II. Responses to Comments

A. Introduction

Sections 21091(d) and 21092.5 of the Public Resources Code (PRC) and Section 15088 of the California Environmental Quality Guidelines (CEQA) Guidelines govern a lead agency's responses to comments on a Draft Environmental Impact Report (EIR). CEQA Guidelines, Section 15088(a), states that "[t]he lead agency shall evaluate comments on environmental issues received from persons who reviewed the draft EIR and shall prepare a written response. The lead agency shall respond to comments raising significant environmental issues received during the noticed comment period and any extensions and may respond to late comments." In accordance with these requirements, this chapter of the Final EIR provides the responses prepared by the City of Los Angeles Department of City Planning (Department of City Planning) to the written comments received during the comment period for the Draft EIR.

Section II.B and Table RTC-1, Matrix of Comments Received on the Draft EIR, includes a table that summarizes the issues raised by each Commenter regarding the Draft EIR. Section II.C, Responses to Comments, provides the City of Los Angeles' (City's) responses to each of the issues raised in the comment letters received on the Draft EIR. For purposes of reviewing and providing detailed responses to the comments received, each comment letter was transcribed and is responded to, below. Copies of the original comment letters are provided in Appendix FEIR-A to this Final EIR.

II. Responses to Comments

B. Matrix of Comments Received on the Draft EIR

Table RTC-1

Matrix of Comments Received on the Draft EIR

Letter No.	Commenter	Introduction and Executive Summary	Project Description	Environmental Setting	Air Quality	Cultural Resources	Energy	Geology and Soils	Greenhouse Ga Emissions	Hazards and Hazardous Materials	Hydrology and Water Quality	Land Use and Planning	Noise	Population and Housing	Public Services – Fire Protection Services	Public Services – Police Protection Services	Transportation	Tribal Cultural Resources	Utilities and Service System – Solid Waste	Utilities and Service System – Wastewater	Utilities and Service System – Water Supply and Infrastructure	Utilities and Service System – Electric Power, Natural Gas and Telecommunications Infrastructure	General/Other	CEQA	Mitigation Measures	Support
State and Regional Agencies																										
1	Miya Edmonson IGR/CEQA Branch Chief Department of Transportation District 7 – Office of Regional Planning 100 S. Main Street, Suite 100 Los Angeles, California 90012		X														X									
Organizations																										
2	Coalition for Responsible Equitable Economic Development Los Angeles (CREED LA) Adams Broadwell Joseph & Cardozo Darien Key 601 Gateway Boulevard, Suite 1000 South San Francisco, CA 94080-7037																						X			
3	Supporters Alliance for Environmental Responsibility (SAFER) Lozeau Drury, LLP Rebecca Davis																						X			

Letter No.	Commenter	Introduction and Executive Summary	Project Description	Environmental Setting	Air Quality	Cultural Resources	Energy	Geology and Soils	Greenhouse Ga Emissions	Hazards and Hazardous Materials	Hydrology and Water Quality	Land Use and Planning	Noise	Population and Housing	Public Services – Fire Protection Services	Public Services – Police Protection Services	Transportation	Tribal Cultural Resources	Utilities and Service System – Solid Waste	Utilities and Service System – Wastewater	Utilities and Service System – Water Supply and Infrastructure	Utilities and Service System – Electric Power, Natural Gas and Telecommunications Infrastructure	General/Other	CEQA	Mitigation Measures	Support
	1939 Harrison Street, Ste. 150 Oakland, CA 94612																									
4	Coalition for Responsible Equitable Economic Development Los Angeles (CREED LA) Adams Broadwell Joseph & Cardozo Darien Key 601 Gateway Boulevard, Suite 1000 South San Francisco, CA 94080-7037 Clark & Associates Environmental Consulting, Inc. James J.J. Clark, Ph.D. 12405 Venice Blvd, Suite 331 Los Angeles, CA 90066 Wilson Ihrig Acoustics, Noise & Vibration Deborah A, Jue, INCE-USA 5900 Hollis Street, Suite T1 Emeryville, CA 94608		**X**		**X**				**X**	**X**	**X**	**X**	**X**										**X**		**X**	
5	Southwest Regional Council of Carpenters (SWRCC) Mitchell M. Tsai 139 South Hudson Avenue, Suite 200 Pasadena, California 91101 Soil Water Air Protection Enterprise (SWAPE) Matt Hagemann, P.G., C.Hg. and Paul E. Rosenfeld, Ph.D. 2656 29th Street, Suite 201 Santa Monica, CA 90405		**X**	**X**	**X**	**X**		**X**	**X**	**X**		**X**	**X**		**X**	**X**	**X**	**X**			**X**		**X**			

Letter No.	Commenter	Introduction and Executive Summary	Project Description	Environmental Setting	Air Quality	Cultural Resources	Energy	Geology and Soils	Greenhouse Ga Emissions	Hazards and Hazardous Materials	Hydrology and Water Quality	Land Use and Planning	Noise	Population and Housing	Public Services – Fire Protection Services	Public Services – Police Protection Services	Transportation	Tribal Cultural Resources	Utilities and Service System – Solid Waste	Utilities and Service System – Wastewater	Utilities and Service System – Water Supply and Infrastructure	Utilities and Service System – Electric Power, Natural Gas and Telecommunications Infrastructure	General/Other	CEQA	Mitigation Measures	Support
Individuals																										
6	Andrea Taylor ataylordesign@icloud.com			**X**								**X**											**X**			
7	Robert Janik bobjarch@gmail.com		**X**	**X**								**X**				**X**							**X**			
8	Merle and Joseph Suhayda josephsuhayda@yahoo.com																						**X**			
9	Merle R. Suhayda, Trustee Dinerstein Family Disclaimer B Trust suhaydajn@yahoo.com												**X**												**X**	
Late Letters																										
10	Rowena Lau, Division Manager City of Los Angeles Wastewater Engineering Services Division LA Sanitation and Environment chris.demonbrun@lacity.org																						**X**			

II. Responses to Comments

C. Comment Letters and Responses

AGENCY COMMENTERS

COMMENT LETTER NO. 1

Miya Edmonson
IGR/CEQA Branch Chief

Department of Transportation
District 7 – Office of Regional Planning
100 S. Main Street, Suite 100
Los Angeles, California 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 an existing office building, two storage/garage buildings, and surface parking lots, and the construction of an 18-story office building. The Project would include ground floor restaurant space, commercial office space, office exterior common areas, and a landscaped outdoor courtyard on Colyton Street. The ground floor would include 112 bicycle parking spaces (40 short-term spaces and 72 long-term spaces), as well as amenities, such as showers and a bicycle repair area. 660 car parking spaces would be spread across 7 floors of the Office Building.

The nearest State facility to the proposed project is US 101.

Response to Comment No. 1-1

This introductory comment, which provides general information regarding the Project and its location relative to Caltrans facilities, does not raise CEQA issues with respect to the Draft EIR or any of the impact analyses in the Draft EIR, is noted for the record, and will be forwarded to the decision-makers for their review and consideration.

Comment No. 1-2

After reviewing the DEIR, Caltrans has the following comments:

Caltrans acknowledges and supports infill development that prioritizes nearby transit service, promotes active transportation, and provides a mixture of land uses that keeps the goods and services people need near where they work and live. Caltrans commends the Project's inclusion of bike parking, repair area and showers. However, there is still room for improvement, as nearly six car parking spaces are being built for every bike parking space. Research looking at the relationship between land-use, parking, and transportation indicates that the amount of car parking supplied can undermine a project's ability to encourage public transit and active modes of transportation. Additionally, the Transportation Impact Study (TIS) did not include the number of car parking spaces being provided, as confirmed by the LADOT Assessment of the TIS. The induced demand generated by this car parking isn't currently being captured in the vehicle miles traveled (VMT) analysis.

Caltrans recommends the following:

- Reducing or eliminating car parking requirements. For any project to better promote public transit, walkability, safety, and reduce vehicle miles traveled, we recommend the implementation of Transportation Demand Management (TDM) strategies as an alternative to building an unnecessary amount of parking.
- If the parking must be built, it should be designed in a way that is conducive to adaptive reuse. They should contain flat floors so that they can be more easily converted to beneficial uses in the future.
- As Project Requirement A-1 states in the LADOT Assessment of the TIS, any car parking that may be required to be built should be completely unbundled from tenant leases so that the true cost of car infrastructure can be exposed to market forces.

Response to Comment No. 1-2

The Commenter acknowledges and supports infill development that is located near transit service, that promotes active transportation, and that provides a mixture of land uses that keep the goods and services people near, like the Project aims to facilitate. The Commenter commends the Project's inclusion of bike parking, repair area and showers but also notes that nearly six car parking spaces are being built for every bicycle parking space. The Project Applicant has committed to meeting the short- and long-term bicycle parking requirements set forth in Los Angeles Municipal Code (LAMC) Section 12.21 A.16.

The Commenter states that the induced demand generated by the Project's vehicle parking is not captured in the vehicle miles traveled (VMT) analysis. However, (as discussed on page II-10 of the Draft EIR), the Project Site is an infill site located within a

Transit Priority Area (TPA) as defined under Senate Bill (SB) 743. Therefore, parking for the Project shall not be considered a significant impact on the environment and is therefore not required to be addressed specifically in the Transportation Impact Study (TIS). Furthermore, and for informational purposes, the TIS for the Project, including the required VMT analysis, is provided within Appendix L1 to the Draft EIR, and was prepared in accordance with the City of Los Angeles Department of Transportation's (LADOT's) July 2019 Transportation Assessment Guidelines, which were in effect at the time of the 2020 TIS approval. The City of Los Angeles VMT Calculator Version 1.3 (May 2020) (VMT Calculator) was used as part of the TIS to estimate the Project VMT. The land uses for which VMT were calculated were the Project's office and restaurant land uses. Parking is not a land use of the Project; it is ancillary to the office and restaurant land uses and serves these uses. In addition, parking is not a land use that users of the VMT Calculator can select to calculate associated VMT.[1] LADOT concurred with the findings of the 2020 TIS in an inter-departmental correspondence, Updated Transportation Impact Assessment for the 4th & Hewitt Commercial Development Located at 405 South Hewitt Street (April 2020), which is provided in Appendix L2 to the Draft EIR. As such, the TIS meets State and LADOT requirements for VMT analysis.

With regard to the amount of vehicle and bicycle parking provided by the Project, the parking requirements of the Project are detailed within Chapter II, Project Description (refer to Table II-3, Vehicle Parking, and Table II-4, Bicycle Parking), as well as in Chapter IV.L, Transportation (refer to Table IV.L-3, LAMC Automobile Parking Requirements), of the Draft EIR. As stated therein, the Project is utilizing a reduced parking requirement, as it is located in State Enterprise Zone pursuant to Sections 12.21 A.4.(d) and 12.21 A.4.(x) of the Los Angeles Municipal Code (LAMC), two vehicle parking spaces are required for each 1,000 square feet of commercial and institution/museum land uses. In addition, per LAMC Section 12.21 A.16, the Project is required to provide 107 bicycle parking spaces but would provide 112 bicycle parking spaces. According to the City of Los Angeles Bicycle Parking Ordinance (LAMC Section 12.21 A.16), Off-Street Automobile Parking Requirements, new or existing automobile parking spaces required by Code, for all land uses, may be replaced by bicycle parking at a ratio of one standard or compact automobile parking space for every four required or non-required bicycle parking spaces provided. No more than 20 percent of the required automobile parking spaces for nonresidential uses shall be replaced at a site. Therefore, the vehicle parking requirement of the Project is 688 spaces; however, with the provision of 112 bicycle parking spaces, the Project again utilized a parking reduction and reduced the requirement from 688 to 660 spaces. As the Project would provide 660 vehicle parking spaces, it complies with LAMC parking requirements. Therefore, the Project utilizes reductions made available by

[1] Los Angeles Department of Transportation and Los Angeles Department of City Planning. 2020. City of Los Angeles VMT Calculator User Guide Version 1.3. May.

Sections 12.21 A.4.(d), 12.21 A.4.(x), and 12.21 A.16 of the LAMC, would not induce parking demand, and would not provide an unnecessary amount of parking.

The Commenter also recommends the implementation of Transportation Demand Management (TDM) strategies, adaptive reuse of the Project's parking levels in the future, and the unbundling of parking from tenant leases. The Project includes a TDM as part of Project Design Feature TRANS-PDF-3, as well as a Transportation Demand Organization as part of Project Design Feature TRANS-PDF-2. With regard to the adaptive reuse of the Project's parking levels in the future, the above-grade parking levels have been designed to be flat and convertible for a future occupiable use. The unbundling of parking from tenant leases is not a CEQA issue and is outside the scope of the EIR analysis. Nevertheless, the Caltrans recommendations are noted for the record and will be forwarded to the decision makers for their consideration along with all of the submitted comments.

Comment No. 1-3

Finally, any transportation of heavy construction equipment and/or materials which requires use of oversized-transport vehicles of 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. 1-3

The Commenter recommends that large size truck trips be limited to off-peak hours. The transportation of heavy construction equipment and/or materials that would require the use of oversized-transport vehicles on State highways will obtain all necessary permits, as applicable and as part of standard regulatory compliance requirements. Large haul trucks would be utilized during the site preparation and construction period. As stated on page IV.I-37 of the Draft EIR, LADOT revised the allowable haul hours for the Project in 2022 to Monday through Friday, 9:00 a.m. to 3:00 p.m.; and Saturdays, 8:00 a.m. to 4 p.m., which would avoid the a.m. peak hour (6:00 to 9:00 a.m.) and p.m. peak hour (3:30 to 7:00 p.m.).

Comment No. 1-4

If you have any questions, please contact project coordinator Anthony Higgins, at anthony.higgins@dot.ca.gov and refer to GTS# 07-LA-2017-03964.

Response to Comment No. 1-4

This comment concludes the letter and provides the contact information of the Commenter. This comment does not raise CEQA issues with respect to the Draft EIR or any of the impact analyses in the Draft EIR, is noted for the record, and will be forwarded

to the decision-makers for their review and consideration along with all of the submitted comments.

ORGANIZATION COMMENTERS

COMMENT LETTER NO. 2

Coalition for Responsible Equitable Economic Development Los Angeles (CREED LA)

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

Comment No. 2-1

We are writing on behalf of Coalition for Responsible Equitable Economic Development Los Angeles ("CREED LA") to request mailed notice of the availability of any environmental review document, prepared pursuant to the California Environmental Quality Act, related to the 4th and Hewitt Project (Case Nos. ENV- 2017-470-EIR and CPC-2017-469- GPA-VZC-HD- MCUP-SPR; SCH No. 2017091054) ("Project"), proposed by LIG – 900, 910 and 926 E. 4th St., 405-411 S. Hewitt St., LLC, as well as a copy of the environmental review document when it is made available for public review.

The Project includes the development of an 18-story office and commercial building on an approximately 1.31-acre site ("Project Site") located at 401 South Hewitt Street, Los Angeles, California 90013. In conjunction with the new development, the Project would demolish a detached storage building associated with the building formerly occupied by the Architecture and Design (A+D) Museum that fronts Colyton Street, a one-story office building that fronts South Hewitt Street, an associated garage/storage building, and surface parking lots. The Project Site consists of six contiguous parcels including Assessor Parcel Numbers (APNs) 5163-022-001, 5163-022-002, 5163-022-003, 5163-022-005, 5163-022-022, and 5163- 022-023.

We also request mailed notice of any and all hearings and/or actions related to the Project. These requests are made pursuant to Public Resources Code Sections 21092.2, 21080.4, 21083.9, 21092, 21108, 21152, 21167(f), and Government Code Section 65092, which require local agencies to mail such notices to any person who has filed a written request for them with the clerk of the agency's governing body.

Please send the above requested items by email and U.S. Mail to our South San Francisco Office as follows:

U.S. Mail

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

Email

ssannadan@adamsbroadwell.com

Please call me at (650) 589-1660 if you have any questions. Thank you for your assistance with this matter.

Response to Comment No. 2-1

This comment identifies that the Commenter represents the Coalition for Responsible Equitable Economic Development Los Angeles (CREED LA), includes general Project information, requests that the Commenter be notified of hearings and/or actions related to the Project, and concludes with contact information of the Commenter. This comment does not raise CEQA issues with respect to the Draft EIR or any of the impact analyses in the Draft EIR, is noted for the record, and will be forwarded to the decision-makers for their review and consideration along with all of the submitted comments. The Department of City Planning has added the Commenter to their list of Interested Parties for the Project.

COMMENT LETTER NO. 3

Supporters Alliance for Environmental Responsibility (SAFER)

Lozeau Drury, LLP
Rebecca Davis
1939 Harrison Street, Ste. 150
Oakland, CA 94612

Comment No. 3-1

I am writing on behalf of Supporters Alliance for Environmental Responsibility ("SAFER") regarding the Draft Environmental Impact Report ("DEIR") prepared for the 4th and Hewitt Project (ENV-2017-470-EIR, SCH 2017091054), including all actions related or referring to the proposed demolition of existing buildings and the construction of an 18-story office building totaling approximately 343,925 square feet of gross floor area, with three subterranean parking levels, located at 900, 902, 904, 906-910, and 926 East 4th Street; 406, 408, and 414 Colyton Street; and 405, 407, 411, 417, and 423 South Hewitt Street in the City of Los Angeles ("Project").

Response to Comment No. 3-1

This comment identifies the Commenter as representing Supporters Alliance for Environmental Responsibility (SAFER) and provides general Project information. This comment does not raise CEQA issues with respect to the Draft EIR or any of the impact analyses in the Draft EIR, is noted for the record, and will be forwarded to the decision-makers for their review and consideration along with all of the submitted comments.

Comment No. 3-2

After reviewing the DEIR, we conclude that the DEIR fails as an informational document and fails to impose all feasible mitigation measures to reduce the Project's impacts. SAFER requests that the Department of City Planning address these shortcomings in a revised draft environmental impact report ("RDEIR") and recirculate the RDEIR prior to considering approvals for the Project.

We reserve the right to supplement these comments during review of the Final EIR for the Project and at public hearings concerning the Project. *Galante Vineyards v. Monterey Peninsula Water Management Dist.*, 60 Cal. App. 4th 1109, 1121 (1997).

Response to Comment No. 3-2

The Commenter states that they believe the Draft EIR fails as an informational document, fails to impose all feasible mitigation measures to reduce the impacts of the Project, and claims that the Department of City Planning should recirculate the Draft EIR. The

Commenter also states that they reserve the right to supplement these comments during review of the Final EIR for the Project and at public hearings. The Commenter does not include any specificity, cite any evidence, or otherwise raise a significant environmental issue. As the Commenter does not identify any specific shortcomings of the Draft EIR, no specific response is required. Additionally, as the Commenter does not present any information or substantial evidence related to a specific impact area or mitigation measure, the criteria for recirculation of the Draft EIR have not been met (refer to Chapter III, Section C, Revisions, Clarifications, and Corrections to the Draft EIR, of the Final EIR). This comment is noted for the record and will be forwarded to the decision-makers for their review and consideration along with all of the submitted comments.

COMMENT LETTER NO. 4

Coalition for Responsible Equitable Economic Development Los Angeles (CREED LA)

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

Comment No. 4-1

On behalf of the Coalition for Responsible Equitable Economic Development Los Angeles ("CREED LA"), we submit these comments on the Draft Environmental Impact Report ("DEIR") for the 4th and Hewitt Project (Case Nos. ENV-2017-470- EIR and CPC-2017-469-GPA-VZC-HD-MCUP-SPR; SCH No. 2017091054) ("Project"), proposed by LIG – 900, 910 and 926 E. 4th St., 405-411 S. Hewitt St., LLC ("Applicant"), and prepared pursuant to the California Environmental Quality Act ("CEQA")[1] by the City of Los Angeles ("the City").

The Project includes the development of an 18-story office and commercial building on an approximately 1.31-acre site ("Project Site") located at 401 South Hewitt Street, Los Angeles, California 90013. In conjunction with the new development, the Project would demolish a detached storage building associated with the building formerly occupied by the Architecture and Design (A+D) Museum that fronts Colyton Street, a one-story office building that fronts South Hewitt Street, an associated garage/storage building, and surface parking lots. The Project Site consists of six contiguous parcels including Assessor Parcel Numbers (APNs) 5163-022-001, 5163-022-002, 5163-022-003, 5163-022-005, 5163-022-022, and 5163- 022-023.

Our review of the DEIR demonstrates that the DEIR fails to comply with CEQA. As explained more fully below, the DEIR fails to accurately disclose the extent of the Project's potentially significant impacts on air quality, public health, noise, greenhouse gas ("GHG") emissions, and land use inconsistencies. The DEIR fails to support its significance findings with substantial evidence and fails to mitigate the Project's significant impacts to the greatest extent feasible, in violation of CEQA. As a result of these deficiencies, the City also cannot make the requisite findings to approve the Project under the City's municipal codes or to adopt a statement of overriding considerations pursuant to CEQA.[2]

These comments were prepared with the assistance of environmental health, air quality, and GHG expert Dr. James Clark, Ph.D., and noise expert Deborah Jue of Wilson Ihrig. Comments and curriculum vitae of Dr. Clark are attached to this letter as Attachment A.[3] Ms. Jue's comments and curriculum vitae are included as Attachment B.[4] Attachments

A and B are fully incorporated herein and submitted to the City herewith. Therefore, the City must separately respond to the technical comments in Attachments A and B.

For the reasons discussed herein, and in the attached expert comments, CREED LA urges the City to remedy the deficiencies in the DEIR by preparing a legally adequate revised DEIR and recirculating it for public review and comment.[5]

Footnotes:

[1] Public Resources Code § 21000 et seq.; 14 Cal. Code Regs. ("C.C.R.") §§ 15000 et seq. L6190-004acp

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

[3] Attachment A: Comments on 4th and Hewitt Project (Case Nos. ENV-2017-470-EIR and CPC- 2017-469-GPA-VZC-HD-MCUP-SPR; SCH No. 2017091054) (July 11, 2022) ("Clark Comments").

[4] Attachment B: 4th and Hewitt Project (Case Nos. ENV-2017-470-EIR and CPC-2017-469-GPA- VZC-HD-MCUP-SPR; SCH No. 2017091054) (July 11, 2022), Comments on Noise Section by Wilson Ihrig ("Jue Comments").

[5] We reserve the right to supplement these comments at later hearings on this Project. Gov. Code § 65009(b); Public Resources Code § 21177(a); Bakersfield Citizens for Local Control v. Bakersfield (2004) 124 Cal.App.4th 1184, 1199–1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal.App.4th 1109, 1121.

Response to Comment No. 4-1

This introductory comment identifies that the Commenter represents the Coalition for Responsible Equitable Economic Development Los Angeles (CREED LA) and provides general Project information. While the Commenter claims that the Draft EIR does not accurately disclose the extent of the Project's potentially significant impacts on air quality, public health, noise, greenhouse gas (GHG) emissions, and land use inconsistencies, the Commenter does not raise specific CEQA issues with respect to these Draft EIR impact analyses. Lastly, the Commenter notes that the comments in the letter were prepared with the assistance of Dr. James Clark, Ph.D. of Clark & Associates and Deborah Jue of Wilson Ihrig, and that letters from these entities are attached to Comment Letter No. 4. The comment is noted for the record and will be forwarded to the decision-makers for their review and consideration along with all of the submitted comments. Responses to the Comment Letter No. 4 attachments from Clark & Associates and Wilson Ihrig are provided in Responses to Comment Letter No. 4A and Responses to Comment Letter No. 4B, respectively.

Comment No. 4-2

I. STATEMENT OF INTEREST

CREED LA is an unincorporated association of individuals and labor organizations formed to ensure that the construction of major urban projects in the Los Angeles region proceeds in a manner that minimizes public and worker health and safety risks, avoids or mitigates environmental and public service impacts, and fosters long-term sustainable construction and development opportunities. The association 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 Los Angeles region.

Individual members of CREED LA include John Ferruccio, Jorge L. Aceves, John P. Bustos, Gerry Kennon, and Chris S. Macias. These individuals live in the City of Los Angeles, and work, recreate, and raise their families in the City and surrounding communities. Accordingly, they would be directly affected by the Project's environmental and health, and safety impacts. Individual members may also work on the Project itself. They will be first in line to be exposed to any health and safety hazards that exist on site.

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

CREED LA supports the development of commercial, mixed use, and medical office projects where properly analyzed and carefully planned to minimize impacts on public health, climate change, and the environment. These projects should avoid adverse impacts to air quality, public health, climate change, noise, and traffic, and must incorporate all feasible mitigation to ensure that any remaining adverse impacts are reduced to the maximum extent feasible. Only by maintaining the highest standards can commercial development truly be sustainable.

Response to Comment No. 4-2

This comment provides an overview of CREED LA. This comment does not raise any specific issues with respect to the Draft EIR or any of the impact analyses in the Draft EIR. More substantive comments and responses are provided below. The comment is noted for the record and will be forwarded to the decision-makers for their review and consideration along with all of the submitted comments.

Comment No. 4-3

II. LEGAL BACKGROUND

CEQA requires public agencies to analyze the potential environmental impacts of their proposed actions in an EIR.[6] The EIR is a critical informational document, the "heart of CEQA."[7] "The foremost principle under CEQA is that the Legislature intended the act to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language."[8]

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.[9] "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.'"[10] 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."[11] As the CEQA Guidelines explain, "[t]he EIR serves not only to protect the environment but also to demonstrate to the public that it is being protected."[12]

Second, CEQA requires public agencies to avoid or reduce environmental damage when "feasible" by requiring consideration of environmentally superior alternatives and adoption of all feasible mitigation measures.[13] 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."[14] If the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has "eliminated or substantially lessened all significant effects on the environment" to the greatest extent feasible and that any unavoidable significant effects on the environment are "acceptable due to overriding concerns."[15]

While 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*."[16] 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."[17] "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.'"[18]

Footnotes:

[6] Public Resources Code § 21100.

[7] Friends of College of San Mateo Gardens v. San Mateo County Community College Dist. (2016) 1 Cal.5th 937, 944 (citation omitted).

[8] *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 390 (internal quotations omitted).

[9] Public Resources Code § 21061; 14 C.C.R. §§ 15002(a)(1); 15003(b)–(e); *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 517 ("[T]he basic purpose of an EIR is to provide public agencies and the public in general with detailed information about the effect [that] a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.").

[10] *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564, *quoting Laurel Heights*, 47 Cal.3d at 392.

[11] *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810; see also *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm'rs*. (2001) 91 Cal.App.4th 1344, 1354 ("*Berkeley Jets*") (purpose of EIR is to inform the public and officials of environmental consequences of their decisions *before* they are made).

[12] 14 C.C.R. § 15003(b).

[13] 14 C.C.R. § 15002(a)(2), (3); *see also Berkeley Jets*, 91 Cal.App.4th at 1354; *Citizens of Goleta Valley*, 52 Cal.3d at 564.

[14] 14 C.C.R. § 15002(a)(2).

[15]Public Resources Code § 21081(a)(3), (b); 14 C.C.R. §§ 15090(a), 15091(a), 15092(b)(2)(A), (B); *Covington v. Great Basin Unified Air Pollution Control Dist*. (2019) 43 Cal.App.5th 867, 883.

[16] *Berkeley Jets*, 91 Cal.App.4th 1344, 1355 (emphasis added), *quoting Laurel Heights*, 47 Cal.3d at 391, 409, fn. 12.

[17] *Berkeley Jets*, 91 Cal.App.4th at 1355; see also *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 722 (error is prejudicial if the failure to include relevant information precludes informed decision making and informed public participation, thereby thwarting the statutory goals of the EIR process); *Galante Vineyards v. Monterey Peninsula Water Management Dist*. (1997) 60 Cal.App.4th 1109, 1117 (decision to approve a project is a nullity if based upon an EIR that does not provide decision-makers and the public with information about the project as required by CEQA); *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 946 (prejudicial abuse of discretion results where agency fails to comply with information disclosure provisions of CEQA).

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

Response to Comment No. 4-3

This comment provides background information on the purpose and some of the requirements of CEQA. For clarification, an EIR is not required for all projects. PRC Section 21100(a) states: "All lead agencies shall prepare, or cause to be prepared by contract, and certify the completion of, an environmental impact report on any project which they propose to carry out or approve that may have a significant effect on the environment." Based on the Initial Study (IS) prepared for the Project, the City determined that the Project may have a significant effect on the environment. Therefore, based on the IS and the scoping process, the Draft EIR was prepared to further evaluate those issue areas in which a potentially significant impact might occur. In addition, for areas in which a potentially significant impact is identified, mitigation measures are identified in the Draft EIR. A synopsis of the Project's impacts, levels of significance, required mitigation measures, and level of impact significance following the implementation of mitigation measures is provided in Chapter I, Introduction and Executive Summary, of the Draft EIR, in Table I-1 and on pages I-11 through I-26.

The City is aware that, given that the Project would result in significant and unavoidable impacts (related to noise and vibration during the construction period), in accordance with PRC Section 21081 and the CEQA Guidelines, Sections 15092 and 15093, the City is required to balance, as applicable, the economic, legal, social, technological, or other benefits of the Project against its significant unavoidable environmental impacts when determining whether to approve the Project. If the benefits of a Project outweigh the significant unavoidable adverse environmental effects the City as Lead Agency must adopt a formal Statement of Overriding Considerations, as required by CEQA.

Comment No. 4-4

III. THE DEIR FAILS TO PROVIDE A COMPLETE AND ACCURATE PROJECT DESCRIPTION

CEQA requires that an EIR "set forth a project description that is sufficient to allow an adequate evaluation and review of the environmental impact."[19] "The scope of the environmental review conducted for the initial study must include the entire project ... [A] correct determination of the nature and scope of the project is a critical step in complying with the mandates of CEQA."[20] An accurate and complete project description is necessary for an intelligent evaluation of the potential environmental impacts of the agency's action. Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal ... and weigh other alternatives in the balance."[21]

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."[22] 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 does not mean each separate governmental approval.[23] 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."[24] As explained below, the Clark Comments highlight numerous deficiencies in the DEIR's Project description.

Footnotes:

[19] *San Joaquin Raptor Rescue Center v. County of Merced* 149 Cal.App.4th 645, 654 (citing 14 C.C.R. § 15124).

[20] Nelson v. County of Kern (2010) 190 Cal.App.4th 252, 267 (internal quotations and citations omitted).

[21] *City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398, 406 (internal quotations and citations omitted).

[22] 14 C.C.R. 15378(a).

[23] CEQA Guidelines § 15378.

[24] 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.

Response to Comment No. 4-4

This comment provides background information on the CEQA definition of "project description." This comment does not raise any specific issues with respect to the Draft EIR or any of the impact analyses in the Draft EIR. The comment is noted for the record and will be forwarded to the decision-makers for their review and consideration along with all of the submitted comments.

Comment No. 4-5

A. The DEIR Fails to Adequately Describe Project Activities that May Result in Significant Air Quality Impacts

The DEIR states that the Project is planning to place large-scale fuel tanks on the Project site.[25] However, the DEIR fails to identify the purpose of the fuel room, fails to explain what on-site Project activities will require fuel storage and fuel use, and fails to analyze the hazards or air emissions associated with on-site fuel storage and use.

Dr. Clark explains that "[n]o explanation is given in the DEIR as to what will be stored, how much will be stored, and what the fuel will be used for. In addition to being a fire hazard, fuels stored on site contain hazardous materials that have not been disclosed in the DEIR."[26] The DEIR's failure to adequately describe this operational component 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 from the Project's operational fuel storage and fuel use.

Dr. Clark opines that, given the size of the fuel storage room and the need for operational back up power generation for the Project to ensure that fire pumps and emergency services within the building could be maintained, a back-generator [sic] ("BUG") is the most likely use for the stored fuel. Hazards posed by fuel storage may require mitigation measures to address such issues as flammability or leaks. Additionally, the air emissions associated with fuel storage and fuel use may result in significant emissions that require mitigation measures. As Dr. Clark explains, "diesel fuel is typically the most common fuel stored onsite given its utility as a fuel source for power generation. If the Proponent is planning on installing a BUG onsite and has failed to disclose it in the DEIR, it represents a stationary source of toxic air contaminants from the Project that has not been evaluated."[27]

Dr. Clark concludes that DPM emissions from use of a BUG and associated fuel storage may pose a significant health threat to future occupants of the Project and the surrounding community.[28] By failing to describe the Project's fuel storage component, the DEIR omits the information necessary to perform a meaningful analysis of Project impacts associated with on-site fuel storage and use. As a result, the DEIR's conclusion that the

Project will result in less than significant operational hazardous materials and air quality impacts, with no mitigation required, is not supported by substantial evidence.

Footnotes:

[25] MND, p. 50.

[26] Clark Comments, p. 17.

[27] Clark Comments, p. 19.

[28] Id.

Response to Comment No. 4-5

The Commenter questions the purpose of the fuel storage room and asserts that its storage and use of the fuel tanks represent a fire hazard, as well as a health risk if it is associated with a back-up or emergency generator, which is a potential stationary source of toxic air contaminants (TACs), including diesel particulate matter (DPM). The Commenter also asserts that the Draft EIR fails to analyze air emissions associated with the use of the stored fuel.

The purpose of the fuel storage room is to store fuel for an emergency generator. Chapter II, Project Description, of the Draft EIR (page II-1) has been revised to identify the purpose of the fuel storage room, as detailed in Chapter III, Revisions, Clarifications, and Corrections to the Draft EIR, of the Final EIR, as follows:

"The ground floor would include 112 bicycle parking spaces (40 short-term spaces and 72 long-term spaces)~~,~~; ~~as well as~~ amenities such as showers and a bicycle repair area for bicyclists~~,~~; and other features essential to building operations, including a loading dock and trash collection area, a fuel storage room (the fuel will be used to power an emergency generator during an emergency and mandatory periodic testing), reception area, and building management and security personnel offices. Vehicle parking spaces would be provided within three subterranean levels and on the 2nd through 5th floors of the Office Building. Office space would comprise the 6th through 17th floors, and office and mechanical equipment would comprise the 18th floor and rooftop level."

The following response addresses potential hazards, air emissions, and health risks associated with the emergency generator.

Hazards Related to the Emergency Generator

The emergency generator would generate electricity in the event of a power failure, operating on diesel fuel. The one-megawatt, 1,839 brake horsepower MTU/Rolls-Royce emergency generator that is proposed to be used and that is certified by the South Coast

Air Quality Management District (SCAQMD)[2] would be placed on the roof of the Office Building within an acoustic enclosure. One, 600-gallon diesel fuel tank would also be located on the roof. The fuel storage room located on the ground level of the Office Building would store an additional 2,000 gallons of diesel fuel. The emergency generator would be tested on a monthly basis for 30 minutes to assure that the equipment is in proper operating condition, which is allowable under the SCAQMD's Rule 1470, Requirements for Stationary Diesel-Fueled Internal Combustion and Other Compression Ignition Engines.

With regard to potential fire risks associated with the storage and use of hazardous materials, including fuels in specified quantities, such activities are highly regulated by federal, State, and local agencies. As described in Chapter IV.F, Hazards and Hazardous Materials, of the Draft EIR (page IV.F-8), the California Hazardous Materials Release Response Plans and Inventory Law of 1985 (Business Plan Act) requires the preparation of Hazardous Materials Business Plans (HMBPs) and the disclosure of hazardous materials inventories, including an inventory of hazardous materials handled, plans showing where hazardous materials are stored, an emergency response plan, and provisions for employee training in safety and emergency response procedures for businesses that handle, store, or transport hazardous materials in amounts exceeding specified minimums (California Health and Safety Code [HSC], Division 20, Chapter 6.95, Article 1). Statewide, the Department of Toxic Substances Control (DTSC) has primary regulatory responsibility for the management of hazardous materials, with delegation of authority to local jurisdictions that enter into agreements with the State. Local agencies are responsible for administering these regulations. The Draft EIR (pages IV.F-15 and IV.F-16) explains that the primary local agency with responsibility for implementing federal and State laws and regulations pertaining to hazardous materials management in the Project area is the Los Angeles County Health Department, Environmental Health Division. The Los Angeles County Health Department is the Certified Unified Program Agency (CUPA) for the County of Los Angeles. A CUPA is a local agency that has been certified by the California Environmental Protection Agency (CalEPA) to implement six State environmental programs within the local agency's jurisdiction, including:

- Hazardous Materials Release Response Plan and Inventory (Business Plans);
- California Accidental Release Prevention (CalARP);
- Hazardous Waste (including Tiered Permitting);
- Underground Storage Tanks (USTs);

[2] South Coast Air Quality Management District. 2022. South Coast Air Quality Management District (South Coast AQMD) Certified Internal Combustion Engine (ICE)-Emergency Generators (Diesel Fuel Except as Specified). December 21 (updated). (Refer to MTU/Rolls-Royce Model 16V2000G86S, 1,839 brake horsepower [bhp].)

- Aboveground Storage Tanks (Spill Prevention Control and Countermeasures [SPCC] requirements); and
- Uniform Fire Code Article 80 Hazardous Material Management Program and Hazardous Material Identification System.

As the CUPA for County of Los Angeles, the Los Angeles County Health Department Environmental Health Division maintains the records regarding location and status of hazardous materials sites in the County and administers programs that regulate and enforce the transport, use, storage, manufacturing, and remediation of hazardous materials. By designating a CUPA, Los Angeles County has accurate and adequate information to plan for emergencies and/or disasters and to plan for public and firefighter safety.

The Los Angeles County Health Department, Environmental Health Division, has designated the LAFD as a Participating Agency, to administer one or more Unified Programs within their jurisdiction on its behalf as the CUPA. The LAFD monitors the storage of hazardous materials in the City for compliance with local requirements. The LAFD also issues permits for hazardous materials handling and enforces California's Business Plan Act, the basic requirements of which include the development of detailed hazardous materials inventories used and stored on-site, a program of employee training for hazardous materials release response, identification of emergency contacts and response procedures, and reporting of releases of hazardous materials. Any facility that meets the minimum reporting thresholds (i.e., a mixture containing a hazardous material that has a quantity at any one time during the reporting year that is equal to, or greater than, 55 gallons for materials that are liquids, 500 pounds for solids, or 200 cubic feet for compressed gas) must comply with the reporting requirements and file a Business Emergency Plan. The LAFD utilizes the California Environmental Reporting System (CERS), which is a web-based system that supports the electronic exchange of required Unified Program information among businesses, local governments, and the United States Environmental Protection Agency (USEPA). All HMBPs are required to be updated and resubmitted annually between January 1st and March 1st in the CERS.

As the Project would store more than 55 gallons of hazardous materials that are liquid (i.e., diesel fuel), the Project would be subject to these requirements as a matter of regulatory compliance. Based on the information provided above and as evaluated in the Draft EIR, the Project would result in a less than significant hazard to the public and the environment as a result of the routine transport, use, or disposal of hazardous materials, because such potentially hazardous materials would be handled in compliance with applicable local, State, and federal regulations.

Air Emissions Related to the Emergency Generator

With regard to potential air emissions associated with the proposed storage and use of fuel, as the fuel would be consumed to operate an emergency generator, revised California Emissions Estimator Model (CalEEMod) outputs were prepared as part of the Final EIR to include this stationary piece of equipment. (It is important to note that the CalEEMod software was updated since preparation of the Draft EIR. The Draft EIR air quality analysis relied on CalEEMod Version 2016.3.2, whereas the version included in Appendix FEIR-B [Revised California Emissions Estimator Model] is CalEEMod Version 2020.4.0. As part of the Final EIR's CalEEMod revision, the construction schedule was also updated from 2021 to 2023 as utilized in the Draft EIR, to 2022 to 2025. The requirement for Tier 4 Final construction equipment was also removed from the revised CalEEMod that was prepared for the Final EIR, in response to Comment No. 4-6. The construction period CalEEMod data was utilized in preparation of a construction Health Risk Assessment [HRA] for the Final EIR [refer to Response to Comment No. 4-7].)

