

Comment Letter B03: Adams Broadwell Joseph & Cardozo representing Coalition for Responsible Equitable Economic Development (CREED) Los Angeles

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November 10, 2025

VIA EMAIL AND OVERNIGHT MAIL

City of Lancaster

Attn: Jocelyn Swain, Senior Planner

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Lancaster, CA 93534

Email: jswain@cityoflancasterca.gov; planning@cityoflancasterca.gov.

Re: Preliminary Comments on the Draft Environmental Impact Report for the Parkway Village Specific Plan (SCH No. 2024020979)

Dear Ms. Swain:

We are writing on behalf of Coalition for Responsible Equitable Economic Development Los Angeles (“CREED LA”) to provide comments on the Draft Environmental Impact Report (“DEIR”) prepared for the Parkway Village Specific Plan (SCH No. 2024020979) (“Project”) by the City of Lancaster (“City”).

The Project proposes to guide the future development of 434.7 acres located between 10th Street West and Sierra Highway and Avenue K and Avenue L in the City of Lancaster. The Project proposes land use and circulation plans and development standards. The Project includes 3,462 residential units, 130 hotel rooms in one or more hotels, 150,000 square feet (sf) of commercial uses, 415,000 sf of office, medical office, assisted/supportive living, and uses supportive of office including restaurants, financial institutions, professional services, etc., 185,000 sf of commercial uses, 8.7 acres for school uses, 27.8 acres for parks, a 200-bed hospital, and up to 500,000 sf of medical-related uses, and a 10.2-acre aquatic center.¹ The Project approvals include adoption of the Specific Plan (or “PVSP”), General Plan Amendment, and Zone Change.

We reviewed the DEIR with the assistance of air quality expert Dr. James Clark² and noise expert Silas Bensing.³ The City must separately respond to these

¹ DEIR, pg. ES-1.

² Dr. Clark’s technical comments and curricula vitae are attached hereto as **Exhibit A**.

³ Mr. Bensing’s technical comments and curricula vitae are attached hereto as **Exhibit B**.

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technical comments. CREED LA's review of the DEIR demonstrates that the DEIR fails to comply with the requirements of the California Environmental Quality Act ("CEQA").⁴

In summary, the DEIR finds that the Project's operations would result in significant air quality impacts, but fails to require all feasible mitigation measures to reduce this impact, as required by CEQA.⁵ Dr. Clark identifies feasible measures that have been required by other programmatic EIRs. The Project's construction activities would generate significant amounts of Toxic Air Contaminants, but the DEIR fails to analyze and mitigate nearby residents' exposure to these pollutants. These comments demonstrate that CEQA requires analysis of the Project's health risk impacts, and Dr. Clark demonstrates that quantitative analysis of these impacts is feasible. Dr. Clark prepared a health risk analysis showing that construction activities would result in an incremental cancer risk of 12.3 in one million, which exceeds the City's 10 in one million significance threshold.⁶

B03-1

The DEIR fails to disclose an additional source of potentially significant health risk from exposure to Valley Fever spores that may be disturbed by the Project's ground-disturbing construction activities. Dr. Clark demonstrates that the DEIR's mitigation is not adequate to protect residents near the Project site.

B03-2

The Project would have potentially significant greenhouse gas ("GHG") impacts resulting from the Project's inconsistencies with key policies in the 2022 California Air Resources Board ("CARB") Scoping Plan and the City's Climate Action Plan.⁷ However, the DEIR incorrectly concludes that GHG impacts are less than significant or non-existent.⁸

B03-3

The DEIR fails to analyze the Project's energy consumption during construction and operation. This is a plain violation of CEQA given the size of the Project.⁹ The DEIR also fails to include sufficient investigation into energy conservation measures that might be available or appropriate for the Project, as required by CEQA Guidelines Appendix F.

B03-4

The DEIR fails to adequately analyze and mitigate significant noise impacts from the Project's construction and operation. Mr. Bensing demonstrates that the

B03-5

⁴ PRC § 21100 et seq.

⁵ 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.

⁶ Clark Comments, pg. 12.

⁷ DEIR, pg. 3.3-14.

⁸ DEIR, p. ES-6.

⁹ See *California Clean Energy Commission v. City of Woodland* (2014) 225 CA4th 173, 210.

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DEIR's analysis fails to adequately measure existing conditions, fails to consider the combined impacts from total development proposed by the Project, and fails to adopt effective mitigation.

**B03-5
(cont'd)**

As a result of these shortcomings, the DEIR fails to comply with CEQA. The DEIR lacks substantial evidence to support its conclusions, violates CEQA's 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.¹⁰

These comments are timely submitted in accordance with a limited extension of the comment period by the City.¹¹ As will be explained in greater detail herein, the City provided an extension for CREED LA to submit its DEIR comments due to the City's failure to make environmental studies other reference documents available throughout the entire comment period.¹² CREED LA reserves the right to provide supplemental comments at any and all later proceedings related to this Project.¹³

I. STATEMENT OF INTEREST

CREED LA is a non-profit organization formed to ensure that the construction of major urban projects in the Los Angeles region proceeds in a manner that minimizes public and worker health and safety risks, avoids or mitigates environmental and public service impacts, and fosters long-term sustainable construction and development opportunities. The organization's members include Lancaster residents Francisco Alvarez, Jose Amezquita, and Douglas Wilson, the Sheet Metal Workers Local 105, International Brotherhood of Electrical Workers Local 11, Southern California Pipe Trades District Council 16, and District Council of Iron Workers of the State of California, and their members, their families, and

¹⁰ We reserve the right to supplement these comments at later hearings on this Project. Gov. Code § 65009(b); Public Resources Code § 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.

¹¹ On October 30, 2025, the City provided CREED LA with an extension to September 10, 2025 to submit comments on the DEIR due to the City's failure to provide timely access to the DEIR reference documents. See **Exhibit C**.

¹² Cal. Code Regs. Tit. 14, § 15105 (the minimum public review period for this document is 45 days).

¹³ 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.

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other individuals who live and work in and around the City of Lancaster and the Los Angeles region.

Individual members of CREED LA live, work, recreate, and raise their families in the City of Lancaster and surrounding communities. Accordingly, they would be directly affected by the Project's environmental and health and safety impacts. Individual members may also work on the Project itself. They will be first in line to be exposed to any health and safety hazards that exist onsite. CREED LA has an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for its members.

Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for business and industry to expand in the region, and by making the area less desirable for new businesses and new residents. Indeed, continued environmental degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduce future employment opportunities.

CREED LA supports the development of residential, commercial, and mixed use 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.

I. FAILURE TO PROVIDE ACCESS TO REFERENCE DOCUMENTS

B03-6

1. The City Failed to Make DEIR Appendices and References Available During the Public Review Period

The City failed to provide timely access to documents referenced, relied upon and incorporated by reference in the DEIR during the public review and comment period, which originally ran from July 21, 2025, to November 3, 2025,¹⁴ in violation of CEQA's requirement that the DEIR and all reference documents be made available during the comment period.¹⁵ These reference documents included

¹⁴ City of Lancaster, Notice of Availability of the Draft Environmental Impact Report For the Parkway Village Specific Plan Project

¹⁵ Pub. Resources Code § 21092(b)(1); 14 C.C.R. § 15087(c)(5).

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environmental studies such as the DEIR's transportation study.¹⁶ As a result, CREED LA had to request access to missing reference documents and an extension of the DEIR comment period, which was only partially granted.

**B03-6
(cont'd)**

On October 27, 2025, 9:50 A.M., CREED LA submitted a letter to the City ("DEIR References Request"), pursuant to CEQA section 21092(b)(1) and CEQA Guidelines section 15087(c)(5), requesting "immediate access to any and all documents referenced, incorporated by reference, and relied upon" in the DEIR.¹⁷ On October 28, 2024, CREED LA emailed the City to follow up on the DEIR References Request and request immediate access to the transportation study.¹⁸ On October 29, 2025, CREED LA reiterated its request for access to reference documents, and submitted a request for extension of the comment period.¹⁹ At 4:30 P.M. on October 30, 2025, the City provided CREED LA with access to the transportation study and stated that CREED LA could submit comments until September 10, 2025.²⁰

While CREED LA utilized the minimal extension provided by the City, the extension provided insufficient time for public review of the missing DEIR reference documents, as required by CEQA. To comply with CEQA's requirement that the *entire* DEIR be circulated for 30 days²¹ and be "readily accessible,"²² the comment period should have been extended 30 days after all missing DEIR references documents were made available.

Courts have held that the failure to provide even a few pages of CEQA documents for a portion of the review period invalidates the entire process, and that such a failure must be remedied by permitting additional public comment.²³ It is well settled that a CEQA document may not rely on hidden studies or documents

¹⁶ Referenced in the DEIR as "*Garland and Associates. 2024 (October). Traffic/Transportation Impact Analysis for the Proposed Parkway Village Specific Plan. City of Lancaster. [Available from the Lancaster City Community Development Department].*"

¹⁷ Letter from Adams, Broadwell, Joseph & Cardozo ("ABJC") to City re Request for Immediate Access to Documents Referenced in the Draft Environmental Impact Report - Parkway Village Specific Plan (SCH No. 2024020979) (October 27, 2025).

¹⁸ Email from ABJC to City re Request for Immediate Access to Documents Referenced in the Draft Environmental Impact (October 28, 2025, 11:30 A.M.).

¹⁹ **Exhibit D:** Letter from ABJC to City re Request to Extend the Public Review and Comment Period for the Draft Environmental Impact Report - Parkway Village Specific Plan (SCH No. 2024020979) (October 29, 2025).

²⁰ Exhibit C.

²¹ Cal. Code Regs. Tit. 14, § 15105 (The public review period for a draft EIR shall not be less than 30 days).

²² Cal. Code Regs. Tit. 14, § 15087(c).

²³ *Ultramar v. South Coast Air Quality Man. Dist.* (1993) 17 Cal.App.4th 689, 699.

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that are not provided to the public.²⁴ Here, public review of the City's analysis of the Project's transportation impacts, air quality, and traffic noise was substantially impaired without access to the transportation study. Moreover, review of other analyses in the DEIR remains impaired without access to documents listed in the DEIR's References sections. The DEIR's review and comment period was thus improperly shortened.

