ADAMS BROADWELL JOSEPH & CARDOZO
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
601 GATEWAY BOULEVARD, SUITE 1000
SOUTH SAN FRANCISCO, CA 94080-7037
TEL: (650) 589-1660
FAX: (650) 589-5062
amarshall@adamsbroadwell.com

SACRAMENTO OFFICE
520 CAPITOL MALL, SUITE 350
SACRAMENTO, CA 95814-4721
TEL: (916) 444-6201
FAX: (916) 444-6209

KEVIN T. CARMICHAEL
CHRISTINA M. CARO
THOMAS A. ENSLOW
KELILAH D. FEDERMAN
RICHARD M. FRANCO
ANDREW J. GRAF
TANYA A. GULESSERIAN
DARION N. JOHNSTON
RACHAEL E. KOSS
AIDAN P. MARSHALL
ALAURA R. McGUIRE
ISABEL TAHIR

*Of Counsel*
DANIEL L. CARDOZO
MARC D. JOSEPH

July 15, 2025

**Via Email and Overnight Mail**
Attn: Paul Caporaso, Deputy Advisory Agency
Attn: Christina Toy-Lee, Zoning Administrator
City of Los Angeles
221 N. Figueroa Street, Suite 1350
Los Angeles, CA 90012
**Email**: paul.caporaso@lacity.org; christina.toy-lee@lacity.org.

**Via Email Only**
Erin Strelich, City Planning Associate
**Email**: erin.strelich@lacity.org

Kathleen King, City Planner
**Email**: kathleen.king@lacity.org

**Re: Agenda Item 1 – 6000 Hollywood Boulevard Project (SCH No. 2023050659; Environmental Case No. ENV-2022-6688-EIR)**

Dear Mr. Caporaso, Ms. Toy-Lee, Ms. Strelich, and Ms. King:

We are writing on behalf of Coalition for Responsible Equitable Economic Development Los Angeles ("CREED LA") regarding the 6000 Hollywood Boulevard Project (SCH No. 2023050659; Environmental Case No. ENV-2022-6688-EIR) ("Project"). The Project will be considered as Agenda Item 1 at the City of Los Angeles ("City") Deputy Advisory Agency and Zoning Administrator hearing on July 16, 2025.

CREED LA submitted comments on the Draft Environmental Impact Report ("DEIR") prepared by the City on December 23, 2024, during the public comment period. CREED LA's comments demonstrated that the DEIR failed to comply with the requirements of the California Environmental Quality Act ("CEQA").[1] The City released the Final EIR ("FEIR") in advance of this hearing. We reviewed the FEIR with the assistance of air quality expert Dr. James Clark[2] and noise expert Patrick Faner,[3] and conclude that the FEIR includes significant new information, fails to

[1] PRC § 21100 et seq.
[2] Dr. Clark's technical comments and curricula vitae are attached hereto as **Exhibit A**.
[3] Mr. Faner technical comments and curricula vitae are attached hereto as **Exhibit B**.

adequately respond to comments, and still fails to comply with CEQA's disclosure and mitigation requirements.

Recirculation of an EIR is required when significant new information is added after the DEIR is circulated for public review but before certification of the FEIR.[4] In particular, the FEIR describes substantial changes to the Project's design that may result in new or more severe environmental and public health impacts than previously analyzed. The original Project design required 40 feet of below ground surface ("bgs") excavation for the building foundations. The Project design was subsequently revised, and is now described in the FEIR to require excavation 48 feet bgs, which will result in deeper excavation into contaminated soil than was analyzed in the DEIR. The DEIR's Phase II ESA found significant contamination from volatile organic compounds ("VOCs") at 40 feet bgs at boring 9, and identified PCE contamination levels increasing in severity with increased depth at borings 9 and 10.[5] However, the DEIR did not examine Project excavation at 48 feet, and therefore lacks analysis or mitigation for the increased VOC releases that would occur at greater soil depths. The Project's increased excavation depth creates a new potential for exposure to soil contamination that was not analyzed in the DEIR or FEIR, and is not adequately addressed by the measures in the proposed Mitigation Monitoring and Reporting Program ("MMRP"). The increased excavation also would result in increased air quality and public health impacts not disclosed in the FEIR. These impacts require additional analysis and mitigation in a recirculated EIR.

The FEIR also fails to meaningfully address significant impacts identified in CREED LA's comments. Dr. Clark demonstrates that the FEIR's health risk analysis ("HRA") contains errors that underestimate the Project's impacts, and that when these errors are corrected, the cancer risk for the most sensitive population would be 22.3 in 1,000,000, a significant impact.[6] The FEIR also fails address the Project's combined impacts with other nearby construction projects, which would impact a community ranking in the 99.3 percentile in the State for diesel particulate matter pollution.[7] The FEIR also fails to acknowledge greenhouse gas and energy impacts associated with the large amount of parking proposed by the Project. Finally, the FEIR fails to resolve significant noise impacts demonstrated by Mr. Faner. Recirculation of the EIR is necessary to address these issues.

Several other discretionary approvals are required to implement the Project, including a Vesting Tentative Tract Map pursuant to LAMC Section 17.15, Site

[4] 14 CCR §15088.5(a).
[5] DEIR, Appendix F, PDF pg. 1583, 1587; DEIR, pg. IV.F-26.
[6] Clark Comments, pg. 3.
[7] DEIR, Appendix B, PDF pg. 54.

Plan Review pursuant to LAMC Section 16.05, Density Bonus Compliance Review pursuant to LAMC Section 12.22 A.25, and a Conditional Use Permit pursuant to LAMC Section 12.24 W.1 (collectively, "Approvals"). Due to the Project's inadequate environmental review, the City cannot make the requisite findings to approve the Project Approvals under the City's municipal code or Subdivision Map Act, or to certify the FEIR or adopt a statement of overriding considerations pursuant to CEQA.[8]

CREED LA urges the Deputy Advisory Agency and Zoning Administrator to require the City to revise and recirculate the EIR to comply with CEQA before any further action is taken on the Project. CREED LA reserves the right to provide supplemental comments at any and all later proceedings related to this Project.[9]

## I. STATEMENT OF INTEREST

CREED LA is 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 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.

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[8] Pub. Res. Code § 21081; *Covington v. Great Basin Unified Air Pollution Control Dist.* (2019) 43 Cal.App.5th 867, 883.
[9] 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.

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. THE FEIR DOES NOT COMPLY WITH CEQA

### A. The FEIR Still Fails to Adequately Analyze the Project's Potentially Significant Geotechnical Impacts

CREED LA's prior comments demonstrated that the DEIR failed to analyze geotechnical impacts on the Metro B (Red) Line tunnel near the Project site. CREED LA explained that the City violated CEQA by improperly deferring analysis until after Project approval and failing to support its conclusion that impacts would be less than significant.

In response, the FEIR alters the Project by moving the entire Project 13.5 feet south and deepening the foundation.[10] The FEIR states that, due to these changes, "Appendix FEIR-2 confirms that the Project would not result in significant impacts related to surcharge of the Metro tunnel.[11] This conclusion is not supported by substantial evidence in the record. Appendix FEIR-2 is a one-page letter presenting the consultant's bare conclusions, without any supporting technical analysis. Thus, the City still lacks substantial evidence to conclude that geotechnical impacts on the Metro tunnel would be less than significant.

The FEIR also claims that its lack of analysis of geotechnical impacts on the Metro tunnel does not constitute impermissibly deferred mitigation because the Project's design is not finalized, and the City would continue to coordinate with

[10] FEIR, Appendix FEIR-2, pg. 1.
[11] FEIR, pg. II-56, 58.

