

II. Responses to Comments

A. Introduction

The CEQA review process provides opportunities for public participation, including periods for public review and comment on the adequacy of the Draft EIR prior to certification. Section 15088(a) of the CEQA Guidelines requires that the lead agency evaluate comments on environmental issues received from persons who reviewed the Draft EIR and prepare a written response to comments received during the comment period. Section 15204(a) of the CEQA Guidelines clarifies that the lead agency is not required to accept every suggestion it is given, provided that the lead agency explains why specific comments/suggestions were not accepted and responds to significant environmental issues with substantial evidence and makes a good faith effort at disclosure. Reviewers of the Draft EIR are encouraged to examine the sufficiency of the environmental document, particularly in regard to significant effects, and to suggest specific mitigation measures and project alternatives. Furthermore, Section 15204(c) of the CEQA Guidelines advises reviewers that comments should be accompanied by factual support.

Section II.B, Matrix of Comments Received on the Draft EIR, includes a table that summarizes the environmental issues raised by each commenter regarding the Draft EIR. The Department of City Planning received a total of seven comment letters on the Draft EIR during the designated public review period (between December 10, 2020 and January 25, 2021). Each comment letter has been assigned a corresponding number, and comments within each comment letter are also numbered. The organizations/persons that provided written comments on the Draft EIR to the Department of City Planning are listed in the summary table below, which also indicates the issue areas on which each organization/person commented.

Section II.C, Comment Letters and Responses, provides detailed responses to all comments related to the environmental review and acknowledges comments and opinions relating to the support of or opposition to the Project. Copies of the original comment letters are provided in **Appendix FEIR-1** of this Final EIR.

II. Responses to Comments

B. Matrix of Comments Received on the Draft EIR

Table II-1
Matrix of Comments Received on the Draft EIR

| SUMMARY OF COMMENTS 676 Mateo Street | Letter Number | Project Description | Impacts Less than Significant | Air Quality | Biological Resources | Cultural Resources | Geology and Soils | Greenhouse Emissions | Hazards and Hazardous Materials | Land Use and Planning | Noise | Population and Housing | Public Services | Transportation/Traffic | Tribal Cultural Resources | Utilities | Energy – CEQA Appendix F | Alternatives | Other | Explanation of “Other” |
|---|---------------|---------------------|-------------------------------|-------------|----------------------|--------------------|-------------------|----------------------|---------------------------------|-----------------------|-------|------------------------|-----------------|------------------------|---------------------------|-----------|--------------------------|--------------|-------|------------------------|
| State Agencies and Departments | | | | | | | | | | | | | | | | | | | | |
| State of California Department of Transportation District 7 – Office of Regional Planning | 1 | | | | | | | | | | | | | • | | | | | | |
| City and County of Los Angeles Officials, Agencies & Departments | | | | | | | | | | | | | | | | | | | | |
| Los Angeles Unified School District | 2 | | | | | | | | | | | | | • | | | | | • | Pedestrian Safety |

| SUMMARY OF COMMENTS 676 Mateo Street | | Letter Number | Project Description | Impacts Less than Significant | Air Quality | Biological Resources | Cultural Resources | Geology and Soils | Greenhouse Emissions | Hazards and Hazardous Materials | Land Use and Planning | Noise | Population and Housing | Public Services | Transportation/Traffic | Tribal Cultural Resources | Utilities | Energy – CEQA Appendix F | Alternatives | Other | Explanation of “Other” | |
|--|--|---------------|---------------------|-------------------------------|-------------|----------------------|--------------------|-------------------|----------------------|---------------------------------|-----------------------|-------|------------------------|-----------------|------------------------|---------------------------|-----------|--------------------------|--------------|-------|------------------------|--|
| Organizations and Individuals | | | | | | | | | | | | | | | | | | | | | | |
| M.G. Lord Associate Professor of English University of Southern California | | 3 | | | | | | | | | | • | | | | | | | | | • | Requesting delay of construction due to COVID-19 stay at home restrictions. |
| Matt Cluett | | 4 | | | • | | | | | | | | | | | | | | | | • | Financial hardship due to COVID-19 and restriction on staying home due to COVID-19. |
| M.G. Lord Associate Professor of English University of Southern California | | 5 | | | | | | | | | | • | | | | | | | | | • | Requesting delay of construction due to COVID-19 stay at home restrictions. |
| Adams Broadwell Joseph & Cardozo Kendra Hartmann | | 6 | • | | • | | | | • | | | • | | | | | | | | | • | The overall accessibility of references for the Draft EIR and the cumulative analysis were not adequate. |
| Adams Broadwell Joseph & Cardozo Kendra Hartmann | | 7 | | | | | | | | | • | | | | | | | | | | | |

II. Responses to Comments

C. Comment Letters and Responses

Comment Letter No. 1

State of California
Department of Transportation
District 7 – Office of Regional Planning
Miya Edmonson, IGR/CEQA Branch Chief
100 S. Main Street, Suite 100
Los Angeles, CA 90012

Comment No. 1-1

Thank you for including the California Department of Transportation (Caltrans) in the environmental review process for the above referenced project. The Project would involve the demolition of the existing warehouse and surface parking lot, and the construction of an up to 197,355-square-foot mixed-use building including up to 185 live/work units, approximately 15,320 square feet of open space for residents, up to 23,380 square feet of art-production and commercial space, and associated parking facilities. Eleven percent of the units (20 live/work units) would be deed-restricted for Very Low-Income households. The Project also proposes the ability to implement an “Increased Commercial Flexibility Option” (Flexibility Option) that would provide the Project the flexibility to increase the commercial square footage and, in turn, reduce the overall amount of live/work units from 185 live/work units to 159 live/work units, with a commensurate reduction in deed-restricted Very Low Income units.

Response to Comment No. 1-1

The comment accurately describes the Project characteristics as an introduction to the comments on the Draft EIR that follow. As the comment does not raise any specific issues with respect to the content and adequacy of the Draft EIR, no further response is necessary.

Comment No. 1-2

The nearest State facility to the proposed project is Interstate 10. After reviewing the DEIR, Caltrans has the following comments:

Caltrans acknowledges and supports infill development that provides a mix of land uses which allow a neighborhood to meet their needs for housing, work, and services, like the proposed Project aims to facilitate. Caltrans also applauds the inclusion of deed restricted low-income housing and concurs with Project Design Feature (PDF) TR-2, which reduces car parking and creates additional bike parking. Since the intention of PDF TR-2 is to reduce car parking, based on the Project’s location and land use context, Caltrans recommends reducing the amount of car parking to the smallest number of spaces possible. Research looking at the relationship between land-use, parking, and transportation indicates that car parking prioritizes driving above all other travel modes and undermines a community’s ability to choose public transit and active modes of

transportation. For any community or city to better support all modes of transportation and reduce vehicle miles traveled, we recommend the implementation of Transportation Demand Management (TDM) measures as an alternative to requiring car parking.

Response to Comment No. 1-2

The commenter acknowledges and supports infill development, including the Project's inclusion of deed restricted low-income housing, and agrees with the inclusion of Project Design Feature **PDF TR-2 (Transportation Demand Management Program)**, which reduces car parking and creates additional bicycle parking. The commenter recommends reducing the amount of car parking to the smallest number of spaces possible. As described in Section IV.K, Transportation of the Draft EIR, the Project would comply with existing applicable City ordinances (e.g., the City's existing TDM Ordinance, referred to in LAMC Section 12.26 J). As outlined in more detail in Project Design Feature **PDF TR-2** in Section IV.K, Transportation, on page IV.K-24 of the Draft EIR, a preliminary TDM program to reduce vehicle miles travelled will be prepared and provided for LADOT review prior to the issuance of the first building permit for this Project, and a final TDM program approved by LADOT is required prior to the issuance of the first certificate of occupancy for the Project. This comment is noted for the record and will be forwarded to the decision makers for their review and consideration.

Comment No. 1-3

If the car parking must be built, it should be designed in a way that is conducive to adaptive reuse. They should contain flat floors with ramps on the exterior edge, so that they can be more easily converted to beneficial uses in the future.

Response to Comment No. 1-3

All car parking would be contained in three subterranean levels of a parking garage and is, therefore, not conducive to reuse. As the comment does not raise any specific issues with respect to the content and adequacy of the Draft EIR, no further response is necessary. This comment is noted for the record and will be forwarded to the decision makers for their review and consideration.

Comment No. 1-4

Caltrans does not expect project approval to result in a direct adverse impact to the existing State transportation facilities. Additionally, any transportation of heavy construction equipment and/or materials which requires use of oversized-transport vehicles on State highways will need a Caltrans transportation permit. We recommend large size truck trips be limited to off-peak commute periods.

Response to Comment No. 1-4

The commenter indicates that Caltrans does not anticipate project approval to result in a direct adverse impact to existing State transportation facilities. The commenter states that transportation of heavy construction equipment and/or materials on State transportation facilities requires a permit from Caltrans and further recommends construction related traffic to be limited to off-peak hours. The Project would comply with Caltrans permit requirements regarding

transportation of heavy construction equipment and/or materials. In addition, Project Design Feature **PDF TR-1 (Construction Staging and Traffic Management Plan)** includes a provision that construction related deliveries, haul trips, etc. shall be scheduled so as to occur outside commuter peak hours (Draft EIR, Section IV.K, Transportation, page IV.K-23). This comment is noted for the record and will be forwarded to the decision makers for their review and consideration.

Comment Letter No. 2

Alex Campbell, Assistant CEQA Project Manager
 Los Angeles Unified School District
 333 South Beaudry Avenue, 21st Floor
 Los Angeles, CA 90017

Comment No. 2-1

Presented below are comments submitted on behalf of the Los Angeles Unified School District (LAUSD) regarding the subject project located at 668-678 S Mateo Street, 669-679 S. Imperial Street. LAUSD is concerned about the potential negative impacts of the project on our students, staff and parents traveling to and from Metropolitan High School since the project site is approximately from 620 feet from the school. While COVID-19 has caused LAUSD to implement remote learning for the time being, we request that these comments apply when LAUSD clears students to return to campus.

Based on the extent/location of the proposed development, it is our opinion that environmental impacts on the surrounding community (traffic, pedestrian safety) may occur. Since the project may have an environmental impact on LAUSD schools, recommended conditions designed to help reduce or eliminate potential impacts are included in this response.

Response to Comment No. 2-1

The comment is an introduction to the comments that follow. The comment addresses the Project's potential impacts on LAUSD students, staff, and parents traveling to and from Metropolitan High School and recommends conditions to reduce or eliminate potential impacts. These comments and recommendations are addressed in Responses to Comment Nos. 2-2 to 2-4.

Comment No. 2-2

Traffic/Transportation

LAUSD's Transportation Branch **must be contacted** at (213) 580-2950 regarding the potential impact upon existing school bus routes. The Project Manager or designee will have to notify the LAUSD Transportation Branch of the expected start and ending dates for various portions of the project that may affect traffic within nearby school areas. To ensure that effective conditions are employed to reduce construction and operation related transportation impacts on District sites, including the net increase of 1000 or more daily vehicle trips, we ask that the following language be included in the recommended conditions for traffic impacts:

- (2-2a) School buses must have unrestricted access to schools.
- (2-2b) During the construction phase, truck traffic and construction vehicles may not cause traffic delays for our transported students.
- (2-2c) During and after construction changed traffic patterns, lane adjustment, traffic light patterns, and altered bus stops may not affect school buses' on-time performance and passenger safety.

(2-2d) Construction trucks and other vehicles are required to stop when encountering school buses using red-flashing-lights must-stop-indicators per the California Vehicle Code.

(2-2e) Contractors must install and maintain appropriate traffic controls (signs and signals) to ensure vehicular safety.

(2-2f) Contractors must maintain ongoing communication with LAUSD school administrators, providing sufficient notice to forewarn children and parents when existing vehicle routes to school may be impacted.

(2-2g) Parents dropping off their children must have access to the passenger loading areas.

(Note: Numbering of items is not from the original comment letter but is provided herein for clarity with the responses below).

Response to Comment No. 2-2

As outlined in more detail in Project Design Feature **PDF TR-1** in Section IV.K, Transportation, on page IV.K-22, of the Draft EIR, a detailed Construction Staging and Traffic Management Plan (CSTMP) would be submitted to LADOT's Citywide Temporary Traffic Control Section or Permit Plan Review Section for review and approval prior to the start of any construction work. This project design feature includes 12 items that are to be included in the CSTMP. The CSTMP would take into account all existing uses surrounding the Project Site, including schools. As shown below, six of the seven recommendations provided by the commenter are already addressed by or reflected in Project Design Feature **PDF TR-1** or elsewhere in the Draft EIR, as specified below. Specifically:

(2-2a) *School buses must have unrestricted access to schools.* As identified by the commenter, the nearest school to the Project Site is Metropolitan High School, located approximately 620 feet southwest of the Project Site, at 727 Wilson Street. Project construction vehicles would use Mateo Street, Imperial Street, Santa Fe Avenue, 7th Street east of Mateo Street and 8th Street east of Mateo Street to access the Project Site. The closest point of approach to Metropolitan High School from these routes would be 800 feet to the east (at Imperial Street and 7th Street). Project construction traffic would remain east of this point. Accordingly, Project construction traffic would be unlikely to directly impact the roadways that provide immediate access to the school (7th Street west of Mateo Street and Wilson Street). In accordance with Project Design Feature **PDF TR-1**, the provisions of the CSTMP will take into account the location of the schools in the area and work to control construction traffic effects on school bus operations.

(2-2b) *During the construction phase, truck traffic and construction vehicles may not cause traffic delays for our transported students.* As outlined in Project Design Feature **PDF TR-1**, temporary traffic control during all construction activities adjacent to public rights-of-way will be provided to improve traffic flow on public roadways (e.g., flag men) and construction-related deliveries, haul trips, etc., will be scheduled so as to occur outside the commuter peak hours to the extent feasible, to reduce the effect on traffic

flow on surrounding streets. Therefore, with the implementation of Project Design Feature **PDF TR-1**, traffic delays for transported students are anticipated to be minimal.

(2-2c) During and after construction changed traffic patterns, lane adjustment, traffic light patterns, and altered bus stops may not affect school buses' on-time performance and passenger safety. As discussed on page IV.J-64 (Public Services - Schools), of the Draft EIR, construction of the Project would not require the closure of any vehicle travel lanes. Further, as outlined in Project Design Feature **PDF TR-1**, temporary traffic control during all construction activities adjacent to public rights-of-way will be provided to improve traffic flow on public roadways (e.g., flag men) and construction-related deliveries, haul trips, etc., will be scheduled so as to occur outside the commuter peak hours to the extent feasible, to reduce the effect on traffic flow on surrounding streets. Therefore, with the implementation of Project Design Feature **PDF TR-1**, traffic delays for schools buses are anticipated to be minimal.

(2-2d) Construction trucks and other vehicles are required to stop when encountering school buses using red-flashing-lights must-stop-indicators per the California Vehicle Code. All construction trucks and other vehicles would be subject to all applicable traffic laws, including the provisions of the California Vehicle Code.

(2-2e) Contractors must install and maintain appropriate traffic controls (signs and signals) to ensure vehicular safety. As outlined in Project Design Feature **PDF TR-1**, temporary traffic control during all construction activities adjacent to public rights-of-way will be provided to improve traffic flow on public roadways.

(2-2f) Contractors must maintain ongoing communication with LAUSD school administrators, providing sufficient notice to forewarn children and parents when existing vehicle routes to school may be impacted. Project Design Feature **PDF TR-1** of the Draft EIR has been modified in response to this request. In addition, the request that LAUSD's Transportation Branch be contacted regarding existing school bus routes and notification to the LAUSD Transportation Branch of the expected start and ending dates for various portions of the Project that may affect traffic within nearby school areas be provided (see 2-3a below) is included in this clarification. The reader is referred to **Section III. Revisions, Clarifications, and Corrections to the Draft EIR**, of this Final EIR for the following revision:

- Section IV.K. Transportation/Traffic, page IV.K-22, under (c) Project Design Features, add the following to **PDF TR-1**:
 - Contractors will maintain ongoing communication with LAUSD school administrators and the LAUSD Transportation Section, providing sufficient notice to forewarn children and parents when existing vehicle routes and existing pedestrian routes to schools, if any, may be impacted.

(2-2g) Parents dropping off their children must have access to the passenger loading areas. Due to the distance from the Project Site to Metropolitan High School and

the fact that Project construction traffic would use roadways east of the school during Project construction activities, Project construction would not directly impact the passenger loading areas at Metropolitan High School that would be accessed from 7th Street west of Mateo Street and Wilson Street. In accordance with Project Design Feature **PDF TR-1**, the provisions of the CSTMP will take into account the location of the schools in the area and work to control construction traffic effects on passenger loading areas at area schools.

Comment No. 2-3

Pedestrian Safety

Construction activities that include street closures, the presence of heavy equipment and increased truck trips to haul materials on and off the project site can lead to safety hazards for people walking in the vicinity of the construction site. To ensure that effective conditions are employed to reduce construction and operation related pedestrian safety impacts on District sites, we ask that the following language be included in the recommended conditions for pedestrian safety impacts:

(2-3a) Contractors must maintain ongoing communication with LAUSD school administrators, providing sufficient notice to forewarn children and parents when existing pedestrian routes to school may be impacted.

(2-3b) Contractors must maintain safe and convenient pedestrian routes to all nearby schools. The District will provide School Pedestrian Route Maps upon your request.

(2-3c) Contractors must install and maintain appropriate traffic controls (signs and signals) to ensure pedestrian and vehicular safety.

(2-3d) Haul routes are not to pass by ***any*** school, except when school is ***not*** in session.

(2-3e) No staging or parking of construction-related vehicles, including worker-transport vehicles, will occur on or adjacent to a school property.

(2-3f) Funding for crossing guards at the contractor's expense is required when safety of children may be compromised by construction-related activities at impacted school crossings.

(2-3g) Barriers and/or fencing must be installed to secure construction equipment and to minimize trespassing, vandalism, short-cut attractions, and attractive nuisances.

(2-3h) Contractors are required to provide security patrols (at their expense) to minimize trespassing, vandalism, and short-cut attractions.

(Note: Numbering of items is not from the original comment letter but is provided herein for clarity with the responses below).

Response to Comment No. 2-3

As outlined in more detail in Project Design Feature **PDF TR-1** in Section IV.K, Transportation, on page IV.K-22, of the Draft EIR, the Project would prepare a CSTMP that would be approved by LADOT. As shown below, six of the eight recommendations provided by the commenter are already addressed by or reflected in Project Design Feature **PDF TR-1** or elsewhere in the Draft EIR, as specified below. The remaining two recommendations will be added to Project Design Feature **PDF TR-1**. Specifically:

(2-3a) Contractors must maintain ongoing communication with LAUSD school administrators, providing sufficient notice to forewarn children and parents when existing pedestrian routes to school may be impacted. See Response to Comment No. 2-2f above.

*(2-3b) Contractors must maintain safe and convenient pedestrian routes to all nearby schools. The District will provide School Pedestrian Route Maps upon your request. As discussed on page IV.J-64 in Section IV.J.3, Public Services – Schools, of the Draft EIR, temporary closures of the sidewalks would likely be limited to areas immediately adjacent to the Project Site on Mateo Street and Imperial Street during portions of the construction period. However, as contained in Project Design Feature **PDF TR-1**, safety precautions for pedestrians and bicyclists will be obtained through such measures as alternate routing and protection barriers as appropriate, especially as it pertains to maintaining safe routes to schools, particularly Metropolitan High School. Covered walkways will be provided where pedestrians are exposed to potential injury from falling objects and in the event of a sidewalk closure, pedestrians will be routed around sidewalk closures.*

*(2-3c) Contractors must install and maintain appropriate traffic controls (signs and signals) to ensure pedestrian and vehicular safety. As outlined in Project Design Feature **PDF TR-1**, temporary traffic control during all construction activities adjacent to public rights-of-way will be provided to improve traffic flow on public roadways (e.g., flag men). Furthermore, safety precautions for pedestrians and bicyclists will be obtained through such measures as alternate routing and protection barriers as appropriate, especially as it pertains to maintaining safe routes to schools, particularly Metropolitan High School.*

*(2-3d) Haul routes are not to pass by any school, except when school is not in session. The anticipated outbound haul route from the Project Site (which has been revised since the Draft EIR was circulated for review), would be south on Imperial Street and east on E. 7th Street to the Golden State Freeway (I-5), and the anticipated inbound haul route to the Project Site (which has also been revised since the Draft EIR was circulated for review) would be exiting the I-10 from Exit 16A (Santa Fe Avenue) toward Santa Fe Avenue and Mateo Street, east onto E. 8th Street, north on Santa Fe Avenue to Jesse Street, west on Jesse Street, and south onto Imperial Street. Neither the inbound nor outbound haul routes would pass by any school, and the streets that would be used for hauling are located at least 800 feet east of Metropolitan High School. The reader is referred to **Section III. Revisions, Clarifications, and Corrections to the Draft EIR**, of this Final EIR for revisions to the haul route.*

- Section II, Project Description, page II-37, under 4. Construction, revise the second sentence of the second paragraph as follows:

“The anticipated outbound haul route from the Project Site would be south on ~~Mateo~~ Imperial Street and east on E. 7th Street to the Golden State Freeway (I-5), and the anticipated inbound haul route to the Project Site would be exiting the I-10 from Exit 16A (~~Santa Fe Avenue~~) toward ~~Santa Fe Avenue and Mateo Street~~, east west onto E. 8th Street, and north onto ~~Mateo Street~~ north on Santa Fe Avenue to Jesse Street, west on Jesse Street, and south onto Imperial Street.”

*(2-3e) No staging or parking of construction-related vehicles, including worker-transport vehicles, will occur on or adjacent to a school property. As outlined in Project Design Feature **PDF TR-1**, the locations of the off-site truck staging will be identified to include staging in a legal area, and which will detail measures to ensure that trucks use the specified haul route, and do not travel through residential neighborhoods. Furthermore, Project Design Feature **PDF TR-1** provides that construction worker parking on nearby residential streets will be prohibited and worker parking will be provided on-site or in designated off-site public parking areas and that construction related vehicles will be prohibited from parking on surrounding public streets, which would include streets located adjacent to schools.*

*(2-3f) Funding for crossing guards at the contractor’s expense is required when safety of children may be compromised by construction-related activities at impacted school crossings. Project Design Feature **PDF TR-1** of the Draft EIR has been revised to accommodate this request. The reader is referred to **Section III. Revisions, Clarifications, and Corrections to the Draft EIR**, of this Final EIR.*

- Section IV.K. Transportation/Traffic, page IV.K-22, under (c) Project Design Features, add the following to **PDF TR-1**:
 - Funding for crossing guards at the Project Applicant’s expense will be required if the safety of children may be compromised by construction-related activities at impacted school crossings.

*(2-3g) Barriers and/or fencing must be installed to secure construction equipment and to minimize trespassing, vandalism, short-cut attractions, and attractive nuisances. As outlined in Project Design Feature **PDF POL-1**, on page IV.J-36 in Section IV.J. 2, Public Services – Police Protection, of the Draft EIR, during construction, the Project will implement appropriate, temporary security measures, including security fencing (e.g., chain-link fencing), low-level security lighting and locked entry (e.g., padlock gates or guard restricted access) to limit access by the general public to the construction site. Regular and multiple security patrols during non-construction hours (e.g., nighttime hours, weekends, and holidays) will also be provided. During construction activities, the Contractor will document the security measures, and the documentation will be made available to the Construction Monitor.*

(2-3h) Contractors are required to provide security patrols (at their expense) to minimize trespassing, vandalism, and short-cut attractions. See Response to Comment No. 2-3g.

Comment No. 2-4

The District's charge is to protect the health and safety of students and staff, and the integrity of the learning environment. The comments presented above identify potential environmental impacts related to the proposed project that must be addressed to ensure the welfare of the students attending Metropolitan High School their teachers and the staff, as well as to assuage the concerns of the parents of these students. However, due to COVID - 19 the school is currently closed, and health and safety concerns are minimized. Therefore, the recommended conditions set forth in these comments should be adopted as conditions of project approval to offset environmental impacts on the affected school students and staff when school is in session.

Response to Comment No. 2-4

This comment summarizes the comments throughout this letter, which are addressed in the preceding Response to Comment Nos. 2-2 and 2-3.

Comment Letter No. 3

Submitted via e-mail

M.G. Lord
Associate Professor of English
University of Southern California
No Address

Comment No. 3-1

What is the proposed date for demolition to begin on this project?

Response to Comment No. 3-1

The construction timeline for the Project is described in Section II, Project Description, page II-37, of the Draft EIR. The Project would be constructed over approximately 24 months. Per the Draft EIR, demolition activities are anticipated to start in 2021, and construction completion and occupancy are anticipated in 2023. In consideration of this comment, the Applicant has clarified that construction of the Project would not begin prior to the 4th quarter of 2021 (no earlier than October 2021). This clarification is provided in **Section III. Revisions, Clarifications, and Corrections to the Draft EIR**, of this Final EIR as follows:

- Section II, Project Description, page II-37, under 4. Construction, add the following sentence to the end of the first paragraph:

“The construction of the Project would not begin prior to the 4th quarter of 2021 (October 2021).”

Comment No. 3-2

I live in a loft that I own on the second floor of the Biscuit Company Lofts. It looks out onto 676 Mateo Street, directly opposite the address where demolition will occur. As you know, because of the surge in corona virus cases in Southern California, we are under safer-at-home work orders until the summer. If demolition and construction begin this spring, THIS WILL DESTROY MY WORK LIFE AND RUIN ME FINANCIALLY.

Here is the situation: I am an associate professor in the English Department at the University of Southern California. Beginning the week after next, I need to teach classes from my home via Zoom on Monday, Tuesday and Thursday each week. Because of my health and my age, I have been ordered not to return to campus. (Most of the campus is closed anyway: I can no longer access the building where the office that I share with another professor is housed.)

If I had had warning that demolition--with its monstrous amount of noise--would begin during the spring semester, I could have petitioned last fall for a place other than my locked office from which to teach. Obtaining such a workspace is now out-of-the-question.

Response to Comment No. 3-2

As discussed in Response to Comment No. 3-1, demolition would not begin prior to the 4th quarter of 2021 (October 2021).

With respect to Project construction, the potential construction noise impacts of the Project are addressed in Section IV.H, Noise, of the Draft EIR on pages IV.H-24 through IV.H-28. Specifically, with respect to the commenter's concerns regarding noise effects on the commenter's second floor unit during demolition, the Project's demolition phase is anticipated to last approximately one month (21 working days). During this time frame, the assumed equipment mix that would be utilized includes a concrete/industrial saw, a rubber tired dozer, and two tractors/loaders/backhoes (Draft EIR, Appendix I, Noise Calculations, page 5). The noisiest piece of this assumed mix of equipment demolition would be the concrete/industrial saw. In calculating the noise that would be generated by construction equipment, the analysis considers the source level of each piece of equipment and assumes the time during which the equipment would be in use, based on typical usage during a typical construction project. In the Draft EIR, the concrete/industrial saw was assumed to be in use at full speed for approximately 20 percent of time during demolition (Draft EIR, Appendix I, Noise Calculations, page 5). Using these assumptions, the Draft EIR analysis calculated that the equipment used during demolition, taking into account the distance from the center of the Project Site to the Biscuit Company Lofts, could generate a noise level of 72.9 dBA at the edge of the building. Because this level would represent an increase of 6.5 dBA over the ambient noise level, which would exceed the significance threshold of 5 dBA increase over the ambient noise level that was measured to be 66.4 dBA (Draft EIR, Section IV.H, Noise, page IV.H-26). Accordingly, the Draft EIR identifies that the impact of construction noise at the Biscuit Company Lofts and Toy Factory Lofts would be potentially significant (Draft EIR, Section IV.H, Noise, pages IV.H-27 and IV.H-28).

