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December 9, 2025

VIA E-Mail, U.S. Mail, and Council File Management System
File Nos. 25-1198, 25-1198-S1

Chair Bob Blumenfield
Planning And Land Use Management Committee
c/o Patrice Lattimore
City Clerk
City of Los Angeles
200 North Spring Street
Los Angeles, CA 90012
clerk.plumcommittee@lacity.org

VIA E-Mail Only

Norali Martinez, City Planner
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Re: **Comments on PLUM Committee Agenda Item No. 1 and City Council**
Agenda Item No. 40: 1420 Coil Avenue Freezer Expansion Project
(CPC-2022-6859-GPA-HD-ZAD-WDI, ENV-2022-6860-ND)

Dear Chair Blumenfield, Honorable Councilmembers, Ms. Lattimore, and Ms. Martinez:

We write on behalf of Appellant **Coalition for Responsible Equitable Economic Development Los Angeles (“CREED LA”)** in support of CREED LA’s appeal (“Appeal”) of the 1420 Coil Avenue Freezer Expansion Project (“Project”) proposed by Konoike Pacific California, Inc. (“Applicant”), and the Project’s proposed General Plan Amendment (“GP Amendment”). 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 Los Angeles residents, **the Sheet Metal Workers**

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L7873-013acp

Local 105, International Brotherhood of Electrical Workers Local 11, Southern California Pipe Trades District Council 16, and District Council of Iron Workers of the State of California, and their members, their families, and other individuals who live and work in and around the City of Los Angeles and the Los Angeles region. CREED LA's Appeal will be considered by the City of Los Angeles ("City") Planning and Land Use Management ("PLUM") Committee under Agenda Item No. 1 at its December 9, 2025 meeting. The GP Amendment will be considered by the City Council under Agenda Item No. 40 at its December 10, 2025 meeting.

1 cont'd

CREED LA respectfully requests that the City Council uphold this Appeal, vacate the City Planning Commission's ("CPC") findings, recommendations, adoptions, and approvals with respect to the Project, and remand this matter to City staff with direction to prepare an environmental impact report ("EIR") that fully discloses, analyzes, and mitigates the Project's significant public health and noise impacts in compliance with the California Environmental Quality Act ("CEQA"). As set forth in the Appeal, the CPC abused its discretion and failed to proceed in the manner required by law by approving the Project in reliance on a deficient CEQA document and without substantial evidence to support approval findings.¹

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CREED LA and its experts, James J. Clark, Ph.D. and Ani Toncheva, reviewed the City's Appeal Report² and the Applicant's response to the Appeal.³ As demonstrated below, and in the attached expert comments,⁴ the responses do not resolve any of the issues raised in the Appeal. The responses merely restate prior legal and factual errors from the City's original analysis and fail to correct the

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¹ Code Civ. Proc. § 1094.5(b); *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515.

² Letter to Planning and Land Use Committee, City Council, City of Los Angeles from Connie Chauv, Senior Planner, Department of City Planning, City of Los Angeles re: Appeal of Case No. CPC-2022-6859-GPA-HD-ZAD-WDI, for Property Located at 1420 North Coil Avenue; CF 25-1198-S1 (Dec. 4, 2025) (hereinafter "Appeal Response").

³ Memorandum to Norali Martinez, City of Los Angeles from Christian Kirkian, Meridian Consultants re: Additional Information Related to Appeal of City Planning Commission Decisions for KPAC Coil Avenue Freezer Expansion Project (CPC-2022-6859-GPA-HD-ZAD-WDI, ENV-2022-6860-ND), Adams Broadwell Joseph & Cardozo letter dated October 9, 2025 (Dec. 2025) (hereinafter "Applicant Appeal Response").

⁴ **Attachment A**, Letter to Andrew J. Graf, Adams Broadwell Joseph & Cardozo from Ani Toncheva, Wilson Ihrig re: KPAC Coil Avenue Freezer Expansion Project, Wilmington, CA, Review and Comment on Staff Report (Dec. 8, 2025) (hereinafter "Toncheva PLUM Comments")

factual and legal deficiencies CREED LA identified in the Negative Declaration (“ND”).⁵

3 cont'd

Staff also continue to ignore substantial expert evidence supporting a fair argument of significant air quality, public health and noise impacts by incorrectly asserting that CREED LA’s evidence is insubstantial or that the “disagreement” between CREED LA’s expert and City staff weighs in favor of the City. Contrary to Staff’s assertions, under CEQA’s fair argument standard, the fact that the City’s expert disagrees with Appellants’ experts about methodology is irrelevant because the City must treat the effect as significant when presented with conflicting evidence.⁶ Moreover, CREED LA’s experts provide substantial evidence in the form of expert opinion supported by facts that health risk and noise impacts exceed relevant thresholds. Under CEQA’s fair argument standard, a negative declaration is improper, and an EIR must be prepared, “whenever substantial evidence supports a fair argument that a proposed project ‘may have a significant effect on the environment.’”⁷ These facts demonstrate that an EIR is required.