As stated above, the emergency generator would be tested on a monthly basis for 30 minutes to assure that the equipment is in proper operating condition. The maintenance and testing of the emergency generator would result in the maximum daily operational emissions shown in Revised Table IV.A-5, Project Maximum Daily Operational Emissions. As the use of the emergency generator for purposes of providing power during an electrical outage would be speculative and infrequent, emissions associated with this type of emergency event are not reasonably foreseeable under CEQA and are therefore not quantified in this analysis. When added to the area, energy, and mobile sources reported in Table IV.A-5, Project Daily Operational Emissions, of the Draft EIR (page IV.A-42), routine maintenance and testing of the emergency generator, in combination with the other Project sources of emissions, would not exceed the SCAQMD thresholds, as shown in Revised Table IV.A-5.

Revised Table IV.A-5

Project Maximum Daily Operational Emissions

Source	Operational Emissions (pounds/day)					
	ROG	NOx	CO	SO_2	PM_{10}	$PM_{2.5}$
Summer						
Area	7.6	0.0	0.1	0.0	0.0	0.0
Energy	0.2	1.4	1.2	0.0	0.1	0.1
Mobile	4.1	16.5	50.2	0.2	15.5	4.2
Emergency Generator	1.5	6.8	3.8	0.0	0.2	0.2
Subtotal	***13.4***	***24.7***	***55.3***	***0.2***	***15.8***	***4.5***
Winter						
Area	7.6	0.0	0.1	0.0	0.0	0.0
Energy	0.2	1.4	1.2	0.0	0.1	0.1
Mobile	3.9	16.8	47.9	0.2	15.5	4.2
Emergency Generator	1.5	6.8	3.8	0.0	0.2	0.2
Subtotal	***13.2***	***25.0***	***53.0***	***0.2***	***15.8***	***4.5***

Source	Operational Emissions (pounds/day)					
	ROG	NOx	CO	SO_2	PM_{10}	$PM_{2.5}$
SCAQMD Threshold	**55**	**55**	**550**	**150**	**150**	**55**
Exceeds Threshold?	**No**	**No**	**No**	**No**	**No**	**No**
Source for Area, Energy, and Mobile Emissions: Giroux & Associates and Envicom Corporation. 2022. Air Quality Impact Analysis, 4th and Hewitt Project. April (Revised). (Appendix B of the Draft EIR.) Source for Emergency Generator Emissions: Appendix FEIR-B, Revised California Emissions Estimator Model.						

Table IV.A-5 in Section IV.A, Air Quality, of the Draft EIR has been revised to include the emissions generated by the emergency generator during routine testing and maintenance, as shown here in Revised Table IV.A-5. Refer to Final EIR Chapter III, Revisions, Clarifications, and Corrections to the Draft EIR.

In addition, and as described in the Draft EIR, Section IV.A, Air Quality (pages IV.A-43 through IV.A-45), localized significance thresholds (LSTs) are applicable for a sensitive receptor where it is possible that an individual could remain for 24 hours, such as a residence, hospital, or convalescent facility. LSTs are only applicable to the following criteria pollutants: Nitrogen Oxides (NO_x), Carbon Monoxide (CO), particulate matter – 10 microns in diameter or smaller (PM_{10}), and particulate matter – 2.5 microns in diameter or smaller ($PM_{2.5}$). 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. The SCAQMD has issued guidance on applying CalEEMod to LSTs. LST pollutant screening level concentration data is currently published for one, two, and five-acre sites for varying distances. For the Project, the most stringent thresholds for a one-acre site were applied. In addition, the most conservative 25-meter distance to the closest sensitive receptor was modeled for purposes of the analysis. When added to the area and energy (natural gas) emissions reported in Table IV.A-7, LST and Project Emissions – Operations (pounds/day), of the Draft EIR (page IV.A-45), routine maintenance and testing of the emergency generator, in combination with the other Project sources of emissions, would not exceed the SCAQMD LST thresholds, as shown in Revised Table IV.A-7.

Revised Table IV.A-7

LST and Project Emissions – Operations (pounds/day)

Emissions Source	Maximum Daily Onsite Emissions [a]			
	NOx	CO	PM_{10}	$PM_{2.5}$
Area	< 0.01	0.1	< 0.01	< 0.01
Energy (Natural Gas) [b]	1.4	1.2	0.1	0.1
Emergency Generator	6.8	3.8	0.2	0.2
On-Site Total	8.2	5.1	0.3	0.3
Operations LST [c]	**74**	**680**	**2**	**1**
Exceeds Threshold?	**No**	**No**	**No**	**No**

Emissions Source	Maximum Daily Onsite Emissions [a]			
	NOx	CO	PM_{10}	$PM_{2.5}$
Source for Area and Energy (Natural Gas) Emissions: Giroux & Associates and Envicom Corporation. 2022. Air Quality Impact Analysis, 4th and Hewitt Project. April (Revised). (Appendix B of the Draft EIR). Source for Emergency Generator Emissions: Appendix FEIR-B, Revised California Emissions Estimator Model. [a] Onsite emissions during any season. [b] LST would not apply to emissions associated with offsite generation of electricity. [c] SCAQMD LST 1.0 acre/25 meters Central LA.				

Table IV.A-7 in Section IV.A, Air Quality, of the Draft EIR has been revised to include the LST-related emissions generated by the emergency generator during routine testing and maintenance, as shown here in Revised Table IV.A-7. Refer to Final EIR Chapter III, Revisions, Clarifications, and Corrections to the Draft EIR.

Based on the information provided above, with the emergency generator, the Project would not result in a cumulatively considerable net increase of any criteria pollutant for which the Project region is nonattainment under an applicable federal or State ambient air quality standard, and the Project would not expose sensitive receptors to substantial pollutant concentrations emitted onsite during operations. Even with the addition of an emergency generator, Project impacts related to criteria pollutant emissions and LSTs during operations remain less than significant, as reported in the Draft EIR.

Health Risks Related to the Emergency Generator

The Commenter also states that the emergency generator represents a stationary source of TACs, and that the associated DPM may pose a significant health threat. With regard to potential health risks associated with the operation of the Project, as described on pages IV.A-46 and IV.A-47 of the Draft EIR, development projects that involve the substantial use of heavy-duty trucks and other mobile sources that operate on diesel fuel have the potential to generate a substantial amount of unhealthful TACs, and the SCAQMD recommends that HRAs be prepared for such projects, which typically involve industrial and manufacturing projects and also include warehouses and distribution facilities that generate a substantial amount of heavy-duty truck trips. The Commenter is referred to SCAQMD guidance below that provides clarification as to when a HRA may be warranted:

The SCAQMD published and adopted the Guidance Document for Addressing Air Quality Issues in General Plans and Local Planning, which provides recommendations regarding the siting of new sensitive land uses near potential sources of air toxic emissions (e.g., freeway, distribution centers, rail yards, ports, refineries, chrome plating facilities, dry

cleaners, and gasoline dispensing facilities).[3] The SCAQMD recommends that HRAs be conducted for substantial sources of DPM (e.g., truck stops and warehouse distribution facilities that generate more than 100 trucks per day or more than 40 trucks with operating transport refrigeration units).

The Project does not involve such land uses, and it would not generate a substantial amount of DPM emissions during operations, as heavy-duty truck trips (as for deliveries) and the maintenance and testing of the emergency generator would be the only sources of DPM emissions and would be minimal. In accordance with the California Air Resources Board's (CARB's) Airborne Toxic Control Measures (ATCMs), diesel-fueled commercial vehicles that visit the Project Site would be limited to idling for no more than five minutes at any given time, which would also reduce DPM emissions. With regard to the emergency generator, such equipment that is located within the South Coast Air Basin is subject to the SCAQMD's permitting and operating procedures, which specify limits on maintenance and testing use as well as emission rates based on the generator's engine size. As previously stated, SCAQMD maintains a list of certified internal combustion engine-emergency generators. The certification of equipment assures compliance with the SCAQMD regulations by identifying equipment that already meets their rule requirements. The MTU/Rolls-Royce[4] unit proposed to be used in the Office Building is on this list. Furthermore, the Project does not involve land uses that would constitute a sensitive receptor, such as residences, a school, or hospital; therefore, it would not expose additional sensitive receptors to existing sources of TACs in the Project area. Based on these factors, an operation HRA of proposed land uses and their effect on sensitive receptors in the Project area is not warranted.

Comment No. 4-6

IV. THE EIR FAILS TO ADEQUATELY ANALYZE AND MITIGATE POTENTIALLY SIGNIFICANT IMPACTS

A. The DEIR's Air Quality Analysis Attempts to Conceal Potentially Significant Impacts to Air Quality by Disguising Mitigation as Project Design Features

Despite concluding that the Project will result in less than significant air quality impacts, the DEIR includes a Project Design Feature ("PDF") clearly designed to mitigate air emissions associated with the proposed Project, AQ-PDF-1. AQ-PDF-1 states "All diesel-powered equipment utilized on-site during the construction period will meet, at a minimum, United States Environmental Protection Agency Tier 4 emission reduction technology for nonroad diesel engines."[29] The DEIR's reliance on compliance with AQ-

[3] SCAQMD. 2005. , Guidance Document for Addressing Air Quality Issues in General Plans and Local Planning. May 6.
[4] MTU/Rolls-Royce Model 16V2000G86S, 1,839 brake horsepower (bhp).

PDF-1 is reflected in the DEIR's CALEEMOD analysis, which assumes the exclusive use of Tier 4 equipment during Project construction.[30]

Reliance on the use of Tier 4 equipment as a PDF is improper. The application of mitigation to the Project's unmitigated impacts violates CEQA's requirement that the lead agency must first determine the extent of a project's impacts before it may apply mitigation measures to reduce those impacts. Exclusive use of Tier 4 equipment is not yet required by law. Tier 4 emissions standards were phased in by the California Air Resources Board ("CARB") from 2011-2015.[31] Older, lower-tier construction equipment remains in use, and is not required to be phased out for exclusively Tier 4 equipment for several years.[32] The use of Tier 4 equipment is therefore mitigation, not a "design feature," because it goes beyond what is required by law and is intended reduce the Project's construction air pollutant emissions.

The CEQA Guidelines define "measures which are proposed by project proponents to be included in the project" as "mitigation measures" within the meaning of CEQA.

As described under CEQA Guidelines Section 15370, "Mitigation" includes:

(a) Avoiding the impact altogether by not taking a certain action or parts of an action.
(b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

(c) Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment.
(d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

(e) Compensating for the impact by replacing or providing substitute resources or environments.

CEQA requires the lead agency to disclose the severity of project impacts before applying mitigation measures designed to reduce the impact to less than significant levels. The DEIR's air quality analysis incorrectly collapses these two steps into one. *Lotus v. Department of Transportation* clarified the requirements of CEQA Guideline 15370. In *Lotus*, the court held that "avoidance, minimization and/or mitigation measures," are not "part of the project." Rather, they are mitigation measures designed to reduce or eliminate environmental impacts of the Project and must be treated as such. Mitigation measures cannot be incorporated in an EIR's initial calculation of the Project's unmitigated impacts because the analysis of unmitigated impacts, by definition, must accurately assess such impacts before any mitigation measures to reduce those impacts

are applied. An EIR that compresses the analysis of impacts and mitigation measures into a single issue disregards the requirements of CEQA.

Because CEQA and *Lotus* prohibit the compressing of a mitigation measure with a Project, the DEIR's lack of analysis of impacts caused by the Project's air quality impacts violates CEQA. The DEIR should be revised to disclose the severity of all potentially significant impacts prior to mitigation.

1. Failure to Require Enforceable Air Quality Mitigation

The DEIR's reliance on AQ-PDF-1 in its construction emissions modeling is unsupported because the use of Tier 4 equipment is not required as binding mitigation in the DEIR. The DEIR makes the same mistake by relying on PDFs throughout the DEIR.

Mitigation measures must be enforceable through conditions of approval, contracts or other means that are legally binding. This requirement is intended to ensure that mitigation measures will actually be implemented, not merely adopted and then ignored. The DEIR's reliance on PDFs fails to meet this threshold requirement because the measures are not incorporated as binding mitigation measures and are therefore unenforceable. As a result, the DEIR fails to include any binding mechanism to ensure that the Applicant will be required to implement these measures for the Project.

Without an enforceable mechanism, the PDFs described in the DEIR are little more than wishful thinking, and the DEIR's conclusions that the Project's impacts will be less than significant with these measures incorporated are unsupported. If the City intends to rely on PDFs to reduce impacts to less than significant levels, these measures must be incorporated into the Project's Mitigation Monitoring and Reporting Program ("MMRP") and Conditions of Approval.

2. Unsupported Emissions Calculations

The DEIR's construction emission modeling is unsupported because it assumes the exclusive use of Tier 4 Final construction equipment, which has the highest emissions reductions of all Tier 4 equipment available and is not required by AQ-PDF-1.

As Dr. Clark explains, AQ-PDF-1 only specifies the use of "Tier 4" equipment.[33] It does not distinguish between Tier 4 "Interim" or Tier 4 "Final" equipment, which have different levels of emissions reductions. Tier 4 Interim equipment is less efficient and has higher emissions than Tier 4 Final equipment. While Tier 4 Final equipment achieves 90% PM/DPM reductions (the air pollutants responsible for the Project's cancer risk), Tier 4 Interim has higher PM/DPM emissions (reducing PM/DPM by just 50-85%).[34] The DEIR's CalEEmod calculations used exclusively Tier 4 Final equipment, assuming higher emissions reductions than would be required under AQ-PDF-1. Therefore, even if the

Applicant complied with AQ-PDF-1, the measure would not reduce the Project's construction emissions to the levels assumed in the DEIR's CalEEMod modeling. The only way Tier 4 Final equipment would be required for the Project is if it were included as a binding mitigation measure or condition.

The DEIR also lacks a discussion of the feasibility of obtaining Tier 4 equipment for the Project. Tier 4 equipment, Interim or Final, is costly and can be difficult to source.[35] Sourcing this equipment to fulfill the PDF's obligations will require additional expense and procurement steps by the Applicant. The DEIR includes no supporting evidence demonstrating that the Applicant has attempted to procure Tier 4 Final equipment for the Project, and no clear indication that is possible. Absent a feasibility analysis, the DEIR's reliance on Tier 4 equipment in its emissions modeling is an unsupported assumption.

Footnotes:

[29] DEIR, p. IV.A-34.

[30] Clark Comments, p. 10.

[31]See EPA final rule: https://www.epa.gov/regulations-emissions-vehicles-and-engines/final-rule-control-emissions-air-pollution-nonroad-dieseland https://www.gpo.gov/fdsys/pkg/FR-2004-06-29/pdf/04-11293.pdf; see 40 Code Fed. Regs. § 1039.102 (describing passed-in Tier 4 PM reductions).

[32] Id.

[33] DEIR, p.

[34] See https://dieselnet.com/standards/us/nonroad.php#tier4; see EPA Final Rule, p. 38977 ("We expect in use PM reductions for these engines of over 50% (and large reductions in toxic hydrocarbons as well) over the five model years this standard would be in effect (2008–2012).").

[35] Clark Comments, pp. 10-12.

Response to Comment No. 4-6

The Commenter opines that the DEIR's air quality analysis attempts to conceal potentially significant impacts to air quality by disguising mitigation as project design features, specifically related to Project Design Feature AQ-PDF-1 (Draft EIR page IV.A-34). However, as shown in the CalEEMod output files provided in Appendix B of the Draft EIR, the Project construction emissions were analyzed with and without the incorporation of Tier 4 Final Equipment and concluded that the Project would not exceed applicable SCAQMD thresholds in both scenarios (Draft EIR Appendix B, 4th and Hewitt Project

MXD-TDM - Los Angeles-South Coast County, Summer, Page 6 of 34, and 4th and Hewitt Project MXD-TDM - Los Angeles-South Coast County, Winter, Page 6 of 34).

As shown in Appendix B of the DEIR, the CalEEMod outputs for the summer and winter seasons provide emissions estimates for Overall Construction (Maximum Daily Emission) as Unmitigated Construction (without applying any reductions for voluntary use of higher Tier equipment or required (SCAQMD Rule 403) dust control application, as well as Mitigated Construction. As shown in the Unmitigated Construction Tables in the Appendix B outputs, and in Table RTC-2 below, Unmitigated Construction Activity Maximum Daily Emissions, the overall construction emissions would not exceed the SCAQMD daily emissions thresholds shown in the Draft EIR (page IV.A-27), even prior to the use of Tier 4 equipment (Interim or Final) and not assuming required compliance with Rule 403 of the SCAQMD for dust control.

Table RTC-2
Unmitigated Construction Activity Maximum Daily Emissions

Construction Period[a]	Maximum Daily Emissions (pounds/day)[c]					
	ROG[b]	NOx	CO	SO_2	PM_{10}	$PM_{2.5}$
2021[d]						
Summer	3.5	69.9	25.8	0.2	9.5	4.5
Winter	3.5	70.8	26.3	0.2	9.5	4.5
2022						
Summer	2.8	22.2	23.3	0.1	3.7	1.4
Winter	2.9	22.3	22.8	0.1	3.7	1.4
2023						
Summer	49.2	26.9	34.9	0.1	4.7	1.9
Winter	49.3	26.9	34.2	0.1	4.7	1.9
Maximum Day Emissions[e]	**49.3**	**70.8**	**34.9**	**0.2**	**9.5**	**4.5**
SCAQMD Thresholds	**75**	**100**	**550**	**150**	**150**	**55**
Exceeds Threshold?	**No**	**No**	**No**	**No**	**No**	**No**

[a] The Project construction schedule has been updated to 2022 to 2025 since preparation of the CalEEMod output sheets for the Project. The estimates provided here are conservative, as emissions from construction equipment and vehicles remain the same or decrease over time, due to increasingly stringent engine requirements that are implemented over time.

[b] SCAQMD significance threshold is in terms of VOC while CalEEMod calculates reactive organic compounds (ROG) emissions. For purposes of this analysis, VOC and ROG are used interchangeably since ROG represents approximately 99.9 percent of VOC emissions.

[c] **Without** required dust control (watering exposed soils twice daily) for compliance with SCAQMD Rule 403 and use of equipment with Tier 4 (Interim or Final) emissions reduction technology on diesel equipment (Project Design Feature AQ-PDF-1). CalEEMod output sheets provided in Appendix B to the Draft EIR reports these amounts in output tables titled "Unmitigated Construction," although regulatory compliance and project features are not considered mitigation under CEQA.

[d] Estimated for a 70-day grading/soil export duration. However, the Project's updated haul route would limit soil export activities to 60 truck loads per day, which would require approximately 90 days for the grading/soil export duration (75,200 cy export/14 cy truck load/60 truck loads = 89.5 days). Extending the number of days for soil export hauling would decrease the Project's maximum daily emissions during the grading/soil export activities relative to the estimates generated with CalEEMod, reducing criteria pollutant emissions. As SCAQMD thresholds are based on maximum daily emissions, the adjustment to the allowable hours for hauling within a 24-hour period would not affect the estimated maximum daily emissions, and thus not affect criteria pollutant emissions.

[e] Summer or Winter season, whichever is greatest.

In addition, and as described in the Draft EIR, Section IV.A, Air Quality, localized LSTs are applicable for a sensitive receptor where it is possible that an individual could remain for 24 hours, such as a residence, hospital, or convalescent facility. LSTs are only applicable to NO_x, CO, PM_{10}, and $PM_{2.5}$. 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. As described in Response to Comment No. 4-5, revised CalEEMod outputs were prepared as part of the Final EIR to include the emergency generator as a stationary piece of equipment utilized during operations, as well as to update the construction schedule from 2021 to 2023 as utilized in the Draft EIR, to 2022 to 2025, and to remove the use of Tier 4 Final construction equipment. The revised CalEEMod results attached to the Final EIR as Appendix FEIR-B were used to update the construction period LST results, to further demonstrate that the Tier 4 Final construction equipment project design feature is not required for the Project to achieve a less-than-significant LST impact during construction, as shown in Table RTC-3, LST and Project Emissions – Construction (with Updated Construction Schedule and without a Tier 4 Final Requirement).

Table RTC-3

LST and Project Emissions – Construction (with Updated Construction Schedule and without a Tier 4 Final Requirement)

Construction Year	Maximum Daily Emissions (pounds/day)[a, b]			
	NOx	CO	PM10	PM2.5
2022[c]	16.6	14.0	1.5	0.9
2023[d]	17.0	13.5	3.5	2.2
2024[e]	11.1	12.5	0.5	0.4
2025[f]	16.8	23.0	0.7	0.7
Construction LST[g]	**74**	**680**	**5**	**3**
Exceeds LST Screening Level?	**No**	**No**	**No**	**No**

Source: Appendix FEIR-B, Revised California Emissions Estimator Model.

[a] Maximum on-site emissions during any season.
[b] Assumes compliance with SCAQMD Rule 403, which is a requirement for construction projects within the South Coast Air Basin. While not considered mitigation, CalEEMod reports emissions with these reductions as "mitigated" within the CalEEMod output file.
[c] Values from Tables 3.2 of Summer and Winter Outputs (Mitigated On-site).
[d] Demolition, Grading, or Building Construction, whichever of these consecutive phases has highest emissions for 2023. Values from Tables 3.2, 3.4, and 3.5 of Summer and Winter Outputs (Mitigated On-site).
[e] Values from Table 3.5 of Summer and Winter Outputs (Mitigated On-site).
[f] Combined emissions of concurrent phases for Building Construction, Paving, and Architectural Coating Activities in 2025. Values from Tables 3.5, 3.6, and 3.7 of Summer and Winter Outputs (Mitigated On-Site).
[g] SCAQMD LST 1.0 acre/25 meters (Central LA).

As such, the commitment of the Project to use Tier 4 equipment (whether Tier 4 Final or Tier 4 Interim, based on availability or other factors) is irrelevant to whether the Project would have significant impacts to air quality, including LSTs.

As stated in the CEQA guidelines Section 15041. Authority to Mitigate, subsection (a):

> A lead agency for a project has authority to require feasible changes in any or all activities involved in the project in order to substantially lessen or avoid significant effects on the environment, consistent with applicable constitutional requirements such as the "nexus" and "rough proportionality" standards established by case law (Nollan v. California Coastal Commission (1987) 483 U.S. 825, Dolan v. City of Tigard, (1994) 512 U.S. 374, Ehrlich v. City of Culver City, (1996) 12 Cal. 4th 854.).

As the Project would not exceed applicable thresholds, even without the use of Tier 4 equipment (Interim or Final), there is no nexus to requiring the use of such equipment (or any tier level beyond the CalEEMod base default assumptions) as a mitigation measure. Therefore, Project Design Feature AQ-PDF-1 is, as the Draft EIR describes, a project design feature and not a mitigation measure, as it is not required to assure impacts would be less than significant. The Applicant's commitment to the use of Tier 4 equipment at any level would further reduce the less than significant air quality impacts. However, Section IV.A, Air Quality, of the Draft EIR has been revised as follows and as shown in Chapter III, Revisions, Clarifications, and Corrections to the Draft EIR, of the Final EIR:

"AQ-PDF-1: The Applicant will make a reasonable effort to attain ~~All~~ diesel-powered equipment ~~utilized on-site during the construction period~~ that will meet~~, at a minimum,~~ United States Environmental Protection Agency Tier 4 Final emission reduction technology for nonroad diesel engines~~.~~ to utilize during the construction period."

Additionally, the Commenter's contention that project design features (PDFs) that exceed regulatory compliance measures are somehow disguised mitigation measures that are not permitted by CEQA is not accurate. The Project's PDFs are all appropriate components of the Project and not mitigation measures. The Draft EIR analyzed the impacts of the Project with the PDFs as Project components incorporated into the Project. Pursuant to CEQA, mitigation measures are not part of the original project design, but instead are actions taken by the lead agency to reduce impacts to the environment resulting from the original project design (CEQA Guidelines Sections 15126.4(a) and 15370). Mitigation measures are identified by the lead agency while a project is undergoing environmental review, and not finalized until the end of the environmental review process, and are above-and-beyond existing laws, regulations, and requirements that would reduce environmental impacts. Moreover, CEQA encourages the incorporation of project elements that would reduce or avoid any potential significant impacts. Accordingly, most projects include avoidance and commitments into the project design

as part of the project description. The CEQA Guidelines also reference these types of features in Section 15064(f)(2) and Section 15126.4(a)(1)(A). Examples of PDFs that may address environmental impacts include construction traffic management plans, transportation demand plans, use of energy efficient lighting, use of solar panels, and building standards in excess of the requirements of Title 24 of the California Building Code. These are not considered mitigation measures, because they are part of the project that is undergoing environmental review. While the courts have recognized that it is often difficult to distinguish between the elements of a project and measures designed to mitigate the impacts of a project (see, e.g., *Lotus v. Department of Transportation* (2014) 223 Cal. App. 4th 645, 656 fn.8) (Lotus), the Project's PDFs are clearly integral to the project.

Moreover, case law is clear that use of PDFs that do have the effect of avoiding or lessening a potential impact are not prohibited by CEQA so long as the characterization of the measure does not improperly interfere with identification of the potential environmental impact. As clarified by the same judge that wrote the opinion in the Lotus case, the court in *Mission Bay Alliance v. Office of Community Investment and Infrastructure* (2016) 6 Cal. App. 5th 160, 185, (Mission Bay), in reference to the objection of including a transportation management program element as part of the project rather than as a mitigation measure, stated that "[a]ny mischaracterization is significant, however, only if it precludes or obfuscates required disclosure of the project's environmental impacts and analysis of potential mitigation measures."

The Draft EIR adequately discusses the PDFs and potential impacts and at no time utilizes PDFs to avoid discussion of the Project's potential impacts or appropriate mitigation measures. Rather than hiding the impacts, the purpose of the PDFs, or the mitigation measures, the EIR sets them out in several places. For easy reference, Chapter I, Introduction and Executive Summary, pages I-16 through I-21, lists all the PDFs without having to go through each environmental topic discussion. These entries are followed by a full analysis of the Project's impacts and the incorporated PDFs in Chapter IV, Environmental Impact Analysis, of the Draft EIR. The City further ensures that PDFs are enforceable components of the Project by including all the PDFs in the Mitigation Monitoring Program (MMP) (see Final EIR Chapter IV, Mitigation Monitoring Program).

Comment No. 4-7

B. The DEIR Fails to Disclose and Analyze the Health Risk Posed by the Project's Air Emissions from Construction and Operation

The DEIR fails to disclose and analyze health risks from construction emissions and lacks a quantified health risk analysis ("HRA"), in violation of CEQA. 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."[36] In particular, 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."[37]

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 on human health.[38] 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."[39] Likewise in *Sierra Club*, the 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.[40] 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."[41] CEQA mandates discussion, supported by substantial evidence, of the nature and magnitude of impacts of air pollution on public health.[42]

The failure to provide the information required by CEQA makes the meaningful assessment of potentially significant impacts impossible and is presumed to be prejudicial.[43] 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.[44] 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."[45]

First the DEIR claims that emissions of toxic air contaminants ("TACs") will be less than significant without including a detailed or quantitative HRA 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 health risk posed to nearby residents and children from TACs, and fails to mitigate it. Because the DEIR fails to include the necessary analysis disclosing the extent and severity of the Project's health risk, and fails to compare the Project's TAC emissions to applicable significance thresholds, the DEIR lacks substantial evidence to support its

conclusion that the Project will not have significant health impacts from human exposure to diesel particulate matter ("DPM") emissions generated during Project construction and operation.

Second, one of the primary emissions of concern regarding the health effects of land development projects is DPM, which can be released during Project construction and operation. 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.[46] When assessing pollution concentrations upon sensitive receptors, the SCAQMD has developed LSTs that are based on the number of pounds of emissions per day that can be generated by a project that would cause or contribute to adverse localized air quality impacts. For the Criteria Pollutants assessed under CEQA, this is correct. For TACs though, there are no LSTs, nor levels of significance based on the pounds per day. Instead, the determination of a significance threshold is based on a quantitative risk analysis that requires the City to perform a multistep, quantitative health risk analysis which was not done here.

Third, the DEIR concludes there will be no significant construction health risk because construction will only last 30 months, and cancer risk is calculated based on a 70-year exposure.[47] This is an incorrect assumption because exposure to TACs has acute health impacts and contributes to increased cancer risk from even short-duration exposures. OEHHA[48] guidance also sets a recommended threshold for preparing an HRA of a construction period of two months or more.[49] Construction of the instant Project will last at least 36 months, as the DEIR puts forth a timeline for construction of 2022 through 2025.[50] Human exposure to construction TACs during that time period may result in a significant, increased cancer risk which the DEIR fails to assess.

The DEIR's failure to quantify the health risk from DPM exposure is a failure to proceed in the manner required by law. CEQA expressly requires that an EIR discuss, inter alia, "health and safety problems caused by the physical changes" resulting from the project.[51] When a project results in exposure to toxic contaminants, this analysis requires a "human health risk assessment."[52] A detailed 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.

Footnotes:

[36] *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 516.

[37] Id. at 518.

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

[39] Id. at 1220.

[40] *Sierra Club*, at 521.

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

[42] *Sierra Club*, 6 Cal.5th at 518–522.

[43] *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236–1237.

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

[45] Id. (internal quotations omitted).

[46] Clark Comments, pp. 4-5.; DEIR, p. IV.A-45.

[47] DEIR, IV.A-44.

[48] 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.

[49] 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.

[50] DEIR, p. IV.A-52

[51] 14 C.C.R § 15126.2(a).

[52] *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).

Response to Comment No. 4-7

The Commenter states that the Draft EIR violates CEQA and pertinent case law regarding health risk, as it does not provide quantified construction and operation HRAs that

disclose the adverse health impacts caused by exposure to TACs and DPMs from the Project's construction and operational emissions.

With regard to health risks associated with Project construction activities, Chapter II, Project Description (page II-31), and Section IV.A, Air Quality, of the Draft EIR (page IV.A-30) correctly identify that the Project construction activities would be limited in duration. The Draft EIR also explains that build-out of the Project has been revised from 2023 to 2025. Therefore, Project construction activities are limited in duration and a short-term source of TAC emissions. The SCAQMD is the governing Air Quality Management District (AQMD) over the Project site and surrounding area, rather than the Office of Environmental Health Hazard Assessment (OEHHA) as referenced by the Commenter, and it is the SCAQMD's rules and regulations that apply to the Project. The SCAQMD CEQA Air Quality Handbook does not recommend the analysis of TACs from short-term construction activities associated with land use development projects, due to the limited duration of exposure. According to SCAQMD methodology, health effects from carcinogenic air toxics are usually described in terms of "individual cancer risk," which is the likelihood that a person who is continuously exposed to concentrations of TAC emissions over a 70-year lifetime will contract cancer based on the use of standard risk assessment methodology.[5] As the overall Project construction schedule would be limited to approximately 30 months (rather than 36 months, as stated by the Commenter), construction of the Project would not result in the substantial, long-term (70-year) exposure of persons to TAC emissions. No residual emissions and corresponding individual cancer risk are anticipated after construction.

Due to the short-term exposure period (approximately 30 months of a 70-year (840-month) life), further evaluation of construction TAC emissions within the Draft EIR is not warranted. This supporting information is consistent with the *L.A. City CEQA Thresholds Guide* in making a case-by-case basis determination of significance. Therefore, the Draft EIR correctly concluded that Project-related TAC emissions impacts during construction would be less than significant and consequently not result in a potential health risk impact (refer to Page IV.A-44 of the Draft EIR).

Although a construction HRA is not required by the SCAQMD or the *L.A. City CEQA Thresholds Guide*, and no guidance for HRAs for construction has been adopted by the SCAQMD or the City, a construction HRA has been prepared in accordance with USEPA, CalEPA, and SCAQMD assessment and dispersion modeling methodologies in response to this comment for informational purposes and to confirm, as the Draft EIR already concluded, that no significant health risk impacts would occur from Project construction. The construction HRA is provided as Appendix FEIR-C of this Final EIR.

[5] SCAQMD. 1993. SCAQMD CEQA Handbook, Chapters 5, 9, and 10.

In consideration of sensitive land uses in closest proximity to the Project Site, the construction HRA identified the following live/work and residential occupancies as sensitive receptors for the analysis:

- 825 East 4th Street
- 801 East 4th Place
- 428 South Hewitt Street
- 510 South Hewitt Street
- 442 Colyton Street

As described in Response to Comment No. 4-5, revised CalEEMod outputs were prepared as part of the Final EIR to include the emergency generator as a stationary piece of equipment utilized during operations, as well as to update the construction schedule from 2021 to 2023 as utilized in the Draft EIR, to 2022 to 2025, and to remove the requirement for Tier 4 Final construction equipment. The construction HRA was based on the revised CalEEMod. However, CalEEMod does not estimate DPM emissions; rather, the CalEEMod-reported PM_{10} emissions were used as a surrogate for DPM emissions in the construction HRA. In 1999, the CARB identified the particulate fraction (PM_{10}) in diesel exhaust as a TAC. As such, the off-road PM_{10} exhaust estimates reported by CalEEMod are an acceptable surrogate for DPM emissions. The emission rates for both winter and summer scenarios were found to be commensurate. The average daily PM_{10} emissions were calculated to be 0.5365 pounds per day.

The construction HRA shows that construction-period health risks from the Project development activities would be a maximum of 0.31 in one hundred thousand at 428 South Hewitt Street. Therefore, the cancer risk for the maximum exposed residential receptor for each occupancy (i.e., identified sensitive receptor) would be below the significance threshold of one in one hundred thousand.

An evaluation of the potential noncancer effects of DPM emissions exposure was also conducted as part of the construction HRA. The noncancer hazard index generated from Project construction activities would be greatest at 428 South Hewitt Street and would be 0.028. Therefore, the hazard index for the respiratory endpoint would be less than one, below the threshold, for all sensitive receptor occupancies.

Based on the information provided above and in Appendix FEIR-C, the Project's health risk impact during construction would be less than significant.

With regard to health risks associated with Project operations, please refer to Response to Comment No. 4-5, which describes that an operation HRA is not warranted for the

Project based on the minimal sources of DPM associated with Project emissions and SCAQMD rules.

Comment No. 4-8

C. The DEIR Fails to Accurately Disclose and Mitigate Potentially Significant GHG Impacts

CEQA requires the lead agency to use scientific data to evaluate GHG impacts directly and indirectly associated with a project.[53] The analysis must "reasonably reflect evolving scientific knowledge and state regulatory schemes."[54] In determining the significance of GHG emissions impacts, the agency must consider the extent to which the project may increase GHG emissions compared to the existing environmental setting and 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."[55]

The DEIR claims that GHG emissions impacts will be less than significant because the Project is consistent with the LA Green New Deal, the 2008 Climate Change Scoping Plan, the 2017 California Climate Change Scoping Plan, and the 2020-2045 RTP/SCS.[56] For example, the DEIR claims consistency with Goal 5 of SCAG 2020-2045 which is to reduce GHG and improve air quality. This consistency claim, however, is inconsistent with the actual development of the Project, since the Project will create 6,258 MTCO2E per year and suffers from the air quality issues described above.[57] The Project also claims consistency to reduce air pollution under the General Plan Policy 3.2, even though the Project did not perform an HRA, the Project is creating significant GHGs, and the Air Quality analysis is understated.[58] The City must correct these assumptions regarding the GHG analysis in a revised EIR.

Footnotes:

[53] See 14 C.C.R. § 15064.4(a) (lead agencies "shall make a good-faith effort, based to the extent possible on scientific and factual data, to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a project); 14 C.C.R. § 15064(d) (evaluating significance of the environmental effect of a project requires consideration of reasonably foreseeable indirect physical changes caused by the project); 14 C.C.R. § 15358(a)(2) (defining "effects" or "impacts" to include indirect or secondary effects caused by the project and are "later in time or farther removed in distance, but are still reasonably foreseeable" including "effects on air"); CEQA Guidelines, Appendix G, § VIII: Greenhouse Gas Emissions (stating agencies should consider whether the project would "generate greenhouse gas emissions, ***either directly or indirectly***, that may have a significant impact on the environment.") (emphasis added).

[54] 14 C.C.R. § 15064.4(b); see also *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 504 (holding that lead agencies have an obligation to track shifting regulations and to prepare EIRs in a fashion that keeps "in step with evolving scientific knowledge and state regulatory schemes").

[55] 14 C.C.R. § 15064.4(b)(1), (3).

[56] DEIR, p. IV.C-48

[57] DEIR, Appendix, p. I-2; I-33; I-34.

[58] DEIR, Appendix, p. I-9.

Response to Comment No. 4-8

The Commenter reiterates CEQA Guidelines Section 15064.4(b)(1), (3) in stating that "In determining the significance of GHG emissions impacts, the agency must consider the extent to which the project may increase GHG emissions compared to the existing environmental setting and 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.'" The Commenter also notes that the Draft EIR provides an analysis of Project consistency with the Green New Deal Sustainable City Plan 2019, the 2008 Climate Change Scoping Plan, the 2017 California Climate Change Scoping Plan, and the Southern California Association of Government's (SCAG's) 2020-2045 Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS).

However, the Commenter expresses concern that the Draft EIR indicates the Project would not be consistent with Goal 5 of SCAG 2020-2045 RTP/SCS, which is to reduce GHG and improve air quality, since the Project would create 6,258 million metric tons of carbon dioxide (CO_2) equivalent ($MMTCO_2e$) per year.

Regarding consistency with Goal 5 of SCAG 2020-2045 RTP/SCS, the Draft EIR (Appendix I, page I-2) states that the Project represents infill development in a heavily urbanized area of the City; would provide employment opportunities in close proximity to existing residential units, commercial uses, and transit facilities (which would reduce VMT and thus GHG emissions); and would be constructed to achieve Leadership in Energy and Environmental Design (LEED) Silver certification as described in Project Design Feature GHG-PDF-1. These are all project features that would reduce GHG emissions of the proposed Project, and that are consistent with the SCAG 2020-2045 RTP/SCS Strategies to Focus Growth Near Destinations & Mobility Options, and Leverage Technology Innovations (Draft EIR, Appendix I, pages I-5 and I-6). Additionally, as stated in the Draft EIR (page IV.E-54), the evaluation conservatively assumes no "credit" for

GHG reductions associated with removal of existing buildings or uses from the Project Site, nor does it quantify reductions of GHG emissions resulting from Project Design Features GHG-PDF-1 (Draft EIR page IV.E-41), TRANS-PDF-2 (Draft EIR page IV.L-32), and TRANS-PDF-3 (Draft EIR pages IV.L-32 and IV.L-33). Therefore, the Draft EIR analysis is conservative, and the net increase in GHG emissions would be less than reported in Table IV.E-8 of the Draft EIR (page IV.E-54). Additionally, as shown in Draft EIR Table IV.E-8, the Project Scenario would reduce GHG emissions compared to the No Action Taken (NAT) Scenario, which, as described in the Draft EIR (page IV.E-39), demonstrates that the Project's characteristics is provided as a point of comparison to show that GHG emissions generated by the Project as proposed would be less than those generated by a similar scale development in the absence of any reduction features beyond those required by federal, State, and local regulations. As such, the Project is consistent with Goal 5 of the SCAG 2020-2045 RTP/SCS.

Also, as described in Chapter IV.E, Greenhouse Gas Emissions, of the Draft EIR (pages IV.E-28 through IV.E-32), there are no SCAQMD-adopted or City-adopted numeric thresholds to apply to the evaluation if GHG impacts, there are no quantitative standards for determining that the Project's GHG emissions would result in significant environmental impacts.