This analysis is conservative in that, as stated in Section IV.H, Noise on page IV.H-25 of the Draft EIR, "it is unlikely (and unrealistic) that every piece of equipment will be used at the same time, at the same distance from the receptor, for each phase of construction." Further, the noise level reported in Table IV.H-12 in Section IV.H, Noise, of the Draft EIR, is a composite value (all pieces of equipment added together). When the concrete/industrial saw is not in use, the noise level during demolition is reduced to 68.7 dBA L_{eq} .¹ As shown in Table IV.H-9 in Section IV.H, Noise, of the Draft EIR, the existing, ambient noise level at the closest receptors to the west (National Biscuit Company and Toy Factory Lofts) is 66.4 dBA L_{eq} ; therefore, when the concrete/industrial saw is not actively being used, the noise level during demolition (from the rubber tired dozer and the tractor/loader/backhoes) would be only 2.3 dBA over ambient levels, without accounting for any mitigation, and would therefore not exceed the City's 5-dBA threshold. In other words, the limited use of the concrete saw during the demolition phase of the Project's construction is the primary source of the potentially significant noise impact at the Biscuit Company and Toy Factory Lofts.

Nonetheless, as shown on pages IV.H-34 and IV.H-35 in Section IV.H, Noise, of the Draft EIR, the Project includes a mitigation measure (Mitigation Measure **MM NOI-1**) that requires the installation of "a temporary, continuous sound barrier along the western (Mateo Street) boundary of the Project Site. The barrier shall be at least 8 feet in height and constructed of materials achieving a Transmission Loss (TL) value of at least 10 dBA, such as ½ inch plywood." A

¹ 66.2 dBA + 65.2 dBA = 68.7 dBA (<https://noisemeters.com/apps/db-calculator/>)

temporary noise barrier constructed of ½ inch plywood can reduce the transmission of noise by up to 20 dBA,² would block the line-of-sight from the concrete saw activity to the closest receptors (as a walk-behind concrete saw has the blade and motor within 1-2 feet of the ground) and would, therefore, reduce construction-related noise levels to less-than-significant levels at the ground floors of the Biscuit Company Lofts and Toy Factory Lofts.

The commenter has raised concerns over the noise effects on the 2nd floor units in the Biscuit Company Lofts building and other commenters have raised concerns over the effects on upper floor units in the Biscuit Company Lofts and Toy Factory Lofts buildings (see Comment Nos. 6-12 and 6-37). In order to address these comments, an additional analysis was undertaken to determine both the noise effects on the 2nd floor and above units from an 8-foot-high plywood barrier and also the feasibility of increasing the height of the sound barrier to intercept the line-of-sight to 2nd floor and above units in the Biscuit Company Lofts and Toy Factory Lofts buildings. As shown in FEIR **Table II-2** on page II-17 below and FEIR **Figure 1** on page II-18 below, a sound barrier height of 8 feet would not sufficiently mitigate noise impacts at the 2nd floor and above at the adjacent buildings. However, a barrier height of 20 feet would be sufficient to intercept the line-of-sight to an adjacent building elevation of 25 feet. Such a barrier would be feasible through the use of sound curtains at the edge of the Project Site, rather than plywood. Sound curtains have a transmission loss value of 20-30 dBA, compared to 10-20 dBA for plywood. The resulting noise levels at the 2nd floor units of the Biscuit Company Lofts and Toy Factory Lofts after incorporation of a 20-foot sound curtain barrier are shown in **Table II-2**. This potential sound curtain would reduce the sound levels at the 2nd floor units to approximately 52.9 dBA, which would be approximately 13 dBA below the measured ambient noise level and below the City's 5-dBA threshold.

To summarize, after incorporating the mitigation measure consisting of an 8-foot plywood barrier as identified in the Draft EIR, the resulting noise level on the first floor of the Biscuit Company Lofts and Toy Factory Lofts buildings would be 62.9 dBA, which would be below the ambient noise level. Construction noise impacts at the first floor of the Biscuit Company Lofts and Toy Factory Lofts buildings would be less than significant after implementation of this mitigation, while construction noise impacts would remain potentially significant at the second floor and above of the Biscuit Company Lofts and Toy Factory Lofts buildings.

Incorporating a 20-foot sound curtain in place of the plywood barrier would result in a noise level at the first and second floors of the Biscuit Company Lofts and Toy Factory Lofts buildings of 52.9 dBA, which would also be below the ambient noise level. Construction noise impacts at the first and second floors of the Biscuit Company Lofts and Toy Factory Lofts buildings would be less than significant with this measure.

However, the feasible height of a sound curtain is limited to approximately 20-feet and use of a 20-foot sound curtain would not reduce noise levels at the third floor and above at the Biscuit

² *Based on the FHWA Noise Barrier Design Handbook (July 14, 2011), see Table 3, Approximate sound transmission loss values for common materials.*

Company Lofts and Toy Factory Lofts buildings. Construction noise impacts would remain potentially significant at these locations. Therefore, an alternate mitigation strategy was considered that could address potentially significant noise impacts at all units in the Biscuit Company Lofts and Toy Factory Lofts buildings that face the Project Site, including those on the third floor and above for which inclusion of any form of perimeter sound barrier would be infeasible.

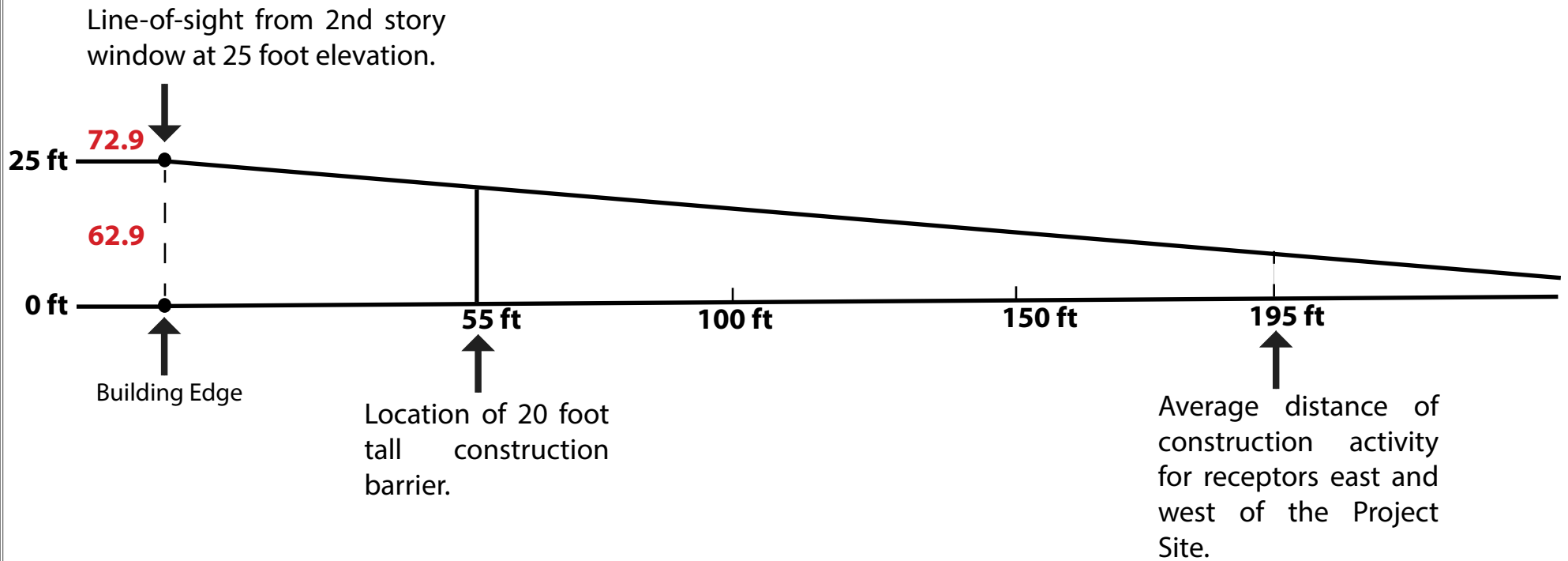
**Table II-2
Estimated Exterior Construction Noise Levels at Toy Factory Lofts and
National Biscuit Company Lofts with Mitigation**

| Sensitive Receptor Location Number | Sensitive Land Uses | Distance to Project Site (feet) | Existing Monitored Ambient Noise Levels (dBA L _{eq}) | Estimated Peak Construction Noise Levels (dBA L _{eq}) | Noise Level Increase Without Mitigation | Noise Levels With Mitigation | Mitigated Construction Noise Level Compared to Ambient | Potentially Significant Impact? |
|------------------------------------|--|---------------------------------|--|---|---|------------------------------|--|---------------------------------|
| 1 | Floor 1 (with plywood barrier) | 55 | 66.4 | 72.9 | 6.5 | 62.9 | -3.5 ^a | No |
| 1 | Floors 2 and higher (with plywood barrier) | 55 | 66.4 | 72.9 | 6.5 | 72.9 ^b | 6.5 | Yes |
| 1 | Floors 1-2 (with sound curtain) | 55 | 66.4 | 72.9 | 6.5 | 52.9 | -13.5 ^a | No |
| 1 | Floors 3 and higher (with sound curtain) | 55 | 66.4 | 72.9 | 6.5 | 72.9 ^b | 6.5 | Yes |

a Mitigated Noise levels would be below ambient noise at receptor location.

b Represents the estimated noise level at Floor 3 units. As the building height increases, the distance from the construction site to upper floor units increases slightly with each floor, which would slightly reduce the resulting noise levels at each higher floor. However, this increase in distance would not be sufficient to reduce the resulting sound level increase at the uppermost units to less than 5 dBA. Reduction in sound levels resulting from these increases in distance would be minimal.

The strategy includes establishing controls on equipment use and/or location, use of alternate demolition techniques, and/or use of temporary noise barriers in the immediate vicinity of the construction equipment. Incorporation of one or more of these measures would be expected to limit noise levels at the Biscuit Company Lofts and Toy Factory Lofts to below the City’s threshold without the use of sound barriers at the perimeter of the Project Site. While the Draft EIR analysis includes an assumed mix of equipment to be used in construction, the actual equipment mix cannot be precisely determined until a demolition contractor is engaged and specific demolition requirements are identified. A more refined analysis that takes into account the precise mix of



Resulting Noise Level (dBA, Leq)



Source: EcoTierra Consulting, May 2021.

Figure 1
Screening Effect of 20 Foot Noise Barrier

equipment to be used, source levels, and utilization rates would be incorporated as a mitigation measure in order to establish the required construction equipment controls.

This analysis would assess the potential for incorporating one or more of the following, including, but not limited to:

- Use of different equipment or techniques for concrete demolition, such as mechanical or chemical pressure bursting, but not including a concrete saw;
- Different technologies for sound muffling controls on construction equipment;
- Location controls for specified pieces of equipment that provide adequate buffer distance between sensitive receptors and the construction equipment; and/or
- Use of temporary noise barriers in the immediate vicinity of operating construction equipment.

For example, the use of a different demolition technique in lieu of the concrete saw, such as mechanical or chemical pressure bursting, would result in a noise level that is approximately 17.3 to 31.3 dBA less than the use of a regular concrete saw, and would result in a 68.7 to 69.8 dBA maximum construction noise level (during demolition).³ Use of a quieter-type blade saw⁴ would reduce the maximum construction noise level by 2.6 dBA, down to 68.8 dBA. Similarly, sound muffling controls such as specially designed mufflers for construction equipment⁵ can reduce noise from the other equipment used during demolition (rubber-tired dozer and tractor/loader/backhoes) by up to 25 dBA and result in a 70.8 dBA maximum construction noise level. Additionally, if the concrete saw was prohibited from being used within 215 feet of the western project boundary, then sound levels would be reduced to 71.4 dBA, which would no longer exceed the 5 dBA above ambient threshold. If the use of the concrete saw was prohibited while other equipment was in use, the maximum noise level would be reduced to 68.7 dBA.⁶ Similarly, movable temporary noise barriers that move along with the use of the concrete saw could result in noise reductions of up to 20 dBA.⁷ As such, one or more of these measures could be feasibly implemented as part of a noise mitigation plan to reduce noise impacts on the adjacent sensitive receptors to less than significant levels. The specific measures to be employed on the

³ Concrete saw generates 89.6 dBA at a distance of 50 feet from the source, whereas water-jetting generates 72.3 dBA at 50 feet

(Source: https://www.epd.gov.hk/epd/misc/construction_noise/contents/index.php/en/concrete-removal/54-quieter-construction-equipment.html)

⁴ The quieter type blade saw has a higher speed and smoother blade which reduces the vibration and hence the propagation of sound and would have a noise level of 74.3 DBA at a distance of 50 feet (Source: https://www.epd.gov.hk/epd/misc/construction_noise/contents/index.php/en/concrete-removal/item/55-quieter-construction-methods/85-quieter-type-blade-saw.html)

⁵ <http://www.paraglidingteam.nl/PPGTechnics/sound%20and%20noise/Mufflers/KamerDemperBerekening.pdf>, <https://www.donaldson.com/en-us/engine/filters/products/exhaust/mufflers/>

⁶ 66.2 dBA + 65.2 dBA = 68.7

⁷ Source: https://www.epd.gov.hk/epd/misc/construction_noise/contents/index.php/en/concrete-removal/55-quieter-construction-methods.html, Acoustical Surfaces Inc. website, Temporary Exterior Quilted Curtains.

Project would be identified through the implementation of Mitigation Measure **MM NOI-2** (shown below).

The noise mitigation plan analysis would be reviewed and approved by the Departments of City Planning and Building and Safety prior to beginning demolition. The City is using this strategy in lieu of a specific mitigation measure to address noise impacts above the second floor because details for a specific measure are infeasible and impractical at this time, since it's unclear what mitigation methods would be available until a demolition contractor is engaged to determine the specific equipment mix and availability of mitigation methods. In accordance with CEQA Guidelines Section 15126.4(a)(1)(B), **MM NOI-2** is therefore an appropriate mitigation measure because the City has committed itself to the mitigation, specific performance standards are identified in the mitigation, and potential actions that can feasibly achieve that performance standard have been identified.

The identified mitigation measures would ensure that construction noise impacts at all units above the ground floor in the Biscuit Company Lofts and Toy Factory Lofts buildings that face the Project Site would be less than significant after mitigation. Accordingly, Mitigation Measure **MM NOI-1** in Section IV.H, Noise, page IV.H-34, of the Draft EIR has been modified as follows, and Mitigation Measure **MM NOI-2** has been added to address above ground level impacts:

MM NOI-1 During all Project Site demolition and excavation/grading, construction contractors shall install a temporary, continuous sound barrier along the western (Mateo Street) boundary of the Project Site. The barrier shall be at least 8 feet in height and constructed of materials achieving a Transmission Loss (TL) value of at least 10 dBA, such as ½ inch plywood.²⁶ The supporting structures shall be engineered and erected according to applicable codes. At the time of plan check, building plans shall include documentation prepared by a noise consultant verifying compliance with this measure.

MM NOI-2 Prior to any demolition and excavating/grading, to address construction sound levels above the ground floor at receptor 1 (Biscuit Company Lofts and Toy Factory Lofts), the Project Applicant shall submit a noise mitigation analysis prepared by a qualified acoustic specialist for the review and approval of the Department of City Planning and the Department of Building and Safety that defines any additional temporary sound barriers, specific equipment mix, noise mufflers and buffer distances for specific pieces of equipment, and/or other measures that would reduce the effect of construction noise on the above ground-floor units at the Biscuit Company Lofts and Toy Factory Lofts to less than a 5-dBA increase above ambient levels, with calculations showing the actual mix of equipment and demolition techniques to be used, source levels, and utilization rates, and the resulting noise levels at sensitive receptors. Any supporting structures shall be engineered and erected according to applicable codes. At the time of plan check, building plans shall include documentation prepared by a noise consultant verifying compliance with this measure.

Footnote 26: *Based on the FHWA Noise Barrier Design Handbook (July 14, 2011), see Table 3, Approximate sound transmission loss values for common materials.*

Furthermore, in consideration of this and other comments related to construction noise and vibration impacts on residential uses located west of Mateo Street, the anticipated haul route for the Project has been changed such that Mateo Street would no longer be used during hauling activity. The revised haul route would utilize Imperial Street, Jesse Street, Santa Fe Avenue, and 7th Street to access the Project Site, as shown in revised Figure II-24, Anticipated Haul Route (see Response to Comment No. 2-3). This would further reduce off-site construction noise impacts on residential uses located west of Mateo Street.

Comment No. 3-3

The letter we received about the project recognizes "significant and unavoidable" impacts related to "Noise and Vibration." Last April, the noise from minor renovations of a one-story factory building next to 676 Mateo made Zoom-teaching from my loft very difficult. I know that a full-on demolition will prevent me from teaching. I will have to find an office to rent (which I cannot afford) or take an unpaid leave of absence (which would not only cripple me financially but derail any future promotions).

Response to Comment No. 3-3

With respect to construction noise, please see Response to Comment No. 3-2 above. With respect to construction vibration, the analysis of Project construction vibration is provided on pages IV.H-38 and IV.H-39 in Section IV.H, Noise, of the Draft EIR. As indicated in the Draft EIR, when equipment that causes high levels of vibration (heavy bulldozers and caisson drilling) is operated at the property line of the Project Site, vibration levels of 78 VdB could be generated at Receptor 1 (Toy Company Lofts and Biscuit Company Lofts). This level of vibration would exceed the threshold of 72 VdB, which is the level at which human annoyance can occur during frequent events (more than 70 per day). Based on these conservative assumptions, the Draft EIR analysis concludes that the vibration levels generated by the use of construction equipment could cause annoyance to the closest receptors at the times when the equipment is in use at the Project boundary. Because no mitigation is available to address this effect, a significant and unavoidable construction vibration impact would occur at the Toy Factory Lofts and Biscuit Company Lofts.

As equipment would not be in use 100 percent of the time right at the Project boundary line, the Draft EIR analysis is conservative. As the equipment moves farther from the Project boundary, the vibration felt at the closest receptor locations would be reduced below the maximum level of 78 VdB. In addition, when vibrations are transmitted through a building, the effect is attenuated further, and the potential for vibrations to be perceived on upper floors of a building would also be less than 78VdB.

Comment No. 3-4

Please consider postponing demolition until at least June. THE STAY-AT-HOME ORDER HAS MADE THIS A UNIQUE TIME THAT CALLS FOR UNIQUE ARRANGEMENTS AROUND NOISE-GENERATING CONSTRUCTION.

Everyone I know on my floor works from home. The pandemic has clobbered us financially. Because of the presence of the Biscuit and Toy lofts on Mateo Street, the neighborhood is no longer "industrial;" it is residential. And--at least for a few months--it needs the protection from noise afforded to residential neighborhoods.

Alternatively, perhaps the developer should compensate us for the destruction of our livelihoods during the stay-at-home period.

Thank you for taking these unique circumstances into consideration.

And again, would you please let me know the current demolition schedule?

Response to Comment No. 3-4

With respect to postponing demolition until at least June 2021, as indicated in Response to Comment No. 3-1, demolition would not begin prior to the 4th quarter of 2021.

Comment No. 3-5

Thank you for acknowledging receipt of my concerns about what month in 2021 the demolition at 676 Mateo Street will begin.

Over the weekend I encountered new concerns. This morning in the LA Times headline email I read: "**In Los Angeles** County, now a national hot spot of the coronavirus crisis, the statistics are hard to process. A person is dying every 10 minutes. And Mayor **Eric Garcetti** said a person is getting infected every six seconds."

Every six seconds! It's astonishing. And it further suggests that FORCING hundreds of live/work residents (who have been in strict compliance with the work-from-home order) to leave their safe homes for dangerous unknown work spaces could create a vast public health problem in the coming months.

As I mentioned earlier, this is not an issue with the project going forward. It is an issue with the timing of its start. **THE PANDEMIC HAS CREATED A UNIQUE SITUATION.** Any policy implemented now will not set a precedent, because these are unprecedented times.

Please consider deferring the start of demolition until the fall (or even late summer) of 2021. This will give the hundreds of live-work residents across the street from the demolition time to secure safe alternative workspaces for the two years of construction that will follow.

It's not even safe to LOOK AT OFFICES NOW: Realtors don't want to visit the spaces in person, either.

Response to Comment No. 3-5

With respect to deferring the start of demolition to the late summer or fall of 2021, as indicated in Response to Comment No. 3-1, demolition would not occur prior to October 2021.

Comment No. 3-6

I'm sure everyone in your office reads the Times and Laist.

But I wanted officially (as a comment on **ENV-2016-3691-EIR**) to bring to your attention yesterday's story on SAG-AFTRA pushing for a halt to film production here until later in the year.

The story mentions that EVERY SIX SECONDS someone in Los Angeles is infected with coronavirus: <https://laist.com/latest/post/20210104/sa-gaftra-production-hold-covid-los-angeles>

This is really not the time to force people following the safe-at-home order out of the safety of their homes. Things might be better later in 2021, possibly in June or July.

Response to Comment No. 3-6

With respect to the start of construction, please see Response to Comment Nos. 3-1 and 3-2.

Comment Letter No. 4

Matt Cluett
No Address

Comment No. 4-1

In response to ENV-2016-3691-EIR

What is the proposed construction date for this project?

Response to Comment No. 4-1

Please see Response to Comment No. 3-1. Project construction would not begin prior to the 4th quarter of 2021 (October 2021).

Comment No. 4-2

I live at the Biscuit Company Lofts. My unit is on the second floor directly facing Mateo and the proposed construction site. This project would turn my life upside down. We are under safer at home work orders until next summer, but outside of Covid many of us work from home here. In fact, all of us who face Mateo on the 2nd floor do.

In building another work / live space this project would take away our ability to work from home. None of us can afford to rent office spaces, we have all been hit hard by the pandemic.

It would be absolutely devastating and we would be forced to move or sell - but this project would also make our units impossible to rent or sell during the 2 year construction.

We barely survived 2 renovations (in the space of 36 months) at the restaurant beneath us (former church & state).

Response to Comment No. 4-2

This comment is a statement that describes the personal impact on the commenter from the COVID pandemic. It does not state any specific concern or question regarding the adequacy of the Draft EIR. This comment is noted for the record and will be forwarded to the decision makers for their review and consideration.

While the characteristics of prior construction activities and mitigation measures employed at the Biscuit Company Lofts site is unknown, construction activity associated with the Project would be separated from the Biscuit Company Lofts by at least 55 feet and would be mitigated to a less than significant level (see Response to Comment No. 3-2). The impacts of the Project on residents would be expected to be considerably less than any construction activity that has previously occurred within the Biscuit Company Lofts building.

Comment No. 4-3

I cannot understand this location choice when Mateo & Santa Fe are practically empty between 7th & 8th. They could build there without disrupting anyone.

Response to Comment No. 4-3

As discussed in Section VI, Alternatives, of the Draft EIR (page VI-4), the Project Applicant does not own and cannot reasonably acquire, control, or access an alternate site in a timely fashion that would accommodate the Project and its objectives. The application before the City specifies the Project Site as the location for the Project, and the Draft EIR evaluates the potential environmental impacts of the Project based on the characteristics of the Project and Project Site.

Comment No. 4-4

Our window sills have to be cleaned every other day just from other construction nearby. I can't imagine what this build would do to our lungs. My wife has asthma.

Please reconsider. There is so much space and other areas nearby that need to be revitalized.

We are all devastated by this proposal. We've had a devastating year and now we are facing losing our home.

Response to Comment No. 4-4

Please see Response to Comment 4-3 with respect to alternate locations for the Project. With respect to construction emissions, as shown in Section IV.A, Air Quality, on page IV.A-41 of the Draft EIR, the Project is subject to SCAQMD Rule 403 – Fugitive Dust. “Specific Rule 403 control requirements include, but are not limited to, applying water in sufficient quantities to prevent the generation of visible dust plumes (up to three times per day), applying soil binders to uncovered areas, reestablishing ground cover as quickly as possible, utilizing a wheel washing system to remove bulk material from tires and vehicle undercarriages before vehicles exit the Project Site, and maintaining effective cover over exposed areas.” Additionally, as shown in Table IV.A-13 in Section IV.A, Air Quality, on page IV.A-49 of the Draft EIR, Local Construction Emissions at the Nearest Receptors, the emissions of particulate matter (PM10 and PM2.5) would not exceed the any of the SCAQMD's health-based Localized Significance Thresholds (LSTs) during any phase of construction. Per Section IV.A, Air Quality, page IV.A-47 of the Draft EIR, “LSTs represent the maximum emissions from a project that are not expected to 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 and distance to the nearest sensitive receptor. These ambient air quality standards were established at levels that provide public health protection and allow adequate margin of safety, including protecting the health of sensitive populations such as asthmatics, children, and the elderly.” As the Project's emissions would not exceed any of the LST thresholds, the Project would not cause damage to lungs or exacerbate asthma at the closest receptor locations. Nevertheless, the comment is acknowledged for the record and will be considered by the City's decision-making bodies in their review and consideration.

Comment Letter No. 5

M.G. Lord
Associate Professor of English
University of Southern California
No Address

Comment No. 5-1

I'd like to add another thought to the comments that influence the city's decision to permit construction to begin on this project on Mateo Street.

Los Angeles County has extended eviction protection for tenants until the end of February: <https://laist.com/2021/01/05/eviction-moratorium-extends-LA-county-February.php>

The county recognizes that forcing residents out of their homes during a stay-at-home order is not a judicious or humane course of action.

Response to Comment No. 5-1

This comment is a statement that describes the eviction protection in regard to the COVID pandemic. It does not state any specific concern or question regarding the adequacy of the Draft EIR. This comment is noted for the record and will be forwarded to the decision makers for their review and consideration.

Comment No. 5-2

I would argue that forcing people who work at home from their safe home offices because of excessive noise is also injudicious and inhumane.

This would be another reason to DELAY demolition until later in the year. By the summer, one hopes there will be greater vaccine availability and possibly a cessation in the infection surge that we're now seeing.

Please consider postponing demolition until the stay-at-home order has been lifted and residents near the construction site have time to secure alternative work spaces.

Response to Comment No. 5-2

With respect to delaying demolition until later in the year and the need for alternate work spaces, please see Response to Comment Nos. 3-1 and 3-2.