Metro.[12] The City misunderstands CREED LA's comment and the legal standard for impact analysis. By deferring analysis of geotechnical impacts to a post-approval phase, the FEIR violates CEQA's threshold requirement that an EIR disclose the severity of a project's impacts and the probability of their occurrence *before* a project can be approved.[13] In *Sundstrom v. County of Mendocino*,[14] 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.[15] The Court explained that the deferred analysis of hydrological conditions failed to meet CEQA's requirement that an environmental impact should be assessed as early as possible in government planning.[16]

The FEIR makes the same mistake here by proposing to defer geotechnical analysis to post-approval consultation with Metro. Although CEQA Guidelines Section 15126.4 authorizes deferred formulation of mitigation measures in limited circumstances, it does not authorize deferral of the impacts analysis, as is the case here. It is also unclear how the City asserts it can determine that moving the Project 13.5 feet south would resolve any potential geotechnical impacts, yet simultaneously claim that analysis of the Project's potential geotechnical impact analysis is infeasible at this time. The FEIR's conclusion that the Project's geotechnical impacts would be less than significant with mitigation is also unsupported. The EIR must be revised to include the missing geotechnical analysis, disclose potentially significant impacts, and implement mitigation that would reduce any new geotechnical impacts associated with the Project's new design to less than significant levels.

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[12] FEIR, pg. II-58.
[13] 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.
[14] (1988) 202 Cal.App.3d 296.
[15] *Id.* at 306.
[16] *Id.*

### B. The FEIR Fails to Disclose and Mitigate Significant Hazardous Materials Impacts

#### 1. The FEIR Fails to Adequately Analyze Significant Onsite Soil Contamination

The DEIR's Phase I and II Environmental Site Assessments found that VOCs, including tetrachloroethylene ("PCE") and Trichloroethylene ("TCE"), were found onsite in levels exceeding residential and commercial thresholds.[17] The Phase II ESA collected soil and vapor samples from borings to a maximum depth of 40 feet bgs.[18] Samples were taken at this depth because the Project was expected to require excavation up to 40 feet bgs.[19] However, the Project was subsequently revised in the FEIR to require excavation up to 48 feet bgs.[20]

The City's own evidence demonstrates that soil contamination at this depth is likely greater than identified in the DEIR. Specifically, the Phase II ESA discloses that PCE was reported at 40 feet bgs at a concentration of 127 ug/$m^3$, far in excess of the residential threshold of 14 ug/$m^3$ and commercial threshold of 67 ug/$m^3$.[21] The Phase II ESA identified PCE is increasing with depth at borings 9 and 10.[22] The Phase II ESA also states that the source of PCE identified on the Project Site is unknown and may represent a larger area that is undefined.[23] The Phase II ESA concludes that, should contaminated soil be removed at a depth of 40 bgs, "[r]esidual VOCs may be present below this depth but may not be significant based on these results."[24] The Phase II ESA did not include analysis of the soil below 40 bgs, so does not discount the possibility of significant contamination below that depth.

Despite this evidence, the FEIR does not include a new soil analysis quantifying contamination levels at 48 feet bgs. The full extent of soil contamination at the Project's increased excavation depth is therefore unknown. The FEIR's failure to analyze this previously identified significant impact fails to meet CEQA's requirements that an EIR establish baseline conditions at the Project site and evaluate the severity of impacts associated with altering baseline

[17] DEIR, pg. IV.F-26.
[18] DEIR, Appendix F, PDF pg. 1583.
[19] *Id.*
[20] FEIR, Section III (Revisions to DEIR).
[21] DEIR, Appendix F, PDF pg. 1583, DEIR, pg. IV.F-26.
[22] DEIR, Appendix F, PDF pg. 1583.
[23] DEIR, Appendix F, PDF pg. 1583. ("the PCE in soil vapor at boring 10 is undefined… the source of PCE at boring 9 is unknown and may represent a larger area that is undefined").
[24] DEIR, Appendix F, PDF pg. 1583.

conditions. 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.[25] As numerous courts have 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 by which a lead agency may assess the significance of a project's impacts.[27] Use of the proper baseline is critical to a meaningful assessment of a project's environmental impacts.[28] The City must then assess the severity of the Project's impacts in the CEQA document.

Here, the Phase II ESA acknowledges that the source and extent of contamination below 40 bgs is currently undefined. The Phase II ESA states that VOCs at 48 feet bgs may be greater than the levels detected in the Phase II ESA, yet the City failed to perform any additional soil sampling to quantify contamination levels at the new Project depth of 48 feet. These facts demonstrate that the FEIR's significance findings and proposed mitigation, which remain based on the DEIR's analysis of 40-foot excavation, are not based on substantial evidence. Specifically, HAZ-MM-1 purports to reduce impacts to a less-than-significant level by removing all contaminated soil (to a 40-foot depth). However, this approach may not be effective if there are higher levels of contamination at 48 feet bgs or below.

Dr. Clark concludes that the increased excavation depth may result in more severe public health and contamination impacts than disclosed in the DEIR. Dr. Clark explains that, if there are high levels of contamination in the soil below the Project (48 bgs or below), they may infiltrate upwards into the Project's buildings.[29] In that situation, simply removing currently contaminated soils would be ineffective, and additional mitigation would be required.[30] By failing to characterize baseline soil conditions at the new Project depth, and failing to analyze the severity of impacts associated with excavating the soil contamination below 40 feet bgs, the FEIR fails to comply with CEQA's disclosure requirements. The FEIR also lacks substantial evidence to conclude that HAZ-MM-1 would be effective in light of these substantial physical changes in the Project.

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[25] CEQA Guidelines, § 15125, subd. (a).
[26] *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.
[27] CEQA Guidelines, § 15125, subd. (a).
[28] *Communities for a Better Environment v. South Coast Air Quality Management District* (2010) 48 Ca.4th 310, 320.
[29] Clark Comments, pg. 8.
[30] *Id.*

### 2. The FEIR Fails to Mitigate Vapor Intrusion Impacts from Deep and Offsite Sources

The EIR's Phase I and II Environmental Site Assessments found that VOCs, including PCE and TCE, were found onsite in levels exceeding residential and commercial thresholds.[31] Dr. Clark also demonstrates that the current concentrations of PCE would exceed screening levels for PCE in air (0.46 ug/m$^3$).[32] Mitigation Measure HAZ-MM-1 provides that contaminated soils will excavated and removed. The DEIR states that the reported contaminants would be removed during excavation to 40 feet below ground surface.[33] However, since the Project was revised in the FEIR to require excavation up to 48 feet bgs,[34] **t**his mitigation is inadequate because it does not mitigate PCE contamination infiltrating from (1) off-site sources, and (2) plumes below 48 feet bgs.[35]

As explained above, the Phase II ESA detected PCE at 40 feet bgs at a concentration of 127 ug/m$^3$, far in excess of the residential threshold of 14 ug/m$^3$ and commercial threshold of 67 ug/m$^3$.[36] The Phase II ESA also shows that this contamination is increasing with depth at borings 9 and 10,[37] and may represent a larger area that is undefined.[38] The Phase II ESA concludes that the increase in concentration with depth suggests an off-site source north of the Project Site.[39] The Phase II ESA concludes that, should contaminated soil be removed at a depth of 40 bgs, residual VOCs may be present below this depth.[40] However, there are many potential off-site sources of contaminants infiltrating the Project site which have contributed to onsite contamination. The Phase I ESA discloses that four properties were identified as within 0.125 miles and upgradient of the Project Site on the Historical Gas Station database, and nine properties were identified as within 0.125 miles and upgradient of the Project Site on the Historical Dry Cleaners database.[41] The DEIR identifies a potential vapor encroachment condition ("VEC") as a result of these neighboring uses.[42]