**B03-6
(cont'd)**

I. THE PROJECT DESCRIPTION IS INADEQUATE

B03-7

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."²⁵ CEQA requires that a project be described with enough particularity that its impacts can be assessed.²⁶ Without a complete project description, the environmental analysis under CEQA is impermissibly limited, thus minimizing the project's impacts and undermining meaningful public review.²⁷ Accordingly, a lead agency may not hide behind its failure to obtain a complete and accurate project description.²⁸

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."²⁹ "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."³⁰ 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."³¹ "If

²⁴ *Santiago County Water District v. County of Orange* (1981) 118 Cal.App.3d 818, 831 ("Whatever is required to be considered in an EIR must be in that formal report; what any official might have known from other writings or oral presentations cannot supply what is lacking in the report.").

²⁵ *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.

²⁶ 14 CCR § 15124; see *Laurel Heights Improvement Assn. v. Regents of Univ. of Cal* ("Laurel Heights I") (1988) 47 Cal.3d 376.

²⁷ *Id.*

²⁸ *Sundstrom v. County of Mendocino* ("Sundstrom") (1988) 202 Cal.App.3d 296, 311.

²⁹ CEQA Guidelines § 15378.

³⁰ *Id.*, § 15378(c).

³¹ *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.

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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.”³²

**B03-7
(cont'd)**

A. Use of Back-Up Generators is a Reasonably Foreseeable Component of the Project

B03-8

The DEIR’s discussion of the Project’s air quality and health risk impacts fails to describe the reasonably foreseeable use of back-up generators. The DEIR’s CalEEMod analysis of criteria air pollutants fails to include emissions from backup generators.³³ The DEIR’s analysis indicates that use of back-up generators is reasonably foreseeable for the land uses proposed by the Project.³⁴ Also, the use of backup generators is a reasonably foreseeable activity during Project operation due to the prevalence of power safety shutoffs, extreme heat events, and other emergencies which lead to temporary losses of power.

In *East Oakland Stadium Alliance v. City of Oakland*,³⁵ the Court of Appeal upheld an EIR’s analysis of emissions from backup generators. The EIR’s analysis assumed that generators would operate for 50 hours of testing and maintenance annually, while allocating no time for actual emergency use. In discussing the lead agency’s duty to analyze backup generator emissions, the Court stated that “if the annual need for emergency generator use is reasonably foreseeable, the EIR was not entitled to disregard such use merely because it would occur at unpredictable times.”³⁶ The Court explained that use of a generator was reasonably foreseeable because, “[a]s noted in the EIR, some parts of the Bay Area are subject to predictable, sustained power outages undertaken to reduce the risk of fire.”³⁷ Thus, “[t]he EIR was required to make neither a generally applicable nor a worst-case assumption; rather it was required to make a reasonable estimate of likely annual use of the generators at the project site.”³⁸

³² *Riverwatch v. Olivenhain Municipal Water Dist.* (2009) 170 Cal. App. 4th 1186, 1201.

³³ DEIR, Appendix A, pg. 214.

³⁴ DEIR, pg. 3.11-19 (“Noise sources commonly associated with these land uses include commercial air conditioning units/chillers, mechanical equipment (e.g., trash compactors, generators”); DEIR, Appendix A, PDF pg. 9 (“Stationary sources that are constructed as part of the project, which could include boilers and large water heaters, emergency power generators...”).

³⁵ (2023) 889 Cal. App. 5th 1226.

³⁶ *Id.* at 1252.

³⁷ *Id.* at 1253.

³⁸ *Id.*

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Here, as in *East Oakland Stadium Alliance*, backup generator emissions are a reasonably foreseeable consequence of the Project due to increasingly common Public Safety Power Shutoff (“PSPS”) events and extreme heat events (“EHE”). EHEs are defined as periods where the temperatures throughout California exceed 100 degrees Fahrenheit.³⁹ From January 2019 through December 2019, Southern California Edison, which the DEIR states may supply the Project’s electricity,⁴⁰ reported 158 of their circuits underwent a PSP event.⁴¹ In Los Angeles County, two circuits had 4 PSPS events during that period, lasting an average of 35 to 38 hours. The total duration of the PSPS events lasted between 141 hours to 154 hours in 2019. According to the California Public Utilities Commission (“CPUC”) de-energization report⁴² in October 2019, there were almost 806 PSPS events that impacted almost 973,000 customers (~7.5% of households in California). The California Air Resources Board estimates that with 973,000 customers impacted by PSPS events in October 2019, approximately 125,000 back-up generators were used by customers to provide electricity during power outages.⁴³ The widespread use of back-up generators to adapt to PSPS and EHE events suggests that back-up generators are a reasonably foreseeable consequence of the Project. In addition to emergency use, any generators included in the Project would be operated for routine testing.

**B03-8
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Generators commonly rely on fuels such as natural gas or diesel,⁴⁴ and therefore emit criteria air pollutants, greenhouse gases, and toxic air contaminants. Generator emissions can significantly impact public health through diesel particulate matter (“DPM”) emissions, which is a TAC.⁴⁵ Generators can also

³⁹ Governor of California. 2021. Proclamation of a state of emergency. June 17, 2021.

⁴⁰ DEIR, Appendix A, PDF pg. 45.

⁴¹ SCAQMD. 2020. Proposed Amendment To Rules (PARS) 1110.2, 1470, and 1472. Dated December 10, 2020. http://www.aqmd.gov/docs/default-source/rule-book/Proposed-Rules/1110.2/1110-2_1470_1472/par1110-2_1470_wgm_121020.pdf?sfvrsn=6.

⁴² <https://www.cpuc.ca.gov/deenergization/> as cited in CARB, 2020. Potential Emission Impact of Public Safety Power Shutoff (PSPS), Emission Impact: Additional Generator Usage associated With Power Outage.

⁴³ California Air Resources Board, Emission Impact: Additional Generator Usage Associated with Power Outage (January 30, 2020), available at

<https://ww2.arb.ca.gov/resources/documents/emissions-impact-generator-usage-during-psps>.

⁴⁴ SCAQMD, Fact Sheet on Emergency Backup Generators,

<http://www.aqmd.gov/home/permits/emergency-generators> (“Most of the existing emergency backup generators use diesel as fuel”).

⁴⁵ California Air Resources Board, Emission Impact: Additional Generator Usage Associated with Power Outage (January 30, 2020), available at <https://ww2.arb.ca.gov/resources/documents/emissions-impact-generator-usage-during-psps> (showing that generators commonly rely on gasoline or diesel, and that use of generators during power outages results in excess emissions); California Air Resources Board, Use of Back-up Engines for Electricity Generation During Public Safety Power Shutoff Events (October 25, 2019), available at

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emit significant amounts of nitrogen oxides (“NOx”), sulfur dioxides (“SO2”), particulate matter (“PM10”), carbon dioxide (“CO2”), carbon monoxide (“CO”), volatile organic compounds (“VOC”), particulate matter less than 10 microns (“PM₁₀”), PM less than 2.5 microns (“PM_{2.5}”).⁴⁶ The DEIR failed to measure emissions from onsite generator emissions. This omission resulted in an underestimation of the Project’s air quality, greenhouse gas, and health risk impacts.

**B03-8
(cont'd)**

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

B03-9

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.⁴⁷ An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.⁴⁸

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

<https://ww2.arb.ca.gov/resources/documents/use-back-engines-electricity-generation-during-public-safety-power-shutoff> (“When electric utilities de-energize their electric lines, the demand for back-up power increases. This demand for reliable back-up power has health impacts of its own. Of particular concern are health effects related to emissions from diesel back-up engines. Diesel particulate matter (DPM) has been identified as a toxic air contaminant, composed of carbon particles and numerous organic compounds, including over forty known cancer-causing organic substances. The majority of DPM is small enough to be inhaled deep into the lungs and make them more susceptible to injury. Much of the back-up power produced during PSPS events is expected to come from engines regulated by CARB and California’s 35 air pollution control and air quality management districts (air districts)”).

⁴⁶ University of California, Riverside Bourns College of Engineering—Center for Environmental Research and Technology, Air Quality Implications Of Backup Generators In California, (March 2005), pg. 8, available at

<https://citeseerx.ist.psu.edu/document?repid=rep1&type=pdf&doi=84c8463118e4813a117db3d768151a8622c4bf6b>; South Coast AQMD, Fact Sheet on Emergency Backup Generators (“Emissions of Nitrogen Oxides (NOx) from diesel-fired emergency engines are 200 to 600 times greater, per unit of electricity produced, than new or controlled existing central power plants fired on natural gas. Diesel-fired engines also produce significantly greater amounts of fine particulates and toxics emissions compared to natural gas fired equipment.”), available at

<http://www.aqmd.gov/home/permits/emergency-generators#Fact2>.

⁴⁷ CEQA Guidelines § 15064(b).

⁴⁸ *Kings Cty. Farm Bur. v. Hanford* (1990) 221 Cal.App.3d 692, 732.

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support of its position. A clearly inadequate or unsupported study is entitled to no judicial deference.”⁴⁹

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(cont'd)**

Moreover, the failure to provide information required by CEQA is a failure to proceed in the manner required by CEQA.⁵⁰ 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.⁵¹ 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.”⁵²

Additionally, CEQA requires agencies to commit to all feasible mitigation measures to reduce significant environmental impacts.⁵³ 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 demonstrates that it has adopted all feasible mitigation to reduce significant environmental impacts to the greatest extent feasible.⁵⁴

A. The DEIR Fails to Disclose and Mitigate Significant Air Quality Impacts

B03-10

1. The DEIR Fails to Identify All Feasible Mitigation for the Project’s Admittedly Significant Air Quality Impacts

The DEIR finds that the Project would result in a significant and unavoidable operational air quality impact.⁵⁵ The DEIR acknowledges that unmitigated emissions from Project operations would exceed significance thresholds for VOCs, CO, and PM10.⁵⁶ The DEIR explains that the VOC exceedance would be primarily caused by transportation and area sources (which include architectural coatings,

⁴⁹ *Berkeley Jets*, 91 Cal.App.4th at 1355.

⁵⁰ *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236.

⁵¹ *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.

⁵² *Id.*, *Madera Oversight Coal., Inc. v. County of Madera* (2011) 199 Cal. App. 4th 48, 102.

⁵³ CEQA Guidelines § 15002(a)(2).

⁵⁴ 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.

⁵⁵ DEIR, pg. 3.3-10.

⁵⁶ *Id.*

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consumer products, landscaping equipment, and hearths),⁵⁷ and the CO and PM10 exceedances would be caused by the large increase in vehicular traffic attributed to population growth in the Plan area.⁵⁸ The DEIR proposes to mitigate these emissions with MM AQ-1, which provides:

**B03-10
(cont'd)**

Operational Area Source Emission Reduction Plan. The PVSP may implement energy-efficient heating and cooling systems to decrease reliance on natural gas. This may include using electric alternatives in residences, including installing electric hearths and stoves instead of natural gas or wood stoves and hearths. Additionally, the project owner may utilize low VOC paints and cleaning supplies where applicable.⁵⁹

The DEIR claims that this measure would fully mitigate PM10 emissions, but CO and VOC emissions would remain significant and unavoidable. The conclusion that remaining significant emissions are unavoidable is unsupported because the DEIR fails to evaluate other feasible and effective measures that would further reduce emissions.