Comment Letter No. 6

Adams Broadwell Joseph & Cardozo
 Kendra Hartmann
 601 Gateway Boulevard, Suite 1000
 South San Francisco, CA 94080-7037

Comment Letter No. 6 consists of the following components:

1. Main body of letter – **Comment Nos. 6-1 through 6-21.**
2. Attachment A – email correspondence between CREED LA and the City of Los Angeles Planning Department regarding access to Draft EIR, Draft EIR Appendices, and Reference documents – **Comment No. 6-22.**
3. Attachment B - email correspondence between CREED LA and the City of Los Angeles Planning Department regarding access to Draft EIR, Draft EIR Appendices, and Reference documents – **Comment No. 6-23.**
4. Attachment C - email correspondence between CREED LA and the City of Los Angeles Planning Department regarding access to Draft EIR, Draft EIR Appendices, and Reference documents – **Comment No. 6-24.**
4. Exhibit A – Letter from Commenter’s consultant James J.J. Clark, Ph.D, Clark & Associates Environmental Consulting, Inc. – **Comment Nos. 6-25 through 6-35.**
5. Exhibit B – Letter from Commenter’s consultant Neil A. Shaw, FASA, FAES, Menlo Scientific Acoustics, Inc. – **Comment Nos. 6-36 through 6-43.**
6. Appendix 1 – Map from Downtown Center Business Improvement District (DCBID) of Downtown Los Angeles’ “coming soon” projects – **Comment No. 6-44.**
7. Appendix 2 – Map from Downtown Center Business Improvement District (DCBID) of Downtown Los Angeles’ “coming soon” projects – **Comment No. 6-45.**
8. Unnumbered appendix containing Section 9.0 of the Construction Noise Handbook – **Comment No. 6-46.**
9. Appendix 4 - Air Quality Technical Report of the Turk Island Landfill Consolidation and Residential Subdivision Project, prepared by Ramboll Environ, August 2017 – **Comment No. 6-47.**
10. Appendix 5 - Draft Environmental Impact Report for the Turk Island Landfill Consolidation and Residential Subdivision Project, prepared by Lamphier - Gregory, March 2018 – **Comment No. 6-48.**

Comment No. 6-1

We are writing on behalf of Coalition for Responsible Equitable Economic Development (“CREED LA”) to provide these preliminary comments on the Draft Environmental Impact Report (“DEIR”) prepared for the 676 Mateo Street Project (SCH No. 2018021068; Case No. ENV 2016-3691-EIR) (“Project”), proposed by District Centre, LP, & District Centre-GPA, LP (collectively, “Applicant”). The Project proposes the demolition of the existing warehouse and surface parking lot, and the construction of an up-to 197,355-square-foot mixed-use building, including up to 185 live/work units, approximately 15,320 square feet of open space for residents, up to 23,380 square feet of art-production and commercial space, and associated parking facilities. The Project site is located at 668-678 S. Mateo Street and 669-679 S. Imperial Street in the Central City North community of the City of Los Angeles, and consists of eight contiguous lots associated with Assessor Parcel Number 5164-020-021.

This letter contains the preliminary comments of CREED LA and its technical consultants based on an initial review of the DEIR. As discussed below, the City failed to provide CREED LA with timely access to the DEIR reference documents, as required by the California Environmental Quality Act¹ (“CEQA”). The City also declined CREED LA’s January 20, 2021 request to extend the formal public comment period to allow additional time for the public to review DEIR reference documents that were provided just days before the end of the DEIR’s current public comment period.² Due to the limited time provided for public comment, and CREED LA’s limited access to documents underlying the DEIR’s analysis, we have not had adequate time to fully review and comment on the DEIR. We reserve the right to supplement supplemental comments on the DEIR by February 8, 2021, and at any and all later proceedings related to this Project.³

Based on our initial review, it is clear that the DEIR fails to comply with CEQA⁴ in several respects. As explained more fully below, the DEIR fails to accurately disclose the extent of the Project’s potentially significant impacts on air quality, greenhouse gases (“GHG”), public health, and noise; fails to support its findings with substantial evidence; and fails to properly mitigate the Project’s potentially significant impacts. The City cannot approve the Project until the errors in the DEIR are remedied and a revised DEIR is circulated for public review and comment.

We reviewed the DEIR and its appendices with the assistance of highly qualified technical consultants, including air quality consultant James Clark, Ph.D.⁵ and acoustics expert Neil A. Shaw, FASA, FAES.⁶ The attached expert comments require separate responses under CEQA.⁷

Footnote 1: Pub. Resources Code (“PRC”) §§ 21000 et seq.; 14 Cal. Code Regs. (“CCR”) §§ 15000 et seq.; PRC § 21092(b)(1); 14 CCR § 15087(c)(5).

Footnote 2: The City has provided CREED LA an informal extension to February 8, 2021 to submit its DEIR comments, but declined to extend the existing CEQA public comment period, which ends on January 25, 2021.

Footnote 3: 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.

Footnote 4: Pub. Resources Code (“PRC”) §§ 21000 et seq.; 14 Cal. Code Regs. (“CCR”) §§ 15000 et seq.

*Footnote 5: Mr. Clark’s technical comments and curriculum vitae are attached hereto as **Exhibit A** (hereinafter Clark Comments).*

*Footnote 6: Mr. Shaw’s technical comments and curriculum vitae are attached hereto as **Exhibit B** (hereinafter Shaw Comments).*

Footnote 7: 14 CCR § 15088(a), (c).

Response to Comment No. 6-1

The comment provides introductory and/or legal background information related to the comments that follow regarding the commenter’s request for an extension on the formal public comment period due to the City’s alleged failure to provide timely access to the Draft EIR reference documents and the alleged failure of the Draft EIR to accurately disclose significant impacts on air quality, greenhouse gases, public health, and noise. The comment does not include specific facts to substantiate the claims with respect to the adequacy or content of the Draft EIR. Responses to the specific claims raised by the commenter regarding these issues are provided in Response to Comment Nos. 6-4, 6-7, 6-10, 6-11, 6-12, 6-14, 6-15, 6-16, 6-17, 6-19, and 6-20. With respect to the informal extension to February 8, 2021 to submit additional comments (Footnote 2), please see Response to Comment No. 6-4.

Comment No. 6-2**I. STATEMENT OF INTEREST**

CREED LA is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential public and worker health and safety hazards, and the environmental and public service impacts of the Project. The coalition includes the Sheet Metal Workers Local 105, International Brotherhood of Electrical Workers Local 11, Southern California Pipe Trades District Council 16, and District Council of Iron Workers of the State of California, along with their members, their families, and other individuals who live and work in the City of Los Angeles.

Individual members of CREED LA and its member organizations include John Ferruccio, Jorge L. Aceves, John P. Bustos, Gerry Kennon, and Chris S. Macias. These individuals 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.

In addition, CREED LA has an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for business and industry to expand in the region, and by making the area less desirable for new businesses and new residents. Continued environmental degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduce future employment opportunities.

Response to Comment No. 6-2

The comment provides introductory and/or legal background information related to the comments that follow regarding environmental, health, and safety impacts on CREED LA members and the enforcement of environmental laws that encourage sustainable development and ensure a safe working environment. The comment does not include specific facts to substantiate the claims with respect to the adequacy or content of the DEIR. Responses to the specific claims raised by the commenter regarding the specific issues of interest to CREED LA members that are related to the Draft EIR for the Project are provided in Response to Comment Nos. 6-7, 6-10, 6-11, 6-12, 6-14, 6-15, 6-16, 6-17, 6-19 and 6-20.

Comment No. 6-3**II. LEGAL BACKGROUND**

CEQA requires that an agency analyze the potential environmental impacts of its proposed actions in an environmental impact report ("EIR") (except in certain limited circumstances).⁸ The EIR is the very heart of CEQA.⁹ "The foremost principle in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language."¹⁰

CEQA has two primary purposes. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project.¹¹ “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.’”¹² 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.”¹³

Second, CEQA requires public agencies to avoid or reduce environmental damage when “feasible” by requiring “environmentally superior” alternatives and all feasible mitigation measures.¹⁴ The EIR serves to provide agencies and the public with information about the environmental impacts of a proposed project and to “identify ways that environmental damage can be avoided or significantly reduced.”¹⁵ If the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has “eliminated or substantially lessened all significant effects on the environment where feasible” and that any unavoidable significant effects on the environment are “acceptable due to overriding concerns.”¹⁶

While the courts review an EIR using an “abuse of discretion” standard, “the reviewing court is not to ‘uncritically rely on every study or analysis presented by a project proponent in support of its position. *A clearly inadequate or unsupported study is entitled to no judicial deference.*”¹⁷ As the courts have explained, “a prejudicial abuse of discretion occurs “if the failure to include relevant information precludes informed decision making and informed public participation, thereby thwarting the statutory goals of the EIR process.”¹⁸ “The ultimate inquiry, as case law and the CEQA guidelines make clear, is whether the EIR includes enough detail ‘to enable who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.’”¹⁹

Footnote 8: See, e.g., PRC § 21100.

Footnote 9: *Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652.

Footnote 10: *Comtys. for a Better Env’ v. Cal. Res. Agency* (2002) 103 Cal. App.4th 98, 109 (“CBE v. CRA”).

Footnote 11: 14 CCR § 15002(a)(1).

Footnote 12: *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 564.

Footnote 13: *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm’rs.* (2001) 91 Cal. App. 4th 1344, 1354 (“Berkeley Jets”); *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

Footnote 14: CCR§ 15002(a)(2) and (3); see also *Berkeley Jets*, 91 Cal.App.4th at 1354; *Citizens of Goleta Valley*, 52 Cal.3d at 564.

Footnote 15: 14 CCR §15002(a)(2).

Footnote 16: PRC § 21081; 14 CCR § 15092(b)(2)(A) & (B).

Footnote 17: *Berkeley Jets*, 91 Cal. App. 4th 1344, 1355 (emphasis added), quoting, *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 391 409, fn. 12.

Footnote 18: *Berkeley Jets*, 91 Cal.App.4th at 1355; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 722; *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1117; *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 946.

Footnote 19: *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 516, quoting *Laurel Heights*, 47 Cal.3d at 405.

Response to Comment No. 6-3

The comment provides introductory and/or legal background information related to the comments that follow regarding the general purpose of CEQA. The comment does not include specific facts or claims regarding the adequacy or content of the DEIR. As such, no further response is required.

Comment No. 6-4

III. THE CITY FAILED TO PROVIDE TIMELY ACCESS TO DOCUMENTS REFERENCED AND INCORPORATED BY REFERENCE IN THE DEIR

The City violated CEQA and improperly truncated the DEIR public comment period by failing to make all documents referenced or relied on in the DEIR available for public review during the Project's public comment period.²⁰ As a result, CREED LA was unable to complete its review and analysis of the DEIR and its supporting evidence during the current public comment period, which ends on January 25. Our request that the City extend the public comment period was denied. We therefore provide these initial comments on the DEIR and reserve our right to submit supplemental comments on the DEIR at a future date.

Access to all of the documents referenced in the DEIR is necessary to conduct a meaningful review of its analyses, conclusions, and mitigation measures and to assess the Project's potential environmental impacts. CEQA requires that "all documents referenced" and "incorporated by reference" in the draft environmental impact report be available for review and "**readily accessible**" during the entire comment period.²¹ The courts have held that the failure to provide even a few pages of a CEQA document for a portion of the review and comment period invalidates the entire CEQA process, and that such a failure must be remedied by permitting additional public comment.²² It is also well-settled that a CEQA document may not rely on hidden studies or documents that are not provided to the public.²³

On December 22, 2020, we submitted a request for immediate access to documents referenced in the DEIR seeking "any and all documents referenced, incorporated by reference, and relied upon" by the City in its preparation of the DEIR.²⁴

On January 6, 2021, we were told during a phone conversation with City staff that we could have access to two CDs containing all of the documents referenced in the DEIR and its appendices.²⁵ On January 13, 2021, we received the two CDs. The CDs, however, did not include any DEIR reference documents that we did not previously have access to.

On January 19, 2021, at the City's request, we submitted a list of the missing DEIR reference documents to the City.²⁶ In response, the City informed us that our January 19, 2021 list was considered a new request pursuant to the California Public Records Act ("PRA"), a misunderstanding on the City's part.²⁷ We responded by clarifying that our January 19 email was a follow up to CREED LA's original December 22, 2020 DEIR reference document request made pursuant to CEQA.²⁸

On January 21, 2021, we received an email from the City providing partial access to the missing documents. The email indicated that access to the remainder of the documents would be provided "in the near future."²⁹ In response to our reply email, which requested a response to our letter

seeking an extension as well as clarification on when we could expect the remainder of the documents, the City responded on January 22, 2021 by providing access to the remainder of the DEIR reference documents, one business day before the close of the comment period.³⁰ Despite its late document production, the City declined CREED LA's request to extend the public comment period. The City cited CEQA Guidelines Section 15105 as support for its denial, which states that "[t]he public review period for a draft EIR shall not be less than 30 days nor should it be longer than 60 days *except in unusual circumstances*."³¹ The City's inability to provide access to all of the DEIR reference documents during the DEIR's public comment period constituted unusual circumstances warranting an extension.³² The City ultimately agreed to provide CREED LA with an informal two-week extension to February 8, 2021 to provide comments on the DEIR, but did not extend the comment period.³³

CEQA requires that all documents referenced, incorporated by reference, and relied upon in a DEIR be readily available to the public during the entire CEQA public comment period. Despite CREED LA's month-long efforts to obtain "immediate access" to all materials referenced in the DEIR, the City granted access these materials in an untimely, piecemeal fashion over a period of more than 30 days, then declined to extend the public comment period. The City's actions flout CEQA's disclosure requirements.³⁴ By failing to make all documents referenced and incorporated by reference in the DEIR "readily accessible" to the public during the entire comment period, the City violated the clear procedural mandates of CEQA, to the prejudice of CREED LA and other members of the public.

Footnote 20: See PRC § 21092(b)(1); 14 CCR § 15087(c)(5).

Footnote 21: PRC § 21092(b)(1) (*emphasis added*); 14 CCR § 15087(c)(5).

Footnote 22: See *Ultramar v. South Coast Air Quality Man. Dist.* (1993) 17 Cal.App.4th 689, 699.

Footnote 23: *Santiago County Water Dist. V. County of Orange* (1981) 118 Cal.App.3d 818, 831 ("Whatever is required to be considered in an EIR must be in that formal report; what any official might have known from other writings or oral presentations cannot supply what is lacking in the report.").

Footnote 24: Letter from Adams, Broadwell, Joseph & Cardozo ("ABJC") to the City of Los Angeles re "Request for Immediate Access to Documents Referenced in the Draft Environmental Impact Report – 676 Mateo Street Project (SCH No. 2018021068; Case No. ENV-2016-3691-EIR)" (Dec. 22, 2020).

Footnote 25: Personal communication between Kendra Hartmann and Jivar Afshar, January 19, 2021.

Footnote 26: **Attachment A:** Email from ABJC to City re "676 Mateo Street Project - List of Missing DEIR Ref Docs" (Jan. 19, 2021).

Footnote 27: Email from City to ABJC re "676 Mateo Street Project - List of Missing DEIR Ref Docs" (Jan. 20, 2021).

Footnote 28: Email from ABJC to City re "676 Mateo Street Project – List of Missing DEIR Docs" (Jan. 20, 2021).

Footnote 29: **Attachment B:** Email from City to ABJC re "676 Mateo Street Project - List of Missing DEIR Ref Docs" (Jan. 21, 2021).

Footnote 30: **Attachment C:** Email from City to ABJC re "676 Mateo Street Project - List of Missing DEIR Ref Docs" (Jan. 22, 2021).

Footnote 31: 14 C.C.R. § 15105(a) (*emphasis added*).

Footnote 32: See *Ultramar*, 17 Cal.App.4th at 699.

Footnote 33: Email from City to ABJC re "676 Mateo Street Project - List of Missing DEIR Ref Docs" (Jan. 22, 2021).

Footnote 34: *Id.*; Gov. Code § 6253(a) (requires public records to be "open to inspection at all times during the office hours of the state or local agency" and provides that "every person has a right to inspect any public record.").

Response to Comment No. 6-4

Section 15148 of the CEQA Guidelines states that project reports and documents should be “cited but not included in the EIR.” The comment provides a timeline of various requests and responses related to the provision of reference materials used in the Draft EIR. The e-mail correspondence associated with these requests and responses is provided in Attachments A, B, and C to Comment Letter No. 6. See Comment Nos. 6-22, 6-23, and 6-24. The commenter’s request for specific reference materials was based on their review of the Draft EIR, Draft EIR Appendices, and reference materials on file with the Department of City Planning. After exchanges between the commenter and the City that occurred between December 22, 2020 and January 19, 2021, the commenter provided a list of 16 reference documents on January 19, 2021 that the commenter claimed to be missing. On January 21, 2021, the City provided clarifying information in the form of website references and document scans on seven of the 16 identified items. Additional information regarding the remaining items was provided to the commenter on January 22, 2021. Specific disposition of the requested materials is summarized in the table below. Dispositions of the commenter’s requests fall into one of the following categories:

- The requested document was already contained in the Draft EIR or Appendices;
- The requested document was available on-line and the City provided website references to the commenter;
- The requested document was in fact not referenced in the Draft EIR or Appendices and was erroneously included in the Section IX, References, of the Draft EIR. In these cases, the City responded to the request by providing a website reference or a copy of the document, even though the Draft EIR did not utilize any information from the requested document;
- The requested document was referenced in the Draft EIR Text in error, which was corrected in the Final EIR;
- The request necessitated the provision of additional information to the commenter.

| Item Number | Description | Disposition |
|-------------|---|---|
| 1 | SCAQMD CEQA Air Quality Handbook, 1993 | Draft EIR only referenced pages 6-1 and 6-2 of Handbook; copies of those pages provided to commenter on January 21, 2021. |
| 2 | SCAQMD White Paper on Regulatory Options for Addressing Cumulative Impacts from Air | City provided website address to access document to commenter on January 22, 2021. |

| Item Number | Description | Disposition |
|-------------|---|--|
| | Pollution Emissions, SCAQMD Board Meeting, September 5, 2003 | |
| 3 | 10th Edition Institute of Transportation Engineers Trip Generation Manual | Draft EIR reference only addressed weekend trip generation rates used in the Draft EIR analysis; a table showing Saturday and Sunday trip generation rates used in Draft EIR analysis was provided to commenter on January 22, 2021. |
| 4 | Orswell and Kasman Inc, Phase I Environmental Site Assessment, Two Unit Industrial Building, 676 Mateo Street | City identified the location of the document within the Draft EIR Appendices to commenter on January 21, 2021. |
| 5 | Highway Capacity Manual, Transportation Research Board, 2010 | Draft EIR Transportation Section and Traffic Study do not include any references to document. City identified website where document is available to commenter on January 21, 2021. |
| 6 | City of Los Angeles, Board of Public Works, Bureau of Sanitation, "Solid Waste Generation," 1981 | Document was erroneously referenced in Draft EIR and corrected in Final EIR. The source of solid waste generation rates used in the Draft EIR was clearly identified in Tables IV.M.3-3 and IV.M.3-4 of the Draft EIR as "L.A. CEQA Thresholds Guide, 2006." |
| 7 | California Department of Transportation, Technical Noise Supplement, October, 1998 | City provided website address to access documents to commenter on January 21, 2021. |
| 8 | Supplemental Traffic Review Memorandum for 850 S Hill Street Project, The Mobility Group, January 2016 | Draft EIR Transportation Section and Traffic Study do not include any references to this document. City provided document to commenter on January 22, 2021. |
| 9 | Traffic Study for 8th and Spring Residential, LSA Associates, October, 2014 | Draft EIR Transportation Section and Traffic Study do not include any references to this document. City |

| Item Number | Description | Disposition |
|-------------|--|---|
| | | provided document to commenter on January 22, 2021. |
| 10 | Traffic Study for the City Market of Los Angeles, The Mobility Group, October 2013 | Draft EIR Transportation Section and Traffic Study do not include any references to this document. City provided document to commenter on January 22, 2021. |
| 11 | Traffic Study for the Metro Emergency Security Operations Center (ESOC), AECOM, August 2015 | Draft EIR Transportation Section and Traffic Study do not include any references to this document. City provided document to commenter on January 22, 2021. |
| 12 | Traffic Study Memorandum of Understanding for 1024 Mateo Street, LLG Engineers, 2017 | Draft EIR Transportation Section and Traffic Study do not include any references to this document. City provided document to commenter on January 22, 2021. |
| 13 | Traffic Study Memorandum of Understanding for 1100 E 5th Street, LLG Engineers, 2017 | Draft EIR Transportation Section and Traffic Study do not include any references to this document. City provided document to commenter on January 22, 2021. |
| 14 | Written Correspondence with Darryl Ford, Senior Management Analyst I, Planning, Maintenance and Construction Branch, City of Los Angeles Department of Recreation and Parks, August 14, 2017 | City identified the location of the document within the Draft EIR Appendices to commenter on January 21, 2021. |
| 15 | Written correspondence with Rena Perez, Director of Master Planning & Demographics, July 12, 2017 | City identified the location of the document within the Draft EIR Appendices to commenter on January 21, 2021. |
| 16 | Written correspondence with Tom Jung, Management Analyst II, LAPL, October, 2017 | City identified the location of the document within the Draft EIR Appendices to commenter on January 21, 2021. |

In summary, of the 16 documents identified as missing by the commenter:

- Four were already in the Draft EIR or Appendices (Item Nos. 4, 14, 15, and 16);

- Two were available on-line and the City provided website references to the commenter (Item Nos. 2 and 7);
- Seven were in fact not referenced in the Draft EIR or Appendices and were included in Section IX, References, of the Draft EIR in error (Item Nos. 5, 8, 9, 10, 11, 12, and 13);
- One reference was erroneous and was corrected in the Final EIR (Item No. 6);
- Two required the provision of additional information to the commenter (total of three pages). These pages are included in **Appendix FEIR-2** to the Final EIR (Item Nos. 1 and 3).

Modifications to Section IX, References of the Draft EIR that correspond to the clarifications listed in the table above are contained in **Section III. Revisions, Clarifications, and Corrections to the Draft EIR**, of this Final EIR as follows:

Section IX, References, page IX-1, delete the third reference:

~~2010 Highway Capacity Manual, Transportation Research Board, 2010.~~

Section IX, References, page IX-20, delete the fifth reference:

~~Supplemental Traffic Review Memorandum for 850 S Hill Street Project, The Mobility Group, January 2016.~~

Section IX, References, page IX-20, delete the 10th reference:

~~Traffic Study for 8th and Spring Residential, LSA Associates, October, 2014.~~

Section IX, References, page IX-20, delete the 13th, 14th, 15th and 16th references:

~~Traffic Study for the City Market of Los Angeles, The Mobility Group, October 2013.~~

~~Traffic Study for the Metro Emergency Security Operations Center (ESOC), AECOM, August 2015.~~

~~Traffic Study Memorandum of Understanding for 1024 Mateo Street, LLG Engineers, 2017.~~

~~Traffic Study Memorandum of Understanding for 1100 E 5th Street, LLG Engineers, 2017.~~

As noted in the comment, the City informally allowed the commenter an additional two weeks beyond the close of the public review period to review the additional materials and submit supplemental comments (see Comment Letter No. 7)

Comment No. 6-5**IV. THE DEIR FAILS TO ADEQUATELY DESCRIBE THE PROJECT**

The DEIR does not meet CEQA requirements because it fails to include a complete and accurate project description, rendering the entire impact analysis unreliable. An accurate and complete project description is necessary to perform an evaluation of the potential environmental effects of a proposed project.³⁵ Without a complete project description, the environmental analysis will be impermissibly narrow, thus minimizing the project's impacts and undercutting public review.³⁶ The courts have repeatedly held that “an accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient [CEQA document].”³⁷ “Only through an accurate view of the project may affected outsiders and public decision makers balance the proposal's benefit against its environmental costs.”³⁸

CEQA Guidelines Section 15378 defines “project” to mean “the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.”³⁹ “The term ‘project’ refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term project does not mean each separate governmental approval.”⁴⁰ Courts have explained that for a project description to be complete, it must address not only the immediate environmental consequences of going forward with the project, but also all “*reasonably foreseeable* consequence[s] of the initial project.”⁴¹ Accordingly, CEQA requires that the project description contain a brief statement of the intended uses of an EIR, including a list of agencies which will use the EIR, along with the permits and approvals required for implementation of a proposed project.⁴²

Footnote 35: See, e.g., *Laurel Heights*, 47 Cal.3d 376.

Footnote 36: See *ibid.*

Footnote 37: *County of Inyo*, 71 Cal.App.3d at p. 193.

Footnote 38: *Id.* at 192-193.

Footnote 39: CEQA Guidelines § 15378.

Footnote 40: *Id.* § 15378(c).

Footnote 41: *Laurel Heights*, 47 Cal.3d at p. 396 (emphasis added); see also *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 449-50.

Footnote 42: CEQA Guidelines § 15124(d).

Response to Comment No. 6-5

The comment provides introductory and/or legal background information related to the comments that follow regarding the commenter's claim that the Draft EIR fails to include a complete and accurate project description, rendering the entire impact analysis unreliable. Responses to the specific comments raised by the commenter regarding this issue are provided in Response to Comment Nos. 6-6 and 6-7.

Comment No. 6-6**A. The DEIR Fails to Adequately Describe the Project's Activities that May Result in Significant Noise Impacts**

The DEIR fails to adequately describe the Project's specifics regarding construction activities, particularly as relates to the approximately 74,500 cubic yards of soil that the City anticipates will be hauled off the Project site. No description is provided of the location for the staging of the haul trucks or the size of the haul trucks to be used in the export of the soil. A description of the hours during which trucks will make haul trips and how many trips they will make per day is likewise absent from the DEIR. This information is crucial to determine the level of the noise the trucks will emit and the hours during which residents and neighbors will be affected.

Response to Comment No. 6-6

As discussed in Response to Comment No. 2-2, the haul route for export of 74,500 cubic yards of soil would utilize 7th Street, Santa Fe Avenue, Jesse Street and Imperial Street to access the Project Site. Staging of haul trucks will be coordinated with LADOT as part of implementation of Project Design Feature **PDF TR-1 (Construction Staging and Traffic Management Plan)**; however, the most likely locations for haul truck staging would be Imperial Street and Jesse Street. This clarification has been included in the Final EIR (see **Section III. Revisions, Clarifications, and Corrections to the Draft EIR**, of this Final EIR) as follows:

Section II, Project Description, page II-37, second paragraph under 4. Construction, add the following after the second sentence:

"The locations of the off-site truck staging during hauling activities would be Imperial Street and Jesse Street."