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With regard to health risk, the City sidestepped its legal obligation to analyze cumulative health impacts from exposure to the Project’s air pollutant emissions by relying on (1) inapplicable emissions thresholds for criteria pollutants (localized significance thresholds (“LSTs”)), and (2) an outdated 2003 White Paper which the South Coast Air Quality Management District (“SCAQMD”) has explained is no longer applicable and is in the process of updating.⁸ The Appeal explained that LSTs are not an appropriate threshold for evaluating toxic air contaminants (TACs”) because they do not measure air toxins. The Appeal further explained that, even if the City relies on the old 2003 SCAQMD TAC thresholds, the City did not consider other evidence—including Dr. Clark’s comments and the existence of many

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⁵ City of Los Angeles, Initial Study: KPAC Coil Avenue Freezer Expansion Project (Apr. 2025), available at <https://planning.lacity.gov/odocument/e1530a49-43ec-49de-9db4-95396a173b68/ENV-2022-6860.pdf>.

⁶ Pocket Protectors, 124 Cal.App.4th at 934-935, 938 (“opposing views are substantial evidence going the other way, which is insufficient to refute the claim of a fair argument.”)

⁷ Pub. Res. Code § 21151; 14 CCR § 15064(f); *Citizens for Responsible Equitable Env’tl Dev. v. City of Chula Vista* (“CREED”) (2011) 197 Cal.App.4th 327, 330–331; *Communities for a Better Env’t v. South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 319 (“CBE v. SCAQMD”).

⁸ See SCAQMD, CEQA Policy Development: Analyzing Cumulative Impacts from Air Toxics in CEQA Documents, November 6, 2024 Working Group, https://www.aqmd.gov/docs/default-source/ceqa/documents/wgm-6-20241106.pdf?sfvrsn=405a8561_13, pp. 4-5 (“Why We Need to Provide Additional Guidance...Our current policy recommends using the same significance thresholds for project-level and cumulative-level impacts, which may underestimate a project’s cumulative impact,” but “A project’s incremental effect on the environment, though individually limited, may be cumulatively considerable,: citing CEQA Guidelines Section 15064(h)).

other sources of pollution near the Project site—showing that the Project has a significant cumulative air quality impact. Under CEQA, “[c]ompliance with the threshold does not relieve a lead agency of the obligation to consider substantial evidence indicating that the project’s environmental effects may still be significant.”⁹ The extremely high background cancer risk at the Project site and the evidence provided by Dr. Clark demonstrating a significant, unmitigated cancer risks from exposure to harmful diesel particular matter (“DPM”) emissions during the Project’s construction and operation under SCAQMD’s current draft cumulative TAC thresholds constitute substantial evidence of significant health impacts that must be considered. The City’s decision to ignore this substantial evidence violated CEQA and jeopardizes the health of local residents and workers near the Project site.

5 cont'd

In the Appeal responses, neither the City nor the Applicant engage with the facts, data, or scientific data provide by Dr. Clark, or documentation from SCAQMD which supports the air district’s decision to revise its cumulative health risk guidance. Instead, the City and Applicant simply reiterate the ND’s unsupported conclusions that there is no significant health risk without acknowledging the evidence demonstrating the opposite. In doing so, the City violates the fair argument standard and fails to disclose or analyze the Project’s potential to exacerbate already elevated cancer risk. CEQA requires the City to consider evidence showing that a project may cause or contribute to significant health impacts. The City failed to do that in response to the Appeal.

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With regard to noise, the City continues to ignore substantial expert evidence from CREED LA’s noise consultant which demonstrated that construction noise levels will reach 82 dba, which exceeds applicable City noise thresholds, Ms. Toncheva. Ms. Toncheva also explained that the City’s reliance on noise mitigation (which it calls “environmental protection measures” (“EPMs”) to avoid CEQA compliance) would be ineffective to reduce noise levels below thresholds. The City erroneously dismisses Ms. Toncheva’s construction noise impact analysis, claiming it fails to incorporate site-specific conditions or mandatory EPMs. However, Ms. Toncheva employed the same methodology prescribed in the City’s own construction noise guidelines to identify significant noise levels. Moreover, the EPMs are not legally required because the Project application was submitted before the new zoning code became effective. And if EPMs were required, they would constitute mitigation measures which invalidate the ND and require the City, at a minimum, to prepare a mitigated negative declaration (“MND”) for the Project.

