that the Project would result in a less than significant GHG impact because it would be consistent with applicable GHG reduction plans and policies.⁸⁶ The DEIR identifies the 2022 California Air Resources Board ("CARB") Scoping Plan, the 2020-2045 Regional Transportation Plan and Sustainable Communities Strategy ("RTP/SCS"), the 2024-2050 RTP/SCS, and the City's Green New Deal as applicable plans.

The 2022 Scoping Plan includes "Reduce or eliminate minimum parking standards" in Table 1 – "Priority GHG Reduction Strategies."⁸⁷ The Plan identifies reduction of parking in Table 3 – "Key Residential and Mixed-Use Project Attributes that Reduce GHGs."⁸⁸ The 2020-2045 RTP/SCS and the City's Green

⁸³ DEIR, Appendix A, PDF pg. 345.

⁸⁴ *Id.* at 351.

⁸⁵ CEQA Guidelines, Appendix G, Section VIII(b).

⁸⁶ DEIR, pg. IV.E-56-57.

⁸⁷ 2022 Scoping Plan, Appendix D, pg. 11, available at <https://ww2.arb.ca.gov/sites/default/files/2022-11/2022-sp-appendix-d-local-actions.pdf>.

⁸⁸ *Id.* at 22.

New Deal also call for reduced parking.⁸⁹ The Project's provision of 894 parking spaces in excess of what is required by law conflicts with each of these strategies. As explained in the Department of Transportation's comments, excess parking induces VMT and undermines a project's ability to encourage public transit and active modes of transportation. Analysis in the 2022 Scoping Plan, 2020-2045 RTP/SCS, and the City's Green New Deal demonstrates that excess parking spaces increase VMT.⁹⁰ It is well studied that increased provision of parking results in increased VMT.⁹¹ The Los Angeles Department of Transportation's ("LADOT") Transportation Assessment Guidelines ("TAG") explains that projects that increase vehicular capacity can lead to additional travel on the roadway network.⁹² The TAG further provides that a project with reduced parking is not likely to lead to substantial or measurable increase in vehicle travel.⁹³ The City of San Francisco's VMT Screening Criteria asks whether a project would result in an amount of parking that is less than or equal to that required or allowed by the Planning Code.⁹⁴ As a result, although the Project is a mixed-use development near a Major Transit Stop, the

⁸⁹ Connect SoCal 2020–2045 Regional Transportation Plan/Sustainable Communities Strategy, pg. 54 ("Parking Requirements Reform – Support local planning efforts to reduce or eliminate parking requirement to realize potential construction costs savings ranging from \$20,000 for surface parking, \$50,000 for garages and structures, and \$80,000 per space for underground spaces."), available at https://scag.ca.gov/sites/main/files/file-attachments/0903fconnectsocal-plan_0.pdf?1606001176; Los Angeles Green New Deal, pg. 65 ("Remove parking minimums... Update parking regulations to allow for adaptive reuse of space, bike and car-sharing infrastructure, and reduced parking requirements"), available at https://plan.mayor.lacity.gov/sites/g/files/wph2176/files/2022-12/pLAN_2019_final.pdf.

⁹⁰ CARB Scoping Plan, Appendix D, pg. 11; Connect SoCal 2020–2045 Regional Transportation Plan/Sustainable Communities Strategy, pg. 54; Los Angeles Green New Deal, pg. 65.

⁹¹ Caltrans Division of Research, Innovation and System Information, Pricing and Parking Management to Reduce Vehicle Miles Travelled (VMT), March 15, 2018, available at <https://dot.ca.gov/-/media/dot-media/programs/research-innovation-system-information/documents/preliminary-investigations/final-pricing-parking-management-to-reduce-vehicles-miles-traveled-pi-a11y.pdf>; Currans et al, Households with constrained off-street parking drive fewer miles, July 22, 2022, <https://link.springer.com/article/10.1007/s11116-022-10306-8> (vehicle ownership rates are 14 percent higher for households with more than one available parking space per unit, compared to those with constrained parking. Vehicle ownership translates into travel demand); City of Millbrae Vehicle Miles Traveled (VMT) Thresholds and Screening Policy ("Excess parking supply is associated with induced and higher levels of VMT and should be avoided to ensure low VMT of screened projects"), available at <https://ci.millbrae.ca.us/DocumentCenter/View/1842/Millbrae-VMT-Policy>.