As discussed in Section IV.H, Noise of the Draft EIR, the Project would generate approximately 142 haul trips per day (71 inbound, 71 outbound) over 66 days (Draft EIR, page IV.H-28), which represents an average load of 16 cubic yards for each double-bottom dirt haul truck (capacity 20 cubic yards). As further noted in Section IV.H, Noise of the Draft EIR (page IV.H-13), construction hours in the City of Los Angeles are 7:00 a.m. to 9:00 p.m. weekdays, 8:00 a.m. to 6:00 p.m. Saturdays and national holidays, and prohibited on Sunday, although construction activity is expected to be completed no later than 5:00 p.m. on construction days. Haul truck activity would be limited to these hours as well. These clarifications have been added to the Project Description in the Final EIR (see **Section III. Revisions, Clarifications, and Corrections to the Draft EIR**, of this Final EIR) as follows:

Section II, Project Description, page II-37, second paragraph under 4. Construction, add the following after the fourth sentence:

"The Project would export a total of 74,500 cubic yards of material over the grading duration of 66 days, which would generate approximately 142 haul truck trips per day (71 inbound, 71 outbound) travelling to and from the Project Site, which represents an average load of 16 cubic yards for each double-bottom dirt haul truck"

(capacity 20 cubic yards). Construction hours in the City of Los Angeles are 7:00 a.m. to 9:00 p.m. weekdays, 8:00 a.m. to 6:00 p.m. Saturdays and national holidays, and prohibited on Sunday, although construction activity is expected to be completed no later than 5:00 p.m. on construction days. Haul truck activity would be limited to these hours as well.”

The above clarifications merely consolidate information contained in other sections of the Draft EIR into the Project Description. Analysis of Project construction noise impacts is provided in Section IV.H, Noise (Draft EIR, pages IV.H-24 through IV.H-28) which contain the substantial evidence of the Draft EIR’s conclusions regarding construction noise. The incorporation of information from Section IV.H, Noise into Section II, Project Description, of the Draft EIR does not change any of the analysis or calculations presented in the Draft EIR. The comment does not provide facts which contradict these conclusions.

Comment No. 6-7

Furthermore, though the DEIR’s Project Description section states that requests for permits for the sale and consumption of alcohol on the premises are anticipated, descriptions of the accompanying activities, such as live or recorded music, are not included in the DEIR.⁴³ As Mr. Shaw explains, noise from boisterous patrons and music being played at the rooftop pool area and businesses will likely have an impact on the residences to the west of the Project site, and could impact homes’ interiors since windows do not have good low-frequency attenuation.⁴⁴ The resulting noise from these activities may require mitigation to reduce adverse impacts to neighboring residents. The DEIR fails to disclose whether the Project anticipates the use of sound systems, alcohol use in the pool area, and other sources of significant noise impacts, thus failing to disclose a potentially significant operational noise impact.⁴⁵

Footnote 43: DEIR Section II. Project Description, p. II-40.

Footnote 44: Shaw Comments, p. 5.

Footnote 45: Shaw Comments, p. 1.

Response to Comment No. 6-7

As discussed in Section IV.H, Noise, of the Draft EIR (page IV.H-23), operational noise sources evaluated in the Draft EIR include the pool area, outdoor common space and yoga deck. The primary sources associated with these uses are people talking, with a source level of 60 to 65 dBA at 3 feet, and pool area noise, with a source level of 64.8 dBA at 50 feet (Section IV.H, Noise, of the Draft EIR, page IV.H-33). The range of 60 to 65 dBA for speech allows for wide variation in speech levels that would encompass variances in the speech levels of individuals, including the potential effects of alcohol consumption. The source level for pool noise represents an actual measurement at a swim club with high levels of activity. As noted in Section IV.H, Noise, of the Draft EIR, these source levels would be below the ambient noise levels in the area (between 66.4 and 69.3 dBA, as identified in Section IV.H, Noise, of Draft EIR, page IV.H-33) and, thus, imperceptible. Moreover, this assessment does not take into account distance attenuation, which would reduce the noise level perceived off-site even further. The two outdoor dining areas are associated with commercial operations, and it can reasonably be expected that these uses would manage their own noise levels to ensure an acceptable patron experience. Even though it is

speculative to presume that “boisterous patrons and music being played at the rooftop pool area and businesses” would occur during Project operation, to the extent that a gathering of individuals produces excessive noise levels, these would be regulated by LAMC Section 116.01, which provides that “it shall be unlawful for any person to willfully make or continue, or cause to be made or continued, any loud, unnecessary, and unusual noise which disturbs the peace or quiet of any neighborhood or which causes discomfort or annoyance to any reasonable person of normal sensitiveness residing in the area. The standard which may be considered in determining whether a violation of the provisions of this section exists may include, but not be limited to, the following:

- (a) The level of noise;
- (b) Whether the nature of the noise is usual or unusual;
- (c) Whether the origin of the noise is natural or unnatural;
- (d) The level and intensity of the background noise, if any;
- (e) The proximity of the noise to residential sleeping facilities;
- (f) The nature and zoning of the area within which the noise emanates;
- (g) The density of the inhabitation of the area within which the noise emanates;
- (h) The time of the day and night the noise occurs;
- (i) The duration of the noise;
- (j) Whether the noise is recurrent, intermittent, or constant; and
- (k) Whether the noise is produced by a commercial or noncommercial activity.”

The standards and criteria established under LAMC Section 116.01 would be sufficient to ensure that adverse noise effects on neighboring properties would be controlled, such that noise impacts associated with Project operations would be less than significant.

While outdoor activities at the Project could also potentially include amplified music or amplified speech, as noted in Section IV.H, Noise, of the Draft EIR (page IV.H-33), such activities would be regulated by LAMC Section 116.01 (Loud, Unnecessary and Unusual Noise, see above), LAMC Section 115.02 (Amplified Sound), and LAMC Section 112.01 (Radios, Television Sets, and Similar Devices), and compliance with existing regulations would ensure that impacts due to the operation of outdoor spaces would remain less than significant. In addition, a project design feature that would expressly prohibit amplified music and speech within the Project between 10 p.m. and 7 a.m. daily has been included in the Project as part of the revisions to the Draft EIR in order to emphasize further the regulation of on-site operational noise sources to ensure that operational noise impacts due to the operation of outdoor spaces would be less than significant. This addition has been included in the Final EIR as follows (see **Section III. Revisions, Clarifications, and Corrections to the Draft EIR**, of this Final EIR):

Section II, Project Description, page II-36, under g) Site Operation and Security, add the following at the end of the 1st paragraph:

“Noise associated with the ground level and Level 2 amenity space would consist primarily of people talking which would be generally consistent with the existing pedestrian-oriented

environment along Mateo Street. While amplified speech and amplified music would be permitted, these sources are subject to the City’s noise regulations. In addition, no amplified music or amplified speech would be permitted between the hours of 9 p.m. and 8 a.m.”

Section IV.H., Noise, page IV.H-23, under (c) Project Design Features, revise the paragraph as follows:

“No specific Project Design Features related to noise reduction are included in the Project. The Project would implement the following project design feature (PDF) to minimize adverse noise impacts. The PDF would be incorporated into the Project and is considered to be part of the Project for purposes of the impact analysis.

PDF NOI-1 Amplified music and amplified speech will be prohibited between the hours of 9 p.m. and 8 a.m.”

The above PDF applies the more stringent standard applicable to the use of sound amplifying equipment for commercial purposes (LAMC 115.02(c)) to the non-commercial use of sound amplifying equipment that could occur under the Project. Analysis of Project operational noise impacts is provided in Section IV.H, Noise (Draft EIR, pages IV.H-28 through IV.H-32), which contain the substantial evidence of the Draft EIR’s conclusions regarding operational noise. The incorporation of information from Section IV.H, Noise into Section II, Project Description, of the Draft EIR does not change any of the analysis or calculations presented in the Draft EIR. The comment does not provide facts which contradict these conclusions. The Draft EIR analysis is adequate, and no mitigation measures are required to address potential impacts from the noise sources cited by the commenter.

Comment No. 6-8

The DEIR’s failure to adequately describe the operational components of the Project renders the analysis that follows incomplete and underestimates the impacts the Project is likely to have on the ambient environment and surrounding residences. Mitigation measures, such as retrofitting windows at impacted residential properties, may be necessary to reduce these impacts, but are absent from the DEIR. The DEIR’s conclusion that the Project will result in less than significant operational noise impacts, with no mitigation required, is not supported by substantial evidence.⁴⁶

Footnote 46: See DEIR, Page IV.H-33.

Response to Comment No. 6-8

The comment provides the commenter’s conclusions related to the preceding comments regarding to the Draft EIR’s alleged failure to adequately describe operational components of the Project and the underestimated impacts of those operations on the ambient environment and surrounding residences. As discussed in Response to Comment Nos. 6-6 and 6-7, all of the information and assumptions necessary to evaluate the noise impacts of the Project were included in the Draft EIR, and incorporating that information into the Project Description does not change any of the analysis or conclusions presented in the Draft EIR. As no additional significant impacts related to noise have been identified, no additional mitigation measures beyond those

included in the Draft EIR would be required. The comment does not provide specific comments with respect to the adequacy or content of the DEIR nor does it include evidence that would contradict the conclusions of the Draft EIR with respect to construction and operational noise. Responses to the specific comments raised by the commenter regarding the inclusion of information in the Project Description and effects on the adequacy of the noise analysis as a result are provided in Response to Comment Nos. 6-6 and 6-7.

Comment No. 6-9

V. THE DEIR FAILS TO ADEQUATELY ANALYZE, QUANTIFY, AND MITIGATE THE PROJECT'S POTENTIALLY SIGNIFICANT IMPACTS

An EIR must fully disclose all potentially significant impacts of a Project and implement all feasible mitigation to reduce those impacts to less than significant levels. The lead agency's significance determination with regard to each impact must be supported by accurate scientific and factual data.⁴⁷ An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.⁴⁸

Moreover, the failure to provide information required by CEQA is a failure to proceed in the manner required by CEQA.⁴⁹ Challenges to an agency's failure to proceed in the manner required by CEQA, such as the failure to address a subject required to be covered in an EIR or to disclose information about a project's environmental effects or alternatives, are subject to a less deferential standard than challenges to an agency's factual conclusions.⁵⁰ In reviewing challenges to an agency's approval of an EIR based on a lack of substantial evidence, the court will 'determine de novo whether the agency has employed the correct procedures, scrupulously enforcing all legislatively mandated CEQA requirements.'⁵¹

Even when the substantial evidence standard is applicable to agency decisions to certify an EIR and approve a project, reviewing courts will not 'uncritically rely on every study or analysis presented by a project proponent in support of its position. A clearly inadequate or unsupported study is entitled to no judicial deference.'⁵²

Footnote 47: 14 CCR § 15064(b).

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

Footnote 49: Sierra Club v. State Bd. Of Forestry (1994) 7 Cal.4th 1215, 1236.

Footnote 50: Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova (2007) 40 Cal.4th 412, 435.

Footnote 51: Id., Madera Oversight Coal., Inc. v. County of Madera (2011) 199 Cal. App. 4th 48, 102.

Footnote 52: Berkeley Jets, 91 Cal.App.4th at 1355.

Response to Comment No. 6-9

The comment provides introductory and/or legal background information related to the comments that follow regarding the requirements for an EIR to disclose all potentially significant impacts, implement all feasible mitigation, and provide accurate and scientific data to support impact statements. It does not provide specific comments with respect to the adequacy or content of the DEIR. Responses to the specific comments raised by the commenter regarding this issue are provided in Response to Comment Nos. 6-10, 6-11 and 6-12.

Comment No. 6-10**A. The DEIR Fails to Adequately Disclose and Mitigate the Project's Significant Noise Impacts**

The CEQA Guidelines require an EIR to consider “whether a project would result in...[g]eneration of a substantial temporary or periodic increase in ambient noise levels in the vicinity of the project . . .”⁵³ The DEIR's noise analysis fails to accurately disclose the Project's noise impacts for several reasons.

i. The DEIR's Noise Analysis Contains Inadequate Baseline Data

The DEIR's Noise Report fails to accurately calculate the baseline ambient noise at the Project site. An accurate baseline is necessary to assess the significance of the Project's two-year construction noise on sensitive receptors in the vicinity of the Project site.⁵⁴

To establish ambient noise levels at the Project site, the DEIR relies on two, 15-minute, on-site noise measurements conducted on a single day: July 5, 2017. One measurement was west of the Project site, near the Toy Factory Lofts and National Biscuit Company residential sensitive receptors, while the other measurement was taken at the northeast corner of the Project site, near the Amp Factory Lofts.⁵⁵ The recorded noise levels at those site visits were 66.4 dBA L_{EQ} and 69.3 dBA L_{EQ}, respectively.⁵⁶ These isolated measurements are inadequate to establish existing ambient noise levels at all relevant areas in the vicinity of the Project site. Furthermore, as Mr. Shaw points out, the DEIR does not disclose environmental conditions present when the measurements were taken.⁵⁷ Certain conditions, such as the time of day the measurements were taken or the presence of other construction activities or wind, could result in significantly inconsistent acoustical values.⁵⁸ The DEIR's failure to disclose these conditions, and its reliance on overly limited noise data, makes an accurate analysis of the DEIR's conclusions of noise impacts impossible.

Footnote 53: CEQA Guidelines, Appendix G, Sec. XII(d).

Footnote 54: 14 CCR § 15125;. Comtys. For A Better Env't v. South Coast Air Quality Mgmt. Dist. (2010) 48 Cal.4th 310, 328 (accurate description of the affected environment is essential because it establishes the baseline physical conditions against which a lead agency can then determine whether an impact is significant); County of Amador v. El Dorado County Water Agency (1999) 76 Cal. App. 4th 931, 952; Galante Vineyards v. Monterey Peninsula Water Management Dist. (1997) 60 Cal. App 4th 1109, 1121-22.

Footnote 55: DEIR Section IV.H Noise, p. IV.H-17.

Footnote 56: Id.

Footnote 57: Shaw Comments, p. 1.

Footnote 58: Id.

Response to Comment No. 6-10

The City of Los Angeles CEQA Thresholds Guide does not specify a minimum number or frequency of ambient noise readings that should be taken at a project site or in the project vicinity⁸. The ambient noise readings for the Project, as detailed in Section IV.H, Noise, Table IV.H-7 on

⁸ *City of Los Angeles 2006 L.A. CEQA Thresholds Guide, Page I.1-4.*

page IV.H-17 of the Draft EIR, were taken on February, 14, 2017 using the 3M SoundPro SP DL-1 sound level meter, which conforms to industry standards set forth in ANSI S1.4-1983 (R2006) – Specification for Sound Level Meters/Type 1, and is consistent with the requirements specified in LAMC Section 111.01(l) that the instruments be “Type S2A” standard instruments or better. This instrument was calibrated and operated according to the manufacturer’s written specifications. At the measurement sites, the microphone was placed at a height of approximately five feet above the ground. The sound level meter was programmed to record the average sound level (L_{eq}) over a period of 15 minutes in accordance with LAMC Section 111.01(a).

With respect to documentation of the conditions at the time the measurements were taken, the footnote in Table IV.H-7 of the Draft EIR refers to Appendix I of the Draft EIR for details. Appendix I contains the noise monitoring field reports, which provide details pertaining to the collection of the ambient noise readings and include the time of day, the weather conditions, wind and primary noise sources during the measurement period. These factors represent the background environmental conditions necessary to understand and accurately interpret the measured ambient noise levels. Therefore, the ambient noise values included in the Draft EIR are accurate and appropriate for use in the Draft EIR noise analysis as the baseline condition. No additional noise readings are warranted or required.

Comment No. 6-11

ii. The DEIR Underestimates and Inadequately Mitigates the Project’s Noise Impacts

CEQA does not set a numeric threshold for determining the significance of ambient noise increases. Lead agencies may select their own thresholds. The agency’s selection of a threshold of significance must be supported by substantial evidence.⁵⁹ As explained by Mr. Shaw in his comments, the threshold chosen to determine whether the Project’s noise impacts will be significant does not consider the actual distance of the Project’s construction activities to nearby sensitive receptors.⁶⁰ In addition, the DEIR fails to address potentially significant noise impacts from the Project’s construction activities, both underestimating some impacts and failing to disclose others.

Moreover, the DEIR underestimates the noise levels from construction activities, such as the distance of trucks hauling soil and other construction debris from sensitive receptors near the Project site and the number of trips those trucks will make to and from the site.⁶¹ Table IV.H-8, which estimates the noise range of Project construction equipment, measures the sound levels at 50 feet from the noise source. As Mr. Shaw clarifies, however, the actual distance of haul trucks making incoming trips to the Project is 30 feet from the closest sensitive receptors—the Biscuit Company and Toy Factory lofts—while the outgoing route of the trucks is only 15 feet from the Biscuit Company Lofts.⁶² The DEIR’s noise measurements were therefore conducted using inaccurate and unsupported distances. When accurate distances are used, noise levels increase by 4.4 dBA and 10.4 dBA higher, respectively, over the levels cited in the DEIR. The DEIR therefore fails to accurately disclose the distance of sensitive receptors to the Project site, resulting in inadequate analyses of impacts on these receptors and incorrect conclusions about the nature and severity of the Project’s impacts.

Furthermore, the DEIR states that “peak construction noise levels at all sensitive receptors would be below the 75 dBA construction noise threshold defined by the Section 41.40 of the [Los Angeles Municipal Code (“LAMC”).]”⁶³ As Mr. Shaw explains, however, LAMC Section 41.40 includes no such threshold.⁶⁴ Regardless, based on the estimated 142 haul truck trips per day (71 inbound and 71 outbound) stated in the DEIR, Mr. Shaw calculates that noise levels will exceed any such threshold. Mr. Shaw’s calculations demonstrate that 75 dBA will be exceeded every 6.4 minutes if the trucks are making haul trips for 15 hours a day (from, for example, 7 a.m. to 10 p.m.) or every 3.6 minutes if they are hauling for 10 hours a day (such as between the hours of 7 a.m. and 5 p.m.).⁶⁵ This is a significant noise impact which the DEIR fails to disclose.

The courts have held that compliance with regulations, including noise ordinances, is not an adequate significance threshold because it does not foreclose the possibility of significant impacts.⁶⁶ Similarly, here, compliance with any LAMC threshold does not assure that noise impacts will be less than significant. As Mr. Shaw states, “If the number of trips per day is greater than stated, noise impacts will be more frequent and could become almost continuous.”⁶⁷

Footnote 59: 14 CCR § 15064(b); King & Gardiner Farms, LLC v. County of Kern (2020) 45 Cal.App.5th 814, 884.

Footnote 60: DEIR Section IV.H Noise p. IV.H-13: “LAMC Section 112.05 sets a maximum noise level for construction equipment of 75 dBA at a distance of 50 feet when operated within 500 feet of a residential zone.” The closest sensitive receptors will be closer than 50 feet from the noise sources.

Footnote 61: Shaw Comments, p. 3.

Footnote 62: Shaw Comments, p. 2.

Footnote 63: DEIR Section IV.H Noise, p. IV.H-27.

Footnote 64: Los Angeles Municipal Code, available at:

https://codelibrary.amlegal.com/codes/los_angeles/latest/lamc/0-0-0-128777#JD_41.40

_____ (last accessed Jan. 20, 2021).

Footnote 65: Shaw Comments, p. 3.

Footnote 66: Keep our Mountains Quiet v. Santa Clara (2015) 236 Cal.App.4th 714, 733; CBE v. CRA (2002) 103 Cal.App.4th 98, 115-16; King & Gardiner Farms, LLC v. County of Kern (2020) 45 Cal.App.5th 814, 893, as modified on denial of reh'g (Mar. 20, 2020).

Footnote 67: Shaw Comments, p. 4.

Response to Comment No. 6-11

With respect to the Draft EIR construction noise analysis, Response to Comment Nos. 6-37 and 6-41⁹ address the construction noise impacts on sensitive receptors, which reflect noise levels that would be experienced at those receptors based on the distance from the sensitive receptor to the noise source. With respect to the impacts from haul trucks on sensitive receptors on Mateo Street (Biscuit Company Lofts and Toy Factory Lofts), this has been addressed by relocating the Project’s haul route from Mateo Street to Imperial Street (see Response to Comment No. 3-2), which would increase the distance between Mateo Street sensitive receptors and haul trucks from the 15 feet suggested by the commenter to approximately 330 feet. With respect to construction

⁹ *Comments 6-11 and 6-12 rely on the comments and analysis provided by the commenter’s noise consultant (Comments 6-36 through 6-42). Since this consultant’s analysis is more detailed than the summary provided in the comment, the most appropriate location for primarily addressing these comments is in the detailed responses to the commenter’s consultant’s letter (Exhibit B to Comment Letter 6).*

noise thresholds, as indicated in the Section IV.H, Noise, of the Draft EIR (pages IV.H-19 and IV.H-27), a numeric threshold is used to identify construction noise impacts (increase in noise levels of 5 dBA at a noise sensitive use per the 2006 L.A. CEQA Thresholds Guide, Draft EIR, Section IV.H, Noise, page IV.H-1). The 75-dBA threshold referenced in the comment is not used as a significance threshold. The reference to the 75-dBA threshold in LAMC Section 41.40 is incorrect and is corrected in the Final EIR. The reference should have been to LAMC Section 112.05 (Draft EIR, Section IV.H, Noise, page IV.H-26). Regardless, the assessment of construction noise impacts from the Project is based on the 5-dBA increase at a noise sensitive use (Draft EIR, Section IV.H, Noise, pages IV.H-27 and IV.H-28).

The correction regarding the 75-dBA threshold has been included in the Final EIR as follows (see **Section III. Revisions, Clarifications, and Corrections to the Draft EIR**, of this Final EIR):

Section IV.H, Noise, page IV.H-27, change the first sentence to read:

“As shown in **Table IV.H-9**, without mitigation, peak construction noise levels at all sensitive receptors would be below the 75 dBA construction noise threshold defined by ~~Section 41.40~~ Section 112.05 of the LAMC.”

Comment No. 6-12

Finally, though the DEIR includes in its mitigation measures the installation of an 8-foot barrier to be erected during demolition and excavation/grading activities,⁶⁸ the barrier will do nothing to combat the noise impacts to multi-story residential buildings on either side of the Project site.⁶⁹ The noise impacts to these receptors, both from construction and operation of the Project once completed, will be substantial.⁷⁰ The mitigation offered by the DEIR is wholly insufficient. This is a separate CEQA violation. The DEIR concludes that construction noise impacts are significant and unavoidable. Therefore, the DEIR must adopt all feasible mitigation measures to reduce construction noise impacts to the greatest extent feasible.⁷¹

An additional, potentially feasible mitigation measure for this impact would be to include Plexiglass balcony barriers on the higher levels of the adjacent residential buildings. This is a measure that is often used on residential balconies which abut noisy roadways. Installation of heavy Plexiglass or other clear panels around the edges of the residential balconies would as [sic] sound barriers without affecting residents' light or view. The DEIR should adopt the recommended mitigation measure or explain why, based on substantial evidence, the proposed measure is infeasible before it can consider approving the Project.⁷²

Footnote 68: MM NOI-1, DEIR Section IV.H Noise, p. IV.H-34.

Footnote 69: DEIR Section II. Project Description, p. II-1.

Footnote 70: Shaw Comments, p. 1.

Footnote 71: Covington v. Great Basin Unified Air Pollution Control Dist. (2019) 43 Cal.App.5th 867, 883.

Footnote 72: Id.

Response to Comment No. 6-12

As discussed in Response to Comment No. 3-2, the primary source of the potentially significant construction noise impact on the upper floors of the Biscuit Company Lofts and Toy Factory Lofts is the operation of a concrete saw during demolition. Mitigation Measure **MM NOI-1** has been

revised to provide alternatives to the use of the concrete saw and/or operational restrictions on the use of demolition equipment that would avoid any impact on the upper floors of the neighboring residential buildings. Noise impacts without employing a concrete saw and during all other phases of construction of the Project would be less than significant without mitigation. No further mitigation is warranted.

Comment No. 6-13

B. THE DEIR FAILS TO ADEQUATELY DISCLOSE AND MITIGATE THE PROJECT'S SIGNIFICANT AIR QUALITY IMPACTS

Under CEQA, a project has significant impacts if it “[v]iolate[s] any air quality standard or contribute[s] substantially to an existing or projected airquality violation.”⁷³ The South Coast Air Quality Management District (“SCAQMD” or “Air District”) maintains thresholds of significance for criteria air pollutants that are to be used in determining the significance of a project’s air quality impacts under CEQA.⁷⁴ The DEIR failed to accurately analyze and mitigate the Project’s construction emissions by using an unsupported qualitative threshold to analyze project emissions, by improperly concluding that GHG emissions are insignificant, by improperly disguising mitigation measures as Project design features, and by relying on ineffective mitigation which is unenforceable and speculative.

Furthermore, the DEIR failed to evaluate the cancer risk impacts resulting from exposure to toxic diesel particulate matter (“DPM”) emissions generated during Project construction and operation. As a result, the DEIR’s conclusions that the Project’s air quality and health risk impacts from emissions generated during Project construction and operation will be less than significant are unsupported and inaccurate.

Footnote 73: CEQA Appendix G

Footnote 74: See SCAQMD Thresholds, available at <http://www.aqmd.gov/docs/default-source/ceqa/handbook/scaqmd-air-quality-significance-thresholds.pdf?sfvrsn=2>.

Response to Comment 6-13

The comment provides introductory and/or legal background information related to the comments that follow regarding alleged failure of the Draft EIR to accurately analyze and mitigate the Project’s construction emissions and the alleged failure to evaluate cancer risk impacts resulting from exposure to toxic diesel particulate matter. The comment does not provide any facts to support the contention that the analysis is inadequate. Responses to the specific comments raised by the commenter regarding these issues are provided in Response to Comment Nos. 6-14 through 6-17.

Comment No. 6-14**a. The DEIR Fails to Disclose and Analyze Air Quality Impacts from Construction and Operation***i. The DEIR's Analysis of GHG Emissions Relies on an Unsupported Threshold*

Under the CEQA Guidelines, a lead agency must analyze a project's impacts on GHG emissions.⁷⁵ The Guidelines allow for several approaches to this analysis, both qualitative and quantitative. The Guidelines explicitly mandate, however, that the "analysis should consider a timeframe that is appropriate for the project. The agency's analysis also must reasonably reflect evolving scientific knowledge and state regulatory schemes."⁷⁶ In determining the significance of GHG emissions impacts, the agency must consider the "extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions."⁷⁷

The City has not adopted a numerical significance threshold for assessing impacts related to GHG emissions and has not formally adopted a local plan for reducing GHG emissions. The DEIR concludes that the Project's GHG impacts would be less than significant based on the Project's consistency with the goals and actions to reduce GHG emissions found in the City's Green New Deal, the Southern California Association of Governments 2016-2040 Regional Transportation Plan/Sustainable Communities Strategy ("SCAG RTP/SCS"), and the 2008 California Climate Change Scoping Plan.⁷⁸

Though the DEIR outlines a few ways in which the Project will comply with these plans, the majority of its strategies for assuring consistency are ambiguous at best, and are not supported by substantial evidence. Many of these strategies delegate to other agencies and departments the responsibility of determining compliance with the plans, while others make conclusory statements regarding the Project's compliance with particular strategies for reducing emissions without providing any support for these conclusions. For example, the DEIR asserts that the Project does not conflict with strategies that propose adopting vehicle efficiency measures in order to reduce GHG emissions included in the AB 32 Scoping Plan because it is required to comply with them.⁷⁹ Likewise, the DEIR claims that it will be required to comply with CARB's measures to reduce hydrofluorocarbon emissions, so it will therefore comply with the Scoping Plan's strategies to reduce emissions of gases with high global warming potential.⁸⁰ These—and several other claims made by the DEIR regarding its compliance with state and regional plans and policies—offer no meaningful analysis of how the Project would specifically comply with these strategies.