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⁹ 14 Cal. Code Regs. (“CEQA Guidelines”) § 15064(b)(2).

Ms. Toncheva’s opinion constitutes substantial evidence. CEQA therefore requires that the City assume construction noise impacts are potentially significant. Contrary evidence on factual questions – such as actual noise levels generated by construction equipment – cannot justify forgoing an EIR where it can be “fairly argued” that the Project may cause a significant environmental impact. In addition, the City incorrectly reports its own construction noise modeling results, which demonstrate a potentially significant impact.

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The CPC unlawfully approved the Project’s entitlements and adopted a fundamentally defective ND that ignores substantial evidence of significant noise and public health impacts in violation of the CEQA. Given these potentially significant, unmitigated impacts, the CPC lacked substantial evidence to support the required land use findings to approve the Project’s Zoning Administrator Determination.

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I. THE CITY COUNCIL SHOULD UPHOLD CREED LA’S APPEAL AND REQUIRE THE CITY TO COMPLY WITH CEQA

CREED LA’s Appeal demonstrates that the Project has significant, unmitigated air quality, public health and noise impacts. The Appeal responses impermissibly ignore this evidence and ask the City Council to uphold a legally inadequate ND that does not comply with CEQA.

Under CEQA, an EIR must be prepared whenever substantial evidence in the record supports a fair argument that a project may have significant environmental impacts that are not fully mitigated.¹⁰ This “fair argument” standard imposes a low threshold for requiring an EIR.¹¹ Here, substantial evidence supports a fair argument the project may have significant and unmitigated public health and noise impacts, requiring preparation of an EIR. The City Council and its PLUM committee should uphold the Appeal and require the City to comply with CEQA by preparing an EIR for the Project.

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¹⁰ CEQA Guidelines § 15064(f)(1).

¹¹ *Consolidated Irrig. Dist. v. City of Selma* (2012) 204 Cal.App.4th 187, 207; *Nelson v. County of Kern* (2010) 190 Cal.App.4th 252; *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 928; *Bowman v. City of Berkeley* (2004) 122 Cal.App.4th 572, 580; *Citizen Action to Serve All Students v. Thornley* (1990) 2222 Cal.App.3d 748, 754; *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 310.

A. The Appeal Responses Sidestep the City’s Legal Obligation to Analyze Cumulative Health Impacts by Relying on Inapplicable Emissions Thresholds and Ignoring Substantial Expert Evidence Demonstrating Significant, Unmitigated Public Health Impacts

1. Localized Significance Thresholds Are Not Appropriate for Determining Whether Cumulative Cancer Risks Are Potentially Significant

CREED LA’s Appeal explained that the ND incorrectly concluded that cumulative health impacts from exposure to DPM from construction equipment are less than significant because estimated particulate matter emissions do not exceed the SCAQMD’s LSTs.¹² The City and Applicant maintain that LSTs are an appropriate threshold for evaluating the significance of DPM impacts.¹³ However, this is incorrect.

LSTs were developed to assess localized air quality impacts specifically, ambient concentration levels of criteria pollutants rather than to evaluate chronic or acute health risks posed by TACs as DPM. By using LSTs as a proxy for cumulative health risks, the ND conflates two distinct analytical tools and bypasses the accepted health risk assessment methodology established by regulatory authorities. While mass emission thresholds for criteria pollutants may be designed to evaluate whether a project’s contribution to regional air quality degradation is cumulative considerable, they are not an appropriate tool for analyzing cumulative DPM impacts.

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2. The Responses Fail to Consider Substantial Evidence Demonstrating that Diesel Particulate Matter Emissions Are Potentially Significant Despite Compliance with Air District Thresholds

Dr. Clark’s analysis determined that the Project would generate a cancer risk of 2.27 in one million during construction more than double the one in one million threshold identified in workshops to update SCAQMD’s cumulative impact thresholds for TACs.¹⁴ The City and Applicant dismiss these findings by asserting that the Project’s emissions fall below the LSTs and SCAQMD’s current threshold of 10 in one million.¹⁵

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¹² ND at p. 26.

¹³ Appeal Response at p. 2; Applicant Appeal Response at p. 2.

¹⁴ Clark Supplemental Comments at pp. 3-4.

¹⁵ RTCs at p. 5; Appeal Response at p. 2; Applicant Appeal Response at pp. 2-3.

Under CEQA, compliance with a selected threshold of significance does not relieve the agency of its obligation to consider substantial evidence indicating that the project's environmental effects may still be significant.¹⁶ Here, even if the City relies on SCAQMD's existing threshold, the evidence of extremely high background cancer risk and exceedance of the draft thresholds constitutes substantial evidence that must be considered. The City's failure to address this evidence violates CEQA.