⁹² Los Angeles Department of Transportation's Transportation Assessment Guidelines (August 2022), pg. 2-14, available at https://ladot.lacity.gov/sites/default/files/documents/2020-transportation-assessment-guidelines_final_2020.07.27_0.pdf

⁹³ *Id.* at 2-16 ("Removal or relocation of off-street or on-street parking spaces").

⁹⁴ City of San Francisco Planning Department, Transportation Impact Analysis Guidelines, Appendix L, Table 2, pg. L-14, available at https://default.sfplanning.org/publications_reports/TIA_Guidelines_VMT_Memo.pdf, https://default.sfplanning.org/publications_reports/TIA_Guidelines_Update_VMT_Memo.pdf.

Project's design would result in GHG emissions that conflict with applicable GHG reduction plans.

This inconsistency is consequential because mobile sources are the major source of the Project's GHG emissions (2,000 net MTCO₂e).⁹⁵ The DEIR must scrupulously analyze inconsistencies with GHG reduction plans, as the DEIR does not identify a quantitative GHG significance threshold. The DEIR must be revised to disclose this potentially significant impact.

2. The Project Would Result in a Potentially Significant Energy Impact

Appendix F of the CEQA Guidelines provides that an EIR must analyze the potential energy impacts of proposed projects, with particular emphasis on avoiding or reducing inefficient, wasteful and unnecessary consumption of energy.⁹⁶ Appendix F identifies "[t]he project's projected transportation energy use requirements and its overall use of efficient transportation alternatives" as an example of an energy impact.⁹⁷ The DEIR's analysis of this factor concludes that the Project would result in a less than significant energy impact due to the Project's "high density design," "proximity to retail and employment uses," and proximity to transit options, which would reduce VMT.⁹⁸ However, this discussion does not address that the Project's provision of parking in excess of State standards would undermine the Project's potential VMT reductions due to proximity to transit options. The DEIR must be revised to analyze the extent to the Project's excess provision of parking is an "inefficient, wasteful and unnecessary consumption of energy." The Department of Transportation's comments, as well as analysis in the 2022 Scoping Plan, 2020-2045 RTP/SCS, and the City's Green New Deal demonstrate that excess parking spaces increase VMT. These expert regulatory opinions constitute substantial evidence that the 894 excess parking spaces proposed by the Project potentially results in unnecessary energy consumption.

The DEIR must also analyze reduction of parking as an energy conservation measure. The CEQA Guidelines require discussion of energy conservation measures when relevant, and provide examples in Appendix F:⁹⁹

⁹⁵ DEIR, pg. IV.E-80.

⁹⁶ See Public Resources Code section 21100(b)(3).

⁹⁷ CEQA Guidelines, Appendix F, Section II (C)(6).

⁹⁸ DEIR, pg. IV.C-40.

⁹⁹ 14 Cal. Code Regs., § 15126.4(a)(1)(C) (stating "Energy conservation measures, as well as other appropriate mitigation measures, shall be discussed when relevant.").

- 1) 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.
- 2) The potential of siting, orientation, and design to minimize energy consumption, including transportation energy, increase water conservation and reduce solid waste.
- 3) The potential for reducing peak energy demand.
- 4) Alternate fuels (particularly renewable ones) or energy systems.
- 5) Energy conservation which could result from recycling efforts.

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 – even when the environmental document identified a less-than-significant energy impact.¹⁰⁰ The unnecessary energy consumption induced by the Project’s excess provision of parking would be mitigated by reducing parking supply.¹⁰¹ The DEIR must be revised to analyze the feasibility of reducing the proposed number of parking spaces as a means of reducing energy consumption, as well as VMT and mobile source air emissions.

C. The DEIR Fails to Adequately Analyze the Project’s Potentially Significant Geotechnical Impacts

The DEIR fails to adequately analyze geotechnical impacts on the Metro B (Red) Line tunnel near the Project site. The Initial Study’s Preliminary Geotechnical Report identifies that the Project is located within the Metro right-of-way pursuant to ZI No. 1117. ZI No. 1117 requires that consultation with Metro is required prior to the issuance of any building permit for certain projects within 100 feet of Metro-owned Rail or Bus Rapid Transit right-of-way. The Preliminary Geotechnical Report discloses potential surcharging impacts on the Metro B Line tunnel.¹⁰² Surcharge refers to increasing the load on the soil over the tunnel walls, increasing pressure on the walls. The Report states that although the majority of the 35-story tower foundations are set far enough from the tunnel that surcharge is

¹⁰⁰ *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; *California Clean Energy Commission v. City of Woodland* (2014) 225 CA4th 173; *League to Save Lake Tahoe Mtn. Area Preservation Found. v County of Placer* (2022) 75 CA5th 63, 167–68.