CEQA requires agencies to commit to all feasible mitigation measures to reduce significant environmental impacts.⁶⁰ In particular, a lead agency may not make required CEQA findings, including finding that a project impact is significant and unavoidable, unless the administrative record demonstrates that it has adopted all feasible mitigation to reduce significant environmental impacts to the greatest extent feasible.⁶¹ Further, Policy 3.3.3 of the General Plan provides: “[m]inimize air pollutant emissions generated by new and existing development.”

Here, the DEIR does not propose all feasible mitigation to minimize significant emissions. Dr. Clark identified additional feasible mitigation measures that must be considered before finding emissions to be significant and unavoidable.⁶²

In summary, the DEIR must be revised to analyze the measures discussed above and in Dr. Clark's comments in order to comply with CEQA.

⁵⁷ DEIR, Appendix A, pg. 14.

⁵⁸ DEIR, pg. 3.3-10.

⁵⁹ DEIR, pg. 3.3-10.

⁶⁰ CEQA Guidelines § 15002(a)(3) (“The basic purposes of CEQA are to... Prevent significant, avoidable damage to the environment by requiring changes in projects through the use of alternatives or mitigation measures when the governmental agency finds the changes to be feasible”); Cal. Code Regs. tit. 14 § 15364 (defining feasibility). *Covington, supra*, at 883.

⁶¹ PRC § 21081(a)(3), (b); CEQA Guidelines § 15091; *Covington, supra*, at 883.

⁶² Clark Comments, pgs. 5-7.

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2. MM AQ-1 is Vague and Non-Binding Mitigation

B03-11

The DEIR claims that MM AQ-1 would reduce emissions from Project operation, and calculates that it would result in specific reductions in VOCs, CO, NOx, Sulfur Dioxide (“SOx”), PM10, and PM2.5 emissions.⁶³ The DEIR calculates that PM10 emissions would be reduced to a less than significant level. The unmitigated and mitigated emissions are reflected in Tables AQ-8 and AQ-9.⁶⁴

The emissions reductions reflected in AQ-9 are unsupported by substantial evidence because measures discussed in MM AQ-1 are vague and non-binding. MM AQ-1 states that “[t]he PVSP *may* implement energy-efficient heating and cooling systems,” which “*may* include using electric alternatives in residences, including installing electric hearths and stoves instead of natural gas or wood stoves and hearths.”⁶⁵ “Additionally, the project owner *may* utilize low VOC paints and cleaning supplies where applicable.”⁶⁶

CEQA requires that mitigation measures must be fully enforceable through permit conditions, agreements, or other measures.⁶⁷ CEQA requires that the DEIR’s analysis of mitigation measures be supported by substantial evidence.⁶⁸ CEQA generally prohibits deferred formulation of mitigation measures, but provides that specific details may be developed after project approval when it is impractical or infeasible to include those details during the project’s environmental review provided that 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.⁶⁹

Here, the DEIR fails to meet CEQA’s standards because it assumes specific reductions in emissions from implementation of a measure that does not require any specific mitigation. Because MM AQ-1 only describes measures that “*may*” be required, the measure is non-binding and fails to specify performance standards. As a result, the emissions reductions “calculated” in the DEIR are illusory and unsupported. MM AQ-1 is not an example of permissibly deferred mitigation because it fails to commit itself to any specific mitigation, lacks performance standards, and may never be implemented.

⁶³ DEIR, Appendix A, pg. 17, 18.

⁶⁴ *Id.*

⁶⁵ DEIR, pg. 3.3-10.

⁶⁶ *Id.*

⁶⁷ Cal. Code Regs. Tit. 14, § 15091(d).

⁶⁸ See Cal. Code Regs. Tit. 14, §§ 15126.4, 15384.

⁶⁹ Cal. Code Regs. Tit. 14, § 15126.4.

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As a result, the emissions reductions calculated by the DEIR are unsupported by substantial evidence. The City therefore lacks substantial evidence to conclude that the Project's significant PM10 emissions would be mitigated to a less than significant level. The Project's emissions of PM10 thus remain potentially significant. The DEIR must be revised to include binding and feasible mitigation to reduce emissions to the greatest extent feasible.

**B03-11
(cont'd)**

B. The DEIR Fails to Analyze and Mitigate Potentially Significant Health Risk Impacts

B03-12

1. The DEIR Fails to Disclose Health Risks from Project Construction and Operation

The DEIR fails to disclose that Project construction and operations would result in potentially significant health risk impacts from exposure to TACs such as Diesel Particulate Matter ("DPM"). The DEIR discusses the health consequences of exposure to TACs⁷⁰ and acknowledges that construction activities would generate DPM emissions,⁷¹ but fails to disclose that the land uses authorized by the PVSP would generate TACs. The DEIR also fails to quantify the health risks from exposure to these TACs, either from construction activities or operations.

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.⁷² The Supreme Court, in *Sierra Club v. County of Fresno*, has also explained that CEQA requires the lead agency to disclose the health consequences that result from exposure to a project's air emissions.⁷³ 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.⁷⁴ The *Sierra Club* decision states that, although CEQA does not specifically require that health risk impacts be analyzed in a Health Risk Assessment, it must connect "the general health effects associated with a particular pollutant and the estimated amount of that pollutant the project will likely

⁷⁰ DEIR, Appendix A, PDF pg. 6.

⁷¹ DEIR, pg. 3.3-10.

⁷² PRC § 21083(b)(3), (d).

⁷³ *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 516, 523; see *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184 (finding 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").

⁷⁴ *Bakersfield Citizens for Local Control*, *supra*, 124 Cal.App.4th at 1220.

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produce.”⁷⁵ CEQA mandates discussion, supported by substantial evidence, of the nature and magnitude of impacts of air pollution on public health.⁷⁶

**B03-12
(cont'd)**

For development projects like this one, the Office of Environmental Health Hazard Assessment’s (“OEHHA”) risk assessment guidelines 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.⁷⁷ 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.⁷⁸ Following that analysis, then the City can make a determination of the relative significance of the emissions. The DEIR provides that exposure to TACs would be significant if it would result in a cancer risk greater than or equal to 10 in a million and/or a HI [non-cancerous] greater than or equal to 1.⁷⁹

Here, the DEIR fails to disclose health risks from the operations of land uses authorized by the Project, even in a qualitative discussion. This omission violates CEQA’s disclosure requirements. Dr. Clark explains that the Project’s operations would generate TACs from sources such as diesel trucks and diesel-fueled stationary equipment like backup generators and fire pumps.⁸⁰ The DEIR’s failure to disclose these impacts violates the informational requirements articulated in *Sierra Club v. County of Fresno* and *Bakersfield Citizens for Local Control v. City of Bakersfield*. The DEIR must be revised to disclose operational health risks.

The Project’s operational and construction health risks should also be quantified in a HRA prepared in accordance with OEHHA guidelines. The significance threshold selected by the City is that exposure to TACs would be

B03-13

⁷⁵ *Sierra Club*, 6 Cal.5th at 525.

⁷⁶ *Sierra Club*, 6 Cal.5th at 518–522.

⁷⁷ 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/air/crnr/notice-adoption-air-toxics-hot-spots-program-guidance-manual-preparation-health-risk-0>.

⁷⁸ *Id.*

⁷⁹ AVAQM, California Environmental Quality Act (CEQA) and Federal Conformity Guidelines (August 2016), available at

<https://www.avaqmd.ca.gov/files/e5b34d385/AV%20CEQA%20Guides%202016.pdf>.

⁸⁰ Clark Comments, pg. 11; 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).

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significant if it would result in a cancer risk greater than or equal to 10 in a million and/or a HI [non-cancerous] greater than or equal to 1.⁸¹ The DEIR cannot conclude that impacts would not exceed this numerical threshold without quantitative analysis. The DEIR's significance finding is thus currently unsupported by substantial evidence.

**B03-13
(cont'd)**

The City may argue that the Project is a program-level analysis, and thus need not quantify speculative impacts from future projects. But the courts have addressed to what degree a program-level EIR such as this must analyze health risk impacts. In *Cleveland National Forest Foundation v. San Diego Assn. of Governments*, the Fourth District Court of Appeal held that a program-level EIR's environmental setting and impacts analysis for health risk impacts violated CEQA.⁸² The EIR's environmental setting was challenged for failing to disclose the public's existing exposure to TACs. The record showed that there was available data with which the lead agency could have developed a reasoned estimate of the region's existing exposures to TACs.⁸³ The fact that the EIR was program-level did not relieve the lead agency of the requirement to establish the environmental setting, stating: "[t]he fact more precise information may be available during the next tier of environmental review does not excuse SANDAG from providing what information it reasonably can now... Moreover, if known impacts are not analyzed and addressed in a program EIR, they may potentially escape analysis in a later tier EIR."⁸⁴

The EIR's impacts analysis was also challenged for failing to correlate the project's adverse air quality impacts to resulting adverse health impacts.⁸⁵ The lead agency argued that its disclosure efforts were adequate for the program level of environmental review and producing additional information at this level was infeasible.⁸⁶ But the Court held that the EIR's analysis was too broad to meaningfully correlate the Project's emissions to anticipated adverse health impacts from emissions.⁸⁷ The Court observed that although there are limitations to the precision of a program-level analysis, the record did not contain substantial

⁸¹ AVAQM, California Environmental Quality Act (CEQA) and Federal Conformity Guidelines (August 2016), available at <https://www.avaqmd.ca.gov/files/e5b34d385/AV%20CEQA%20Guides%202016.pdf>.

⁸² *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 17 Cal.App.5th 413, 225.

⁸³ *Id.* at 572, 573.

⁸⁴ *Id.* at 573.

⁸⁵ *Id.*

⁸⁶ *Id.* at 574.