Dr. Clark highlighted that the draft cumulative impact guidance is grounded in an "empirically validated and regionally specific assessment of background air toxics" through its reliance on SCAQMD's Multiple Air Toxics Exposure Study ("MATES") V.¹⁷ In fact, in that study, SCAQMD concludes that the largest contributor to cancer risk from air pollution is DPM emissions, contributing approximately 50% of the cancer risk.¹⁸ The MATES V data shows that "the zip code where the proposed Project is located already experiences an air toxic cancer risk of 664 in 1 million, a level 98% higher than the average for all other zip codes in the South Coast Air Basin. Notably, over 66% of that risk is attributable to DPM."¹⁹

12 cont'd

Dr. Clark's modeling demonstrated that Project would increase the cumulative cancer risk for nearby residential receptors by an additional 2.27 in 1 million, further exacerbating these impacts.²⁰ He concluded: "While 2.27 in 1 million may appear numerically small in isolation, it must be evaluated in the broader context of the existing (and future) pollution. In this context, the additional 2.27 in 1 million cannot be dismissed as negligible. Rather, it represents a statistically and ethically meaningful compounding of harm in a community that is already demonstrably overburdened by toxic emissions."²¹

Neither the CPC nor the Appeal Responses meaningfully considered this evidence. Nor do the responses engage with the facts, data, or scientific data underlying the draft health-protective guidelines which SCAQMD is developing to evaluate DPM exposure. Rather than responding to the evidence presented, the responses simply reiterate the ND's unsupported conclusions without

¹⁶ CEQA Guidelines § 15064(b)(2).

¹⁷ Clark Supplemental Comments at p. 2.

¹⁸ South Coast Air Quality Management District, Multiple Air Toxics Exposure Study in the South Coast AQMD: Final Report (Aug. 2021) pp. ES-6, 2-63.

¹⁹ Clark Supplemental Comments at p. 2.

²⁰ *Ibid.*

²¹ *Ibid.*

acknowledging the underlying health-risk context.²² In doing so, the City fails to disclose or analyze the Project's potential to exacerbate already elevated cancer risk, contrary to CEQA's requirement to consider evidence showing that a project may cause or contribute to significant environmental health impacts.²³

12 cont'd

3. *The City Fails to Meaningfully Address Operational Air Quality and Public Health Impacts*

CREED LA's Appeal explained that the ND underestimated operational emissions because it excluded key sources, including transportation refrigeration units ("TRUs").²⁴ In response, the City acknowledges that TRU activity would increase by up to 40 trucks per day, but asserts – without evidentiary support – that this increase is not expected to materially affect localized DPM emissions.²⁵ CREED LA's Appeal and the comments of Dr. Clark already documented that the City's attempt to account for TRU-related emissions relying on CalEEMod data and LSTs as a proxy is inadequate and misleading.²⁶ The City's failure to correct these errors is a violation of CEQA which resulted in unsupported significance findings.

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First, CalEEMod does not provide an adequate assessment of DPM exposure or related cancer risk for the purpose of evaluating health impacts under CEQA. CalEEMod is a screening-level emissions estimation tool primarily designed to quantify criteria air pollutants and greenhouse gas emissions.²⁷ It does not calculate localized concentrations of TACs, does not model dispersion of DPM from construction equipment, and does not estimate incremental cancer risk to nearby sensitive receptors.²⁸ As a result, CalEEMod output alone cannot disclose or evaluate potential health effects associated with DPM. Reliance solely on CalEEMod therefore understates the magnitude of DPM exposure and fails to identify potentially significant health impacts.

²² Appeal Response at p. 2.

²³ CEQA Guidelines § 15064(b)(2).

²⁴ CREED LA ND Comments at pp. 9-11.

²⁵ RTCs at pp. 6-8; Appeal Response at pp. 2-3; Applicant Appeal Response at pp. 2-3.

²⁶ *Id.* at pp. 6-7.

²⁷ Letter to Nathan Perez, City of Perris from Sam Want, South Coast Air Quality Management District re; Draft Environmental Impact Report (Draft DEIR) for the Perris Airport Logistics Center Project (Proposed Project) (SCH No: 2023100540) (July 25, 2025) p. 5 (hereinafter "SCAQMD Perris Logistics Center DEIR Comments"), available at https://www.aqmd.gov/docs/default-source/ceqa/comment-letters/2025/july-2025/rvc250617-06.pdf?sfvrsn=c7cb6e7e_3.