¹⁰¹ Los Angeles Department of Transportation’s Transportation Assessment Guidelines (August 2022), pg. 2-13, available at https://ladot.lacity.gov/sites/default/files/documents/2020-transportation-assessment-guidelines_final_2020.07.27_0.pdf (“reduce parking supply” is identified as a VMT-reducing measure in Table 2.2-2: TDM Strategies).

¹⁰² DEIR, Appendix A, PDF pg. 191.

not anticipated, foundations on the northern side of the 35-story tower may need to be supported on deep foundations, depending on the final load and column grid conditions.¹⁰³ The Report explains that deep foundations may be required because mat foundations may not be feasible due to potentially surcharging the Metro B Line.¹⁰⁴

Metro's comments on the NOP call for the Project's geotechnical impacts on the Metro B Line to be analyzed in the DEIR.¹⁰⁵ Metro's comments provide recommendations for the scope of the DEIR's analysis:

Impact Analysis: Due to the Project's proximity to the B Line tunnels, the EIR must analyze potential effects on subway operations and identify mitigation measures as appropriate. Critical impacts that should be studied include (without limitation): impacts of Project construction and operation on the structural and systems integrity of subway tunnels; damage to subway infrastructure, including tracks; disruption to subway service; and temporary and/or permanent changes to customer access and circulation to the station.

The following provisions should be used to develop a mitigation measure that addresses these potential impacts:

Technical Review: The Applicant shall submit architectural plans, engineering drawings and calculations, and construction work plans and methods, including any crane placement and radius, to evaluate any impacts to the Metro B Line infrastructure in relationship to the Project. Before issuance of any building permit for the Project, the Applicant shall obtain Metro's approval of final construction plans.

Construction Safety: The construction and operation of the Project shall not disrupt the operation and maintenance activities of the Metro B Line or the structural and systems integrity of Metro's tunnels. Not later than two months before Project construction, the Applicant shall contact Metro to schedule a pre-construction meeting with all Project construction personnel and Metro Real Estate, Construction Management, and Construction Safety staff.¹⁰⁶

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 193.

¹⁰⁵ DEIR, Appendix A, PDF pg. 350.

¹⁰⁶ DEIR, Appendix A, PDF pg. 350.

In summary, Metro identifies a potentially significant impact due to surcharge on the Metro B Line, calls for additional analysis in the DEIR, and calls for formulation of a binding mitigation measure. The DEIR fails to include any of the analysis identified in the Metro comment letter and fails to formulate a mitigation measure to reduce the potentially significant geotechnical impact to a less-than-significant level. The only discussion of this impact is found in the DEIR's analysis of "Effects to Be Found Not Significant."¹⁰⁷ This discussion merely states that "[f]urther coordination between Metro is expected during the Building and Safety review process for the Project."¹⁰⁸ As will be discussed below, the DEIR's omission of a detailed analysis of geotechnical impacts on the Metro B Line violates CEQA.

1. The DEIR Improperly Defers Analysis of Geotechnical Impacts

The DEIR violates CEQA by improperly deferring analysis of the Project's geotechnical impacts on the Metro B Line. CEQA requires that an environmental document disclose the severity of a project's impacts and the probability of their occurrence *before* a project can be approved.¹⁰⁹ In *Sundstrom v. County of Mendocino*,¹¹⁰ the First District Court of Appeal rejected a mitigation measure that required the applicant to submit hydrological studies subject to review and approval by a planning commission and county environmental health department.¹¹¹ The Court explained that the deferred analysis of hydrological conditions fails to meet CEQA's requirement that an environmental impact should be assessed as early as possible in government planning:

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. (See Pub. Resources Code, § 21003.1; *No Oil, Inc. v. City of Los Angeles*, *supra*, 13 Cal. 3d 68, 84.) In *Bozung v. Local Agency Formation Com.*, *supra*, 13 Cal. 3d 263, 282, the Supreme Court approved "the principle that the environmental impact should be assessed as early as possible in government planning."

