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December 8, 2025

VIA EMAIL AND OVERNIGHT MAIL

Kyle Winston, City Planner
City of Los Angeles
Department of City Planning
200 North Spring Street, Room 721
Los Angeles, CA 90012
Email: kyle.winston@lacity.org

Re: Preliminary Comments on the Initial Study/Mitigated Negative Declaration for the Stocker Street Creative Project (SCH No. 2025110100; Case Nos. ENV-2024-326-MND and CPC-2024-325-CU-MCUP-CUX-SPE-SPP-DRB-SPR-WDD):

Dear Mr. Winston:

We are writing on behalf of **Coalition for Responsible Equitable Economic Development Los Angeles ("CREED LA")** to provide preliminary comments on the Initial Study/Mitigated Negative Declaration ("ISMND") prepared by the City of Los Angeles ("City") for the Stocker Street Creative Project (SCH No. 2025110100; Case Nos. ENV-2024-326-MND and CPC-2024-325-CU-MCUP-CUX-SPE-SPP-DRB-SPR-WDD) ("Project"), proposed by 3731-41 Stocker Opportunity LLC & 3751-3761 Stocker Traditional LLC ("Applicant").

The Project consists of the demolition of five office buildings totaling approximately 123,354 square feet ("SF") and the construction of a campus for studio and sound stage production, totaling approximately 256,758 SF, plus a parking garage (122,358-square-foot open parking garage with 344 parking stalls).¹ The campus would consist of six new buildings, which will include sound stages, production support facilities, offices, retail use, an approximately 16,500 SF indoor/outdoor restaurant, 31,000 SF open space event area, security office and mill shop.² The Project site is located at 3701-3761 Stocker Street (Assessor Parcel Numbers 5032-022-018, 5032-022-017, 5032-022-005, 5032-022-004, and 5032-022-

¹ MND, p. 1.

² MND, p. 1.

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003) in the West Adams-Baldwin Hills-Leimert Community Plan Area of the City of Los Angeles, California.³

CREED LA reviewed the IS/MND with the assistance of air quality expert James Clark, Ph.D.⁴ The IS/MND is incomplete and fails to meet CEQA's basic requirements. For example, the IS/MND fails to describe existing conditions related to hazardous materials at the Project site, including existing soil and building conditions. The IS/MND does not include a Phase I or II Environmental Site Assessment, industry-standard reports for detecting hazardous materials on the Project site. Omitting this analysis results in an unsupported conclusion that the Project site contains no hazardous conditions and would have no significant hazardous materials impacts from construction and operation. If undisclosed contamination exists, it may place construction workers, neighbors, and future tenants at risk. The IS/MND also fails to include an analysis of health risks to nearby sensitive receptors from exposure to toxic air contaminants ("TACs") during construction activities. The IS/MND fails to quantify the Project's energy consumption, disclose energy-consuming activities that would result from the proposed studio production uses, or analyze concrete energy-reducing measures.

Based upon our review of the IS/MND and supporting documentation, it is also clear that substantial evidence supports a fair argument that the Project would have potentially significant air quality, public health, energy, noise, and public utilities impacts that are not adequately mitigated by the mitigation proposed in the IS/MND. Dr. Clark prepared a health risk analysis, using data and assumptions from the IS/MND's air study, which shows that Project construction emissions would result in an incremental cancer risk of 13.4 in one million, in excess of the South Coast Air Quality Management District's ("SCAQMD") cancer risk threshold of 10/million.⁵ Further, the air quality analysis drastically underestimates the Project's operational consumption of energy: the IS/MND analyzes the Project as an office project, whereas studio and sound stage production is much more energy-intensive. The Project's energy consumption and emissions of criteria air pollutants and greenhouse gases ("GHGs") are potentially significant. The City cannot approve the Project until the errors in the IS/MND are remedied by preparing an environmental impact report ("EIR") which fully discloses and mitigates the Project's potentially significant impacts.

³ MND, p. 7.

⁴ Dr. Clark's comments and curricula vitae and are attached hereto as **Exhibit A** ("Clark Comments").

⁵ Clark Comments, pg. 6.

We reserve the right to supplement these comments at later proceedings and hearings related to the Project.⁶

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 Los Angeles residents, the Sheet Metal Workers Local 105, International Brotherhood of Electrical Workers Local 11, Southern California Pipe Trades District Council 16, and District Council of Iron Workers of the State of California, and their members, their families, and other individuals who live and work in and around the City of Los Angeles and the Los Angeles region.

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

⁶ Gov. Code § 65009(b); PRC § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield ("Bakersfield")* (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.

II. THE CITY MUST PREPARE AN ENVIRONMENTAL IMPACT REPORT TO COMPLY WITH CEQA

CEQA requires that lead agencies analyze any project with potentially significant environmental impacts in an EIR.⁷ “Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR protects not only the environment, but also informed self-government.”⁸ The EIR has been described as “an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.”⁹

CEQA’s purpose and goals must be met through the preparation of an EIR, except in certain limited circumstances.¹⁰ CEQA contains a strong presumption in favor of requiring a lead agency to prepare an EIR. This presumption is reflected in the “fair argument” standard. Under that standard, a lead agency “shall” prepare an EIR whenever substantial evidence in the whole record before the agency supports a fair argument that a project may have a significant effect on the environment.¹¹

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

- (1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review *would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur*, and
- (2) there is *no substantial evidence* in light of the whole record before the public agency that the project, as revised, *may* have a significant effect on the environment.¹²

⁷ See Pub. Resources Code, § 21000; CEQA Guidelines, § 15002.

⁸ *Citizens of Goleta Valley v. Bd. of Supervisors* (“Goleta Valley”) (1990) 52 Cal.3d 553, 564, internal citations omitted.

⁹ *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

¹⁰ See Pub. Resources Code, § 21100

¹¹ Pub. Resources Code, §§ 21080, subd. (d), 21082.2, subd. (d); CEQA Guidelines, §§ 15002, subd. (k)(3), 15064, subds. (f)(1), (h)(1); *Laurel Heights Improvement Assn. v. Regents of the Univ. of Cal.* (“*Laurel Heights II*”) (1993) 6 Cal.4th 1112, 1123; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 82; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-151; *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (“*Quail Botanica*”) (1994) 29 Cal.App.4th 1597, 1601-1602.

¹² Pub. Resources Code, § 21064.5 (emphasis added).

Courts have held that if “no EIR has been prepared for a nonexempt project, but substantial evidence in the record supports a fair argument that the project may result in significant adverse impacts, the proper remedy is to order preparation of an EIR.”¹³ The fair argument standard creates a “low threshold” favoring environmental review through an EIR, rather than through issuance of a negative declaration.¹⁴ An agency’s decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.¹⁵

“Substantial evidence” required to support a fair argument is defined as “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.”¹⁶ According to the CEQA Guidelines, when determining whether an EIR is required, the lead agency is required to apply the principles set forth in Section 15064, subdivision (f):

[I]n marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the lead agency shall be guided by the following principle: If there is disagreement among expert opinion supported by facts over the significance of an effect on the environment, the Lead Agency shall treat the effect as significant and shall prepare an EIR.¹⁷

Furthermore, CEQA documents, including EIRs and MNDs, must mitigate significant impacts through measures that are “fully enforceable through permit conditions, agreements, or other legally binding instruments.”¹⁸ Deferring formulation of mitigation measures to post-approval studies is generally impermissible.¹⁹ Mitigation measures adopted after Project approval deny the

¹³ See, e.g., *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 319-320.

¹⁴ *Citizens Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 754

¹⁵ *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th, 1307, 1318; see also *Friends of B Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002 (“*Friends of B Street*”) (“If there was substantial evidence that the proposed project might have a significant environmental impact, evidence to the contrary is not sufficient to support a decision to dispense with preparation of an EIR and adopt a negative declaration, because it could be ‘fairly argued’ that the project might have a significant environmental impact”).

¹⁶ CEQA Guidelines, § 15384, subd. (a).

¹⁷ Pub. Resources Code, § 21064.5.

¹⁸ CEQA Guidelines, § 15126.4, subd. (a)(2).