Additionally, the DEIR claims its consistency with the SCAG RTP/SCS supports the conclusion that the Project will not result in significant GHG emissions. Its analysis, however, consists of stating that the Project "would accommodate increases in population, households, employment, and travel demand," and that because the Project site is located in close proximity to public transit stops, it would result in reduced vehicle-miles traveled ("VMT"), "as compared to a project of similar size and land uses at a location without close and walkable access to off-site destinations and public transit stops."⁸¹ The DEIR further asserts that the Project will contribute to a reduction in GHG emissions due to the Project's addition of compact housing and jobs close to public transit,

as well as the construction of biking and walking infrastructure.⁸² It inexplicably ignores, however, other strategies aimed at reducing GHG emissions included in the SCAG RTP/SCS, such as adaptive reuse of existing structures, an approach with which the Project's demolition of existing structures and construction of new ones is in direct contradiction.⁸³

The DEIR's statements cannot qualify as analyses of consistency with local, state, and regional plans because they lack any discussion of the plans' goals and policies as they apply to the Project. An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.⁸⁴ The DEIR's discussion fails to meet this standard.

Footnote 75: 14 CCR §15064.4.

Footnote 76: 14 CCR §15064.4(b).

Footnote 77: 14 C.C.R. § 15064.4(b)(3).

Footnote 78: DEIR Section IV.D Greenhouse Gases, p. IV.D-27.

Footnote 79: Id., p. 45.

Footnote 80: d

Footnote 81: Id., p. IV.D-49.

Footnote 82: Id.

Footnote 83: 2016-2040 SCAG RTP/SCS, p. 78.

Footnote 84: Sierra Club v. County of Fresno (2018) 6 Cal.5th 502, 516, 520; Kings County Farm Bureau, 221 Cal.App.3d at 732.

Response to Comment No. 6-14

With respect to the use of consistency with Statewide, regional, and local plans for reducing GHG emissions as a threshold of significance for GHG emissions, please see Response to Comment No. 6-32.¹⁰ This approach is appropriate because these plans, policies, and programs together represent the strategies for achieving staged reductions in GHG emissions as set forth in State policy (Section IV.D, Greenhouse Gas Emissions, of the Draft EIR, pages IV.D-8 and IV.D-11.) Table IV.D-8 of the Draft EIR (Section IV.D, Greenhouse Gas Emissions, pages IV.D-44 through IV.D-47) shows that the Project would not conflict with the AB32 Scoping Plan, which represents the Statewide approach to achieving the identified GHG reductions goals. The commenter is correct that most of these strategies are focused on GHG sources other than development projects. For instance, standards for GHG emissions from mobile sources and fuels would be implemented by the automobile and fuel production industries, respectively. The Project has limited ability and is not required to implement these programs. It is only required that the Project not conflict with the strategies. The assessments provided in Table IV.D-8 of the Draft EIR conclude that the Project would not conflict with all strategies and programs designed to achieve GHG reductions throughout the State. The primary means by which a development project would contribute to achievement of the State GHG reduction goals would be through consistency with land use policies designed to reduce GHG emissions and through inclusion of measures set forth

¹⁰ *Comments 6-14, 6-15, 6-16 and 6-17 rely on the comments and analysis provided by the commenter's air quality, GHG and health risk consultant (Comments 6-25 through 6-35). Since this consultant's analysis is more detailed than the summary provided in the comment, the most appropriate location for responding to these comments is in the detailed responses to the commenter's consultant's letter (Exhibit A to Comment Letter 6).*

in State and local green building codes and standards. Consistency with these measures is addressed in Section IV.D, Greenhouse Gas Emissions, of the Draft EIR in Table IV.G-1, Consistency with Applicable Goals of RTP/SCS, in Appendix H (Land Use Tables) of the Draft EIR and Section IV.G, Land Use, pages IV.G-31 and IV.G-32 of the Draft EIR, respectively. These evaluations establish through substantial evidence that the Project would be consistent with applicable land use and green building policies. It is not incumbent on the Project to implement all of the policies of any particular plan. The commenter's example of reuse of the existing structure on the Project Site is particularly inapt, as following this strategy would preclude a major opportunity for achieving GHG reductions through the concentration of growth in areas served by transit, as set forth in State, regional, and local policies. The commenter has provided no facts to contradict these conclusions. Accordingly, the Draft EIR includes the full analysis of the Project's consistency with State, regional, and local plans, policies, and programs designed to reduce GHG emissions, which supports the conclusion that GHG emissions of the Project would be less than significant.

Comment No. 6-15

ii. The DEIR Attempts to Conceal Potentially Significant GHG Emissions by Disguising Mitigation Measures as Project Design Features

The DEIR concludes that its consistency with local, state, and regional plans signifies that Project GHG emissions cannot be considered significant. As Dr. Clark explains, however, the DEIR's own calculations of GHG emissions demonstrate that emissions will, in fact, be significant. Without the incorporation of design features meant to reduce emissions, Project-related GHG emissions will increase exponentially, to more than 8 times their current level, from 546 MTCO_{2e} to 4,445 MTCO_{2e}. Even with the incorporation of such design features, they are still projected to increase to more than 6 times their current level, to 3,394 MTCO_{2e}.⁸⁵

The DEIR appears to acknowledge the significance of this increase with the inclusion of several measures designed to minimize adverse impacts—such as from emissions of GHG and other pollutants—while simultaneously concluding that the Project will not result in significant impacts in these areas of concern. However, the DEIR does not mandate the use of the GHG reduction measures as binding mitigation.

Under CEQA, it is improper to attempt to disguise mitigation measures as part of the project's design if this obfuscates the potential significance of environmental impacts.⁸⁶ In *Lotus v. Department of Transportation*, an EIR prepared by the California Department of Transportation ("CalTrans") contained measures to help minimize potential stress on redwood trees during highway construction, such as restorative planting, invasive plant removal, watering, and use of an arborist and specialized excavation equipment.⁸⁷ The Court of Appeal held that the EIR improperly compressed the analysis of impacts and mitigation measures into a single issue because the EIR did not designate the measures as mitigation and concluded that because of the measures, no significant impacts were anticipated.⁸⁸ The Court explained that a significance determination must be made independent of mitigation first, then mitigation can be incorporated, and the effectiveness of those measures can be evaluated.⁸⁹ "Absent a determination regarding the significance of the impacts to the root systems of the old growth redwood trees, it is impossible

to determine whether mitigation measures are required or to evaluate whether other more effective measures than those proposed should be considered.”⁹⁰

For example, though the DEIR concludes that GHG emissions from the Project will not be significant, it also states that emissions would be reduced through measures such as “technological improvements and additions to California’s renewable resource portfolio.”⁹¹ “Anticipated deployment of improved vehicle efficiency, zero emission technologies, lower carbon fuels, and improvement of existing transportation systems” will further reduce Project emissions.⁹² “Enhancements in water conservation technologies” and future improvements in waste management will likewise reduce Project impacts.⁹³

Additionally, these measures are a further indication of the DEIR’s violations of CEQA by offering only unenforceable and speculative mitigation. The DEIR provides no analysis of how or to what extent emissions will be reduced by its reliance on unknown future technological advances or actions. The DEIR does not disclose what construction equipment it used to model construction emissions, so its presumption that emissions will be lowered over time—assuming that as older equipment is retired from use, newer, more efficient equipment will replace it—is unreliable. The DEIR provides no guarantee that older, less efficient equipment will not be used in construction.

By failing to make a significance determination about air quality impacts independent of mitigation before incorporating emissions reductions measures into the calculations, the DEIR commits the same fatal error found in *Lotus*. Just as use of specialized equipment and practices to limit impacts to the roots of redwood trees should have been classified as mitigation measures, so too should the incorporation of myriad measures to reduce emissions. The City’s failure to acknowledge the significance of impacts to air quality from pollutant emissions prevents the public from properly evaluating the effectiveness of the mitigation measures proposed.

Footnote 85: Clark Comments, p. 10; DEIR Section IV.D Greenhouse Gases, p. IV.D-37; the City chose to quantify Project GHG emissions to satisfy CEQA Guidelines Section 15064.4(a), though it relies only on a qualification threshold to analyze the significance of emissions.

Footnote 86: Lotus v. Department of Transportation (2014) 223 Cal.App.4th 645, 658 (compression of mitigation measures into project design without acknowledging potentially significant impact if effects were not mitigated violates CEQA).

Footnote 87: Id. at 650.

Footnote 88: Id. at 656

Footnote 89 Id. at 654–656

Footnote 90: Id. at 656.

Footnote 91: DEIR Section IV.D Greenhouse Gases, p. IV.D-42.

Footnote 92: Id.

Footnote 93: Id.

Response to Comment No. 6-15

With respect to the relevance of the GHG emissions calculated for the Project to the determination of the significance of those emissions, please see Response to Comment No. 6-32. With respect to the reference to project design features, the Draft EIR does not include any PDFs for GHG emissions. In the Section IV.D, Greenhouse Gas Emissions, the Draft EIR references Project Design Feature **PDF TR-1** (page IV.D-34) which would reduce air quality impacts by controlling traffic during construction. However, the Section IV.D, Greenhouse Gas Emissions, of the Draft

EIR clearly states (page IV.D-34) that this analysis does not account for quantitative emissions reductions. Further, the Draft EIR does not include mitigation measures related to the Project's GHG emissions, as impacts associated with those emissions would be less than significant, and no mitigation measures are required (Section IV.D, Greenhouse Gas Emissions, of the Draft EIR, page IV.D-40). Moreover, even though CalEEMod refers to adjusted totals as “mitigated,” this does not reflect only adjustments associated with mitigation measures; CalEEMod also includes adjustments related to regulatory compliance and project characteristics under the heading of “mitigated.” Similarly, the reference in the Draft EIR to “design features” (Section IV.D, Greenhouse Gas Emissions, pages IV.D-36 and IV.D-38) was meant to refer to project design generically, not “Project Design Features” as that term is used in the Draft EIR. The quantification of the Project's GHG emissions properly incorporates the project characteristics into the CalEEMod model, which contains estimates of emission reductions associated with various aspects of GHG reduction strategies. As noted in the Draft EIR, these adjustments would reduce the estimated GHG emissions attributed to the Project by 26.9 percent (Draft EIR, Section IV.D, Greenhouse Gas Emissions, page IV.D-36) compared to emissions calculations that did not reflect the adjustments. As noted in the Draft EIR (Section IV.D, Greenhouse Gas Emissions, page IV.D-36), these reductions result from either (1) compliance with green building regulations (low flow fixtures, water-efficient irrigation systems, recycling of solid waste, use of Energy Star appliances, energy efficient LED lighting, energy efficient window glazing and window frames) or (2) the characteristics of the Project (land use density, land use diversity, affordable housing, limited parking supply, unbundled parking costs). Compliance with regulations and accounting for the basic characteristics of the Project in an analysis is not mitigation. Accordingly, the Draft EIR makes no attempt to “disguise mitigation measures” as alleged in the comment.

However, because the reference to “design features” in the discussion of the calculation of Project GHG emissions could be confusing, the following clarification has been included in the Final EIR as follows (see **Section III. Revisions, Clarifications, and Corrections to the Draft EIR**, of this Final EIR):

Section IV.D, Greenhouse Gas Emissions, IV.D-36, revise the first paragraph as follows:

“**Table IV.D-4, Project-Related GHG Emissions** shows that the subtotal for the Project's emissions (~~without accounting for project characteristics or compliance with incorporation of design features/regulations~~) would be 4,444.80 MTCO₂e per year. With the removal of the existing uses, the emissions are reduced to 3,898.59 MTCO₂e per year. The data provided in **Table IV.D-5, Project-Related GHG Emissions With Incorporation of Project Characteristics Design Features and Regulations** shows that the Project's total “mitigated” emissions (incorporation of ~~design features~~ project characteristics and compliance with regulation, shown as “mitigation” in the CalEEMod output) would be reduced to 2,848.13 MTCO₂e per year resulting in a reduction of 26.9 percent. The 26.9 percent reduction comes from incorporation of the following project ~~design features~~ characteristics and regulatory compliance:”

Section IV.D, Greenhouse Gas Emissions, IV.D-37, revise title of Table IV.D-5 as follows:

Table IV.D-5
Project-Related GHG Emissions With Incorporation of Project Characteristics Design Features and Regulations

Section IV.D, Greenhouse Gas Emissions, IV.D-38, revise the third paragraph as follows:

“The GHG emissions have been calculated based on the parameters described above. A summary of the results (using the trip generation rates-based mobile source analysis) are shown below in **Table IV.D-6, Project-Related GHG Emissions Flexibility Option** and the CalEEMod Model runs for the Flexibility Option are provided in **Appendix E** of this Draft EIR. **Table IV.D-6** shows that the subtotal for the Flexibility Option’s emissions (without accounting for project characteristics or compliance with incorporation of design features/regulation) would be 4,572.37 MTCO_{2e} per year. With the removal of the existing uses, the emissions are reduced to 4,026.16 MTCO_{2e} per year. The data provided in **Table IV.D-7, Project-Related GHG Emissions Flexibility Option With Incorporation of Project Characteristics Design Features and Regulations** shows that the Increased Commercial Flexibility Option’s total “mitigated” emissions (incorporation of project characteristics design features and compliance with regulation is shown as “mitigation” in the CalEEMod output) would be reduced to 2,956.01 MTCO_{2e} per year resulting in a reduction of 26.9 percent. The 26.9 percent reduction comes from incorporation of the following project characteristics design features and regulatory compliance:”

Section IV.D, Greenhouse Gas Emissions, IV.D-40, revise title of Table IV.D-7 as follows:

Table IV.D-7
Project-Related GHG Emissions Flexibility Option With Incorporation of Project Characteristics Design Features and Regulations

The inclusion of references to potential future effects of Statewide programs in achieving future anticipated statewide GHG reduction goals (Draft EIR, Section IV.D, Greenhouse Gas Emissions, page IV.D-47) is only intended to provide context for the overall Statewide effort, which has been successful so far, to achieve the State’s GHG reduction targets. The quantification of Project GHG emissions in the Draft EIR does not rely on the results of ongoing or future programs, other than as indicated above. Project GHG emissions would be less than significant without potential reductions from these programs (Draft EIR, Section IV.D, Greenhouse Gas Emissions, page IV.D-40). Therefore, it is not necessary to quantify possible GHG emission reductions that may result from future activities within the State in the Draft EIR GHG emissions analysis.

The commenter claims that the DEIR does not disclose what construction equipment is used to model construction emissions. The equipment that would be utilized during the construction phases is listed in Appendix I to the Draft EIR (Draft EIR, Appendix I, Noise Calculations, page 5), and includes the following:

- Demolition – 1 concrete saw; 1 rubber tired dozer; 2 tractors/loaders/backhoes;
- Grading – 1 excavator; 1 rubber tired dozer; 2 tractors/loaders/backhoes;

- Construction – 1 crane; 2 forklifts; 1 generator; 3 welders; 1 tractor/loader/backhoe;
- Architectural Coating – 1 compressor.

The equipment listed above represents the default equipment assumptions from CalEEMod, which were used because the exact construction equipment mix for the Project is not known at this time. The exception was during the grading phase, where the default mix was modified to remove 1 grader and add 1 excavator and 1 tractor/loader/backhoe (see Draft EIR Appendix B, Air Quality Calculations, page 30). The equipment mix above was used for both the construction noise and air quality analyses.

The commenter contends that the Draft EIR analysis relies on a presumption that emissions will be lowered over time—assuming that as older equipment is retired from use, newer, more efficient equipment will replace it. The only reference to reduction in emissions in the Draft EIR is in Table IV.A-7, Project Consistency with Applicable Policies of the General Plan Air Quality Element, Objective 1.3 (Draft EIR, Section IV.A, Air Quality, page IV.A-34), which states that the CARB In-Use Off-Road Diesel Vehicle Regulation aims to reduce emissions by encouraging the retirement, replacement or repower of older, dirtier engines with newer emission-controlled models. The Draft EIR analysis does not rely on any reductions in emissions from construction equipment to support its conclusion that the Project would be consistent with the City’s General Plan Air Quality Element.

Comment No. 6-16

C. THE DEIR FAILS TO DISCLOSE AND ANALYZE HEALTH RISKS FROM CONSTRUCTION AND OPERATIONAL EMISSIONS AND FAILED TO CONDUCT A QUANTIFIED HEALTH RISK ANALYSIS

An agency must support its findings of a project’s potential environmental impacts with concrete evidence, with “sufficient information to foster informed public participation and to enable the decision makers to consider the environmental factors necessary to make a reasoned decision.”⁹⁴ A project’s health risks “must be ‘clearly identified’ and the discussion must include ‘relevant specifics’ about the environmental changes attributable to the Project and their associated health outcomes.”⁹⁵

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.⁹⁶ In *Bakersfield*, the court found that the EIRs’ 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.”⁹⁷ 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.⁹⁸ 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.”⁹⁹ CEQA

mandates discussion, supported by substantial evidence, of the nature and magnitude of impacts of air pollution on public health.¹⁰⁰

The failure to provide information required by CEQA makes meaningful assessment of potentially significant impacts impossible and is presumed to be prejudicial.¹⁰¹ Challenges to an agency's failure to proceed in the manner required by CEQA, such as the failure to address a subject required to be covered in an EIR or to disclose information about a project's environmental effects or alternatives, are subject to a less deferential standard than challenges to an agency's factual conclusions.¹⁰² Courts reviewing challenges to an agency's approval of a CEQA document based on a lack of substantial evidence will "determine de novo whether the agency has employed the correct procedures, scrupulously enforcing all legislatively mandated CEQA requirements."¹⁰³

Claiming that emissions of toxic air contaminants ("TACs") will be less than significant, the DEIR fails to include a health risk analysis to disclose the adverse health impacts that will be caused by exposure to TACs from the Project's construction and operational emissions. As a result, the DEIR fails to disclose the potentially significant risk posed to nearby residents and children from TACs, and fails to mitigate it. Because the DEIR fails to support its conclusion that the Project will not have significant health impacts from diesel particulate matter ("DPM") emissions with the necessary analysis, this finding is not supported by substantial evidence.

One of the primary emissions of concern regarding health effects for land development projects is DPM, which can be released during Project construction and operation. The DEIR acknowledges that the greatest potential for TAC emissions during construction would be related to DPM emissions associated with heavy-duty equipment during excavation and grading activities.¹⁰⁴ However, the DEIR failed to perform a quantitative assessment of the Project's DPM emissions, instead concluding that the Project's cancer risk from exposure to DPM would be less than significant based on the DEIR's conclusion that the Project's *criteria pollutant* emissions are less than significant.

The DEIR's health risk conclusion is unsupported for three reasons. First, DPM is not a criteria pollutant like PM₁₀ and PM_{2.5}. Therefore, the DEIR relies on an analysis of the wrong pollutants to analyze health risk. DPM is a toxic air contaminant ("TAC") that is recognized by state and federal agencies, and atmospheric scientists, as causing severe respiratory disease, lung damage, cancer, and premature death. Air districts have recently recognized that "TACs present an even greater health risk than previously thought."¹⁰⁵ By contrast, standard criteria pollutants, which include both PM₁₀ and PM_{2.5}, are defined under both federal and state laws as "criteria pollutants."¹⁰⁶ PM alone does not contain toxic chemicals.

PM is simply defined as "very small solid or liquid particles that can be suspended in the atmosphere."¹⁰⁷ TACs, by contrast, are defined as "air pollutant[s] which may cause or contribute to an increase in mortality or in serious illness, or which may pose a present or potential hazard to human health. Unlike regular particulate matter, DPM contains toxic chemicals which are not evaluated in a criteria pollutant analysis. The DEIR's attempt to rely on its criteria pollutant analysis to conclude that DPM emissions are insignificant is therefore a major error, and one which fails to provide any support for the DEIR's conclusion that the health risk posed by exposure to DPM is insignificant.

Second, the DEIR's failure to quantify the health risk from DPM exposure is unsupported. CEQA expressly requires that an EIR to discuss, inter alia, "health and safety problems caused by the physical changes" resulting from the project.¹⁰⁸ When a project results in exposure to toxic contaminants, this analysis requires a "human health risk assessment."¹⁰⁹ OEHHA¹¹⁰ guidance also sets a recommended threshold for preparing an HRA of a construction period of two months or more.¹¹¹ Construction of the instant Project will last at least 24 months.

Third, the DEIR's conclusion that health risk is less than significant is unsupported by its own inclusion of mitigation measures to minimize the impacts from TAC emissions. The DEIR indicates that the Project would comply with the CARB Air Toxics Control Measure, which limits diesel-powered equipment and vehicle idling to no more than 5 minutes at a location, as well as with the CARB In- Use Off-Road Diesel Vehicle Regulation. Compliance with these measures "would minimize emissions of TACs during construction" to less than significant levels.¹¹² Because these measures are designed to reduce impacts, their function in the Project is as mitigation measures.¹¹³ The DEIR fails to describe the extent of the Project's impacts prior to implementation of these measures, in violation of CEQA.¹¹⁴ Since the DEIR relies on these measures to reduce adverse impacts, they must be also included as binding mitigation measures.¹¹⁵ By ensuring compliance with such a measure in order to avoid significant impacts, the City is acknowledging that impacts from TAC emissions will be significant without mitigation. A health risk analysis is necessary to determine how significant those impacts will be and if mitigation measures are sufficient to avoid risks to public health.

Footnote 94: *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 516.

Footnote 95: *Id.* at 518.

Footnote 96: *Id.* at 518–520; *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184.

Footnote 97: *Id.* at 1220.

Footnote 98: *Sierra Club*, at 521.

Footnote 99: *Id.* at 519, citing *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 514–515.

Footnote 100: *Sierra Club*, 6 Cal.5th at 518–522.

Footnote 101: *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236–1237.

Footnote 102: *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 43.

Footnote 103: *Id.* (internal quotations omitted).

Footnote 104: DEIR Section IV.A Air Quality, p. IV.A-49.

Footnote 105: *California Bldg. Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th 369, 379.

Footnote 106: The seven criteria air pollutants are: ozone (O₃); carbon monoxide (CO); nitrogen dioxide (NO₂); sulfur dioxide (SO₂); PM₁₀; PM_{2.5}; and lead (Pb).

Footnote 107: *CURE v. Mojave Desert Air Qual. Mgm't Dist.* (2009) 178 Cal. App. 4th 1225, 1231-32; see 40 C.F.R. § 50.6(c).

Footnote 108: 14 CCR § 15126.2(a).

Footnote 109: *Sierra Club*, 6 Cal.5th at 520; *Berkeley Keep Jets Over the Bay Com. v. Bd. of Port Comrs. ("Berkeley Jets")* (2001) 91 Cal.App.4th 1344, 1369; *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1219–1220 (CEQA requires that there must be some analysis of the correlation between the project's emissions and human health impacts).

Footnote 110: OEHHA is the organization responsible for providing recommendations and guidance on how to conduct health risk assessments in California. See OEHHA organization description, available at <http://oehha.ca.gov/about/program.html>.

Footnote 111: 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.

Footnote 112: DEIR Section IV.A Air Quality, p. IV.A-50.

Footnote 113: PRC §§ 21002.1(a)(b), 21100(b)(3); 14 CCR § 15126.4.

Footnote 114: *Id.*; *Lotus v. Dep’t of Transp.* (2014) 223 Cal. App. 4th 645, 651-52.

Footnote 115: *Id.*

Response to Comment No. 6-16

With respect to a need for a quantitative operational health risk assessment for the Project, please see Response to Comment No. 6-30. Simply put, the Project would not involve the large-scale use of diesel-powered equipment or vehicles during operations and would, therefore, not be a source of substantial DPM emissions in accordance with guidance from SCAQMD. With respect to a need for a construction health risk assessment for the Project, please see Response to Comment No. 6-31. Section IV.A, Air Quality, of the Draft EIR (pages IV.A-49 through IV.A-54) provides analysis and support for the Draft EIR’s conclusions regarding the significance of TAC emissions during both construction and operations. As discussed in Response to Comment No. 6-31, the commenter’s contention that that the Draft EIR concludes that the Project’s cancer risk from exposure to DPM would be less than significant based on the conclusion that the Project’s *criteria pollutant (emphasis from the original)* emissions are less than significant is inaccurate. With respect to OEHHA guidance related to construction health risk assessments, please see Response to Comment No. 6-31.

With respect to the commenter’s contention that the Draft EIR’s conclusion that “health risk is less than significant is unsupported by its own inclusion of mitigation measures to minimize the impacts from TAC emissions,” the two measures identified by the commenter, the CARB Air Toxics Control Measure and the CARB In-Use Off-Road Diesel Vehicle Regulation, are regulatory requirements with which all projects must comply. Compliance with regulations is not mitigation. Because these are legal requirements, there is no plausible scenario in which the levels of TAC emissions in the absence of such regulations would occur. Moreover, the statement is taken out of context. The Draft EIR does not base its conclusion solely on compliance with these regulations. The primary consideration was long-term exposures would not result from Project construction (Draft EIR, Section IV.A, Air Quality, page IV.A-49 and Response to Comment No. 6-31). Accordingly, it is inaccurate to identify these regulatory requirements as mitigation measures designed to avoid or mitigate significant impacts.

Comment No. 6-17

a. Substantial Evidence Shows that Operational Emissions Will Result in Potentially Significant Impacts to Public Health

Despite the DEIR’s claim that Project operations will not result in any significant health risks from TAC emissions, the potential cancer risk from diesel exhaust emitted by the Project is significant and unmitigated.

Dr. Clark performed his own analysis using the DEIR’s CalEEMod estimated emissions of 0.5046 lbs per day of fugitive PM_{2.5} exhaust for the Project and 0.4615 lbs per day of fugitive PM_{2.5}

exhaust for the Project alternative.¹¹⁶ His conclusions are at remarkable odds to those of the DEIR:

These emissions are equivalent to DPM emissions of 169.5 lbs per year to 184.2 lbs per year. Since the City has not attempted to assess what those impacts would be on the local community and in particular the impacts to the adjacent residences, I have prepared a screening assessment of the operational impacts reported in the CALFEEMOD analyses for the project. Using the Bay Area Air Quality Management District's (BAAQMD) Health Risk Calculator, which calculates the adjusted risk and hazard impacts that can be expected with farther distances from the source of emissions, it is possible to quickly assess the impacts from the project on the adjacent neighbors. The model refines the screening values for cancer risk and PM_{2.5} concentrations found in the BAAQMD's Stationary Source Screening Analysis Tool for permitted facilities which contain diesel internal combustion engines (primary source of DPM). The model is recommended by BAAQMD to assess the impacts from facilities where a comprehensive risk screening assessment has not been completed.

For the preferred project design, operational emissions of 0.5046 lbs per day of Fugitive PM_{2.5} exhaust would result in cancer risks of 568 in 1,000,000, well in excess of BAAQMD's CEQA Air Quality Guidelines threshold of 10 in 1,000,000.¹¹⁷ Operational emissions of 0.4615 lbs per day of Fugitive PM_{2.5} exhaust would result in cancer risks of 519 in 1,000,000, also well in excess of BAAQMD's threshold of 10 in 1,000,000.¹¹⁸

The DEIR provides no substantial evidence in support of its claims that health risks from operational emissions are insignificant. Dr. Clark's analysis, meanwhile, uses data from the DEIR's own modeling files to show that cancer risks resulting from the Project would significantly exceed some agency thresholds.¹¹⁹

Footnote 116: Clark Comments, p. 8.