The Commenter also implies that the Project would not be consistent with General Plan Policy 3.2 (related to reducing air pollution), because the Project did not perform an HRA and the air quality analysis is understated. Please refer to Response to Comment Nos. 4-5 and 4-7, which address health risk impacts and air quality impacts and provide additional documentation that further supports the Draft EIR conclusion that the Project would result in less than significant air quality impacts, including health risk impacts.

Comment No. 4-9

D. The DEIR Fails to Accurately Disclose and Mitigate Potentially Significant Hazards and Hydrology Impacts

The City's analysis of the Project impacts from hazards and hazardous material is inadequate and unsupported. The DEIR relies on the Phase I and Phase II Environmental Site Assessment ("ESA") reports, which fail to perform the proper scope of sampling.[59] Dr. Clark found the City's reliance on the current level of sampling to be misplaced. The site may have significant contamination from its previous use as an auto repair shop and that sub-surface sampling could not occur due to the use of the garage, office building, and parking lot.[60] The DEIR fails to mention that those three areas make up a large majority of the entire Project site.

Additionally, as Dr. Clark notes project construction will require extensive earthmoving activities to excavate multiple levels of underground parking. Until the

contamination onsite is further investigated, the City cannot conclude that the Project's impacts from hazards on the Project site are less than significant even with mitigation since it is unclear what needs to be mitigated. The City's assertion that hazards impacts are less than significant with mitigation is inherently false since ***the City has not quantified the extent of the impact, and therefore uncertain the extent of mitigation that is required.***

This problem is further compounded after reviewing the DEIR's conclusions on Hydrology which concludes that due to the unexpected finding of groundwater at 78 feet (as opposed to the expected 84 feet), "Project impacts to surface or groundwater quality would be potentially significant without mitigation if hazardous soils conditions are encountered during construction."[61] Once again the DEIR relies on the mitigation measure HAZ-MM-1 to reduce the impact. However, without disclosing the extent of contamination, it is unclear whether HAZ-MM-1 will be effective. The Phase II subsurface investigation required by HAZ-MM-1 must be performed prior to approval. Failure to include this basic information violates CEQA's requirement that an EIR meaningfully "evaluate existing conditions in order to assess whether a project could exacerbate hazards that are already present."[62]

The lack of information in the DEIR about the nature and extent [sic] Project's soil contamination impacts is comparable to the lack of information in the EIR in *Sierra Club*. The EIR in *Sierra Club* contained "two segments of information – potential project emissions and human health impacts."[63] It explained that ozone would be emitted by the Project and offered "a general discussion" of adverse health effects associated with exposure to Project-related pollutants.[64] However, the EIR failed to disclose how much ozone would be produced by the Project, and failed to describe the health effects related to that level of exposure.[65] The Court held that the EIR was inadequate as a matter of law because it failed to include a meaningful discussion of the impacts of exposure. Here, the DEIR similarly fails to disclose the full extent of subsurface contamination that will be released during Project construction and which requires remediation due to the purported inaccessibility of critical sampling locations at the Project site during DEIR preparation.[66] The DEIR lacks supporting evidence regarding its claim of inaccessibility, and an any case, CEQA does not allow the City to defer critical impact analysis to a post-approval phase of the Project. Without this information, neither the public nor the County's decision makers can determine the extent of the Project's hazardous materials impacts.[67]

Footnotes:

[59] Clark Comments, pp. 4-8.

[60] DEIR, p. IV.F-29.

[61] DEIR, p. IV.G-25.

[62] *CBIA v. BAAQMD*, 62 Cal.4th at 388; *Sierra Club*, pp. 20-21 ("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")

[63] *Sierra Club*, p. 22.

[64] *Id.* at 19.

[65] *Id.* at 21.

[66] DEIR, p. IV.F-30.

[67] PRC section 21083(b)(3); *Sierra Club*, p. 21; *Ass'n for a Cleaner Env't v. Yosemite Comty. College Dist*. (2004) 116 Cal.App.4th 629, 639–640; see also *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.

Response to Comment No. 4-9

The Commenter asserts that the Draft EIR relies on Phase I Environmental Site Assessment (ESA) and Phase II Subsurface Site Investigation reports that fail to perform the proper scope of sampling, and that as a result, the hazards and hazardous materials, and hydrology and water quality, impact analyses of the Draft EIR are not adequately assessed or mitigated. The Commenter further asserts that the Draft EIR lacks evidence to substantiate that portions of the Project Site are not accessible for further investigation, as well as that the Draft EIR defers critical impact analysis to the post-approval phase of the Project.

According to Section 15151, Standards for Adequacy of an EIR, of the CEQA Guidelines, "an EIR should be prepared with a sufficient degree of analysis to provide decision makers with information which enables them to make a decision which intelligently takes account of environmental consequences. An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed *in the light of what is reasonably feasible* (emphasis added). Disagreement among experts does not make an EIR inadequate, but the EIR should summarize the main points of disagreement among the experts. *The courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure*" (emphasis added).

In accordance with the CEQA Guidelines, the Draft EIR incorporates technical analyses to evaluate the Project's potential impacts related to hazards and hazardous materials (Chapter IV.F), and to hydrology and water quality (Chapter IV.G). The supporting technical studies are provided in Draft EIR Appendices G1, Phase I ESA; G2, Phase II ESA; and in Appendix H, Water Resources Technical Report. As described therein, these technical studies undertook reasonably feasible efforts to investigate existing conditions at the Project Site, which are summarized in Chapter IV.F, Hazards and Hazardous

Materials, and Chapter IV.G, Hydrology and Water Quality, of the Draft EIR. The Phase II ESA describes that, due to the existing occupied development on the Project Site, the assessment of the onsite wastewater clarifier, auto repair floor pit, and several wastewater separator structures were not performed. Contrary to the Commenter's assertion that the Draft EIR lacks supporting evidence regarding its claim of site inaccessibility, the Draft EIR, Figure II-2, and Phase II ESA, Figure 2, show the existing development on the Project Site that precluded the assessment.

The Draft EIR discloses that the Project would require excavation across the Project Site to a depth of 38 feet (ft) to accommodate subterranean parking levels, and that excavation would produce an estimated 75,200 cubic yards (cy) of soil. Although subsurface investigations completed to date have not detected hazardous soil conditions, access was limited due to current development at the Project Site. Due to the proposed excavation activities, previous uses of the Project Site for vehicle repair and truck washing, and limited access to investigate the subsurface conditions in some on-site locations, the Draft EIR concludes that the Project has the potential to uncover hazardous soil conditions that may create a significant hazard to the public or the environment. The Draft EIR also discloses that such soil conditions have the potential to also impact surface and groundwater quality during excavation.

As additional investigation prior to demolition is not reasonably feasible to further characterize subsurface soil and water conditions at the Project Site, Mitigation Measure HAZ-MM-1, included in Chapter IV.F, Hazards and Hazardous Materials, of the Draft EIR (pages IV.F-30 and IV.F-31) requires that a Supplemental Phase II Subsurface Site Investigation be prepared following demolition of on-site structures and prior to redevelopment of the Project Site and that it focus on soils in those areas that were identified as previously inaccessible. The Commenter fails to identify that the Draft EIR also requires Mitigation Measure HAZ-MM-2 (page IV.F-31), which, as described in the Draft EIR, would require that a Soil Management Plan be prepared prior to the commencement of soil-disturbing activities for review and approval by the City of Los Angeles Department of Building and Safety. The Soil Management Plan shall describe specific soil-handling controls required to assure compliance with local, State and federal overseeing agencies. Chapter IV.G, Hydrology and Water, of the Draft EIR (pages IV.G-24 and IV.G-25) also discloses that Mitigation Measures HAZ-MM-1 and HAZ-MM-2 are required to be applied to both the Project's hazards and hazardous materials impacts and hydrology and water quality impacts during construction.

Chapter IV of the Final EIR is comprised of the MMP for the Project. For each project design feature and mitigation measure required by the Draft EIR, the MMP identifies the responsible enforcement and monitoring agencies; establishes the phase, frequency, and duration of monitoring; and conveys the manner by which the Project is required to achieve compliance and the materials that document compliance for the record. In the

case of Mitigation Measures HAZ-MM-1 and HAZ-MM-2, the City of Los Angeles Department of Building and Safety (LADBS) would be the primary agency with authority to enforce and monitor implementation.

Therefore, the technical reports included in the Draft EIR Appendices provide substantial evidence in support of the Draft EIR analysis and does not inappropriately defer mitigation.

Comment No. 4-10

E. The DEIR Fails to Accurately Disclose and Mitigate Significant Noise Impacts

The CEQA Guidelines require an [sic] DEIR 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 . . ."[68] The DEIR's noise analysis fails to accurately disclose the Project's noise impacts for several reasons.

1. The DEIR Fails to Disclose and Analyze the Extent of Noise Impacts During Both Construction and Operation

a) The DEIR's Quantitative Analysis Fails to Describe Key Aspects Related to the Project Thus Resulting In Under-Estimates of Actual Noise Levels during Construction

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.[69] As explained by Ms. Jue in her comments, when calculated correctly and compared to the DEIR's thresholds, the Project's noise impacts will be significant because the DEIR both underestimates some impacts and fails to disclose others.

The DEIR underestimates the noise levels from construction activities in one key respect by failing to account for the difference in paving noise baselines between paving a multi-story parking garage vs. a freeway. As Ms. Jue notes "[t]he paving activities that are provided in RCNM are intended for asphalt paving operations on a highway, and since the driving surface of parking garages are not typically constructed this way, it is possible that the noise estimates for "paving" provided in the DEIR are overly conservative."[70]

The DEIR's failure to disclose how severe these noise impacts will be is an informational deficiency in the DEIR. By failing to disclose the full severity of noise impacts, the DEIR also fails to all feasible mitigation to reduce significant noise impacts.

Footnotes:

[68] CEQA Guidelines, Appendix G, Sec. XII(d).

[69] 14 C.C.R § 15064(b); *King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 884.

[70] Jue Comments, p. 3.

Response to Comment No. 4-10

The Commenter asserts that the Project's noise impacts will be significant, because the Draft EIR underestimates impacts related to construction of the Project's parking levels.

While the Commenter states that the noise from construction paving was underestimated, they attempt to support this by quoting their noise expert stating the opposite—that noise estimates provided in the DEIR are "overly conservative" i.e., *overestimated*. The DEIR appropriately analyzed paving noise levels, which are shown in Tables IV.I-7, IV.I-8, IV.I-9, IV.I-18, and IV.I-19 of Draft EIR Section IV.I, Noise.

The Federal Highway Administration (FHWA) Roadway Construction Noise Model (RCNM) is an industry standard tool that is routinely used to analyze construction noise levels from land development projects in the City of Los Angeles and many other jurisdictions. Additionally, it is not uncommon for noise analyses to include conservative assumptions to ensure evaluation of the full impact at the risk of somewhat overstating it. Even if it were to occur, overstatement of the severity of an impact is not a disclosure issue, because the full magnitude of an impact would be included in an overstated impact.

Contrary to the Commenter's assertion, construction noise impacts are not understated, as their own noise expert acknowledges. Therefore, the Commenter's claims of insufficiency are not supported by evidence and are in fact contradicted by its own quotation of his own expert. Chapter IV.I, Noise, of the Draft EIR discloses all noise impacts and incorporates feasible mitigation to reduce significant noise impacts.

Comment No. 4-11

b) The DEIR's Quantitative Analysis Fails to Describe Key Aspects Related to the Project Thus Resulting In Under-Estimates of Actual Noise Levels during Operation

The DEIR's operational noise analysis suffers from similar deficiencies as its construction analysis. For example, the operational analysis fails to consider two key considerations: (1) the Project contains a ground-level bar/lounge, but fails to analyze any noise stemming from these uses; and (2) the described HVAC equipment is not nearly large enough to serve the entire building. Ms. Jue notes that "a building this size often includes a water tower or air-cooled condenser fans with a typical sound rating of 85 PWL, and several make-up air fans as large as 40,000 CFM (90 PWL)" as opposed to the

current single HVAC unit.[71] The DEIR fails to describe or analyze the noise generating activities that these Project components will cause.

The DEIR's incomplete operational noise analysis creates confusion and results in a failure to disclose how severe the Project's operational noise impacts will be. The City should revise and recirculate the DEIR to include a complete operational noise analysis, and to require all feasible mitigation to reduce potentially significant operational noise impacts to the greatest extent feasible.

Footnote:

[71] Jue Comments, p. 4.

RESPONSE TO COMMENT 4-11

The Commenter asserts that the Draft EIR's operational period noise analysis is incomplete, as it does not consider noise from a ground-level bar or lounge, and because noise from HVAC equipment is not fully disclosed (based on the Commenter's claim that the proposed HVAC equipment is not large enough to serve the entire Office Building).

The operational noise analysis is provided in Chapter IV.I, Noise, of the Draft EIR (pages IV.I-38 through IV.I-50). The Project proposes two food and beverage areas: a 5,416-square-foot area at the northeastern corner of the building and a 2,733-square-foot area at the eastern edge. In the event that these spaces included a ground-level bar/lounge, they would be located in a busy urban environment with existing industrial land uses, an existing restaurant and an existing alcohol-serving live music venue both with existing outdoor seating areas, and adjacent to a major avenue and other roadways. Therefore, such a ground-level bar/lounge at the Project site would not substantially affect noise levels, and the Commenter does not provide any evidence that a noise impact would occur from this proposed use.

However, to demonstrate that ground-level bar/lounges at the Project site would not substantially affect noise levels, supplemental noise estimates are provided for informational purposes, as follows. Based on the Building Code, the maximum occupancy would be one person per 15 square feet, resulting in 361 people at the northeastern food and beverage use and 91 people at the eastern food and beverage use (using the square footages cited above). It is conservatively assumed that 50 percent of the people could be speaking in a raised voice at the same time. It is further assumed that half of the people would be male, and half would be female. A reference level of 65 A-weighted decibels (dBA) at 3.3 ft for a male and 62 dBA at 3.3 ft for a female raised speaking voice is assumed.[6] The noise levels were added together and distance attenuation was calculated

[6] Cyril M. Harris, Handbook of Acoustical Measurements and Noise Control, Third Edition, 1991, Table 16.1.

to the nearest sensitive receptor, 428 South Hewitt Street. Although the food and beverage uses would be located indoors, no reduction from the walls of the building was assumed for a conservative analysis. The resulting noise levels from these potential bar/lounges, if added to the Project's composite operational noise level from the Draft EIR, Table IV.I-17, would be less than significant, as shown in Table RTC-4, Project Food and Beverage Use Noise Levels at Nearest Sensitive Receptor. Noise levels at all other sensitive receptors would be lower. In addition, noise levels would be further reduced by the walls of the building. Consistent with the conclusion of the Draft EIR, operational noise levels would be less than significant, and no mitigation measures for noise impacts during operations would be required.

Table RTC-4
Project Food and Beverage Use Noise Levels at Nearest Sensitive Receptor

Food & Beverage Use	Noise Level at 3.3 ft (dBA) [1]	Distance to Trailer at 428 South Hewitt Street (ft)	Distance Attenuation (dBA)	Food & Beverage Noise Level at Receptor. (dBA)	Composite Operational Noise Levels, Ambient and Project (dBA Leq) [2]	Noise with Food and Beverage Use (dBA Leq)	Threshold (dBA Leq)	Exceedance?
Northeast	86.3	180	34.7	51.6	66.2-66.4	66.3-66.5	70	No
East	83.4	140	32.6	50.8	66.2-66.4	56.3-66.5	70	No
Total	N/A			54.2	66.2-66.4	66.5-66.7	70	No

Source: Envicom Corporation, July 2022.

ft = feet, dBA = A-weighted decibels, Leq = equivalent noise level, N/A = Not Applicable
[1] Reference noise levels based on 50 percent of occupants speaking in a raised voice.
[2] Composite operational noise levels at 428 South Hewitt Street from Draft EIR Section IV.I, Table IV.I-17. These noise levels include ambient noise and Project-related noise. Daytime and nighttime operational noise levels are the same.
[3] Threshold from Draft EIR Section IV.I, Table IV.I-17. Daytime and nighttime operational noise levels are the same.

Regarding heating, ventilation, and air conditioning (HVAC), the Commenter states that the Draft EIR noise analysis only evaluated one HVAC unit. The Commenter also states that the Project is likely to include a water tower or air-cooled condenser; however, the Project would not include such equipment. Further, the Draft EIR never states that there would only be one HVAC unit. The reference level of 54 dBA used in the Draft EIR (page IV.I-46) is for external mechanical systems, accounting for all the equipment as a whole, not just one HVAC unit. The Commenter also quotes sound *power* levels from equipment, but these are not directly comparable to the sound *pressure* levels that measure noise as perceived by humans, because sound power only measures the power of the source and not the resulting sound waves, which spread out spatially as they propagate, resulting in distance attenuation at the receiver. For example, the Draft EIR's reference noise level of

54 dBA at 50 ft would be equivalent to a sound power level of approximately 85.7 dBA, which is within the range provided by the Commenter's expert. The operational noise analysis is complete, all impacts are accounted for, and there is no basis for revising and recirculating the Draft EIR.

Comment No. 4-12

c) The DEIR Fails to Require All Feasible Mitigation Before Concluding That Construction Noise Will Be Significant And Unavoidable

The DEIR concludes that, even with the proposed mitigation of NOI-MM-1, construction noise impacts will remain significant and unavoidable.[72] There are two separate problems with the DEIR's construction noise mitigation. First, the proposed mitigation is ineffective. Second, additional mitigation is required to reduce construction noise to the greatest extent feasible.

First, the proposed mitigation measure requires building sound walls on-site, but then suggests sound barriers built ***at the sensitive receptors*** who will be affected by the noise without discussing whether these locations are feasible.[73] While the sound walls on the sensitive receptor structures are likely to help reduce noise at those locations, the City has not indicated whether the property owners at sensitive receptor locations would be open to building barriers at their sites. The City's reliance on 3rd parties' potential agreement to a mitigation measure is not enforceable. The City should require the Applicant to approach the receptors and gauge their willingness to agree to the mitigation before including it in the MMRP. Failure to do so creates an unenforceable mitigation measure since there is no certainty that the Applicant will be able to install noise barriers at off-site receptor locations without the agreement of the property owners and residents at those locations.

Footnotes:

[72] DEIR, p. IV.I-52.

[73] DEIR, p. IV.I-52

Response to Comment No. 4-12

The Commenter asserts that the proposed mitigation for reducing construction period noise impacts is ineffective, that additional mitigation is required to reduce construction noise to the greatest extent feasible, and that the City can't rely on third party agreement to implement a mitigation measure. The Commenter does not indicate what additional feasible mitigation measures are available to further reduce the construction period noise impacts.

Section IV.I, Noise, of the Draft EIR (pages IV.I-51, IV.I-61, and IV.I-62) evaluates potential feasible mitigation measures to avoid or lessen the Project's significant and unavoidable noise and vibration impacts that would occur during the construction period. Some of the mitigation measures, though physically feasible, cannot be relied upon due to the fact that they require commitments by off-site property owners. In other cases, despite the implementation of mitigation measures, impacts would remain significant and unavoidable (refer to Draft EIR pages IV.I-51 through IV.I-54, IV.I-62 through IV.I-68, and pages IV.I-77 and IV.I-78). Further, even though the measures are not able to mitigate impacts to below significance, the Project would implement six project design features (Draft EIR pages IV.I-31 and IV.I-32) and four mitigation measures (Draft EIR pages IV.I-51 through IV.I-54, IV.I-62 through IV.I-68, and pages IV.I-77 and IV.I-78) in order to lessen the Project's noise (and vibration) impacts as much as possible.

Regarding the off-site sound barrier at 428 South Hewitt Street proposed with NOI-MM-1, the Draft EIR stated that the property owners may not agree to enforce the mitigation measure as stated; therefore, the Draft EIR conservatively determined a significant and unavoidable impact at the receptor location. Mitigation Measure NOI-MM-1 also includes a temporary construction noise barrier at the eastern and southeastern corner of the Project Site to reduce construction noise levels. While the Commenter states that NOI-MM-1 *relies* on the third party's (property owner's) potential agreement, the mitigation measure actually states that implementation of the off-site barrier is *subject* to their agreement. Therefore, the Commenter's claim of reliance on an unenforceable mitigation measure is erroneous. As acknowledged in the Draft EIR, even in the case that both the on-site and off-site sound barriers are erected, the noise impact would remain significant and unavoidable. Table IV.I-18 on page IV.I-53 of the Draft EIR documents the reductions in noise levels that would occur with implementation of the on-site sound barrier, off-site sound barrier, or both barriers.

Comment No. 4-13

Second, the DEIR fails to propose all feasible mitigation measures. Ms. Jue notes that the Project could do all of the following to reduce noise impacts and that each of these should be feasible for the given Project:[74]

1. Require a noise control plan that will require specifics on where stationary equipment and portable shields will be located.

2. The use of specific "quiet" equipment, such as generators, electric tools, excavators, etc. that achieve substantially lower levels than those used in the noise analysis and that this plan will require those products.

3. Require time of day restrictions and other feasible measures that would reduce the level and duration of noise impacts at affected receptors.

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, including but not limited to those recommended by Ms. Jue.[75] The DEIR's failure to implement all feasible mitigation measures to reduce construction noise impacts before declaring them significant and unavoidable is a separate CEQA violation.

Footnotes:

[74] Jue Comments, pp. 3-4.

[75] *Covington,* 43 Cal.App.5th at 883.

Response to Comment No. 4-13

The Commenter restates the assertion that additional mitigation is required to reduce construction noise impacts of the Project to the greatest extent feasible, and states that the Project should employ a noise control plan that will require specifics on where stationary equipment and portable shields will be located; use specific "quiet" equipment, such as generators, electric tools, excavators, etc. that achieve lower noise levels; and require time of day restrictions and other feasible measures that would reduce the level and duration of noise impacts at affected receptors.

The project design features included in Chapter IV.I, Noise, the Draft EIR (page IV.I-32) already incorporate the Commenter's suggestions. Regarding the first listed item, NOI-PDF-1 includes mufflers and dampening systems for diesel-powered construction equipment; NOI-PDF-2 includes noise shielding devices for fixed equipment; and NOI-PDF-3 specifies that that quieter rubber-tired equipment will be used instead of metal-tracked equipment.

In addition, the use of stationary equipment would be limited to equipment such as generators and air compressors, which would be shielded by the on-site barrier included in Mitigation Measure NOI-MM-1. The Commenter states that specific "quiet equipment" should be used. However, heavy equipment with large engines is inherently loud, and the Commenter does not indicate what "quiet equipment" is available, nor does the Commenter provide quantified noise reductions from so-called "quiet equipment" or otherwise demonstrate that they would be beneficial or that such equipment would be feasible to obtain.

With regard to the Commenter's suggestion that the Project should require time of day restrictions to reduce noise levels, Chapter IV.I, Noise, of the Draft EIR (page IV.I-33) stated that the Project shall comply with the hours and days in which LAMC Section 41.40 allows construction. LAMC Section 41.40 restricts the hours of construction to 7:00 A.M.

to 9:00 P.M. on Monday through Friday and 8:00 A.M. to 6:00 P.M. on Saturdays and National Holidays. In addition, as described in Chapter VI, Alternatives, of the Draft EIR (pages VI-9 and VI-10), restricting the time of day of construction would not affect the noise levels from construction and would increase the duration of construction activity rather than decrease it, as a reduction in work hours per day would require more days to complete the work. The Draft EIR includes all feasible mitigation measures, and no further mitigation is required.

Comment No. 4-14

V. THE DEIR FAILS TO ADEQUATELY ANALYZE THE PROJECT'S CUMULATIVE IMPACTS

CEQA requires the lead agency to include a reasonable and good faith analysis of cumulative impacts in an EIR. The analysis must be sufficiently detailed to correspond to the severity of the impact and the likelihood that it will occur. While an EIR may provide less detail in its cumulative impact analysis than for project-specific effects, the discussion must provide sufficient specificity to enable the agency to make findings that a project will, or will not, have a significant cumulative impact where the possible effects of the project are "individually limited but cumulatively considerable."

Response to Comment No. 4-14

The Commenter asserts that an EIR must include a cumulative impact analysis, and that it must be sufficiently detailed to correspond to the severity of the impact and the likelihood that it will occur. This comment does not raise any specific issues with respect to the Draft EIR or any of the impact analyses in the Draft EIR. The comment is noted for the record and will be forwarded to the decision-makers for their review and consideration along with all of the submitted comments.

Comment No. 4-15

A. The DEIR Fails to Evaluate Cumulative Air Quality Impacts

CEQA requires analysis of cumulative impacts, defined as "two or more individual effects which, when considered together, are considerable." Such impacts may "result from individually minor but collectively significant projects taking place over a period of time." Cumulatively considerable 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." 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.” “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.”

Response to Comment No. 4-15

The Commenter restates language from CEQA Guidelines Section 15130(b)(1) related to the approach to cumulative impact analyses. This comment does not raise any specific issues with respect to the Draft EIR or any of the impact analyses in the Draft EIR. The comment is noted for the record and will be forwarded to the decision-makers for their review and consideration along with all of the submitted comments.

Comment No. 4-16

The DEIR neglects to consider the amount of emissions associated with the cumulative projects in the vicinity of the Project. As a result, the DEIR fails to evaluate the severity of the Project’s cumulative impacts on air quality, GHGs, or noise. These omissions are particularly glaring given that the DEIR itself identified 74 other related cumulative projects near the Project site.

The law is clear that individually insignificant incremental contributions to air pollution are part of a cumulatively considerable impact requiring analysis in an EIR. In *Kings County Farm Bureau v. City of Hanford*, the City of Hanford prepared an EIR for a 26.4-megawatt coal-fired cogeneration plant. Notwithstanding the fact that the EIR found that the project region was out of attainment for PM10 and ozone, the City failed to incorporate mitigations for the project’s cumulative air quality impacts from project emissions because it concluded that the Project would contribute “less than one percent of area emissions for all criteria pollutants.” The Court held that it was an error for the City to not take into account the nonattainment with air quality standards. Regarding ozone, the Court reasoned that “[t]he relevant question to be addressed in the EIR is not the relative amount of [ozone] precursors emitted by the project when compared with preexisting 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.” In addition, the Court generally held that the EIR improperly sidestepped the cumulative impacts analysis when it “focused on the individual project’s relative effects and omitted facts relevant to an analysis of the collective effect this and other sources will have upon air quality.”

Here, the DEIR acknowledges that the SCAQMD is in nonattainment for state air quality standards for O3, PM2.5, and PM10. Given these background conditions, even

marginal contributions of O3, PM2.5, and PM10 from the Project and other projects in the vicinity can have a significant cumulative effect of exacerbating the already serious nonattainment of air quality standards. Under *Kings County*, the Project's small and incremental contribution to air pollution in the SCAB must be understood in the context of poor air quality that currently exists. Yet the DEIR does not even mention O3, PM2.5, and PM10 in its discussion of Cumulative Impacts. The DEIR must be revised to consider the circumstances of the O3, PM2.5, and PM10 problem in the region in conjunction with the cumulatively considerable air quality effects from the Project, which is a new source of O3, PM2.5, and PM10 emissions in the SCAB.

Response to Comment No. 4-16

The Commenter claims that the Draft EIR fails to evaluate the severity of the Project's cumulative impacts on air quality, GHGs, or noise. The Commenter also cites case law (*Kings County Farm Bureau v. City of Hanford)* in asserting that individually insignificant incremental contributions to air pollution are part of a cumulatively considerable impact requiring analysis in an EIR.

As stated in Chapter IV.A, Air Quality, of the Draft EIR (page IV.A-35, IV.A-41, and IV.A-42), Project construction and operations would not exceed SCAQMD's regional or local of significance for thresholds for PM_{10}, $PM_{2.5}$, or ROG (reactive organic gases),[7] a precursor for the formation of O_3. Further, Chapter IV.A, Air Quality, of the Draft EIR (page IV.A-28), the SCAQMD is clear that the AQMD uses the same significance thresholds for project-specific and cumulative impacts for all environmental topics analyzed in an EIR (one exception is the Hazard Index for TAC emissions). Therefore, projects that do not exceed the project-specific thresholds are not considered to be cumulatively significant, and the SCAQMD recommends that other public agencies perform cumulative analyses relative to air quality in the same manner as the AQMD. As such, the Project-specific analysis of air quality impacts is the same as the cumulative analysis of air quality impacts, which would not exceed the applicable thresholds, and thus cumulative air quality impacts are less than significant, as described in the Draft EIR. With regard to the Commenter's reference to the *Kings County Farm Bureau v. City of Hanford* case, the reference is not relevant to the Project, as the project in question in that case was located within the Kings County Air Pollution Control District (KCAPCD) and not the SCAQMD; therefore, it was not subject to the same SCAQMD-specific thresholds or guidelines as the Project.

As stated in Chapter IV.E, Greenhouse Gas Emissions, of the Draft EIR (page IV.E-56), the contribution of GHG emissions to global climate change is inherently a cumulative issue. Therefore, a project's potential GHG impacts are exclusively cumulative impacts, as there are no non-cumulative GHG emission impacts from a climate change

[7] For purposes of this analysis, VOC and ROG are used interchangeably since ROG represents approximately 99.9 percent of VOC emissions.

perspective.[8] The Draft EIR evaluation concludes that the City has determined that the Project's contribution to cumulative GHG emissions and climate change would not be cumulatively considerable and cumulative impacts would be less than significant, based on the consistency of the Project with applicable plans and regulations that have been adopted to reduce GHG emissions, including plans at the State, regional, and local levels.

The Commenter also contends that the analysis of cumulative noise impacts is deficient for a failure to consider the cumulative noise generated from the Project combined with 74 of the Related Projects. The analysis of the Project's cumulative noise and vibration impacts is provided in Chapter IV.I, Noise, of the Draft EIR, from pages IV.I-63 through IV.I-78. As described therein, while 137 Related Projects were identified as planned or under construction in the Project vicinity, cumulative noise impacts associated with construction activities and operation of the Project, in combination with the most proximate of the Related Projects to the Project Site and sensitive receptors, were evaluated, as only projects and ambient growth in the nearby area could combine with the Project's on-site development to result in cumulative noise impacts.

The Related Projects located in closest proximity to the Project Site are listed in Table IV.I-24 of the Draft EIR on pages IV.I-64 and IV.I-65. Four existing sensitive uses that could potentially be impacted by Related Project construction, in addition to Project construction, are identified within 300 feet of the Project Site, and are shown in Figure IV.I-5 of the Draft EIR on page IV.I-66. The Project would generate significant and unavoidable cumulative off-road construction noise impacts to 428 South Hewitt Street in combination with Related Projects 37 and 94, and to 442 Colyton Street and 449 South Hewitt Street in combination with Related Projects 85, 137, and 94, even after the implementation of NOI-MM-1. Cumulative noise from on-road vehicular construction trips would be less than significant without mitigation. The Project, in combination with the Related Projects and anticipated growth in the area, would also generate significant cumulative composite (combined off-road and on-road) construction noise impacts to 428 South Hewitt Street, 442 Colyton Street, and 449 South Hewitt Street.

Comment No. 4-17

VI. THE CITY LACKS SUBSTANTIAL EVIDENCE TO APPROVE THE PROJECT'S LOCAL LAND USE PERMITS AND THE VESTING TENTATIVE MAP

The Project requires a number of discretionary entitlements and related approvals under local City plans and codes, including a General Plan Amendment to modify the Central City North Community Plan to change the land use designation from Heavy Industrial to Regional Center Commercial pursuant to Section 555 of the City Charter and LAMC section 11.5.6; a Vesting Zone Change from M3 Zone to C2 Zone pursuant to

[8] CAPCOA. 2008. CEQA and Climate Change, Page 23. January.

LAMC section 12.32 F and Q; a Height District change from the existing Height District 1 to Height District 2, pursuant to LAMC § 12.32F; a Main Conditional Use Permit to permit the sale of full line alcoholic beverages within six restaurants and bars, pursuant to LAMC § 12.21 W.1; Site Plan Review for a project that results in an increase of 50,000 gross square feet or more of nonresidential uses, pursuant to LAMC § 16.05; and a Vesting Tentative Tract Map pursuant to LAMC § 17.03 and 17.15.[76]

Each permit requires the City to make findings regarding land use consistencies and/or environmental factors. As discussed herein, there is substantial evidence supporting a fair argument that the Project has potentially significant, unmitigated impacts on air quality, GHG, hazards, and noise that the DEIR fails to accurately disclose and fails to mitigate to less than significant levels. These unmitigated impacts create inconsistencies with several of the permits required for the Project.

Where a local or regional policy of general applicability, such as an ordinance, is adopted 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.[77] A project's inconsistencies with local plans and policies also constitute significant impacts under CEQA.[78] The City must recirculate the DEIR to adequately disclose and mitigate the significant land use impacts discussed below.

Footnotes:

[76] MND, p. 50.

[77] *See, Pocket Protectors v. Sacramento* (2005) 124 Cal.App.4th 903.

[78] *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. 4-17

The Commenter reiterates some of the discretionary approvals that are requested by the Project and asserts that each permit requires the City to make findings regarding land use consistencies and/or environmental factors. However, as the environmental review process for the Project has not yet been concluded, the preparation of such permit findings is not yet timely. Entitlement requests are the purview of the City as part of the land use entitlement process, not as part of the CEQA process.

In accordance with Section 15091 of the CEQA Guidelines, findings (for the Project's significant effects) are made following certification of the Final EIR. Per Section 15092 and 15093 of the CEQA Guidelines, after considering the Final EIR and in conjunction with making findings, the Lead Agency will then decide whether or how to approve or

carry out the Project, and will also determine that any remaining significant effects on the environment found to be unavoidable under Section 15091 are acceptable due to overriding concerns. As described in Section 15093 of the CEQA Guidelines, the decision-making agency is required to balance, as applicable, the economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project against its unavoidable environmental risks when determining whether to approve the project (i.e., prepares a statement of overriding considerations).

The Commenter incorrectly states that there is substantial evidence supporting a fair argument that the Project has potentially significant, unmitigated impacts on air quality, GHG, hazards, and noise that the Draft EIR fails to accurately disclose and fails to mitigate to less than significant levels. In fact, the impacts of the Project are disclosed throughout Chapter IV, Environmental Impact Analysis, of the Draft EIR, and mitigation measures are provided, where applicable. Further, Revisions, Clarifications and Corrections, including additional analysis are provided in Section III of this Final EIR; however, no new significant impacts and no new mitigation measures have been identified that warrant recirculation of the Draft EIR.

The Commenter also asserts that the City must recirculate the Draft EIR in order to adequately disclose and mitigate the significant land use impacts of the Project. Section IV.H, Land Use and Planning (pages IVH-16 through IV.H-33), and Appendix I, Land Use Policy Consistency Tables, of the Draft EIR provide consistency analyses of the Project with the applicable land use plans, policies, and regulations adopted for the purposes of avoiding or mitigating an environmental effect. As evaluated therein, the Project would not conflict with applicable land use plans, policies, and regulations adopted for the purposes of avoiding or mitigating an environmental effect, and impacts would be less than significant. Further, contrary to the Commenter's statement, a conflict between a project and an applicable plan is not necessarily a significant impact under CEQA unless the inconsistency will result in an adverse physical change to the environment that is a "significant environmental effect" as defined by CEQA Guidelines Section 15382. As provided in CEQA Guidelines Section 15126.2 "an EIR shall identify and focus on the significant effects of the proposed project on the environment." An excerpt from the legal practice guide, Continuing Education of the Bar, Practice Under the California Environmental Quality Act, Section 12.34 illustrates the point:

An inconsistency between a proposed project an applicable plan is a legal determination not a physical impact on the environment. …if a project affects a river corridor, one standard for determining whether the impact is significant might be whether the project violates plan policies protecting the corridor; the environmental impact, however, is the physical impact on the river corridor.

Under State Planning and Zoning law (Government Code Section 65000, et seq.) strict conformity with all aspects of a plan is not required. Generally, plans reflect a range of competing interests and agencies are given great deference to determine consistency with their own plans. A proposed project should be considered consistent with a general plan or elements of a general plan if it furthers one or more policies and does not obstruct other policies.[9] Generally, given that land use plans reflect a range of competing interests, a project should be compatible with a plan's overall goals and objectives but need not be in perfect conformity with every plan policy. Thus, the assertion that the Draft EIR must be recirculated to evaluate the Project's land use impacts is unfounded.

It is also noted here that Footnote 76 in Comment Letter No. 4-18 references a MND, which was not prepared for the Project. The Draft EIR that was prepared for the Project lists the required permits and approvals for the Project on pages II-34 and II-35 of the Draft EIR.

Comment No. 4-18

A. General Plan Amendment, Vesting Zone Change, and Height District Change

The Project Applicant is seeking a General Plan Amendment to change the land use designation from Heavy Industrial to Regional Center Commercial.[79] Additionally, the Applicant is seeking a Vesting Zone Change from M3 Zone to C2 Zone pursuant to LAMC section 12.32 F and Q. Lastly Footnote 1 of the Central City North Community Plan limits the Project Site to Height District No. 1. Footnote 6 states that development exceeding an FAR of 1.5:1 up to 3:1 on properties designated as Height District No.1 may be permitted through a Zone Change Height District Change procedure, including environmental clearance. The requested Zone Change Height District Change would modify both footnotes to include the proposed boundaries and development standards of the Project.

With the approval of the Height District Change, the allowable FAR would increase from 1.5:1 to 6:1 resulting in a massive increase in potential FAR. The Project would create approximately 343,925 new square feet of developed floor area using all allowed space resulting in a total FAR of 6:1.

The General Plan Amendment would result in a permanent change that impacts the entire Community Plan Area and is not limited to the Project site. The General Plan Amendment would result in a higher FAR allowed in the Central City North Community Plan with a Height District Change than is currently allowed under Footnotes 1 and 6. Higher floor area ratios result in denser construction. Additionally, the change from Heavy Industrial to Regional Commercial Center reduces areas where traditional industrial use

[9] Office of Planning and Research (OPR). 2017. State of California General Plan Guidelines.

can operate. The DEIR lacks analysis of the impacts that the General Plan Amendment would have from increased development density and associated environmental and public health impacts that would result in the Central City North Community Plan Area authorizing a higher FAR and change from Heavy Industrial to Regional Commercial Center.

The DEIR also lacks substantial evidence to demonstrate that the Project satisfies the mandatory requirements for approving a General Plan Amendment. Under Section 556 of the City Charter, in order to amend the General Plan, the "City Planning Commission and the Council shall make findings showing that the action is in substantial conformance with the purposes, intent, and provisions of the General Plan."[80] "Once a general plan is in place, it is the province of elected city officials to examine the specifics of a proposed project to determine whether it would be 'in harmony' with the policies stated in the plan."[81] It is the role of the City to determine the Project's consistency with the General Plan, not to make the General Plan consistent with the Project.

Here, the proposed Project violates the existing General Plan, thus necessitating a General Plan Amendment to allow the Project to proceed. The DEIR lacks a detailed analysis of the impacts associated with the increased density that would be authorized by the Project's increased FAR, and lacks an analysis of the impacts associated with the incremental increases in density that could subsequently be authorized under subsequent Height District Changes in the Central City North Community Plan once Footnotes 1 and 6 are amended to authorize FAR of up to 4.5:1. Impacts associated with an increased residential and commercial density that should have been analyzed in the Project's CEQA document include increased air quality impacts, noise, transportation impacts, and impacts on public services, to name a few. A recirculated DEIR is required to analyze and mitigate the full extent of the Project's impacts from the proposed General Plan Amendment.