²⁸ *Ibid.*

Moreover, the City's reliance on the California Air Resources Board regulations is also misplaced.²⁹ While TRUs are subject to regulatory requirements intended to reduce DPM emissions, these measures do not eliminate emissions or associated health risks.³⁰ TRUs continues to pose a significant health risk, particularly in communities already burdened by air pollution.³¹ Without a health risk analysis, the ND remains incomplete and does not satisfy CEQA's requirement to disclose and evaluate potential significant health impacts.

13 cont'd

B. The Appeal Responses Erroneously Reject Substantial Evidence Supporting a Fair Argument that the Project May Result in Significant Unmitigated Noise Impacts

1. Ms. Toncheva's Expert Opinion Constitutes Substantial Evidence

CREED LA's Appeal explained that the ND incorrectly concluded that on-site construction noise impacts will be less than significant because construction activities would not exceed the City's absolute noise threshold of 80 dbA during any phase.³² However, Ms. Toncheva's analysis demonstrated that demolition-phase activities could generate noise levels up to approximately 82 dbA, exceeding the City's selected threshold.³³ Rather than address this exceedance, the City and Applicant continue to assert that Ms. Toncheva's analysis does not constitute substantial evidence because it purportedly fails to incorporate existing site conditions and EPMs.³⁴ This contention is unfounded.

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"Substantial evidence" includes fact-based expert opinion supported by reasoned analysis.³⁵ Courts have consistently held that testimony by a qualified expert which is grounded in recognized methodology and supported by relevant data qualifies as substantial evidence, even where conflicting opinions exists.³⁶ Under the fair argument standard, CEQA does not permit an agency to dismiss an expert opinion merely because the agency disagrees with the conclusion or prefers another

²⁹ Clark Supplemental Comments at p. 4.

³⁰ *Ibid.*

³¹ SCAQMD Perris Logistics Center DEIR Comments at p. 5.

³² ND at pp. 77-78.

³³ Toncheva PLUM Comments at p. 2.

³⁴ RTCs at pp. 8-11; Appeal Response at p. 4; Applicant Appeal Response at p. 4.

³⁵ Pub. Res. Code § 21080(e), 21082.2(c); CEQA Guidelines § 15064(f)(5), 15384.

³⁶ *Rominger V. County of Colusa* (2014) 229 Cal.App.4th 690 overruled in part on other grounds *Union of Med. Marijuana Patients, Inc. v. City of San Diego* (2019) 7 Cal.5th 1171; *City of Carmel-by-the-Sea v. Board of Supervisors* (1986) 183 Cal.App.3d 229, 249; *Brentwood Ass'n for No Drilling, Inc. v. City of Los Angeles* (1982) 134 Cal.App.3d 491, 504.

interpretation of the evidence.³⁷ Instead, the agency must demonstrate that the opinion is speculative, unsupported, or not credible.³⁸ The City's responses fail to do so.

First, Ms. Toncheva employed the precise methodology prescribed in the City's own construction noise guidelines.³⁹ Those guidelines require construction noise evaluation based on (1) the types of construction equipment anticipated for the project, (2) published noise levels for that equipment, and (3) standard point-source noise-distance attenuation factors.⁴⁰ Ms. Toncheva's report did exactly that. It identified the specific equipment expected during construction, applies recognized noise reference levels, and calculates the construction noise using the standard attenuation methodology that the City itself endorses.⁴¹ The City cannot disregard Ms. Toncheva's analysis that applied the agency's own methodology merely because the results are unfavorable or inconvenient. Because Ms. Toncheva relied on the City-adopted standards and presents here calculations transparently, her calculations constitute substantial evidence as a matter of law.

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Second, the City's assertion that Ms. Toncheva's opinion is inadequate because it did not incorporate EPMs rests on a fundamental misunderstanding of the applicability of those requirements. Under the City's newly adopted zoning code and implementation guidelines, the EPMs apply only to projects for which an entitlement application was submitted after January 1, 2025, the effective date of the new zoning code.⁴² This Project's application was submitted on September 22, 2022, which was before the new zoning code's effective date and is therefore subject to the original zoning code.⁴³ This means the EPMs cannot be treated as part of the Project. Because Ms. Toncheva correctly evaluated the project under the standards in effect for this application, the City's claim that she should have incorporated the

³⁷ *Ibid.*

³⁸ Pub. Res. Code § 21080(e), 21082.2(c); CEQA Guidelines § 15064(f)(5), 15384.