¹⁹ *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 308-309; Pub. Resources Code, § 21061.

public the opportunity to comment on the Project as modified to mitigate impacts.²⁰ If identification of specific mitigation measures is impractical until a later stage in the Project, specific performance criteria must be articulated and further approvals must be made contingent upon meeting these performance criteria.²¹ Courts have held that simply requiring a project applicant to obtain a future report and then comply with the report's recommendations is insufficient to meet the standard for properly deferred mitigation.²²

With respect to this Project, the IS/MND fails to satisfy the basic purposes of CEQA. The IS/MND fails to adequately disclose, investigate, and analyze the Project's potentially significant impacts, and fails to provide substantial evidence to conclude that impacts will be mitigated to a less than significant level. Because the IS/MND lacks basic information regarding the Project's potentially significant impacts, the IS/MND's conclusion that the Project will have a less than significant impact on the environment is unsupported.²³ Moreover, substantial evidence shows that the Project may result in potentially significant impacts that are not reduced to less than significant levels with the mitigation measures included in the IS/MND. Therefore, a fair argument can be made that the Project may cause significant impacts requiring the preparation of an EIR.

A. The IS/MND Fails to Disclose and Mitigate Significant Health Risk Impacts

1. The IS/MND Fails to Analyze Health Risks from the Project's Construction and Operational Emissions

Project construction and operation would generate DPM, a type of TAC.²⁴ DPM would be emitted during construction by heavy equipment and diesel trucks, and likely during operations by a diesel backup generator or other diesel-fueled stationary equipment.²⁵ DPM has been linked to a range of serious health problems including an increase in respiratory disease, lung damage, cancer, and premature death. The Project's emissions of DPM would impact sensitive receptors near the

²⁰ *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1393; *Quail Botanical*, *supra*, 29 Cal.App.4th at pg. 1604, fn. 5.

²¹ *Id.*

²² *Id.*

²³ Pub. Resources Code, § 21064.5.

²⁴ SCAQMD, Classification of Diesel PM as a Carcinogen, <https://www.aqmd.gov/home/rules-compliance/compliance/toxic-hot-spots-ab-2588/iws-facilities/dice/dice-b2>; OEHHA, Health Effects of Diesel Exhaust (May 21, 2001), <https://oehha.ca.gov/media/downloads/calenvirocreen/indicators/diesel4-02.pdf>.

²⁵ *Id.*;

Project site, which include residences, a convalescent center, and a school in close proximity to the Project site.²⁶ The IS/MND fails to quantify the Project's health risk impacts and compare the impacts to the City's significance threshold, which provides that a project's incremental cancer risk would be significant if it exceeds 10 in one million.²⁷ The City's approach does not comply with CEQA.

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.²⁸ The Supreme Court has also explained that CEQA requires the lead agency to disclose the health consequences that result from exposure to a project's air emissions.²⁹ 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.³⁰

In *Bakersfield Citizens for Local Control v. City of Bakersfield*, the court found that the EIR's description of health risks were insufficient and that after reading them, "the public would have no idea of the health consequences that result when more pollutants are added to a nonattainment basin."³¹ Likewise, in *Sierra Club*, the California Supreme Court held that the EIR's discussion of health impacts associated with exposure to the named pollutants was too general and the failure of the EIR to indicate the concentrations at which each pollutant would trigger the identified symptoms rendered the report inadequate.³² Some connection between air quality impacts and their direct, adverse effects on human health must be made. As the Court explained, "a sufficient discussion of significant impacts requires not merely a determination of whether an impact is significant, but some effort to explain the nature and magnitude of the impact."³³ CEQA mandates discussion, supported by substantial evidence, of the nature and magnitude of impacts of air pollution on public health.³⁴

²⁶ IS/MND, pg. 11.

²⁷ IS/MND, Appendix A, pg. 44.

²⁸ PRC § 21083(b)(3), (d).

²⁹ *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 516, 523.

³⁰ *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184.

³¹ *Id.* at 1220.

³² *Sierra Club*, at 521.

³³ *Id.* at 519, citing *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 514–515.

³⁴ *Sierra Club*, 6 Cal.5th at 518–522.

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.³⁵ 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.³⁶ Following that analysis, then the City can make a determination of the relative significance of the emissions. The IS/MND 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 1.³⁷

Here, the IS/MND fails to quantify sensitive receptors' exposure to TACs and compare the impact to the City's quantitative threshold. As such, no connection between the Project's emissions and their direct, adverse effects on human health has been made.³⁸ Further, the City lacks substantial evidence to conclude that the significance threshold would not be exceeded.

The IS/MND argues that no significant health risk impact would occur from exposure to construction emissions because they would be short-term (35 months).³⁹ The IS/MND reasons that SCAQMD guidance describes health effects from TACs "in terms of individual cancer risk, which is the likelihood that a person exposed to TACs over a 70-year lifetime will contract cancer," and that exposure to TACs for a shorter period would not result in a "a long-term (i.e., lifetime or 30-year) exposure."⁴⁰ The IS/MND does not support this reasoning with scientific evidence. The IS/MND's reasoning is also incorrect: individual cancer risk is not just affected by the duration of exposure to TACs, but also the concentration of the individual's unique exposure scenario and the toxicity of the chemical. Accordingly, OEHHA

³⁵ 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/cnr/notice-adoption-air-toxics-hot-spots-program-guidance-manual-preparation-health-risk-0>.

³⁶ IS/MND, Appendix A, pg. 44.

³⁷ AVAQMD, California Environmental Quality Act (CEQA) and Federal Conformity Guidelines (August 2016), available at <https://www.avagmd.ca.gov/files/e5b34d385/AV%20CEQA%20Guides%202016.pdf>.

³⁸ *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184.

³⁹ IS/MND, pg. 45.

⁴⁰ IS/MND, pg. 45.

guidance sets a recommended threshold for preparing an HRA of a construction period of two months or more.⁴¹ Because the IS/MND contains no quantitative analysis of TAC emissions, the City lacks substantial evidence to support the IS/MND's untenable conclusion that exposing sensitive receptors to TACs over the Project's two-year (25 month) construction period would not result in health impacts or increase the cancer risk to those receptors. As construction of the instant Project will last at least two years, an HRA must be prepared.

The IS/MND also argues that "none of the Project's emissions exceed any local or regional thresholds."⁴² This statement is misleading, because the IS/MND fails to compare the Project's health risk impacts to the applicable 10 in one million significance threshold. Instead, the IS/MND purports to compare the Project's emissions to Localized Significance Thresholds ("LSTs"), which do not address health risk from exposure to TACs such as DPM.

The City's reliance on LSTs is misplaced, as the purpose of LSTs is not to represent health risk significance thresholds for TACs such as DPM. Rather, LSTs represent the maximum criteria pollutant emissions from a project that will not cause or contribute to an exceedance of the most stringent applicable federal or state ambient air quality standard, and are developed based on the ambient concentrations of that pollutant for each source receptor area.⁴³ DPM is not a criteria pollutant for which there is an applicable federal or state ambient air quality standard. The seven criteria air pollutants are: ozone ("O₃"); carbon monoxide ("CO"); nitrogen dioxide ("NO₂"); sulfur dioxide ("SO₂"); particulate matter less than 10 microns ("PM₁₀"), PM less than 2.5 microns ("PM_{2.5}"); and lead ("Pb"). Conversely, DPM is made of dozens of constituent particles that cause cancer. For example, the California Air Resources Board explains that DPM is composed of carbon particles and numerous organic compounds, including over 40 known cancer-causing organic substances.⁴⁴ Examples of these chemicals include polycyclic aromatic hydrocarbons, benzene, formaldehyde, acetaldehyde, acrolein, and 1,3-butadiene. Diesel exhaust also contains gaseous pollutants, including volatile organic compounds and oxides of nitrogen (NO_x). Accordingly, CARB has identified DPM as a "toxic air contaminant" with no threshold level of exposure for adverse health effects determined. These actions allow for the implementation of control measures at levels below the ambient concentrations specified for these

⁴¹ See "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments," OEHHA, February 2015, available at: http://oehha.ca.gov/air/hot_spots/hotspots2015.html ("OEHHA Guidance"), p. 8-18.

⁴² IS/MND, Appendix A, pg. 55.

⁴³ <http://www.aqmd.gov/docs/default-source/ceqa/handbook/localized-significance-thresholds/final-lst-methodology-document.pdf?sfvrsn=2>.

⁴⁴ <https://ww2.arb.ca.gov/resources/overview-diesel-exhaust-and-health>.

pollutants. In sum, LSTs were not designed to reflect the unique health risks of toxic air contaminants like DPM.