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[31] DEIR, pg. IV.F-26.
[32] Clark Comments, pg. 7.
[33] DEIR, pg. IV.F-26.
[34] FEIR, Section III (Revisions to DEIR).
[35] DEIR, pg. IV.F-26.
[36] DEIR, Appendix F, PDF pg. 1583, DEIR, pg. IV.F-26.
[37] DEIR, Appendix F, PDF pg. 1583.
[38] *Id.*; DEIR, pg. IV.F-26.
[39] DEIR, Appendix F, PDF pg. 1583, DEIR, pg. IV.F-26.
[40] DEIR, Appendix F, PDF pg. 1583.
[41] DEIR, Appendix F, PDF pg. 10.
[42] DEIR, pg. IV.F-32.

Dr. Clark explains that, if there is an off-site or deep source of PCE that is currently infiltrating into the Project site, as is stated in the Phase II ESA, simply removing the currently contaminated soil pursuant to HAZ-MM-1 would not fully mitigate the impact.[43] After the currently contaminated soil onsite is removed, the vapor encroachment condition would remain.[44] Without additional mitigation, this vapor encroachment would continue to exceed residential and commercial thresholds. Thus, impacts remain significant and unmitigated.

Dr. Clark also explains that the removal of contaminated soil up to 48 feet bgs may actually increase risks of vapor intrusion from contaminated soil below that depth. By removing the overlaying soils that typically slow the migration of soil vapor from deeper contamination to the surface, the remedial action of excavating soils will shorten that pathway and thereby increase the potential for vapor migration into the new structure.[45] The FEIR does not analyze or disclose any of these impacts.

Dr. Clark explains that the City should implement feasible measures to reduce impacts from vapor intrusion, such as subslab venting or subslab depressurization systems, which are common long-term mitigation technologies.[46] Vapor barriers can be used in conjunction with these measures.[47] Mitigation monitoring is necessary to demonstrate the initial and continued effectiveness of the mitigation.[48] These measures are not considered in the FEIR or included in the MMRP. Vapor intrusion impacts thus remain significant and unmitigated.

### 3. The FEIR Improperly Defers Details of the Soil Management Plan

The FEIR proposes to mitigate impacts from disturbance of contaminated soil by implementing a Soil Management Plan ("SMP") pursuant to HAZ-MM-1.[49] HAZ-MM-1 specifies some of the required components of the SMP, but defers formulation of many details critical to the effectiveness of the SMP. HAZ-MM-1 states that routine soil sampling and testing would be required, but does not specify a minimum frequency. The measure also does not specify which exact contaminants

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[43] Clark Comments, pg. 8.
[44] *Id.*
[45] *Id.*
[46] DTSC, Final Draft Supplemental Guidance: Screening and Evaluating Vapor Intrusion (February 2023), pg. 47, available at https://dtsc.ca.gov/wp-content/uploads/sites/31/2023/02/VI_SupGuid_Screening-Evaluating.pdf.
[47] *Id.* at 48.
[48] *Id.*
[49] FEIR, pg. IV-8.

would be sampled and tested for. The measure also does not specify performance standards for the cleanup, let alone quantitative targets for each contaminant. For example, the measure lacks performance standards for what concentration of contaminants in a portion of soil would require it to be removed, as well as standards for acceptable concentrations in the soil before construction can commence. The measure also does not require oversight from DTSC or a self-certified local agency qualified to conduct oversight for cleanup activities, a deficiency with DTSC also raised in its comments on the DEIR.[50] Instead, the FEIR states the SMP will be implemented under the supervision of a qualified environmental professional.[51] And the MMRP provides that the SMP shall be submitted to the Los Angeles Department of Building and Safety.[52] DTSC commented that the City Planning department is not self-certified to provide oversight for environmental investigations and cleanup.[53]

Deferring formulation of mitigation measures is generally impermissible.[54] If identification of specific mitigation measures is impractical until a later stage in the Project, specific performance criteria must be articulated and further approvals must be made contingent upon meeting these performance criteria.[55] Mitigation that does no more than allow approval by a county department without setting enforceable standards is inadequate.[56] As summarized in the CEQA Guidelines, deferral of mitigation details is permitted if the agency "(1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) identifies the type(s) of potential action(s) that can feasibly achieve that performance standard and that will [be] considered, analyzed, and potentially incorporated in the mitigation measure."[57]

In *East Oakland Stadium Alliance v. City of Oakland*,[58] the Court of Appeal considered an EIR's soil contamination mitigation that met CEQA's requirements for deferred mitigation. That EIR required preparation of a Remedial Action Plan approved by DTSC, identified target cleanup levels for each contaminant of concern, and required the preparation of health and safety plans consistent with applicable

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[50] FEIR, pg. II-7.
[51] FEIR, pg. II-7
[52] FEIR, MMRP, pg. IV-8.
[53] FEIR, pg. II-7
[54] *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 308-309; Pub. Resources Code, § 21061.
[55] *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1393; Quail Botanical, supra, 29 Cal.App.4th at pg. 1604, fn. 5.
[56] *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 794.
[57] CEQA Guidelines § 15126.4(a)(1)(B).
[58] (2023) 89 Cal. App. 5th 1226

regulations to protect workers and the public during the remediation activities.[59] The Court determined that "the extensive history of remediation efforts at the site, the establishment of quantitative target levels for each COC, the presentation in the consultant's report of a detailed range of alternative approaches to remediation, and the presence of a state agency responsible for oversight of remediation are sufficient to satisfy the requirements for deferring the final details of contamination mitigation."[60]

Here, unlike the EIR in *East Oakland Stadium Alliance*, HAZ-MM-1 fails to establish specific performance standards, does not require appropriate regulatory oversight from a certified regulatory agency, and merely states that contaminated soil would be removed. This vague goal does not ensure that PCE concentrations would be reduced to a particular level, or that cleanup would comply with applicable laws.

Unlike the EIR in *East Oakland Stadium Alliance*, HAZ-MM-1 does not require DTSC oversight, instead providing that the SMP would be submitted to the Department of Building and Safety. DTSC commented that the City's Department of Building and Safety is not a local agency self-certified to provide oversight for environmental investigations and cleanup.[61] Health and Safety Code § 101480, as amended by AB 304 (Stats. 2021, ch. 698), provides that a local agency must have adequate staff resources and technical expertise to provide oversight of an individual site.[62] A local agency must include (1) a Local Officer,[63] 2) Licensed Professionals,[64] and 3) Technical Staff.[65] Because the Department of Building and