¹⁰⁷ DEIR, pg. VI-23.

¹⁰⁸ *Id.*

¹⁰⁹ 14 CCR §§ 15143, 15162.2(a); *Cal. Build. Indust. Ass'n v. BAAQMD* (2015) 62 Cal.4th 369, 388-90 ("CBIA v. BAAQMD") (disturbance of toxic soil contamination at project site is potentially significant impact requiring CEQA review and mitigation); *Madera Oversight Coalition v. County of Madera* (2011) 199 Cal. App. 4th 48, 82; *Berkeley Keep Jets Over the Bay Com. v. Bd. of Port Comrs.* ("Berkeley Jets") (2001) 91 Cal.App.4th 1344, 1370-71; CEQA Guidelines, Appendix G.

¹¹⁰ (1988) 202 Cal.App.3d 296.

¹¹¹ *Id.* at 306.

Environmental problems should be considered at a point in the planning process "where genuine flexibility remains." (*Mount Sutro Defense Committee v. Regents of University of California*, *supra*, 77 Cal. App. 3d 20, 34.) A study conducted after approval of a project will inevitably have a diminished influence on decision making. Even if the study is subject to administrative approval, it is analogous to the sort of post hoc rationalization of agency actions that has been repeatedly condemned in decisions construing CEQA. (*Id.* at p. 35; *No Oil, Inc. v. City of Los Angeles*, *supra*, 13 Cal. 3d 68, 81; *Environmental Defense Fund, Inc. v. Coastside County Water Dist.* (1972) 27 Cal. App. 3d 695, 706 [104 Cal. Rptr. 197].)

Here, there is no evidence in the record showing that it would be infeasible to fully analyze the Project's geotechnical impacts at this time and include the results in the DEIR. The City's decision to defer analysis of the Project's geotechnical impacts until after Project approval violates CEQA's informational disclosure requirements.

In limited circumstances, a lead agency may rely on future studies to devise the specific design of a mitigation measure when the results of later studies are used to tailor mitigation measures to fit on-the-ground environmental conditions.¹¹² This principle does not authorize the City to avoid disclosing the Project's geotechnical impacts before Project approval. Moreover, the DEIR's deferral of the Project's geotechnical impacts on the Metro B Line is not an example of "deferred mitigation" authorized by CEQA Guidelines Section 15126.4. Section 15126.4 may authorize deferred formulation of mitigation measures in limited circumstances, but it does not authorize deferral of the impacts analysis, as is the case here. Thus, the City's decision to defer analysis of the Project's geotechnical impacts until after Project approval violates CEQA.

2. The DEIR Lacks Substantial Evidence to Conclude Impacts to the Metro B Line Would Not Be Significant

As demonstrated above, the DEIR improperly defers a full analysis of impacts on the Metro B Line. Per Metro's comments on the NOP, an adequate analysis of impacts on the Metro B Line would evaluate impacts of Project construction and operation on the structural and systems integrity of subway

¹¹² *City of Hayward v Board of Trustees of Cal. State Univ.* (2015) 242 CA4th 833, 855 (upholding transportation demand management program that identified measures to be evaluated and included monitoring plan, performance goals, and schedule for implementation); *Save Panoche Valley v San Benito County* (2013) 217 CA4th 503, 524 (upholding mitigation measures, based on preconstruction surveys, requiring identified steps for avoiding impacts to biological resources to be implemented).

tunnels; damage to subway infrastructure, including tracks; disruption to subway service; and temporary and/or permanent changes to customer access and circulation to the station.¹¹³ The Metro Adjacent Development Construction Design Manual calls for analysis demonstrating that the loading induced by the building foundation will not impose adverse effects the Metro facilities.¹¹⁴ Because this analysis is not included in the DEIR, the DEIR lacks substantial evidence to conclude that geotechnical impacts on the B Line would be less than significant.

Additionally, Appendix G of the CEQA Guidelines requires an EIR to analyze whether a project would “[c]ause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect.”¹¹⁵ Metro developed the Metro Adjacent Development Handbook¹¹⁶ and the Adjacent Design Construction Manual¹¹⁷ for the purpose of avoiding impacts such as surcharge on Metro tunnels.¹¹⁸ The DEIR fails to analyze consistency with these plans and is thus incomplete.