Footnote 117: BAAQMD CEQA Air Quality Guidelines May 2017, p. 2-5.

Footnote 118: Clark Comments, pp. 7-8; see Clark Exhibits 1 & 2

Footnote 119: BAAQMD's threshold is more appropriate than SCAQMD's in this instance because SCAQMD's Health Risk Calculator does not include diesel particulate matter, a major contributor of [sic]

Response to Comment No. 6-17

As discussed in Response to Comment No. 6-31, the commenter's consultant's alternate analysis uses incorrect assumptions and misinterprets the results of the Project's CalEEMod analysis, which produced incorrect and vastly over-estimated cancer risks from the Project. Further, the Draft EIR accurately evaluated the potential impacts of the Project related to TACs and concluded, based on substantial evidence, that TAC emissions from the Project would be less than significant (Draft EIR, Section IV.A, Air Quality, pages IV.A-49 through IV.A-52 and IV.A-55).

Comment No. 6-18**VI. THE DEIR FAILS TO CONSIDER AND ANALYZE CUMULATIVE IMPACTS**

CEQA requires an evaluation of cumulative impacts, defined as “two or more individual effects which, when considered together, are considerable.”¹²⁰ Such impacts may “result from individually minor but collectively significant projects taking place over a period of time.”¹²¹ Lead agencies must consider whether a project’s potential impacts, although individually limited, are cumulatively considerable.¹²² “Cumulatively considerable” under CEQA means that “the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.”¹²³

CEQA Guidelines section 15130(b)(1) provides two options for analyzing cumulative impacts: (A) list “past, present, and probable future projects producing related or cumulative impacts, including, if necessary, those projects outside the control of the agency, or” (B) summarize “projection contained in an adopted local, regional or statewide plan, or related planning document that describes or evaluates conditions contributing to the cumulative effect.”¹²⁴ “When relying on a plan, regulation or program, the lead agency should explain how implementing the particular requirements in the plan, regulation or program ensure that the project’s incremental contribution to the cumulative effect is not cumulatively considerable.”¹²⁵

This analysis necessarily requires the identification of other projects that will be constructed and/or operating over the same time period as the subject project and the analysis of these projects together with the project being reviewed. The DEIR fails to analyze the impacts the Project will have when considered with the more than 30 other projects within the vicinity that are planned, have been completed, or are under construction.¹²⁶

Footnote 120: 14 C.C.R. § 15355; see also Staff Report, Attachment 10, pp. 894–896 (explaining IS/MND’s failure to analyze cumulative impacts from habitat loss).

Footnote 121: 14 C.C.R. § 15355(b).

Footnote 122: PRC § 21083(b); 14 CCR §§ 15064(h)(1), 15065(a)(3).

Footnote 123: CEQA Guidelines §15064(h)(1).

Footnote 124: 14 C.C.R. § 15130(b)(1).

Footnote 125: Id.; see id. § 15130(a) (stating that the lead agency shall describe its basis for concluding that an incremental effect is not cumulatively considerable).

Footnote 126: Clark Comments, p. 2; <https://downtownla.com/maps/development/in-the-pipeline/arts-district/all> (last accessed Jan. 22, 2021).

Response to Comment No. 6-18

The comment provides introductory and/or legal background information related to the comments that follow regarding CEQA cumulative analysis and the Draft EIR’s analysis of the Project’s cumulative impacts. Responses to the specific comments raised by the commenter regarding cumulative impacts are provided in Response to Comment Nos. 6-19 and 6-20.

Comment No. 6-19**A. The DEIR Fails to Disclose, Analyze, and Mitigate Cumulative Impacts to Air Quality**

The DEIR's list of 20 projects within the Project site's vicinity¹²⁷ omits more than 10 other projects, amounting to more than 3,000,000 square feet of nearby projects. The DEIR's failure to account for all of the proposed and active construction projects in the Project's vicinity reveals the erroneous existing baseline from which the DEIR's entire analysis of cumulative air quality impacts follows.

Furthermore, the DEIR declines to perform any analysis of cumulative impacts from GHG emissions, stating that "the proximity of the Project to other GHG emission generating activities is not directly relevant to the determination of a cumulative impact because climate change is a global condition."¹²⁸ It goes on to reason that, because the CAPCOA holds that GHG emissions are always cumulative due to the global nature of climate change, any analysis it has performed is necessarily a cumulative one, and any further analysis is unnecessary.¹²⁹ It concludes that "[d]ue to the complex physical, chemical, and atmospheric mechanisms involved in global climate change, there is no basis for concluding that the Project's increase in annual GHG emissions would cause a measurable change in global GHG emissions necessary to influence global climate change."¹³⁰ The DEIR's statement that "[t]he GHG emissions of the Project alone would not likely cause a direct physical change in the environment"¹³¹ is a direct violation of the CEQA Guidelines' mandate that a lead agency explain that the project's "incremental contribution to the cumulative effect is not cumulatively considerable."¹³² Moreover, CEQA describes GHG impacts as inherently cumulative impacts, and does not excuse the lead agency from addressing these impacts as cumulative impacts.¹³³ Merely stating that a project's impacts are not significant because it is "unlikely" that they are is not sufficient to support that conclusion.

Footnote 127: DEIR Appendix L.1 Traffic Study, pp. 41–42.

Footnote 128: DEIR Section IV.D Greenhouse Gases, p. IV.D-55.

Footnote 129: Id.

Footnote 130: DEIR Section IV.D Greenhouse Gases, p. IV.D-43.

Footnote 131: Id.

Footnote 132: 14 CCR §§ 15130(a); (b)(1); 15064.4(b).

Footnote 133: 14 CCR § 15064.4(b).

Response to Comment No. 6-19

With respect to the "omission" of more than 10 (actually 12) projects from the Draft EIR's related projects list, please see Response to Comment No. 6-29, which establishes that the commenter did not use authoritative sources of information in developing an alternate list.¹¹ With respect to the methodology used in the Draft EIR to evaluate potential cumulative air quality impacts, please

¹¹ *Comments 6-19 and 6-20 rely on the comments and analysis provided by the commenter's air quality, GHG and health risk consultant (Comments 6-25 through 6-35). Since this consultant's analysis is more detailed than the summary provided in the comment, the most appropriate location for responding to these comments would be the detailed responses to the commenter's consultant's letter (Exhibit A to Comment Letter 6).*

see Response to Comment No. 6-27, which demonstrates that the cumulative air quality impact analysis was conducted in accordance with applicable guidance from the SCAQMD.

With respect to the cumulative nature of GHG emissions, according to the California Air Pollution Control Officers Association (CAPCOA), “GHG impacts are exclusively cumulative impacts; **there are no non-cumulative GHG emission impacts from a climate change perspective** (emphasis added).”¹² Moreover, although the State requires MPOs and other planning agencies to consider how region-wide planning decisions can impact global climate change, there is currently no established non-speculative method to assess the cumulative impact of proposed independent private-party development projects.

Comment No. 6-20

The provision of the CEQA Guidelines that permitted agencies to conclude air emissions would be cumulatively insignificant because they are small in the grand scheme of things has been struck down by the Courts. Indeed, as was recognized in *CBE v. CRA* and *Kings County Farm Bureau*, the relevant analysis is not the relative amount of emissions from the Project compared with other emissions, but “whether any additional amount of precursor emissions should be considered significant in light of the serious nature of the ozone problems in this air basin.”¹³⁴ As Dr. Clark explained in his comment letter, the Project’s emissions are significant and, when considered along with those from nearby projects, will contribute heavily to impacts to air quality and public health.¹³⁵

Footnote 134: Id. at 118–121; Kings County Farm Bureau, 221 Cal.App.3d at 718.

Footnote 135: Clark Comments, pp. 3–4; <https://downtownla.com/maps/development/in-the-pipeline/arts-district/all> (last accessed Jan. 22, 2021).

Response to Comment No. 6-20

With respect to the methodology used in the Draft EIR to assess potential cumulative air quality impacts, please see Response to Comment No. 6-27. This methodology does not use an incremental addition approach to determine whether or not the Project would contribute to a cumulatively considerable impact. Rather the cumulative impact analysis for air emissions was valued in the Draft EIR based on guidance and methodology promulgated by SCAQMD. With respect to cumulative GHG emissions, please see Response to Comment No. 6-19. The impact analysis for GHG emission was correctly performed in accordance with the criteria set forth in CEQA Guidelines Section 15064.4(b).

Comment No. 6-21

VII. CONCLUSION

An EIR “protects not only the environment but also informed self-government” by informing the public and its responsible officials of the environmental consequences of government decisions

¹² *Source: California Air Pollution Control Officers Association, CEQA & Climate change: Evaluating and Addressing Greenhouse Gas Emissions from Projects Subject to the California Environmental Quality Act, (2008).*

before they are made.¹³⁶ The DEIR fails to fulfill CEQA's informational and procedural requirements in multiple ways, including in its description of crucial Project details and establishing an accurate existing baseline, as well as from all analyses, conclusions, and proposed mitigation derived therefrom. As such, the extent of the Project's adverse environmental impacts is hidden from public view. The City cannot rely on the document to determine if the Project's benefits outweigh its environmental impacts or if those impacts have been lessened or avoided to the extent feasible.

The DEIR must be revised and recirculated, consistent with CEQA's Legislative intent and substantive requirements.

Footnote 136: Citizens of Goleta Valley v. Board of Supervisors (1990) 52 Cal.3d 553, 564; see also e.g., Pub. Resources Code, § 21061 ("The purpose of an [EIR] is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment; to list ways in which in the significant effects of such a project might be minimized; and to indicate alternatives to such a project.").

Response to Comment No. 6-21

The comment provides a conclusion statement related to the preceding comments regarding the Draft EIR's alleged failure to fulfill CEQA's requirements pertaining to the Project Description, analysis, conclusions, and proposed mitigation. It does not provide specific comments with respect to the adequacy or content of the DEIR. Responses to the specific comments raised by the commenter are provided in previous Response to Comment Nos. 6-6, 6-7, 6-10, 6-11, 6-12, 6-14, 6-15, 6-16, 6-17, 6-19, and 6-20.

Comment No. 6-22

The comment is Attachment A to Comment Letter 6 and provides a series of email correspondences between CREED LA and the City of Los Angeles Department of City Planning providing information in regard to accessing the Draft EIR, Draft EIR Appendices, and the references documents.

Response to Comment No. 6-22

See Response to Comment No. 6-4.

Comment No. 6-23

The comment is Attachment B to Comment Letter 6 and provides a string of email correspondences between CREED and the City of Los Angeles Planning Department providing information in regard to accessing the Draft EIR, Draft EIR Appendices, and the references documents.

Response to Comment No. 6-23

See Response to Comment No. 6-4.

Comment No. 6-24

The comment is Attachment C to Comment Letter 6 and provides a string of email correspondences between CREED and the City of Los Angeles Planning Department providing information in regard to accessing the Draft EIR, Draft EIR Appendices, and the references documents.

Response to Comment No. 6-24

See Response to Comment No. 6-4.

Exhibit A to Comment Letter No. 6

Letter from James J.J. Clark
Clark & Associates Environmental Consulting Inc.
12405 Venice Boulevard, Suite 331
Los Angeles, CA 90066

Comment No. 6-25

At the request of Adams Broadwell Joseph & Cardozo (ABJC), Clark and Associates (Clark) has reviewed materials related to the 2020 City of Los Angeles Draft Environmental Impact Report (DEIR) of the above referenced project.

Clark's review of the materials in no way constitutes a validation of the conclusions or materials contained within the plan. If we do not comment on a specific item this does not constitute acceptance of the item.

Project Description:

The Project is located at 668-678 S. Mateo Street and 669-679 S. Imperial Street (Project Site) within the Central City North Community Plan area of the City in Los Angeles County. Regional access to the area of the Project Site is provided by the Santa Monica Freeway (I-10) via Alameda Street approximately 0.84-mile to the southwest and the Hollywood Freeway (US-101) via E. 7th Street approximately 0.63-mile to the east. The Los Angeles County Metropolitan Transportation Authority (Metro) provides local bus service in the Project Site area. Metro runs multiple bus lines, including local and rapid lines, along E. 6th Street, E. 7th Street, Alameda Street, and Santa Fe Avenue in the area.

The Project Site consists of approximately 44,800 square feet (1.03 acres), and is bounded by Mateo Street to the west, Imperial Street to the east, a one-story warehouse building that has been converted into a small grocery/market use, associated surface parking lot and Jesse Street to the north, and single-story industrial and commercial buildings, associated surface parking lots, and E. 7th Street to the south.

The Project would involve the demolition of the existing warehouse and surface parking lot, and the construction of an up to 197,355-square-foot mixed-use building including up to 185 live/work units, approximately 15,320 square feet of open space for residents, up to 23,380 square feet of art- production and commercial space, and associated parking facilities, resulting in a 4.74:1 FAR. Eleven percent of the units (20 live/work units) would be deed-restricted for Very Low Income households. The proposed building would be up to 116'-0" to the top of the parapet and 110'-0" to the top of the roof (8 above-ground levels) plus three levels of subterranean parking. The Project has been designed to incorporate specific design standards to address the Arts District's unique urban form and architectural characteristics. The Project also proposes the ability to implement an increased commercial option that would provide the Project the flexibility to increase the commercial square footage provided by the Project from 23,380 square feet to 45,873 square-feet within the same building parameters (i.e., 197,355-square-foot, 116'-0" to the top of the parapet and 110'-0" to the top of the roof with eight-aboveground levels achieving a 4.74:1 FAR and three level subterranean parking structure) and, in turn, reduce the overall amount of live/work

units from 185 live/work units to 159 live/work units. The Project proposes between 159 and 185 live/work units and between 45,873 and 23,380 square feet of commercial space.

Response to Comment No. 6-25

This letter is an attachment to Comment Letter 6 submitted by CREED LA (see list of all components of the CREED LA letter provided as introductory information immediately before Comment No. 6-1 above) prepared by the commenter's consultant (consultant). The comment is an introductory comment identifying the consultant and describing the Project. The comment accurately describes the Project. As this comment does not address the adequacy of the Draft EIR, no further response is necessary.

Comment No. 6-26

General Comments:

The proposed project is located in a heavily impacted portion of Los Angeles, where there are currently more than 30 projects¹ (not the 20 listed the DEIR) within the area of influence of the proposed project that are planned, have been completed, or are under consideration. The City has an obligation under CEQA to ensure that the cumulative impacts from all of these projects are quantified so appropriate mitigation measures (including delaying projects) can be considered. Finally, the DEIR fails to accurately disclose or mitigate the Project's potentially significant health risks from exposure to toxic air contaminants (TACs). The City must conduct a proper analysis of health risks as they relate to the significant impacts from construction and operational emissions in order to accurately evaluate these impacts.

Footnote 1: <https://downtownla.com/maps/development/in-the-pipeline/arts-district/all>.

Response to Comment 6-26

The comment provides introductory and/or summary information related to the comments that follow regarding Draft EIR cumulative analysis and the failure of the Draft EIR to accurately disclose and mitigate the Project's potentially significant health risks from exposure to toxic air contaminants (TACs). Responses to the specific comments raised by the consultant regarding these issues are provided in Response to Comment Nos. 6-27 through 6-32.

Comment No. 6-27

1. The DEIR Fails to Assess The Cumulative Air Quality Impacts From The Project and Existing/Proposed Projects In The Surrounding Community.

The DEIR fails to accurately assess the cumulative air quality impacts and existing or proposed projects within the immediate vicinity of the Proposed Project. Rather than quantify emissions and assess the impacts from each existing/proposed project, the City chooses to list the number of "related projects" near the Proposed Project in lieu of the needed quantitative assessment. This qualitative assessment fails to describe the individual and the collective impacts of each of the related projects and fails to provide a numerical threshold against which a determination of cumulative impacts may be assessed.

The method utilized by the City fails to meet the basic requirements for a cumulative air quality analysis as outlined by the SCAQMD's L.A. CEQA Threshold Guide (2006). A cumulative impact analysis would include a review of the list of related projects and identify those that would have pollutant or odor emissions. Such an analysis would determine the potential impacts of all such projects, together with the proposed project, using the methodology to evaluate the Proposed Project's pollutant impacts. This significance methodology includes:

- The type, number of pieces, and usage of equipment;
- Rate, quantity, and type of fuel consumption;
- Emission factors, assuming implementation of applicable rules and regulations;
- Type(s) and size(s) of land uses, including location of vehicle driveways and parking facilities; and
- The location and usage of equipment or processes that may emit odors.

The City's air quality cumulative analysis is clearly deficient and must be revised in a Revised Draft Environmental Impact Report (R-DEIR).

Response to Comment No. 6-27

The Draft EIR provides an analysis of potential cumulative impacts of the Project in conjunction with past, present, and future projects in each technical section of the Draft EIR. Each of these analyses identifies the appropriate geographic area that reflects the characteristics of the potential cumulative impact, ranging from the Project Site and immediate vicinity to regional and even global geographies. With respect to air quality, the appropriate geography is the South Coast Air Basin (Basin). Even though the 2006 L.A. CEQA Thresholds Guide identifies a methodology that would quantify emissions from a list of related projects in the vicinity of the Project to assess cumulative impacts, this methodology is inaccurate because it does not take into account all projects that contribute emissions within the Basin. Further, SCAQMD has issued more recent guidance regarding the assessment of cumulative air quality impacts in EIRs. According to SCAQMD, individual projects that exceed SCAQMD's daily thresholds for criteria pollutants would cause a cumulatively considerable increase in emissions for those pollutants for which the Air Basin is in non-attainment (Draft EIR, Section IV.A, Air Quality, page IV.A-56). Conversely, projects with emissions below the daily thresholds would not represent a cumulatively considerable increase in such emissions. The City, as Lead Agency, has adopted the more recent SCAQMD thresholds and methodologies to supersede the L.A. CEQA Thresholds Guide as its means of assessing the cumulative air quality impacts of a project. As neither the construction nor operational emissions of the Project would exceed any SCAQMD project-specific threshold, the Project's contribution to cumulative impacts would not be cumulatively considerable in accordance with SCAQMD methodology. Accordingly, the City's air quality cumulative analysis is not deficient, and a revised Draft EIR is not necessary for recirculation.

Comment No. 6-28**2. The DEIR Fails To Accurately Describe The Number And Types Of Construction Projects In The Vicinity Of The Proposed Project.**

The City's DEIR fails to accurately describe the number and types of proposed and active projects in the vicinity of the Proposed Project. The City's analysis includes the following projects (see table below) but fails to include more than 3,000,000 square feet of proposed projects within the vicinity of the Proposed Project (see second table below). The City must update their assessment in a R-DEIR to include the additional projects and determine the cumulative impacts of the projects on the community.

| ID | Status | Address | Land Use | Size |
|----|--------------------|--|--|--|
| 1 | Under Construction | 2051 E. 7 th Street S. Santa Fe Avenue | Apartments Retail Restaurant | 320 du 15,000 sf 5,000 sf |
| 2 | Proposed | 826 S. Mateo Street | Apartments Retail Restaurant | 90 du 11,000 sf 5,600 sf |
| 3 | Proposed | 527 S. Colyton Street 1147 E. Palmetto Street | Apartments Retail Production Space | 275 du 11,375 sf 11,375 sf |
| 4 | Proposed | 540 Santa Fe Avenue | Office | 89,825 sf |
| 5 | Approved | 1525 E. Industrial Street | Apartments Creative Office Retail Restaurant | 328 du 27,300 sf 6,400 sf 5,700 sf |
| 6 | Proposed | 2130 E. Violet Street | Office Retail Restaurant | 94,000 sf 3,500 sf 4,000 sf |
| 7 | Approved | 1800 E. 7th Street | Apartments Retail Office Restaurant | 122 du 3,245 sf 2,700 sf 4,605 sf |
| 8 | Under Construction | 520 S. Mateo Street | Apartments Retail Office Restaurant Museum | 600 du 15,000 sf 110,000 sf 15,000 sf 10,000 sf |
| 9 | Approved | 668 S. Alameda Street Industrial Street | Live-Work Apartments Live-Work Office Specialty Retail Office Restaurant Supermarket | 475 du 25,200 sf 17,500 sf 7,900 sf 16,300 sf 15,300 sf |

| ID | Status | Address | Land Use | Size |
|----|--------------------|---|---|---|
| 10 | Under Construction | 640 S. Santa Fe Avenue | Office Retail Restaurant | 91,185 sf 9,430 sf 6,550 sf |
| 11 | Proposed | 1206-1278 E. 6th Street 640 S. Alameda Street | Apartments Condominiu ms Hotel Quality Restaurant High-Turnover Restaurant Retail Office Art Museum Warehouse School | 1,305 du 431 du 514 rooms 22,639 sf 22,639 sf 82,332 sf 253,514 sf 22,429 sf 316,632 sf 300 students |
| 12 | Proposed | 1005 S. Mateo Street | Industrial Park | 94,849 sf |
| 13 | Approved | 2110 Bay Street | Apartments Retail Creative Office | 110 du 43,657 sf 113,350 sf |
| 14 | Proposed | 1101-1129 E. 5th Street 445 S. Colyton Street | Apartments Retail Hotel Quality Restaurant High-Turnover Restaurant Fast-Food Restaurant Art Gallery Design Incubator | 129 du 26,979 sf 113 rooms 15,197 sf 13,634 sf 2,888 sf 10,341 sf 3,430 sf |
| 15 | Proposed | 641 S. Imperial Street | Apartments Retail Office | 140 du 7,375 sf 7,375 sf |
| 16 | Proposed | 2117-2143 E. Violet Street | Apartments Retails Office | 347 du 21,858 sf 187,374 sf |

| ID | Status | Address | Land Use | Size |
|----|----------|-----------------------|---|--|
| 17 | Proposed | 670 S. Mesquit Street | Apartments Retail Hotel Restaurant Event Space Gym Grocery Creative Office | 308 du 79,240 sf 236 rooms 89,576 sf 93,617 sf 62,148 sf 56,912 sf 944,055 sf |
| 18 | Proposed | 1024 Mateo Street | Live-Work Apartments Live-Work Office Retail Office Restaurant | 106 du 2,250 sf 13,979 sf 92,740 sf 13,126 sf |
| 19 | Proposed | 2159 E. Bay Street | Office Meeting Space Quality Restaurant High-Turnover Restaurant | 202,954 sf 3,235 sf 10,860 sf 10,860 sf |
| 20 | Proposed | 1100 E. 5th Street | Live-Work Apartments Live-Work Office Office Retail Restaurant | 220 du 4,350 sf 17,810 sf 19,609 sf 9,129 sf |

Table Notes: sf = square-feet; du = dwelling units

Source: Linscott, Law & Greenspan, Engineers, Transportation Assessment Report, 676 Mateo Street Project, City of Los Angeles, California, February 18, 2020.

Response to Comment No. 6-28

The comment correctly extracts the related projects list provided in Section III, Environmental Setting, Table III-1, pages III-8 and III-9, of the Draft EIR. This list was developed from data maintained by the Department of City Planning and LADOT that show projects in the City including approved, under construction, proposed or reasonably foreseeable projects. The City defines proposed and reasonably foreseeable projects as those for which development applications have been submitted. The list in the comment includes projects within 0.5 mile of the Project Site, per LADOT methodology. As noted in the Draft EIR (Section III, Environmental Setting, page III-7), the list is conservative in that it is unlikely that all of the related projects would be developed, due to various circumstances, such as changes in economic conditions or delays in obtaining entitlements. The City has determined that this radius is sufficient to support an analysis of cumulative impacts in all areas where the analysis is based on the cumulative effects of the Project in conjunction with other projects located in the immediate vicinity of the Project, which encompasses most of the cumulative analyses presented in the Draft EIR. The remainder of the cumulative analyses are based on wider geographies, such as the regional air basin or the service

area of a utility or public service provider. The geographic area used in each cumulative analysis presented in the Draft EIR is defined in each technical section.

Comment No. 6-29

Projects Missing From City's Related Projects List²

| ID | Status | Address | Land Use | Size |
|----|----------|--|--|---|
| 1 | Proposed | 2 nd and Vignes/Challenge Cream Butter Building | Mixed Use | 190,165 sf |
| 2 | Proposed | 2057 East 7 th Street | Hotel | Addition of 53,353 sf of new floor area to building |
| 3 | Proposed | 234 North Central | | |
| 4 | Proposed | 330 South Alameda | Apartment Retail | 190,000 sf 22,000 sf |
| 5 | Proposed | 405 South Hewitt Street | Office Retail | 255,000 sf 15,000 sf |
| 6 | Proposed | 400 South Alameda St | Hotel | Development of 66 hotel rooms |
| 7 | Proposed | 1211 Wholesale Street (6AM Project) | Hotel | 2,439,000 sf |
| 8 | Proposed | 360 South Alameda (Alameda and 4 th Lofts) | Apartments | 55,719 sf |
| 9 | Proposed | 454 Seaton Street | 8 Story Building | |
| 10 | Proposed | 1000 South Mateo Street | 106 live/work Apartments Retail Restaurant | 120,000 sf 14,000 sf 13,000 sf |
| 11 | Proposed | 1340 East 6 th Street | 193 live/work Apartments | |
| 12 | Proposed | 1800 East 7 th Street | Apartments Commercial | 28,999 sf |

Footnote 2: <https://downtownla.com/maps/development/in-the-pipeline/arts-district/all>.

Response to Comment No. 6-29

The source of the information provided in this table is a map provided by the Downtown Center Business Improvement District (DCBID) that lists projects located within the service area of the DCBID. DCBID is a private organization that provides a variety of services to users within its service area and is not a government agency. The information in the table is extracted from maps

published by DCBID and provided by the commenter as Appendices 1 and 2 (see Comment Nos. 6-43 and 6-44). The date of the information is not provided in either of these appendices. The City does not consider information provided by this organization as an authoritative source of information on development projects in the City, and, therefore it would be inappropriate for use in developing related projects lists. As noted in Response to Comment No. 6-28, City agencies rely on official project information databases maintained by the Department of City Planning and LADOT to identify related projects. If any of the projects listed in the table above are not included in the related projects list in the Project's Draft EIR, it is because the project is outside the 0.5-mile radius used by the City to determine possible cumulative impacts in the immediate vicinity of the Project or the project is not considered proposed or reasonably foreseeable if it does not have a development application filed. The consultant has provided no evidence that any of the "missing" projects would contribute to a cumulatively considerable impact in conjunction with the Project.

Comment No. 6-30

3. The DEIR Fails to Assess The Significant Health Risks As They Relate To The Operational Emissions Of The Proposed Project And The Project Alternative.

The DEIR fails to address the health risks for residents in adjacent properties (less than 25 meters away from the property boundary) from Toxic Air Contaminants (TACs) that will be released during the operational phase of the project. The City's air quality analysis ignores the potential cancer risk from diesel exhaust emitted by the project.