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[59] *Id.* at 1267.
[60] *Id.*
[61] FEIR, pg. II-7
[62] HSC § 101480; AB 304 Frequently Asked Questions, https://www.waterboards.ca.gov/water_issues/programs/ab_304/docs/ab304faqs.pdf.
[63] Local Officer: A Local Officer is defined in HSC Section 101480 as "a county health officer, city health officer, or county director of environmental health who has been granted authority by the city's or county's governing body to enter into a remedial action agreement and oversee a remedial investigation or remedial action, or both, at a waste release site."
[64] Licensed Professionals: Licensed Professionals must have current registration in California as a Professional Civil Engineer, or Professional Geologist and should have experience overseeing or performing site investigation and remediation of unauthorized releases of hazardous substances. Only a civil engineer or geologist registered under the provisions set forth in Business and Professions Code, sections 6700 et seq. and 7800 et seq., respectively, may be considered a Licensed Professional for the purpose of the Remedial Action Agreement.
[65] Technical Staff: Technical Staff should possess the technical expertise and capabilities to adequately oversee the remedial investigation or remedial action, or both. Technical Staff may be licensed professionals or may be subordinates, as defined in Business and Professions Code, sections 6705 and 7805. A subordinate is any person who assists a Licensed Professional without assuming

Safety is not a self-certified local agency, oversight by this department would not meet CEQA's requirements. As explained above, mitigation that does no more than allow approval by a county department without setting enforceable standards is inadequate.[66]

To ensure that the Project's soil contamination impacts are adequately mitigated, the EIR should be revised to comply with DTSC's recommendations. Per DTSC's comments on the DEIR, the City should enter into a voluntary agreement or receive oversight from a self-certified local agency.[67] For example, the Los Angeles County Fire Department, Health & Hazardous Materials Division, is a self-certified local agency.[68] Additionally, pursuant to DTSC's recommendations, mitigation should be part of a Remedial Action Plan ("RAP") or Removal Action Workplan ("RAW"), as an "SMP alone cannot sufficiently identify and document the potential contaminants that may pose a threat to human health and the environment."[69] Dr. Clark explains that these plans would ensure that onsite contamination is fully characterized and the site is cleaned up to meet objective performance standards.[70]

### 4. The Project's Soil Contamination Impacts Constitute New Information Requiring Recirculation of the EIR

The increase in depth of excavation to 48 feet bgs constitutes significant new information requiring recirculation of the EIR. The CEQA Guidelines provide that significant new information requiring recirculation of an EIR includes information showing that "[a] new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented," or "[a] substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance."[71]

Here, the increase in depth results in new, potentially significant public health, air quality, and hazardous materials impacts. Whereas the DEIR included samples up to 40 feet bgs, consistent with the Project's proposed depth of 40 feet bgs, the FEIR fails to analyze soil contamination at 48 feet bgs. The Phase II ESA

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the responsible charge of work. Technical Staff may also include Licensed Professionals, as described above.

[66] *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 794.

[67] FEIR, pg. II-7.

[68] DTSC, List of Certified Local Agencies, https://dtsc.ca.gov/local-agency-resources/.

[69] FEIR, pg. II-7.

[70] Clark Comments, pg. 9.

[71] CEQA Guidelines, Section 15088.5.

indicates that vapor intrusion risks may be greater at these depths, and acknowledges that contamination below 40 feet bgs is currently undefined. Increased vapor intrusion risks may require additional mitigation beyond simply removing onsite soil. Since HAZ-MM-1 does not mitigate these new risks, future residents, construction workers, and neighbors would thus potentially be exposed to greater levels of VOCs than disclosed in the DEIR. This is significant new information requiring recirculation of the EIR.

Deeper excavation in an area where PCE contamination is significant and is increasing with depth may result in increased vapor intrusion risks. As explained by Dr. Clark, by removing the overlaying soils that typically slow the migration of soil vapor from deeper contamination to the surface, the remedial action of excavating soils will shorten that pathway and thereby increase the potential for vapor migration into the new structure.[72] This would constitute a new significant environmental impact "from a new mitigation measure proposed to be implemented."[73] The EIR must be revised and recirculated.

### C. The FEIR Underestimates Air Quality Impacts Due to Increased Excavation

The DEIR initially assumed that the Project would require excavation of soil up to 40 feet below ground surface (bgs). The DEIR's quantitative air quality analysis assumed that the grading period, which includes excavation, would take 110 days.[74] The Project was revised in the FEIR to require excavation up to 48 bgs.[75] The amount of soil to be removed from the site was increased from 210,000 cubic yards (cy) to 252,000 cy.[76] Dr. Clark explains that this represents a 20 percent increase in the volume of soil to be exported during the grading phase.[77] However, the CalEEMod calculations in the air quality analysis were not updated to reflect the increased depth of construction and amount of soil required to be removed from the site.

The duration of the grading period in the Project's emissions modeling must be increased to reflect the increased excavation required. The FEIR's existing air quality analysis thus underestimates the Project's emissions of criteria air pollutants and TACs. The FEIR's HRA also erroneously assumes that grading

[72] Clark Comments, pg. 8.
[73] CEQA Guidelines, Section 15088.5.
[74] DEIR, Appendix B, PDF pg. 110.
[75] FEIR, Section III, pg. III-1.
[76] *Id.*
[77] Clark Comments, pg. 9.

would take 110 days. The City thus lacks substantial evidence to conclude that the Project would not exceed significance thresholds for criteria air pollutants and health risk thresholds for exposure to TACs.

Additional excavation below 48 bgs may also be required to mitigate onsite PCE contamination. As discussed above, the Phase II ESA found that PCE levels exceed residential and commercial thresholds at 40 feet bgs, are increasing with depth at boring 9 and 10, and may represent a larger area that is undefined.[78] HAZ-MM-1, the FEIR's mitigation for this impact, calls for removal of contaminated soil. Because the measure does not propose other methods to mitigate vapor instruction impacts from onsite contamination, such as a vapor barrier, additional excavation below 48 bgs may be required to reduce PCE levels to below applicable thresholds. This additional excavation would result in greater air quality impacts than disclosed in the FEIR, and must be considered.

The City may argue that analysis of air quality impacts resulting from deeper excavation is speculative. This is incorrect. The FEIR discloses that the Project will excavate an additional 8 feet of soil than previously analyzed. Excavators have air emissions, as do the additional truck trips required to haul the additional excavated material from the Project site. Moreover, soil samples must be taken at 48 feet bgs to determine whether additional excavation is needed beyond the proposed 48 feet, in order to avoid health impacts from soil vapor intrusion. All of these factors must be analyzed in a revised and recirculated EIR.

### D. The FEIR Fails to Disclose and Mitigate Significant Health Risk Impacts

CREED LA commented that the DEIR violated CEQA by failing to support its conclusions with an HRA. In response, the FEIR includes an HRA showing that the combined construction and operational cancer risk from exposure to TACs generated by the Project would be 3.7 in one million, which is below the 10 in one million significance threshold.[79] Dr. Clark demonstrates that the HRA contains errors that underestimate the Project's impacts, and that when these errors are corrected, the cancer risk for the most sensitive population would be 22.3 in 1,000,000, a significant impact.[80]

[78] DEIR, Appendix F, PDF pg. 1583, 1587; DEIR, pg. IV.F-26.
[79] FEIR, pg. II-34; Appendix FEIR-3, pg. 1.
[80] Clark Comments, pg. 3.