The IS/MND also states that construction emissions would be less than significant because the “average diesel PM emissions from on-site heavy-duty equipment would be approximately 1.13 pounds per working day, spread across the five-acre site.”⁴⁵ The IS/MND lacks substantial evidence to conclude that this level of emissions would be less than significant, as it did not model sensitive receptors’ exposure to these emissions. As will be explained below, Dr. Clark prepared an HRA showing that this level of TAC emissions would result in significant health risks.

The IS/MND thus fails to meet CEQA’s informational and analytical requirements, and the Project’s health risk impacts remain potentially significant and unmitigated. These potentially significant impacts must be analyzed and mitigated in an EIR.

2. Substantial Evidence Supports a Fair Argument that the Project’s TAC Emissions would Result in a Significant Health Risk Impact

Dr. Clark performed a quantitative health risk analysis using values from the IS/MND’s air study. Assumptions regarding types of construction equipment, hours of operation, and construction schedule were based on information in the air study. Dr. Clark’s analysis demonstrates that emissions from the Project’s construction could result in an excess cancer risk of 13.4 in one million for a sensitive receptor (infant) at existing residences.⁴⁶ This cancer risk would exceed the SCAQMD significance threshold of 10 in one million. This significant impact must be disclosed and mitigated in an EIR.

B. The IS/MND Fails to Disclose and Analyze Cumulative Health Risk Impacts

The IS/MND reasons that projects that do not exceed significance thresholds for *project-level* air quality and health risk impacts would not be *cumulatively* considerable.⁴⁷ These thresholds are sourced from SCAQMD’s 2003

⁴⁵ IS/MND, Appendix A, pg. 55.

⁴⁶ Clark Comments, pg. 6.

⁴⁷ IS/MND, Appendix A, pg. 58.

White Paper.⁴⁸ This approach violates CEQA because it improperly focuses upon the individual project's relative effects and omits facts relevant to an analysis of the collective effect this and other sources will have upon air quality.⁴⁹ These facts include that the Project site is located in an SB 535 Disadvantaged Community⁵⁰ and that other construction projects are proposed nearby.⁵¹ The City's analysis is not supported by substantial evidence, as SCAQMD itself acknowledges that the 2003 guidance is outdated and reliance on its thresholds underestimates impacts.⁵²

The IS/MND's approach has been rejected by the courts for failing to comply with CEQA's requirement that a project mitigate impacts that are "cumulatively considerable."⁵³ The leading case on this issue is *Kings County Farm Bureau v. City of Hanford*.⁵⁴ In *Kings County*, the city prepared an EIR for a 26.4-megawatt coal-fired cogeneration plant. Notwithstanding the fact that the EIR found that the project region was out of attainment for PM₁₀ and ozone, the city failed to incorporate mitigation for the project's cumulative air quality impacts from project emissions because it concluded that the Project would contribute "less than one percent of area emissions for all criteria pollutants."⁵⁵ The city reasoned that, because the project's air emissions were small in ratio to existing air quality problems, that this necessarily rendered the project's "incremental contribution" minimal under CEQA. The court rejected this approach, finding it "contrary to the intent of CEQA." The court stated:

We find the analysis used in the EIR and urged by GWF avoids analyzing the severity of the problem and allows the approval of projects which, when taken in isolation, appear insignificant, but

⁴⁸ South Coast Air Quality Management District, 2003, "White Paper on Potential Control Strategies to Address Cumulative Impacts from Air Pollution".

⁴⁹ *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal. App. 3d 692 ("Kings County"); see also, *Friends of Oroville v. City of Oroville* (2013) 219 Cal. App. 4th 832, 841-42.

⁵⁰ IS/MND, Appendix A, pg. 177.

⁵¹ IS/MND, pg. 152 ("Related Projects within 500 feet of the Project site include: Apartment with 127 dwelling units at 3831 West Stocker Street located across the street from the Project site, and a mixed-use development at 3650 West Martin Lutor King Jr. Boulevard located 310 feet from the Project site.").

⁵² 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, pg. 5.

⁵³ PRC § 21088(b)(2); 14 CCR § 15130; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal. App. 3d 692, 719-21.

⁵⁴ *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal. App. 3d 692 ("Kings County"); see also, *Friends of Oroville v. City of Oroville* (2013) 219 Cal. App. 4th 832, 841-42.

⁵⁵ *Kings County*, *supra*, at 719.

when viewed together, appear startling. Under GWF's "ratio" theory, the greater the over-all problem, the less significance a project has in a cumulative impacts analysis. We conclude the standard for a cumulative impacts analysis is defined by the use of the term "collectively significant" in Guidelines section 15355 and the analysis must assess the collective or combined effect of energy development. The EIR improperly focused upon the individual project's relative effects and omitted facts relevant to an analysis of the collective effect this and other sources will have upon air quality.⁵⁶

In *People of the State of California v. City of Fontana*, the Attorney General's petition for writ of mandate challenged an MND that erroneously applied SCAQMD guidance in the same way as the instant IS/MND.⁵⁷ The petition explained:

[T]he MND's cumulative air quality impact analysis does not account for—or even acknowledge—the multitude of other warehouses near the Project. Rather than consider the environmental setting within which the Project will be situated, the MND simply states that the Project will not result in a cumulatively considerable increase in emissions because the Project's individual air quality impacts will be less than significant. The MND even applies this reasoning to its analysis of health impacts from localized emissions, despite making no attempt to determine or disclose the severity of the existing health impacts from localized emissions in the community.⁵⁸

The Attorney General further explained that merely citing to the 2003 SCAQMD guidance does not justify a failure to analyze a Project's cumulative impacts:

The MND cites Appendix D of an August 2003 white paper published by the South Coast Air Quality Management District ("SCAQMD") entitled "White Paper on Potential Control Strategies to Address Cumulative Impacts from Air Pollution" ("2003 SCAQMD White Paper"). To the extent that the 2003 SCAQMD White Paper asserts that any project with less than significant individual air quality impacts also necessarily has less

⁵⁶ *Id.* at 721.

⁵⁷ *People of the State of California v. City of Fontana*, Case No. CIVSB2121829, Petition for Writ of Mandate, available at https://climatecasechart.com/wp-content/uploads/case-documents/2021/20210723_docket-CIVSB2121829_petition-for-writ-of-mandate.pdf.

⁵⁸ *People of the State of California v. City of Fontana*, Case No. CIVSB2121829, Petition for Writ of Mandate, pg. 9, paragraph 32, available at https://climatecasechart.com/wp-content/uploads/case-documents/2021/20210723_docket-CIVSB2121829_petition-for-writ-of-mandate.pdf.

than significant cumulative air quality impacts, it is inconsistent with CEQA for at least the reasons stated above. Moreover, the 2003 SCAQMD White Paper lacks substantial evidence to support such a contention, and thus the MND's reliance on it violates CEQA. (Cal. Code Regs., tit. 14, § 15064.7, subd. (c).) The MND further violated CEQA by failing to provide substantial evidence to support its reliance on the 2003 SCAQMD White Paper, Appendix D as "guidance." (Ibid.) Finally, even if the MND's reliance on the 2003 SCAQMD White Paper were proper and supported by substantial evidence, the MND did not consider other evidence—such as public comments and the existence of many other sources of pollution near the Project site—showing that the Project could have a significant cumulative air quality impact. (See Cal. Code Regs., tit. 14, § 15064, subd. (b).) [emphasis added]⁵⁹

The Attorney General's litigation resulted in a settlement which requires compliance with an ordinance adopted on April 12, 2022, that establishes sustainability standards for warehouses in Fontana.⁶⁰ The City of Fontana's decision to suspend its erroneous reliance on SCAQMD's drop-in-the-bucket approach and to address cumulative impacts in a settlement with the Attorney General's office reflects an approach consistent with CEQA.

In response to the State's litigation, SCAQMD commenced a process to replace the outdated guidelines relied upon by the City.⁶¹ Draft Guidance from SCAQMD's November 6, 2024 Working Group states: "[o]ur current policy recommends using the same significance thresholds for project-level and cumulative-level impacts, **which may underestimate a project's cumulative impact...** a project's incremental effect on the environment, though individually limited, may be cumulatively considerable."⁶² The draft guidance recommends that agencies use a more stringent health risk significance threshold for SB 535 Disadvantaged Communities.⁶³ Although the protocols have not been formally

⁵⁹ *People of the State of California v. City of Fontana*, Case No. CIVSB2121829, Petition for Writ of Mandate, pg. 13, paragraph 49.