⁸⁷ *Id.*

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evidence showing that a more detailed analysis was infeasible.⁸⁸ The lead agency was “obliged to disclose what it reasonably can.”⁸⁹

**B03-13
(cont'd)**

The instant DEIR is similarly inadequate, as there is no evidence in the record suggesting that a quantitative analysis of TACs and resultant health risk impacts is infeasible at this stage, particularly given the specificity of the Project’s proposed buildout. As in *Cleveland National Forest Foundation v. San Diego Assn. of Governments*, even if more detailed information will become available at the project-level, the City must still analyze what it reasonably can. And here, there is no evidence in the record suggesting that it will become more feasible to analyze the *total* health risk impacts of the PVSP in a future project-level EIR. Dr. Clark explains that an analysis of the Project’s health risks can be conducted using data in the DEIR’s air study, and conducts an analysis finding that impacts would be significant.⁹⁰ The DEIR must be revised to include this omitted analysis in order to meaningfully correlate the Project’s emissions to its health risk impacts.

A key flaw in the DEIR is that it fails to treat the PVSP’s total health risk impacts (from the total development authorized by the plan) as a programmatic issue. The CEQA Guidelines explain that program EIRs are best suited for considering broad programmatic issues for related actions at an early stage of the planning process.⁹¹ As stated above, there is no evidence in the record suggesting that it will become more feasible to analyze the *total* health risk impacts of the PVSP in a future project-level EIR. Accordingly, if Specific Plan-wide health risk impacts are not disclosed and mitigated at this time, they may escape analysis in future project-level analyses. As stated in *Cleveland National Forest Foundation*, if known impacts are not analyzed and addressed in a program EIR, they may potentially escape analysis in a later tier EIR.”⁹²

Here, the DEIR adopts significance thresholds from the Antelope Valley Air Quality Management District (“AVAQMD”) CEQA and Federal Conformity Guidelines.⁹³ The AVAQMD guidelines provide that a significant impact would occur if a project’s emissions result in a cancer risk greater than or equal to 10 in a million and/or a Hazard Index (HI) (non-cancerous) greater than or equal to 1.⁹⁴ These guidelines do not set forth protocols for analysis of cumulative impacts, so it is possible that the specific plan-wide impacts would escape analysis in a future

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ Clark Comments, pg. 12.

⁹¹ 14 Cal Code Regs §15168(b)(1)–(4).

⁹² *Cleveland National Forest Foundation, supra*, at 225.

⁹³ DEIR, Appendix A, pg. 16; AVAQMD CEQA and Federal Conformity Guidelines.

⁹⁴ AVAQMD CEQA and Federal Conformity Guidelines, pg. 11.

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project-level EIR.⁹⁵ To ensure that the Project's total health risk impacts are actually evaluated, the DEIR must be revised to analyze construction and operational impacts in as much detail feasible.

**B03-13
(cont'd)**

2. The DEIR Lacks Substantial Evidence to Find that Health Risks from Construction Emissions would be Less than Significant

B03-14

The DEIR acknowledges that the Project's construction activities would generate TACs resulting in potential health risks.⁹⁶ The DEIR claims that with mitigation to reduce engine exhaust emissions (MM AQ-2),⁹⁷ the impact of localized ground level concentrations and incremental health effects of toxic air contaminants would be less than significant.⁹⁸ This conclusion is unsupported by substantial evidence because the DEIR fails to calculate the Project's unmitigated health risks from construction activities. Courts have held that "CEQA EIR requirements are not satisfied by saying an environmental impact is something less than some previously unknown amount."⁹⁹ As such, the DEIR's claim that impacts would be less than significant due to reductions from MM AQ-2 is unsupported by substantial evidence.

3. The Project's Emissions of TACs would Result in a Significant Health Risk Impact

B03-15

Dr. Clark performed a quantitative health risk analysis using values from the DEIR's air study. Dr. Clark's analysis demonstrates that emissions from the Project's construction could result in an excess cancer risk of 12.3 in one million for a sensitive receptor (infant) at existing residences.¹⁰⁰ This cancer risk would exceed the AVAQMD significance threshold of 10 in one million. This significant impact must be disclosed and mitigated in an EIR.

⁹⁵ *Id.*

⁹⁶ DEIR, Appendix A, pg. 19.

⁹⁷ DEIR, pg. 3.3-10 (MM AQ-2 requires Tier 4 engines would be required for all construction equipment over 50 horsepower (hp), but Tier 3 equipment may be used for equipment over 100 hp if Tier 4 is unavailable.)

⁹⁸ *Id.*

⁹⁹ *California Clean Energy Commission v. City of Woodland* (2014) 225 CA4th 173, 210.

¹⁰⁰ Clark Comments, pg. 12.

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C. The DEIR Fails to Adequately Disclose and Mitigate Potentially Significant Health Risk from Exposure to Valley Fever

B03-16

The DEIR acknowledges that Valley Fever is highly endemic in Antelope Valley, meaning that the annual incidence rate of Valley Fever is greater than 20 cases per 100,000 persons per year.¹⁰¹ The DEIR claims that with implementation of MM-AQ-3, impacts would be less than significant.¹⁰² But Dr. Clark explains that the DEIR's mitigation would not protect nearby residents, as the measures in MM-AQ-3 primarily apply to workers. Specifically, given the proximity of the Project Site to nearby residential receptors to the northwest and southeast of the Site, residential receptors could be exposed to Valley Fever (*Coccidioides immitis*) from fugitive dust generated during construction.¹⁰³ Dr. Clark explains that compliance with standard dust control regulations such as AVAQMD Rule 403 do not meaningfully reduce Valley Fever risks.¹⁰⁴ Conventional dust control measures do not prevent the spread Valley Fever because they largely focus on visible dust or larger dust particles—the PM₁₀ fraction—not the very fine particles where the Valley Fever spores are found.¹⁰⁵

Dr. Clark proposes feasible and effective mitigation measures, including watering the site three times a day and offering filtration for homes near the Project Site.¹⁰⁶ These measures must be considered in a revised DEIR that acknowledges existing residents' potentially significant risk of exposure to Valley Fever.

D. The DEIR Fails to Adequately Analyze and Mitigate Potentially Significant Greenhouse Gas Impacts

B03-17

The DEIR states that the Project would generate a less than significant amount of GHGs.¹⁰⁷ CEQA Guidelines Section 15064.4 provides that a lead agency should consider the extent to which a project complies with GHG reduction plans.¹⁰⁸ The Project is inconsistent with key policies in the 2022 California Air Resources Board ("CARB") Scoping Plan and the City's Climate Action Plan.¹⁰⁹ These inconsistencies constitute a significant impact not disclosed in the DEIR.¹¹⁰

¹⁰¹ DEIR, pg. 3.3-10.

¹⁰² *Id.*

¹⁰³ Clark Comments, pg. 8.

¹⁰⁴ Clark Comments, pg. 10.

¹⁰⁵ Clark Comments, pg. 9.

¹⁰⁶ Clark Comments, pg. 9-10.

¹⁰⁷ DEIR, pg. 3.3-13, 14.

¹⁰⁸ DEIR, pg. 3.3-14.

¹⁰⁹ DEIR, pg. 3.3-14.

¹¹⁰ 14 Cal Code Regs §15125(d).

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1. The Project is Inconsistent with Policies in the 2022 CARB Scoping Plan

B03-18

Appendix D (“Local Actions”) of the 2022 Scoping Plan identifies eight project attributes for residential and mixed-use projects to qualitatively determine consistency with the Scoping Plan.¹¹¹ The Plan explains that residential and mixed-use projects that have all of the listed project attributes should accommodate growth in a manner consistent with State GHG reduction and equity prioritization goals. The California Air Resources Board (“CARB”) recommended, in its comments on the Project’s Notice of Preparation, that the DEIR “include a robust discussion of the project’s consistency with the recommendations in Appendix D.”¹¹² Despite the directive in CEQA Guidelines Section 15064.4 and CARB’s recommendation, the DEIR fails to disclose the Project’s inconsistency with key attributes in Appendix D.

The Project is inconsistent with the attribute: “[p]rovides EV charging infrastructure that, at minimum, meets the most ambitious voluntary standard in the California Green Building Standards Code at the time of project approval.”¹¹³ The CALGreen Tier 2 voluntary standard calls for 55% of parking spaces to be equipped with Level 2 EV charging receptacles, or a combination of 20% Level 2 EV chargers and 50% of required chargers be equipped with J1772 connectors.¹¹⁴ The DEIR does not require this level of charging infrastructure for developments in the Specific Plan area, and thus is inconsistent with the 2022 Scoping Plan.

The Project is inconsistent with an attribute providing: “located on infill sites... presently served by existing utilities...”¹¹⁵ There is no evidence in the DEIR that the Project is adequately served by existing utilities. The DEIR states that “[i]t is possible that the growth in the Plan area...would result in a need for new or expanded wastewater treatment facilities.”¹¹⁶ The DEIR also states that “[d]evelopment associated with the buildup of the PVSP would increase water demand and the need for new water supply, storage, and transmission facilities.”¹¹⁷

B03-19

¹¹¹ 2022 CARB Scoping Plan, Appendix D, available at <https://ww2.arb.ca.gov/sites/default/files/2022-11/2022-sp-appendix-d-local-actions.pdf>.

¹¹² DEIR, Appendix F, PDF pg. 7.

¹¹³ 2022 CARB Scoping Plan, Appendix D, pg. 22.

¹¹⁴ CALGreen Section A4.106.8.2.1.

¹¹⁵ 2022 CARB Scoping Plan, Appendix D, pg. 22.

¹¹⁶ DEIR, pg. 3.13-18.

¹¹⁷ *Id.*

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The Project is inconsistent with the attribute: “[d]oes not result in the loss or conversion of natural and working lands.”¹¹⁸ This attribute is related to the 2022 Scoping Plan’s “Priority GHG Reduction Strategy” of “[p]reserv[ing] natural and working lands by implementing land use policies that guide development toward infill areas and do not convert “greenfield” land to urban uses (e.g., green belts, strategic conservation easements).”¹¹⁹ Here, the Project would rezone a vacant site historically used for agricultural.¹²⁰ Even if the site is not currently utilized for agricultural purposes, this Project is inconsistent with the Scoping Plan’s recommendation against mixed-use development on greenfield land.

B03-20

The Project is inconsistent with the attribute: “[c]onsists of transit-supportive densities (minimum of 20 residential dwelling units per acre).”¹²¹ The DEIR states that the Project would have a “gross target density of 18.7 dwelling units per acre,”¹²² which is less dense than recommended in Appendix D of the Scoping Plan.