D. The DEIR Fails to Adequately Evaluate Potentially Significant Noise and Vibration Impacts

1. The DEIR Fails to Accurately Establish the Environmental Setting

The DEIR fails to accurately establish the environmental setting because the DEIR improperly relies on short-term ambient noise measurements. The DEIR also fails to conduct validation measurements for its traffic noise model.

CEQA requires that a lead agency include a description of the physical environmental conditions in the vicinity of the Project as they exist at the time environmental review commences.¹¹⁹ As numerous courts have held, the impacts of

¹¹³ DEIR, Appendix A, PDF pg. 349.

¹¹⁴ Metro Adjacent Design Construction Manual, pg. 7, available at <https://www.dropbox.com/scl/fi/1libxih7nhe4asfmqluev/2018-Adjacent-Construction-Design-Manual.pdf?rlkey=sntfnvj6lgd3be3jv64bsx65f&e=1&dl=0>.

¹¹⁵ CEQA Guidelines, Appendix G, Section XI (b).

¹¹⁶ Metro Adjacent Development Handbook, available at <https://www.dropbox.com/scl/fi/nvyd0zlie2xdk7f2vmswl/2021-Adjacent-Development-Review-Handbook.pdf?rlkey=7zg3e8lcl23lecc71dfi41mg3&e=1&dl=0>;

¹¹⁷ Metro Adjacent Design Construction Manual; Metro documents available at <https://www.metro.net/about/adjacent-development-review/>.

¹¹⁸ Metro Adjacent Design Construction Manual, pg. 7.

¹¹⁹ CEQA Guidelines, § 15125, subd. (a).

a project must be measured against the “real conditions on the ground.”¹²⁰ The description of the environmental setting constitutes the baseline physical conditions by which a lead agency may assess the significance of a project’s impacts.¹²¹ Baseline information on which a lead agency relies must be supported by substantial evidence.¹²²

Here, Mr. Faner explains that the DEIR improperly relies on short-term (15-minute) ambient noise measurements to establish baseline noise levels.¹²³ These short-term measurements may not be reflective of actual existing conditions because the DEIR fails to provide discussion of how typical/representative these data were of the rest of the day.¹²⁴ Mr. Faner explains that environmental noise can vary widely throughout the day (perhaps +/- 10 dBA or more for areas with intermittent local traffic.¹²⁵ Thus, the DEIR fails to provide a description, supported by substantial evidence, of the “real conditions on the ground.”¹²⁶

The DEIR’s description of existing traffic noise is also not supported by substantial evidence. Traffic noise levels were modeled using the Federal Highway Administration’s Traffic Noise Model (“TNM”).¹²⁷ Mr. Faner observes that the DEIR fails to provide validation measurements showing that the model is accurate within industry expectations.¹²⁸ Mr. Faner explains that a validated model may fall within +/- 3 dBA of the measured result, which undermines attempts to use modeled-only results from TNM for absolute noise characterization of the ambient condition.¹²⁹ Mr. Faner demonstrates that the DEIR’s unvalidated model is not supported by substantial evidence in this case because in the cases of urban environments, TNM does not take into account sound amplification from traffic noise reflecting off nearby buildings.¹³⁰

¹²⁰ *Save Our Peninsula Com. v. Monterey Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 121-22; *City of Carmel-by-the Sea v. Bd. of Supervisors* (1986) 183 Cal.App.3d 229, 246.

¹²¹ CEQA Guidelines, § 15125, subd. (a).

¹²² *CBE v. SCAQMD*, *supra*, 48 Ca.4th at 321 (stating “an agency enjoys the discretion to decide [...] exactly how the existing physical conditions without the project can most realistically be measured, subject to review, as with all CEQA factual determinations, for support by substantial evidence”); see *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.

¹²³ Faner Comments, pg. 3.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Save Our Peninsula Com. v. Monterey Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 121-22; *City of Carmel-by-the Sea v. Bd. of Supervisors* (1986) 183 Cal.App.3d 229, 246.

¹²⁷ DEIR, pg. IV.H-23.

¹²⁸ Faner Comments, pg. 3.

¹²⁹ *Id.*

¹³⁰ *Id.*

The DEIR must be revised and recirculated to include an updated environmental setting that accurately reflects existing conditions.