⁶⁰ *Id.*, Stipulation For Entry Of Final Judgment On Consent, available at https://climatecasechart.com/wp-content/uploads/case-documents/2022/20220414_docket-CIVSB2121605-CIVSB2121829_stipulation.pdf.

⁶¹ 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 (Fontana case referenced on pg. 4).

⁶² *Id.*, at 5.

⁶³ SCAQMD, CEQA Policy Development: Analyzing Cumulative Impacts from Air Toxics in CEQA Documents, [https://www.aqmd.gov/home/rules-compliance/ceqa/ceqa-policy-development-\(new\)](https://www.aqmd.gov/home/rules-compliance/ceqa/ceqa-policy-development-(new)); [https://www.aqmd.gov/home/rules-compliance/ceqa/ceqa-policy-development-\(new\)](https://www.aqmd.gov/home/rules-compliance/ceqa/ceqa-policy-development-(new));

adopted, SCAQMD has commented on recent projects, recommending that the draft protocols be applied.⁶⁴ Thus, the City's significance thresholds for cumulative impacts are no longer supported by substantial evidence.

This Project's cumulative impacts are potentially significant. The Project's construction emissions could combine with construction of concurrent projects to result in heightened health risk impacts—impacts not reflected in the City's analysis. The IS/MND identified several projects proposed within 500 feet of the Project site. Sensitive receptors could be exposed to emissions of TACs far greater than disclosed in the IS/MND. Further, the Project census tract ranks in the 84th percentile for exposure to PM 2.5⁶⁵—the Project's emissions would add to similar, existing sources of pollution. The IS/MND admits that the Project region is out of attainment for the federal and State one-hour and eight-hour ozone standards, State PM10 standards, federal 24-hour PM2.5 standard, and federal and State annual PM2.5 standard.⁶⁶ This constitutes substantial evidence supporting a fair argument that cumulative health risk impacts would be significant. Nevertheless, the City inexplicably asserts that cumulative impacts would be less than significant based on a project-specific threshold.⁶⁷ The City must prepare an EIR that properly evaluates and mitigates cumulative impacts.

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

The IS/MND's analysis of the Project's air quality impacts fails to include emissions associated with the reasonably foreseeable use of back-up generators.⁶⁸ Use of back-up generators is reasonably foreseeable for the Project because (1) the IS/MND acknowledges that back-up generators may be required,⁶⁹ (2) the film production uses anticipated by the Project regularly use diesel generators,⁷⁰ and (3) diesel generators would run during routine testing and emergencies.

https://www.aqmd.gov/docs/default-source/ceqa/documents/wgm-6-20241106.pdf?sfvrsn=405a8561_13.

⁶⁴ SCAQMD, Comments on Draft Environmental Impact Report (DEIR) for the Proposed DJT4 Parcel Delivery Facility Project (Proposed Project) (SCH No. 2023070241) (December 20, 2024).

⁶⁵ <https://www.arcgis.com/apps/View/index.html?appid=c3e4e4e1d115468390cf61d9db83efc4> (CalEnviroScreen data for 3761 Stocker St, View Park, CA, 90008, USA).

⁶⁶ IS/MND, Appendix A, pg. 13.

⁶⁷ FEIR, pg. II-47.

⁶⁸ IS/MND, Appendix A, pg. 169.

⁶⁹ IS/MND, Appendix A, pg. 11, 38.

⁷⁰ Trellis, How Disney and Netflix are getting rid of diesel on production sets, October 21, 2024, <https://trellis.net/article/how-disney-and-netflix-are-getting-rid-of-diesel-on-production-sets/>; BBC, How to make movies without a huge carbon footprint, 16 August 2022, <https://www.bbc.com/news/business-62051070>.

In *East Oakland Stadium Alliance v. City of Oakland*,⁷¹ 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."⁷² 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."⁷³ 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."⁷⁴

Here, as in *East Oakland Stadium Alliance*, backup generator emissions are a reasonably foreseeable consequence of the Project. First, the IS/MND acknowledges that "[d]uring long-term operations, sources of DPM may include heavy duty diesel-fueled delivery trucks and stationary emergency generators,"⁷⁵ and "[s]tationary source emissions are generated from proposed emergency generators during routine maintenance/testing."⁷⁶ An estimate of these emissions must be included in the air study.

Not disclosed in the IS/MND is that diesel generators are commonly used in the film and television industry. Diesel generators account for an estimated 700,000 tons of emissions annually across the film and television industry.⁷⁷ Diesel generators are commonly used to power the heavy vehicles and generators needed for filming.⁷⁸ Other CEQA documents prepared for sound stage and production support projects in the City account for use of backup generators during operations.⁷⁹ Because the Project proposes a campus for studio and sound stage

⁷¹ (2023) 889 Cal. App. 5th 1226.

⁷² *Id.* at 1252.

⁷³ *Id.* at 1253.

⁷⁴ *Id.*

⁷⁵ IS/MND, Appendix A, pg. 11.

⁷⁶ IS/MND, Appendix A, pg. 38.

⁷⁷ Trellis, *How Disney and Netflix are getting rid of diesel on production sets*, October 21, 2024, <https://trellis.net/article/how-disney-and-netflix-are-getting-rid-of-diesel-on-production-sets/>.

⁷⁸ BBC, *How to make movies without a huge carbon footprint*, 16 August 2022, <https://www.bbc.com/news/business-62051070>.

⁷⁹ City of Los Angeles, EIR for Radford Studio Center Project (SCH No. 2023060056), Appendix D, pg. 14, 1103, available at

https://planning.lacity.gov/eir/Radford%20Studio%20Center/deir/files/App_G.pdf,

<https://planning.lacity.gov/development-services/eir/radford-studio-center-1>; see Air Quality &

production, the IS/MND must include a reasonable estimate of diesel generator emissions during operations.

Diesel generator emissions are also reasonably foreseeable due to routine testing of generators. SCAQMD Rule 1470 permits testing of generators for up to 50 hours annually.⁸⁰ Emergency use is also reasonably foreseeable 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.⁸¹ From January 2019 through December 2019, Southern California Edison reported 158 of their circuits underwent a PSP event.⁸² 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 report⁸³ 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.⁸⁴ 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.

Generators commonly rely on fuels such as natural gas or diesel,⁸⁵ and therefore emit criteria air pollutants, greenhouse gases, and toxic air contaminants. Generator emissions can significantly impact public health through DPM

Greenhouse Gas Technical Study For The 5426 San Fernando Studios Project, pg. 47, available at <https://www.glendaleca.gov/home/showpublisheddocument/70372/638742829816300000>.

⁸⁰ Available at <https://www.aqmd.gov/docs/default-source/rule-book/reg-xiv/rule-1470.pdf>.

⁸¹ Governor of California. 2021. Proclamation of a state of emergency. June 17, 2021.

⁸² 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.

⁸³ <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.

⁸⁴ 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>.

⁸⁵ 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”).

emissions.⁸⁶ Generators can also emit significant amounts of NO_x, SO₂, PM₁₀, carbon dioxide (“CO₂”), carbon monoxide CO, volatile organic compounds (“VOC”), and PM_{2.5}.⁸⁷ Failure to measure onsite generator emissions results in an underestimation of the Project’s air quality, greenhouse gas, and health risk impacts. Dr. Clark explains that these emissions may be potentially significant.⁸⁸ The City must quantify operational emissions from backup generators and compare them to applicable significance thresholds. Without this information, the IS/MND’s conclusion that operational emissions are less than significant is unsupported.

D. Air Quality and Energy Impacts Would be Greater than Analyzed in the IS/MND

The IS/MND fails to quantify this specific project’s energy consumption. Instead, the IS/MND references energy consumption for a generic land use category from the air study’s CalEEMod analysis which does not describe the Project’s intended uses.⁸⁹ The IS/MND bases its energy “analysis” on the land uses that are

⁸⁶ 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 <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)”).

⁸⁷ 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 (NO_x) 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>.

⁸⁸ Clark Comments, pg. 12.