B03-21

The Project is inconsistent with the attribute: “[r]educes parking requirements by: Eliminating parking requirements or including maximum allowable parking ratios (i.e., the ratio of parking spaces to residential units or square feet); or Providing residential parking supply at a ratio of less than one parking space per dwelling unit; or For multifamily residential development, requiring parking costs to be unbundled from costs to rent or own a residential unit.”¹²³ The DEIR and draft Specific Plan fail to include measures reducing parking requirements or unbundling parking. The only discussion of parking requirements in these documents provides: “[e]xcept as provided for in State law, for all uses and developments, the developer, property owner, or authorized agent shall determine the number of parking spaces sufficient for the proposed use in order to adequately facilitate operations and shall provide justification acceptable to the Director of Community Development and/or the Planning Commission to support the determination.”¹²⁴ Thus, the Project is inconsistent with the Scoping Plan.

B03-22

The Project is inconsistent with the attribute: “[a]t least 20 percent of units included are affordable to lower-income residents.”¹²⁵ Here, the Project does not commit to making at least 20 percent of the proposed residential units affordable to

B03-23

¹¹⁸ 2022 CARB Scoping Plan, Appendix D, pg. 22.

¹¹⁹ 2022 CARB Scoping Plan, Appendix D, pg. 12.

¹²⁰ DEIR, pg. 3.7-2 (“The site was used for agricultural purposes from prior to 1948 to around 1974”).

¹²¹ 2022 CARB Scoping Plan, Appendix D, pg. 22.

¹²² DEIR, pg. 2-6.

¹²³ 2022 CARB Scoping Plan, Appendix D, pg. 22-23.

¹²⁴ DEIR, pg. 2-13; Draft Specific Plan, pg. 100.

¹²⁵ 2022 CARB Scoping Plan, Appendix D, pg. 23.

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lower-income residents. The DEIR states that the Project would allow “a range of household sizes and income levels to locate in the Plan Area,” but does not reference any requirement that any units would be made affordable to low-income residents.¹²⁶ This is another inconsistency with the Scoping Plan.

**B03-23
(cont'd)**

The Project is inconsistent with the attribute: “[u]ses all-electric appliances without any natural gas connections and does not use propane or other fossil fuels for space heating, water heating, or indoor cooking.”¹²⁷ The DEIR lacks any condition requiring all-electric appliances. MM-AQ-1 provides that “[t]he PSVP shall implement energy-efficient heating and cooling systems to decrease reliance on natural gas,” but fails to outright require all-electric appliances in the proposed residential uses.¹²⁸

B03-24

To comply with CEQA, the DEIR must be revised to disclose the Project’s inconsistencies with the 2022 Scoping Plan. The DEIR must also evaluate mitigation measures to address the Scoping Plan inconsistencies.

2. The Project is Inconsistent with the Climate Action Plan

B03-25

Climate action plans “may, if sufficiently detailed and adequately supported, be used in later project-specific CEQA documents to simplify the evaluation of the project’s cumulative contribution to the effects of greenhouse gas emissions.”¹²⁹ Courts have held that a lead agency “must consider whether the projects comply with each action identified in the Climate Action Plan if it wishes to avail itself to the streamlined review provided by section 15183.5 of the Guidelines...As part of that review, the [agency] must identify the reduction measures that apply to the project and, if they are not otherwise binding and enforceable, include them as mitigation measures.”¹³⁰

Here, the DEIR discusses consistency with several Climate Action Plan policies, but fails to discuss any of the policies with which the Project would be inconsistent. Measure 4.8.1b calls for “transit-oriented development,” which includes a mixture of housing, office, retail and/or other amenities integrated into a walkable neighborhood and located within a half-mile of quality public transportation.¹³¹ The stated benefits of these types of developments include:

¹²⁶ DEIR, pg. 3.12-5.

¹²⁷ 2022 CARB Scoping Plan, Appendix D, pg. 23.

¹²⁸ DEIR, pg. 3.3-10

¹²⁹ Cal. Code Regs. tit. 14 § 15183.5; *McCann v. City of San Diego* (2021) 70 Cal.App.5th 51, 92.

¹³⁰ *McCann v. City of San Diego* (2021) 70 Cal.App.5th 51, 97.

¹³¹ Draft Lancaster Climate Action Plan, pg. 4-123.

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reduced driving, air pollution, and greenhouse gas emissions; increased healthy and active lifestyles; increased transit ridership; increased property values; and increased access to jobs and economic opportunities.¹³² There is insufficient evidence in the record demonstrating the instant Project would have these GHG-reducing attributes because only a small portion is located in a Priority Growth Area, Transit Priority Area, or High Quality Transit Area.¹³³ Measure 4.6.1b provides: “[e]stablish goals that new commercial and residential construction exceed the California Building Standards Code energy requirements by 10%.”¹³⁴ Here, there is no requirement identified in the DEIR that projects in the Plan area must exceed California Building Standards Code energy requirements by 10%. Due to these inconsistencies with the Climate Action Plan, the City lacks substantial evidence to conclude that the Project (which would emit 45,623 mtco₂e per year of GHGs)¹³⁵ would result in a less-than-significant GHG impact.

**B03-25
(cont'd)**

B03-26

B03-27

E. The DEIR's Energy Analysis is Incomplete and Unsupported by Substantial Evidence

The DEIR states that a significant impact would occur if the Project would “[r]esult in potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources, during project construction or operation.”¹³⁶ The DEIR concludes that impacts would be less than significant.¹³⁷ But the DEIR’s analysis of this impact is unsupported by substantial evidence because, in summary, it is less than one page in length,¹³⁸ fails to quantify the Project’s energy consumption during either construction or operation, and assumes that compliance with building codes would ensure energy impacts would be less than significant. This fails to meet CEQA’s requirements.

¹³² *Id.*

¹³³

<https://hub.scag.ca.gov/datasets/10edc64279ff4ebef99a191161416422/explore?location=34.660723%2C-118.136421%2C13.80>;

https://opendata.mtc.ca.gov/datasets/5572ccb7bfe2426eae086c35931f1d0e_0/explore; https://gisdata-caltrans.opendata.arcgis.com/datasets/863e61eachf3463ab239beb3cee4a2c3_0/explore?location=34.66187%2C-118.138716%2C14.92 (last visited 10/28/2025)

¹³⁴ *Id.* at 4-92.

¹³⁵ DEIR, pg. 3.3-13.

¹³⁶ DEIR, pg. 3.6-11.

¹³⁷ DEIR, pg. 3.6-12.

¹³⁸ 3.6-12.

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1. The DEIR's Energy Analysis Lacks Analysis Called For in the CEQA Guidelines**B03-28**

Section 15126.2(b) of the CEQA Guidelines provides that an energy analysis “should include the project’s energy use for all project phases and components, including transportation-related energy, during construction and operation... In addition to building code compliance, other relevant considerations may include, among others, the project’s size, location, orientation, equipment use and any renewable energy features that could be incorporated into the project.” Appendix F, of the CEQA Guidelines calls, in part, for discussion of:

II.A. Project Description may include the following items:

1. Energy consuming equipment and processes which will be used during construction, operation and/or removal of the project. If appropriate, this discussion should consider the energy intensiveness of materials and equipment required for the project.
2. Total energy requirements of the project by fuel type and end use.
3. Energy conservation equipment and design features.
4. Identification of energy supplies that would serve the project.
5. Total estimated daily vehicle trips to be generated by the project and the additional energy consumed per trip by mode.

C. Environmental Impacts may include:

1. The project’s energy requirements and its energy use efficiencies by amount and fuel type for each stage of the project including construction, operation, maintenance and/or removal. If appropriate, the energy intensiveness of materials may be discussed.
2. The effects of the project on local and regional energy supplies and on requirements for additional capacity.
3. The effects of the project on peak and base period demands for electricity and other forms of energy.
4. The degree to which the project complies with existing energy standards.
5. The effects of the project on energy resources.
6. The project’s projected transportation energy use requirements and its overall use of efficient transportation alternatives

Courts have rejected EIRs that have failed to analyze relevant considerations listed above. In *California Clean Energy Commission v. City of Woodland*

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(“CCEC”),¹³⁹ the Third District Court of Appeal reviewed an EIR for a shopping center on undeveloped agricultural land. The Court found that the EIR was deficient insofar as it does not assess or consider mitigation for transportation energy impacts of the project, which would generate up to 40,051 new vehicle trips a day.¹⁴⁰ The Court explained that “Appendix F states that environmental impacts subject to the EIR process include [t]he project's projected transportation energy use requirements and its overall use of efficient transportation alternatives,”¹⁴¹ concluding that the omission of this analysis violated CEQA. The Court rejected an argument that impacts would be less than significant because the project would include mitigation measures designed to reduce vehicle trips, reasoning “the City cannot say how much less transportation energy is needed for the project as approved because the issue has never been assessed in an EIR... CEQA EIR requirements are not satisfied by saying an environmental impact is something less than some previously unknown amount.”¹⁴²

**B03-28
(cont'd)**

As in CCEC, this DEIR fails to discuss relevant considerations listed in Appendix F. The DEIR fails to analyze the energy intensiveness of materials and equipment required for the project.¹⁴³ This analysis is feasible because the DEIR's air quality study provides an estimated construction schedule, lists likely construction and operational equipment necessary for the Project, and estimates emissions from this equipment.

B03-29

The DEIR also fails to analyze the total energy requirements of the Project by fuel type and end use, either for construction activities or operation.¹⁴⁴

B03-30

The DEIR's energy analysis fails to discuss energy conservation equipment and design features beyond stating that the Project would comply with building codes.¹⁴⁵

B03-31

The DEIR fails to estimate the energy consumed by vehicle trips generated by the Project.¹⁴⁶ This is a major omission because the Project's operations are estimated in the air quality study to generate a total of 16,513,738 trips per year

B03-32

¹³⁹ (2014) 225 CA4th 173.

¹⁴⁰ *Id.* at 210.

¹⁴¹ Citing Guidelines, Appendix F, Section II(C)(6).

¹⁴² *CCEC, supra*, 225 CA4th 173 at 210.

¹⁴³ CEQA Guidelines, Appendix F, Section II(A)(1), (C)(1).

¹⁴⁴ CEQA Guidelines, Appendix F, Section II(A)(2).

¹⁴⁵ CEQA Guidelines, Appendix F, Section II(A)(3); DEIR, pg. 3.6-12.

¹⁴⁶ CEQA Guidelines, Appendix F, Section II(A)(5), (C)(6).

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(approximately 45,243 trips per day).¹⁴⁷ This is greater than the 40,051 trips in the CCEC EIR, demonstrating that this EIR also violates CEQA by omitting study of transportation energy requirements.

**B03-32
(cont'd)**

The DEIR fails to estimate the effects of the project on local and regional energy supplies and on requirements for additional capacity.¹⁴⁸ The DEIR also fails to study the effects of the project on energy resources and peak and base period demands for electricity and other forms of energy.¹⁴⁹ These are major omissions given the size of the Project.