2. The DEIR Fails to Analyze Vibration Impacts on the Metro B Line

Table IV.H-1 of the DEIR identifies construction vibration damage criteria for different building categories.¹³¹ Table IV.H-27 shows the Project's construction vibration impacts on nearby sensitive receptors, applying the aforementioned significance criteria.¹³² The DEIR fails to include the Metro B Line in this analysis or identify it as a sensitive receptor. The failure to identify the Metro B Line as a sensitive receptor in regard to vibration impacts is a failure to fully disclose the impacts of the Project. The DEIR's failure to evaluate whether the applicable vibration damage criterium for the B Line tunnel would be exceeded means that the DEIR's significance conclusions are not supported by substantial evidence.

Vibration impacts on the Metro B Line are potentially significant because the Project's construction would include significant sources of vibration. Vibration would be caused by caisson drilling, bulldozers, loaded trucks, and jackhammers.¹³³ The 0.30 PPV significance threshold for concrete structures may be exceeded due to the proximity of the Metro B Line tunnel.¹³⁴ According to the Initial Study, the sidewall of the Metro B Line is, at its closest, approximately 16 feet from the Project site.¹³⁵ The six-story office building proposed by the Project is approximately 22 feet from the Metro B Line sidewall and the 35-story tower is approximately 28 feet from the sidewall.¹³⁶ Further, the Project is within 100 feet of the Metro B Line, and thus subject to the Metro Adjacent Development Handbook, which states that vibration is a common adjacency concern for projects constructed near Metro facilities.¹³⁷

In sum, the scope of the DEIR's vibration analysis is inadequate because it fails to address impacts on the Metro B Line. Vibration impacts are potentially significant due to the proximity of the B Line tunnels to construction activities. This potentially significant impact must be fully analyzed and mitigated in a revised and recirculated EIR.

¹³¹ DEIR, pg. IV.H-12.

¹³² *Id.* at IV.H-60.

¹³³ *Id.*; Table IV.H-1.

¹³⁴ DEIR, pg. IV.H-12., Table IV.H-1.

¹³⁵ DEIR, Appendix A, pg. 191.

¹³⁶ *Id.*

¹³⁷ Metro Adjacent Development Handbook, pg. 5.

3. The DEIR Fails to Analyze Construction Ground-borne Noise at Recording Studios

The DEIR's analysis fails to adequately address ground-borne noise impacts at two recording studios identified as receptors R3 and R10, located 5 feet and 10 feet, respectively, from construction activities. While the DEIR analyzes the significance of ground-borne *vibration* impacts,¹³⁸ the DEIR fails to analyze ground-borne *noise* impacts at the recording studios. Mr. Faner explains that recording studios are not typically designed to eliminate ground-borne vibration that can radiate sound into the interior, where the noise may interfere with the recording process.¹³⁹ The significance of ground-borne noise impacts at recording studios is subject to a 25 dBA significance threshold under the FTA guidance cited by the DEIR.¹⁴⁰

Mr. Faner calculated the ground-borne noise impacts at receptors R3 and R10 and found that the 25 dBA threshold would be exceeded. These exceedances are reflected in the table below.¹⁴¹

Table 1 Construction Groundborne Noise Impacts

Off-Site Receptor Location	Approx. Distance Between the Off-Site Buildings and the Construction Equipment (ft)	Estimated Groundborne Noise at the Off-Site Receptor (dBA)					Sig. Criteria (dBA)	Sig. Impact
		Large Bulldozer	Caisson Drilling	Loaded Trucks	Jack-hammer	Small Bulldozer		
R3	5	68-83	68-83	67-82	60-75	39-54	25	Yes
R10	95	34-50	34-50	34-49	27-42	6-21	25	Yes

Adapted from Table IV.H-28 of the DEIR

Mr. Faner explains these exceedances constitute significant impacts under FTA guidance cited by the DEIR.¹⁴² Mr. Faner identifies feasible mitigation measures to reduce these impacts. The DEIR must be revised to disclose all potentially significant ground-borne noise impacts and identify feasible mitigation.

¹³⁸ DEIR, pg. IV.H-62.

¹³⁹ Faner Comments, pg. 5.

¹⁴⁰ *Id.*

¹⁴¹ *Id.* at 6.