³⁹ Toncheva PLUM Comments at p. 2; see City of Los Angeles, Construction Noise and Vibration: Updates to Thresholds and Methodology (Aug. 2024) attach. 3, available at <https://planning.lacity.gov/odocument/fba26ae5-ca95-48c3-aace-ae3bf0cb43b1/Construction%20Noise%20and%20Vibration%20-%20Proposed%20Updates%20to%20Thresholds%20and%20Methodology%20&%20Attachments.pdf>.

⁴⁰ *Ibid.*

⁴¹ Toncheva PLUM Comments at p. 2.

⁴² City of Los Angeles, Chapter 1A: Environmental Protection Measures Handbook (Feb. 2025) p. 6 (hereinafter "EPM Handbook"), available at [https://planning.lacity.gov/odocument/fc2ad261-3ad5-40a7-bf12-120ba4ad9064/Chapter_1A-EPM_Handbook_\(February_2025\).pdf](https://planning.lacity.gov/odocument/fc2ad261-3ad5-40a7-bf12-120ba4ad9064/Chapter_1A-EPM_Handbook_(February_2025).pdf).

⁴³ See Appeal Response, attach. 1 at p. 1, fn. 1 ("The case was filed on September 22, 2022, prior to the effective date of the New Zoning Code (Chapter 1A – Process and Procedures). Therefore, the case is vested to and subject to the Original Zoning Code.").

EPMs into her analysis is unsupported. Moreover, if the City is relying on EPM noise reduction measures to reduce construction noise levels below the City's noise threshold, as the Appeal Response asserts, those measures would constitute mitigation which would require the City to prepare an MND or EIR for the Project anyway.⁴⁴

Because Ms. Toncheva's expert opinion constitutes substantial evidence that construction noise may exceed the City's 80 dBA significant threshold, CEQA Guidelines § 15064(g) applies. In marginal cases, when it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, and when experts disagree over the significance of an impact, the lead agency must treat the effect as significant and prepare an EIR.⁴⁵ This provision applies after the lead agency has evaluated the record under CEQA Guidelines § 15064(f) to determine whether substantial evidence exists that the project may have a significant environmental impact.

Here, once the City evaluates the evidence pursuant to § 15064(f), the record plainly contains substantial evidence (i.e., Ms. Toncheva's calculations showing demolition noise could reach 82 dBA at the nearest single-family home) that the Project may exceed the City's significance threshold. Because that analysis contradicts the ND's conclusion that noise levels would remain below 80 dBA, the record reflects a disagreement among qualified experts regarding both the likelihood and magnitude of the noise impact.

Under § 15064(g), such expert disagreement requires the City to assume the impact may be significant.⁴⁶ Contrary evidence on factual questions – such as actual noise levels generated by construction equipment – cannot justify forgoing an EIR where it can be “fairly argued” that the Project may cause a significant environmental impact.⁴⁷ Accordingly, because substantial evidence and expert disagreement exist in the record, CEQA mandates that the City prepare an EIR rather than rely on a negative declaration.

⁴⁴ PRC § 21064.5; CEQA Guidelines, § 15064(f)(2). *Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 650, 656.

⁴⁵ CEQA Guidelines § 15064(g).

⁴⁶ *City of Carmel-by-the-Sea v. Board of Supervisors* (1986) Cal.App.3d 229, 249; see also *Clews Land & Livestock v. City of San Diego* (2017) 19 Cal.App.5th 161, 192.

⁴⁷ *Brentwood Ass'n for No Drilling, Inc. v. City of Los Angeles* (1982) 134 Cal.App.3d 491, 503; *Friends of "B" St. v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002.

2. *The ND's Description of Construction Noise Is Inaccurate*

The ND relies on Table 4.13-1 purporting to show maximum construction noise estimates at nearby single-family homes.⁴⁸ However, this table is merely a replication of Table 3 contained in Appendix F, and that appendix expressly references underlying construction noise worksheets as the source of the data.⁴⁹ Ms. Toncheva found that those worksheets reveal that the numerical estimates they contain are inconsistent with the figures presented in both the appendix table and the ND.⁵⁰ In fact, the worksheets report higher construction noise levels than those disclosed in the ND.⁵¹ For example, the worksheets demonstrate that maximum construction noise at the nearest single-family residence would reach 79.6 dBA.⁵²

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Despite these clear discrepancies, the City has neither acknowledged nor corrected these errors. Because the ND presents reduced noise estimates that do not match the underlying technical data, its analysis is neither accurate nor supported by substantial evidence.⁵³ The City therefore cannot rely on the ND's noise estimates to demonstrate that construction impacts are less than significant.