B03-33

The DEIR fails to fully analyze “the degree to which the project complies with existing energy standards.”¹⁵⁰ The DEIR states that the Project would comply with Title 24 standards, but fails to evaluate the feasibility of meeting voluntary standards described in Appendix A4, Residential Voluntary Measures, and Appendix A5, Nonresidential Voluntary Measures, of the California Green Building Standards Code. These standards are voluntary measures and are not uniformly required for all development projects, but nonetheless constitute “existing energy standards” applicable to the Project, which proposes both residential and nonresidential uses.

B03-34

In sum, the DEIR’s project description and impacts analysis is incomplete and fails to adequately inform decisionmakers and the public. The omitted analysis must be provided in a revised EIR. In addition to this informational defect, the lack of analysis renders the DEIR’s conclusions unsupported by substantial evidence.

B03-35

2. The DEIR’s Conclusions Regarding Energy Impacts Are Unsupported by Substantial Evidence

The one-page analysis of the Project’s energy impacts states that energy impacts would be less than significant because the Project would comply with State and local building codes.¹⁵¹ Courts have held that simply stating that a Project would comply with building standards does not constitute substantial evidence that energy impacts would be less than significant.

¹⁴⁷ DEIR, Appendix A, PDF pg. 205-6 (summing trips/year of each land use proposed by the Project).

¹⁴⁸ CEQA Guidelines, Appendix F, Section II(C)(2).

¹⁴⁹ CEQA Guidelines, Appendix F, Section II(C)(3), (5).

¹⁵⁰ CEQA Guidelines, Appendix F, Section II (C)(4).

¹⁵¹ DEIR, pg. 3.6-12.

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In the *CCEC* case,¹⁵² the EIR concluded that, due to the proposed project's compliance with Title 24 guidelines and regulations, the Project would be expected to have a less-than-significant impact regarding the wasteful, inefficient, or unnecessary consumption of energy.¹⁵³ The Court of Appeal explained that compliance with local and state building codes do not address many aspects of a project's energy consumption: “[I]ike the Building Code, CALGreen does not address construction and operational energy impacts for a project intended to transform agricultural land into a regional commercial shopping center... Moreover, CALGreen does not address transportation energy impacts for a project such as Gateway II.”¹⁵⁴

**B03-35
(cont'd)**

The Court distinguished the Court of Appeal's decision in *Tracy First v. City of Tracy* (“*Tracy First*”),¹⁵⁵ which rejected a challenge to an EIR arguing that “it is improper to rely on state building standards in determining whether an energy impact is significant.”¹⁵⁶ The *CCEC* court explained that (1) *Tracy First* involved an EIR including 17 pages discussing energy issues and eight pages discussing energy impacts, (2) the plaintiffs in *Tracy First* made “no argument concerning what more the EIR should have done,” and (3) the *CCEC* EIR failed to fully study the construction and operational energy impacts of the project.¹⁵⁷ “The failure to study the energy impacts resulting from a large part of the planned construction” thwarted “the statutory goals of the EIR process.”¹⁵⁸

Here, the DEIR has the same flaws as the EIR rejected in *CCEC*: the instant EIR claims, in a conclusory one-page discussion, that consistency with building codes would result in less than significant impacts, while failing to study major aspects of the Project's energy consumption and resultant impacts. And unlike the plaintiffs in *Tracy First*, this letter identifies omitted analysis that must be included in a revised EIR. The DEIR's energy analysis is thus unsupported by substantial evidence.

B03-36

3. The DEIR Fails to Include Sufficient Investigation into Energy Conservation Measures

B03-37

The DEIR fails to include sufficient investigation into energy conservation measures that might be available or appropriate for the Project. The DEIR

¹⁵² *CCEC*, *supra*, 225 CA4th 173.

¹⁵³ *Id.* at 212.

¹⁵⁴ *Id.* at 211.

¹⁵⁵ (2009) 177 Cal.App.4th 912, 932.

¹⁵⁶ *CCEC*, *supra*, 177 Cal.App.4th at 212.

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

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concludes that operational energy impacts of the Project would be less than significant because the buildings would be designed and constructed in accordance with the State's Title 24 guidelines and regulations.¹⁵⁹ However, compliance with Title 24 regulations alone does not support a conclusion that energy impacts are less than significant, and the DEIR does not sufficiently consider energy conservation measures like solar facilities, use of alternate fuel sources, or passive energy efficiency measures to ensure the Project's energy consumption would not be wasteful, inefficient, or unnecessary. This lack of analysis violates CEQA.

**B03-37
(cont'd)**

CEQA requires an environmental document to discuss mitigation measures for significant environmental impacts, including "measures to reduce the wasteful, inefficient, and unnecessary consumption of energy."¹⁶⁰ The CEQA Guidelines require discussion of energy conservation measures when relevant, and provide examples in Appendix F.¹⁶¹

B03-38

- 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 EIRs that fail to include adequate analysis investigation into energy conservation measures that might be available or appropriate for a project.¹⁶² In *CCEC*,¹⁶³ the Court of Appeal rejected an EIR that failed to include discussion regarding the different renewable energy options that might be available or appropriate for the project. The Court held "the City's EIRs failed to comply with the requirements of Appendix F to the Guidelines by not discussing or analyzing renewable energy options."¹⁶⁴ The lead agency argued that compliance with the

¹⁵⁹ DEIR, pg. 3.6-12.

¹⁶⁰ Pub. Resources Code, § 21100(b)(3); *Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 912, 930.

¹⁶¹ CEQA Guidelines, Appendix F, Section II(D); see Section 15126.4(a)(1)(C) (stating "Energy conservation measures, as well as other appropriate mitigation measures, shall be discussed when relevant.").

¹⁶² *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.

¹⁶³ *CCEC, supra*, 225 CA4th 173.

¹⁶⁴ *Id.* at 213.

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Building Code sufficed to address energy impact concerns for the project.¹⁶⁵ But the Court explained:

**B03-38
(cont'd)**

Although the Building Code addresses energy savings for components of a new commercial construction, it does not address many of the considerations required under Appendix F of the CEQA Guidelines... These considerations include whether a building should be constructed at all, how large it should be, where it should be located, whether it should incorporate renewable energy resources, or anything else external to the building's envelope. Here, a requirement that Gateway II comply with the Building Code does not, by itself, constitute an adequate assessment of mitigation measures that can be taken to address the energy impacts during construction and operation of the project.¹⁶⁶

The Supreme Court of California agreed with the CCEC court's decision in *League to Save Lake Tahoe Mtn. Area Preservation Found. v County of Placer*, holding that even projects that find a less-than-significant energy impact must "discuss whether any renewable energy features could be incorporated into the project."¹⁶⁷ In *Save Lake Tahoe*, the Court considered an EIR for a land use specific plan and rezoning to permit residential and commercial development and preserve forest land near Truckee and Lake Tahoe. The EIR did not consider whether it was feasible to power the project on 100 percent renewable electrical energy or some lesser percentage, nor evaluate strategies for reducing reliance on fossil fuels, increasing reliance on renewable resources, reducing peak loads, and reducing the impacts of relying on remote generation facilities. The lead agency reasoned that this analysis was not required because energy impacts would be less than significant. Citing CEQA Guidelines Section 15126.2, subdivision (b) and the decision in CCEC, the Court held that when an EIR analyzes the project's energy use to determine if it creates significant effects, it should discuss whether any renewable energy features could be incorporated into the project. The Court found that the EIR violated CEQA for not discussing whether the project could increase its reliance on renewable energy sources to meet its energy demand.

Here, the DEIR's energy analysis lacks basic analysis of energy consumption measures in violation of CEQA Guidelines Appendix F. The discussion states that "the PVSP's objectives include sustainable design practices, including but not limited energy-conserving buildings, low-water use landscaping, and community

B03-39

¹⁶⁵ *Id.* at 210, 211.

¹⁶⁶ CEC (2014) 225 CA4th 173, 213.

¹⁶⁷ (2022) 75 CA5th 63, 167–68.

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design elements that promote walking and biking over driving.”¹⁶⁸ The discussion also states that the PVSP outlines “renewable energy or energy efficiency measures... such as the requirement of solar energy systems on all future residential and commercial buildings.”¹⁶⁹ This analysis is vague and fails to study considerations identified in Appendix F, listed above. Further, there is no requirement in the PVSP regarding solar energy systems, contrary to the claim in the DEIR.

**B03-39
(cont'd)**

There are numerous energy consumption measures applicable to this Project that must be analyzed in a revised EIR. To begin with, the DEIR fails to analyze the feasibility of requiring future development to meet CALGreen voluntary standards. Appendices A4 and A5 describe two tiers of voluntary measures – Tier 1 and Tier 2. Tier 2 standards would result in greater reductions in energy consumption. Under CalGreen Section A4.106.8.2.1, Tier 2 standards require 55% of parking spaces to be equipped with Level 2 EV charging receptacles, or a combination of 20% Level 2 EV chargers and 50% of required chargers be equipped with J1772 connectors. Section A4.106.5.1 calls for increased solar reflectance. Sections A4.203.1.2.1 through A4.203.1.2.8 call for roof deck insulation, high-performance walls, compact hot water distribution systems, drain water heat recovery, heat pump water heater demand management, and other measures. The City must revise the EIR to evaluate the feasibility of these measures and others described in CalGreen Appendix A4.

B03-40

The nonresidential voluntary standards in Appendix A5 include consumption measures applicable to this project. CALGreen Section A5.106.5.1.2 calls for 50% spaces to be reserved for clean air vehicles. CALGreen Section A5.106.5.3 calls for an increased number of EV capable spaces, depending on the total number of spaces.¹⁷⁰ Tier 2 standards require large projects with 201 or more parking spaces to provide 45% EV capable spaces.¹⁷¹ CALGreen Section A5.203.1.2 sets energy budgets that are less than permitted by the mandatory Title 24 energy standards.¹⁷² CALGreen Section A5.303.2.3 calls for reductions in water consumption by requiring plumbing fixtures and fixture fittings that would reduce the use of potable water by 20% in the case of Tier 2 standards.¹⁷³ The DEIR’s failure to discuss consistency with CALGreen’s voluntary standards is thus a failure to analyze consistency with existing energy standards.

¹⁶⁸ DEIR, pg. 3.6-12.

¹⁶⁹ *Id.* at 3.6-13.

¹⁷⁰ CALGreen, Table A5.106.5.3.1 Tier 1

¹⁷¹ Table A5.106.5.3.1, A5.106.5.3.2.

¹⁷² CALGreen Sections A5.203.1.2.1, A5.203.1.2.2.