Finally, the DEIR fails to include evidence that would support the approval of a General Plan amendment pursuant to LAMC Section 11.5.6(B). Pursuant to this section, the LAMC would not restrict the adoption of a General Plan Amendment which provides for an exclusively local workforce at the prevailing wage and provides affordable housing.82 Since the DEIR lacks evidence demonstrating that these factors will be met, the General Plan amendment is not clearly eligible for approval under the LAMC.

The City failed to adequately analyze and mitigate the impacts associated with nonconformance with the existing General Plan and the City failed to analyze potentially significant impacts associated with this General Plan Amendment, in violation of CEQA. The City must prepare an EIR to adequately analyze and mitigate all impacts associated with the General Plan Amendment and Height District Change.

Footnotes:

[79] DEIR, p. II-34.

[80] City of Los Angeles Charter § 556.

[81] *California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 638.

[82] LAMC § 11.5.6(B)(2), (3).

Response to Comment No. 4-18

The Commenter summarizes some of the requested discretionary actions that are listed in Chapter II, Project Description, of the Draft EIR (pages II-34 and II-35), and notes that the approval of these requests (namely the General Plan Amendment, Vesting Zone Change, and Height District Change) would increase the floor area ratio (FAR) and land use density. Section IV.H, Land Use and Planning, of the Draft EIR, already discloses this fact by stating that the Project, similar to the existing pattern of development in the Project area, "would increase the height and density of land uses in the Community Plan area [the Central City North Community Plan area] and throughout DTLA [Downtown Los Angeles]" (page IV.H-25). Appendix I, Land Use Policy Consistency Tables (Table IV.H-2, Project Conflicts with Applicable Framework Element Objectives and Policies) further notes that "The Project would increase the height and density of the uses on the Project Site, which is consistent with more recently constructed and planned infill developments in the Arts District that include increased height and density compared to the land uses they replaced" (page Appendix I-10).

The Commenter asserts that the Project's requested General Plan Amendment from Heavy Industrial to Regional Center Commercial would reduce areas where traditional industrial uses can operate. However, the Commenter is mistaken; as the General Plan Amendment would apply only to the Project Site, and, as noted in Section IV.H, Land Use and Planning, of the Draft EIR, the Project Site is not utilized currently for industrial related purposes; it currently supports the building that was formerly occupied by the Architecture and Design (A+D) Museum, surface parking, and a law office building (refer to Draft EIR pages IV.H-13 and IV.H-18). Therefore, the Project would not replace industrial uses with non-industrial uses. In addition, the area immediately surrounding the Project Site is no longer comprised of uses that are primarily industrial. Rather, the Arts District is comprised of a mix of industrial and manufacturing, commercial, residential, and live/work uses.

The Commenter also asserts that the Project lacks substantial evidence to demonstrate that the Project satisfies the mandatory requirements for approving a General Plan

Amendment under Section 556 of the City Charter and fails to include evidence that would support the approval of a General Plan Amendment pursuant to LAMC Section 11.5.6(B). In addition to the fact that this assertion does not raise a CEQA issue regarding the adequacy of the Draft EIR, as noted in Response to Comment No. 4-17, the environmental review process for the Project has not yet been concluded. The preparation of the Project's findings to show that the Project's discretionary actions would be in substantial conformance with the General Plan is not yet timely. Entitlement requests are the purview of the City as part of the land use entitlement process, not as part of the CEQA process. There is no language in the City Charter, Section 556, or in the LAMC, Section 11.5.6, that precludes the City from processing, considering, and adopting a General Plan Amendment for individual properties such as for the Project Site.

The Commenter also claims that, pursuant to LAMC Section 11.5.6(B), the City would not restrict the adoption of a General Plan Amendment which provides for an exclusively local workforce at the prevailing wage and provides affordable housing. This is a reference to the City's adoption of Measure JJJ (Affordable Housing and Labor Standards Related to City Planning), which was passed on November 7, 2016 and provides that development projects with 10 or more residential units may only receive general plan amendments or certain zoning changes if 1) the project includes a component of affordable housing, or the developer pays in-lieu fees into the City's Affordable Housing Trust Fund; and 2) the project complies with specific Labor Standards including, but not limited to, paying prevailing wages. However, as the Project does not include a residential land use, and the Project application was filed prior to adoption of Measure JJJ, these requirements to not apply to the Project.

Lastly, the Commenter asserts that the City failed to adequately analyze and mitigate the impacts associated with Project nonconformance with the existing General Plan, and that impacts associated with an increased density should have been analyzed in the Project's CEQA document include increased air quality, noise, transportation, and public services impacts. However, the detailed land use and planning analysis provided in Section IV.H, Land Use and Planning, of the Draft EIR and associated Appendix I show that the Project, including the requested discretionary actions of a General Plan Amendment, Vesting Zone Change, and Height District Change, would not present conflicts with the applicable land use plans and policies from the SCAG 2020-2045 RTP/SCS, the City of Los Angeles General Plan Framework Element (Framework Element) and Community Plan, A Plan for a Healthy Los Angeles, LAMC, Citywide Design Guidelines, and the Los Angeles River Revitalization Master Plan (LARRMP) that were adopted for the purpose of avoiding or mitigating a significant environmental effect. With regard to the combined Project and Related Project cumulative land use and planning impacts related to requested entitlements (such as General Plan Amendments), as discussed on pages IV.H-31 through IV.H-33 of the Draft EIR, Related Projects, like the Project, would be required to

comply with the relevant land use policies and regulations, through review by City regulatory agencies, and would be subject to CEQA review. The Related Projects represent urban infill development, and although they would increase density, they would be required to seek individual entitlements to change existing zoning and land use designations and would be evaluated for consistency with existing and proposed zoning and land use designations prior to approval and development. The Project would not substantially conflict with the applicable land use plans and zoning standards, and the Project would not incrementally contribute to cumulative inconsistencies with respect to applicable plans and policies adopted for the purpose of avoiding or mitigating an environmental effect. Therefore, cumulative impacts related to land use and planning conflicts would be less than significant.

Further, the environmental impact analyses of Chapter IV, Environmental Impact Analysis, of the Draft EIR account for the Project's physical and environmental impacts that would result from the requested height, land use, and density to air quality, noise, transportation, and public services in Sections IV.A, IV.I, IV.K.1 and IV.K.2, and IV.L, respectively. Mitigation measures are only required for the Project's significant impacts related to noise (and vibration) during the construction period, and these are also provided in Section IV.I, Noise,, Noise, of the Draft EIR. This Final EIR also provides additional analysis related to air quality and health risk; however, no new significant impacts and no new mitigation measures have been identified that warrant recirculation of the Draft EIR. Therefore, all impacts are accounted for, and there is no basis for revising and recirculating the Draft EIR.

Comment No. 4-19

B. Main Conditional Use Permit 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 alcoholic beverages for on-site consumption for up to 6 establishments.[83] 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."[84]

The potential impacts of noise on neighboring residences from establishments serving alcohol can be significant. Noise from boisterous patrons and music being played on the Project Site will likely have an impact on the residences at 428 South Hewitt Street and other sensitive receptors and could impact residences' interiors since windows have poor low-frequency attenuation. The resulting noise from these activities may require mitigation to reduce adverse impacts on neighboring residents.

The DEIR fails to disclose whether the Project anticipates the use of sound systems, alcohol on balconies, and other sources of significant noise impacts, and fails

to analyze whether the establishments serving alcohol will adversely affect the welfare of the pertinent community. The DEIR thus does not provide substantial evidence to support the required findings that must be made for approval of a Main Conditional Use Permit for the sale and dispensing of alcohol to be consumed at the site. The City must recirculate the DEIR and adequately analyze and mitigate impacts associated with alcohol sales on the Project site.

Footnotes:

[83] DEIR, II-34.

[84] LAMC Section 12.24.W.1(a)(1).

Response to Comment No. 4-19

The Commenter notes that the Project is requesting approval pursuant to LAMC Section 12.24-W,1 for the sale and dispensing of alcoholic beverages for on-site consumption for up to six establishments, based partially on a finding that the proposed use will not adversely affect the welfare of the pertinent community. As such, the Commenter asserts that noise from "boisterous patrons and music" being played on the Project Site will likely impact the residence located at 428 South Hewitt Street and other sensitive receptors, and that the Draft EIR fails to disclose whether the Project anticipates the use of sound systems, alcohol on balconies, and other sources of significant noise impacts.

Contrary to the Commenter's assertion that the Draft EIR does not address the sources of significant noise impacts, Chapter IV.I, Noise, of the Draft EIR, pages IV.I-38 through IV.I-50 and IV.I-70 through IV.I-77 address roadway traffic, parking structure, mechanical equipment (heating, ventilation, and air conditioning; and parking garage ventilation equipment), and loading dock/trash collection noise during Project operations, and these impacts were determined to be less than significant.

With regard to noise generated by patrons of the proposed restaurant spaces, please refer to Response to Comment No. 4-11. As detailed therein, operational period noise impacts related to the Project's restaurant spaces would be less than significant, even if combined with the Project's other operational period noise sources. No outdoor sound systems are proposed with the Project. With regard to balconies, these spaces are associated with the Office Building's office spaces and would therefore not be associated with the Project's food and beverage spaces. No significant noise impacts would occur during operations, and no mitigation measures would be required. No revisions to the Draft EIR are necessary and the conditions requiring recirculation of the Draft EIR have not been met.

Comment No. 4-20

C. The City Cannot Make the Required Findings for a Vesting Tentative Map Due to the Substantial Environmental Damage Caused By the Project

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

Government Code, section 66474, provides:

A legislative body of a city or county shall deny approval of a tentative map, or a parcel map for which a tentative map was not required, if it makes any of the following findings:

(a) That the proposed map is not consistent with applicable general and specific plans as specified in Section 65451.

(b) That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.

(c) That the site is not physically suitable for the type of development.

(d) That the site is not physically suitable for the proposed density of development.

(e) That the design of the subdivision or the proposed improvements are likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat.

(f) That the design of the subdivision or type of improvements is likely to cause serious public health problems.

(g) That the design of the subdivision or the type of improvements will conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision. In this connection, the governing body may approve a map if it finds that alternate easements, for access or for use, will be provided, and that these will be substantially equivalent to ones previously acquired by the public. This subsection shall apply only to easements of record or to easements established by judgment of a court of competent jurisdiction and no authority is hereby granted to a legislative body to determine that the public at large has acquired easements for access through or use of property within the proposed subdivision.

Furthermore, where an EIR has been prepared and demonstrates that there will be significant and unavoidable environmental impacts, a Vesting Tentative Map ("VTM")

can be certified only if the decision-makers issue a statement of overriding considerations, per Government Code, section 66474.01:

> Notwithstanding subdivision (e) of Section 66474, a local government may approve a tentative map, or a parcel map for which a tentative map was not required, if an environmental impact report was prepared with respect to the project and a finding was made pursuant to paragraph (3) of subdivision (a) of Section 21081 of the Public Resources Code that specific economic, social, or other considerations make infeasible the mitigation measures or project alternatives identified in the environmental impact report.

Government Code, section 66474, subsections (e) and (f) implicate CEQA, and prohibit decision-makers from approving a tract map where the project is "likely to cause substantial environmental damage" or "cause serious public health problems." And the City is unable to make a statement of overriding considerations for the Project under CEQA because the City has not mitigated the Project's construction noise impacts to the greatest extent feasible, and has not demonstrated that the Project's benefits outweigh its costs, including providing employment opportunities for highly trained workers.

Here, approval of the project is likely to cause substantial impacts on air quality, public health, and noise. The City's decision-makers therefore cannot make the necessary SMA findings based on the record before it. The City must correct the errors in the DEIR, adopt adequate mitigation measures to reduce impacts to less than significant levels, and must provide substantial evidence supporting the Project's proposed statement of overriding considerations to address the Project's outstanding, unmitigated significant impacts before the City can approve the VTTM.

Response to Comment No. 4-20

The Commenter claims that City cannot approve the Vesting Tentative Tract Map (VTTM) because the City is unable to make a statement of overriding considerations, because approval of the Project is likely to cause substantial impacts on air quality, public health, and noise; the Project's construction noise impacts have not been mitigated to the greatest extent feasible; and the City has not demonstrated that the Project's benefits outweigh its costs. The City's ability to approve the VTTM is not a comment on the adequacy of the Draft EIR and, therefore, no further response is required. Nonetheless, as detailed in Response to Comment No. 4-17, the environmental review process for the Project has not yet been concluded. Entitlement requests are the purview of the City as part of the land use entitlement process, not as part of the CEQA process. Prior to making a decision on whether to approve the Project, the City will consider certification of the Final EIR. If the decision makers decide that the Project should be approved, or approved as modified, prior to such approval, the City is required to make one or more written

findings for each of the identified significant effects. After considering the Final EIR and in conjunction with making the findings, the City will decide whether to approve the Project and will be required to prepare a statement of overriding considerations justifying approval of the Project notwithstanding its temporary construction noise and vibration significant and unavoidable impacts, which will be included in the record of Project approval. As described in Response to Comment No. 4-18, the Project's impacts related to air quality, noise, transportation, and public services are included in Sections IV.A, IV.I, IV.K.1 and IV.K.2, and IV.L, respectively, of the Draft EIR. Mitigation measures for significant and unavoidable impacts are only required for Project impacts related to noise (and vibration) during the construction period, and these are also provided in Section IV.I of the Draft EIR. This Final EIR also provides additional analysis related to air quality and health risk; however, no new significant impacts and no new mitigation measures have been identified that warrant recirculation of the Draft EIR. Therefore, the Draft EIR provides the City with substantial evidence on the environmental impacts of the Project, which are necessary to making the findings required to approve the VTTM for the Project.

Comment No. 4-21

VII. CONCLUSION

For the reasons discussed above, the DEIR for the Project remains wholly inadequate under CEQA. It must be thoroughly revised to provide legally adequate analysis of, and mitigation for, all of the Project's potentially significant impacts. These revisions will necessarily require that the DEIR be recirculated for public review. Until the DEIR has been revised and recirculated, as described herein, the City may not lawfully approve the Project.

Thank you for your attention to these comments. Please include them in the record of proceedings for the Project.

Response to Comment No. 4-21

The Commenter asserts again that the Draft EIR is inadequate and must be recirculated. This concluding comment does not raise any specific issues with respect to the content or adequacy of the Draft EIR. For all the reasons set forth in the responses to comments above: the Draft EIR adequately analyzes the potential impacts of Project construction and operation; either no substantial evidence is provided or the evidence provided in the comment letter does not demonstrate a deficiency in the Draft EIR analysis; supplemental analyses conducted to respond to some of the comments in this comment letter do not show that the Project would have any additional environmental impacts that are significant and unavoidable and/or change the level of significance for any impacts identified in the Draft EIR; therefore, nothing in this comment letter or the responses thereto constitute new information pursuant to CEQA Guidelines Section 15088.5 that warrant recirculation

of the Draft EIR. The comment is noted for the record and will be forwarded to the decision-makers for their review and consideration along with all of the submitted comments.

COMMENT LETTER NO. 4A

James J.J. Clark, PhD
Clark & Associates
12405 Venice Blvd.
Suite 331
Los Angeles, CA 90066

Comment No. 4A-1

At the request of Adams Broadwell Joseph & Cardozo (ABJC), Clark and Associates (Clark) has reviewed materials related to the 2022 City of Los Angeles (the City) 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.

The 4th and Hewitt Project would involve the demolition of an existing office building, two storage/garage buildings, and surface parking lots, and the construction of an 18-story office building (Office Building). The Project would total approximately 343,925 square feet of gross floor area, comprised of an existing 7,800-square-foot building and the new approximately 336,125-square-foot Office Building, which would include approximately 8,149 square feet of ground floor restaurant space, 311,682 square feet of commercial office space, and 16,294 square feet of office exterior common areas. The Project would also include a landscaped outdoor courtyard on Colyton Street. The ground floor would include 112 bicycle parking spaces (40 short-term spaces and 72 long-term spaces), as well as amenities, such as showers and a bicycle repair area. Vehicle parking spaces would be provided within three subterranean levels and on the 2nd through 5th floors of the Office Building. Office space would comprise the 6th through 17th floors, and office and mechanical equipment would comprise the 18th floor and rooftop level. In addition to the ground floor courtyard and passageway, outdoor amenity spaces, including balconies, and/or decks, would be provided on the 6th through 16th floors for commercial tenants. The Office Building would have a maximum height of 292 feet to the top of the parapet. The Project's proposed floor area ratio would be approximately 6:1.

According to the DEIR,

> "The Project Site is located in the Arts District area of the City of Los Angeles (City), within the Central City North Community Plan (Community Plan) area, located in Downtown Los Angeles (DTLA) and bounded by the Los Angeles River to the east; the City of Vernon to the south; Alameda Street, Cesar Chavez Avenue, Sunset Boulevard, and Marview Avenue to the west; and Stadium Way, Lilac Terrace, and

North Broadway to the north. The Community Plan area is surrounded by the communities of Silver Lake-Echo Park Elysian Valley, Central City, Boyle Heights, and Northeast Los Angeles.[1] As defined by the Historic Core Neighborhood Council, the Arts District is generally bounded by 1st Street to the north, Alameda Street to the west, the Los Angeles River to the east, and 7th Place/Violet Street to the south.[2,3]

The Project Site is 1.31 acres in size and is generally bounded by Colyton Street to the west, East 4th Street to the north, South Hewitt Street to the east, and various industrial and commercial uses to the south. The Project Site is currently occupied by an existing 7,800-square-foot building formerly occupied by the A+D Museum at the southeast corner of Colyton Street and East 4th Street, which is currently vacant. This building would remain in place with the Project. A storage space for the 7,800- square-foot building (located southeast of the in a separate 1,000-square foot structure), a one-story office structure that fronts South Hewitt Street and related garage/storage space (6,030 square feet combined), and associated surface parking lots (approximately 39,751 square feet) are also located on the Project Site but would be demolished as part of the Project."

Figure 1: Project Site Location

The areas of controversy identified in the DEIR include:

1. Air quality;
2. Greenhouse gases (GHG) emissions; and
3. Hazards and hazardous materials [sic]

The DEIR summarizes the impacts of each of these concerns in Table I-1. For air quality analysis of the project, the impacts are assumed to be less than significant, even for exposure to toxic air contaminants.

Table I-1

Summary of Environmental Impacts

Environmental Issue[a]	Project Impact
Air Quality	
Air Quality Plan Consistency	Less than Significant
Regional Emissions	
Construction	Less than Significant
Operation	Less than Significant
Sensitive Receptors	

Environmental Issue[a]	Project Impact
Construction	
Localized Significance Thresholds	Less than Significant
Toxic Air Contaminants	Less than Significant
Operation	
Localized Significance Thresholds	Less than Significant
Micro-Scale Impacts (Carbon Monoxide Hot Spots)	Less than Significant
Toxic Air Contaminants	Less than Significant
Cumulative Air Quality Impacts	Less than Significant

For the greenhouse gas analysis of the project, the impacts are assumed to be less than significant, [sic]

Environmental Issue[a]	Project Impact
Paleontological Resources	Less than Significant
Cumulative Geology and Soils	
Geology and Soils	Less than Significant
Paleontological Resources	Less than Significant
Greenhouse Gas Emissions	
Project Consistency with Applicable Plans and Policies	Less than Significant
GHG Emissions Quantification	
Construction	Less than Significant
Operation	Less than Significant
Cumulative Greenhouse Gas Emissions Impacts	Less than Significant
Hazards and Hazardous Materials	
Transport, Use, or Disposal of Hazardous Materials	
Construction	Less than Significant
Operation	Less than Significant
Upset and Accident Conditions – Methane	
Methane	Less than Significant
Soil Conditions	Less than Significant with Mitigation
Hazardous Building Materials	Less than Significant
Emissions or Handling of Hazardous Materials within One-Quarter Mile of a School	No Impact
Section 65962.5 List of Sites	No Impact
Impairment of Emergency Response Plan or Emergency Evacuation Plan	Less than Significant
Cumulative Hazards and Hazardous Materials Impacts	
Routine Handling of Hazardous Materials	Less than Significant
Risk of Upset and Accident Conditions	Less than Significant
Hazards to Schools in the Project Vicinity	No Impact
Hazards Associated with Designated Hazardous Sites	Less than Significant
Hazards and Hazardous Materials Emergency Plan Consistency	Less than Significant

Footnotes:

[1] City of Los Angeles Department of City Planning. 2000. Central City North Community Plan Update. Adopted December 1 5.

[2] Los Angeles River Artist and Business Association. Arts District Boundary Map. Available at: http://laraba.org/arts- district-boundarymap/.

[3] Los Angeles River Artist and Business Association. Arts District History. Available at: https://laraba.org/arts-district- history/.

Response to Comment No. 4A-1

This introductory comment identifies the Commenter, provides a summary of the Project Description, and provides excerpts from the Draft EIR, including the impact conclusions for air quality, GHG, and hazards and hazardous materials, from Chapter I, Introduction

and Executive Summary, of the Draft EIR. The Commenter does not raise specific CEQA issues with respect to these Draft EIR impact analyses. Responses to the specific comments included in Comment Letter No. 4A-1. are provided in Responses to Comments No. 4A-2 through 4A-13, below. The comment is noted for the record and will be forwarded to the decision-makers for their review and consideration along with all of the submitted comments.

Comment No. 4A-2

While the hazards section of the DEIR states that the impacts are less than significant the DEIR goes on to state that mitigation measures will have to be implemented onsite. The mitigation measures outlined in the DEIR for hazardous wastes include:

> HAZ-MM-1 Following demolition of on-site structures and prior to redevelopment of the Project Site, the Applicant shall retain a qualified environmental professional to perform a Supplemental Phase II Subsurface Site Investigation. The Supplemental Phase II Subsurface Site Investigation shall focus on soils in those areas that were identified as inaccessible during the Phase II Subsurface Site Investigation: the areas of the on-site wastewater clarifier, auto repair floor pit, and wastewater separator structures. In addition, due to the low level of petroleum hydrocarbons reported at B2 at 10 feet below ground surface (bgs), the Supplemental Phase II Subsurface Site Investigation shall also include the area of the former truck wash rack. In the event that soils contaminated by petroleum products or other hazardous chemicals are encountered during the investigation, a qualified environmental professional shall be retained to oversee the proper characterization and disposal of waste and remediation of impacted soil and/or materials, as necessary.
>
> HAZ-MM-2 Prior to the commencement of soil-disturbing activities, the Applicant shall retain a qualified environmental professional to prepare a Soil Management Plan for review and approval by the City of Los Angeles Department of Building and Safety. Soil-disturbing activities include excavation, grading, trenching, utility installation or repair, and other human activities that may potentially bring contaminated soil to the surface. The approved Soil Management Plan shall be implemented during soil- disturbing activities on the Project Site and shall establish policies and requirements for the testing, management, transport, and disposal of soils. The Soil Management Plan shall describe specific soil-handling controls required to assure compliance with local, State and federal overseeing agencies, as well as to prevent unacceptable exposure to contaminated soil and prevent the improper disposal of contaminated soils, if encountered.

The vague nature of the HAZ-MM-2 must be clarified by the City. Given the nature of the project (mixed residential and commercial end use) the appropriate mitigation level would be driven by the most sensitive receptor on site (the residential exposure scenario). Since the lateral and vertical extent of the chemical contamination on site has yet to be defined, it is a priority that the extent of testing (number of samples per ton of soil excavated, types of testing to be performed, the turn-around-time (TAT) for testing, and method for storing chemically impacted materials must be defined *a priori* to insure that worker and residents near the site are not unintentionally exposed to contaminated soils prior to treatment or removal of the soils. The logical conclusion from the list of mitigation measures provided in the DEIR clearly is that there is an unknown risk at the site which has never been fully evaluated.

Response to Comment No. 4A-2

The Commenter asserts that the Draft EIR indicates Project impacts related to hazards would be less than significant but would require mitigation measures (HAZ-MM-1 and HAZ-MM-2). The Commenter also asserts that additional investigation is necessary to determine the extent of potential soil contamination and that the appropriate mitigation level would be driven by the most sensitive receptor on-site (which the Commenter states is a residential exposure scenario).

First, to correct the Commenter, the Project does not include a residential land use.

With regard to the characterization of impact significance before and following the implementation of Mitigation Measures HAZ-MM-1 and HAZ-MM-2, the Draft EIR correctly identifies that Project impacts related to reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment (due to soil conditions specifically) would be significant. This impact would be reduced to a less-than-significant level following implementation of Mitigation Measures HAZ-MM-1 and HAZ-MM-2 (refer to page IV.F-29 and IV.F-30, and pages IV.F-30 and IV.F-31).

As to the Commenter's implication that additional evaluation or investigation should be undertaken as part of the Draft EIR to determine the extent of potential soil contamination, please refer to Response to Comment No. 4-9. As described therein, a Phase I ESA and Phase II Subsurface Investigation were prepared for the Project; the conclusions from both technical reports were relied upon for the analysis included in Section IV.F Hazards an Hazardous Materials, in the Draft EIR. As stated in the mitigation measures themselves, the qualified entity that provides the Supplemental Phase II Subsurface Site Investigation (HAZ-MM-2) shall oversee the proper characterization and disposal of waste and remediation of impacted soil and/or materials, as necessary, in the event that soils contaminated by petroleum products or other hazardous chemicals are encountered during the investigation. Also, the qualified preparer of the Soil Management Plan (HAZ-

MM-2) shall establish policies and requirements for the testing, management, transport, and disposal of soils. The Soil Management Plan shall also describe specific soil-handling controls required to assure compliance with local, State and federal overseeing agencies, as well as to prevent unacceptable exposure to contaminated soil and prevent the improper disposal of contaminated soils, if encountered.

In addition, Chapter IV of the Final EIR is comprised of the MMP for the Project. For each project design feature and mitigation measure required by the Draft EIR, the MMP identifies the responsible enforcement and monitoring agencies; establishes the phase, frequency, and duration of monitoring; and conveys the manner by which the Project is required to achieve compliance and the materials that document compliance for the record. In the case of Mitigation Measures HAZ-MM-1 and HAZ-MM-2, the LADBS would be the primary agency with authority to enforce and monitor implementation.

Comment No. 4A-3

Emergency Plan Consistency	
Hydrology and Water Quality	
Water Quality Standards, Waste Discharge Requirements, and Surface or Groundwater Quality Degradation	
Construction	Less than Significant with Mitigation (refer to Hazards and Hazardous Materials Mitigation)
Operation	Less than Significant
Groundwater Supply and Recharge	
Construction	Less than Significant
Operation	Less than Significant
Drainage Pattern Alteration	
Erosion or Siltation	
Construction	Less than Significant
Operation	Less than Significant
Runoff Rate and On- and Off-Site Flooding	
Construction	Less than Significant
Operation	Less than Significant
Runoff and Stormwater Drainage System Capacity	
Construction	Less than Significant

Environmental Issue[a]	Project Impact
Operation	Less than Significant
Release of Pollutants due to Inundation	Less than Significant
Conflicts with Water Quality Control Plans or Sustainable Groundwater Management Plan	Less than Significant
Construction	Less than Significant with Mitigation (refer to Hazards and Hazardous Materials Mitigation)
Operation	Less than Significant
Cumulative Hydrology and Water Quality Impacts	
Surface Water Quality	Less than Significant
Groundwater Quality	Less than Significant
Surface Water Hydrology	Less than Significant
Groundwater Hydrology	Less than Significant

This failure to analyze for the risk from residual chemicals on [sic] concern (COCs) carries over into the analysis of hydrology for the project site. Since there will be residual COCs in the soils, water infiltrating into excavations at the Project site will become impacted with the COCs. Therefore the workers on site must be informed that they are working in a potentially hazardous environment and will require additional characterization before materials (soil and water) can be removed from the site. The City cannot defer this analysis to after Project approval. The City must quantify the full extent of subsurface contamination at the Project site and fully address and mitigate the hazardous waste issue onsite prior to approving any DEIR.

Response to Comment No. 4A-3

The Commenter restates the Draft EIR's analysis that addresses the relationship between the hazards and hazardous materials impacts related to soil conditions and hydrology and water quality. Chapter IV.G, Hydrology and Water Quality, of the Draft EIR (pages IV.G-24, 25, and 27), acknowledges that Mitigation Measures HAZ-MM-1 and HAZ-MM-2 are required to address potential Project impacts related to surface and groundwater quality standards and discharge requirements during construction. The Commenter also restates the assertion that the full extent of potential soil contamination on the Project Site should be quantified as part of the Draft EIR. Please refer to Response to Comment No. 4-9. As described therein, the Project Applicant has provided the technical investigation that was reasonably feasible to prepare in support of the Draft EIR analysis, as required by CEQA, and does not inappropriately defer mitigation.

With regard to the Commenter's statement that construction workers on the Project Site must be informed that they are working in a potentially hazardous environment and will require additional characterization before materials (soil and water) can be removed from the site, Mitigation Measures HAZ-MM-1 and HAZ-MM-2 would provide such characterization. Furthermore, the Project would be required to comply with the applicable

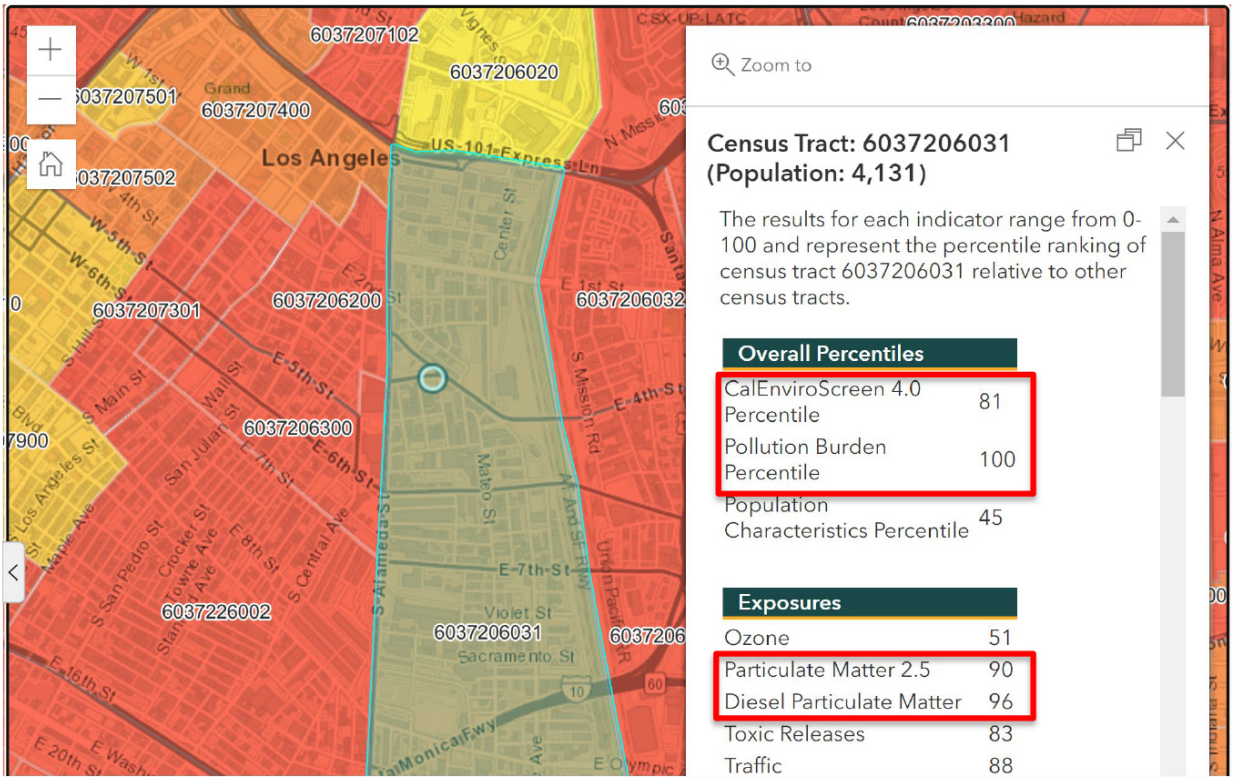
Federal and California Occupational Safety and Health Administration (OSHA and CalOSHA) regulations related to worker safety.

Comment No. 4A-4

Specific Comments:

1. The DEIR Fails To Assess The Cumulative Air Quality and Public Health Impacts Of The Project On The Heavily Impacted Portion Of Los Angeles In Which the Project Would Be Located.

The DEIR describes the individual impacts of the project, but does not attempt to assess the cumulative air quality and public health impacts of the 4th and Hewitt Project resulting from human exposure to increased levels of toxic air contaminants (TACs). The analysis performed is inadequate for assessing the cumulative impacts which must be addressed in an environmental impact report. Using the Office of Environmental Health and Hazard Assessment's (OEHHA's) California Communities Environmental Health Screening Tool Version·4.0 (CalEnviroScreen) it is possible to assess the existing concerns for the census tract in which the project is located.



The location of the proposed project is in a census tract located within the top 19 percent for Pollution Burden according to the CalEnviroScreen 4.0. According to the

CalEnviroScreen analysis, the census tract for the Project location, census tract 6037206031, has a higher pollution burden than 81% of the census tracts in California.

Based on the existing toxic diesel particulate matter (DPM) emission sources, which include existing industrial uses and vehicular traffic along State Route 101 (the Hollywood Freeway), the census tract in which the Project would be located is in the top 4% in California from DPM impacts. The community is therefore considered a disadvantaged community.[4] Increasing the number of DPM sources within the community via the construction phase of the project will increase the Pollution Burden on the community, placing an even greater health burden on the community. This is a significant cumulative health impact which should have been disclosed in the DEIR. The City should revise its analysis and present it in a revised EIR.

Footnote:

[4] According to Senate Bill 535, a disadvantaged community is identified by the California Environmental Protection Agency (CalEPA) as any community in the 25% highest scoring census tracts using results of the California Communities Environmental Health Screening Tool.

Response to Comment No. 4A-4

The Commenter provides existing conditions information related to the pollution burden of the census tract in which the Project Site is located, and the Commenter asserts that the cumulative air quality and public health impacts of the Project resulting from human exposure to increased levels of toxic air contaminants (TACs), specifically DPM emissions, is not adequately addressed.

As described in Chapter IV.A, Air Quality, of the Draft EIR (page IV.A-8), the greatest potential for TAC emissions during construction is related to DPM emissions associated with heavy-duty equipment. Regarding potential health risk impacts related to construction activities, the Draft EIR correctly identified that proposed construction activities would be limited in duration and considered a short-term source of TAC emissions. The SCAQMD CEQA Air Quality Handbook does not recommend analysis of TACs from short-term construction activities associated with land use development projects. The rationale for not requiring a health risk assessment for construction activities is the limited duration of exposure. According to SCAQMD methodology, health effects from carcinogenic air toxics are usually described in terms of individual cancer risk. Specifically, “Individual Cancer Risk” is the likelihood that a person continuously expose to concentrations of toxic air contaminants (TACs) over a 70-year lifetime will contract

cancer based on the use of standard risk assessment methodology.[10] Specifically, and as described on page IV.A-44 of the Draft EIR, the toxicity of diesel exhaust is evaluated relative to a 24-hour per day, 365 days per year, 70-year lifetime exposure. The SCAQMD does not generally require the analysis of construction-related diesel emissions relative to health risk due to the short period for which the majority of diesel exhaust would occur. Health risk analyses are typically assessed over a 9-, 30-, or 70-year timeframe and not over a relatively brief construction period due to the lack of health risk associated with such a brief exposure. Further, as described on page IV.A-28 of the Draft EIR, based on the SCAQMD's 1993 CEQA Air Quality Handbook, a project would cause a significant impact by exposing sensitive receptors to TACs if it would emit carcinogenic materials or TACs that exceed the maximum incremental cancer risk of ten in one million, or a cancer burden greater than 0.5 excess cancer cases (in areas greater than or equal to 1 in 1 million), or an acute or chronic hazard index of 1.0.

Because the overall construction schedule would be limited to approximately 30 months, and the phases that require the most heavy-duty diesel vehicle usage, such as site grading/excavation, would last for an even shorter duration, construction of the Project would not result in a substantial, long-term (i.e., 70-year) source of TAC emissions. No residual emissions and corresponding individual cancer risk are anticipated after construction. Because there is such a short-term exposure period (e.g., three out of 30 months of a 70-year lifetime), further evaluation of construction TAC emissions within the Draft EIR was not warranted. This supporting information is consistent with the *L.A. City CEQA Thresholds Guide* in making a case-by-case basis determination of significance. As such, the Draft EIR correctly concluded that Project-related TAC emission impacts during construction would be less than significant and consequently not result in a potential health risk impact.

From an operational standpoint, the Draft EIR correctly identified that the Project would not support any land use or activities that would involve the use, storage, or processing of carcinogenic toxic air contaminants. In addition, the proposed land uses would not generally involve the use of heavy-duty diesel trucks with the exception of occasional moving trucks, trash trucks, or delivery trucks. The Commenter is referred to SCAQMD guidance below that provides clarification as to when a HRA may be warranted:

The SCAQMD published and adopted the Guidance Document for Addressing Air Quality Issues in General Plans and Local Planning, which provides recommendations regarding the siting of new sensitive land uses near potential sources of air toxic emissions (e..g, freeways, distribution centers, rail yards, ports, refineries, chrome plating facilities, dry

[10] SCAQMD. 1993. South Coast Air Quality Management District (SCAQMD) CEQA Handbook. Chapters 5, 9, and 10.

cleaners, and gasoline dispensing facilities).[11] The SCAQMD recommends that HRAs be conducted for substantial sources of DPM (e.g., truck stops and warehouse distribution facilities that generate more than 100 trucks per day or more than 40 trucks with operating transport refrigeration units).

Pages IV.A-46 and IV.A-47 of the Draft EIR describe that development projects involving the use of heavy-duty trucks and other mobile sources that operate on diesel fuel have the potential to generate a substantial amount of unhealthful TACs. Such projects generally include industrial and manufacturing land uses. The SCAQMD recommends that health risk assessments be prepared for projects with substantial sources of diesel particulate emissions (typically including warehouses and distribution facilities). However, the Project does not involve such land uses, and it would not generate a substantial amount of heavy-duty truck trips. Based on data made available by the National Cooperative Highway Research Program (NCHRP), the Project is conservatively estimated to generate 15.43 truck trips per day, based on the following:

- Table D-2c of the NCHRP (Trip Generation Summary – Daily Commercial Vehicle Trips per 1,000 square feet of Building Space for Retail [includes restaurants])[12] provides an average of 0.324 truck trips per 1,000 square feet, or approximately 2.64 truck trips per day, for the Project's restaurant uses (8,149 square feet). It is conservatively assumed that all trucks would run on diesel fuel, although many restaurant truck deliveries are from smaller, gasoline-fueled trucks. The NCHRP data does not provide the percentage of trucks that would be equipped with a transportation refrigeration unit (TRUs); however, for purposes of this analysis, it was estimated that one of the trucks per day would be equipped with a TRU related to the restaurant use.

- Table D-2d of the NCHRP data (Trip Generation Summary – Daily Commercial Vehicle Trips per 1,000 square feet of Building Space for Office and Services)[13] provides 0.039 truck trips per 1,000 square feet, or approximately 12.79 truck trips per day, for the Project's office (and office-exterior) uses (327,976 square feet). It is conservatively assumed that all trucks would run on diesel fuel, although many restaurant truck deliveries are from smaller, gasoline-fueled trucks.