⁸⁹ IS/MND, Appendix A, pg. 160.

not consistent with the Project description, including office park and strip mall.⁹⁰ These generic land use categories do not reflect the specific uses anticipated by the Project, which include studio and sound stage production, restaurant and outdoor event space, and a mill shop for set production. These uses have higher energy consumption than a typical office reflected in the generic CalEEMod land use category. Accordingly, CEQA documents typically analyze sound stage and production support projects as “general heavy industrial.”⁹¹

Studio and sound stage production requires much greater energy than a typical office due to specific demands of production, which include intensive lighting, specialized A/V equipment, cooling for heat-generating gear, and significant transportation/fuel use. The Project also includes a mill shop for set production.⁹² Specialized sources of energy consumption in a studio project include:

- Lighting: Parabolic Aluminized Reflector (“PAR”) cans and Hydrargyrum Medium-arc Iodide (“HMI”) lights consume much more energy than LED lights and generate intense heat, necessitating heavy cooling.
- Cameras & Support: Digital cameras, monitors, and associated grip/electric gear add to the load.
- Climate Control: Cooling large, hot sound stages is a major energy expense, especially with older lighting systems.⁹³

High-energy equipment like lights, cameras, and special effects that can consume over 2 MW per soundstage.⁹⁴ This level of energy consumption—and the resultant emissions—is not reflected in the City’s CalEEMod analysis. As a result, the City’s analysis underestimates energy consumption, criteria for air pollutant emissions, and GHG emissions. Further, substantial evidence supports a fair argument that

⁹⁰ *Id.*

⁹¹ City of Los Angeles, EIR for Radford Studio Center Project (SCH No. 2023060056), Appendix D, pg. 14, 1103, available at

https://planning.lacity.gov/eir/Radford%20Studio%20Center/deir/files/App_G.pdf,

<https://planning.lacity.gov/development-services/eir/radford-studio-center-1>; see Air Quality & Greenhouse Gas Technical Study For The 5426 San Fernando Studios Project, pg. 47, available at <https://www.glendaleca.gov/home/showpublisheddocument/70372/638742829516300000>.

⁹² Milling is the process of machining using rotary cutters to remove material by advancing a cutter into a workpiece.

⁹³ <https://www.paclights.com/explore/the-impact-of-recording-studio-lighting-on-energy-savings-and-sustainability/#:~:text=LED%20Lights,%20A%20Sustainable%20Choice%20These%20lights%20systems%20in%20studios%2C%20further%20decreasing%20energy%20consumption;>
<https://www.colborlight.com/blogs/articles/guide-to-film-lighting-equipment>.

⁹⁴ <https://www.emtec-engineers.com/news/mep-design-film-studios/#:~:text=Electrical%20systems%20form%20the%20core,many%20markets%2C%20reducing%20operational%20costs..>

these impacts would be potentially significant. These impacts must be analyzed in an EIR.

E. The Air Quality Analysis Erroneously Assumes that the Project is Residential

The qualitative analysis in Appendix A repeatedly references residential units proposed by the Project. These references appear to be in error, as the body of the IS/MND states that the Project only proposes commercial uses.⁹⁵ These references include:

- Under “Emissions Calculations,” Appendix A states: “The Project does not include fireplaces in the design of the residential units, and the Los Angeles Green Building Code prevents the installation of woodstoves.”⁹⁶
- Under “Area Source Emissions,” Appendix A states: “Area source emissions were calculated using CalEEMod default assumptions for the multi-family residential (mid-rise apartments) land uses.”⁹⁷
- Under “Building Energy Use,” Appendix A states: “Future fuel consumption rates are estimated based on the specific square footage of the multi-family residences and the ancillary facilities and amenities included in the Project...Energy use (i.e., off-site electricity generation and on-site natural gas combustion) requirements for the Project is calculated within CalEEMod using the CEC’s 2018–2030 Uncalibrated Commercial Sector Forecast (Commercial Forecast) and the 2019 Residential Appliance Saturation Survey (RASS) data sets.”⁹⁸
- In its analysis of the Project’s consistency with AQMP land use policies, Appendix A states: “The Project represents an infill development near transit within an existing urbanized area that would concentrate new residential, retail, and office uses within a TPA and NMA, thus reducing VMT.”⁹⁹
- In its analysis of General Plan consistency, Appendix A states: “The Project would locate residential uses near major employment centers (i.e., Downtown Los Angeles), which would reduce trips and encourage employees to utilize alternative modes of transportation.”¹⁰⁰

⁹⁵ IS/MND, pg. 42 (“The Project would not construct any new housing units”).

⁹⁶ IS/MND, Appendix A, pg. 40-41.

⁹⁷ *Id.* at 41.

⁹⁸ *Id.* at 42-43.

⁹⁹ *Id.* at 48.

¹⁰⁰ *Id.* at 49.

Due to these errors, the IS/MND's discussion of air quality impacts and consistency with applicable plans is not supported by substantial evidence.

F. The IS/MND's Energy Analysis is Incomplete and Unsupported by Substantial Evidence

The IS/MND 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."¹⁰¹ The IS/MND concludes that impacts would be less than significant.¹⁰² But the IS/MND's analysis of this impact is unsupported by substantial evidence because, in summary, it is two pages in length, fails to quantify the Project's energy consumption, and assumes that compliance with building codes would ensure energy impacts would be less than significant.¹⁰³ **And critically, the IS/MND's analysis ignores discussion of energy impacts related to the studio production uses proposed by the Project.** This fails to meet CEQA's requirements.

1. The IS/MND's Energy Analysis Lacks Analysis Called For in the CEQA Guidelines

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.

¹⁰¹ IS/MND, pg. 56.

¹⁰² *Id.*

¹⁰³ *Id.* at 56-57.

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* ("CCEC"),¹⁰⁴ 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.¹⁰⁵ 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,'"¹⁰⁶ 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."¹⁰⁷

¹⁰⁴ (2014) 225 CA4th 173.

¹⁰⁵ *Id.* at 210.

¹⁰⁶ Citing Guidelines, Appendix F, Section II(C)(6).

¹⁰⁷ *CCEC, supra*, 225 CA4th 173 at 210.

As in *CCEC*, the IS/MND fails to discuss relevant considerations listed in Appendix F. The IS/MND fails to analyze the energy intensiveness of materials and equipment required for the project.¹⁰⁸ This Project proposes a campus for studio and sound stage production, yet the qualitative discussion of the Project's energy consumption fails to discuss the energy consumption of the equipment required for these uses. The IS/MND states that energy would be used by "heavy equipment used for film production, including cameras, lighting, and sound equipment..."¹⁰⁹ This statement is inadequate because (1) it merely lists broad categories of equipment without actually disclosing the specialized, high-intensity equipment often used in film production, and (2) fails to disclose the energy intensiveness of this equipment. The discussion also makes no reference to energy impacts associated with the 12,957-square-foot mill shop. As such, the IS/MND violates CEQA for failing to disclose "[e]nergy consuming equipment and processes which will be used during construction, operation and/or removal of the project."

The IS/MND also fails to analyze the total energy requirements of the Project by fuel type and end use, either for construction activities or operation.¹¹⁰ The only quantification of the Project's energy consumption is a generic output from the air study's CalEEMod analysis.¹¹¹ This analysis based on the land uses anticipated for the Project (office park, strip mall, parking, etc.).¹¹² These generic land use categories do not reflect the specific uses anticipated by the Project, which include studio and sound stage production. And as is shown in these comments, these uses have higher energy consumption than a typical office reflected in the generic CalEEMod land use category.

The IS/MND fails to estimate the energy consumed by vehicle trips generated by the Project.¹¹³ This is a major omission because the Project's operations are estimated in the air quality study to generate a total of 3,397 vehicle trips per day.¹¹⁴

The IS/MND fails to fully analyze "the degree to which the project complies with existing energy standards."¹¹⁵ The IS/MND states that the Project would comply with Title 24 standards and is "anticipated to achieve LEED Gold Standard

¹⁰⁸ CEQA Guidelines, Appendix F, Section II(A)(1), (C)(1).

¹⁰⁹ IS/MND, pg. 56.

¹¹⁰ CEQA Guidelines, Appendix F, Section II(A)(2).

¹¹¹ IS/MND, Appendix A, pg. 160.

¹¹² *Id.*

¹¹³ CEQA Guidelines, Appendix F, Section II(A)(5), (C)(6).

¹¹⁴ IS/MND, Appendix H, PDF pg. 9.

¹¹⁵ CEQA Guidelines, Appendix F, Section II (C)(4).

certification,”¹¹⁶ but fails to evaluate the feasibility of meeting voluntary standards described in 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.