¹⁴² *Id.*

4. The DEIR's Analysis of Stationary Mechanical Noise Is Not Supported by Substantial Evidence

The DEIR analyzes estimated noise levels from stationary mechanical equipment (e.g. air ventilation equipment) in Table IV.H-16.¹⁴³ The DEIR finds that because noise levels would not exceed applicable thresholds, impacts would be less than significant.¹⁴⁴ Mr. Faner demonstrates that this analysis is not supported by substantial evidence. To begin with, the DEIR noise analysis does not provide sources for the rooftop mechanical equipment operational noise calculations.¹⁴⁵

Further, Mr. Faner shows that the DEIR likely underestimates the noise levels generated by HVAC units required for the Project. Whereas Table IV.H-16 of the DEIR estimates a noise level of 43 dBA at receptor R2, a single 90 dBA PWL fan would generate a noise level of 69 dBA at receptor R2.¹⁴⁶

Mr. Faner also shows that the DEIR underestimates the number of HVAC units required for the Project. Whereas the noise analysis assumes 33 HVAC units for the residential zones of the project, Mr. Faner introduces substantial evidence showing that a project this size would need 49 to 72 twenty-five-ton units to properly ventilate the space.¹⁴⁷

As a result, the DEIR underestimates noise levels from stationary mechanical equipment. Noise impacts from stationary equipment remains potentially significant. These impacts must be accurately analyzed in a revised and recirculated EIR.

5. The DEIR Fails to Identify All Feasible Mitigation for the Project's Significant Impacts

The DEIR concludes that on-site construction noise impacts will be significant and unavoidable at receptors R1, R2, R3, and R7.¹⁴⁸ The DEIR concludes that off-site construction noise impacts would be significant and unavoidable at receptors R2, R2, and R10.¹⁴⁹ The DEIR fails to identify all feasible mitigation measures to reduce these impacts to the greatest extent feasible.

¹⁴³ DEIR, pg. IV.H-43.

¹⁴⁴ *Id.*

¹⁴⁵ Faner Comments, pg. 7.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*

¹⁴⁸ DEIR, pg. IV.H-55.

¹⁴⁹ *Id.* at IV.H-56.

Under CEQA, if the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has “eliminated or substantially lessened all significant effects on the environment” to the greatest extent feasible and that any unavoidable significant effects on the environment are “acceptable due to overriding concerns.”¹⁵⁰

Mr. Faner identifies feasible mitigation measures that would reduce the severity of the Project’s onsite construction noise impacts. Mr. Faner first recommends including NOI-PDF-1 (mufflers) and NOI-PDF-2 (no pile drivers) in the Mitigation Monitoring and Reporting Program (MMRP) to ensure that the measures are binding.¹⁵¹

Mr. Faner calls for a measure requiring for continuous noise monitoring during construction and to halt construction if noise levels exceed the estimated construction noise levels.¹⁵² Continuous measurement would provide improved assurance that noise levels are minimized as estimated in the DEIR. It is feasible to install noise monitors that provide 24/7 coverage for the duration of a project at a low cost.

Mr. Faner identifies additional measures to reduce impacts at the upper levels of the receptors R1 and R7.¹⁵³ These include erecting scaffolding to support construction noise control blankets, installing heavy Plexiglass or other clear panels around the edges of balconies and/or breezeways that face the Project site, and offering to upgrade windows and exterior doors of those upper floor residential units that would not be shielded by the sound barriers as defined in NOI-MM-1.¹⁵⁴

Mr. Faner also identifies mitigation for the Project’s construction vibration impacts, which the DEIR concludes would result in a significant and unavoidable impact to human annoyance. Mr. Faner recommends offering to relocate persons who either work from home, have irregular sleep schedules due to night shift work, or are subject to other conditions where the vibration from construction would cause an unduly disruption to their lives.¹⁵⁵

In sum, the DEIR must be revised to identify all feasible mitigation measures to reduce the Project’s significant impacts.

¹⁵⁰ PRC § 21081(a)(3), (b); CEQA Guidelines §§ 15090(a), 15091(a), 15092(b)(2)(A), (B); *Covington v. Great Basin Unified Air Pollution Control Dist.* (2019) 43 Cal.App.5th 867, 883.

¹⁵¹ Faner Comments, pg. 4.

¹⁵²

¹⁵³ Faner Comments, pg. 4.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* at 5.