Based on SCAQMD guidance, there was no quantitative analysis required for future cancer risk within the vicinity of the Project, as the Project is consistent with the recommendations regarding the siting of new sensitive land uses near potential sources

[11] SCAQMD. 2005. Guidance Document for Addressing Air Quality Issues in General Plans and Local Planning. May 6.
[12] National Cooperative Highway Research Program (NCHRP) Synthesis 298 Truck Trip Generation Data Table D-2c, 2001.
[13] National Cooperative Highway Research Program (NCHRP) Synthesis 298 Truck Trip Generation Data Table D-2d, 2001.

of TAC emissions provided in the SCAQMD's Guidance Document for Addressing Air Quality Issues in General Plans and Local Planning. Specifically, the Project is not considered to be a substantial source of DPM warranting a refined HRA since daily truck trips to the Project Site would not exceed 100 trucks per day or more than 40 trucks with operating transport refrigeration units.

Also, in accordance with CARB regulations, diesel-fueled commercial vehicles that visit the Project Site would be limited to idling for no more than five minutes at any given time, which would also reduce diesel particulate emissions. In addition, as detailed in Response to Comment No. 4-5, equipment such as the proposed emergency generator is subject to the SCAQMD's permitting and operating procedures, and the MTU/Rolls-Royce unit proposed to be used in the Office Building is on the SCAQMD's list of certified internal combustion engine-emergency generators. Therefore, a HRA of proposed land uses and their effect on sensitive receptors in the Project area is not warranted per the SCAQMD guidance. As the Project would not create substantial concentrations of TACs during its normal operation, impacts would be less than significant and not cumulatively considerable (i.e., the cumulative impact would be less than significant).

Nevertheless, as discussed in Response to Comment No. 4-7 and Appendix FEIR-C (construction HRA), a construction period HRA was prepared for informational purposes and found that the health risk impact of the Project during construction would be less than significant.

Comment No. 4A-5

2. The Air Quality Analysis Is Flawed Since It Fails To Present A Baseline Measurement Of Emissions From Available Construction Equipment.

A review of the Air Quality Analysis presented in Appendix B of the DEIR clearly demonstrates that the City has failed to perform a baseline analysis of emissions from the Project construction phase without including the use of a Project Design Feature (PDF) to mitigate the overall emissions. In response to the potential for air quality concerns the City created AQ-PDF-1 that states "All diesel-powered equipment utilized on-site during the construction period will meet, at a minimum, United States Environmental Protection Agency Tier 4 emission reduction technology for nonroad diesel engines." AQ-PDF-1 is reflected in the CALEEMOD analysis of the project that assumed only the use of Tier 4 equipment.

The City's analysis changes the baseline conditions of the Project emissions by substituting the use of available equipment with Tier 4 equiment, [sic]

tblConstEquipMitigation	NumberOfEquipmentMitigated	0.00	1.00
tblConstEquipMitigation	NumberOfEquipmentMitigated	0.00	2.00
tblConstEquipMitigation	NumberOfEquipmentMitigated	0.00	8.00
tblConstEquipMitigation	Tier	No Change	Tier 4 Final
tblConstEquipMitigation	Tier	No Change	Tier 4 Final
tblConstEquipMitigation	Tier	No Change	Tier 4 Final
tblConstEquipMitigation	Tier	No Change	Tier 4 Final
tblConstEquipMitigation	Tier	No Change	Tier 4 Final
tblConstEquipMitigation	Tier	No Change	Tier 4 Final
tblConstEquipMitigation	Tier	No Change	Tier 4 Final
tblConstEquipMitigation	Tier	No Change	Tier 4 Final

There are two types of Tier 4 engines – Tier 4 "Interim" and Tier 4 "Final." Tier 4 emissions standards were phased in by the Cal. Air Resources Board ("CARB") from 2011-2015.[5] The 2011 standards are referred to as 'Tier 4 Interim," while the 2015 limits represent "Tier 4 Final" standards.[6] Tier 4 Interim equipment is less efficient and has higher emissions than Tier 4 Final equipment. While Tier 4 Final equipment achieves 90% PM/DPM reductions (the air pollutants responsible for the Project's cancer risk), Tier 4 Interim has higher PM/DPM emissions (reducing PM/DPM by just 50- 85%).[7]

MM AQ-2 simply requires the use of "Tier 4" equipment. The Proponent could therefore use Tier 4 Interim equipment and still comply with AQ-PDF-1. However, the DEIR's emissions modeling relies on the use of "Tier 4 Final" equipment. The DEIR therefore assumes, without supporting evidence or a binding mitigation measure, that the Proponent would use exclusively Tier 4 Final construction equipment for the Project. This assumption is unsupported, and results in both PM and DPM emissions being underestimated. This calculation error must be corrected in a revised EIR.

Additionally, the DEIR assumes that Tier 4 equipment is available for all off-road equipment used on site during the construction phase of the project, without demonstrating that procuring Tier 4 equipment will be feasible. While Tier 4 equipment is available for purchase, it is new technology that is more costly than older technologies and has less availability. The DEIR lacks supporting evidence to demonstrate that the Proponent has, or will be able to, procure Tier 4 equipment for Project construction.

The City is obliged to first provide an analysis of emissions based on available equipment and the most likely emissions that will be produced. Based upon a review of public records of the California Air Resources Board's (CARB) Diesel Off-Road Online Reporting System (DOORS), it is evident that the availability of Tiered construction equipment is highly dependent on the type of equipment. Using the CALEEMOD analysis

supplied in Appendix to the IS/MND, the availability of the specific pieces of construction equipment required for the Project (highlighted in yellow) across the state are identified in Table 1 below.

Table 1: Percent of Equipment in California DOORS Database by Emission Tier Level

Equipment Type (> 50 hp)	U.S. EPA Emission Tier Level						Percent Total Meeting Requirement MM AQ-2
	T0	T1	T2	T3	T4F	T4I	
Aerial Lifts	1.63%	4.67%	14.86%	4.08%	**48.64%**	**26.12%**	74.76%
Boom	0.15%	0.77%	5.22%	1.59%	**76.20%**	**16.06%**	92.26%
Bore/Drill Rigs	11.53%	15.42%	16.86%	21.76%	**17.72%**	**14.34%**	32.06%
Bucket	8.33%	18.33%	10.00%	6.67%	**33.33%**	**23.33%**	56.67%
Concrete Mixer	0.00%	0.00%	0.00%	14.29%	**85.71%**	**0.00%**	85.71%
Concrete Pump	1.30%	7.79%	40.26%	1.30%	**32.47%**	**16.88%**	49.35%
Crane 35ton or more	5.57%	4.41%	5.37%	18.81%	**37.62%**	**27.45%**	65.07%
Crane less than 35ton	20.37%	2.47%	6.79%	12.35%	**38.27%**	**19.75%**	58.02%
Cranes	27.84%	11.49%	9.13%	26.60%	**10.82%**	**11.80%**	22.62%
Crawler Tractors	26.56%	13.31%	13.11%	13.70%	**22.39%**	**10.93%**	33.32%
Crushing/Processing Equipment	0.00%	0.78%	2.34%	14.06%	**74.22%**	**8.59%**	82.81%
Drill Rig	7.09%	4.14%	8.86%	12.56%	**45.79%**	**17.87%**	63.66%
Drill Rig (Mobile)	11.51%	8.71%	11.51%	17.26%	**30.95%**	**14.77%**	45.72%
Excavators	5.24%	8.34%	13.95%	7.29%	**48.67%**	**16.50%**	65.17%
Forklifts	9.57%	10.57%	13.82%	7.99%	**40.45%**	**17.46%**	57.91%
Garbage Refuse	0.00%	0.00%	8.70%	8.70%	**43.48%**	**39.13%**	82.61%
Garbage Transfer	0.00%	0.00%	0.00%	33.33%	**66.67%**	**0.00%**	66.67%
Graders	29.78%	14.12%	12.89%	15.27%	**17.40%**	**10.52%**	**27.92%**
Hopper Tractor Trailer	0.00%	0.00%	0.00%	0.00%	**50.00%**	**50.00%**	100.00%
Mower	2.44%	7.27%	13.58%	1.10%	**54.40%**	**21.22%**	75.62%
Nurse Rig Aircraft Supply	0.00%	0.00%	0.00%	0.00%	**100.00%**	**0.00%**	100.00%
Nurse Rig Other	0.00%	0.00%	0.00%	100.00%	**0.00%**	**0.00%**	0.00%
Off Highway Tractors	3.55%	6.28%	6.01%	8.74%	**65.30%**	**10.11%**	75.41%
Off Highway Trucks	1.69%	3.87%	11.14%	5.81%	**62.23%**	**15.25%**	77.48%
Off-Highway Tractors	18.25%	17.06%	20.98%	10.02%	**17.18%**	**16.31%**	33.49%
Off-Highway Trucks	16.96%	12.96%	17.54%	20.81%	**16.13%**	**13.99%**	**30.12%**
Other Construction Equipment	16.35%	14.20%	17.11%	10.53%	**24.03%**	**17.19%**	**41.22%**
Other General Industrial Equipment	13.18%	16.56%	27.57%	8.61%	**13.80%**	**19.84%**	**33.65%**
Other Material Handling Equipment	10.84%	11.39%	19.25%	15.55%	**26.63%**	**16.26%**	42.89%
Other Truck	15.64%	10.34%	5.31%	13.41%	**36.87%**	**11.45%**	48.32%

Equipment Type (> 50 hp)	U.S. EPA Emission Tier Level						Percent Total Meeting Requirement MM AQ-2
	T0	T1	T2	T3	T4F	T4I	
Pavers	12.11%	21.18%	16.99%	14.97%	**23.34%**	**11.41%**	**34.75%**
Paving Equipment	6.49%	12.80%	12.74%	12.44%	**38.17%**	**17.05%**	55.22%
Railcars or Track Cars	16.33%	8.16%	0.00%	14.29%	**51.02%**	**10.20%**	61.22%
Rollers	14.09%	15.93%	18.30%	6.46%	**30.61%**	**14.59%**	**45.20%**
Rough Terrain Forklifts	3.95%	9.32%	15.89%	8.11%	**41.94%**	**20.80%**	62.74%
Rubber Tired Dozers	41.04%	10.02%	9.44%	19.65%	**15.22%**	**4.62%**	**19.85%**
Rubber Tired Loaders	16.74%	12.71%	13.56%	14.94%	**29.29%**	**12.76%**	42.05%
Scrapers	28.91%	10.98%	15.47%	30.41%	**10.15%**	**4.04%**	**14.19%**
Skid Steer Loaders	3.70%	10.02%	15.81%	3.20%	**54.69%**	**12.58%**	67.27%
Spray Truck	5.56%	4.17%	19.44%	2.78%	**34.72%**	**26.39%**	61.11%
Spreader Tractor Trailer	0.00%	14.29%	28.57%	0.00%	**42.86%**	**14.29%**	57.14%
Spreader Truck	4.17%	0.00%	4.17%	37.50%	**16.67%**	**25.00%**	41.67%
Surfacing Equipment	15.38%	14.25%	10.18%	23.08%	**19.23%**	**17.65%**	36.88%
Sweepers/Scrubbers	11.02%	20.84%	16.57%	6.61%	**25.75%**	**19.06%**	44.81%
Tank Truck	4.05%	6.76%	8.11%	27.03%	**37.84%**	**16.22%**	54.05%
Tanker Truck Trailer	0.00%	18.18%	0.00%	0.00%	**63.64%**	**18.18%**	81.82%
Telescopic Handler	1.33%	0.00%	2.67%	0.00%	**80.00%**	**16.00%**	96.00%
Tow Tractor	0.00%	100.00%	0.00%	0.00%	**0.00%**	**0.00%**	0.00%
Tractors/Loaders/Backhoes	13.53%	16.50%	18.73%	8.96%	**29.23%**	**13.05%**	**42.28%**
Trenchers	21.86%	19.57%	20.87%	3.28%	**21.86%**	**12.57%**	34.43%
Vacuum Truck	2.21%	18.38%	15.44%	25.00%	**13.24%**	**14.71%**	27.94%
Water Truck	21.79%	8.21%	16.43%	16.07%	**23.57%**	**13.57%**	37.14%
Workover Rig (Mobile)	5.99%	15.14%	9.78%	17.35%	**7.10%**	**13.56%**	20.66%
Yard Goat	4.40%	4.58%	9.41%	18.31%	**41.71%**	**21.33%**	63.04%

It is clear from the CARB data that access to Tier 4 certified equipment necessary for demolition (rubber tired dozers and tractors/loaders/backhoes), site preparation (graders, scrapers, rubber tired dozers, and tractors/loaders/backhoes), grading (graders, scrapers, rubber tired dozers, off-highway trucks, and tractors/loaders/backhoes), and paving operations (pavers, rollers, and tractors/loaders/backhoes), are in short supply in the State. In particular, Tier 4 dozers, scrapers, graders, and pavers make up a small portion of the registered fleet in California. If the Proponent cannot acquire the necessary equipment during construction or delay the construction until the equipment is available, project construction could be substantially delayed while the Proponent searches for Tier equipment to comply with PDF-AQ-1.

Footnotes:

[5] See EPA final rule: https://www.epa.gov/regulations-emissions-vehicles-and-engines/final-rule-control-emissions-air-pollution-nonroad-diesel and https://www.gpo.gov/fdsys/pkg/FR-2004-06-29/pdf/04-11293.pdf; see 40 Code Fed. Regs. § 1039.102 (describing passed-in Tier 4 PM reductions).

[6] Id.

[7] See https://dieselnet.com/standards/us/nonroad.php#tier4; see EPA Final Rule, p. 38977 ("We expect in use PM reductions for these engines of over 50% (and large reductions in toxic hydrocarbons as well) over the five model years this standard would be in effect (2008–2012).").

Response to Comment No. 4A-5

The Commenter asserts that the DEIR's air quality analysis does not disclose emissions from the Project construction phase without including the use of a Project Design Feature (PDF) to mitigate the overall emissions. The Commenter also notes that PDF-AQ-1 requires Tier 4 equipment to mitigate impacts, whereas Appendix B of the Draft EIR (the CalEEMod output files) rely on Tier 4 *Final* equipment. Lastly, the Commenter asserts that Tier 4 Final equipment would be difficult to procure and/or cost prohibitive to utilize.

As detailed in Response to Comment No. 4-6, and as shown in the CalEEMod output files provided in Appendix B of the Draft EIR, the Project construction emissions were in fact analyzed with and without the incorporation of Tier 4 Final Equipment and concluded that the Project would not exceed applicable SCAQMD thresholds in both scenarios (Draft EIR Appendix B, 4th and Hewitt Project MXD-TDM - Los Angeles-South Coast County, Summer, Page 6 of 34, and 4th and Hewitt Project MXD-TDM - Los Angeles-South Coast County, Winter, Page 6 of 34). As shown in the Unmitigated Construction Tables in the Appendix B outputs, and in Table RTC-2, Unmitigated Construction Activity Maximum Daily Emissions, the overall construction emissions would not exceed the SCAQMD daily emissions thresholds shown in the Draft EIR (page IV.A-27), even without any requirement for the use of Tier 4 equipment (Interim or Final) and not assuming required compliance with Rule 403 of the SCAQMD for dust control.

As the Project would not exceed applicable thresholds, even without the use of Tier 4 equipment (Interim or Final), there is no nexus to requiring the use of such equipment (or any tier level beyond the CalEEMod base default assumptions) as a mitigation measure. Therefore, Project Design Feature AQ-PDF-1 is, as the Draft EIR describes, a project design feature and not a mitigation measure, as it is not required to assure impacts would be less than significant. The Applicant's commitment to the use of Tier 4 equipment at any level would further reduce the Project's less than significant air quality impacts.

However, to clarify the specific type of Tier 4 equipment that would be used during Project construction activities, Section IV.A, Air Quality, of the Draft EIR has been revised as follows and as shown in Chapter III, Revisions, Clarifications, and Corrections to the Draft EIR, of the Final EIR:

"AQ-PDF-1: The Applicant will make a reasonable effort to attain ~~All~~ diesel-powered equipment ~~utilized on-site during the construction period~~ that will meet~~, at a minimum,~~ United States Environmental Protection Agency Tier 4 Final emission reduction technology for nonroad diesel engines~~.~~ to utilize during the construction period."

As to the Commenter's assertion that Tier 4 Final equipment would be difficult to procure and/or cost prohibitive to utilize, as indicated in the Draft EIR analysis and in Response to Comment No. 4-6, the Project's air quality impacts would be less than significant and thus no mitigation measures are required. The Applicant is only obligated to make a reasonable effort to attain Tier 4 Final equipment for Project construction and is doing so would further reduce the Project's less than significant air quality impacts and not to fulfill a requirement under CEQA.

It is also noted here that Comment No. 4A-5 incorrectly refers to a "MM AQ-2" which does not appear in the Draft EIR analysis. Comment No. 4A-5 also refers to an IS/MND (Initial Study/Mitigated Negative Declaration), which was not prepared for the Project. The appropriate CEQA document to analyze the impacts of the Project is an EIR, as determined by the IS (refer to Draft EIR Appendix A2).

Comment No. 4A-6

3. The City's Air Quality Analysis Failed To Perform A Quantitative Health Risk Assessment Of The Impacts Of Diesel Particulate Matter Emissions From The Construction Phase Of The Project For The Nearest Sensitive Receptor(s)

The City claims that it is not required to conduct a numerical health risk assessment for mixed use commercial projects, such as the Project, as the applicable standards and guidance that are available are intended for evaluation of health risks associated with stationary long-term sources of TAC emissions. This is false. Under CEQA the City is required to provide a detailed health risk analysis for all projects that emit toxic air contaminants with potential human exposure.

On page IV-A-44 of the DEIR, the City states that there is no significant construction health risk because construction since that phase of the project will only last 30 months, and the cancer risk is calculated based on a 70-year exposure. This is a false assumption by the City. The cancer risk is based on the duration of the exposure divided by a lifetime assumed to be 70 years. The Office of Environmental Health and Hazard Assessment (OEHHA), recommends that short term exposures to toxic air contaminants

(TACs) exposure should be assumed to start in the third trimester to allow for the use of the Age Sensitivity Factors.[8] A quantitative analysis of the Project emissions using the risk assessment process outlined by the California Air Resources Board Toxic Hot Spot Guidance and supported OEHHA, will provide a measure of the increased cancer risk that nearby sensitive receptors (residents near the Project site) will be exposed to because of the Project.

Given location of the Project site (in a densely packed residential and commercial area) it is the City's responsibility to ensure that sensitive receptors are not adversely impacted during the construction and/or operational phases of the Project. The use of Localized Significance Threshold (LSTs) levels by the City to conclude that there is no significant health risk is incorrect.[9] According to the SCAQMD, "LSTs are only applicable to the following criteria pollutants: oxides of nitrogen (NOX), carbon monoxide (CO), particulate matter less than 10 microns in aerodynamic diameter (PM10) and particulate matter less than 2.5 microns in aerodynamic diameter (PM2.5). 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."[10] The City is clearly misapplying the LST in the DEIR when they state that there is no significant health risk based on the assumption that the LSTs are not exceeded.

TACs, including diesel particulate matter (DPM)[11], contribute to a host of respiratory impacts and may lead to the development of various cancers. Failing to quantify those impacts places the community at risk for unwanted adverse health impacts. *Even brief exposures to the TACs could lead to the development of adverse health impacts over the life of an individual.*

Diesel exhaust contains nearly 40 toxic substances, including TACs and may pose a serious public health risk for residents in the vicinity of the facility. TACs are airborne substances that are capable of causing short-term (acute) and/or long-term (chronic or carcinogenic, i.e., cancer causing) adverse human health effects (i.e., injury or illness). TACs include both organic and inorganic chemical substances. The current California list of TACs includes approximately 200 compounds, including particulate emissions from diesel-fueled engines.

Diesel exhaust has been linked to a range of serious health problems including an increase in respiratory disease, lung damage, cancer, and premature death.[12,13,14] Fine DPM is deposited deep in the lungs in the smallest airways and can result in increased respiratory symptoms and disease; decreased lung function, particularly in children and individuals with asthma; alterations in lung tissue and respiratory tract defense mechanisms; and premature death.[15] Exposure to DPM increases the risk of lung cancer.

It also causes non-cancer effects including chronic bronchitis, inflammation of lung tissue, thickening of the alveolar walls, immunological allergic reactions, and airway constriction.[16] DPM is a TAC that is recognized by state and federal agencies as causing severe health risk because it contains toxic materials, unlike PM2.5 and PM10.[17]

The inherent toxicity of the TACs requires the City to first quantify the concentration released into the environment at each of the sensitive receptor locations through air dispersion modeling, calculate the dose of each TAC at that location, and quantify the cancer risk and hazard index for each of the chemicals of concern. Following that analysis, then the City can make a determination of the relative significance of the emissions.

The CalEEMOD analysis of the construction activities presented by the City shows that "unmitigated" emissions of DPM from the project site would range between 0.60 pounds per day (lbs/day) to 1.00 lbs/day. Footnote C to Table 7 of the Air Quality Analysis Appendix to the DEIR states that the amounts reported (maximum daily emissions in lbs per day) represent the emissions based on the use of required dust control measures under SCAQMD Rule 403 and the use of Tier 4 emissions reduction technology. From the input section of the CALEEMOD analysis provided as an appendix to the Air Quality section of the DEIR it is evident that the City's analysis already includes the use of Tier 4 equipment as a baseline condition, failing to consider whether that equipment is readily available and ignoring the requirement to model the baseline or most likely conditions at the Project site.

tblConstEquipMitigation	NumberOfEquipmentMitigated	0.00	1.00
tblConstEquipMitigation	NumberOfEquipmentMitigated	0.00	2.00
tblConstEquipMitigation	NumberOfEquipmentMitigated	0.00	8.00
tblConstEquipMitigation	Tier	No Change	Tier 4 Final
tblConstEquipMitigation	Tier	No Change	Tier 4 Final
tblConstEquipMitigation	Tier	No Change	Tier 4 Final
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tblConstEquipMitigation	Tier	No Change	Tier 4 Final

Unmitigated Construction

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total
Year	lb/day									
2021	3.4949	69.8829	25.7610	0.1811	8.4504	1.0819	9.5323	3.5407	1.0015	4.5422
2022	2.8144	22.2293	23.2792	0.0715	3.0929	0.6253	3.7182	0.8347	0.6030	1.4377
2023	49.1834	26.8516	34.8510	0.0924	3.7301	0.9253	4.6553	1.0036	0.8816	1.8852
Maximum	**49.1834**	**69.8829**	**34.8510**	**0.1811**	**8.4504**	**1.0819**	**9.5323**	**3.5407**	**1.0015**	**4.5422**

The mitigated emissions of DPM would range from 0.39 lbs/day to 0.50 lbs/day.

Mitigated Construction

	ROG	NOx	CO	SO2	Fugitive PM10	Exhaust PM10	PM10 Total	Fugitive PM2.5	Exhaust PM2.5	PM2.5 Total
Year	lb/day									
2021	2.6051	51.8614	27.2131	0.1811	5.8869	0.4424	6.0952	2.1638	0.4399	2.3646
2022	2.4217	17.4582	23.8934	0.0715	3.0929	0.3878	3.4807	0.8347	0.3855	1.2202
2023	48.5049	18.6513	36.2561	0.0924	3.7301	0.5121	4.2421	1.0036	0.5036	1.5072
Maximum	**48.5049**	**51.8614**	**36.2561**	**0.1811**	**5.8869**	**0.5121**	**6.0952**	**2.1638**	**0.5036**	**2.3646**

Clearly the City has evidence that diesel exhaust will be generated on site during the construction phase of the Project. According to the DEIR[18], the effects of TACs can

be diverse and their health impacts tend to be local rather than regional; consequently ambient air quality standards for these pollutants have not been established, and analysis of health effects is instead based on cancer risk and exposure levels.

By relying on the Air Quality Management Plan (AQMPs) control strategies for construction equipment and other activities to mitigate DPM emissions, the City cannot attest as to whether there is a cancer risk presented to the community by the Project. The City must address this concern by performing an air dispersion model of the sources on site and off site, quantify the annual concentrations of DPM for each of the receptors, perform a health risk assessment of the DPM concentrations consistent with the California Air Resources Board Toxic Hot Spot Guidance, and present the results in a revised EIR.

Footnotes:

[8] OEHHA (2009) Air Toxics Hot Spots Risk Assessment Guidelines. Technical Support Document for Cancer Potency Factors: Methodologies for derivation, listing of available Technical Support Document for Exposure Assessment and Stochastic Analysis, FINAL, August, 2012

[9] DEIR, p. IV.A-45

[10] SCAQMD. 2022. Localized Significance Threshold website. http://www.aqmd.gov/home/rules-compliance/ceqa/air-quality-analysishandbook/localized-significance-thresholds

[11] Because DPM is a TAC, it is a different air pollutant than criteria particulate matter (PM) emissions such as PM10, PM2.5, and fugitive dust. DPM exposure causes acute health effects that are different from the effects of exposure to PM alone.

[12] California Air Resources Board, Initial Statement of Reasons for Rulemaking, Proposed Identification of Diesel Exhaust as a Toxic Air Contaminant, Staff Report, June 1998; see also California Air Resources Board, Overview: Diesel Exhaust & Health, https://ww2.arb.ca.gov/resources/overview-diesel-exhaust-and-health#:~:text=Diesel%20Particulate%20Matter%20and%20Health&text=In%201998%2C%20CARB%20identified%20DPM,and%20other%20adverse%20health%20effects.

[13] U.S. EPA, Health Assessment Document for Diesel Engine Exhaust, Report EPA/600/8-90/057F, May 2002.

[14] Environmental Defense Fund, Cleaner Diesel Handbook, Bring Cleaner Fuel and Diesel Retrofits into Your Neighborhood, April 2005; http://www.edf.org/documents/4941_cleanerdieselhandbook.pdf, accessed July 5, 2020.

[15] California Air Resources Board, Initial Statement of Reasons for Rulemaking, Proposed Identification of Diesel Exhaust as a Toxic Air Contaminant, Staff Report, June 1998.

[16] Findings of the Scientific Review Panel on The Report on Diesel Exhaust as adopted at the Panel's April 22, 1998 Meeting.

[17] Health & Safety Code § 39655(a) (defining "toxic air contaminant" as air pollutants "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. A substance that is listed as a hazardous air pollutant pursuant to subsection (b) of Section 112 of the federal act (42 U.S.C. Sec. 7412 (b)) is a toxic air contaminant.")

[18] DEIR. 2022. Page IV.A-8

Response to Comment No. 4A-6

The Commenter claims that the City is required to provide a detailed health risk analysis for all projects that emit toxic air contaminants with potential human exposure and states that the quantitative analysis of the Project emissions should use the risk assessment process outlined by the California Air Resources Board Toxic Hot Spot Guidance and supported by the Office of Environmental Health and Hazard Assessment (OEHHA). The Commenter states that the City is required to quantify the concentration of toxic air contaminants (TACs) released into the environment at each of the sensitive receptor locations through air dispersion modeling, calculate the dose of each TAC at that location, and quantify the cancer risk and hazard index for each of the chemicals of concern. The Commenter also restates their assertion that AQ-PDF-1 is incorrectly used as a mitigation measure.

Please refer to Response to Comment Nos. 4-5, 4-6, 4-7, and 4A-4, as well as Appendix FEIR-C. As described therein, the SCAQMD is the governing AQMD over the Project site and surrounding area, rather than the OEHHA, as referenced by the Commenter. It is the SCAQMD's rules and regulations that apply to the Project; and the Project does not meet the SCAQMD's requirements for preparation of a HRA. Nevertheless, as described in Response to Comment No. 4-7, as well as Appendix FEIR-C, a construction HRA was prepared for informational purposes, and it determined that the Project health risks during construction would be less than significant. With regard to health risks associated with Project operations, please refer to Response to Comment No. 4-5, which describes that an operation HRA is not warranted for the Project based on the minimal sources of DPM associated with Project emissions and SCAQMD rules.

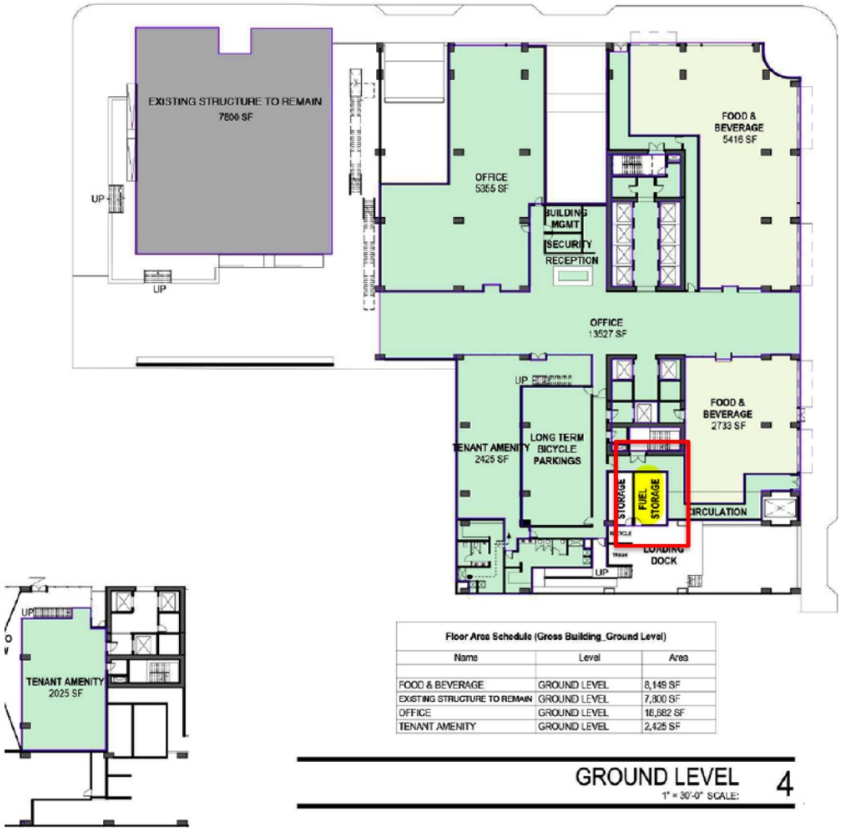
In addition, and as described in Responses to Comment Nos. 4-6 and 4A-5, the Project would not exceed applicable thresholds, even without the use of Tier 4 equipment (Interim or Final). Therefore, there is no nexus to require the use of such equipment (or any tier

level beyond the CalEEMod base default assumptions) as a mitigation measure. The implementation of Project Design Feature AQ-PDF-1 (the use of Tier 4 Final equipment) is not required during Project construction activities to achieve a less-than-significant air quality impact during construction; it is provided voluntarily as a PDF.

Comment No. 4A-7

4. The City's Air Quality Analysis Fails to Assess The Impacts of Fuel Storage Onsite During The Operational Phase Of The Project

A review of the project plans provided in the DEIR clearly shows a room on ground level 4 as being designated as Fuel Storage adjacent to the loading dock. No explanation is given in the DEIR as to what will be stored, how much will be stored, and what the fuel will be used for. In addition to being a fire hazard, fuels stored on site contain hazardous materials that have not been disclosed in the DEIR.



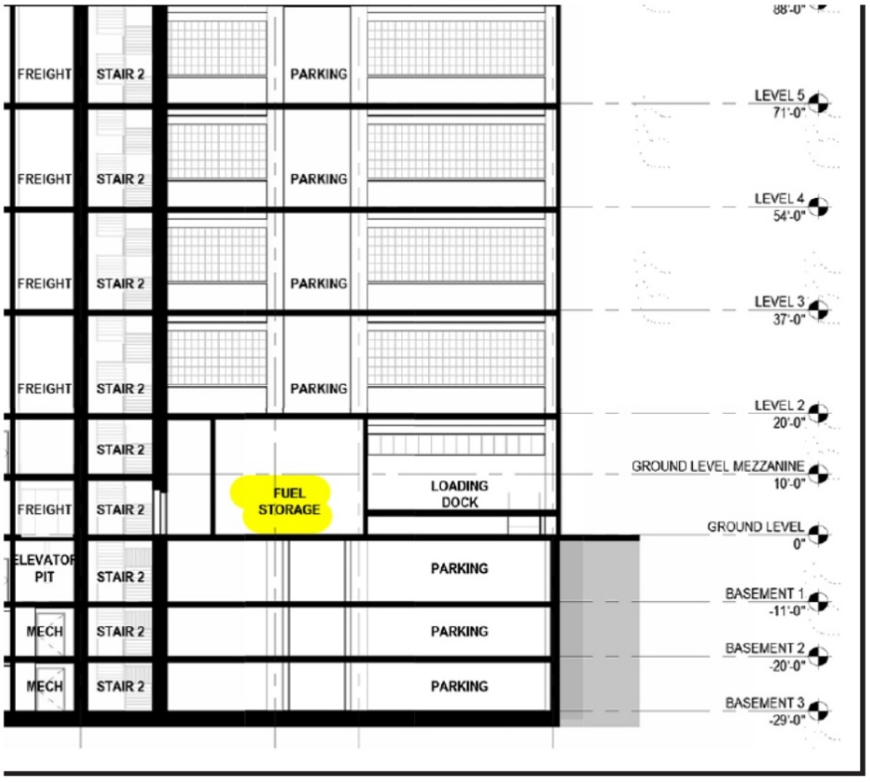


Figure II-13

The transverse cross section of the building in Figure II-13 shows that the Fuel Storage area would be involve a significant volume on ground level 4. The City's failure to disclose this fuel storage area, to analyze the potential emissions, quantify the health risk associated with the stored fuel are major flaws in the DEIR and may be placing the residents in the building and the adjacent structures at risk from the operational phase of the project.

Given the size of the fuel storage room and the need for back up power generation to ensure that fire pumps and emergency services within the building could be maintained it is evident that a back-generator [sic] (BUG) is most likely source that will utilize the stored fuel. Diesel fuel is typically the most common fuel stored onsite given its utility as a fuel source for power generation. If the Proponent is planning on installing a BUG onsite and has failed to disclose it in the DEIR, it represents a stationary source of toxic air contaminants from the Project that has not been evaluated. The DPM emissions from the BUG represent a significant health threat to residents of the Project and the surrounding community. The City must disclose the information regarding fuel storage in a revised EIR.

Response to Comment No. 4A-7

The Commenter states that the Draft EIR does not explain what type of fuel will be stored on the Project Site, how much fuel will be stored, and what the fuel will be used for. Please refer to Response to Comment No. 4-5, which describes the purpose of the fuel storage room and describes the health risk and hazard impacts associated with fuel storage and the routine testing and maintenance of an emergency generator. As described therein, the Project hazard and health risk impacts during operation would be less than significant.

It is also noted here that Comment No. 4A-7 incorrectly refers to "residents in the building." However, the Project does not include a residential component.

Comment No. 4A-8

Conclusion

The facts identified and referenced in this comment letter lead me to reasonably conclude that the Project could result in significant unmitigated impacts if the DEIR is approved. The City must re-evaluate the significant impacts identified in this letter by requiring the preparation of a revised environmental impact report.

Response to Comment No. 4A-8

The Commenter restates the assertion that the Project could result in significant impacts that require mitigation and that the Draft EIR should be revised. This concluding comment does not raise any specific issues with respect to the content or adequacy of the Draft EIR. The comment is noted for the record and will be forwarded to the decision-makers for their review and consideration along with all of the submitted comments.

Comment No. 4A-9

This comment includes the professional resume of James J.J. Clark, Ph.D.

Response to Comment No. 4A-9

This comment provides the professional resume of James J.J. Clark, Ph.D. This comment does not raise specific CEQA issues with respect to the Draft EIR or any of the impact analyses in the Draft EIR. The comment is noted for the record and will be forwarded to the decision-makers for their review and consideration along with all of the submitted comments.

Comment No. 4A-10

This comment is comprised of a document provided by the Commenter and includes nonroad diesel engine information, which is referenced by the Commenters in Comment Nos. 4-6 and 4A-5.

Response to Comment No. 4A-10

The Commenter provides documentation that is utilized in Comment Nos. 4-6 and 4A-5. This comment does not raise specific CEQA issues with respect to the Draft EIR or any of the impact analyses in the Draft EIR. The comment is noted for the record and will be forwarded to the decision-makers for their review and consideration along with all of the submitted comments. Refer to Response to Comment Nos. 4-6 and 4A-5, as the document was referenced in those corresponding comments.

Comment No. 4A-11

This comment is comprised of a document provided by the Commenter and including 40 Code of Federal Regulations (CFR) Parts 9, 69 et al (Control of Emissions of Air Pollution from Nonroad Diesel Engines and Fuel; Final Rule), which is referenced by the Commenters in Comment Nos. 4-6 and 4A-5.

Response to Comment No. 4A-11

The Commenter provides documentation that is utilized in Comment Nos. 4-6 and 4A-5. This comment does not raise specific CEQA issues with respect to the Draft EIR or any of the impact analyses in the Draft EIR. The comment is noted for the record and will be forwarded to the decision-makers for their review and consideration along with all of the submitted comments. Refer to Response to Comment Nos. 4-6 and 4A-5, as the document was referenced in those corresponding comments.

Comment No. 4A-12

This comment is comprised of a document provided by the Commenter and including information related to diesel exhaust and health, which is referenced by the Commenter in Comment No. 4A-6.

Response to Comment No. 4A-12

The Commenter provides documentation that is utilized in Comment Nos. 4A-6. This comment does not raise specific CEQA issues with respect to the Draft EIR or any of the impact analyses in the Draft EIR. The comment is noted for the record and will be forwarded to the decision-makers for their review and consideration along with all of the submitted comments. Refer to Response to Comment No. 4A-6, as the document was referenced in that corresponding comment.

Comment No. 4A-13

This comment is comprised of a document provided by the Commenter and including the Environmental Defense Fund's April 2005 Cleaner Diesel Handbook, which is referenced by the Commenter in Comment No. 4A-6.

Response to Comment No. 4A-13

The Commenter provides documentation that is utilized in Comment Nos. 4A-6. This comment does not raise specific CEQA issues with respect to the Draft EIR or any of the impact analyses in the Draft EIR. The comment is noted for the record and will be forwarded to the decision-makers for their review and consideration along with all of the submitted comments. Refer to Response to Comment No. 4A-6, as the document was referenced in that corresponding comment.

COMMENT LETTER NO. 4B

Deborah A. Jue, INCE-USE, Principal
Wilson Ihrig
5900 Hollis Street, Suite T1
Emeryville, CA 94608

Comment No. 4B-1

Per your request, we have reviewed portions of the above referenced document, in particular Section II - Project Description and Section IV.I – Noise sections of the Draft EIR, as well as Appendix J. We have generated the following comments.

Response to Comment No. 4B-1

The Commenter notes their review of the Draft EIR Project Description and Noise analysis. This introductory comment does not raise CEQA issues with respect to the Draft EIR or any of the impact analyses in the Draft EIR, is noted for the record, and will be forwarded to the decision-makers for their review and consideration along with all of the submitted comments.