In sum, the IS/MND’s project description and energy impact analysis are incomplete and fail to adequately inform decisionmakers and the public. The omitted analysis must be provided in an EIR. In addition to this informational defect, the lack of analysis renders the IS/MND’s conclusions unsupported by substantial evidence.

2. The IS/MND’s Conclusions Regarding Energy Impacts Are Unsupported by Substantial Evidence

The IS/MND’s brief discussion 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.¹¹⁷ 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.

In the *CCEC* case,¹¹⁸ 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.¹¹⁹ The Court of Appeal explained that compliance with local and state building codes do not address many aspects of a project’s energy consumption: “[l]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.”¹²⁰

The Court distinguished the Court of Appeal’s decision in *Tracy First v. City of Tracy* (“*Tracy First*”),¹²¹ which rejected a challenge to an EIR arguing that “it is improper to rely on state building standards in determining whether

¹¹⁶ IS/MND, pg. 57.

¹¹⁷ *Id.* at 56.

¹¹⁸ *CCEC, supra*, 225 CA4th 173.

¹¹⁹ *Id.* at 212.

¹²⁰ *Id.* at 211.

¹²¹ (2009) 177 Cal.App.4th 912, 932.

an energy impact is significant.”¹²² 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.¹²³ “The failure to study the energy impacts resulting from a large part of the planned construction” thwarted “the statutory goals of the EIR process.”¹²⁴

Here, the IS/MND has the same flaws as the EIR rejected in *CCEC*: the IS/MND claims, in a conclusory two-page discussion, that consistency with building codes would result in less than significant impacts, while failing to study energy consumption impacts from the studio production uses proposed by the Project. And unlike the plaintiffs in *Tracy First*, this letter identifies omitted analysis that must be included in an EIR. The IS/MND’s energy analysis is thus unsupported by substantial evidence.

3. The IS/MND Fails to Include Sufficient Investigation into Energy Conservation Measures

The IS/MND fails to include sufficient investigation into energy conservation measures that might be available or appropriate for the Project. The IS/MND 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.¹²⁵ The IS/MND also alludes to required energy conservation measures, but these measures are vague and nonbinding:

The Project would include energy conservation, water conservation, waste reduction, and transportation demand management features, and the campus would be constructed to a minimum of Leadership in Energy and Environmental Design (LEED) Gold Standard. The Project would comply with the 2020 Los Angeles Green Building Code (LAGBC), and the 2019 California Green Building Standards Code (CalGreen). In addition, all building systems would meet or exceed current Title 24 Energy Standards to reduce energy and water usage and waste and, thereby, reduce associated greenhouse gas emissions and help minimize the impact on natural resources and infrastructure. In addition, the infill location of the campus would

¹²² *CCEC*, *supra*, 177 Cal.App.4th at 212.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ IS/MND, pg. 56.

promote the concentration of development in an urban area with extensive infrastructure and access to public transit facilities. The proximity to public transportation would reduce vehicle miles traveled for employees and visitors.¹²⁶

The IS/MND does not clearly define the measures listed above. Further, the IS/MND is unclear whether LEED Gold certification is aspirational or will be required as a condition of approval, as elsewhere the IS/MND states that “[t]he Project is *anticipated* to achieve LEED Gold Standard certification.”¹²⁷

The IS/MND does not sufficiently consider concrete 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.

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.”¹²⁸ The CEQA Guidelines require discussion of energy conservation measures when relevant, and provide examples in Appendix F:¹²⁹

- 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

¹²⁶ IS/MND, pg. 23.

¹²⁷ *Id.* at 57.

¹²⁸ Pub. Resources Code, § 21100(b)(3); *Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 912, 930.

¹²⁹ 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.”).

project.¹³⁰ In *CCEC*,¹³¹ 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.”¹³² The lead agency argued that compliance with the Building Code sufficed to address energy impact concerns for the project.¹³³ But the Court explained:

Although the Building Code addresses energy savings for components of a new commercial construction, it does not address many of the considerations required under Appendix F of the CEQA Guidelines... These considerations include whether a building should be constructed at all, how large it should be, where it should be located, whether it should incorporate renewable energy resources, or anything else external to the building’s envelope. Here, a 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.¹³⁴

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.”¹³⁵ 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

¹³⁰ *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.

¹³¹ *CCEC*, *supra*, 225 CA4th 173.

¹³² *Id.* at 213.

¹³³ *Id.* at 210, 211.

¹³⁴ *CECC* (2014) 225 CA4th 173, 213.

¹³⁵ (2022) 75 CA5th 63, 167–68.

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 IS/MND's energy analysis lacks basic analysis of energy consumption measures in violation of CEQA Guidelines Appendix F.

To begin with, the IS/MND's vague discussion of sustainability measures fails to study the specific considerations identified in Appendix F, listed above. Next, the IS/MND fails to discuss any energy consumption measures applicable to the specific studio production uses proposed by the Project. Further, the IS/MND fails to analyze the feasibility of voluntary CALGreen standards. 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.¹³⁶ Tier 2 standards require large projects with 201 or more parking spaces to provide 45% EV capable spaces.¹³⁷ CALGreen Section A5.203.1.2 sets energy budgets that are less than permitted by the mandatory Title 24 energy standards.¹³⁸ 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.¹³⁹

The IS/MND 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 IS/MND states that the Project would comply with applicable building codes and achieve LEED Gold certification, but this does not address what solar facilities would be required by these measures, nor analyze if additional solar facilities would be feasible or effective at reducing emissions.¹⁴⁰ The IS/MND'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.¹⁴¹ It is common for new studios and production facilities to consider and implement energy-saving measures. For example, Disney and Netflix are investigating energy storage, hydrogen generators and other clean energy technologies that can be used off-grid,¹⁴² and Garden Studios is integrating an advanced energy management

¹³⁶ CALGreen, Table A5.106.5.3.1 Tier 1

¹³⁷ Table A5.106.5.3.1, A5.106.5.3.2.

¹³⁸ CALGreen Sections A5.203.1.2.1, A5.203.1.2.2.

¹³⁹ CALGreen Sections A5.303.2.3.1, A5.303.2.3.2

¹⁴⁰ IS/MND, pg. 76.

¹⁴¹ CEQA Guidelines, Appendix F, Section II(D).

¹⁴² Trellis, How Disney and Netflix are getting rid of diesel on production sets, October 21, 2024, <https://trellis.net/article/how-disney-and-netflix-are-getting-rid-of-diesel-on-production-sets/>.

platform to aid in monitoring and reducing energy waste.¹⁴³ The IS/MND fails to discuss or consider any such energy saving measures.

In sum, the IS/MND'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 the structures proposed by the Project 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.¹⁴⁴ This analysis must be provided in an EIR.

G. The IS/MND Fails to Disclose Existing Conditions or Impacts Related to Hazardous Materials

The IS/MND claims that the Project would not "create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment."¹⁴⁵ But the IS/MND fails to analyze the site for soil contamination (either in a Phase I or II Environmental Site Assessment). Courts have held that disturbance of toxic soil contamination at a project site is a potentially significant impact requiring CEQA review and mitigation.¹⁴⁶ Here, the Project's construction may result in disturbance of soil contaminants, particularly during the shoring/earthwork phase.¹⁴⁷ The IS/MND violates CEQA by failing to adequately establish baseline environmental conditions and analyze the potential for disturbance of hazardous materials.

¹⁴³ EGSDive, Film studios prioritize energy efficiency: A look at Garden Studios' innovative approach, June 10, 2024, available at <https://www.esgdrive.com/spons/film-studios-prioritize-energy-efficiency-a-look-at-garden-studios-innova/718021/>.

¹⁴⁴ *Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 CA4th 256, 264.
¹⁴⁵ IS/MND, pg. 79.

¹⁴⁶ *Cgl. Build. Indust. Ass'n v. BAAQMD* (2015) 62 Cal.4th 369, 388-90 ("CBIA v. BAAQMD") ("the statutory language emphasizes how the analysis of a project's potential to exacerbate existing conditions is not an exception to, but instead a consequence of, CEQA's core requirement that an agency evaluate a project's impact on the environment"); see *Association for a Cleaner Environment v. Yosemite Community College Dist.* (2004) 116 Cal.App.4th 629, 635, 638-640 (project to remove a shooting range that would not increase the lead contamination already present due to bullets might nevertheless "spread[] [that] contamination, which is a direct physical change in the environment," through increased vehicle and foot traffic and donations of portion of range to another site.");
¹⁴⁷ IS/MND, pg. 68.