### 1. The FEIR's HRA Fails to Disclose Health Risk Impacts on All Groups of Sensitive Receptors

CEQA requires analysis of human health impacts. CEQA's statutory scheme and legislative intent include an express mandate that agencies consider and analyze human health impacts, acknowledges that human beings are an integral part of the "environment", and mandates that public agencies determine whether the "environmental effects of a project will cause substantial *adverse effects on human beings,* either directly or indirectly,"[81] and to "take immediate steps to identify any critical thresholds for the *health and safety of the people* of the state and take all coordinated actions necessary to prevent such thresholds being reached."[82]

The HRA prepared in response to CREED LA's comments fails to analyze impacts on all sensitive receptors. Health risk impacts on children are measured using Age Sensitivity Factors ("ASFs").[83] As stated in the FEIR, ASFs "account for increased sensitivity of early-life exposure to carcinogens."[84] ASFs account for increased sensitivity of children by weighting the impacts of their exposure to a project's estimated emissions of TACs. In the Project's HRA, the City fails to make early-life exposure adjustments to analyze impacts on children, thus failing to disclose the severity of the Project's health risk impacts on this group of sensitive receptors.[85]

The FEIR claims that relevant guidance does not support the use of ASFs to analyze health impacts of DPM.[86] The FEIR's analysis in support of this claim is recycled from prior projects' EIRs.[87] Although CREED LA has rebutted this argument in the past, the repetitive legal and factual flaws in the City's analysis are discussed herein.

The FEIR first considers guidance by California Office of Environmental Health Hazard Assessment ("OEHHA"), acknowledging that it recommends an age-

[81] Pub. Res. Code ("PRC") § 21083(b)(3), (d) [emphasis added].
[82] *See* PRC §21000 et seq. [emphasis added]
[83] Appendix FEIR-3, pg. 4.
[84] Appendix FEIR-3, pg. 4.
[85] Appendix FEIR-3, pg. 6.
[86] Appendix FEIR-3, pg. 5-6.
[87] City of Los Angeles, Final Environmental Impact Report for the 8th Grand and Hope Project, SCH 2019050010, available at https://planning.lacity.gov/eir/8th-Grand-and-Hope/feir/App_2.pdf; City of Los Angeles, Final Environmental Impact Report for the New Beatrice West Project, SCH New Beatrice West Project, available at https://planning.lacity.gov/EIR/New-Beatrice-West-Project/FEIR/files/App_2.pdf.

weighting factor be applied to all carcinogens regardless of purported mechanism of action.[88] Since DPM is carcinogenic, the OEHHA guidance provides that ASFs should be applied to analyze this Project's DPM impacts on children. But the FEIR argues that the OEHHA guidance should not be considered because it has not been adopted by the South Coast Air Quality Management District ("SCAQMD") as a CEQA significance threshold.[89] This argument is flawed because the City does not identify any supporting evidence demonstrating that OEHHA's scientific conclusions regarding children's heightened susceptibility to TACs such as DPM should be overlooked.

The FEIR also ignores that SCAQMD has commented on many HRAs conducted in the South Coast Air Basin by criticizing the failures of other agencies to apply ASFs for projects with DPM emissions.[90] SCAQMD comment letters cite to the 2015 OEHHA Guidelines when recommending that CEQA projects apply ASFs.[91] Thus, the claim that ASFs and OEHHA guidance are inapplicable to the Project due to lack of support from SCAQMD lacks merit.

The FEIR also ignores that the City itself has applied ASFs in previous construction HRAs.[92] The City offers no reasoning for why substantial evidence supported the use of ASFs for other construction projects and not this one.

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[88] Appendix FEIR-3, pg. 4.
[89] Appendix FEIR-3, pg. 4-5.
[90] SCAQMD, Comments on Draft Mitigated Negative Declaration (DMND) for the Proposed Walnut Specific Plan No. 3 Mixed-Use Development Located North of Valley Boulevard, Bounded by Pierre Road to the West and Suzanne Road to the East (February 2015), available at https://www.aqmd.gov/docs/default-source/ceqa/comment-letters/2015/february/dmndwalnutsp.pdf?sfvrsn=4 ("Although the HRA specifically states that the analysis used recent guidance from OEHHA, the breathing rates used do not correspond to OEHHA's new guidance using the different age groups. The cancer risk was also calculated using one ASF value, which is not consistent with OEHHA's calculation recommendation for the different age groups."); SCAQMD, Comments on Second Recirculated Draft Environmental Impact Report (RDEIR) for the Proposed West Valley Logistics Center Specific Plan (SCH No.: 2012071058) (March 2018), available at https://www.aqmd.gov/docs/default-source/ceqa/comment-letters/2018/deirwestvalleylogistics-032018.pdf ("When calculating cancer risks, the age sensitivity factors (ASF) accounts for greater susceptibility in early life, starting from the 3rd trimester of pregnancy to 70 years").
[91] *Id.*
[92] City of Los Angeles, Air Quality Technical Report For the Proposed 1020 S. Figueroa Street Project (June 2016), available at https://planning.lacity.gov/eir/1020SoFigueroa/DEIR/Appendix_C_Air_Quality_Technical_Report.pdf ; City of Los Angeles, Initial Study for 698 New Hampshire Project, pg. B23-B24, available at https://planning.lacity.gov/staffrpt/mnd/Pub_102716/ENV-2016-1414.pdf; City of Los Angeles, Air Quality Technical Report for 698 New Hampshire Project (September 2017), pg. 52-53, available at https://planning.lacity.gov/eir/FigPico/files/Apx%20C_Air%20Quality%20Tech%20Report.pdf; City of Los Angeles, Final EIR for Harvard-Westlake Parking Improvement Plan (June 2017), pg. 66,

The FEIR elects to rely on U.S. EPA guidance[93] related to early life exposure adjust factors whereby the adjustment factors are only considered when carcinogens act "through the mutagenic mode of action."[94] The FEIR argues that DPM is not mutagenic because only some of its constituent particles are mutagenic – and as a result, use of ASFs is not required for measuring DPM health impacts. This conclusion is unsupported, and is contradicted by EPA guidance finding that DPM is mutagenic:

> [D]iesel exhaust (DE) is likely to be carcinogenic to humans by inhalation from environmental exposures. The basis for this conclusion includes the following lines of evidence: […] **extensive supporting data including the demonstrated mutagenic and/or chromosomal effects of DE** and its organic constituents, and knowledge of the known mutagenic and/or carcinogenic activity of a number of individual organic compounds that adhere to the particles and are present in the DE gases.[95] [emphasis added]

The U.S. EPA clearly identifies DPM as a mutagenic carcinogen. Thus, use of ASFs is warranted pursuant to the EPA guidance referenced by the City. The City's failure to apply ASFs is not supported by substantial evidence.

The FEIR also ignores CEQA's legal requirement to analyze whether the "environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly,"[96] which necessarily includes children and infants. Children and infants are more sensitive to acute exposure to TACs, and suffer greater health impacts over short periods of exposure. ASFs are a scientifically accepted method of quantifying the risk to children and infants. Therefore, health impacts on children are not disclosed without use of ASFs due to the increased sensitivity of children to the harmful effects of DPM. The omission of

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available at https://planning.lacity.gov/eir/Harvard_WestLake/FEIR/0.0%20FEIR%20Responses%20to%20Comments%20and%20MMP.pdf.

[93] U.S. EPA. 2006. Memorandum – Implementation of the Cancer Guidelines and Accompanying Supplemental Guidance – Science Policy Council Cancer Guidelines Implementation Workgroup Communication II: Performing Risk Assessments That Include Carcinogens Described in the Supplemental Guidance as having a Mutagenic Mode of Action. (Like the OEHHA guidance, the EPA guidance also has not been formally adopted by SCAQMD, rendering the FEIR's justification for dismissing the OEHHA guidance specious.)

[94] Appendix FEIR-3, pg. 6.

[95] U.S. Environmental Protection Agency, Integrated Risk Information System (IRIS) Chemical Assessment Summary: Diesel engine exhaust; CASRN N.A., pg. 11, available at https://iris.epa.gov/static/pdfs/0642_summary.pdf.