Comment No. 4B-2

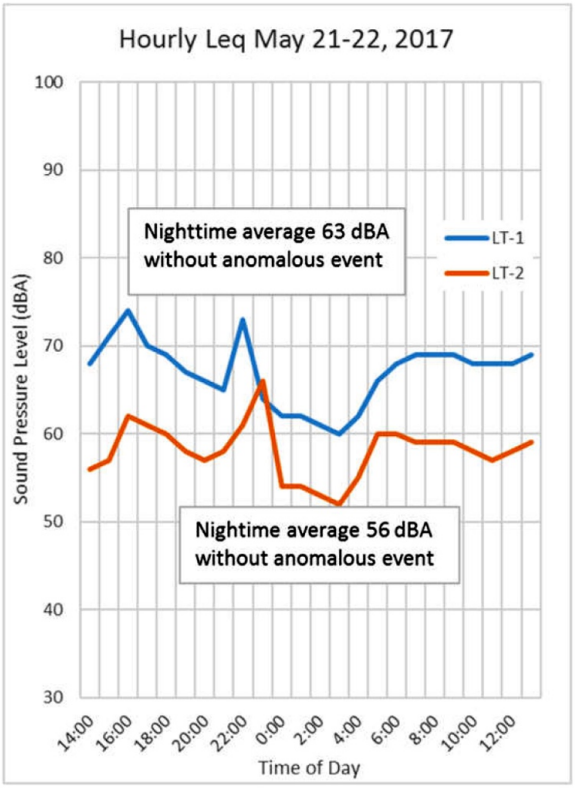
Existing Ambient Noise

The DEIR provides documentation for noise measured along E. 4th Street and on the Project property partially shielded from traffic (site interior) measured in 2017. The hourly values are reported in Appendix J (Table 1). These values are plotted in Figure 1. Based on this data, the average hourly Leq during typical construction hours (7 AM to 5 PM) was 69 dBA at LT-1. The standard deviation was 1.9 dBA during this time. The DEIR uses the *maximum* noise level recorded of 74 dBA as the basis of determining the ambient and the significance threshold along E 4th. This is improper since the average value during the day was 69 dBA and would be a more accurate characterization of the ambient noise levels.

Supplemental noise measurements were obtained in 2019 at 3 locations in closer proximity to noise sensitive sites (DEIR Table IV.I-5). The DEIR notes that these short-term results “may be overstated” (p. IV.I-18) since they were taken near the building facades, which function as large noise reflecting surfaces. The measurements occurred at ST1 along E. 4th was 74 dBA (should be 69 dBA per the argument above), ST2 at 442 Colyton as 63 dBA, and ST3 at 449 South Hewitt Street was 61 dBA.

There is no data provided in the DEIR or Appendix J that explains at what time of day these readings were taken in 2019, and there is no discussion to tie together these two

sets of data or to draw any conclusions regarding how the noise environment may have changed between 2017 and 2019. Based on the long-term results, where the standard deviation was about 2 dBA, if the short-term data measured in 2019 were “typical” in level, the range at those locations could be expected to be +/- 2 dBA; or perhaps since the DEIR notes that the noise levels measured at those locations were “overstated”, then perhaps the actual noise level should be considered to be +0/-4 dBA.



Response to Comment No. 4B-2

The Commenter asserts that the Draft EIR noise analysis utilizes the incorrect ambient noise and threshold of significance based on noise measured in 2017. The Commenter also notes that supplemental noise measurements were obtained in 2019, and that these short-term results “may be overstated” (as noted on Draft EIR page IV.I-18) since they were taken near the building facades, which function as large noise reflecting surfaces. The Commenter asserts that, based on the long-term results, where the standard deviation was about 2 dBA, if the short-term data measured in 2019 were “typical” in level, the range at those locations could be expected to be +/- 2 dBA; or, since the DEIR notes that the noise levels measured at those locations were “overstated,” then perhaps the actual noise level should be considered to be +0/-4 dBA.

The noise level of 74 dBA equivalent noise level (Leq) was only used as a baseline at the sensitive receptor locations closest to ST-1, where that noise level was measured. The

different locations show the variation in noise levels in the Project vicinity, and the measured noise levels are representative of various off-site sensitive receptor locations. Measured noise levels at different locations vary, based on different distances to major noise sources as well as differences in intervening structures or topography. The short-term noise measurements were taken in the mid-afternoon, during off-peak hours, for a conservative baseline. Between 2017 and 2019, no substantial changes in noise levels in the immediate vicinity of the Project would be expected, as no major demolition and construction projects occurred adjacent to the Project site, based on a comparison of Google Earth aerial imagery from the approximate times of the measurements in 2017 and 2019. The change that occurred during this period closest to the Project Site was the completion of a mid-rise apartment building located approximately 550 ft northeast of the Project Site at 950 E. 3rd Street, which would not have a considerable effect on the noise environment in the Project vicinity, because of the distance to the Project Site (approximately 200 feet) and the amount of existing intervening development (at East 4th Place and Traction Avenue) and roadways (Traction Avenue and East 4th Place, with associated vehicle travel). The Commenter does not provide supporting evidence for why or how there could have been a considerable change in noise levels during this period. Regardless, noise level changes of +/- 2 dBA are typically not perceptible to the human ear in an outdoor environment. The Commenter's statement that "perhaps" noise would be +0/-4 dBA from the measurements is not quantitatively supported and is speculative. Some measurements were taken close to buildings, because of limited space for measurement locations due to the minimal existing building setbacks from roadways in the Project vicinity. In addition, the City's Noise Ordinance establishes baseline ambient noise on the actual measured ambient noise level or the City's presumed ambient noise level, whichever is greater. Accordingly, baseline ambient noise levels at 428 S. Hewitt Street, 442 Colyton Street, and 449 S. Hewitt Street were established as the presumed ambient noise level rather than the measured noise levels.

Comment No. 4B-3

Construction Noise and Mitigation

Mitigation Measure NOI-MM-1 identifies temporary noise barriers that could be used, both on-site and off-site, however, even if both sets of barriers are used, the DEIR acknowledges that there would still be significant and unavoidable impacts.

Response to Comment No. 4B-3

The Commenter restates information from the Draft EIR, describing that, following implementation of Mitigation Measure NOI-MM-1, the construction period noise impact of the Project related to off-road construction equipment and composite construction (due to the combination of off-road and on-road trucks) would remain significant and

unavoidable (refer to Chapter IV.I, Nosie, of the Draft EIR, pages IV.I-51 and IV.I-55). The Commenter's summary of Mitigation Measure NOI-MM-1 and the construction noise impact conclusion is acknowledged and noted for the record.

Comment No. 4B-4

The Project Description (Section II of the EIR) indicates that the construction phases of the project would last about 28 months. No specific information is provided that clarifies how long each of the phases used in the noise analysis would last; at rough estimate, perhaps demolition, grading and paving would each require about 2 to 3 months, which would leave the bulk of the time (at least 19 months) to erect the building. Reviewing the construction noise analysis details in the DEIR, Table IV.I-18 shows that the noisiest phase would be "paving" done at the 2nd through 5th floors. The paving activities that are provided in the FHWA Roadway Construction Noise Model (RCNM) as relied upon by the DEIR are intended for asphalt paving operations on a highway, and since the driving surface of parking garages are not typically constructed in the same fashion as a highway, it is possible that the noise estimates for "paving" provided in the DEIR are overly conservative.

The construction of the upper levels of the building potentially would last about 19 months. The equipment listed for "paving" activities in Appendix J – Appendix A (page 2 of 19) includes a paver, cement mixer, loader/backhoe, paving equipment, and a roller. Of these, the paver, paving equipment, and roller are commonly used for asphalt paving activities. To install the concrete floor or of a multi-story steel frame building requires more concrete than can be readily mixed in a small mixer. Often, such construction entails pumping concrete up to the appropriate levels via a concrete pump and/or truck at the ground level, and a concrete vibrator can be used at the floor level to settle the concrete into the forms. A loader/backhoe or similar possibly could be used at the ground level, but not at the floors during concrete installation. In some industrial/office buildings the finished floor will be the polished concrete, with no additional floor covering. There is no asphalt "paving" involved to finish the floors within a conventional office building. If tiles are intended for the finish floor, this is done by hand. Ceramic tile saws would be used, and possibly a hand or electric mixer to prepare the mortar and the grout.

Response to Comment No. 4B-4

The Commenter states that the Draft EIR indicates the construction phases of the Project would last about 28 months, but that no details regarding the construction phasing of the Project are provided in the Draft EIR. The Commenter also notes that the paving activities that are provided in the FHWA Roadway Construction Noise Model (RCNM) as relied upon by the Draft EIR are intended for asphalt paving operations on a highway, and since the driving surface of parking garages are not typically constructed in the same fashion

as a highway, it is possible that the noise estimates for "paving" provided in the Draft EIR are overly conservative. The Commenter also details their understanding of the construction process for parking structures.

The Commenter states that construction would occur over 28 months. However, the construction duration has been revised on page II-31 of Chapter II, Project Description, of the Draft EIR, and as detailed in Chapter III, Revisions, Clarifications, and Corrections to the Draft EIR, of the Final EIR as follows for consistency with the duration utilized in the CalEEMod output that is provided in Appendix B to the Draft EIR as well as the updated CalEEMod output provided in Appendix FEIR-B of the Final EIR:

"Construction of the Project is anticipated to begin in 2022 and would conclude in 2025, with an overall duration of ~~28~~approximately 30 months."

With regard to the construction phases of the Project, such detail is provided in Appendix B, Air Quality Impact Analysis, of the Draft EIR. As described therein, paving would occur over approximately three months, overlapping with the building construction phase. However, as discussed in Chapter IV.I, Noise, of the Draft EIR (pages IV.I-27, 35, and 36), the City's construction noise thresholds depend on whether construction activities would last for more than one day or for more than 10 days in a three-month period. Beyond this assessment, the full duration of construction is not relevant to the City's noise thresholds and therefore does not affect the Draft EIR noise analysis or conclusions, because the number of days beyond 11 days (i.e., more than 10 days) in a three-month period does not change the applicable threshold of significance. Regarding the paving phase and construction noise, paving and associated pieces of equipment were conservatively assumed to occur and be utilized, as no detailed information regarding the finishes of the aboveground parking level were available. As discussed in the Response to Comment 4-10, FHWA RCNM is an industry standard tool that is routinely used to analyze construction noise from land development projects in the City and many other jurisdictions. Additionally, noise analyses sometimes make conservative assumptions to ensure the full disclosure of an impact, somewhat overstating it, as in the case of constructing the parking levels of the Office Building. Even if it were to occur, overstatement of the severity of an impact is not a disclosure issue, because the full magnitude of an impact would be included in an overstated impact. Regarding paving on "upper floors", the Project would contain multiple levels of aboveground parking. The equipment assumed to be utilized during the paving phase is listed on page IV.I-34 of the Draft EIR (refer to Draft EIR Table IV.I-7), and the noise levels resulting from the use of such equipment at the identified sensitive receptors are described on pages IV.I-34 through IV.I-36 (refer to Draft EIR Tables IV.I-7, IV.I-8, and IV.I-9). The Commenter does not provide evidence or substantiate that construction noise impacts of the Project would be more severe than stated in the Draft EIR.

Comment No. 4B-5

The equipment used for the noise analysis of building construction are shown in Table IV.I-7 of the DEIR, and the highest noise sources would be the generator, loader/backhoe, and crane. Placing the crane and loader/backhoe as far as possible from noise sensitive receptors (possibly along E 4th Street) would further reduce the noise from building construction, possibly reducing the total noise from this phase to about 75 dBA at a distance of 50 ft or about 71 dBA at 428 South Hewitt Street. In combination with on-site barriers (ground-level and suspended from the new building framing), it should be possible to further reduce the construction noise and limit the noise increase.

Thus, in addition to the noise barriers described in Mitigation Measure NOI-MM-1, the DEIR should include a new mitigation measure which requires the contractor to submit a noise control plan that identifies:

- How noise from stationary equipment will be reduced, for example by siting such equipment on the project to maximize shielding effects from existing structures; by using portable shields or enclosures, etc.
- Specific "quiet" equipment, such as generators[1], electric tools, excavators, etc. that achieve substantially lower levels than those used in the noise analysis and that this plan will require those products. For example, this document lists specific manufacturers and makes and models, but the specific noise levels are not published.
    - https://www1.nyc.gov/assets/dep/downloads/pdf/air/noise/construction-noise- protocols-vendor-guidance-sheet.pdf[3].
- Time of day restrictions and other feasible measures that would reduce the level and duration of noise impacts at affected receptors.

Footnotes:

[1] Manufacturer's data for a Generac Mobile MLG20 (20kW) with an enclosure lists a 70 dBA noise level at 23 ft, which would be about 64 dBA at a distance of 50 ft. Replacing the generator with a quieter unit would reduce the total noise by 4 dBA to 78 dBA at 50 ft distance for building construction.

[2] For an idea of the possible noise reduction, this is a certification program in Hong Kong which lists the reduced sound power levels https://www.epd.gov.hk/cgi-bin/npg/qpme/search_gen.pl [Footnote number not assigned to text in Comment Letter No. 4B.]

[3] For an idea of the possible noise reduction, this is a certification program in Hong Kong which lists the reduced sound power levels https://www.epd.gov.hk/cgi-bin/npg/qpme/search_gen.pl

Response to Comment No. 4B-5

The Commenter asserts that with the placement of the crane and loader/backhoe as far as possible from noise sensitive receptors, in combination with using on-site barriers (ground-level and suspended from the new building framing), it should be possible to further reduce construction noise and limit the noise increase. The Commenter also asserts that additional mitigation should be included, requiring the contractor to submit a noise control plan that identifies how noise from stationary equipment will be reduced (e.g., siting equipment to maximize shielding effects from existing structures and using portable shields or enclosures); identifies specific "quiet" equipment to achieve lower noise levels; and includes time of day restrictions.

With regard to placement of the crane and loader/backhoe, the equipment locations can't be pre-determined or fixed in place. The location of the crane would be determined by what is technically feasible for construction of the building and loaders and backhoes are mobile and would be required to move around the construction site to where they are needed on any given day. However, Project Design Features NOI-PDF-1 through NOI-PDF-3, listed on page IV.I-32 of the Draft EIR, call for the use of noise-shielding and muffling devices, after market dampening systems, and rubber tires for construction equipment in order to control noise levels. With regard to additional on-site noise barriers, the Draft EIR includes Mitigation Measure NOI-MM-1, which requires a temporary construction noise barrier at the eastern and southeastern corner of the Project Site to reduce construction noise levels at the closest sensitive receptor at 428 South Hewitt Street. Table IV.I-18 on page IV.I-53 of the Draft EIR documents the reductions in noise levels that would occur with implementation of the on-site sound barrier. The Commenter also suggests that noise barriers could be "suspended from the new building framing" to reduce total noise levels. However, the Commenter does not provide any information related to the technical feasibility or safety of such devices. Overall, the Commenter does not provide quantitative support for the claims of noise level reduction and does not claim noise levels would be reduced to less than significant. As detailed in the Response to Comment 4-13, the suggested additional mitigation measures are not feasible. Project Design Features (NOI-PDF-1 through NOI-PDF-5, listed on page IV.I-32 of the Draft EIR) are included and incorporate some of the Commenter's suggestions, while other suggestions would not provide substantial reductions in Project construction noise, or fail to be substantiated as safe and feasible.

Comment No. 4B-6

Operational Noise and Mitigation

The DEIR noise analysis cites prior measurements and literature from Trane that the rooftop HVAC unit would generate 54 dBA at a distance of 50 ft. There is no specific unit size provided, and based on our experience it is hard to reconcile how there would be only a single HVAC/air handling unit on the roof of an 18-story building. Additionally it is puzzling that a system of the necessary size would generate such a low level when rooftop equipment for a building this size often includes a water tower or air cooled condenser fans with a typical sound rating of 85 sound power level (PWL), and several make up air fans as large as 40,000 cubic feet per minute (CFM) (90 dBA PWL). A combination of four or more fans would generate a noise level on the order of 59 dBA or more using spherical divergence (spreading) in a free-field (no ground reflections) to a distance of 50 ft or 55 dBA at a distance of 80 ft. This rooftop equipment, as described, alone would not appear to exceed the significance threshold of 5 dBA above the ambient or 65 dBA at 428 South Hewitt Street. However, none of the operational noise analyses in the DEIR evaluate the increase on a CNEL basis, which is one of the significance thresholds.

Given the likely incorrect description about the necessary system needed for this size building the operational noise impacts are underestimated. This underestimate brings the operational levels in under the significance thresholds, and the DEIR analysis lacks any conclusion regarding the future noise level with the project on a CNEL basis and the potential significance of such noise increases

Please feel free to contact me with any questions on this information.

Response to Comment No. 4B-6

The Commenter states that no specific unit size for the rooftop HVAC unit is provided in the Draft EIR and that more than one HVAC unit would be required for the Project. The Commenter also implies that a cooling tower or condenser fans would be required for the Project. The Commenter also asserts that the Draft EIR fails to provide a conclusion regarding the future noise level with the Project on a CNEL basis.

As discussed in the Response to Comment 4-11, the Draft EIR never states that there would only be one HVAC unit. The reference level of 54 dBA at 50 ft used in the Draft EIR (page IV.I-46) is for external mechanical systems, accounting for all of the equipment as a whole, not just one HVAC unit. The Commenter lists sound power levels from equipment, but these are not directly comparable to the sound pressure levels which measure noise as perceived by humans, because sound power only measures the power of the source and not the resulting sound waves, which spread out spatially as they move

outward and the resulting distance attenuation at the receiver. For example, the Draft EIR's reference noise level of 54 dBA at 50 ft would be equivalent to a sound power level of approximately 85.7 dBA sound power level (PWL), which is within the range provided by the Commenter. Regardless, the Commenter acknowledges that the equipment would not exceed ambient noise levels by 5 dBA and would be less than significant. While the Commenter erroneously states that "none of the operational noise analyses in the DEIR evaluate the increase on a (Community Noise Equivalent Level [CNEL] basis)", operational traffic noise increases were evaluated on a CNEL basis, which is typical for transportation-related noise sources (refer to Draft EIR pages IV.I-20, 21, 38-44, and 70-76). Other operational noise sources were evaluated against both daytime and nighttime ambient Leq noise levels, which is typical for stationary operational noise sources (refer to Draft EIR pages IV.I-44 through 50 and page IV.I-77). The operational noise analysis is complete and no revisions to the Draft EIR are necessary.

Comment No. 4B-7

This comment includes the professional resume of Deborah Jue.

Response to Comment No. 4B-7

This comment provides the professional resume of Deborah Jue. This comment does not raise specific CEQA issues with respect to the Draft EIR or any of the impact analyses in the Draft EIR. The comment is noted for the record and will be forwarded to the decision-makers for their review and consideration along with all of the submitted comments.

Comment No. 4B-8

This comment is comprised of a document provided by the Commenter and includes the New York City Department of Environmental Protection's July 16, 2018 Construction Noise Control Products and Vendors Guidance Sheet, which is referenced by the Commenter in Comment No. 4B-5.

Response to Comment No. 4B-8

The Commenter provides documentation that is utilized in Comment No. 4B-5. This comment does not raise specific CEQA issues with respect to the Draft EIR or any of the impact analyses in the Draft EIR. The comment is noted for the record and will be forwarded to the decision-makers for their review and consideration along with all of the submitted comments. Refer to Response to Comment No. 4B-5, as the document was referenced in that corresponding comment.

Comment No. 4B-9

This comment is comprised of a document provided by the Commenter and including a webpage with links to information related to construction, traffic, and neighborhood noise, which is referenced by the Commenter in Comment No. 4B-5.

Response to Comment No. 4B-9

The Commenter provides documentation that is utilized in Comment No. 4B-5. This comment does not raise specific CEQA issues with respect to the Draft EIR or any of the impact analyses in the Draft EIR. The comment is noted for the record and will be forwarded to the decision-makers for their review and consideration along with all of the submitted comments. Refer to Response to Comment No. 4B-5, as the document was referenced in that corresponding comment.

COMMENT LETTER NO. 5

Southwest Regional Council of Carpenters (SWRCC)

Mitchell M. Tsai
139 South Hudson Avenue, Suite 200
Pasadena, California 91101

Comment No. 5-1

On behalf of the Southwest Regional Council of Carpenters ("**SWRCC**" or "**Southwest Carpenters**"), my Office is submitting these comments on the Draft Environmental Impact Report ("**Draft EIR**" or "**DEIR**") for the 4th and Hewitt Project ("**Project**") and requesting various approvals and actions from the City of Los Angeles ("**City**" or "**Lead Agency**"). The Project is proposed at: 900, 902, 904, 906- 910, and 926 East 4th Street; 406, 408, and 414 Colyton Street; 405, 407, 411, 417, and 423 South Hewitt Street, Los Angeles, California 90013 ("**Project Site**").

The Southwest Carpenters is a labor union representing more than 50,000 union carpenters in six states, including California, and has a strong interest in well-ordered land use planning, addressing the environmental impacts of development projects and equitable economic development.

Individual members of the Southwest Carpenters live, work and recreate in the area and surrounding communities and would be directly affected by the Project's environmental impacts.

SWRCC expressly reserve the right to supplement these comments at or prior to hearings on the Project, and at any later hearings and proceedings related to this Project. Cal. Gov't Code § 65009(b); Cal. Pub. Res. Code § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal.App.4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal.App.4th 1109, 1121.

SWRCC incorporate by reference all comments raising issues regarding the Project and its CEQA compliance, submitted prior to the Project approvals. *Citizens for Clean Energy v City of Woodland* (2014) 225 Cal.App.4th 173, 191 (finding that any party who has objected to the Project's environmental documentation may assert any issue timely raised by other parties).

Moreover, SWRCC request that the Lead Agency provide notice for any and all notices referring or related to the Project issued under the California Environmental Quality Act ("**CEQA**"), Cal Public Resources Code ("**PRC**") § 21000 *et seq*, and the California Planning and Zoning Law ("**Planning and Zoning Law**"), Cal. Gov't Code §§ 65000–65010. California Public Resources Code Sections 21092.2, and 21167(f) and

Government Code Section 65092 require agencies to mail such notices to any person who has filed a written request for them with the clerk of the agency's governing body.

Response to Comment No. 5-1

This introductory comment identifies that the Commenter represents the Southwest Regional Council of Carpenters (SWRCC) and provides general Project information.

The Commenter also states that they reserve the right to supplement their comments on the Draft EIR at or prior to hearings on the Project, and that they incorporate by reference all comments raising issues regarding the Project and its CEQA compliance.

Lastly, the Commenter requests legally-required notices related to the Lead Agency's actions on the Project. The comment is noted, and the Commenter's contact information has been added to the list of individuals and organizations receiving future notices related to the Project.

This comment does not raise CEQA issues with respect to the Draft EIR or any of the impact analyses in the Draft EIR, is noted for the record, and will be forwarded to the decision-makers for their review and consideration along with all of the submitted comments.

Comment No. 5-2

The City should require community benefits such as requiring local hire and use of a skilled and trained workforce to build the Project. The City should require the use of workers who have graduated from a Joint Labor Management apprenticeship training program approved by the State of California, or have at least as many hours of on-the-job experience in the applicable craft which would be required to graduate from such a state approved apprenticeship training program or who are registered apprentices in an apprenticeship training program approved by the State of California.

Community benefits such as local hire and skilled and trained workforce requirements can also be helpful to reduce environmental impacts and improve the positive economic impact of the Project. Local hire provisions requiring that a certain percentage of workers reside within 10 miles or less of the Project Site can reduce the length of vendor trips, reduce greenhouse gas emissions and providing localized economic benefits. As environmental consultants Matt Hagemann and Paul E. Rosenfeld note:

> [A]ny local hire requirement that results in a decreased worker trip length from the default value has the potential to result in a reduction of construction-related GHG emissions, though the significance of the reduction would vary based on the location and urbanization level of the project site.

(March 8, 2021 SWAPE Letter to Mitchell M. Tsai re Local Hire Requirements and Considerations for Greenhouse Gas Modeling; see **Exhibits A-C**).

Skilled and trained workforce requirements promote the development of skilled trades that yield sustainable economic development. As the California Workforce Development Board and the UC Berkeley Center for Labor Research and Education concluded:

> . . . labor should be considered an investment rather than a cost – and investments in growing, diversifying, and upskilling California's workforce can positively affect returns on climate mitigation efforts. In other words, well trained workers are key to delivering emissions reductions and moving California closer to its climate targets.[1]

Recently, on May 7, 2021, the South Coast Air Quality Management District found that that the "[u]se of a local state-certified apprenticeship program or a skilled and trained workforce with a local hire component" can result in air pollutant reductions.[2]

Cities are increasingly adopting local skilled and trained workforce policies and requirements into general plans and municipal codes. For example, the City of Hayward 2040 General Plan requires the City to "promote local hiring . . . to help achieve a more positive jobs-housing balance, and reduce regional commuting, gas consumption, and greenhouse gas emissions."[3]

In fact, the City of Hayward has gone as far as to adopt a Skilled Labor Force policy into its Downtown Specific Plan and municipal code, requiring developments in its Downtown area to require that the City "[c]ontribute to the stabilization of regional construction markets by spurring applicants of housing and nonresidential developments to require contractors to utilize apprentices from state-approved, joint labor-management training programs, . . ."[4] In addition, the City of Hayward requires all projects 30,000 square feet or larger to "utilize apprentices from state-approved, joint labor-management training programs."[5]

Locating jobs closer to residential areas can have significant environmental benefits. As the California Planning Roundtable noted in 2008:

> People who live and work in the same jurisdiction would be more likely to take transit, walk, or bicycle to work than residents of less balanced communities and their vehicle trips would be shorter. Benefits would include potential reductions in both vehicle miles traveled and vehicle hours traveled.[6]

In addition, local hire mandates as well as skill training are critical facets of a strategy to reduce vehicle miles traveled. As planning experts Robert Cervero and Michael Duncan noted, simply placing jobs near housing stock is insufficient to achieve VMT reductions

since the skill requirements of available local jobs must be matched to those held by local residents.[7] Some municipalities have tied local hire and skilled and trained workforce policies to local development permits to address transportation issues. As Cervero and Duncan note:

> In nearly built-out Berkeley, CA, the approach to balancing jobs and housing is to create local jobs rather than to develop new housing. The city's First Source program encourages businesses to hire local residents, especially for entry- and intermediate-level jobs, and sponsors vocational training to ensure residents are employment-ready. While the program is voluntary, some 300 businesses have used it to date, placing more than 3,000 city residents in local jobs since it was launched in 1986. When needed, these carrots are matched by sticks, since the city is not shy about negotiating corporate participation in First Source as a condition of approval for development permits.

The City should consider utilizing skilled and trained workforce policies and requirements to benefit the local area economically and mitigate greenhouse gas, air quality and transportation impacts.

Footnotes:

[1] California Workforce Development Board (2020) Putting California on the High Road: A Jobs and Climate Action Plan for 2030 at p. ii, *available at* https://laborcenter.berkeley.edu/wp-content/uploads/2020/09/Putting-California-on-the-High-Road.pdf.

[2] South Coast Air Quality Management District (May 7, 2021) Certify Final Environmental Assessment and Adopt Proposed Rule 2305 – Warehouse Indirect Source Rule – Warehouse Actions and Investments to Reduce Emissions Program, and Proposed Rule 316 – Fees for Rule 2305, Submit Rule 2305 for Inclusion Into the SIP, and Approve Supporting Budget Actions, *available at* http://www.aqmd.gov/docs/default-source/Agendas/Governing-Board/2021/2021-May7-027.pdf?sfvrsn=10.

[3] City of Hayward (2014) Hayward 2040 General Plan Policy Document at p. 3-99, *available at* https://www.hayward-ca.gov/sites/default/files/documents/General_Plan_FINAL.pdf.

[4] City of Hayward (2019) Hayward Downtown Specific Plan at p. 5-24, *available at* https://www.hayward-ca.gov/sites/default/files/Hayward%20Downtown%20Specific%20Plan.pdf.

[5] City of Hayward Municipal Code, Chapter 10, § 28.5.3.020(C).

[6] California Planning Roundtable (2008) Deconstructing Jobs-Housing Balance at p. 6,

available at https://cproundtable.org/static/media/uploads/publications/cpr-jobs-housing.pdf.

[7] Cervero, Robert and Duncan, Michael (2006) Which Reduces Vehicle Travel More: Jobs- Housing Balance or Retail-Housing Mixing? Journal of the American Planning Association 72 (4), 475-490, 482, *available at* http://reconnectingamerica.org/assets/Uploads/UTCT- 825.pdf.

Response to Comment No. 5-2

The Commenter states that the Applicant should include additional community benefits, such as requiring local hire and use of a skilled and trained workforce to build the Project and goes on to raise several claims that are either unrelated to significant environmental issues analyzed in the Draft EIR or are inaccurately categorized as applying to the Project and the City.

The Commenter claims that local hire and skilled and trained workforce requirements can be helpful to reduce environmental impacts and improve the positive economic impact of the Project, as well as to mitigate air quality, GHG, and transportation impacts. However, the Governor's Office of Planning and Research (OPR) has not adopted thresholds for analysis that are related to local hire provisions or economic benefits. Furthermore, the Project's Initial Study (IS) and Draft EIR were prepared in accordance with the requirements of CEQA and the CEQA Guidelines and addressed all applicable thresholds. As noted in Sections IV.A, Air Quality (pages IV.A-24 through IV.A-49); IV.E, Greenhouse Gas Emissions (pages IV.E-34 through IV.E-57); and IV.L, Transportation (pages IV.L-22 through IV.L-51), of the Draft EIR, the Project would not result in significant impacts related to these issues, and no mitigation measures (including local hire provisions or otherwise) are required.

Comment No. 5-3

Also, the City should require the Project to be built to standards exceeding the current 2019 California Green Building Code and 2020 County of Los Angeles Green Building Standards Code to mitigate the Project's environmental impacts and to advance progress towards the State of California's environmental goals.

Response to Comment No. 5-3

The Commenter states that the Project should exceed the current 2019 California Green Building Standards Code (CALGreen) and 2020 County of Los Angeles Green Building Standards Code in order to mitigate the Project's environmental impacts. The Commenter claims that the Project should comply with two referenced green building codes to mitigate potential environmental impacts. First, it should be noted that the Project Site is located

within the City of Los Angeles. Therefore, the Project is subject to the City of Los Angeles Green Building Code, not the County of Los Angeles Green Building Standards Code. Also, compliance with existing regulations, such as the City of Los Angeles Green Building Code, is required and would not be mitigation. Additionally, the Commenter does not state which environmental impacts warrant mitigation; the only significant impacts of the Project would occur during the construction period with regard to noise and vibration, which are not regulated by CALGreen and/or the Los Angeles Green Building Code. There are several areas where Project impacts would not exceed the threshold, but project design features would be incorporated in order to conserve energy and water resources. For example, as evaluated in Section IV.C, Energy (page IV.C-24), and IV.E, Greenhouse Gas Emissions (page IV.E-41 and IV.E-47), of the Draft EIR, the Project is designed to the LEED Silver standard (Project Design Feature GHG-PDF-1), to reduce energy consumption and comply with the performance standards of CALGreen and the City of Los Angeles Green Building Code (LAGBC). Additionally, the Project would utilize Energy Star rated products and appliances, high-efficiency wall and/or roof insulation, and/or high efficiency lighting, as well as a cool roof, electric vehicle (EV) charging stations, and low flow water features (included as Project Design Feature WS-PDF-1 on page IV.N.3-27 of Draft EIR, Chapter IV.N.3, Utilities and Service Systems – Water Supply and Infrastructure) consisting of low flow plumbing fittings and water efficient landscaping. Moreover, on August 11, 2021, the California Energy Commission adopted the 2022 Title 24 Standards, which were approved by the California Building Standards Commission for inclusion into the California Building Standards Code in December 2021. The 2022 standards encourage efficient electric heat pumps, expands solar photovoltaic and battery storage standards, strengthens ventilation standards, and more. Buildings whose permit applications are applied for on or after January 1, 2023, such as for the Office Building, are required to comply with the 2022 standards. For all these reasons, no additional mitigation measures are required of the Project.

Comment No. 5-4

I. THE PROJECT WOULD BE APPROVED IN VIOLATION OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

A. Background Concerning the California Environmental Quality Act

CEQA has two basic purposes. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project. (CEQA Guidelines § 15002(a)(1).) “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.’ [Citation.]” (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.) 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." (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392*; Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 503 [same].)

- **EIR**

Second, CEQA directs public agencies to avoid or reduce environmental damage when possible by requiring alternatives or mitigation measures. (CEQA Guidelines § 15002(a)(2) and (3); *see also, Berkeley Keep Jets Over the Bay Committee v. Board of Port Com'rs* (2001) 91 Cal.App.4th 1344, 1354 *("Berkeley Jets")*; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553; *Laurel Heights Improvement Ass'n v. Regents of the University of California* (1988) 47 Cal.3d 376, 400.) The EIR serves to provide public agencies and the public in general with information about the effect that a proposed project is likely to have on the environment and to "identify ways that environmental damage can be avoided or significantly reduced." (CEQA Guidelines § 15002(a)(2).) If the project has a significant effect on the environment, the agency may approve the project only upon finding 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" specified in CEQA Pub. Res. Code § 21081. (CEQA Guidelines § 15092(b)(2)(A–B).)

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.'" (*Berkeley Jets*, 91 Cal.App.4th 1344, 1355 (emphasis added) (quoting *Laurel Heights,* 47 Cal.3d at 391, 409 fn. 12).) Drawing this line and determining whether the EIR complies with CEQA's information disclosure requirements presents a question of law subject to independent review by the courts. (*Sierra Club v. Cnty. of Fresno* (2018) 6 Cal. 5th 502, 515; *Madera Oversight Coalition, Inc. v. County of Madera* (2011) 199 Cal. App. 4th 48, 102, 131.) As the court stated in *Berkeley Jets*, 91 Cal.App.4th at 1355:

> 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.

"The preparation and circulation of an EIR is more than a set of technical hurdles for agencies and developers to overcome. The EIR's function is to ensure that government officials who decide to build or approve a project do so with a full understanding of the environmental consequences and, equally important, that the public is assured those consequences have been taken into account. [Citation.] For the EIR to serve these goals

it must present information so that the foreseeable impacts of pursuing the project can be understood and weighed, and the public must be given an adequate opportunity to comment on that presentation before the decision to go forward is made." (*Communities for a Better Environment v. Richmond* (2010) 184 Cal. App. 4th 70, 80 (quoting *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal. 4th 412, 449–450).)

- **Negative Declaration or Mitigated Negative Declaration.**

Third, CEQA and CEQA Guidelines are strict and unambiguous about when a Negative Declaration ("**ND**") or a Mitigated Negative Declaration ("**MND**") may be used. A public agency must prepare an EIR whenever substantial evidence supports a "fair argument" that a proposed project "may have a significant effect on the environment." (Pub. Res. Code §§ 21100, 21151; Guidelines §§ 15002(f)(1) & (2), 15063; *No Oil, Inc. v. City of Los Angeles* ("*No Oil*") (1974) 13 Cal.3d 68, 75; *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 111-112.) "Said another way, if a lead agency is presented with a fair argument that a project may" – [not "will"] – "have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect." (Guidelines §§ 15064(f)(1) & (2) (emph. added); *No Oil, supra*, 13 Cal.3d 68, 75.)

"Substantial evidence" means "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." (Guidelines § 15384(a).) "Substantial evidence is not argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous...." (Pub. Res. Code § 21080(e)(2); see also Guidelines § 15384(a).)

The fair argument standard is a "low threshold" test for requiring the preparation of an EIR. (*No Oil*, *supra*, 13 Cal.3d at 84; *County Sanitation Dist. No. 2 of Los Angeles County v. County of Kern* (2005) 127 Cal.App.4th 1544, 1579 (*"County Sanitation"*).) It "requires the preparation of an EIR where 'there is substantial evidence that any aspect of the project, either individually or cumulatively, may cause a significant effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial . . . .'" (*County Sanitation*, *supra*, 127 Cal.App.4th at 1580, quoting Guidelines § 15063(b)(1).) A lead agency may adopt an MND only if "there is no substantial evidence that the project will have a significant effect on the environment[]." (Guidelines § 15074(b) (emphasis added).)

Evidence supporting a fair argument of a significant environmental impact triggers preparation of an EIR regardless of whether the record contains contrary evidence.

(*League for Protection of Oakland's Architectural and Historical Resources v. City of Oakland* (1997) 52 Cal.App.4th 896, 904-905.) "Where the question is the sufficiency of the evidence to support a fair argument, 'deference to the agency's determination is not appropriate . . . .'" (*County Sanitation*, 127 Cal.App.4th at 1579, (emphasis added), quoting *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1317-1318.)

Further, it is the duty of the lead agency, not the public, to conduct the proper environmental studies. "The agency should not be allowed to hide behind its own failure to gather relevant data." (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.) "Deficiencies in the record may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences." (*Id*.) The "lack of study . . . 'enlarge[s] the scope' of the fair argument which may be made 'based on the limited facts in the record' [Cit. omit.]" (*Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1382.)

Thus, refusal to complete recommended studies lowers the already low threshold to establish a fair argument. The "court may not exercise its independent judgment on the omitted material by determining whether the ultimate decision of the lead agency would have been affected had the law been followed. . . . The remedy for this deficiency was for the trial court to have issued a writ of mandate . . . ." (*Environmental Protection Information Center v. California Dept. of Forestry* (2008) 44 Cal.4th 459, 486.)

Both the review for failure to follow CEQA's procedures and the fair argument test are questions of law, i.e., *de novo* standard of review applies. (*Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.) "Whether the agency's record contains substantial evidence that would support a fair argument that the project may have a significant effect on the environment is treated as a **question of law**. (*See, e.g., Consolidated Irrig. Dist. v. City of Selma* (2012) 204 Cal.App.4th 187, 207." (Kostka and Zischke, Practice Under the Environmental Quality Act, (2017, 2d ed.), at § 6.76 (emphasis added).) The Court gives no deference to the agency in the MND context.

In an MND context, the agency or the court should not *weigh* expert testimony or decide on the credibility of evidence; such weighing is for an EIR. As stated in *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 935:

> Unlike the situation where an EIR has been prepared, neither the lead agency nor a court may "weigh" conflicting substantial evidence to determine whether an EIR must be prepared in the first instance. Guidelines section 15064, subdivision (f)(1) provides in pertinent part: "if a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect. (*No Oil* [, *supra,*] 13

> Cal.3d 68 [118 Cal.Rptr. 34, 529 P.2d 66]).” Thus, as *Claremont* itself recognized, “Consideration is not to be given contrary evidence supporting the preparation of a negative declaration. (*City of Carmel-by-the Sea v. Board of Supervisors* (1986) 183 Cal.App.3d 229, 244–245 [227 Cal.Rptr. 899]; *Friends of “B” Street v. City of Hayward* (1980) 106 Cal.App.3d 988 [165 Cal.Rptr. 514].” (*Claremont, supra,* 37 Cal.App.4th at p. 1168, 44 Cal.Rptr.2d 288.

(*Pocket Protectors,* 124 Cal.App.4th at 935.)

In cases where it is not clear whether there is substantial evidence of significant environmental impacts, CEQA requires erring on the side of a “preference for resolving doubts in favor of environmental review.” (*Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 332.) “The foremost principle under CEQA is that the Legislature intended the act to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.” (*Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259.)

- **CEQA Exemptions and Exceptions Thereto.**

Fourth, where the Lead Agency chooses to dispose of CEQA by asserting a CEQA exemption, it has a duty to support its CEQA exemption findings by substantial evidence, including evidence that there are no applicable exceptions to exemptions. This duty is imposed by CEQA and related case law. (Guidelines § 15020 [“The Lead Agency shall not knowingly release a deficient document hoping that public comments will correct defects in the document.”]; *see also, Citizens for Environmental Responsibility v. State ex rel. 14th Dist. Ag. Assn.* (2015) 242 Cal.App.4th 555, 568 [“The lead agency has the burden to demonstrate that a project falls within a categorical exemption and the agency’s determination must be supported by substantial evidence”]; *Association for Protection etc. Values v. City of Ukiah* (1991) 2 Cal.App.4th 720, 732 [agency is required to consider exemption exceptions “where there is some information or evidence in the record that the project might have a significant impact.”]