1. The IS/MND Fails to Establish Baseline Conditions

The IS/MND's failure to analyze the site for hazardous materials violates CEQA's requirement to establish baseline conditions at the Project site and evaluate the severity of impacts associated with altering baseline conditions.

CEQA requires that a lead agency include a description of the physical environmental conditions in the vicinity of the Project as they exist at the time environmental review commences.¹⁴⁸ As numerous courts have held, the impacts of a project must be measured against the "real conditions on the ground."¹⁴⁹ The description of the environmental setting constitutes the baseline physical conditions by which a lead agency may assess the significance of a project's impacts.¹⁵⁰ Use of the proper baseline is critical to a meaningful assessment of a project's environmental impacts.¹⁵¹ The City must then assess the severity of the Project's impacts in the CEQA document.¹⁵²

Here, the only analysis of hazardous materials that may be present on the Project site is a review of the EnviroStor database or the Geotracker database.¹⁵³ The databases do not constitute a complete analysis of onsite conditions. EnviroStor tracks the Department of Toxic Substances Control's cleanup, permitting, enforcement, and investigation efforts at hazardous waste facilities. Geotracker tracks authorized or unauthorized discharges of waste to land, or unauthorized releases of hazardous substances from underground storage tanks. But if a site has not been previously analyzed, it would not show up in these databases. Thus, a site's absence from these databases does not demonstrate that a site is free of soil contamination or other hazardous materials.

There is no evidence in the record demonstrating that additional analysis of baseline conditions is infeasible. Phase I ESAs prepared for the City often include:

- Site inspection to verify current Project site conditions and check for visible evidence of previously disposed and/or currently present hazardous waste, surface contamination, underground and above ground storage tanks

¹⁴⁸ CEQA Guidelines, § 15125, subd. (a).

¹⁴⁹ *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.

¹⁵⁰ CEQA Guidelines, § 15125, subd. (a).

¹⁵¹ *Communities for a Better Environment v. South Coast Air Quality Management District* (2010) 48 Ca.4th 310, 320.

¹⁵² *San Francisco Baykeeper, Inc. v. State Lands Com.* (2015) 242 Cal.App.4th 202, 217.

¹⁵³ IS/MND, pg. 81.

(USTs/ASTs), suspect polychlorinated biphenyls (PCBs), and other potential environmental hazards.

- Survey of adjacent properties and the immediate vicinity to determine if any nearby sites posed a significant environmental threat to the Site.
- Review of currently and readily available documents, including maps, aerial photographs, other consultant reports (if any), fire insurance maps, and other accessible records.
- Analysis of vapor intrusion risks.
- Review results from a search of available current land title records for environmental cleanup liens and other activity and use limitations, such as engineering controls and institutional controls.
- Review of databases such as FINDS, ECHO, HWTS, EDR's Historical Gas Station database, Historical Dry Cleaners database, HAZNET, etc.
- Consult with appropriate governmental agencies having jurisdiction relative to past history of the property, complaints or incidents in the immediate area, and permits that may have been issued.¹⁵⁴

An EIR must be prepared that includes an evidence-based analysis of baseline conditions.

2. Impacts from Disturbance of Hazardous Materials May Be Potentially Significant

There are a variety of potential hazardous materials that have a high probability of being present on the Project site due to the age of the existing structures, the Project site's historic use as a medical campus, and its location. These potentially present hazardous materials are discussed below. In summary, the age of the buildings, constructed in the 1950's, makes the presence of asbestos and lead-based paints likely. Due to the long history of development in the area, there is also potential for soil contamination. Because this IS/MND fails to require any analysis for the presence of hazardous materials either in the IS/MND or after Project approval and requires no mitigation, risks from exposure to these materials are potentially significant. Workers and nearby residents may be exposed to hazardous materials disturbed on the Project site during demolition and excavation. Residences along the haul route may be exposed to hazardous materials in the soil, as the Project would require the export of approximately 21,800 cubic yards of soil during the shoring/earthwork phase.¹⁵⁵ There is no evidence in the record

¹⁵⁴ https://planning.lacity.gov/eir/6000_Hollywood_Boulevard_Project/deir/files/App_F.pdf; <https://planning.lacity.gov/odocument/95bbc6a4-e7d5-47a1-a7a8-b220d7bd3d28/ENV-2021-9032-F.pdf>;

¹⁵⁵ IS/MND, pg. 68.

demonstrating that regulatory compliance would fully mitigate these impacts. An EIR must be prepared that includes analysis of baseline conditions.

a) Asbestos-Containing Material

The L.A. CEQA Thresholds Guide provides that exposure to asbestos-containing material ("ACM") may result in a health hazard, and thus should be analyzed in a CEQA document:

A health hazard may occur where there is contact with or contamination from asbestos-containing material ("ACM"), which includes both friable ACM and Class I nonfriable ACM. Friable asbestos is more easily airborne than non-friable asbestos. Actions which may cause ACM to be broken, crumbled, pulverized, or reduced to powder include physical wear and disturbance by mechanical force, such as, but not limited to, sanding, sand blasting, cutting or abrading, improper handling or removal, or leaching of matrix binders. Class I nonfriable ACM includes, but is not limited to, fractured or crushed asbestos cement products, transite materials, mastic, roofing felts, roofing tiles, cement water pipes and resilient floor covering. Friable ACM is material containing more than 1 percent asbestos that, when dry, can be crumbled, pulverized, or reduced to powder by hand pressure. California Occupational Safety and Health Administration (CalOSHA) defines asbestos-containing construction material as material which contains more than 1/10 of 1 percent asbestos by weight.¹⁶⁶

Analysis in recent City of Los Angeles EIR suggests that the existing structures may contain asbestos due to their age:

Asbestos was widely used in the building industry starting in the late 1800s and up until the late 1970s for a variety of uses, including acoustic and thermal insulation and fireproofing, and is often found in ceiling and floor tiles, linoleum, pipes, structural beams, and asphalt. Despite its useful qualities, asbestos becomes a hazard if the fibers separate and become airborne. Inhalation of airborne asbestos fibers could cause lung diseases. Any building, structure, surface asphalt driveway, or parking lot constructed prior to 1979 could contain asbestos or ACMs. Based on the age of the existing buildings, it is possible ACMs could be present within the Project Site.

¹⁶⁶ City of Los Angeles, L.A. CEQA Thresholds Guide, 2006, pg. F.2-2, available at <https://planning.lacity.gov/eir/CrossroadsHwd/deir/files/references/A07.pdf>.

Here, the Project proposes demolition of a “large campus that has functioned as a cohesive medical campus since the 1950s.”¹⁵⁷ Because these structures were constructed prior to 1979, exposure to asbestos is a potentially significant impact which the IS/MND fails to discuss. Workers and nearby residents may be exposed to ACMs during demolition of the existing structures. An EIR must be prepared which discloses existing site conditions and includes any necessary remediation for hazardous conditions prior to Project construction.

b) Lead-Based Paint

Lead is a naturally occurring element and heavy metal that was widely used as a major ingredient in most interior and exterior oil-based paints prior to 1950.¹⁵⁸ Lead compounds continued to be used as corrosion inhibitors, pigments, and drying agents from the early 1950s to 1972, when the Consumer Products Safety Commission specified limits on lead content in such products. While adults can be affected by excessive exposure to lead, the primary concern is the adverse health effects on children. The most common paths of lead exposure in humans are through ingestion and inhalation. LBP is of concern both as a source of exposure and as a major contributor to lead in interior dust and exterior soil. Due to the age of the existing buildings, it is possible LBPs could be present within the Project Site. Moreover, CalEnviroScreen shows that the census tract ranks in the 86.1 percentile for “lead risk housing.”¹⁵⁹ The IS/MND fails to disclose existing conditions and does not discuss whether workers and nearby residents may be exposed to LBPs during demolition of the existing structures. An EIR must be prepared.

H. Substantial Evidence Supports a Fair Argument that the Project May Result in Potentially Significant Public Utilities Impacts.

Under CEQA, a public utilities impact is considered significant if a project would “[r]equire or result in the relocation or construction of new or expanded water, wastewater treatment or storm water drainage, electric power, natural gas, or telecommunications facilities the construction or relocation of which could cause significant environmental effects.”¹⁶⁰ The IS/MND states that no impacts would result from connections to utilities. However, the IS/MND’s analysis is not supported by substantial evidence.