E. The Project May Result in Potentially Significant Public Utilities Impacts.

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.”¹⁵⁶ The DEIR states that the Project would not result in the construction of new or expanded water facilities, the construction of which would result in significant environmental effects.¹⁵⁷ In support of this conclusion, the DEIR refers to an Information of Fire Flow Availability Request (“IFFAR”) showing that six existing hydrants could meet the Project’s fire flow requirement of 9,000 gallons per minute.¹⁵⁸ The IFFAR is dated May 23, 2023. The DEIR does not discuss a subsequent analysis from the Department of Water and Power (“LADWP”), dated December 29, 2023, concluding that three new hydrants must be constructed as a condition of approval.¹⁵⁹ These improvements are not disclosed in the DEIR.

As demonstrated in the DEIR, construction of utilities infrastructure results in environmental impacts such as air quality and noise. Because the DEIR fails to analyze impacts associated with all water infrastructure improvements required by the Project, the DEIR’s analysis is not supported by substantial evidence.

F. The Statement of Overriding Consideration Must Consider Whether the Project Provides Employment Opportunities for Highly Trained Workers

The City concludes in the DEIR that the Project will have significant and unavoidable environmental impacts. Therefore, in order to approve the Project, CEQA requires the City to adopt a statement of overriding considerations, providing that the Project’s overriding benefits outweigh its environmental harm.¹⁶⁰ An agency’s determination that a project’s benefits outweigh its significant,

¹⁵⁶ DEIR, pg. 4.14-12.

¹⁵⁷ DEIR, pg. IV.L1-35.

¹⁵⁸ DEIR, pg. IV.L1-34; Appendix M, PDF pg. 42.

¹⁵⁹ Letter from Rafael Viramontes, P.E., LADP, to Vincent Bertoni, Department of City Planning, re: Tract No. 83987 – 6000 Hollywood Boulevard – South of Hollywood Boulevard and East of Gower Street (December 29, 2023), attached as **Exhibit C**.

¹⁶⁰ CEQA Guidelines, § 15043.

unavoidable impacts “lies at the core of the lead agency’s discretionary responsibility under CEQA.”¹⁶¹

The City must set forth the reasons for its action, pointing to supporting substantial evidence in the administrative record.¹⁶² This requirement reflects the policy that public agencies must weigh a project’s benefits against its unavoidable environmental impacts, and may find the adverse impacts acceptable only if the benefits outweigh the impacts.¹⁶³ Importantly, a statement of overriding considerations is legally inadequate if it fails to accurately characterize the relative harms and benefits of a project.¹⁶⁴

In this case, the City must find that the Project’s significant, unavoidable impacts are outweighed by the Project’s benefits to the community. CEQA specifically references employment opportunities for highly trained workers as a factor to be considered in making the determination of overriding benefits.¹⁶⁵ Currently, there is not substantial evidence in the record showing that the Project’s significant, unavoidable impacts are outweighed by benefits to the community. The Applicant has not made any commitments to employ graduates of state approved apprenticeship programs or taken other steps to ensure employment of highly trained and skilled craft workers on Project construction. Therefore, the City would not fulfill its obligations under CEQA if it adopted a statement of overriding considerations and approved the Project.

We urge the City to prepare and circulate a revised EIR which identifies the Project’s potentially significant impacts, requires all feasible mitigation measures and analyzes all feasible alternatives to reduce impacts to a less than significant level. If a Statement of Overriding Considerations is adopted for the Project, we urge the City to consider whether the Project will result in employment opportunities for highly trained workers.

V. CONCLUSION

For the reasons discussed above, the DEIR for the Project is inadequate under CEQA. It must be revised to provide legally adequate analysis of, and mitigation for, all of the Project’s potentially significant impacts. These revisions

¹⁶¹ *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392.

¹⁶² Pub. Resources Code, § 21081, subd. (b); CEQA Guidelines, § 15093, subds. (a) and (b); *Cherry Valley Pass Acres & Neighbors v. City of Beaumont* (2010) 190 Cal.App.4th 316, 357.

¹⁶³ Pub. Resources Code, § 21081(b); CEQA Guidelines, § 15093, subds. (a) and (b)

¹⁶⁴ *Woodward Park Homeowners Association v. City of Fresno* (2007) 150 Cal.App.4th 683, 717.

¹⁶⁵ Pub. Resources Code, § 21081, subds. (a)(3) and (b).

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will necessarily require that the DEIR be recirculated for additional public review. Until the DEIR has been revised and recirculated, as described herein, 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,



Aidan P. Marshall

Attachments

APM:acp