The duty to support CEQA (and/or exemption) findings with substantial evidence is also required by the Code of Civil Procedure and case law on administrative or traditional writs. Under Code of Civil Procedure (“CCP”) § 1094.5(b), an abuse of discretion is established if the decision is not supported by the findings, or the findings are not supported by the evidence. CCP § 1094.5(b). In *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515 (“*Topanga”*), our Supreme Court held that “implicit in [Code of Civil Procedure] section 1094.5 is a requirement that the agency which renders the challenged decision must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order.” The agency’s findings may “be determined to be sufficient if a court ‘has no trouble under the circumstances discerning the analytic

route the administrative agency traveled from evidence to action.'" *West Chandler Blvd. Neighborhood Ass'n vs. City of Los Angeles* (2011) 198 Cal.App.4th 1506, 1521- 1522. However, "mere conclusory findings without reference to the record are inadequate." *Id*. at 1521 (finding city council findings conclusory, violating *Topanga*).

Further, CEQA exemptions must be narrowly construed to accomplish CEQA's environmental objectives. *California Farm Bureau Federation v. California Wildlife Conservation Bd.* (2006) 143 Cal.App.4th 173, 187 ("*California Farm*"); *Save Our Carmel River v. Monterey Peninsula Water Management Dist.* (2006) 141 Cal.App.4th 677, 697 ("These rules ensure that in all but the clearest cases of categorical exemptions, a project will be subject to some level of environmental review.")

Finally, CEQA procedures reflect a preference for resolving doubts in favor of environmental review. (*See,* Pub. Res. Code § 21080(c) [dispose of EIR only if "there is no substantial evidence, in light of the *whole record* before the lead agency, that the project *may* have a significant effect on the environment" or "revisions in the project .... Would avoid the effects or mitigate the effects to a point where *clearly* no significant effect on the environment would occur, *and* ...." Emph. added.]; Guidelines §§ 15061(b)(3) [common sense exemption only "where it can be seen with certainty ...."]; 15063(b)(1) [prepare an EIR "if he agency determines that there is substantial evidence that *any* aspect of the project, either *individually* or *cumulatively, may* cause a significant effect on the environment, *regardless* of whether the overall effect of the project is adverse or beneficial"]; 15064(h) [need to consider cumulative impacts of past, other current and "probable future" projects]; 15070 [prepare a negative declaration only if "no substantial evidence, *in light of the whole record* before the agency, that the project *may* have a significant effect on the environment," or project "revisions would avoid the effects or mitigate the effects to a point where clearly no significant effects would occur, *and* (2) there is no substantial evidence, in light of the whole record before the project, that the project as revised *may* have a significant effect on the environment" emph. added]; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 83-84 [interpret "significant impacts" so as "to afford the fullest possible protection"].)

Response to Comment No. 5-4

This comment provides information from case law, the CEQA Statute, and the State CEQA Guidelines regarding the basic purpose of CEQA. Information related to Negative Declarations, Mitigated Negative Declarations, and CEQA Exemptions is also provided but is irrelevant, as a Draft EIR was prepared for the Project. As this comment does not raise any specific CEQA issues related to the Project or the Draft EIR, no further response is required. This comment is noted for the record and will be forwarded to the decision-makers for their review and consideration along with all of the submitted comments.

Comment No. 5-5

B. Due to the COVID-19 Crisis, the Lead Agency Must Adopt a Mandatory Finding of Significance that the Project May Cause a Substantial Adverse Effect on Human Beings and Mitigate COVID-19 Impacts.

CEQA requires that an agency make a finding of significance when a Project may cause a significant adverse effect on human beings. PRC § 21083(b)(3); CEQA Guidelines § 15065(a)(4).

Public health risks related to construction work require a mandatory finding of significance under CEQA. Construction work has been defined as a Lower to High- risk activity for COVID-19 spread by the Occupations Safety and Health Administration. Recently, several construction sites have been identified as sources of community spread of COVID-19.[8]

Southwest Carpenters recommend that the Lead Agency adopt additional CEQA mitigation measures to mitigate public health risks from the Project's construction activities. Southwest Carpenters request that the Lead Agency require safe on-site construction work practices as well as training and certification for any construction workers on the Project Site.

In particular, based upon Southwest Carpenters' experience with safe construction site work practices, Southwest Carpenters recommend that the Lead Agency require that while construction activities are being conducted at the Project Site:

Construction Site Design:

- The Project Site will be limited to two controlled entry points.
- Entry points will have temperature screening technicians taking temperature readings when the entry point is open.
- The Temperature Screening Site Plan shows details regarding access to the Project Site and Project Site logistics for conducting temperature screening.
- A 48-hour advance notice will be provided to all trades prior to the first day of temperature screening.
- The perimeter fence directly adjacent to the entry points will be clearly marked indicating the appropriate 6-foot social distancing position for when you approach the screening area. Please reference the Apex temperature screening site map for additional details.

- There will be clear signage posted at the project site directing you through temperature screening.
- Provide hand washing stations throughout the construction site.

Testing Procedures:

- The temperature screening being used are non-contact devices.
- Temperature readings will not be recorded.
- Personnel will be screened upon entering the testing center and should only take 1-2 seconds per individual.
- Hard hats, head coverings, sweat, dirt, sunscreen or any other cosmetics must be removed on the forehead before temperature screening.
- Anyone who refuses to submit to a temperature screening or does not answer the health screening questions will be refused access to the Project Site.
- Screening will be performed at both entrances from 5:30 am to 7:30 am.; main gate [ZONE 1] and personnel gate [ZONE 2]
- After 7:30 am only the main gate entrance [ZONE 1] will continue to be used for temperature testing for anybody gaining entry to the project site such as returning personnel, deliveries, and visitors.
- If the digital thermometer displays a temperature reading above 100.0 degrees Fahrenheit, a second reading will be taken to verify an accurate reading.
- If the second reading confirms an elevated temperature, DHS will instruct the individual that he/she will not be allowed to enter the Project Site. DHS will also instruct the individual to promptly notify his/her supervisor and his/her human resources (HR) representative and provide them with a copy of Annex A.

Planning

- Require the development of an Infectious Disease Preparedness and Response Plan that will include basic infection prevention measures (requiring the use of personal protection equipment), policies and procedures for prompt identification and isolation of sick individuals, social distancing (prohibiting gatherings of no more than 10 people including all-

> hands meetings and all-hands lunches) communication and training and workplace controls that meet standards that may be promulgated by the Center for Disease Control, Occupational Safety and Health Administration, Cal/OSHA, California Department of Public Health or applicable local public health agencies.[9]

The United Brotherhood of Carpenters and Carpenters International Training Fund has developed COVID-19 Training and Certification to ensure that Carpenter union members and apprentices conduct safe work practices. The Lead Agency should require that all construction workers undergo COVID-19 Training and Certification before being allowed to conduct construction activities at the Project Site.

Southwest Carpenters has also developed a rigorous Infection Control Risk Assessment ("**ICRA**") training program to ensure it delivers a workforce that understands how to identify and control infection risks by implementing protocols to protect themselves and all others during renovation and construction projects in healthcare environments.[10]

ICRA protocols are intended to contain pathogens, control airflow, and protect patients during the construction, maintenance and renovation of healthcare facilities. ICRA protocols prevent cross contamination, minimizing the risk of secondary infections in patients at hospital facilities.

The City should require the Project to be built using a workforce trained in ICRA protocols.

Footnotes:

[8] Santa Clara County Public Health (June 12, 2020) COVID-19 CASES AT CONSTRUCTION SITES HIGHLIGHT NEED FOR CONTINUED VIGILANCE IN SECTORS THAT HAVE REOPENED, *available at* https://www.sccgov.org/sites/covid19/Pages/press-release-06-12-2020-cases-at-construction-sites.aspx.

[9] *See also,* The Center for Construction Research and Training, North America's Building Trades Unions (April 27 2020) NABTU and CPWR COVIC-19 Standards for U.S Constructions Sites, *available at* https://www.cpwr.com/sites/default/files/NABTU_CPWR_Standards_COVID-19.pdf; Los Angeles County Department of Public Works (2020) Guidelines for Construction Sites During COVID-19 Pandemic, *available at* https://dpw.lacounty.gov/building-and-safety/docs/pw_guidelines-constructionsites.pdf.

[10] For details concerning Southwest Carpenters's ICRA training program, *see* https://icrahealthcare.com/.

Response to Comment No. 5-5

The Commenter recommends that the Lead Agency adopt additional CEQA mitigation measures to mitigate public health risks (related to the Covid-19 pandemic) from the Project's construction activities and asserts that health risks related to construction work require a mandatory finding of significance under CEQA. However, the Commenter has misidentified what requires a mandatory finding of significance under CEQA, per the CEQA Guidelines, Section 15065. The Covid-19 pandemic is an existing condition; such public health issues do not fall under any of the conditions listed in Section 15065 of the CEQA Guidelines as having a significant effect on the environment. The Draft EIR provides impact analysis as well as all feasible mitigation measures (when a potential significant impact is determined) for all required CEQA impact areas that were not previously scoped out in the Project's IS.

Workers hired for Project construction would be protected by the federal Occupational Safety and Health Administration (OSHA) and California OSHA program (Cal/OSHA) regulations, as identified in Section IV.F, Hazards and Hazardous Materials, of the Draft EIR (pages IV.F-3, 4, 8, 10, 11, 27, 36, and 37). As to risks associated with construction activities and COVID-19, the Applicant will comply with all State and Los Angeles County construction activity protocols in place at the time of the commencement of construction and through the construction process.

Comment No. 5-6

II. THE DRAFT EIR IS LEGALLY AND PREJUDICIALLY INADEQUATE AS IT OMITS CRITICAL INFORMATION.

The Draft EIR suffers from several procedural and substantive flaws and omissions. These omissions preclude informed and meaningful public participation by providing inaccurate information about the Project's scope and resultant impacts. As such, the Draft EIR's omissions are prejudicial, as detailed below.

In addition, the Draft EIR erroneously finds that all Project impacts will be less than significant, except for *construction* noise/vibration and further improperly finds there are no feasible mitigation measures for it. The findings of less than significant impacts, including but not limited to operational noise, are also based on omissions, inadequate studies and understatement and are also unsupported by substantial evidence.

The Draft EIR is legally inadequate as further detailed below.

Response to Comment No. 5-6

The Commenter claims that the Draft EIR suffers from several procedural and substantive flaws and omissions, that the findings of less than significant impacts are based on

omissions and inadequate studies, and that the Draft EIR erroneously finds that all Project impacts will be less than significant, with the exception of construction period noise and vibration impacts. The Commenter also suggests that additional feasible mitigation measures are available for the Project's construction period noise and vibration impacts; however, no specific information regarding additional mitigation measures is provided. As the Commenter provides no specific evidence to support these claims, no response is required. This comment is noted for the record and will be forwarded to the decision-makers for their review and consideration along with all of the submitted comments.

Comment No. 5-7

A. The Project Description Is Not Accurate, Finite, and Complete, to Enable Meaningful Evaluation of Project Impacts.

The Draft EIR suffers from several significant flaws as to the project description. First, the Project description increased in *piecemeal* fashion over the years. As a result, the Project as presented in 2017 and the Draft EIR that was ultimately developed in 2022 failed to capture various Project impacts, since the studies and comments provided on the Project as described at the time of the Draft EIR Notice of Preparation (**"NOP"**) have been largely relying on the Project description as first introduced in the initial study and NOP circulated in 2017. (**Exhibit D** [10/15/2019 Email correspondence re Project Changes, along with the Project's 2017 Initial Study].)

Response to Comment No. 5-7

The Commenter asserts that the Draft EIR largely relies on the Project Description as initially introduced in 2017 in the Notice of Preparation (NOP) and IS (included as Appendices A1 and A2 of the Draft EIR).

At the time that the NOP and IS were prepared in 2017, the Project proposed 289,203 square feet of commercial space (office, and retail/restaurant) and retain the then-active Architecture and Design (A+D) Museum. The 2017 Project also included three subterranean parking levels and four above-ground parking levels, and the structure was originally planned to rise to a maximum height of 190 feet with a FAR of 5.01:1. The proposed Project did undergo minor changes after the 2017 IS was published; however, this is it prohibited by CEQA. The Project that is analyzed throughout the Draft EIR is detailed in Chapter II, Project Description, of the Draft EIR and is consistent with the most recent site plans prepared for the Project in 2022. As stated therein, the Project would total approximately 343,925 square feet, comprised of approximately 7,800 square feet of the existing building formerly occupied by the A+D Museum, and the new approximately 336,125-square-foot Office Building, which would include approximately 8,149 square feet of ground floor restaurant space, 311,682 square feet of commercial office space, and 16,294 square feet of office exterior common areas. Vehicle parking

spaces would be provided within three subterranean levels and four above-ground parking levels. The Office Building would rise to a height of 292 feet to the top of the parapet and a maximum height of 297 feet to the top of the elevator overrun. The Project's proposed FAR would be approximately 6:1.

Issues for which the 2017 IS analysis determined the Project would result in no impact or a less than significant impact are summarized on page V-14 in Chapter V, Other CEQA Considerations, of the Draft EIR, as well as detailed in Appendix A2 (Initial Study) to the Draft EIR. The minor changes in the Project Description that occurred since publishing the 2017 IS did not change the level of significance determinations that were conveyed in the IS, nor did they warrant preparation of revised technical studies beyond those that were already undertaken as part of the Draft EIR.

The Commenter failed to identify any instances where the Draft EIR contains insufficient information that precluded adequate impact analysis. Rather, the Draft EIR contains a fulsome description of the Project allowing for a complete and accurate impact analysis for each and every required impact area.

Comment No. 5-8

This piecemeal change of the Project precluded meaningful comment on the Project and its impacts, including by various responsible agencies. For example, in its letter to the Los Angeles Department of Water and Power ("**LADWP**") in 2020, City indicated the piecemeal increase of the Project's scope and floor area ratio ("**FAR**"), acknowledged the Project's General Plan inconsistency in light of its intensity, and provided striking comparisons of how the Project evolved since 2017 through 2020. (**Exhibit E** [4/8/2020 Email Communication of the City to LADWP]). City correspondence also shows that City was on notice of the problem with issuing a Water Supply Assessment ("**WSA**") for the Project and approving water demand without first obtaining the approval of the General Plan amendment, to ensure the Project is consistent with the General Plan (**Exhibit E** [7/29/2020 Email from City to LADWP].) In fact, the Project has further evolved and increased in intensity as compared with 2020.

Where the Project was initially proposed in a smaller scale and solicited agencies' comments on such smaller project, its later piecemeal increase prejudiced the environmental review in that there is evidence that agencies do not perform a renewed analysis but are rather more inclined to find no significant change regardless. (e.g., **Exhibit F** [1/6/2022 LADOT assessment: "DOT concurs with the analysis that the extension of the buildout year does not change any of the findings from the previous study. All of the conditions of DOT's April 14, 2020 letter shall remain the same"].)

Response to Comment No. 5-8

The Commenter asserts that the change in the Project Description between 2017 and 2020 precluded meaningful comment on the Project and its impacts by various responsible agencies, namely the City of Los Angeles Department of Water and Power (LADWP) and LADOT. As noted by the Commenter themselves, the City performed its due diligence in notifying the responsible agencies of changes in the Project that occurred over time and by requesting the applicable Departments' input as to whether any additional analysis would be required. The January 20, 2021 Project Water Supply Assessment (WSA), which is included in Appendix O1 of the Draft EIR, was based on the following Project specifications: retention of the 7,800 square-foot building formerly occupied by the A+D Museum; 8,149 square feet of restaurant space; 327,976 square feet of combined office and office exterior spaces; and 8,955 square feet of landscaping. The Project that is described in Chapter II, Project Description of the Draft EIR (pages II-1 and II-21) and that is evaluated throughout Chapter IV, Environmental Impact Analysis, of the Draft EIR shares the same specifications, with the exception of the landscaped square footage, which was reduced to 6,256 square feet since preparation of the WSA (this change would incrementally reduce the Project's water demand). On December 2, 2021, the Department of City Planning reached out to LADWP to inquire as to whether the revised build-out year for the Project (a change from 2023 to 2025) would necessitate a revised WSA and the LADWP confirmed on December 10, 2021 that a revised WSA would not be required (see correspondence included in Appendix O2 of the Draft EIR). The Transportation Impact Study (provided in Appendix L1 of the Draft EIR) is also based on the same Project specifications that are described in the Draft EIR. The Department of City Planning similarly reached out to the LADOT regarding the revised build-out year, and the LADOT confirmed that the revised build-out year did not necessitate a revised study (see correspondence included in Appendix L4 of the Draft EIR). Therefore, the Commenter's claim that "there is evidence that agencies do not perform a renewed analysis" is unfounded.

Comment No. 5-9

The Draft EIR indicates *another piecemeal change* in the Project that is reasonably foreseeable to occur and yet is not properly disclosed in the Project description: the future development of the A+D ("Architecture + Design") Museum buildings with higher intensity uses. The Draft EIR describes those A+D buildings as vacant. Yet, per a *fine print footnote*, the A+D buildings have been vacated since 2020 and the museum is operating *virtually*, and the Project's requested zone change will allow the Project's *higher intensity* land uses in those A+D building as well:

> "At the time that the Notice of Preparation for the Project was issued (September 20, 2017), the CEQA baseline for this Draft EIR, the building was occupied by the

> A+D Museum. In the **summer** of **2020**, the **A+D Museum moved out** of the building and **began operating virtually**. The building is currently vacant. While there **are no plans for reoccupation as of the date of this EIR**, it is **anticipated** that the building would be **re-occupied** with a use that is **consistent** with recent uses, such as the **A+D Museum**, for which the building interior **is customized**. The Project's requested discretionary approvals would not physically alter the 7,800-sf building. The Project's **proposed C2-2- RIO zoning would allow for a similar range of commercial land uses** as compared to the existing M3-1-RIO zoning. The proposed change in zoning would not expand or increase the intensity of the **allowable uses** within the building. The zoning change of the Project would actually limit the use, as some of the **currently allowed** manufacturing and industrial uses would not be allowed with the proposed C2-2-RIO zoning."

(DEIR, p. I-8, fn. 6, emph. added; see also DEIR, p. II-4, fn. 3.)

Based on the quoted statement, it is reasonably foreseeable that the A+D museum will be later developed with the *allowable* uses after the Project is approved, as compared with the *currently allowed* uses of a museum. Yet, this anticipated higher intensity development was concealed in the Draft EIR, short of two *fine print* footnotes. This omission affected and curtailed all impacts analysis, including but not limited to air quality, GHG, transportation, land use, and historical/cultural. This omission is therefore prejudicial as it precluded meaningful information about the Project's full scope and reasonably foreseeable impacts of the requested zoning amendments.

Response to Comment No. 5-9

The Commenter asserts that the future development of the building formerly occupied by the A+D Museum with higher intensity uses is reasonably foreseeable and is not disclosed or evaluated in the Draft EIR. The A+D Museum was operating at the time that the NOP for the Project was issued (September 20, 2017). The CEQA baseline for the Draft EIR environmental analysis was formulated by the existing conditions at the time that the NOP for the Project was issued, in accordance with the CEQA Guidelines, Section 15125(a)(1), which states that "Generally, the lead agency should describe physical environmental conditions as they exist at the time the notice of preparation is published…". As further detailed by Section 15125(a)(1), the CEQA Guidelines state that, "Where existing conditions change or fluctuate over time, and where necessary to provide the most accurate picture practically possible of the project's impacts, a lead agency may define existing conditions by referencing historic conditions, or conditions expected when the project becomes operational, or both, that are supported with substantial evidence."

However, as a leased space, tenants, and therefore specific uses, of the building formerly occupied by the A+D Museum may fluctuate over time; therefore, the most reliable indicator of the future use is the most recent use in operation before the building became vacant. No substantial evidence exists to support the Commenter's claim that the building formerly occupied by the A+D Museum will be occupied by a higher intensity land use under the rezoning of the Project Site to C2-2-RIO from M3-1-RIO upon Project approval. As described in the Draft EIR (pages II-4, 8, and 10) and restated by the Commenter, the zone change of the Project would actually limit the currently permitted types of uses, as some of the currently allowed manufacturing and industrial uses that are permitted in the M3 Zone would not be allowed with the proposed C2 Zone. Due to the range of potential, specific uses that could possibly occupy the building formerly occupied by the A+D Museum per the LAMC and proposed C2 zoning, including, but not limited to restaurant, bar, brewery, retail, museum, studio, production office, and other office uses, it would be speculative to assume that any one of these uses would replace the most recent use. As CEQA specifies that speculation is not substantial evidence per Section 21080(e)(2), the Draft EIR correctly utilizes the operating A+D Museum as the environmental baseline for analysis, and the assumption that the future use of the now vacant building would be similar to the A+D Museum use is justified. Furthermore, in the event that a substantially different or more intensive land use is proposed to occupy the space formerly occupied by the A+D Museum, a Subsequent EIR, Supplement to an EIR, or an EIR Addendum pursuant to CEQA Guidelines Sections 15162, 15163, or 15164, respectively, would be required to document the changes to the Project description and evaluate the associated impacts and mitigation measures, if any.

Comment No. 5-10

Second, the EIR's Project description is inaccurate and misleading, since it understates the Project's scope and inconsistency with the existing zoning by emphasizing the incremental *changes* happening in the area. For example, the Draft EIR understates the Project's FAR and presents it as 6:1 (DEIR, p. I-10) and yet, in a *fine print* footnote 8 (font size 8), the DEIR mentions that the FAR calculation is one offered by the Project's Architect. (DEIR, p. I-9). And footnote 8 in the Draft EIR – even if acceptable under CEQA for its fine print and legibility – is not clear as to whether the Project's FAR calculation or definition provided by the Project's Architect is proper:

> According to the Los Angeles Municipal Code (LAMC) Section 12.03, Definitions, Floor Area Ratio is a ratio establishing the relationship between a property and the amount of development permitted for that property, and it is expressed as a percentage or a ratio of the **Buildable Area** or Lot size. **Utilized** by the **Project Architect** for purposes of the Project, **floor area** is defined as area in square feet confined **within** the exterior walls of a building, but **not including** the area of the following: **exterior walls**, stairways, shafts, rooms housing building-operating

> equipment or machinery, **parking areas** with **associated driveways** and ramps, space dedicated to bicycle parking, and **basement storage** areas. However, the Project land use "**office exterior common area**" **does** contribute to the floor area, as it is a covered area (refer to floor plans, elevations, and cross-sections provided herein).

(DEIR, p. I-9, fn. 8, emph. added.)

The fine print statement quoted above is ambiguous as to what is the correct FAR calculation since the Draft EIR cannot delegate its objective CEQA duties to the Applicant's Architect to disclose or calculate the FAR. The above-quoted statement also reveals that the Draft EIR fails to calculate numerous large areas as part of the FAR and thereby *understates* the FAR. E.g., elsewhere the Draft EIR notes: "Vehicle parking spaces would be provided within three subterranean levels and on the **2nd through 5th floors** of the Office Building." (DEIR, p. I-10.) In other words, areas on the 2nd through 5th floors, as well as the basement storage areas, are currently not calculated in the FAR. Any *further* departure from the permitted 1.5:1 FAR on the Project site may indicate *additional* impacts or *more severity* in the Project's impacts as compared with impacts analyzed in the EIR, but such severity was ignored or understated in light of the Draft EIR's ambiguous and inaccurate project description.[11]

Tellingly, this FAR calculation by the Project proponents appears to have been questioned by the City and Project's Planner since its application in 2017. (**Exhibit G** [8/15/2017 Applicant's email to the City re FAR].) However, rather than disclose the FAR issue, the Draft EIR repeatedly buries it in fine print. Doing so, it makes the Draft EIR more cumbersome, contrary to CEQA's intent. (See CEQA Guidelines § 15140 ["EIRs shall be written in plain language and may use appropriate graphics so that decision makers and the public can rapidly understand the documents."])

Footnotes:

[11] See also, the City's correspondence noting the FAR as being 6:1 even as of 2020, when the Project was proposed as 17-18 stories, instead of the current 19 stories in 2022. (**Exhibit E,** pp. 6 & 13 [March 24, 2020 City Letter to LADWP]**.**)

Response to Comment No. 5-10

The Commenter asserts that the Draft EIR understates the Project's floor area ratio (FAR), which is approximately 6:1, based solely on the fact that the source of the FAR calculation is the Project Architect, and that the City Planner had questions regarding the FAR calculation. The Commenter claims that the "Draft EIR cannot delegate its objective CEQA duties to the Applicant's Architect to disclose or calculate the FAR." In fact, environmental analyses such as the Draft EIR are permitted to rely on the expertise of

technical experts, and the Project Architect, with expertise in building design and LAMC requirements, correctly calculated the Project FAR, based on the LAMC, Section 12.03, definitions of floor area and floor area ratio, which are:

> **"FLOOR AREA. (Amended by Ord. No. 182,386, Eff. 3/13/13.)** The area in square feet confined within the exterior walls of a Building, but not including the area of the following: exterior walls, stairways, shafts, rooms housing Building-operating equipment or machinery, parking areas with associated driveways and ramps, space dedicated to bicycle parking, space for the landing and storage of helicopters, and Basement storage areas."
>
> **"FLOOR AREA RATIO (FAR).** A ratio establishing relationship between a property and the amount of development permitted for that property, and is expressed as a percentage or a ratio of the Buildable Area or Lot size (example: "3 times the Buildable Area" or "3:1"). **(Added by Ord. No. 181,624, Eff. 5/9/11.)"**

Therefore, Project areas that include stairways, shafts, rooms with building-operating equipment or machinery, parking areas with associated driveways and ramps, spaces dedicated to bicycle parking, and basement storage areas are correctly omitted from the calculation of floor area and FAR.

In addition, the Commenter also refers to Exhibit G to Comment Letter No. 5 (8/15/2017 Applicant's email to the City regarding the FAR) as an indication that the FAR is incorrectly calculated; but Exhibit G only demonstrates that a discussion between the Applicant's representative and City Planner regarding the FAR was to take place. As such, the Commenter's assertion that the Project may result in additional or more severe impacts than those disclosed in the Draft EIR as a result of a higher FAR is unfounded.

Lastly, the Commenter implies that the Draft EIR attempts to conceal the Project FAR. However, the FAR is clearly stated, repeatedly, throughout the Draft EIR (see Chapters I, Introduction and Executive Summary [page I-10]; II, Project Description [pages II-3 and II-33]; and VI, Alternatives [page VI-6], as well as Section IV.H, Land Use and Planning [page IV.H-29]). Including footnotes to further explain details of the FAR calculation is not a violation of CEQA.

Comment No. 5-11

The Draft EIR also provides, and *again* in *fine print*, that the FAR calculated in the Project *includes* the easements and areas that are proposed to be vacated. As such, the Draft EIR further *understates* the FAR increase of the *buildable* area as defined by the Municipal Code and the Project not only *exceeds* the allowed buildable area but also eliminates and appropriates *public rights* of *way*:

> The Project Site area of **57,103** sf does not include the **termination** of **existing easements** and **proposed vacations** as indicated in Vesting Tentative Tract Map No. 74745 (Psomas, January 6, 2017). The proposed area according to the Vesting Tentative Tract Map (VTTM) 74745 is approximately **57,325** sf, which is used to calculate the Project FAR.

(DEIR, p. II-4, fine print in the chart, emph. added.) In fact, *nowhere* in the Draft EIR does it mention about *termination* of existing easements or *proposed vacations*.[12] And the discretionary actions listed in the Project description mention of no such termination or vacation either. (DEIR, pp. II-34-35 [Project will merge *previously* approved vacations of the public right of way, indicating another example of piecemealing].) This critical *omission* of the Project's proposed vacation of public rights of way and easements (other than in one fine print reference) is prejudicial and taints the entire EIR and its analysis, as such vacation may result in additional significant impacts or increase the severity of impacts that were not adequately analyzed because the issue was not adequately described (e.g., transportation/circulation, and the associated air quality, greenhouse gas emissions, noise, safety, emergency, and adverse impacts on human beings).

Footnote:

[12] This is a further omission in the Draft EIR and is a violation of not only CEQA but also other applicable laws.

Response to Comment No. 5-11

The Commenter restates the assertion that the Project FAR is calculated incorrectly and is therefore understated. The statement demonstrates the Commenter's misunderstanding of the description of the existing conditions of the Project Site, which correctly does not include the Project's proposed merger of those public rights-of-way (i.e., the termination of existing easements and proposed vacations). The Commenter also contradicts itself by stating that the Draft EIR makes no mention of the termination of existing easements and proposed vacations that are included with the proposed Vesting Tentative Tract Map No. 74745 and then provides the citation indicating where this information is provided in Chapter II, Project Description, within Table II-1, Information by Parcel, on page II-4 of the Draft EIR**.**

Pursuant to Section 66499.20 of the California Government Code, a public right-of-way may be merged upon the recordation of a final subdivision tract map or parcel map without going through vacation proceedings. Under City Council policy (CF No. 01-1459 and CF No. 01-1459-S1), petitioners are instructed to apply for a Tract or Parcel Map with the Department of City Planning if they wish to proceed with a requested merging of public

right-of-way. Under this policy, all elements of the development project approval will be considered by a single decision maker, so as to avoid piecemealing.

The Commenter is incorrect in their assertion that the "Draft EIR *understates* the FAR increase of the *buildable* area." As detailed in Chapter II, Project Description, pages II-34 and II-35, and throughout the Draft EIR, there is a list of requested entitlements, including the change to Height District No. 2 to allow for a 6:1 FAR and the increased buildable area calculated after the requested mergers (i.e., the termination of existing easements and proposed vacations). As specified in LAMC 12.03, the definition of buildable area is calculated by "…computing the height district limitations on total floor area for any development of…commercial uses, in the C2, C4, or C5 zones, buildable area shall have the same meaning as lot area." The Project, which would be located within a C2 Zone, correctly calculates the buildable area, which is the proposed lot area that includes the mergers of those aforementioned public rights-of-way (i.e., the termination of existing easements or proposed vacations).

Comment No. 5-12

Third, the Draft EIR's *project description* section misleadingly includes Section 3 about the *existing* environment, even though it is appropriate under a different *baseline* section in the EIR. (*Compare*, CEQA Guidelines § 15124 [project description] with § 15125 [baseline].) Yet, by providing a description of the *baseline existing* conditions (DEIR, pp. II.4—11 [Section: "Project Site Characteristics", esp. DEIR, p. I-5 (emphasizing the commercial development trend in the area)]) *before* Section 4 on the proposed Project, the Draft EIR's project description creates a misleading account as to the significant amendments the Project is seeking and fails to disclose the Project's inconsistency with the applicable land use designation or general and community plans. As an illustration, a *fine print* footnote 15 in the Draft EIR provides:

> In the existing condition, the Project Site is located on land currently zoned M3-1-RIO (Heavy Industrial, Height District 1, River Improvement Overlay). **With some limitations**, the M3 Zone allows for uses permitted in the M2 (Light Industrial), M1 (Limited Industrial), MR2 (Restricted Light Industrial), **C2 (Commercial),** and C1 and 1.5 (Limited Commercial) Zones. Therefore, the **M3 Zone allows for commercial uses**. With the Project, the Project Site would be **re-zoned to C2**.

(DEIR, p. II-10, fn. 16, emph. added.) The footnote is clearly argumentantive [sic] and inaccurate. And yet, an EIR must be *objective*, since an EIR is a document of accountability and information – not of persuasion or advocacy. (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 738 ["Arambel's assertion at oral argument that alternative sites need not be considered because they would necessitate the loss to the town of Grayson of the "substantial

benefits" the development project would bring is facile. It may be true that if the project were located elsewhere, Grayson would lose these benefits; however, if so, another community would be similarly enriched. **An EIR is not a document of advocacy but of information**."] Emph. added.)

Response to Comment No. 5-12

The Commenter states that the Draft EIR is misleading with regard to the placement of the description of the Project and the environmental setting in Chapter II, Project Description. The CEQA Guidelines, Sections 15124 and 15125, require that a Project Description and Environmental Setting description are included in a Draft EIR; however, the placement of these descriptions is not dictated by the CEQA Guidelines. Chapter II, Project Description, and Chapter III, Environmental Setting, of the Draft EIR, and the subsection headings therein, clearly label the components of the chapter, orient the reader, and inform the reader of whether the text that follows is describing the Project Site conditions, conditions in the Project vicinity, features of the Project that is proposed by the Applicant, existing zoning and land use designations of the Project Site, or zoning and land use designations proposed by the Project for the Project Site.

As to the Commenter's assertion that the Draft EIR does not disclose the Project's inconsistency with the applicable land use designation or general and community plans, the Commenter is mistaken. The Draft EIR describes the requested changes to the Project Site land use designation from Heavy Industrial to Regional Center Commercial, from the M3 Zone to the C2 Zone, and from Height District No. 1 to Height District No. 2 in Chapter II, Project Description (pages II-34 and II-35), and Section IV.H, Land Use and Planning (pages IV.H-18, 21, 28, 29, and 32). The Project includes these requested entitlements, which are subject to the City's discretionary approval. As evaluated in the Draft EIR, Section IV.H, Land Use and Planning (pages IV.H-16 through IV.H-33), and Appendix I, Land Use Policy Consistency Tables, the Project, as proposed with these requested entitlements, would not be in conflict with the requirements and policies of the SCAG 2020-2045 RTP/SCS, the General Plan (and applicable elements, including the Framework Element, Mobility Plan, Community Plan, and Plan for a Healthy Los Angeles), the LAMC, the Citywide Design Guidelines, and the River Improvement Overlay (RIO) District that were specifically adopted for the purpose of avoiding or mitigating an environmental effect.

Lastly, the Commenter states that the Draft EIR is argumentative and inaccurate, and they provide an example from case law that is irrelevant to the other land use and entitlement issues raised in this comment. As the Commenter does not specify the source of the inaccuracy, no further response is required.

Comment No. 5-13

As another example of misleadingly conflating the existing and future conditions, the Draft EIR provides that the Project is located in the transit-priority area ("**TPA**"), but does not explain what constitutes the ground for such assertion and only provides a map, indicating a "former" and "future" Metroline. (DEIR,pp.II-10-11.)[13] The Draft EIR provides no measurement of how far that Metro line is from the Project site and what is the status of that as of circulation of the Draft EIR.

Footnote:

[13] Elsewhere in the Draft EIR, it provides a footnote 36, which states: "The Metro L Line (Gold) was previously accessed from the Little Tokyo/Arts District Station located at 1st and Alameda Street; however, as part of Metro's Regional Connector Transit Project, **that location has been closed**, and a new Little Tokyo/Arts District Station is under construction and will be located at 1st Street and Central Avenue. The new station will be operational in 2022 (prior to the anticipated completion date of the Project)." (DEIR, p. IV.A-36.) The dates in this statement show that the Draft EIR has not been updated to reflect changes as of 2022.

Response to Comment No. 5-13

The Commenter questions the basis on which the Project Site is located in a TPA. The Project Site is located in a TPA pursuant to SB 743 (PRC §210099[d]) and the City's Planning Zoning Information (ZI) File No. 2452. Chapter II, Project Description, of the Draft EIR details how the Project qualifies as a transit-oriented infill project and the characteristics of the Project Site that qualify it as being located in a TPA: "PRC Section 21099 and ZI File No. 2452 apply to the Project, because the Project would be an employment center that is located on land zoned for commercial uses on an infill site within a TPA" (page II-10 of the Draft EIR). Figure II-4, Project Site Location within a Transit Priority Area, of the Draft EIR further illustrates that the Project Site is located within the 0.5 mile distance requirement of both the existing (at the time of the NOP, the baseline for analysis) Los Angeles County Metropolitan Transportation Authority (Metro) Little Tokyo/Arts District Station and of the proposed location of the Little Tokyo/Arts District Station. The relocated station is scheduled to open in early 2023, according to Metro.[14]

[14] Metro. L Line (Gold) Service Interruption. Available at: https://www.metro.net/projects/rclt-station-closure/. Accessed on January 5, 2023.

Comment No. 5-14

The Draft EIR also provides: "Pursuant to the Project Site's current M3 Zoning and Height District No. 1 designation, buildings on the Project Site would be limited to a FAR of 1.5:1. In these areas, there is no maximum height limit, rather height is limited by the FAR." (DEIR, p. II-8.) And yet, the Draft EIR does not explain why then the discretionary actions for the Project include a change from *Height District 1* to *Height District 2* and not just an approval of the FAR increase. (DEIR, p. II-34.)

Response to Comment No. 5-14

The Commenter questions why there is a need for a height change and not just a change in the FAR. The City's zoning provisions regulate many aspects of how land may be used, including limitations on the size and scale of buildings through the use of height districts. The height district limits the height of a building and its square footage and is defined by a number, which appears after the zone class. The Draft EIR (Chapter II, Project Description, pages II-34 and II-35), correctly describes the necessary entitlement requests, including the zone and height district change from M3-1-RIO to C2-2-RIO, that would allow the Project's uses, FAR, and height. A zone change on its own, from M3 to C2, without changing the Height District No. 1, would not accommodate the Project's FAR of 6:1. Rather, a zone scenario of C2-1 (C zone and Height District No. 1) would still only allow a FAR of 1.5:1; therefore, a height district change to Height District No. 2 would still be required to allow for the Project's FAR of 6:1.

Comment No. 5-15

Lastly, the Project's *objectives* in the project description very narrowly drawn [sic] and mirror the Project, with its higher density uses, thereby tainting the EIR's analysis and conclusions. For example, the Draft EIR's Section 8, Objectives 1 and 2 provide:

1. Redevelop **low-intensity parcels** in the Arts District with a mix of **high-density commercial land uses** that provide an increased variety of job opportunities, thereby maximizing the creation of permanent jobs and economic investment in the City of Los Angeles and the Arts District.

2. Introduce a range of high quality and **high-density commercial spaces** at the appropriate scale and intensity that would supply the increasing demand for office, incubator space, and innovative campus uses in the Arts District; contribute to the demand for office space; and provide neighborhood resources for the growing residential neighborhood within the Arts District.

(DEIR, pp. II-33—34, emph. added.) Manifestly, the Project's objectives intend to *change* the industrial lower intensity uses into higher density commercial use [sic].

Similarly, Objectives 3 through the rest are narrowly drawn and mirror the Project, promoting the Project's multi-level design and pedestrian features:

3. Support the growing community of creative and commercial uses and bourgeoning residential population in close proximity with additional office and restaurant uses.

4. Represent the character of the Arts District by maintaining the bow truss structure and constructing a **complementary multi-level** building that incorporates unique exterior architectural treatments and **publicly accessible open space that acts as a visual anchor**.

5. Through the provision of the design, scale, and **height of the Office Building**, encourage **pedestrian activity and commerce**, and create **open space opportunities**, with ground floor, street- facing commercial spaces; a landscaped courtyard that would be open to public use and available for community and private events; a landscaped passageway that connects South Hewitt and Colyton Streets and promotes pedestrian access throughout the Project's street level; and balconies and a rooftop deck for the Project's office tenants.

6. Promote transit and mobility objectives and reduce VMT by providing **mixed-use commercial and office spaces** proximate to existing and planned DTLA residential land uses and public transit facilities, including the Metro L (Gold) Line Little Tokyo/Arts District Station located at 1st and Alameda Streets, as well as the Metro and DASH bus stops located near East 4th and South Hewitt Streets.

7. Encourage the use of alternative forms of transportation through the provision of **bicycle parking and showers; charging stations for electric vehicles; and preferential parking** for fuel- efficient, low-emission, and carpool/vanpool vehicles.

8. Reduce the consumption of energy and water and minimize impacts on the environment through sustainable design features.