¹⁷³ CALGreen Sections A5.303.2.3.1, A5.303.2.3.2

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The DEIR fails to fully analyze the feasibility of onsite solar facilities, such as rooftop, parking lot, or ground-level solar photovoltaics to offset energy consumption. The air study states that the Project would comply with the City's Zero Net Energy Ordinance, which mandates installation of a solar system equivalent to two watts per square foot for each new home built, or payment of in-lieu fees.¹⁷⁴ This does not address whether additional solar facilities would be feasible or effective at reducing emissions, nor address the non-residential components of the Project. The DEIR's analysis must be revised to address the energy requirements of the Project and study the degree to which onsite solar facilities could offset consumption.¹⁷⁵

B03-41

The DEIR states that the Plan area would obtain electricity from Lancaster Energy/Lancaster Choice Energy, which supplies power to homes and businesses with an opportunity to opt up to 100% renewable energy.¹⁷⁶ But the DEIR fails to evaluate the feasibility of requiring projects to opt in to the 100% renewable program and makes no commitment to the program.

B03-42

In sum, the DEIR's energy analysis fails to analyze measures to reduce the wasteful, inefficient, and unnecessary consumption of energy, and fails to meaningfully address Appendix F's considerations of whether developments authorized under the Specific Plan should be constructed at all, how large they should be, where they should be located, whether they should incorporate renewable energy resources, or anything else external to the buildings' envelope.¹⁷⁷ This analysis must be provided in a revised EIR.

B03-43

F. The DEIR Fails to Adequately Analyze and Mitigate Significant Noise Impacts

1. The DEIR Fails to Adequately Establish the Environmental Setting for Noise Impacts

The DEIR fails to establish accurate baseline noise levels. Mr. Bensing identifies several flaws in the City's approach. First, the DEIR's noise analysis relies on seven short-term measurements (ranging from 10-20 minutes) conducted on a single weekday during the middle of the day.¹⁷⁸ Mr. Bensing observes that

B03-44

¹⁷⁴ DEIR, Appendix A, pg. 24.

¹⁷⁵ CEQA Guidelines, Appendix F, Section II(D).

¹⁷⁶ DEIR, pg. 3.13-5; 3.13-18.

¹⁷⁷ *Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 CA4th 256, 264.

¹⁷⁸ Bensing Comments, pg. 2.

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there is no discussion of how representative the noise results are at that time compared to a morning or evening period.¹⁷⁹ Second, the DEIR fails to measure nighttime conditions. Third, the DEIR fails to validate its traffic noise model.

**B03-44
(cont'd)**

CEQA requires that a lead agency include a description of the physical environmental conditions, or “baseline,” in the vicinity of the project as they exist at the time environmental review commences.¹⁸⁰ As many courts have held, the impacts of a project must be measured against the “real conditions on the ground.”¹⁸¹ The description of the environmental setting constitutes the “baseline” physical conditions against which the lead agency assesses the significance of a project’s impacts.¹⁸²

B03-45

The DEIR’s short-term, 10 to 20-minute noise measurements are inadequate to establish baseline conditions because environmental noise can vary widely throughout the day (+/- 10 dBA or more for areas with intermittent local traffic).¹⁸³ The DEIR’s assessment of baseline noise levels is not supported by substantial evidence because the DEIR fails to provide evidence of how typical these measurements were for the rest of the daytime and nighttime conditions. Further, the DEIR’s reliance on short-term measurements does not meet the standards of the Federal Transit Administration’s Transit Noise and Vibration Impact Assessment Manual (“FTA Manual”).¹⁸⁴ The FTA Manual recommends a minimum of three one-hour Leq noise measurements to estimate the 24-hour Ldn/CNEL.¹⁸⁵

B03-46

The DEIR fails to measure nighttime conditions, assuming that “[n]ighttime noise levels are typically 5-10 dBA lower than daytime noise levels.”¹⁸⁶ Mr. Bensing observes that this assumption is not supported by evidence in the record, and recommends that the Project must conduct properly documented ambient measurements near sensitive receptors that fully capture the current baseline conditions during full daytime and nighttime hours.

¹⁷⁹ *Id.*

¹⁸⁰ 14 CCR § 15125(a); *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal. 4th 310, 321 (“*CBE v. SCAQMD*”).

¹⁸¹ *CBE v. SCAQMD*, 48 Cal. 4th at 321; *Save Our Peninsula Com. v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 121-22; *City of Carmel-by-the-Sea v. Bd. of Supervisors of Monterey County* (1986) 183 Cal.App.3d 229, 246.

¹⁸² 14 CCR § 15125(a); *CBE v. SCAQMD*, 48 Cal. 4th at 321.

¹⁸³ Bensing Comments, pg. 2.

¹⁸⁴ https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/research-innovation/118131/transit-noise-and-vibration-impact-assessment-manual-fta-report-no-0123_0.pdf

¹⁸⁵ *Id.*

¹⁸⁶ DEIR, Appendix D, pg. 9.

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The DEIR's description of existing traffic noise is also not supported by substantial evidence. The DEIR characterizes absolute noise levels from existing traffic based on an outdated traffic model – FHWA Noise Prediction Model (FHWA-RD-77-108).¹⁸⁷ Mr. Bensing explains that state of the art traffic modeling uses the Traffic Noise Model ("TNM") with the most current revision 3.2.¹⁸⁸ The DEIR provides no evidence to tie its absolute values to existing measured conditions. Mr. Bensing observes that the DEIR fails to include validation measurements to verify that the model is accurate. Caltrans acknowledges that a validated TNM model may fall within +/- 3 dBA of the measured result, which undermines attempts to use modeled-only results for absolute noise characterization of the ambient condition.¹⁸⁹

B03-47

In sum, the DEIR fails to provide a description, supported by substantial evidence, of the "real conditions on the ground" related to existing noise levels.¹⁹⁰

2. The DEIR's Construction Noise Threshold is Not Supported by Substantial Evidence

B03-48

The DEIR provides that construction noise impacts would be significant if they exceed 15 dBA above the exterior noise objectives outlined in the City's Noise Compatible Land Use Objectives.¹⁹¹ The exterior noise objective for residential land uses is 65 dBA, so a significant impact would be recognized at 80 dBA.¹⁹² This approach ignores that existing ambient noise levels at some sensitive receptors are far quieter than 65 dBA (ranging from 44.3 dBA Leq to approximately 75.4 dBA Leq).¹⁹³ The noise level at receptor ST2, a residential community, was measured at 49.3. The Project would generate noise impacts 33 dB greater than the existing noise measured at ST2.¹⁹⁴ The DEIR's failure to assess the significance of construction noise in relation to existing ambient noise levels fails to meet CEQA's requirements.

Appendix G of the CEQA Guidelines provides that the Project would cause a significant noise impact if it would result in "[g]eneration of a *substantial temporary or permanent increase in ambient noise* levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or applicable

¹⁸⁷ Bensing Comments, pg. 4.

¹⁸⁸ *Id.*

¹⁸⁹ *Id.*

¹⁹⁰ *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.

¹⁹¹ DEIR, pg. 3.11-16.

¹⁹² *Id.*

¹⁹³ DEIR, Appendix D, pg. 9.

¹⁹⁴ Bensing Comments, pg. 3.

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standards of other agencies.” Accordingly, courts have held that “the lead agency should consider both the increase in noise level and the absolute noise level associated with a project.”¹⁹⁵

**B03-48
(cont'd)**

The courts have held that reliance on a maximum noise level as the sole threshold of significance for noise impacts violates CEQA because it fails to consider whether the magnitude of changes in noise levels is significant.¹⁹⁶ In *Keep our Mountains Quiet v. County of Santa Clara*,¹⁹⁷ neighbors of a wedding venue sued over the County of Santa Clara’s failure to prepare an EIR for a proposed project to allow use permits for wedding and other party events at a residential property abutting an open space preserve. Neighbors and their noise expert contended that previous events at the facility had caused significant noise impacts that reverberated in neighbors’ homes and disrupted the use and enjoyment of their property.¹⁹⁸ Similar to the DEIR’s construction noise threshold in this case, the County’s EIR relied on the noise standards set forth in its noise ordinance as its thresholds for significant noise exposure from the project, deeming any increase to be insignificant so long as the absolute noise level did not exceed those standards.¹⁹⁹ The Court examined a long line of CEQA cases which have uniformly held that conformity with land use regulations is not conclusive of whether or not a project has significant noise impacts²⁰⁰ in holding that the County’s reliance on the project’s compliance with noise regulations did not constitute substantial evidence supporting the County’s finding of no significant impacts.²⁰¹

In *King and Gardiner Farms, LLC v. County of Kern*,²⁰² the Court of Appeal cited *Keep our Mountains Quiet* and decisions cited therein when it rejected the use of a single “absolute noise level” threshold of significance (construction and

¹⁹⁵ *Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714, 733; see *King and Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 894 (citing *Keep Our Mountains Quiet*).

¹⁹⁶ *King & Gardiner Farms, LLC*, 45 Cal.App.5th at 865.

¹⁹⁷ *Keep our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714.

¹⁹⁸ *Id.* at 724.

¹⁹⁹ *Id.* at 732.

²⁰⁰ *Id.*, citing *Citizens for Responsible & Open Government v. City of Grand Terrace* (2008) 160 Cal.App.4th 1323, 1338; *Oro Fino Gold Mining Corp. v. County of El Dorado* (1990) 225 Cal.App.3d 872, 881–882; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1416 (project’s effects can be significant even if “they are not greater than those deemed acceptable in a general plan”); *Environmental Planning & Information Council v. County of El Dorado* (1982) 131 Cal.App.3d 350, 354, (“CEQA nowhere calls for evaluation of the impacts of a proposed project on an existing general plan”).

²⁰¹ *Id.* at 732-734; see also *King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 893, as modified on denial of rehearing (Mar. 20, 2020).

²⁰² *King and Gardiner Farms, LLC, supra*, 45 Cal.App.5th 814.

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operational noise impacts were only deemed significant if they exceeded 65 dBA CNEL) on the grounds that the sole use of such a threshold fails to consider the magnitude or severity of increases in noise levels attributable to the project in different environments. The Court explained the lead agency failed to “refer to evidence showing why the magnitude of an increase was irrelevant in determining the significance of a change in noise.”²⁰³

**B03-48
(cont'd)**

Here, the DEIR’s construction noise threshold violates CEQA because it fails to consider the magnitude of increases in noise over ambient levels. But, as in *King and Gardiner Farms*, the DEIR fails to refer to substantial evidence showing why the magnitude of the increase over ambient levels is irrelevant. Per *Keep our Mountains Quiet*, conformity with land use regulations is not conclusive of whether or not a project has significant noise impacts.