Based on the CALEEMOD [sic] analyses provided in the Appendix B of the DEIR, the operational phase of the project will emit 0.5046 lbs per day of Fugitive PM_{2.5} exhaust (equal to DPM) for the proposed project and 0.4615 lbs per day of Fugitive PM_{2.5} exhaust (equal to DPM) for the proposed project alternative. These emissions are equivalent to DPM emissions of 169.5 lbs per year to 184.2 lbs per year. Since the City has not attempted to assess what those impacts would be on the local community and in particular the impacts to the adjacent residences, I have prepared a screening assessment of the operational impacts reported in the CALEEMOD analyses for the project. Using the Bay Area Air Quality Management District's (BAAQMD) Health Risk Calculator, which calculates the adjusted risk and hazard impacts that can be expected with farther distances from the source of emissions, it is possible to quickly assess the impacts from the project on the adjacent neighbors. The model refines the screening values for cancer risk and PM_{2.5} concentrations found in the BAAQMD's Stationary Source Screening Analysis Tool for permitted facilities which contain diesel internal combustion engines (primary source of DPM). The model is recommended by BAAQMD to assess the impacts from facilities where a comprehensive risk screening assessment has not been completed.

The results are attached as **Exhibit 1 and 2** to this letter. For the preferred project design, operational emissions of 0.5046 lbs per day of Fugitive PM_{2.5} exhaust would result in cancer risks of 568 in 1,000,000, well in excess of BAAQMD's CEQA Air Quality Guidelines threshold of 10 in 1,000,000.³ Operational emissions of 0.4615 lbs per day of Fugitive PM_{2.5} exhaust would result in cancer risks of 519 in 1,000,000, also well in excess of BAAQMD's threshold of 10 in 1,000,000.

Footnote 3: BAAQMD CEQA Air Quality Guidelines May 2017, p. 2-5.

Response to Comment No. 6-30

Neither the City of Los Angeles nor the SCAQMD currently require operational emission health risk assessments for all projects in their jurisdiction. The Project would include residential (live-work), art production, and commercial space and parking uses. SCAQMD requires operational health risk assessments to be conducted only for facilities that include the following activities that have the potential to generate high levels of DPM:¹

- Truck idling and movement (such as, but not limited to, truck stops, warehouse/distribution centers or transit centers),
- Ship hoteling at ports, and
- Train idling.

The Project does not include any of these uses and would not be a significant source of on-site diesel emissions. Therefore, an operational HRA is neither warranted nor required. Moreover, the Project is not under the jurisdiction of the BAAQMD and is not a facility that includes a stationary source of DPM emissions; therefore, the consultant's application of this tool and methodology is inappropriate for this type of project.

In addition, even if such an analysis were required, the operational HRA performed by the commenter's consultant would not be consistent with acceptable SCAQMD HRA methodology. In order to correctly analyze HRA impacts from a project, it is necessary to:

1. Quantify project-generated TAC emissions.
2. Identify nearby ground-level receptor locations that may be affected by the emissions (including any special sensitive receptor locations such as residences, schools, hospitals, convalescent homes, and daycare centers).
3. Perform air dispersion modeling analyses to estimate ambient pollutant concentrations at each receptor location using project TAC emissions and representative meteorological data to define the transport and dispersion of those emissions in the atmosphere.
4. Characterize and compare the calculated health risks with the applicable health risk significance thresholds.

¹ South Coast Air Quality Management District, *Mobile Source Toxics Analysis*, <http://www.aqmd.gov/home/rules-compliance/ceqa/air-quality-analysis-handbook/mobile-source-toxics-analysis>, accessed March 2021.

The first step in quantifying project-generated TAC emissions is to estimate the emissions. For operational HRAs, SCAQMD requires the use of the EMFAC model (EMFAC2017 is the latest version).² Per current SCAQMD HRA guidance³,

“the latest version of EMFAC should be used to estimate the composite DPM emission factor for truck movement on local streets and truck movement and idling on the proposed facility property. EMFAC is CARB’s computer model to estimate past, present, and future on-road emissions of HC, CO, NOX, PM, lead, SO₂, and CO₂. Make sure EMFAC is run for a calendar year and county/air basin representative of the proposed project. From the output, select the DPM emission factor for the vehicle class and speed pertinent to the proposed project.”

The consultant’s operational HRA analysis did none of the above steps to obtain an accurate emissions factor. Instead, the consultant used the BAAQMD Stationary Source Screening Analysis Tool for permitted facilities, which contain diesel internal combustion engines as a primary source of DPM.

Additionally, use of CalEEMod emissions data for an operational HRA analysis is incorrect because the total amount of Exhaust PM_{2.5} per year obtained from CalEEMod is from all sources of Exhaust PM_{2.5}, not just mobile sources. Furthermore, the consultant indicates that the modeled operational health risk was based on an on-site emissions rate; however, the emissions data used as input into the analysis incorrectly included both on-site and off-site emissions sources of Exhaust PM_{2.5}. As the majority of the Project’s mobile source emissions are off-site emissions (shown by the number of vehicle miles traveled [VMT] calculated by CalEEMod for vehicles traveling to and from the site), use of this total Exhaust PM_{2.5} value results in an incorrect and very large over-estimation of on-site Exhaust PM_{2.5} emissions, all of which the consultant based on the flawed assumption that emissions would occur from a point source on the Project Site. As the emissions rate is incorrect, any dispersion modeling based on that value would generate incorrect and vastly over-estimated health risks. Thus, the consultant’s analysis is fundamentally flawed and, therefore, does not represent evidence for the consultant’s suggestion that significant operational TAC emissions from the Project would cause a significant health risk.

Comment No. 6-31

4. The DEIR Fails To Include A Proper Analysis Of Health Risks As They Relate To The Significant Impacts From Construction And Operational Emissions.

The City’s DEIR states that the Project would not result in any substantial emission of TACs during the construction or operational phases without any quantification of the known releases that will

² U.S. Environmental Protection Agency, *Official Release of EMFAC2017 Motor Vehicle Emission Factor Model for Use in the State of California*, <https://www.federalregister.gov/documents/2019/08/15/2019-17476/official-release-of-emfac2017-motor-vehicle-emission-factor-model-for-use-in-the-state-of-california>, accessed February 21, 2021.

³ South Coast Air Quality Management District, *Health Risk Assessment Guidance for Analyzing Cancer Risks from Mobile Source Diesel Idling Emissions for CEQA Air Quality Analysis*, August 2003, p.4.

occur on site. CARB⁴ defines diesel exhaust as a complex mixture of inorganic and organic compounds that exist in gaseous, liquid, and solid phases. CARB and U.S. EPA identify 40 components of the exhaust as suspected human carcinogens, including formaldehyde, 1,3-butadiene, and benzo[a]pyrene. The inhalation unit risk factor identified by OEHHA for use in risk assessments is for the particulate matter (DPM) fraction of diesel exhaust and not the vapor phase components identified by CARB and U.S. EPA.

The City attempts to argue that it is not required to analyze the health risk from operational exposure to TAC emissions based on the numeric threshold for fine particulate matter (PM_{2.5}). However, there is notable precedent requiring a quantitative analysis of all the TACs from diesel exhaust in DEIRs submitted for the approval of projects under CEQA. Moreover, the absence of this analysis renders the City's DEIR incomplete. In a 2017 Air Quality Technical Report⁵ submitted in support of a Draft EIR for the Turk Island Landfill Consolidation and Residential Subdivision⁶, proponents accounted for the gaseous phase of diesel emission and detailed the speciated diesel total organic gas (TOG) emissions along with the DPM emissions for all construction equipment. The speciated diesel TOG emissions and DPM emissions were utilized in dispersion modeling to identify the maximally exposed individual sensitive receptor (MEISR) of the project to determine the health risks associated with all sources of air toxins from the construction phase of the project.

Here, the City's analysis ignores the presence of TACs being emitted with diesel exhaust during the construction and operational phases of the project without making any attempt to quantify the impacts. As noted in Comment 3 above, there are substantial health impacts from the operational phase of the project for the adjacent neighbors from the emissions associated with the project that must be addressed. This omission is a continuing flaw that must be addressed by the City. The results should then be presented in a recirculated DEIR.

Footnote 4: CARB. 1998. Report to the Air Resources Board on the Proposed Identification of Diesel Exhaust as a Toxic Air Contaminant, Part A, Public Exposure To, Sources and Emissions of Diesel Exhaust In California. April 22, 1998. Pg A-1.

Footnote 5: Ramboll Environ. 2017. Air Quality Technical Report Turk Island Landfill Consolidation And Residential Subdivision Project. Prepared For City of Union City, Union City, CA. Prepared by Ramboll Environ [sic] US Corporation, San Francisco, CA, August, 2017. <https://www.unioncity.org/DocumentCenter/View/1867/Turk-Island---App-D---AQ-Emissions-Report?bidId=>.

Footnote 6: Union City. 2018. Draft Environmental Impact Report (DEIR) Turk Island Landfill Consolidation And Residential Subdivision Project. SCH Number 20008112107. Dated 3/15/2018. <https://www.unioncity.org/DocumentCenter/View/1863/Turk-Island-DEIR?bidId=>

Response to Comment No. 6-31

Contrary to the consultant's contention, the Draft EIR does not suggest that an operational health risk assessment for the Project is not required based on the numeric threshold for fine particulate matter (PM_{2.5}). Section IV.A, Air Quality, of the Draft EIR (pages IV.A-51 and IV.A-52) indicates that an operational health risk assessment was not conducted for the Project because Project operations are not a substantial source of diesel particulate matter (DPM) emissions, as discussed in detail in Response to Comment No. 6-30 above.

With respect to the “precedent” cited by the consultant, the Project is not located in Union City or the BAAQMD and is not subject to BAAQMD requirements. Rather the City of Los Angeles is the Lead Agency for the Project, and the City follows guidance and analysis methodologies promulgated by SCAQMD, the agency responsible for planning and regulation of air quality in the South Coast Air Basin, in which the Project is located. Moreover, the project cited in the comment for the Turk Island Landfill Consolidation and Residential Subdivision project in Union City, California⁴ is not nearly comparable to the 676 Mateo Project. The Turk Island Landfill Project included the removal of 175,000 cubic yards of landfill debris from a 6.3-acre site and transferred to an adjacent closed 47-acre landfill. The 6.3-acre site would then be backfilled with 80,000 cubic yards of clean fill and 33 residential units would be constructed. This activity would involve diesel construction equipment utilization that far exceeds the Project’s 1.03-acre site, 74,500 cubic yards export of excavated soil, and no import of fill material. In addition, the Turk Island Landfill Project includes the operation of a Landfill Gas (LFG) Flare, a major source of emissions of criteria pollutants and TACs. Nonetheless, even the substantially increased activity associated with the Turk Island Landfill Project compared to the 676 Mateo Project would not result in exceedances of emissions or health risk thresholds (see Appendix 4 to Comment Letter No. 6, page 1).

Potential human health impacts of the Project are addressed throughout the Draft EIR in accordance with the CEQA Statutes and Guidelines and applicable SCAQMD thresholds and regulations. For example, Section IV.A, Air Quality, of the Draft EIR analyzes the potential for the Project to generate criteria air pollutants in excess of SCAQMD thresholds and identifies sensitive receptors in the Project vicinity that may be exposed to such pollutants. Table IV.A-1, Summary of Health Effects of Criteria Pollutants, of the Draft EIR sets forth a summary of the health effects of criteria pollutants. The Draft EIR concludes, based on a detailed quantification of the Project’s pollutant emissions, that neither the Project’s construction nor operational emissions would exceed the SCAQMD’s regional or localized thresholds. The localized thresholds are health-based in that they represent the maximum emissions from a project that are not expected to cause or contribute to an exceedance of the most stringent applicable federal or State ambient air quality standard. The Draft EIR also evaluates impacts from hazardous materials in Section IV.E, Hazards and Hazardous Materials (Draft EIR, pages IV.E-23 through IV.E-27).

Specifically with respect to the need for a health risk assessment for Project construction, the Project includes an anticipated construction duration of approximately 24 months, which is only approximately 6.6 percent of the 30-year exposure duration recommended for health risk analyses by the Office of Environmental Health Hazard Assessment (OEHHA). The comment misrepresents the guidance from OEHHA, which does not require a construction HRA in this situation. The OEHHA guidance cited in the comment provides technical perspective on how construction activities could be evaluated if they would last for more than two months in terms of exposure assumptions. While the guidance recommends to not perform a cancer risk assessment for construction lasting less than two months, it is not accurate to extrapolate this statement into a conclusion that all other longer construction events should be assessed. On the contrary, as indicated in the latest OEHHA Guidance Manual for Preparation of Health Risk Assessments

⁴ This report is included as Appendix 4 to Comment Letter No. 6.

(February 2015), it is up to local air districts to determine whether construction-related Health Risk Assessments are to be required.⁵ Per Lijin Sun, J.D. Program Supervisor, CEQA IGR, South Coast Air Quality Management District (SCAQMD), SCAQMD does not have recommendations for how to conduct a construction HRA for CEQA purposes using the revised OEHHA guidelines but has been tasked with going through a public process to develop those recommendations to bring to the SCAQMD Board for approval⁶. As those recommendations have not been published or adopted, a construction health risk assessment is not required per current SCAQMD guidance.

The Localized Significance Threshold (LST) analysis is performed to ensure that nearby sensitive receptors to a project are not adversely affected by emissions from on-site construction activities that are in close proximity to nearby receptors. As shown in Section IV.A, Air Quality, on page IV.A-49 of the DEIR in Table IV.A-13, Localized On-Site Peak Daily Construction Emissions, the closest sensitive receptors, located approximately 55 feet from the Project boundary, would not be significantly impacted by construction emissions from the Project. Therefore, no significant short-term health impacts would occur during construction of the Project, and impacts from would be less than significant.

Comment No. 6-32

5. The DEIR Fails To Address The Considerable Increase In Greenhouse Gas (GHG) Emissions From The Existing Site Structures And Fails To Meet The City's Own Commitment To Reduce GHG Emissions From All New Projects.

Since the City does not have a numerical threshold against which projects may be compared, they can use the convoluted logic in the DEIR to claim a level of non-significance for GHG emissions from the project. According to the City, since there is no applicable adopted or accepted numerical threshold of significance for GHG emissions, the methodology for evaluating the Project's impacts related to GHG emissions focuses on its consistency with statewide, regional and local plans adopted for the purpose of reducing and/or mitigating GHG emissions. The City notes that the significance of the Project's GHG emission impacts is not based on the amount of GHG emissions resulting from the Project. This statement alone is a clear indication that the City is not prepared to actually assess what the true impacts of the GHG emissions from the Project will be.

The City's GHG analysis of the proposed project ignores the substantial increase (a factor of 7 to 9) in GHG emissions from the existing site to the proposed project (546 metric tons CO₂e (MTCO₂e) for the existing site to an estimated 3,394.35 to 4,444.80 MTCO₂e for the proposed project).⁷ The single greatest factor in the increase in GHG emissions is from mobile sources associated with the project (49%-55%), followed by energy usage (35%-42%).⁸

The City claims that a 26.9 percent reduction via mitigation measures comes from "utilizing low-flow fixtures that would reduce indoor water demand by 20 percent per CalGreen Standards,

⁵ OEHHA, *Guidance Manual for Preparation of Health Risk Assessments, February 2015, page 1-3.*

⁶ *Based on personal communication May 18, 2018 and information provided at AEP/SCAQMD Update July 17, 2019.*

using water- efficient irrigation systems on-site per City requirements, recycling programs that reduces waste to landfills by a minimum of 75 percent (per AB 341); use of Energy Star® appliances on-site, installation of energy efficient LED lighting, energy efficient glazing and energy efficient window frames; incorporation of the CAPCOA-based land use and site enhancement reduction measures: LUT-1 Increased Density, LUT-3 Increased Diversity, LUT-6 Integrate Below Market Housing Rate^{54[sic]}, PDT-1 Limit Parking Supply, and PDT-2 Unbundle Parking Costs.”⁹

While the measures appear to provide some measure of reduction they do not address the critical issue of the substantial impact that increasing the GHG emissions 7 to 9 times will have on the environment. The environmental “cost” of the extra 2,900 MTCO₂e to 3,400 MTCO₂e is not addressed by the City in its analysis.

Footnote 7: DEIR Section IV.D Greenhouse Gases, p. IV.D-37.

Footnote 8: DEIR Section IV.D Greenhouse Gases, p. IV.D-37.

Footnote 9: DEIR Section IV.D Greenhouse Gases, p. IV.D-36.

Response to Comment No. 6-32

As noted, the City has not adopted a numerical significance threshold for assessing impacts related to GHG emissions and has not formally adopted a local plan for reducing GHG emissions (Section IV.D, Greenhouse Gas Emissions, of the Draft EIR, page IV.D-26). Similarly, the SCAQMD, OPR, CARB, CAPCOA, or any other State or regional agency responsible for developing policies, plans and programs designed to reduce GHG emissions has not adopted a numerical significance threshold for assessing the significance of GHG emissions associated with development projects. Since there is no applicable adopted or accepted numerical threshold of significance for GHG emissions, the methodology for evaluating the Project’s impacts related to GHG emissions focuses on its consistency with Statewide, regional, and local plans adopted for the purpose of reducing and/or mitigating GHG emissions, as is permitted under the CEQA Guidelines. It is not accurate to suggest that, because a numerical threshold is not available, the City is not properly assessing the potential impacts of the Project’s GHG emissions. This evaluation of consistency with such plans is the sole basis for determining the significance of the Project’s GHG-related impacts on the environment.

Section IV.D, Greenhouse Gas Emissions, page IV.D-24 of the Draft EIR states the following:

As described in Section 15064.4(b) of the *State CEQA Guidelines*, the following factors, among others, should be considered when assessing the significance of impacts from GHG emissions on the environment:

1. *The extent to which the project may increase or reduce greenhouse gas emissions as compared to the existing environmental setting.*
2. *Whether the project emissions exceed a threshold of significance that the lead agency determines applies to the project.*
3. *The extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions.*

Section 15064.4 does not establish a threshold of significance. Lead agencies are called on to establish significance thresholds for their respective jurisdictions in which a lead agency may appropriately look to thresholds developed by other public agencies, or suggested by other experts, such as the California Air Pollution Control Officers Association (CAPCOA), as long as any threshold chosen is supported by substantial evidence (see *State CEQA Guidelines* Section 15064.7(c)). Although GHG emissions can be quantified, CARB, SCAQMD, and the City of Los Angeles have yet to adopt project-level numerical significance thresholds for GHG emissions that would be applicable to the Project. Moreover, because the effect of GHG emissions is experienced on a global scale in the form of global climate change, it would be inaccurate to simply consider the emissions allocated to the Project by CalEEMod as new GHG emissions. At present, no accepted methodology exists that can identify offsetting emissions (i.e., the extent to which Project-related emissions represent new emissions rather than a shift in the location of GHG emissions that are already being generated) so that an accurate assessment of the increase in GHG emissions associated with a project can be evaluated. Accordingly, the simple reliance on the volume of GHG emissions allocated to the Project, as suggested in the comment, substantially overstates the actual new GHG emissions that could be associated with Project. Accordingly, the commenter's calculation of the magnitude of GHG emissions is misleading and irrelevant since the quantified GHG emissions calculated for a project is not a measure used by the City to assess the effects of project-level GHG emissions.

It is within the City's purview to use compliance with Statewide, regional, and local plans for reduction of GHGs as the basis for significance determination. As *State CEQA Guidelines* Section 15064(h)(3) allows a lead agency to make a finding of less than significant for GHG emissions if a project complies with program and/or other regulatory schemes to reduce GHG emissions, Project GHG emissions would be less than significant.

Comment No. 6-33

Conclusion

The facts identified and referenced in this comment letter lead me to reasonably conclude that the Project could result in significant unmitigated impacts and that the City should re-evaluate the impacts in a recirculated/revised DEIR.

Response to Comment No. 6-33

The comment provides a conclusion statement related to the preceding comments in regard to possible significant unmitigated impacts of the Project. It does not provide substantial evidence with respect to the adequacy or content of the DEIR. Responses to the specific comments raised by the commenter regarding the issues raised in the prior comments are provided in previous Response to Comment Nos. 6-27 through 6-31. As shown in these responses, Project-level and cumulative impacts of the Project related to air and GHG emissions would be less than significant without mitigation, and, therefore, no additional analysis is required.

Comment No. 6-34

This comment is Exhibit 1 to the commenter's consultant's letter and provides output from an unidentified computer model related to Diesel Particulate Matter emissions.

Response to Comment 6-34

See Response to Comment 6-30.

Comment No. 6-35

This comment is Exhibit 2 to the commenter's consultant's letter and provides output from an unidentified computer model related to Diesel Particulate Matter emissions.

Response to Comment 6-35

See Response to Comment 6-30.

Exhibit B to Comment Letter No. 6

Letter from Neil A. Shaw
Menlo Scientific Acoustics, Inc.
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Comment No. 6-36

Per Ms. Kendra Hartmann's request Menlo Scientific Acoustics, Inc. (MSAI), reviewed the Project Definition (II) chapter as well as the Noise Environmental Impact Analysis (IV.H) and the Transportation/Traffic sections of the subject Draft Environmental Impact Report. The discussion below provides a summary of our review. The items discussed below indicate some of the ways in which the DEIR does not adequately describe the project noise impacts, presents the impression the impacts are not significant, and omits potential noise sources and their impacts.

Response to Comment No. 6-36

The comment provides introductory information related to the following comments in regard to the Noise and Transportation sections of the Draft EIR. It does not provide specific comments with respect to the adequacy or content of the DEIR. Responses to the specific comments raised by the commenter regarding these issues are provided in Response to Comment Nos. 6-37 through 6-42.

Comment No. 6-37

The DEIR fails to provide the details necessary to review the Project's impacts and assess the mitigation needed to minimize them. The project description lacks information critical for the reviewing public to meaningfully assess the DEIR's conclusions in several ways, including:

- a. DEIR Section 2, *Environmental Setting*, includes in its descriptions and figures makes brief mention of the multi-story residential buildings to the west across Mateo Street and, to a much lesser extent, the multi-story residential building to the east across Imperial Street. The description of the Project site's surroundings is an inadequate baseline from which to analyze Project impacts. The impacts during construction for residential units above ground level (note all units are above ground level) in the neighboring buildings, despite a mitigation offered by an eight-foot-high barrier, is neither disclosed nor discussed. This impact is substantial.

Response to Comment No. 6-37

As discussed in Response to Comment No. 3-2, the primary source of the potentially significant construction noise impact on the upper floors of the Biscuit Company Lofts and Toy Factory Lofts is the operation of a concrete saw during demolition. Mitigation Measure **MM NOI-1** has been revised to provide alternatives to the use of the concrete saw and/or operational restrictions on the use of the demolition equipment that would avoid any impact on the upper floors of the neighboring residential buildings. Noise impacts without employing a concrete saw and during all other phases of construction of the Project would be less than significant without mitigation. No further mitigation or analysis is required.

Comment No. 6-38

- b. DEIR Section 4, *Construction*, admits that the project will require the net export of approximately 74,500 cubic yards of soil. No mention is made of the location for the staging of the haul trucks and the size of the haul trucks to be used. This information is necessary to analyze the noise impacts from the haul trucks' daily trips on the adjacent residential units.

Response to Comment No. 6-38

With respect to the staging site for haul trucks and the size of haul trucks to be used, please see Response to Comment No. 6-6.

Comment No. 6-39

- c. DEIR Section 6, *Discretionary Actions and Approvals*, notes the anticipated request for approval to serve a full line of alcoholic beverages on-site. This could have significant implications for the Project's operational noise impacts, none of which are disclosed or discussed. These potential impacts include those resulting from boisterous patrons in open seating areas; noise from the interior of an establishment if it has windows and doors that open to the outside; noise impacts from sound systems for recorded or live sound. The noise level from these can exceed the criteria in LAMC Chapter 12.08, Noise Control. The DEIR, however, does not include a description of any of these potentialities.

Response to Comment No. 6-39

As discussed in Response to Comment No. 6-7, adequate controls are in place to ensure that outdoor activities during Project operation, including amplified sound, would not significantly impact neighboring uses, even taking into account potential effects of alcohol consumption. No substantial evidence has been provided by the commenter to support the contention that noise levels from the Project would exceed the City's noise criteria.

Comment No. 6-40

II. The Existing Baseline Established by the Noise Impact Analysis is Inadequate and the Data Presented to Analyze Noise Impacts is Inaccurate and Incomplete

Table IV.H-7 in DEIR Section IV.H Noise presents some noise measurements made at the Project site. Absent from the DEIR or its analyses are details critical to support its conclusions regarding the existing baseline at the Project site. The time(s) of day, for example, at which these measurements were taken is not disclosed. No description of the environmental conditions in the vicinity, such as the current or former presence of construction and other activities near the measurement locations or other environmental conditions such as wind that could affect the noise baseline measurements. The DEIR's baseline ambient noise measurements fail to establish existing noise levels at relevant noise-sensitive receptors in the vicinity of the Project site and the DEIR likewise fails to assess the temporary increase in ambient noise levels at those receptors accurately. Table IV.H-9 presents data that is confusing and misleading. Figures, for example, in that the column labeled "Estimated Peak Construction Noise Levels (dBA Leq)" refer both to "peak" and "Leq." These values, however, measure different energy noise levels. "Peak sound level" is defined by ANSI AS S1.1, *Acoustical Terminology*, as the "greatest absolute value of

instantaneous sound pressure within a specified time interval within a stated time interval to the square of the reference value for sound pressure. *Equivalent continuous sound level, or Leq*, meanwhile, is defined as “Ten times the logarithm to the base ten of the ratio of *time-mean-square* frequency-weighted sound pressure signal, during a stated time interval T, to the square of the reference value for sound pressure,” or the average acoustic energy content of noise for a stated period of time. A peak level in a given time period is always greater than an average sound level for a given time period. These inconsistencies and errors make a precise analysis of noise impacts impossible.

Page IV.H-27 states “peak construction noise levels at all sensitive receptors would be below the 75 dBA construction noise threshold defined by the Section 41.40 of the LAMC.” Section 41.40, however, makes no mention of a noise threshold of 75 dBA.^a

- Further, peak levels are not defined nor referenced in LAMC Chapter XI, *Noise Regulation*. Sound level is defined in section 111.01. *Definitions*, sub section (k) “Sound Level” (Noise level) in decibels (dB) is the sound measured with the “A” weighting and slow response by a sound level meter; except for impulsive or rapidly varying sounds, the fast response shall be used.”
- Per ANSI/ASA S1.1 section 3.12 the slow response time period is 1000 ms (one thousand milli-seconds = 1 second) and the fast response time period is 125 ms (1/8 second). For time-varying noise the shorter the time period the greater the measured sound level and the longer the time period the more the sound level decreases.

Footnote a: https://codelibrary.amlegal.com/codes/los_angeles/latest/lamc/0-0-0-128777#JD_41.40

Response to Comment No. 6-40

With respect to ambient noise readings, see Response to Comment No. 6-10. With respect to construction noise impacts, the peak noise levels described in Tables IV.H-9 and Table IV.H-12 of the Draft EIR refers to the highest (peak) construction noise level during all stages of construction. As detailed in the notes of each table, the data sheets available in Appendix I of the Draft EIR show the construction noise levels at each receptor location during all phases of construction. Construction noise levels at their highest level would not exceed 75 dBA. The analysis is concise and accurate. With respect to the reference to the 75-dBA threshold in LAMC Section 41.40, see Response to Comment No. 6-11. As discussed in this response, the 75-dBA threshold contained in LAMC Section 112.05 is not used as a significance threshold in the Draft EIR. No additional analysis or clarification is required.