3. *The City's Own Noise Modeling Demonstrates a Potentially Significant Impact*

As discussed in Section IIB.2, the construction modeling prepared for the Project reports a maximum noise level of 79.6 dBA – just 0.4 dBA below the applicable 80 dBA significance threshold. However, both federal and state guidance emphasize that reporting noise levels to the tenth of a decibel may imply a false degree of accuracy and precision, and therefore model results should be rounded prior to comparison with applicable criteria.⁵⁴ When properly rounded in

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⁴⁸ ND at p. 78.

⁴⁹ ND, appen. F at p. 24.

⁵⁰ Toncheva Plum Comments at p. 1.

⁵¹ *Ibid.*

⁵² *Ibid.*

⁵³ Pub. Res. Code § 21082.2(c) (“evidence which is clearly inaccurate or erroneous ... is not substantial evidence”); CEQA Guidelines § 15064(f)(5).

⁵⁴ Toncheva PLUM Comments at pp. 1-2; Caltrans, Traffic Noise Analysis Protocol: For New Highway Construction, Reconstruction, and Retrofit Barrier Projects (Apr. 2020), appen. E at p. E-1, available at <https://dot.ca.gov/-/media/dot-media/programs/environmental-analysis/documents/env/traffic-noise-protocol-april-2020-a11y.pdf>; U.S. Department of Transportation, Highway Traffic Noise: Analysis and Abatement Guide (Dec. 2011) pp. 54-55, available at https://www.fhwa.dot.gov/environment/noise/regulations_and_guidance/analysis_and_abatement_guide/revguidance.pdf.

accordance with this guidance, the modeled level becomes 80 dBA and is therefore equivalent to the applicable absolute threshold.⁵⁵

Thresholds of significance are not rigid standards that automatically determine the significance of an impact; rather, they serve as a guideline for agencies to make informed decisions.⁵⁶ Compliance with a threshold does not relieve the agency of its independent obligation to consider substantial evidence indicating the project's environmental effects may nevertheless be significant.⁵⁷

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Because the City's own modeling shows that construction noise meets the selected threshold, it is at least potentially significant. Moreover, Ms. Toncheva's analysis prepared in accordance with the City's own guidelines demonstrates that construction noise would exceed the threshold,⁵⁸ further confirming a significant construction noise impact.

4. *Environmental Protection Measures Are Unenforceable Because the Application Vested Before the Effective Date of the New Zoning Code*

The City and Applicant claims that the EPMs are enforceable for this Project is incorrect and unsupported by the record.⁵⁹ The ND does not mention EPMs at all. The only references to EPMs appear in the noise study and the City's responses to comments.⁶⁰ Even there, the noise study does not assert that the EPMs apply to the project.⁶¹ Instead, it acknowledges that the EPMs were incorporated into the newly adopted zoning code and could be imposed as conditions of approval.⁶² That conditional phrasing reflects the correct legal framework.

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In contrast, during the CPC hearing and now in this appeal,⁶³ the City and Applicant have shifted their positions and contends that the EPMs are already enforceable. This is factually and legally incorrect. The EPMs were adopted pursuant to the new zoning code, and by their terms, apply only to projects subject

⁵⁵ Toncheva PLUM Comments at p. 2.

⁵⁶ CEQA Guidelines § 15064(b)(2).

⁵⁷ *Ibid.*

⁵⁸ Toncheva PLUM Comments at p. 2.

⁵⁹ Appeal Response at p. 4; Applicant Appeal Response at pp. 3-4.

⁶⁰ ND, appen F. at pp. 17-19; RTCs at pp. 10-13; Appeal Response at p. 4; Applicant Appeal Response at pp. 3-4.

⁶¹ ND, appen. F. at pp. 17-19.

⁶² *Ibid.*

⁶³ RTCs at p. 10; Appeal Response at p. 4; Applicant Appeal Response at pp. 3-4.

to the new zoning code.⁶⁴ Section 1.4.4 of the new zoning code provides that permit applications submitted before its effective date could continue using the zoning that was in effect at the time of the application.⁶⁵

This project was submitted under, and remains governed by, the prior zoning code.⁶⁶ Because the project is not subject to the new zoning code, the EPMs cannot be imposed through regulatory compliance and are not enforceable. As a result, the EPMs cannot be considered as project design features, because such features must be embedded in, and enforceable through, existing regulatory requirements. Nor can be treated as mitigation measures, because they were not disclosed or analyzed in the ND,⁶⁷ nor were they adopted or made enforceable as conditions of approval. Because the City now relies on EPMs to reduce or avoid potentially significant noise impacts, the City cannot adopt a negative declaration and, at a minimum, must prepare a MND.⁶⁸

17 cont'd

CEQA does not permit an agency to rely on undisclosed, unenforceable measures to justify a less than significant finding.⁶⁹ Accordingly, the City's reliance on EPMs to demonstrate compliance with noise thresholds is improper and unsupported by substantial evidence.