¹⁵⁷ IS/MND, pg. 88.

¹⁵⁸ [https://planning.lacity.gov/eir/6000 Hollywood Boulevard Project/deir/files/App F.pdf](https://planning.lacity.gov/eir/6000%20Hollywood%20Boulevard%20Project/deir/files/App%20F.pdf), pg. IV.F-24.

¹⁵⁹ IS/MND, Appendix A, pg. 173.

¹⁶⁰ IS/MND, pg. 138.

The IS/MND's analysis is not supported by substantial evidence because the IS/MND fails to describe existing utilities infrastructure beyond stating that adequate services already exist in the vicinity of the area. Use of the proper baseline is critical to a meaningful assessment of a project's environmental impacts.¹⁶¹ This analysis fails to inform decisionmakers and the public regarding the magnitude of utilities improvements required for the Project. For example, the IS/MND does not disclose the proximity and size of water mains that would service the Project. And the IS/MND does not disclose current sewer capacity. These omissions make analysis of the Project's water infrastructure improvements impossible.

Analysis of the Project's impacts is similarly omitted from the IS/MND. For example, the IS/MND fails to determine whether any new wastewater infrastructure would be required for the Project, stating "[a]ny new site-specific wastewater infrastructure or upgrades required for the Project would be determined in coordination with the City."¹⁶² The Project proposes a campus twice as large as the existing use (the current 123,354 SF complex would be replaced with a 256,758 SF campus, which have more 889 employees). This new development would thus result in an increase in wastewater. There is no analysis in the IS/MND whether the existing local infrastructure would need to be upsized.

The IS/MND also fails to disclose the fire flow requirements for this Project, whether that fire flow would be met by existing infrastructure, and the environmental impacts resulting from construction of any necessary improvements. This information is necessary to evaluate whether new and upsized water mains are required, or whether new hydrants must be constructed. Construction of improvements to water infrastructure serving the Project site may be required because the Project proposes a development with twice the square footage of the existing use. The City's Municipal Code sets increased fire flow requirements for projects with higher density,¹⁶³ demonstrating that the Project's increased density may require expansion of existing infrastructure.

If needed, construction of improvements to water infrastructure would have environmental impacts not analyzed in the IS/MND. Construction of water infrastructure upgrades typically require street excavation and subsequent repair to access water mains. Excavation would require demolition, disruption, and removal of portions of the street along the entire length of water main upgrade.

¹⁶¹ *Communities for a Better Environment v. South Coast Air Quality Management District* (2010) 48 Ca.4th 310, 320.

¹⁶² IS/MND, pg. 140-141.

¹⁶³ LAMC, Table 57.507.3.1.

This would entail excavation and removal of asphalt, soils, and trench backfill materials. These construction activities may result in significant environmental impacts in several areas, including traffic, noise, vibration, and health risk. Impacts may occur closer to sensitive receptors than analyzed in the IS/MND because construction of utilities improvements may occur offsite and potentially closer to sensitive receptors.

The IS/MND improperly defers analysis of the Project's impacts. CEQA requires that an environmental document disclose the severity of a project's impacts and the probability of their occurrence *before* a project can be approved.¹⁶⁴ In *Sundstrom v. County of Mendocino*,¹⁶⁵ the First District Court of Appeal rejected a mitigation measure that required the applicant to submit hydrological studies subject to review and approval by a planning commission and county environmental health department.¹⁶⁶ The Court explained that the deferred analysis of hydrological conditions fails to meet CEQA's requirement that an environmental impact should be assessed as early as possible in government planning:

By deferring environmental assessment to a future date, the conditions run counter to that policy of CEQA which requires environmental review at the earliest feasible stage in the planning process. (See Pub. Resources Code, § 21003.1; *No Oil, Inc. v. City of Los Angeles*, *supra*, 13 Cal. 3d 68, 84.) In *Bozung v. Local Agency Formation Com.*, *supra*, 13 Cal. 3d 263, 282, the Supreme Court approved "the principle that the environmental impact should be assessed as early as possible in government planning." Environmental problems should be considered at a point in the planning process "where genuine flexibility remains." (*Mount Sutro Defense Committee v. Regents of University of California*, *supra*, 77 Cal. App. 3d 20, 34.) A study conducted after approval of a project will inevitably have a diminished influence on decision-making. Even if the study is subject to administrative approval, it is analogous to the sort of post hoc rationalization of agency actions that has been repeatedly condemned in decisions construing CEQA. (Id. at p. 35; *No Oil, Inc. v. City of Los Angeles*, *supra*, 13 Cal. 3d 68, 81; *Environmental Defense Fund, Inc. v. Coastside County Water Dist.* (1972) 27 Cal. App. 3d 695, 706 [104 Cal. Rptr. 197].)

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

¹⁶⁵ (1988) 202 Cal.App.3d 296.

¹⁶⁶ *Id.* at 306.

This IS/MND similarly violates CEQA because it defers all analysis of infrastructure improvements until after Project approval. As a result, the Project may result in significant impacts unanalyzed in the IS/MND. The IS/MND fails as an informational document and fails to support its finding of a less-than-significant impact with substantial evidence. An EIR must be prepared to analyze these potentially significant impacts.

I. The IS/MND Underestimates Potentially Significant Construction Noise Impacts

The IS/MND calculates that the Project's construction would generate noise levels in excess of its 80 dBA significance threshold.¹⁶⁷ Noise levels at the multi-family residences adjacent to the Project and the Baldwin Hills Urgent Care would reach 88.3 dBA, 8.3 dBA over the significance threshold.¹⁶⁸ The IS/MND claims that impacts would be reduced to a less than significant level through imposition of Mitigation Measures N-1 through N-3.¹⁶⁹ The IS/MND attributes a 5 dBA reduction to N-1, which requires all construction equipment be equipped with mufflers, and a 10 dBA reduction to N-2, which requires a temporary noise barrier capable of reducing noise by 10 dBA. The IS/MND finds that noise impacts would be reduced from 88.3 dBA to 73.3, and would thus be less than significant. These conclusions are unsupported.

In particular, the IS/MND lacks substantial evidence to assume that equipping all construction equipment with mufflers would result in a 5 dBA reduction. 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. Specifically, the IS/MND's calculations utilize the Federal Highway Administration's (FHWA) Roadway Construction Noise Model ("RCNM").¹⁷⁰ The bulk of the sound data in this model was obtained during the 1990s and 2000s during the Central Artery Tunnel project in Boston ("The Big Dig"). By the 1990s, virtually all construction equipment was fit with mufflers, so the reference sound levels in the model already reflect noise reduction provided by those components. Prior to the RCNM, the most widely-disseminated data on construction equipment was published by the Environmental Protection Agency (EPA) in 1971. When that data was gathered in the late 1960s, mufflers were not in widespread use, so requiring a muffler as a mitigation measure in the 1970s could result in a substantial reduction in noise levels. Today, requiring that equipment be

¹⁶⁷ IS/MND, pg. 105.

¹⁶⁸ IS/MND, pg. 104.

¹⁶⁹ *Id.*

¹⁷⁰ IS/MND, Appendix G, pg. 24.

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muffled simply ensures that noise levels are not unduly high because of faulty or missing components. As such, the IS/MND overstates noise reductions from the proposed mitigation.

III. CONCLUSION

The IS/MND does not comply with CEQA. The City lacks substantial evidence to find that the Project will have less than significant impacts. Moreover, substantial evidence supports a fair argument that the Project's impacts may be significant and unmitigated. Due to the IS/MND's deficiencies, the City cannot conclude that the Project's impacts have been mitigated to a less than significant level.

The CEQA Guidelines require that an EIR be prepared if there is substantial evidence supporting a fair argument that any aspect of a project, either individually or cumulatively, may cause a significant effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial.¹⁷¹ As discussed in detail above, there is a fair argument based on substantial evidence that the Project would result in significant adverse impacts not identified in the IS/MND.

We urge the City to fulfill its responsibilities under CEQA by withdrawing the IS/MND and preparing an EIR to address the issues raised in this preliminary comment letter. This is the only way the City and the public can ensure the Project's significant environmental impacts are mitigated to less than significant levels.

Sincerely,



Aidan P. Marshall

Attachment
APM:acp

¹⁷¹ CEQA Guidelines § 15063(b)(1).