3. The DEIR’s Operational Noise Threshold Is Not Supported By Substantial Evidence

B03-49

The DEIR states that, “a substantial increase in ambient noise levels associated with long-term operational activities would be defined as an increase of 3 dBA, or greater.”²⁰⁴ However, the DEIR’s analysis fails to analyze the Project’s impacts in reference to ambient noise levels. Instead, the DEIR analyzes whether impacts would exceed the City’s minimum exterior residential noise standard of 65 dBA and interior noise standards of 45 dBA.²⁰⁵ This analysis violates CEQA for the same reasons as discussed in the preceding section.

4. The DEIR Underestimates Significant Construction Noise and Vibration Impacts

B03-50

The DEIR’s noise and vibration impacts analysis contains flaws that render its findings unsupported by substantial evidence.

Mr. Bensing explains that the DEIR underestimates construction noise because it fails to consider the cumulative effect from simultaneous equipment operation.²⁰⁶ The DEIR finds that noise levels associated with the single loudest piece of construction equipment could reach up to 82 dBA Leq,1-hour at 50 feet.²⁰⁷ Conversely, the total noise generated from operation of the two loudest pieces of

²⁰³ *Id.* at 894.

²⁰⁴ DEIR, pg. 3.11-15, 16.

²⁰⁵ See DEIR, pg. 3.11-19.

²⁰⁶ Bensing Comments, pg. 3.

²⁰⁷ DEIR, Appendix D, pg. 41.

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equipment in any given hour would result in 85 dBA Leq, 1-hour at 50 feet, an increase of 36 dB above the existing noise measured at ST2.²⁰⁸ Mr. Bensing also demonstrates that this impact would also exceed the City's 80 dBA threshold.²⁰⁹ The DEIR thus fails to disclose the full magnitude of the Project's impacts. The DEIR must be revised to analyze and mitigate the combined effects of multiple pieces of equipment operating simultaneously.

**B03-50
(cont'd)**

Mr. Bensing also demonstrates that the DEIR underestimates construction noise and vibration impacts by failing to include impacts from pile driving. The DEIR claims that pile driving is not anticipated to be required, but fails to present substantial evidence supporting this assumption. Mr. Bensing explains that certain types of buildings proposed by the Project may require pile driving.²¹⁰ Thus, the DEIR should consider the impacts from pile driving.

B03-51

The DEIR must be revised and recirculated to fully disclose the Project's noise and vibration impacts.

5. The DEIR Underestimates Noise from Project Operations

B03-52

The DEIR underestimates operational noise from air conditioning and mechanical noise because the DEIR fails to consider combined noise from multiple units. The DEIR uses a reference level of 65 dBA Leq at 3 feet for the residential-use air conditioners, and a reference level of 88 dBA Leq at 3 feet for commercial units.²¹¹ Mr. Bensing explains that this erroneously implies that sensitive receptors will be exposed to a single unit from the entire Project, which includes up to 3,462 residential units and 750,000+ square feet of commercial development.²¹² The DEIR must be revised to disclose the combined impacts of the development proposed by the Project.

6. The DEIR Fails to Mitigate Significant Construction Noise Impacts

B03-53

The DEIR calculates that the Project's construction would generate noise levels in excess of its 80 dBA significance threshold.²¹³ The DEIR claims that impacts would be reduced to a less than significant level through imposition of MM-

²⁰⁸ *Id.*

²⁰⁹ *Id.*

²¹⁰ Bensing Comments, pg. 5.

²¹¹ DEIR, pg. 3.11-19.

²¹² Bensing Comments, pg. 3.

²¹³ DEIR, pg. 3.11-18.

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NOI-1, which lists measures to reduce construction noise.²¹⁴ However, the noise reductions the DEIR attributes to MM-NOI-1 are not supported by substantial evidence, and impacts remain potentially significant.

**B03-53
(cont'd)**

Mr. Bensing first explains that, due to the DEIR's inadequate assessment of baseline conditions, the City lacks substantial evidence to conclude that any reductions in noise from MM-NOI-1 would fully mitigate construction noise impacts.²¹⁵

B03-54

Second, the DEIR assumes that equipping all construction equipment with mufflers would result in a 10 dB reduction.²¹⁶ Mr. Bensing explains that the noise reference levels for construction equipment already assumes that mufflers would be equipped, as virtually all construction equipment was fit with mufflers by the 1990s.²¹⁷ The DEIR lacks substantial evidence to find that impacts would be reduced below the City's threshold.

To adequately mitigate construction noise, the DEIR must analyze the effectiveness and feasibility of requiring noise barriers between construction activities and sensitive receptors. The General Plan includes policies requiring use of noise barriers "whenever feasible" to reduce significant noise impacts.²¹⁸

B03-55

The DEIR acknowledges that construction of the PVSP could result in increased levels of annoyance to occupants of nearby structures.²¹⁹ Specifically, "predicted vibration levels at the nearest occupied structures located within 13 feet of onsite construction activities could potentially exceed the commonly applied criteria for the human annoyance of 0.2 in/sec ppv."²²⁰ The DEIR claims that this impact would be fully mitigated through implementation of MM-NOI-1, which

²¹⁴ *Id.*

²¹⁵ Bensing Comments, pg. 2.

²¹⁶ *Id.*; DEIR, Appendix D, pg. 41.

²¹⁷ *Id.*

²¹⁸ DEIR, Appendix D, pg. 14 ("Action 4.3.3(b): Whenever feasible, require the use of noise barriers (walls, berms, or a combination thereof) to reduce significant noise impacts. • Noise barriers must be massive enough to prevent significant noise transmission and high enough to shield the receiver from the noise source. • The barrier must be carefully constructed so that there are no cracks or openings. • Require landscaping treatment to be provided in conjunction with noise barriers to provide visual relief and to reduce aesthetic impacts.").

²¹⁹ DEIR, pg. 3.11-27.

²²⁰ DEIR, pg. 3.11-26, 27.

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would require construction equipment and material staging areas to be located at the furthest distance possible from nearby residential land uses.²²¹

**B03-55
(cont'd)**

The City lacks substantial evidence to find that MM-NOI-1 would fully mitigate impacts because it does not actually preclude construction activities within 13 feet of sensitive land uses.²²² Mr. Bensing explains that unless the DEIR can demonstrate that highest vibration-generating construction equipment will not be required within 13 feet of all nearby sensitive land uses, vibration impacts remain potentially significant.²²³

8. The DEIR Fails to Mitigate Significant Operational Noise Impacts

B03-56

The DEIR finds that the Project's operational, non-transportation noise impacts would be significant prior to mitigation.²²⁴ The DEIR claims that with the implementation of MM-NOI-2, impacts would be reduced to a less than significant level.²²⁵ MM-NOI-2 of the DEIR requires that an acoustical analysis be prepared for future commercial land use noise sources.²²⁶ The DEIR claims that noise-reduction measures can reduce operational noise by 5 dB.²²⁷

The DEIR's conclusion that operational noise impacts would be reduced to a less than significant level is not supported by substantial evidence. Even noise-reduction measures can reduce operational noise by 5 dB, there is inadequate documentation in the DEIR that this would be sufficient to reduce impacts to a less than significant level. Mr. Bensing notes that a much greater reduction in noise would be required to reduce nighttime impacts to a less than significant level.²²⁸

The DEIR must be revised and recirculated to analyze the feasibility of fully mitigating the Project's operational noise impacts, and to adopt all feasible mitigation. To begin with, the DEIR's MM-NOI-2 can be revised to include proposed language from the noise study. The noise study's proposed MM-NOI-2 provides:

B03-57

Air conditioning units for residential and non-residential land uses shall be located in areas shielded from direct line-of-sight of nearby noise-sensitive

²²¹ DEIR, pg. 3.11-27.

²²² DEIR, pg. 3.11-18.

²²³ Bensing Comments, pg. 4.

²²⁴ DEIR, pg. 3.11-20 – 3.11-22.

²²⁵ DEIR, pg. 3.11-22.

²²⁶ *Id.*

²²⁷ *Id.*

²²⁸ Bensing Comments, pg. 4.

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land uses. To the extent allowed per building code requirements, commercial-use air conditioning units should be located on building rooftop areas and shielded by a rooftop parapet. Rooftop parapets should be constructed to a minimum height of approximately 3 feet.²²⁹

**B03-57
(cont'd)**

G. The Project Fails to Provide Affordable Housing, In Conflict with General Plan Policies

B03-58

Under the CEQA Guidelines, an environmental document must discuss “any inconsistencies between the proposed project and applicable general plans, specific plans, and regional plans.”²³⁰ The DEIR fails to analyze inconsistencies with policies in the City’s 2021-2029 Housing Element that call for provision of affordable housing:

Policy H-1.1 Provide for adequate sites that will enable the production of 9,023 housing units through October 2029 to meet the demands of present and future residents, including an adequate number and range of new dwelling types affordable to extremely low-, very low-, low-, moderate-, and above moderate- income households.

Policy H-1.2 Encourage a mix of housing types are provided, including single- and multi-family housing within a variety of price ranges to provide a range of housing options for Lancaster residents.

Policy H-1.6 Encourage affordable mixed-use and multi-family residential housing developments on mixed-use zoned sites.²³¹

This Project is inconsistent with the policies above because although the Project proposes 3,462 residential units, none of the residential units are conditioned to be affordable units.²³² The Project is inconsistent with Policy H-1.1 because the Project proposes a zone change without providing affordable housing. Policy H-1.1 calls for provision of adequate sites to meet affordable housing demands, not just market-rate housing demands. Policy H-1.2 encourages a mix of housing types, but this Project would allow for exclusively market-rate housing. Policy H-1.6 encourages affordable mixed-use and multi-family residential housing

²²⁹ DEIR, Appendix D, pg. 22.

²³⁰ 14 Cal Code Regs §15125(d).

²³¹ Lancaster General Plan Housing Element, pg. H-16, available at <https://www.hcd.ca.gov/housing-elements/docs/lancaster-6th-adopted062422.pdf>.

²³² DEIR, pg. 3.12-5. For the same reason, the Project is also inconsistent with SCAG’s Regional Comprehensive Plan objective to foster affordable housing. DEIR, p. 3.14-9.

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developments on mixed-use-zoned sites, but this Project proposes development without affordable units on a mixed-use-zoned site. These Housing Element inconsistencies must be analyzed in a revised EIR.

**B03-58
(cont'd)**

II. 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 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

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