[96] PRC § 21083(b)(3), (d).

information regarding the Project's health effects on children constitutes an ongoing failure to analyze a potentially significant impact under CEQA.

### 2. The Project's Health Risk Impacts Would Be Significant

Dr. Clark demonstrates that, when errors in the HRA are corrected, the Project's impacts are shown to exceed the 10 in one million cancer risk significance threshold. Dr. Clark applied ASFs to the concentration modeled for the construction phase assumed in the FEIR, and found that the cumulative risk for exposure of infants during the 3.9375 years (45 months) of construction is 22.3 in 1,000,000, much greater than the 10 in 1,000,000 significance threshold.[97] This is substantial evidence of a significant impact requiring mitigation in a recirculated EIR.

## E. The FEIR Still Fails to Adequately Analyze Cumulative Health Risk Impacts

The DEIR reasoned that projects that do not exceed SCAQMD's significance thresholds for project-level air quality and health risk impacts would not be cumulatively considerable.[98] CREED LA demonstrated that this approach violates CEQA 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.[99] The FEIR responds that its project-level analysis constitutes an adequate cumulative impacts analysis because it complies with SCAQMD guidance.[100]

The FEIR'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."[101] The leading case on this issue is *Kings County Farm Bureau v. City of Hanford*.[102] 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

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[97] Clark Comments, pg. 5.
[98] DEIR, pg. IV.A-72.
[99] *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.
[100] FEIR, pg. II-47.
[101] PRC § 21083(b)(2); 14 CCR § 15130; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal. App. 3d 692, 719-21.
[102] *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.

emissions because it concluded that the Project would contribute "less than one percent of area emissions for all criteria pollutants."[103] 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:

> 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.[104]

Here, the FEIR's analysis is flawed because, as previously explained in CREED LA's comments, the Project's construction emissions could combine with construction of concurrent projects to result in heightened health risk impacts– impacts not reflected in the City's analysis. The DEIR identified numerous projects proposed within a 0.5 mile radius of the Project site.[105] CREED LA also explained that the City's analysis ignores that the Project census tract has a CalEnviroScreen score of 99.3 for DPM, making it among the highest pollution-burdened communities in the State.[106] The Project's emissions would add to similar, existing sources of pollution, but this combined impact is not considered in the FEIR. Further, while the DEIR admits that the Project region is out of attainment for the federal and State one-hour and eight-hour ozone standards, State PM10 standards, federal 24-hour PM2.5 standard, and federal and State annual PM2.5 standard,[107] the City reasons that cumulative impacts would be less than significant based on a project-specific threshold.[108]

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[103] *Kings County, supra,* at 719.
[104] *Id.* at 721.
[105] DEIR, pg. III-9, Table III-1.
[106] DEIR, Appendix B, PDF pg. 54.
[107] DEIR, pg. IV.A-3.
[108] FEIR, pg. II-47.

In *People of the State of California v. City of Fontana,* the Attorney General's petition for writ of mandate challenged a Mitigated Negative Declaration ("MND") that erroneously applied SCAQMD guidance in the same way as the instant EIR.[109] The petition explained:

> [T]he 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.[110]

The Attorney General further explained that merely citing to SCAQMD guidance does not justify a failure to analyze a Project's cumulative impacts:

> The MND cites Appendix D of an August 2003 white paper published by the South Coast Air Quality Management District ("SCAQMD") entitled "White Paper on Potential Control Strategies to Address Cumulative Impacts from Air Pollution" ("2003 SCAQMD White Paper"). **To 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** for at least the reasons stated above. Moreover, the 2003 SCAQMD White Paper lacks substantial evidence to support such a contention, and thus the MND's reliance on it violates CEQA. (Cal. Code Regs., tit. 14, § 15064.7, subd. (c).) The MND further violated CEQA by failing to provide substantial evidence to support its reliance on the 2003 SCAQMD White Paper, Appendix D as "guidance." (Ibid.) Finally, even if the MND's reliance on the 2003 SCAQMD White Paper were proper and supported by substantial evidence, the MND did not consider other evidence—such as public comments and the existence of many other sources of pollution near the Project site—showing that the Project could have a

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[109] *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.

[110] *People of the State of California v. City of Fontana,* Case No. CIVSB2121829, Petition for Writ of Mandate, pg. 9, paragraph 32, available at https://climatecasechart.com/wp-content/uploads/case-documents/2021/20210723_docket-CIVSB2121829_petition-for-writ-of-mandate.pdf.

> significant cumulative air quality impact. (See Cal. Code Regs., tit. 14, § 15064, subd. (b).) [emphasis added][111]

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.[112] The City of Fontana's decision to suspend its erroneous reliance on SCAQMD's drop-in-the-bucket approach and to address cumulative impacts in a settlement with the Attorney General's office reflects an approach consistent with CEQA.

In sum, the FEIR's cumulative health risk and air quality impacts analysis does not comply with CEQA. The City must prepare a revised EIR that properly evaluates and mitigates such impacts.

### 1. The Project's Impacts Would be Cumulatively Considerable Under the Draft SCAQMD Thresholds

The FEIR argues that its cumulative impacts analysis is adequate because it follows methodology in a 2003 SCAQMD White Paper.[113] The FEIR ignores that SCAQMD is currently updating its methodology.[114] Guidance from SCAQMD's November 6, 2024 Working Group recommends that agencies use a more stringent health risk significance threshold for SB 535 Disadvantaged Communities.[115] Although the protocols have not been formally adopted, SCAQMD has commented on recent projects, recommending that the draft protocols be applied.[116] Substantial evidence demonstrates that the Project's cumulative health risk impacts would exceed the draft SCAQMD cumulative impacts thresholds.

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[111] *People of the State of California v. City of Fontana,* Case No. CIVSB2121829, Petition for Writ of Mandate, pg. 13, paragraph 49.
[112] *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.
[113] FEIR, pg. II-47.
[114] SCAQMD, CEQA Policy Development: Analyzing Cumulative Impacts from Air Toxics in CEQA Documents, https://www.aqmd.gov/home/rules-compliance/ceqa/ceqa-policy-development-(new).
[115] 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.
[116] SCAQMD, Comments on Draft Environmental Impact Report (DEIR) for the Proposed DJT4 Parcel Delivery Facility Project (Proposed Project) (SCH No. 2023070241) (December 20, 2024).

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.[117]

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 70th percentile of highest cancer risks in the South Coast Air Basin, with a cancer risk of 528 in one million.[118] 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 thresholds from 10 in one million to 5 in one million.[119]

Step 2 of the WG 6 flow diagram is to determine whether two additional criteria would apply. The cancer risk would be reduced from 5 in one million to 3 in one million if either criterion applies. Criterion #1 is whether there are 951 daily heavy-duty truck trips or more that would traverse the truck route to the freeway with Existing + Project + Future volumes. If there are more than 951 heavy duty truck trips, then the cancer risk threshold would drop from 5 in one million to 3 in one million.[120] The record does not clearly establish whether this criterion is met. Criterion #2 is whether the Project is located in a SB 535 disadvantaged community or an AB 617 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. Here, the Project is located in a SB 535 disadvantaged community.[121] Thus, the cancer risk threshold is reduced to 3 in one million.