II. THE CPC'S APPROVAL FINDINGS WERE UNSUPPORTED

The CPC recommended that the City approve the General Plan Amendment, and approved a Zone Change, a Zoning Administrator Determination, and a Waiver of Dedication and Improvements. CREED LA's Appeal challenges the Zoning

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⁶⁴ EPM Guidelines at p. 6.

⁶⁵ Zoning Code (Chapter 1A) § 1.4.4.

⁶⁶ Appeal Response, attach. 1 at p. 1, fn. 1 ("This case was filed on September 22, 2022, prior to the effective date of the New Zoning Code (Chapter 1A – Process and Procedures). Therefore, the case is vested and subject to the Original Zoning Code.").

⁶⁷ See *Save Our Capital! V. Department of Gen. Servs.* (2023) 87 Cal.App.5th 655, 696 (agency could not rely on compliance with LEED and CalGreen building standards to mitigate light and glare impacts in absence of project-specific analysis of impacts and effects of compliance).

⁶⁸ Pub. Res. Code § 21064.5; CEQA Guidelines § 15064(f)(2); see *Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 650, 656. (EIR approved by CalTrans contained several measures "[t]o help minimize potential stress on the redwood trees" during construction of a highway. Although those measures were clearly separate mitigation, the project proponents considered them "part of the project," and the EIR concluded that because of the planned implementation of those measures, no significant impacts were expected. However, the court found that because the EIR had "compress[ed] the analysis of impacts and mitigation measures into a single issue, the EIR disregard[ed] the requirements of CEQA.").

⁶⁹ Pub. Res. Code § 21081.6(b); CEQA Guidelines § 15126.4(a)(2).

Administrator's Determination because the CPC lacked substantial evidence to support the required findings due to significant, unmitigated public health and environmental impacts.

The CPC determined that the Project substantially conforms to the purposes, intent, and provision of the General Plan, applicable Community Plan, and any Specific Plan; is consistent with public necessity, convenience, general welfare, and good zoning practice, and that its features such as building height, size, and operations are compatible with the surrounding development and will not adversely affect public health, welfare, or safety.⁷⁰ Additionally, the CPC found that the Project enhances the built environment or provides a beneficial service, will not degrade adjacent properties or public welfare, and is compatible with the scale and character of the neighborhood.⁷¹ Given the Project's significant, unmitigated public health impacts, including those described in Section I,⁷² the City lacked substantial evidence to support these findings.

18 cont'd

The Project's adverse effects on air quality, noise, and other environmental factors would directly conflict with key General Plan and the Wilmington Harbor City Community Plan policies aimed at protecting public health and welfare including, but not limited to, Air Quality Element Policy 1.3.1, Noise Element Policy 2.2, P8, and P11, and Community Plan Policy 3-1.4.⁷³ In addition, construction of the warehouse expansion would degrade the adjacent properties by exacerbating existing air quality and noise conditions for an already overburdened community.

The CPC's approval of the Zoning Administrator Determination is inconsistent with the General Plan and applicable community plan and lacked substantial evidence to support the required findings. The City Council should vacate the Zoning Administrator Determination and direct the City to prepare an EIR that fully discloses, analyzes, and mitigates the Project's significant public health and noise impacts before reconsidering the Project's land use entitlements or

⁷⁰ Los Angeles Municipal Code ("LAMC") § 12.24.X.22(a).

⁷¹ *Ibid.*

⁷² See generally Clark Supplemental Comments (air quality and public health impacts); Toncheva PLUM Comments (noise impacts).

⁷³ City of Los Angeles, Air Quality Element (2003), available at https://planning.lacity.gov/odocument/Off9a9b0-0adf-49b4-8e07-0c16f6ea70bc/Air_Quality_Element.pdf; City of Los Angeles, Noise Element (1998), available at https://planning.lacity.gov/odocument/b49a8631-19b2-4477-8c7f-08b48093cddd/Noise_Element.pdf; City of Los Angeles, Wilmington-Harbor City Community Plan (2016), available at https://planning.lacity.gov/odocument/1f8e8e13-5c84-42cd-913e-5fc659a4241a/Wilmington-Harbor_City_Community_Plan.pdf.

proposed General Plan amendment. Only then can the City's findings be properly supported.

18 cont'd

III. CONCLUSION

CREED LA urges the City Council to uphold this Appeal, vacate the CPC's approvals, and remand this matter to City staff with directions to prepare an EIR that fully discloses, analyzes, and mitigates all the Project's environmental impacts in compliance with CEQA.

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Sincerely,



Andrew J. Graf

Attachments
AJG:acp