Comment No. 6-41

III. The DEIR’s Conclusions Regarding Noise Impacts Are Inaccurate and Underestimated

CEQA does not set a uniform standard for determining the significance of a project’s noise impacts. Lead agencies may select their own method but must support the method with evidence and analysis. The City [sic]

The estimated peak construction noise levels at the nearest sensitive receptors, the National Biscuit Company Lofts and the Toy Factory Lofts, is projected to be 66.4 dBA.^b This analysis is not supported by substantial evidence for several reasons. First, the analysis did not specify the construction equipment used in the estimation, a crucial datapoint.^c Secondly, the analysis uses a threshold set forth in Los Angeles Municipal Code Section 112.05, which “prohibits any powered equipment or powered hand tool from producing noise levels that exceed 75 dBA at a distance of 50 feet from the noise source within 500 feet of a residential zone.”^d The distance of the haul trucks route to the sensitive receptors, however, is less than 50 feet. For incoming haul trucks, the distance to the Biscuit Company building will be approximately 30 feet, while outgoing trucks will pass about 15 feet from the building.^e The noise levels, therefore, will be considerably higher—4.4 dBA higher for incoming trips and 10.4 dBA higher for outgoing.

A considerable increase in noise levels such as these for each haul truck trip equates to an exponentially more significant impact when considering the number of trips per day and the hours during which they are completed. If there will be, as stated, 71 trips per day for both incoming and outgoing trips^f from 7 am to 10 pm (15 hours) then:

- 4.7 incoming trips/hr (every 12.8 minutes) will be 80.4 dBA
- 4.7 outgoing trips/hr (every 12.8 minutes) will be 86.4 dBA So, each trip can exceed the 75 dBA criteria every 6.4 minutes!

If there will be 71 trips in and out/day from 7 am to 5 pm (10 hours) then:

- 7.1 incoming trips/hr (every 7.1 minutes) will be 80.4 dBA
- 7.1 outgoing trips/hr (every 7.1 minutes) will be 86.4 dBA So, each trip can exceed the 75 dBA criteria every 3.6 minutes!

Since the trucks will be accelerating and decelerating the levels can be higher than those noted above and the time of exceedance depends on the time it takes for each truck to arrive and depart. Further, as noted above, if the truck noise level found in Table IV.H-8 are underestimated, the noise impact will be even greater. If the number of trips per day is greater than the 71 incoming and outgoing that the DEIR projects, noise impacts will be more frequent and could become almost continuous.

Footnote b: DEIR Section IV.H Noise, Table IV.H-9, p. IV.H-27.

Footnote c :

https://www.fhwa.dot.gov/environment/noise/construction_noise/handbook/handbook09.cfm.

Footnote d : https://codelibrary.amlegal.com/codes/los_angeles/latest/lamc/0-0-0-128777#JD_112.05.

Footnote e: See Google Earth image, below.

Footnote f : DEIR Section IV.H Noise, p. IV.H-28.

Response to Comment No. 6-41

As detailed in the footnote of Table IV.H-9 on page IV.H-27 in Section IV.H, Noise, of the Draft EIR, the construction noise data sheets are available in Appendix I of the Draft EIR. These data sheets list each piece of construction equipment used in the calculations. The threshold used in the construction noise analysis is shown in Section IV.H, Noise, on page IV.H-26 of the Draft EIR,

where it states per the *L.A. CEQA Thresholds Guide*, a project would normally have a significant impact on noise levels from construction if:

Construction activities lasting more than 10 days in a three-month period would exceed existing ambient exterior noise levels by 5 dBA or more.

As haul trucks pass by receptors in the Project vicinity, the noise level from that pass-by would be approximately 76 dBA L_{max} at a distance of 50 feet. The L_{max} noise level reflects an instantaneous noise level and not an average noise level. The roads in the Project vicinity are already subject to vehicular noise and truck traffic. As shown by the ambient noise readings reported in Table IV.H-7 on page IV.H-17 in Section IV.H, Noise, of the Draft EIR, receptors in the Project vicinity are already exposed to noise levels up to 86.7 dBA L_{max} . Furthermore, since the haul route has been revised to eliminate haul truck traffic on Mateo Street, as shown in the revised Figure II-24, Anticipated Haul Route (see Response to Comment No. 3-2), haul trucks would not pass-by the Biscuit Lofts. The haul truck staging area would be on Imperial Street between the Project Site and Jesse Street. Therefore, noise levels from the intermittent truck pass-bys would be less than the maximum noise levels that already exist at receptor locations in the Project vicinity, and the noise levels would not generate a significant increase over ambient noise levels, and impacts remain less than significant.

Comment No. 6-42

IV. Construction Noise Mitigation is Inadequate

Lastly, the measures proposed by the DEIR to mitigate noise impacts are woefully inadequate. In order to help minimize adverse noise impacts at the National Biscuit Company and Toy Factory lofts, an eight-foot-high barrier will be installed along the western boundary of the Project site during demolition and excavation/grading. This barrier, which stands at a much lower height than any residential units in both buildings, will provide no mitigation. It will neither dampen noise at the site due to its low profile, nor will it protect residents at either residential building from the haul truck construction noise impact as the haul truck route will pass down Mateo Street with no barrier or other mitigation between the trucks and the residential units.

Response to Comment No. 6-42

With respect to construction noise mitigation, please see Response to Comment Nos. 3-2 and 6-37. With respect to haul truck noise, please see Response to Comment No. 6-41.

Comment No. 6-43

Furthermore, nowhere are impacts from music or loud (and potentially inebriated) patrons on the ground discussed. Permits for live music or music playback on or at the roof area pool and spa, yoga deck, and private terraces are anticipated, but the impacts of these is neither disclosed nor discussed in the DEIR. Music, especially the low frequency sounds present in many music genres, can be a nuisance and impact the residential units in close proximity. Music can impact the interior of the residences since windows do not have good low-frequency attenuation. Potential mitigation measures for reducing these impacts can include limiting music or sound levels, including not

allowing music at the pool and spa, yoga deck, and private terraces, as well as retrofitting windows at impacted existing residential properties, similar to that implemented at LAX.

Response to Comment No. 6-43

With respect to noise impacts from outdoor spaces, please see Response to Comment No. 6-7.

Comment No. 6-44

The comment is Appendix 1 to Comment Letter No. 6 and provides a map from the Downtown Center Business Improvement District (DCBID) of Downtown Los Angeles' "coming soon" projects.

Response to Comment No. 6-44

See Response to Comment No. 6-29.

Comment No. 6-45

The comment is Appendix 2 to Comment Letter No. 6 and provides a map from the Downtown Center Business Improvement District (DCBID) of Downtown Los Angeles' "coming soon" projects.

Response to Comment No. 6-45

See Response to Comment No. 6-29.

Comment No. 6-46

This comment is an unnumbered appendix to Comment Letter No. 6 containing Section 9.0 of the Construction Noise Handbook.

Response to Comment No. 6-46

See Response to Comment No. 6-41.

Comment No. 6-47

The comment is Appendix 4 to Comment Letter No. 6, consisting of the Air Quality Technical Report of the Turk Island Landfill Consolidation and Residential Subdivision Project, prepared by Ramboll Environ, August 2017.

Response to Comment No. 6-47

See Response to Comment No. 6-31.

Comment No. 6-48

The comment is Appendix 5 to Comment Letter No. 6, consisting of Draft Environmental Impact Report for the Turk Island Landfill Consolidation and Residential Subdivision Project, prepared by Lamphier - Gregory, March 2018.

Response to Comment No. 6-48

See Response to Comment No. 6-31.

Comment Letter No. 7

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Comment No. 7-1

We are writing on behalf of the Coalition for Responsible Equitable Economic Development (“CREED LA”) to provide supplemental comments on the Draft Environmental Impact Report (“DEIR”) prepared for the 676 Mateo Street Project (SCH No. 2018021068; Case No. ENV 2016-3691-EIR) (“Project”), proposed by District Centre, LP, & District Centre-GPA, LP (collectively, “Applicant”). The Project proposes the demolition of the existing warehouse and surface parking lot, and the construction of an up-to 197,355-square-foot mixed-use building, including up to 185 live/work units, approximately 15,320 square feet of open space for residents, up to 23,380 square feet of art-production and commercial space, and associated parking facilities. The Project site is located at 668-678 S. Mateo Street and 669-679 S. Imperial Street in the Central City North community of the City of Los Angeles, and consists of eight contiguous lots associated with Assessor Parcel Number 5164-020-021.

We previously reviewed the DEIR and its appendices and provided comments on January 25, 2021 regarding our concerns over the Project’s impacts to air quality from construction and operational emissions, as well as its potential impacts from construction and operational noise.¹ Specifically, our comments concluded that the DEIR does not comply with CEQA due to its failure to accurately disclose the extent of the Project’s potentially significant impacts, as well as its failures to support its findings with substantial evidence and properly mitigate the Project’s impacts. These comments supplement and incorporate CREED LA’s prior comments on the Project.

During the DEIR’s public review and comment period, which ended on January 25, 2021, the City failed to provide CREED LA with timely access to the DEIR reference documents, as required by the California Environmental Quality Act² (“CEQA”). The City also declined CREED LA’s January 20, 2021 request to extend the formal public comment period to allow additional time for the public to review DEIR reference documents that were provided just days before the end of the comment period.³ Due to the limited time provided for public comment, and CREED LA’s limited access to documents underlying the DEIR’s analysis, the City agreed to provide CREED LA with additional time, through February 8, 2021, to review and comment on the DEIR. We now provide further comments on the DEIR’s analysis of the Project’s impacts, and reserve the right to supplement comments at any and all later proceedings related to this Project.⁴

Footnote 1: Our preliminary review and comments were prepared with the assistance of air quality consultant James Clark, Ph.D. and acoustics expert Neil A. Shaw, FASA, FAES.

Footnote 2 : Pub. Resources Code (“PRC”) §§ 21000 et seq.; 14 Cal. Code Regs. (“CCR”) §§ 15000 et seq.; PRC § 21092(b)(1); 14 CCR § 15087(c)(5).

Footnote 3: The City provided CREED LA an informal extension to February 8, 2021 to submit its DEIR comments, but declined to extend the formal CEQA public comment period.

Footnote 4: 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.

Response to Comment No. 7-1

The comment provides introductory and/or legal background information related to the comments that follow regarding the commenter’s request for an extension on the formal public comment period due to the City’s alleged failure to provide timely access to the Draft EIR reference documents and the alleged failure of the Draft EIR to accurately disclose the significant impacts on air quality, greenhouse gases, public health, and noise. With respect to the provision of reference materials, see Response to Comment No. 6-4. With respect to the issues raised in Comment letter 6, see Response to Comment Nos. 6-1 through 6-47. Responses to the specific comments raised by the commenter in Comment letter 7 are provided in Response to Comment Nos. 7-2 through 7-7.

Comment No. 7-2**I. THE CITY LACKS SUBSTANTIAL EVIDENCE TO APPROVE THE PROJECT’S LOCAL LAND USE PERMITS**

The Project requires a number of discretionary entitlements and related approvals under local City plans and codes, including an amendment to the land use designation for the Project Site from the current “Heavy Industrial” to “Regional Center Commercial,” a Vesting Zone Change from M3 Zone to C2 Zone, Master Conditional Use approval to permit the sale and dispensing of alcohol, approval of a merging and subdivision of the Project site for mixed-use purposes, and a reduction in the number of required parking spaces.⁵ In addition, the Project must comply with the City’s Open Space Requirement for Six or More Residential Units.⁶

Each permit requires the City to make findings regarding land use consistencies and/or environmental factors. As discussed in our prior comments, the DEIR fails to disclose the Project’s potentially significant, unmitigated impacts on air quality, public health, climate change, and noise. These impacts also create inconsistencies with several of the permits required for the Project, as proposed.

Where a local or regional policy of general applicability, such as an ordinance, is adopted in order to avoid or mitigate environmental effects, a conflict with that policy constitutes a significant land use impact and, in itself, indicates a potentially significant impact on the environment.⁷ Any inconsistencies between a proposed project and applicable plans must be discussed in an EIR.⁸ A project’s inconsistencies with local plans and policies also constitute significant impacts under CEQA.⁹ The DEIR must be revised and recirculated to adequately disclose and mitigate the significant land use impacts discussed below.

Footnote 5: DEIR Section II. Project Description, p. II-40–41.

Footnote 6: LAMC 12.21(G).

Footnote 7: Pocket Protectors v. Sacramento (2005) 124 Cal.App.4th 903.

Footnote 8: 14 CCR § 15125(d); City of Long Beach v. Los Angeles Unif. School Dist. (2009) 176 Cal. App. 4th 889, 918; Friends of the Eel River v. Sonoma County Water Agency (2003) 108 Cal. App. 4th 859, 874 (EIR inadequate when Lead Agency failed to identify relationship of project to relevant local plans).

Footnote 9: Endangered Habitats League, Inc. v. County of Orange (2005) 131 Cal.App.4th 777, 783-4, 32 Cal.Rptr.3d 177; see also, County of El Dorado v. Dept. of Transp. (2005) 133 Cal.App.4th 1376.

Response to Comment No. 7-2

The comment provides introductory and/or legal background information related to the comments that follow regarding the City's approval of land use permits for the Project. Comment Letter No. 7 largely reprises the comments provided in Comment Letter No. 6; however, the comments are provided within the context of the commenter's contention that the City cannot make the findings and approve the Project because there are unidentified significant environmental impacts and conflicts with unspecified City plans and policies. As the comment does not provide substantial evidence of any deficiencies in the Draft EIR or specify which plans or policies are in conflict with the Project, no further response is needed.

Comment No. 7-3

A. Plan Amendments and Zone Changes

The Project site is currently designated for Heavy Industrial land uses, which allows a variety of industrial and commercial uses. The Project, as proposed, would require a land use designation change to Regional Center Commercial. The entire Project, in fact, depends on this redesignation. Several of the Project's features, however, would make it incompatible with a redesignation.

The City of Los Angeles Industrial Land Use Policy ("ILUP"), which provided direction for preserving industrial land for job production uses, designates the block where the Project site is located as an Employment Protection District ("EMP"). EMP Districts are defined as "areas where industrial zoning should be maintained, i.e., where adopted General Plan, Community Plan and Redevelopment Plan industrial land use designations should continue to be implemented. Residential uses in these Districts are not appropriate."¹⁰

The ILUP does contemplate a variety of community benefits that can be derived from projects located in an EMP that has undergone a change of use.¹¹ These benefits, however, including affordable housing and open space, are not adequately provided by the Project. Most notably, the Project's proposed open space does not comply with the LAMC's requirement for projects of its size.

Footnote 10: City of Los Angeles Department of Planning and Community Redevelopment Agency, Memorandum for Staff Direction Regarding Industrial Land Use and Potential Conversion to Residential or Other Uses, January 3, 2008.

Footnote 11: Id.

Response to Comment No. 7-3

As noted in the comment, the Project includes a proposed land use redesignation from Heavy Industrial to Regional Center Commercial for the Project Site. The City of Los Angeles Industrial Land Use Policy (ILUP) was developed by the Department of City Planning and the Community Redevelopment Agency of the City of Los Angeles (now defunct) in December 2007. The ILUP was not developed to address environmental impacts. Rather, it was designed to align land use

policies with economic goals to preserve the City's industrial base. However, in recent years, the economic goal of the ILUP has been largely superseded by policies designed to encourage the production of housing to address the City's housing shortage. This is particularly noticeable in the Arts District, where many residential projects have been approved by the City on previously industrially-zoned land. Accordingly, the Project's request for a General Plan Amendment and zone change is consistent with City policies to promote housing development as discussed in Section IV.I, Population and Housing, of the Draft EIR (pages IV-I-6 through IV.I-9).

Comment No. 7-4

B. Open Space Requirement

The City requires that "[n]ew construction resulting in additional floor area and additional units of a building or group of buildings containing six or more dwelling units on a lot shall provide at a minimum the following usable open space per dwelling unit: 100 square feet for each unit having less than three habitable rooms; 125 square feet for each unit having three habitable rooms; and 175 square feet for each unit having more than three habitable rooms."¹²

The Project proposes 15,320 square feet of open space, which includes a swimming pool and spa, fitness and recreation rooms, courtyard, arts and production space, yoga deck, outdoor dining areas, terraces, and private balconies.¹³ With a proposed 185 residential units, however, the minimum area of open space required to comply with the LAMC would amount to at least 18,500 square feet. The DEIR offers no explanation for this deficiency, instead asserting, inexplicably, that the Project is consistent with the Open Space Requirement.¹⁴ The Project therefore fails to comply with the City's open space requirements, resulting in a significant land use impact and a significant impact under CEQA.

Footnote 12: LAMC 12.21(G).

Footnote 13: DEIR Section IV.G Land Use and Planning, p. IV.G-25.

Footnote 14: Id.

Response to Comment No. 7-4

Contrary to the suggestion in the comment, the Draft EIR addresses the Project's consistency with all of the City's open space requirements, which are discussed in the Draft EIR in Section II, Project Description, on pages II-28 and II-29. The unadjusted open space requirement for the Project would be approximately 19,150 square feet and the unadjusted open space requirement for the Flexibility option would be approximately 17,700 square feet (Draft EIR, Section II, Project Description, page II-28). As noted on page II-23 in Section II, Project Description, of the Draft EIR, the Project is utilizing an on-menu incentive set forth in the State Density Bonus Law and the City's Density Bonus Ordinance to reduce the required open space by 20 percent in exchange for the provision of Very Low Income affordable units within the Project (20 units in the Project and 18 units in the Flexibility Option). With application of this 20-percent open space reduction, the open space requirements would be approximately 15,320 square feet for the Project and approximately 14,160 square feet for the Flexibility Option (Draft EIR, Section II, Project Description, page II-28). The Project would provide approximately 15,320 square feet of open space and the Flexibility Option would provide approximately 14,870 square feet of open space.

Accordingly, the Draft EIR establishes that the Project would be consistent with the City's open space requirements. The Project's consistency with State, regional, and local plans and policies related to the provision of housing and affordable housing is discussed in Section IV.G, Land Use and Planning, of the Draft EIR. Accordingly, the Project would not be in conflict with the City's open space requirements and impacts would be less than significant.

Comment No. 7-5

C. Master Conditional Use Approval for The Sale Of Alcohol

The Project must secure approval pursuant to LAMC Section 12.24-W,1 for the sale and dispensing of a full line of alcoholic beverages for on-site consumption for up to 4 establishments, for a total of up to 15,005 square feet of floor area.¹⁵ Section 12.24-W,1, however, requires that the Zoning Administrator shall find, among other things, that that the proposed use "will not adversely affect the welfare of the pertinent community."¹⁶

As discussed in our prior comments, the potential impacts from noise on neighboring residences from establishments serving alcohol can be significant.¹⁷ Mr. Shaw, in his comments on noise impacts, explained that noise from boisterous patrons and music being played at the rooftop pool area and businesses will likely have an impact on the residences to the west of the Project site, and could impact homes' interiors since windows do not have good low-frequency attenuation.¹⁸ The resulting noise from these activities may require mitigation to reduce adverse impacts to neighboring residents.

As the DEIR fails to even disclose whether the Project anticipates the use of sound systems, alcohol use in the pool area, and other sources of significant noise impacts, it provides no assessment of whether the establishments serving alcohol will adversely affect the welfare of the pertinent community. The DEIR thus not fulfilled the required findings that must be made for approval of a Master Conditional Use Permit for the sale and dispensing of alcohol to be consumed at the site.

Footnote 15: DEIR Section II. Project Description, p. II-40–41.

Footnote 16: LAMC Section 12.24.W.1(a)(1).

Footnote 17: ABJC Preliminary Comments, pp. 8–9.

Footnote 18: Shaw Preliminary Comments, p. 5.

Response to Comment No. 7-5

See Response to Comment Nos. 6-7 and 6-41. The Draft EIR properly evaluates potential noise impacts associated with the outdoor spaces in the Project, and no significant impacts would occur. The Draft EIR provides the City with substantial evidence on the environmental impacts of the Project that are needed to make the findings required to approve the Master Conditional Use Permit for Alcohol Sales for the Project.

Comment No. 7-6**D. Vesting Tentative Tract Map**

Pursuant to LAMC Section 17.15, the City requires a Vesting Tentative Tract Map No. 74550 to merge the existing lots and subdivide for commercial and live/work condominium purposes, and waive one-foot dedication along Imperial Street. The Section states that a permit, approval, extension or entitlement may be conditioned or denied if the Advisory Agency determines that “a failure to do so would place the occupants of the subdivision or the immediate community, or both, in a condition dangerous to their health or safety, or both.”¹⁹

Under the Subdivision Map Act (“Map Act”), the City is similarly required to “deny approval of a tentative map” if the project’s design is “likely to cause substantial environmental damage” or “is likely to cause serious public health problems.”²⁰ The Map Act also requires written findings when a project causes changes to any existing approved ordinances, policies, or standards.²¹

As discussed in our Preliminary Comments, the Project may result in significant impacts to public health and safety from noise and air quality, including risks to public health from emissions of toxic air contaminants (“TACs”), which can be released during Project construction and operation.²² The findings required for the vesting tentative tract map under both the City’s Municipal Code and the Map Act cannot be made, as a determination that the Project may place public and immediate community in a condition dangerous to their health or safety.

Footnote 19: LAMC 17.15.C.2(a).

Footnote 20: Gov. Code, § 66474(e), (f).

Footnote 21: Gov. Code, § 66474.2(c); § 66474(a), (b).

Footnote 22: See ABJC Preliminary Comments.

Response to Comment No. 7-6

See Response to Comment No. 6-31. Impacts of the Project with respect to TACs would be less than significant without mitigation. The Draft EIR properly evaluates potential TAC impacts during construction and operation, and no significant impacts would occur. The Draft EIR provides the City with substantial evidence on the environmental impacts of the Project that are needed to make the findings required to approve the Vesting Tentative Tract Map for the Project.

Comment No. 7-7**E. Reduced Parking**

The Project proposes to provide 287 parking spaces, 211 of which will be dedicated to residents of the 185 live/work units. This amounts to fewer than half of the parking required by Advisory Agency Policy No. 2000-1, which calls for 2 parking spaces for each dwelling unit, in addition to 1/4 guest spaces per unit in non-parking congested areas and 1/2 guest spaces in parking congested areas.²³

The DEIR includes this reduced parking in its Project Design Features meant to help mitigate adverse impacts to traffic.²⁴ The strategy will be included in the Transportation Demand Management Program to be prepared and provided to the Los Angeles Department of

Transportation prior to Project construction. While the strategy is projected to contribute to a 13% reduction in vehicle miles traveled (“VMT”) attributed to the Project,²⁵ it is unclear how this reduction in VMT will actually be accomplished by the reduction in parking. By way of explanation, the DEIR offers only that the strategy “changes the on-site parking supply to provide less than the amount of vehicle parking required by direct application of the Los Angeles Municipal Code (LAMC) without consideration of parking reduction mechanisms permitted in the code.”²⁶ Nowhere does the DEIR explain how exactly fewer parking spaces for the residents of the Project will result in lower VMT.

Though the Project is located close to public transit and proposes to install bicycle parking at the site, the DEIR fails to offer any substantial evidence of how fewer parking spaces for residents results in lower VMT. An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.²⁷ The DEIR must be revised and recirculated to provide additional analysis and substantial evidence supporting its proposed findings.

Footnote 23: Los Angeles City Planning Department Advisory Agency Policy No. 2000-1.

Footnote 24: DEIR Section IV.K Transportation, p. IV.K-24.

Footnote 25: Id., p. IV.K-30.

Footnote 26: Id., p. IV.K-24.

Footnote 27: See ABJC Preliminary Comments.

Response to Comment No. 7-7

As discussed in Section IV.K., Transportation, on page IV.K-1 of the Draft EIR, the traffic analysis follows LADOT’s *Transportation Assessment Guidelines* (TAG), which focuses on transportation metrics that promote the reduction of GHG emissions, the development of multimodal networks and access to diverse land uses, as well as safety, sustainability and smart growth. Attachment G, which is included as **Appendix FEIR-3** to the Final EIR, of the TAG provides additional information regarding the Transportation Demand Management (TDM) measures utilized in LADOT’s Vehicle Miles Traveled (VMT) Calculator. The VMT Calculator is used in assessing the VMT impacts of the Project as noted in the TAG. In addition to the development features of a project (e.g., number of residential units, amount of restaurant floor area, etc.), TDM measures may be incorporated into the VMT Calculator for purposes of calculating the applicable VMT metrics related to the Project (i.e., VMT per capita for residential components and VMT per employee for commercial components). Typically, potential TDM measures are applied within the VMT Calculator with the intent of reducing the VMT metrics associated with a project. The Attachment G of the TAG provides a description of each of the TDM strategies incorporated into the LADOT VMT Calculator.

Specifically, as described on page 4 of Attachment G, the TDM strategy results in a reduced VMT calculation in a case where a project proposes to provide less on-site vehicle parking as compared to what would otherwise be required by the LAMC. The section further states: “The application and effectiveness of this strategy [in reducing VMT] is based on research and methodology documented in the 2010 California Air Pollution Control Officers Association [CAPCOA] publication, ‘*Quantifying Greenhouse Gas Mitigation Measures.*’” The relationship between

vehicle parking supply/availability and transportation mode choice is well-documented, beginning with the book *The High Cost of Free Parking* written by UCLA professor Donald Shoup in 2005. Based on case studies, Shoup and others have demonstrated that if the relative low cost and convenience of vehicle parking is reduced or eliminated, travelers will utilize other transportation modes (public transit, walking, bicycling, etc.). Therefore, the reduction in VMT incorporated into the LADOT VMT Calculator based on the Project's proposal to provide on-site vehicle parking that is less than what is required by LAMC is appropriate. In addition, as noted in Comment No. 1-2, Caltrans is supportive of reducing parking within the Project based on its location and land use context.

Comment No. 7-8

II. CONCLUSION

We submit these supplemental comments regarding the Project's violations of local land use ordinances to provide additional support for our previous comments that the DEIR fails to comply with CEQA and its requirements to disclose, analyze and mitigate the Project's significant impacts. The extent of the Project's adverse environmental impacts is hidden from public view due to the DEIR's inadequate analyses and conclusions. As such, the DEIR, as currently proposed, fails to comply with the legislative intent and substantive requirements of CEQA. The City cannot rely on the document to determine if the Project's benefits outweigh its environmental impacts or if those impacts have been lessened or avoided to the extent feasible. Thus, the City cannot lawfully approve the Project until these deficiencies are corrected.

Response to Comment 7-8

The comment provides a conclusion statement related to the preceding comments in regard to the Project's violations of local land use ordinances. It does not provide specific comments with respect to the adequacy or content of the DEIR. Responses to the specific comments raised by the commenter regarding this issue are provided in previous Response to Comment Nos. 7-2 through 7-7.