The FEIR's HRA estimates that the maximum off-site residential cancer risk (combined operational and construction) would be 3.7 in one million at the residential receptors directly south of the Project site.[122] This health risk impact would exceed the 3 in one million significance threshold potentially applicable to the Project. The results of Dr. Clark's corrected HRA (cancer risk of 22.3 in 1,000,000)

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[117] https://www.aqmd.gov/docs/default-source/ceqa/documents/wgm-6-20241106.pdf?sfvrsn=405a8561_13, pg. 21.
[118] DEIR, pg. IV.A-25; SCAQMD, Gridded Cancer Risk, https://experience.arcgis.com/experience/79d3b6304912414bb21ebdde80100b23/page/Main-Page/?views=Click-tabs-for-other-data%2CGridded-Cancer-Risk#data_s=id%3AdataSource_112-7c8f2a4db79b4a918d46b4e8985a112b%3A15547.
[119] https://www.aqmd.gov/docs/default-source/ceqa/documents/wgm-6-20241106.pdf?sfvrsn=405a8561_13, pg. 21.
[120] *Id.*
[121] https://experience.arcgis.com/experience/1c21c53da8de48f1b946f3402fbae55c/page/SB-535-Disadvantaged-Communities (last accessed July 15, 2025).
[122] FEIR, pg. II-34.

would exceed this threshold by a greater amount. This evidence of a significant impact constitutes "significant new information" requiring recirculation of the EIR.[123]

### F. The FEIR Still Fails to Adequately Analyze Impacts Associated with the Project's Excess Parking

CREED LA's comments on the DEIR explained that the Project provides more parking spaces than required by law, which may induce VMT and negate the benefits of the Project's location near public transit. CREED LA explained that this would constitute a potentially significant GHG and energy impact.

Regarding GHG emissions, the DEIR did not adopt a quantitative GHG significance threshold, and concluded that the Project would result in a less than significant GHG impact because it would be consistent with applicable GHG reduction plans and policies.[124] CREED LA demonstrated that this excess parking would conflict with GHG policies calling for reduced parking. In response, the FEIR argues that, under State Planning and Zoning law, a project need not conform with all aspects of a plan.[125] This argument ignores that the DEIR established "consistency with applicable plans and policies" as a significance threshold, and that CEQA requires disclosure of inconsistencies with applicable policies.[126] The FEIR therefore must disclose all inconsistencies with these policies.

The FEIR also argues that GHG impacts would be less than significant because the Project would be located in a High-Quality Transit Area ("HQTA"), would be near a Metro station, provide bicycle parking, and implement a Transportation Demand Management ("TDM") program. The FEIR does not analyze the possibility that excess parking may negate these benefits. As explained in the California Department of Transportation's June 8, 2023, comment letter on the Project, "[r]esearch 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."[127] The FEIR must be revised to include this missing analysis.

Regarding energy impacts, the FEIR claims that impacts would be less than significant because the Project would charge for parking, implement a TDM

[123] CEQA Guidelines, Section 15088.5(a)(1).
[124] DEIR, pg. IV.E-56-57.
[125] FEIR, pg. II-51.
[126] Cal. Code Regs. Tit. 14, § 15125.
[127] DEIR, Appendix A, PDF pg. 345.

program, and would not exceed VMT significance thresholds.[128] This response ignores that Appendix F of the CEQA Guidelines 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.[129] The FEIR fails to address that the Project's provision of parking in excess of State standards would undermine the "overall use of efficient transportation alternatives." The FEIR must be revised to disclose this impact and evaluate the feasibility of reducing parking.[130]

### G. The FEIR Still Fails to Adequately Evaluate Potentially Significant Noise and Vibration Impacts

#### 1. The FEIR Fails to Accurately Establish the Environmental Setting

CREED LA's comments on the DEIR demonstrated that the DEIR failed to accurately establish the environmental setting for noise. The DEIR improperly relied on short-term ambient noise measurements, and failed to include validation measurements for its traffic noise model. The FEIR responds that existing noise levels were recorded in accordance with the City's standards, but is non-responsive to the specific issues raised in CREED LA's comments.[131]

Mr. Faner explains that the FEIR still fails to address the issue of the DEIR relying on two 15-minute measurements to extrapolate a 24-hour CNEL at nine measurement locations. There is not substantial evidence in the record showing that these short-term measurements are representative of a 24-hour period.[132] The Federal Transit Administration's Transit Noise and Vibration Impact Assessment Manual ("FTA Manual") recommends a minimum of three one-hour Leq noise measurements to estimate the 24-hour Ldn/CNEL, rather than two 15-minute measurements.[133]

Mr. Faner also explains that the FEIR still fails to demonstrate how typical the short-term measurement data were for the rest of the daytime and nighttime conditions. Substantial evidence does not show that the time selected for noise measurements is representative of the rest of the day or even of the worst case

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[128] FEIR, pg. II-53.
[129] CEQA Guidelines, Appendix F, Section II (C)(6).
[130] 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.").
[131] FEIR, pg. II-60.
[132] Faner Comments, pg. 1.
[133] *Id.*

(quietest conditions).[134]

Additionally, the FEIR still fails to include validation measurements for its traffic noise model. Mr. Faner explains that a validation measurement for the Federal Highway Traffic Noise Model requires counting traffic during the noise measurement in order to properly compare the measured noise levels with the model calculated noise levels.[135] Without a traffic count, there is no basis to confirm the validity of the traffic model. Here, the FEIR does not reference any traffic counts conducted during the existing noise measurements. [136]

### 2. The FEIR Still Fails to Analyze Construction Groundborne Noise at Recording Studios

CREED LA demonstrated that the DEIR's analysis fails to address groundborne noise impacts at two recording studios identified as receptors R3 and R10, located 5 feet and 10 feet, respectively, from construction activities. The FEIR responds that recording studios are not considered sensitive receptors under the LA CEQA Thresholds Guide.[137] The FEIR ignores that the City adopted the document "Construction Noise and Vibration: Updates to Thresholds and Methodology" (August 2024), which states that "[r]ecording studios will be added as a sensitive use relative to construction vibration impacts."[138] Mr. Faner explains that groundborne noise is a consequence of groundborne vibration, so it therefore must be considered.[139] Further demonstrating that recording studios are sensitive receptors is that FTA manual has guidance applicable to sensitive buildings such as recording studios.[140]

As shown in CREED LA's prior comments, the Project's construction activities would generate groundborne noise in excess of the FTA's 25 dBA significance threshold.[141] This significant impact must be disclosed and mitigated.

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[134] *Id.* at 1, 2.
[135] *Id.* at 2.
[136] *Id.*
[137] FEIR, pg. II-64.
[138] Faner Comments, pg. 3.
[139] *Id.*
[140] *Id.*
[141] *Id.*

### 3. The FEIR's Analysis of Stationary Mechanical Noise Is Still Not Supported by Substantial Evidence

CREED LA's comments on the DEIR demonstrated that the DEIR failed to support its analysis of HVAC noise with substantial evidence. Mr. Faner calculated that noise impacts would be significant. The FEIR fails to resolve this issue.

CREED LA commented 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.[142] The FEIR responds that its noise analysis is based on representative noise levels for typical HVAC equipment ranging from 80 to 100 dBA sound power levels.[143] The FEIR explains that more detailed study is not feasible because detailed building plans have not yet been finalized.[144] This response is inadequate. Mr. Faner explains that the FEIR still does not provide a citation for the FEIR's estimated HVAC reference levels.[145] These noise levels are much lower than reasonably foreseeable for the Project, as a single 90 dBA PWL fan would result in higher noise impacts. The City's estimated noise levels are thus not supported by substantial evidence.

CREED LA commented 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 showed that a project this size would need 49 to 72 twenty-five-ton units to properly ventilate the space, applying standard industry rule-of-thumb calculations.[146] The FEIR simply responds that detailed building plans are not yet available for the Project, and does not support its estimate with any calculations or other evidence. [147] However, the does not provide any evidence suggesting that Mr. Faner's estimate is inaccurate, nor has the Project's size been decreased such that fewer HVAC units would be needed than calculated by Mr. Faner. Thus, the only substantial evidence in the record shows that the FEIR's HVAC noise estimates are underestimated.

Noise impacts from stationary equipment remain potentially significant. These impacts must be accurately analyzed in a revised and recirculated EIR.

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[142] *Id.*
[143] FEIR, pg. II-65.
[144] *Id.*
[145] Faner Comments, pg. 4.
[146] Faner DEIR Comments, 7.
[147] FEIR, pg. II-66.

### 4. The FEIR Fails to Identify All Feasible Mitigation for the Project's Significant Impacts

The DEIR concluded that construction noise impacts would be significant and unavoidable, but CREED LA demonstrated that the DEIR failed to identify all feasible mitigation measures to reduce these impacts to the greatest extent feasible. 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."[148] The FEIR fails to adopt feasible noise mitigation measures identified in CREED LA's comments.

Mr. Faner recommended a measure requiring continuous noise monitoring during construction.[149] Continuous measurement would provide improved assurance that mitigation measures such as the proposed barrier walls are providing the estimated noise reductions. The FEIR responds that monitoring is unwarranted, as a noise consultant would provide documentation that the barriers would achieve the specified noise reduction.[150] But the FEIR does not specify what kind of documentation would be deemed sufficient to verify the adequacy of the barriers. Use of continuous noise monitors would guarantee the effectiveness of the proposed mitigation.

Mr. Faner identified additional measures to reduce impacts at the upper levels of the receptors R1 and R7.[151] 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. The FEIR argues that the construction of temporary noise barriers at the balconies/and or breezeways facing the Project site would in itself be a noise impact, but Mr. Faner explains that the duration of the noise barrier construction is minimal compared to the Project construction.[152] Thus, this measure would be effective.

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[148] 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.
[149] Faner Comments, pg. 2.
[150] FEIR, pg. II-68.
[151] Faner Comments, pg. 2-3.
[152] *Id.*

Mr. Faner also identified mitigation for the Project's construction vibration impacts, which the DEIR concludes would result in a significant and unavoidable impact to human annoyance.[153] Mr. Faner recommended 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. The FEIR fails to address this proposed mitigation measure, merely reiterating that noise and vibration impacts would be significant and cannot be fully mitigated.[154]

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

## III. The City Lacks Substantial Evidence to Approve the Entitlements

### A. Approval of a Vesting Tentative Tract Map Would Be Unsupported by the Record

The Subdivision Map Act provides guidance as to the findings that the agency must make when approving a tentative map, and requires agencies to deny map approval if the project would result in significant environmental or public health impacts. Government Code, section 66474, provides:

> A legislative body of a city or county shall deny approval of a tentative map, or a parcel map for which a tentative map was not required, if it makes any of the following findings:
>
> > (a) That the proposed map is not consistent with applicable general and specific plans as specified in Section 65451.
> >
> > (b) That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.
> >
> > (c) That the site is not physically suitable for the type of development.
> >
> > (d) That the site is not physically suitable for the proposed density of development.

[153] *Id.* at 3.
[154] FEIR, pg. II-69.

> (e) That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.
>
> (f) That the design of the subdivision or type of improvements is likely to cause serious public health problems.
>
> (g) That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. In this connection, the governing body may approve a map if it finds that alternate easements, for access or for use, will be provided, and that these will be substantially equivalent to ones previously acquired by the public. This subsection shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to a legislative body to determine that the public at large has acquired easements for access through or use of property within the proposed subdivision.

LAMC Section 17.15(c)(2), "Vesting Tentative Maps," provides that "a permit, approval, extension or entitlement may be conditioned or denied if the Advisory Agency, or the City Planning Commission or the City Council on appeal determines:

> (a) A failure to do so would place the occupants of the subdivision or the immediate community, or both, in a condition dangerous to their health or safety, or both; or
>
> (b) The condition or denial is required in order to comply with state or federal law.

Here, approval of the vesting tentative tract map would place the community in a condition dangerous to its health and safety. Emissions from the Project's construction equipment would emit TACs resulting in a significant cancer risk, and the Project's excavation may expose workers and residents to harmful levels of VOCs. The Advisory Agency therefore lacks substantial evidence to make the necessary findings. The City must correct the errors in the EIR, adopt adequate mitigation measures to reduce impacts to less than significant levels, and must provide substantial evidence supporting the Project's proposed statement of overriding considerations to address the Project's outstanding, unmitigated significant impacts before the City can approve the VTTM.

### B. Approval of Site Plan Review Would Be Unsupported by the Record

Site Plan Review approval requires making certain environmental findings. LAMC Sec. 16.05(A) provides that:

> The purposes of site plan review are to promote orderly development, evaluate and mitigate significant environmental impacts, and promote public safety and the general welfare by ensuring that development projects are properly related to their sites, surrounding properties, traffic circulation, sewers, other infrastructure and environmental setting; and to control or mitigate the development of projects which are likely to have a significant adverse effect on the environment as identified in the City's environmental review process, or on surrounding properties by reason of inadequate site planning or improvements.

LAMC Sec. 16.05(E) further provides that:

a. In granting site plan approval, the Director may condition and/or modify the project, or select an alternative project, as he or she deems necessary to implement the general or specific plan and to mitigate significant adverse effects of the development project on the environment and surrounding areas.
b. The Director shall not approve or conditionally approve a site plan review for a development project unless an appropriate environmental review clearance has been prepared in accordance with the requirements of CEQA.

The Project's significant impacts prevent approval of site plan review pursuant to LAMC Sec. 16.05(A). The City must require additional environmental mitigation pursuant to LAMC Sec. 16.05(E)(a) to reduce the Project's health risk impacts to a less-than-significant level.

### C. Approval of the Density Bonus Would Be Unsupported by the Record

The Project seeks a Density Bonus Compliance Review pursuant to LAMC Section 12.22 A.25. The LAMC provides that the City shall not approve a Density Bonus and requested Incentives if:

> The Incentive will have a Specific Adverse Impact upon public health and safety or the physical environment or on any real property that is listed in the California Register of Historical Resources and for which there is no feasible method to satisfactorily mitigate or avoid the Specific Adverse Impact without rendering the development unaffordable to Very Low, Low and Moderate Income households. Inconsistency with the zoning ordinance or general plan land use designation shall not constitute a specific, adverse impact upon the public health or safety.[155]

The Project's significant environmental and public health impacts are Specific Adverse Impacts that prevent approval of the Density Bonus and Incentives.

## IV. CONCLUSION

As is explained herein, the FEIR's analyses remain substantially inaccurate and incomplete, failing to comply with the requirements of CEQA. As a result, the FEIR still fails to adequately disclose and mitigate the Project's significant impacts. As a consequence of these impacts, the City cannot make the requisite findings under CEQA to certify the FEIR or under the City's Municipal Code to approve the Project's entitlements. CARE CA urges the Deputy Advisory Agency and Zoning Administrator to require the City to revise and recirculate the EIR before any further action is taken on 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

[155] LAMC, Section 12.22 A.25(g)(2)(i)(c)(ii)