(DEIR, p. II-34, emph. added.)[14]

These overly narrowly drawn project objectives are legally inadequate for a project description since they preclude potential mitigation or a reasonable range of alternatives, by focusing on the Project's basic objective to "provide a high-density, mixed-use, commercial office project that provides job opportunities in proximity to public transit and other commercial and residential land uses to the same extent as the Project, because the office uses of the Project would be replaced with live/work residential uses." (DEIR, pp. I-27—28 & I-30). (*We Advocate Through Environmental Review v. County of Siskiyou* (2022) 78 Cal.App.5th 683, 692 ["In taking this artificially narrow approach for describing

the project objectives, the County ensured that the results of its alternatives analysis would be a foregone conclusion. It also, as a result, transformed the EIR's alternatives section—often described as part of the "core of the EIR" (*In re Bay-Delta, supra*, 43 Cal.4th at p. 1162)—into an empty formality."])

Footnote:

[14] Contrary to the EIR, Objectives 3-8 can be obtained through a reduced Project alternative with *lower* FAR and *industrial* uses, but the Draft EIR does not list such an alternative.

Response to Comment No. 5-15

The Commenter asserts that the Project objectives are so narrow that they preclude consideration of a reasonable range of alternatives. However, pursuant to *California Oak Found. v Regents of Univ. of Cal.* (2010) 188 CA4th 227, 276, "CEQA does not restrict an agency's discretion to identify and pursue a particular project designed to meet a particular set of objectives. CEQA simply requires the agency to thereafter prepare and certify a legally adequate EIR that provides the agency and the public alike with detailed information regarding the proposed project's significant environmental impacts, as well as reasonable alternatives that would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen [those impacts]." The statement of Project objectives is not overly or inappropriately narrow. Rather, the Project objectives are based on the underlying purpose of the Project that would be in conformance with its current and proposed Community Plans, which is to provide a mixed-use, commercial office project at an increased FAR that provides job opportunities in proximity to public transit and other commercial and residential land uses.

With regard to the Project objectives, it is noted here that the Commenter misquoted the Project objective(s) when stating that one of the basic Project objectives is to "provide a high-density, mixed-use, commercial office project that provides job opportunities in proximity to public transit and other commercial and residential land uses to the same extent as the Project, because the office uses of the Project would be replaced with live/work residential uses." This text is an excerpt from the analysis of Alternative 3, wherein the Draft EIR describes that Alternative 3 would not meet the basic Project objectives, as it eliminates the office space and associated jobs that the Project would create and instead would develop residential units. The Project objectives are listed on pages II-33 and II-34 in Chapter II, Project Description, of the Draft EIR.

However, the Project objectives that are listed in the Draft EIR on pages II-33 and II-34 of Chapter II, Project Description, have been revised to omit the term "high-density," as "density" is a term that refers to residential units, rather than commercial or office space.

Therefore, Project objectives 1 and 2, on pages II-33 and II-34 of the Draft EIR, have been revised, as follows and as is also shown in Chapter III, Revisions, Clarifications, and Corrections to the Draft EIR, of the Final EIR:

"1. Redevelop low-intensity parcels in the Arts District with a mix of ~~high-density~~ commercial land uses at an increased FAR that provides an increased variety of job opportunities, thereby maximizing the creation of permanent jobs and economic investment in the City of Los Angeles and the Arts District.

2. Introduce a range of high quality ~~and high-density~~ commercial spaces at the appropriate scale and intensity that would supply the increasing demand for office, incubator space, and innovative campus uses in the Arts District; contribute to the demand for office space; and provide neighborhood resources for the growing residential neighborhood within the Arts District."

In addition, elsewhere in the Draft EIR (Chapter I, Introduction and Executive Summary; Section IV.A, Air Quality; Section IV.B, Cultural Resources; Section IV.C, Energy; Section IV.H, Land Use and Planning; Chapter V, Other CEQA Considerations; Chapter VI, Alternatives; and Appendix I, Land Use Policy Consistency Tables) where the terms "density" or "high-density" are used in reference to the Project's commercial and office spaces, the Draft EIR text has been revised as described in Chapter III, Revisions, Clarifications, and Corrections to the Draft EIR, of the Final EIR.

The Project objectives are broad enough to facilitate a meaningful alternatives analysis, which is provided in Chapter VI, Alternatives, of the Draft EIR. The analysis therein is sufficient and identifies three feasible alternatives: No Project Alternative, Current Zoning and Land Use Designation Alternative, and Downtown Community Plan Alternative. The Commenter provides no evidence to support claims that the objectives precluded consideration of other reasonable alternatives for achieving the underlying purpose of the Project, nor do they provide a different alternative that would both avoid or mitigate the Project's significant environmental effects in addition to achieving the basic Project objectives. The Commenter only suggests a vague industrial use as an alternative in Footnote 14; however, they fail to address the fact that industrial uses, which typically involve manufacturing processes, may result in significant air quality and GHG impacts, to which the Project would actually have less than significant impacts, as evaluated in the Draft EIR, Chapters IV.A, Air Quality, and IV.E, Greenhouse Gas Emissions. In addition, an industrial use would not meet the basic Project objectives.

Notably, the Commenter also ignores the fact that the only significant and unavoidable impacts of the Project would occur during the temporary construction period of the Project and relate to noise (off-road construction equipment and composite construction noise levels) and vibration (off-road construction activity – building damage and on-road construction vehicles – human annoyance). The alternatives analysis in Chapter VI of the

Draft EIR (pages VI-8 through VI-11) evaluates three scenarios for avoiding these significant and unmitigable noise and vibration impacts: 1) omitting subterranean parking levels and excavation activities, 2) extending the duration of the construction period, and 3) placing a reduced version of the Project in the central portion of the Project Site. As determined by the Draft EIR, these scenarios (refer to pages VI-8 through VI-11, Alternatives that Avoid the Significant and Unavoidable Construction Period Noise and Vibration Impacts of the Project) may reduce the severity of the impacts, but not to the extent that they would be reduced to a less than significant level. The other significant impacts of the Project (related to archaeological resources, hazards and hazardous materials [upset and accident conditions – soil conditions], and hydrology and water quality [construction – water quality standards and plans]), would be reduced to less than significant with mitigation measures incorporated, which each Alternative would also implement.

Comment No. 5-16

In sum, the Draft EIR's project description is inaccurate, incomplete, and misleading, as it does not reflect the reasonably foreseeable full scope of the Project and conceals the Project's inconsistency with the current applicable zoning and General Plan. The Project objectives are also narrowly drawn, turning the EIR into a mere formality. The Draft EIR's project description is also inadequate, in view of continuous changes and piecemeal increases in the Project since 2017. The Draft EIR's inaccurate project description is fatal and requires revision and recirculation. (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 730 ["Since "[a]n accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR" (*id.* at p. 193, 139 Cal.Rptr. 396), even were the FEIR deemed to be adequate in all other respects, the selection and use of a "truncated project concept" violated CEQA and mandates the conclusion that the County did not proceed " 'in a manner required by law.' " (Cit. omit.).])

Response to Comment No. 5-16

The Commenter restates the assertion that the Project Description is inaccurate and misleading. This comment serves as a conclusory statement, summarizing Comment No. 5-6 through Comment No. 5-15. Please refer to Response to Comment No. 5-6 through Response to Comment No. 5-15 for the responses to these comments.

Comment No. 5-17

B. The Draft EIR's Baseline Is Fatally Inaccurate.

An inaccurate baseline taints the entire EIR analysis, as occurred here. Based on CEQA, the Draft EIR's baseline must be set as of the time the NOP was circulated, here, 2017.

(CEQA Guidelines § 15125(a)(1).) Yet, the Draft EIR provides baseline conditions without specifying any timing and instead generally referring to "recent" conditions. Yet, a lot has changed since 2017, both in the Project and its surrounding.

First, as noted above in the Section A, *supra*, the Draft EIR provides a misleading account of the A+D Museum buildings. As of the 2017 NOP, those buildings were occupied by the Museum; the change occurred in 2020 when the Museum – perhaps due to COVID-19 pandemic – started operating virtually. Yet, the Draft EIR's *project description* section portrayed those buildings as "vacant" for purposes of the Project's scope. And here, in the *baseline* section – for purposes of baseline conditions *against which* the Project's impacts will be measured, the Draft EIR does *not even* identify the buildings as related to the A+D Museum, but rather vaguely describes those and their associated storage area as a "commercial" structure:

> The Project Site is currently occupied by **four structures** -two **occupiable** and **two storage** accessory structures. One **occupiable** structure with a commercial use is located at the southeast corner of Colyton and East 4th Streets. A storage space for the commercial use (located southeast of the commercial use in a separate 1,000-square foot structure), a one-story office structure and related garage/storage space (6,030 square feet combined), and associated surface parking lots (approximately 39,751 square feet) are also located on the Project Site.

(DEIR, p. III.2, emph. added.)

Response to Comment No. 5-17

The Commenter first questions the baseline for the Draft EIR analysis. Please refer to Response to Comment No. 5-9 for a description of the Draft EIR analysis baseline.

The Commenter also asserts that the Draft EIR Project Description (Chapter II) portrayed the building formerly occupied by the A+D Museum and associated storage building as vacant for purposes of the Project's scope. This statement is inaccurate. The Project Description merely conveys the updated conditions of the building formerly occupied by the A+D Museum and associated storage building. The operating A+D Museum (the condition at the time of the NOP) is utilized throughout Chapter IV, Environmental Impact Analysis, of the Draft EIR, where warranted (for example, in Section IV.J, Population and Housing; Section IV.K, Public Services; and Section IV.N, Utilities and Service Systems).

The Commenter also asserts that the Draft EIR does not identify the vacant buildings as being related to the A+D Museum, and instead vaguely describes them as commercial structures in Chapter III, Environmental Setting. However, Chapter I, Introduction and Executive Summary; Chapter II, Project Description; the sub-sections of Chapter IV,

Environmental Impact Analysis, and Chapter VI, Alternatives, all describe these buildings as being formerly occupied by the A+D Museum. For additional clarity, page III-2 of the Draft EIR, Chapter III, Environmental Setting, has been revised for clarity, as follows and as is also shown on page III-3 in Chapter III, Revisions, Clarifications, and Corrections to the Draft EIR, of the Final EIR:

"The Project Site is currently occupied by four structures – two occupiable and two storage accessory structures. One ~~occupiable~~ structure ~~with a commercial use~~was formerly occupied by the Architecture and Design (A+D) Museum and is located at the southeast corner of Colyton and East 4th Streets. A storage space for the ~~commercial use~~building formerly occupied by the A+D Museum (located southeast of the ~~commercial use~~former A+D Museum building in a separate 1,000-square foot structure), a one-story office structure and related garage/storage space (6,030 square feet combined), and associated surface parking lots (approximately 39,751 square feet) are also located on the Project Site."

Comment No. 5-18

The Draft EIR's failure to identify, in the EIR's *baseline* section, the potentially historical structure of the A+D Museum building located at the Project site and the fact that the 1,000 sq. ft. storage area (to be demolished) is part of such potentially historic building and therefore also having historical significance is prejudicial since it fails to provide an accurate statement of the existing conditions and uses. The fact that the Draft EIR identifies those buildings in other sections, such as *project description,* is irrelevant and does not cure the inadequacy of the Draft EIR's *baseline* section.

Similarly, the baseline description of surrounding uses omits the presence of the *other* potentially historical resources (disclosed later in the Draft EIR) and the fact that the Project and surrounding structures are located in *a historic district* per the 2016 LA Survey. (DEIR, p. IV.I-25—26.)

Response to Comment No. 5-18

The Commenter asserts that the Draft EIR is inadequate on the basis of failing to identify "the potentially historical" buildings formerly occupied by the A+D Museum and because this is not disclosed in the Draft EIR's "baseline section." The Draft EIR is adequate, and historical structures are discussed elsewhere in the Draft EIR (in Section IV.B, Cultural Resources). There is not a "baseline section" in the Draft EIR, nor does CEQA require any one such section. Chapter III, Environmental Setting, of the Draft EIR provides the existing conditions of the Project Site and surrounding area (as well as a description of the Related Projects) in a broad sense. However, each individual environmental resource analysis that comprises Chapter IV, Environmental Impact Analysis, of the Draft EIR

provides the baseline existing condition that is specific to that environmental resource topic. Therefore, Section IV.B, Cultural Resources, subsection b, Existing Conditions (pages IV.B-30 through IV.B-37 of the Draft EIR), appropriately provides the baseline for the historic resources analysis.

Further, the building formerly occupied by the A+D Museum and the associated storage structure, and the existing office building and the associated garage/storage structure on the Project Site are not potentially historic buildings as the Commenter suggests. As described in detail in the Historical Resources Technical Report (Appendix C2 of the Draft EIR) and in the Draft EIR, Section IV.B, Cultural Resources, subsection b, Existing Conditions (pages IV.B-30 through IV.B-37 of the Draft EIR), properties surveyed as part of the Los Angeles Historic Resources Survey (SurveyLA) were evaluated for individual eligibility and as potential contributors to the potential Downtown Los Angeles Historic Industrial District (potential Historic District) using relevant contexts and themes developed in SurveyLA's August 2016 Los Angeles Citywide Historic Context Statement (HCS) and established eligibility criteria and integrity thresholds for listing in the National Register of Historic Places, the California Register of Historical Resources, and as City of Los Angeles Historic-Cultural Monuments (HCMs) or Historic Preservation Overlay Zone (HPOZs) (i.e., historic districts). No structures located on the Project Site were identified as contributors to the potential Historic District by SurveyLA, nor were they identified in SurveyLA as being individually eligible for historic listing or designation per federal, State, or local criteria. In addition, none of the structures located on the Project Site are listed in the California Office of Historic Preservation's (OHP's) Built Environment Resource Directory (BERD). According to the September 2016 Department of City Planning's Office of Historic Resources (OHR) "SurveyLA: Historic Resources Survey Report, Central City North Community Plan Area," none of these properties were identified as individually significant for an association with an important event (Criterion A/1/1); none were found individually significant for an association with an important person (Criterion B/2/2); and none were identified as individually significant as an example of a style, type, period, or method of construction, or as a notable work of a master (Criterion C/3/3). These properties are not reflective of relevant themes developed in the Los Angeles Citywide HCS; therefore, they do not meet eligibility criteria for individual historic listing or designation at the federal, State or local levels.

Furthermore, and as supported by the Historical Resources Technical Report (Appendix C2 of the Draft EIR), Draft EIR Section IV.B, Cultural Resources, subsection b, Existing Conditions (pages IV.B-30 through IV.B-37 of the Draft EIR) identifies five properties located adjacent to or across Colyton Street or South Hewitt Street from the Project Site that were evaluated by SurveyLA as contributors to the potential Historic District. These properties include 407 Colyton Street, 421 Colyton Street, 424 Colyton Street, 427 South Hewitt Street, and 428 South Hewitt Street. While they are contributors to the potential

Historic District, none of the five properties located adjacent to or across Colyton Street or South Hewitt Street from the Project Site were determined by SurveyLA to be eligible for listing individually as historical resources as defined by CEQA.

Accordingly, the potential historic resources in the Project area, including on- and off-site structures as well as the potential Historic District, are appropriately addressed in the baseline discussion of Section IV.B, Cultural Resources, subsection b, Existing Conditions (pages IV.B-30 through IV.B-37) of the Draft EIR.

Comment No. 5-19

Second, the EIR uses general statements as to the surrounding uses and does not specify the timing of the "recent" changes it seeks to portray:

> In **recent** years, the subareas of the Community Plan area, within which the Property is located, have been **transforming** from a **predominantly industrial** area to one that is comprised of old warehouses **now converted** to artists' lofts and studios. In addition, with the advent of the City's Adaptive Reuse Ordinance, the **converted** buildings now operate as **live/work** and **commercial uses**; thus, there is a growing residential population and **commercial-oriented** uses within the Community Plan area.

(DEIR, p. III-2, emph. Added.)

The EIR's failure to identify the dates of such "recent" changes and its continued emphasis of commercial uses is misleading as it understates the change the Project causes and its inconsistency with the current zoning and applicable land use plans.

Response to Comment No. 5-19

The Commenter asserts that the Draft EIR is misleading, because it does not identify the dates of construction/redevelopment of commercial projects located in the Project area. The specific dates of the construction/redevelopment of land uses in the Project area are not relevant when describing the Environmental Setting and specifically the Project Site's surrounding area. However, the surrounding land uses in the area are visually depicted in Figure II-2, Existing Site and Surrounding Land Uses, of the Draft EIR. Further, the City, in its Draft Community Plan Update for the area, also acknowledges the general trend of industrial uses being replaced with more residential and commercial uses as it has redesignated much of the Arts District area to a Hybrid Industrial land use designation for those "areas with a distinct form characterized by an industrial legacy, now developed with light industrial, new industry, commercial, and live/work uses." Therefore, contrary to the Commenter's assertion that the Draft EIR "understates the change the Project

causes," these well documented land use changes in the Arts District will continue with or without the implementation of the Project.

The Commenter also implies that the Draft EIR emphasizes commercial uses over other uses and is inconsistent with current zoning and applicable land use plans. Section III, Environmental Setting, of the Draft EIR accurately states the surrounding area's existing conditions. Additionally, the Project's requested entitlements, which include a General Plan Amendment, Vesting Zone, and Height District Change, are disclosed in Section II, Project Description (see Page II-34), of the Draft EIR, which, if approved, would ensure that the Project's proposed uses are consistent with the Project Site's land use designation and zoning. Lastly, contrary to the Commenter's statement, the Project's potential impacts to land use, including whether the Project would conflict with any land use plans, policies, or regulations adopted for the purpose of avoiding or mitigating an environmental effect, are analyzed in Section IV.H, Land Use and Planning, of the Draft EIR. As concluded in Section IV.H, impacts were determined to be less than significant.

Comment No. 5-20

Third, the Draft EIR's baseline section includes a list of *related projects* (DEIR, pp. III- 4—12), which is misplaced and outdated. As also noted in the Draft EIR, such [sic] list is required under CEQA Guidelines § 15130, and for purposes of *cumulative impacts* analysis. Yet, the related projects list is provided in the *baseline* section. (CEQA Guidelines § 15125.) Also, the related projects' list is outdated. The Draft EIR claims that the list is one provided by LADOT as of 2017 (DEIR, p. III-4), and yet in *fine print* footnote "a" in the chart, the Draft EIR provides that the related projects list was provided by LADOT in 2019. In any case, the Draft EIR was circulated in 2022, and – as evidenced by the piecemeal increase of the Project itself since 2017 – it is reasonably foreseeable that the Project area is now surrounded by *more* or *changed* related projects than those listed in the EIR as of 2019. (*See also*, various footnotes in the chart at DEIR, p. III-12.) The EIR's misplacement of the related projects and its failure to capture all of the related projects makes the Draft EIR inadequate also for purposes of the Project's cumulative impacts analysis.

Response to Comment No. 5-20

The Commenter asserts that the list of Related Projects is misplaced in the Draft EIR, that the list is also outdated, and that the Related Projects list fails to capture all Related Projects.

As described in Response to Comment No. 5-12, the CEQA Guidelines, Sections 15124 and 15125 require that a Project Description and Environmental Setting description are included in a Draft EIR; however, the placement of these descriptions is not dictated by the CEQA Guidelines. Further, as described in Response to Comment 5-18, there is not

one “baseline section” in the Draft EIR, nor does CEQA require any one such section. Similarly, the CEQA Guidelines, Section 15130, requires an analysis of a project’s cumulative effects and directs that this analysis may be based on a list of past, present, and probable future projects producing related or cumulative impacts; however, it does not specify a required location in the Draft EIR for this information.

Chapter III, Environmental Setting, of the Draft EIR provides the existing conditions of the Project Site and surrounding area, including a description of the Related Projects. The Related Projects list for the Project was first provided in 2017 by LADOT as part of the City of Los Angeles Transportation Impact Study Memorandum of Understanding for the Project TIS. This list, including 183 projects, included the Related Projects that were present at the time that the NOP for the Project was issued (September 20, 2017). However, between 2018 and 2019, LADOT and Department of City Planning subsequently revised the Related Projects list, noting that it included duplicate listings of projects, ministerial projects that did not warrant transportation or CEQA analysis, and projects that had been terminated. In addition, LADOT and Department of City Planning had received an additional 12 case filings for projects that would need to be considered as Related Projects. Therefore, the Related Projects list that is included in Chapter III, Environmental Setting, of the Draft EIR (pages III-4 through III-12) is based on information provided by LADOT and Department of City Planning, case filings of major discretionary projects, and transportation studies prepared for projects located within 1.5 miles of the Project Site as of 2019. A total of 137 Related Projects were identified for the Project and are considered in the evaluation of cumulative impacts. As noted in the Draft EIR, Chapter III, Environmental Setting (page III-13), the growth projected by the Related Projects list is a conservative assumption, as some of the Related Projects may not be developed by buildout of the Project, may be approved and developed at reduced densities, or may not be developed. Furthermore, since the time that the 1.5-mile radius Related Projects list was prepared for the Project, LADOT has revised the Related Project radius to 0.5 mile (according to the August 2022 LADOT Transportation Assessment Guidelines). As such, the Related Projects list provided for the Project is more exhaustive than currently required by the City and is adequate to support the cumulative impacts analysis for each environmental topic studied throughout Chapter IV, Environmental Impact Analysis the Draft EIR.

The Commenter provides no evidence that the Related Projects list, as originally formulated at the time the 2017 NOP was circulated and as updated and finalized in 2019, is incomplete. However, to clarify how the Related Projects list was developed, page III-4 of Chapter III, Environmental Setting, of the Draft EIR has been revised as follows and as is also shown in Chapter III, Revisions, Clarifications, and Corrections to the Draft EIR, of the Final EIR:

"The Related Projects list is based on information provided by the City's Department of Transportation (LADOT) and City of Los Angeles Department of City Planning (Department of City Planning), recent case filings of major discretionary projects, and recent transportation studies prepared for projects located within 1.5 miles of the Project Site as of the date of the September 20, 2017 NOP and as subsequently updated between 2018 and 2019 by the LADOT and Department of City Planning to 1) remove duplicate listings of projects, ministerial projects that did not warrant transportation or CEQA analysis, and projects that had been terminated; and 2) to add projects for which new case filings had been submitted since 2017."

Comment No. 5-21

In sum, the Draft EIR's baseline is fatally inaccurate as it fails to disclose the actual existing conditions on the Project site as of 2017 when the Notice of Preparation was issued and inflates it by presenting various "recent" changes in the area. It also conceals the fact that the presently vacant "occupiable" commercial structures belong to A+D museum and the entire site and its numerous surround structures are part of a historic district. The Draft EIR's baseline is also inaccurate as it includes the related projects list, which, in addition to being misplaced in the *baseline* section, is also outdated and does not capture the changes within the listed projects, as well as the quantity and scope of projects as of 2022 when the Draft EIR was circulated.

Response to Comment No. 5-21

The Commenter restates the assertion that the environmental baseline used in the Draft EIR is inaccurate. This comment serves as a conclusory statement, summarizing Comment No. 5-17 through Comment No. 5-20. Please refer to Response to Comment No. 5-17 through Response to Comment No. 5-20 for the responses to these comments.

Comment No. 5-22

C. The Draft EIR's Alternatives Are Legally Inadequate In Light of the Overly Narrow Objectives and Leave Out Feasible Alternatives.

The Draft EIR's alternatives are legally inadequate. First, as noted in Section A, *supra*, the alternatives are legally inadequate in light of the overly narrow Project objectives, which leave no room for flexibility to consider purely industrial development. In CEQA, alternatives are the core of the EIR since they help reduce the Project's potentially significant impacts. The Draft EIR here admits that a reduced size of the Project would lessen the Project's various impacts; yet, it chooses not to proceed with a lower density or reduced size only because it would not meet the Project's "basic" objective of the higher density mixed use development. (DEIR, p. I-27—31.) For example, the Draft EIR provides:

> As with the Project, Alternative **2** includes no residential units. However, Alternative **2** would not meet the **basic** Project objective to redevelop the urban infill Project Site **and** provide a **high-density, mixed-use**, **commercial office** project that increases job opportunities in proximity to public transit and other commercial and residential land uses to the same extent as the Project, because its **reduced density** would provide **substantially fewer jobs**. Alternative **2** would also result in similar impacts as the Project, and, **due** to the **reduced scale** of development to be constructed and operated, the relative impacts of Alternative **2** would **generally** be **less** in comparison (such as to **air quality**, **energy**, **GHG**, and **utilities** and **service** systems, for example).

(DEIR, p. I-28, emph. Added.)

Response to Comment No. 5-22

The Commenter asserts that the alternatives are legally inadequate in light of overly narrow Project objectives. Please refer to Response to Comment No. 5-15, which shows that the Project Objectives in fact did not preclude the consideration of other reasonable alternatives that would both achieve the underlying purpose of the Project and would avoid or mitigate the significant environmental effects of the Project.

The Commenter also claims that the Draft EIR did not proceed with a lower density or reduced size alternative (such as Alternative 2 – Current Zoning and Land Use Designation Alternative) to lessen the Project's various impacts only because it would not meet the Project's "basic" objective of the higher density mixed use development. This claim is false. First, the Commenter references only Chapter I, Introduction and Executive Summary, of the Draft EIR for the description of Alternative 2. Chapter VI, Alternatives, of the Draft EIR, provides a full analysis of the impacts of Alternative 2 as compared to those of the Project (pages VI-41 through VI-94). As evaluated therein, Alternative 2 would not meet the basic Project objectives to the same extent as the Project, because it would reduce the amount of commercial and office development on the Project site by 78 percent and would provide 282 jobs as compared to the 1,282 jobs that the Project would provide. The reduced scale of development of Alternative 2 would also reduce the duration of construction as compared to the Project. As such, the impact experienced during these peak construction phases would occur over a shorter period as compared to the Project, and noise and vibration levels during maximum activity days, which is one metric used for measure impact significance, would be similar to those of the Project. However, the duration of noise and vibration levels, another metric used for measuring impact significance, would be substantially less as compared to the Project.

While Alternative 2 would substantially lessen the Project's significant and unavoidable impacts related to Project-level and cumulative off-road construction equipment noise,

Project-level and cumulative composite construction activity noise, Project-level off-road construction activity vibration (building damage), and Project-level and cumulative on-road construction vehicle vibration (human annoyance), similar to the Project, Alternative 2 would not reduce the Project's significant and unavoidable impacts (identified above) to a level of less than significant. In addition, the average work VMT per employee under Alternative 2 would be greater than that of the Project.

Pages VI-69, 70, 122, and 123 of Chapter VI, Alternatives, of the Draft EIR have been revised as follows to clarify that the groundborne vibration related to off-road construction activity would be similar with Alternative 2 (and Alternative 3) as with the Project, due to the same construction equipment being utilized, but that the impacts would be substantially less with Alternative 2 (and Alternative 3) by comparison, due to the reduction in development and consequently the reduced duration of construction activity. These revisions are also shown in Chapter III, Revisions, Clarifications, and Corrections to the Draft EIR, of the Final EIR:

"The adjacent buildings are of such an age that they may be considered sensitive to the structural effects of vibration. Vibration annoyance was not considered, based on the commercial and industrial nature of the land uses. Due to the reduced amount of development that would occur with Alternative 2 as compared to the Project (78 percent less development), as well as the substantially reduced amount of grading (the export of 5,205 cubic yards of soils as compared to 75,200 cubic yards of soils), the overall amount and duration of construction activities would be reduced with Alternative 2. However, as previously explained, because the same equipment would still be utilized to demolish existing site uses; to prepare and level the site for new construction; and to collect, remove, and to transport demolished materials and surface soils from the site, the maximum vibration levels during construction of the Project would still occur during construction of Alternative 2, only over a reduced duration. As the closest vibration-sensitive receptors to the Project Site may experience significant vibration that exceeds the building damage threshold of 0.12 inches/second PPV, like the Project, the Alternative 2 impact would be significant."

"The adjacent buildings are of such an age that they may be considered sensitive to the structural effects of vibration. Vibration annoyance was not considered, based on the commercial and industrial nature of the land uses. Due to the reduced amount of development that would occur with Alternative 3 as compared to the Project (78 percent less development), as well as the substantially reduced amount of grading (the export of 5,205 cubic yards of soils as compared to 75,200 cubic yards of soils), the overall amount and duration of construction activities would be reduced with Alternative 3. However, as previously explained, because the same equipment would still be utilized to demolish existing site uses; to prepare and level the site for new construction; and to collect, remove, and to transport demolished materials and surface soils from the site, the

maximum vibration levels during construction of the Project would still occur during construction of Alternative 3, only over a reduced duration. As the closest vibration-sensitive receptors to the Project Site may experience significant vibration that exceeds the building damage threshold of 0.12 inches/second PPV, the Project impact would be significant. ~~and t~~ The Project's ~~proposed~~ Mitigation Measures NOI-MM-2, NOI-MM-3, and NOI-MM-4 would implement a pre-construction survey, shoring plan, and comprehensive structural monitoring program, respectively, for adjacent sensitive buildings at 418 Colyton Street, 424 Colyton Street, and 427 South Hewitt Street, to reduce the potential for vibration damage at these fragile structures."

Comment No. 5-23

Second, the Draft EIR's description of Alternatives is not accurate. Thus, the Draft EIR provides that, with Alternative 2, there would be no need for a general plan amendment or zone change, claiming it will be consistent with C2 zoning:

> As Alternative **2** would be developed **in accordance with** the existing City of Los Angeles **Municipal Code** (LAMC) Zoning and **Community Plan land use** designation for the Project Site, it would **not** require the **General Plan** Amendment, Vesting **Zone Change**, Height District Change, or **Conditional Use** approval to permit a Major Development Project resulting in 100,000 square feet or more of floor area in non-residential uses in the **C2 Zone** that the Project would require.

(DEIR, p. I-28—29, emph. Added.)

And yet, the Project is proposed in an *industrial* M3 zone – not *commercial* C2 zone; similarly, the Project's land use designation in the community plan and general plan is industrial, and the City is aware that the Project is *not consistent* with the General Plan. As described by the Project Planner William Lamborn in his letter to the LADWP:

> **Proposed General Plan Amendment and Zone Change**
>
> The Project **does not generally conform** with the **use** and **intensity** of development **currently permitted** by the General Plan for this site. The Project Site is currently designated for Heavy Industrial land uses and zoned M3 (Heavy Industrial) under the General Plan. **In order to develop** the Project, the following entitlements are required: (1) **General Plan Amendment** to **change** the **land use designation** from **Heavy Industrial** to **Regional Center Commercial**; (2) Zone Change from the M3 Zone to the C2 Zone; (3) Height District Change from Height District No. 1 to Height District No. 2; (4) Master Conditional Use Permit approval to permit sale and dispensing of a full line of alcohol beverages for on-site consumption for up to six establishments for a total of 15,949 sf; (5) Conditional Use approval to permit a Major Development Project over 100,000 square feet or

more of floor area in nonresidential uses in the C2 Zone; (6) Site Plan Review approval for a development project that results in an increase of 50,000 square feet of non-residential floor area; (7) a Vesting Tentative Tract Map to merge the existing lots and subdivide into 13 lots – one master lot and 12 airspace lots; and (8) a Waiver of Street Dedications and Street Improvements.

(**Exhibit E**, p. 12, emph. Added.)

As such, the Draft EIR provides an inaccurate description and analysis of Alternative 2 and presents it as consistent with the land use designation, whereas it is not. *See also*, Table 11 Project Development Comparisons (**Exhibit E**, pp. 12-13), comparing the General Plan designation and the Proposed Project:

Table 11
Project Development Comparison

	Existing Under General Plan	**Project**
Land Use	Heavy Industrial	Regional Center Commercial
Zoning	M3 Zone	C2 Zone
Height District	Height District No. 1 permits max 1.5:1 FAR	Height District No. 2 Permits max 6:1 FAR
FAR	1.5:1	6:1
Floor Area	85,988 sf gross floor area	343,925 sf floor area
Density	0	0

(**Exhibit E**, pp. 12-13 [March 24, 2020 William Lamborn's (City) Letter to Richard F. Harasick (LADWP)].)

Further, to the extent the Alternative 2 description relies on C2 *use* in M3 zoning, it does not state so and instead uses the phrase of "C2 zone".[15] To the extent the Draft EIR relies on *future* changes planned under the Community Plan update for the area, those changes have not occurred and the Draft EIR cannot present those as a *fait accompli*.

Footnote:

[15] As noted *supra*, the Draft EIR appears to argue elsewhere that C2 use is a permitted use in M3 zoning, with "some limitations," which limitations are not presented in the EIR, and the EIR admits that the Project still has to "re-zone" the area into C2. (DEIR, p. II-10, fn. 16.) While C2 "use" is not the same as C2 "zone," the EIR's conclusion about permitted uses is inaccurate as well. Thus, the permitted uses under M3 do not include a restaurant or office buildings as the Project proposes and its Café and other commercial uses require conditional use and other permits (see pp. 121-132 of List No. 1 of Uses Permitted in Various Zones in the City of Los Angeles (the list link is here [also, under https://planning.lacity.org/odocument/647665b9-6246-4eaf-a70c-

f06285ff28c4/ UseListMemo.pdf]) As such, the proposed "8,149 square feet of restaurant space, as well as 70,039 square feet of new office space" under Alternative **2** would not be a permitted use under M3, without an amendment of the general plan's land use designation and zoning.

In addition, the EIR is unclear on how a 10-story development can reasonably have an FAR of 1.5:1 and be described as: "[t]he proposed structure for Alternative **2** would reach a maximum height of **108.5 feet**, with five occupied stories above grade (including two parking levels) and no subterranean development, with a FAR of 1.**5:**1." (DEIR, p. I-28.) The EIR miscalculates and understates the FAR in Alternative 2 by discounting certain areas and including additional areas as part of its lot area, as described in Section A [Project Description], above.

Response to Comment No. 5-23

The Commenter first claims that the Draft EIR is incorrect in stating that Alternative 2 would not require a general plan amendment or zone change and that the Draft EIR claims that it would be consistent with C2 zoning. The Commenter misinterpreted the referenced text from pages I-28 and I-29 of the Draft EIR, however. The proposed land uses, at the densities provided for under Alternative 2, would not require a General Plan Amendment or Zone Change from the *current M3 zoning* of the Project Site. The text referenced by the Commenter is referring to the fact that the Project's land uses at the proposed densities would require a General Plan Amendment, Vesting Zone Change, Height District Change, and Conditional Use Permit, and that the Vesting Zone Change would be from M3 to C2.

The Commenter also states that the City is aware that the Project Site is located in an "industrial M3 zone" and not a "commercial C2 zone," rendering the Project as inconsistent with the General Plan. The Draft EIR (Chapter II, Project Description, pages II-3, 5, and 35; and Chapter IV.H, Land Use and Planning, pages IV.H-8, 10, 21, 27, 28, and 29) acknowledges the current and proposed General Plan land use designations and zoning designations of the Project Site. The Project as proposed includes several required entitlements, which are subject to the discretionary approval of the City. As described in Response to Comment 5-12, and as evaluated in the Draft EIR, Section IV.H, Land Use and Planning (pages IV.H-16 through IV.H-33), and Appendix I, Land Use Policy Consistency Tables, the Project, as proposed with the requested entitlements, would not be in conflict with the requirements and policies of the SCAG 2020-2045 RTP/SCS, the General Plan (and applicable elements, including the Framework Element, Mobility Plan, Community Plan, and Plan for a Health Los Angeles), the LAMC, the Citywide Design Guidelines, and the RIO District.

The Commenter also appears to confuse the description of Alternative 2 with the description of the Project, stating that "the Draft EIR provides an inaccurate description and analysis of Alternative 2 and presents it as consistent with the land use designation, whereas it is not" and then providing a table from Exhibit E of Comment Letter No. 5 that actually shows a comparison of the development that is permitted on the Project Site with the existing land use and zoning designations, and that which would be permitted with the proposed land use and zoning designations. Again, the proposed land uses, at the densities provided for under Alternative 2, would not require a General Plan Amendment or Zone Change from the *current M3 zoning* of the Project Site. Alternative 2 does not require rezoning of the Project Site to the C2 Zone; however, per the LAMC, and as stated in Response to Comment 5-9, the M3 Zone permits a wide range of industrial and manufacturing uses that are in operation in the area. The M3 Zone also permits some commercial uses that are permitted under the C2 Commercial Zone, such as, but not limited to, restaurant, bar, brewery, retail, museum, studio, production office, and other office uses.

With regard to the Commenter's statement in Footnote 15 that Alternative 2 would consist of a 10-story development and therefore could not have a FAR of 1.5:1 and reach a maximum height of 108.5 ft, the Commenter is mistaken. As described in both Chapter I, Introduction and Executive Summary, and Chapter VI, Alternatives, of the Draft EIR (pages VI-41 and VI-42), Alternative 2 would consist of five stories, not 10 stories. Alternative 2 would provide 70,039 square feet of office space; 8,149 square feet of retail or restaurant space; the 7,800 square feet of the building formerly occupied by the A+D Museum; and 71,305 square feet of parking area (with 178 parking spaces). The FAR and height of Alternative 2 described in the Draft EIR are correct.

Comment No. 5-24

Similarly, the EIR's description of Alternative 3 is inaccurate, as it seeks to present it as compatible with the *proposed* community plan update, which has not yet been approved:

> The **draft** Downtown Community Plan land use designation for the Project Site is proposed to be **Hybrid Industrial**, with **base zoning** of mid-rise broad form 3 (MB3), daylight factory frontage and development standard 5 (CDF1-5), and use district IX4, within the floor area density district (MB3-CDF-1-5) (IX-4-FA) (CPIO). This zoning allows a **FAR** of **1.5:1**, and **live/work** units in this zone must be 1,**000** square feet in size or greater.

(DEIR,p.II-29,emph.added.)[16] As such, the EIR's reference of future changes in the area is misleading and irrelevant, since those changes are not and might not be approved at all.

In addition, Alternative 3 is not compatible with the proposed Community Plan update either, in light of its mass, scale, and uses, including but not limited to the 8,149 sq. ft. restaurant use. The Draft EIR describes Alternative 3 as:

> In accordance with the **allowable** land uses and **z**oning specifications described above from the draft **Downtown Community Plan**, Alternative **3** would provide **8,149 square feet of new retail/restaurant** space, which would include the existing **7,800-square-foot building** fronting Colyton Street, as well as **70**,**039** square feet of **new residential** space, comprised of **44 live/work units**. Alternative **3** would provide 89 parking spaces. The proposed structure for Alternative **3** would reach a maximum height of **96 feet**, with **five occupied stories above grade** (including one parking level) and **no subterranean development**, with a **FAR of 1.5:1**. The design of Alternative **3** would be similar to that of the Project; incorporating both industrial elements (such as concrete surfaces; small, steel-framed glass windows; large bifold doors; and utilitarian detailing) that reflect the character of the Arts District, as well as modern elements. The total floor area of Alternative 3 would be 85,988 square feet (a net increase of 71,158 square feet).
>
> As Alternative 3 would develop **primarily live/work residential uses** and **not office uses**, it would not meet the basic Project objective to redevelop the urban infill Project Site and provide a high-density, mixed- use, commercial office project that provides job opportunities in proximity to public transit and other commercial and residential land uses to the same extent as the Project, because the office uses of the Project would be replaced with live/work residential uses.

(DEIR, p. II-29, emph. Added.)

Yet, the Draft EIR for the *Community Plan Update* underscores the importance of a lower FAR in the Arts District, where the Project is, including in order to preserve the ecological resource of the Los Angeles River:

> **Arts District.** The Arts District is located in the eastern portion of the Downtown Plan Area and predominantly consists of industrial, manufacturing, and wholesale uses and has been transitioning to a more mixed-use environment in the recent past. Many of the existing **low-scale** warehouses and industrial buildings have been **converted into live/work**, commercial, and institutional uses. New mixed-use buildings with housing, commercial, light production, restaurants, retail establishments, and business incubation uses have been constructed and other similar projects have been proposed. The Arts District is predominantly designated **Heavy Manufacturing, with M3 Heavy Industrial zoning**, which allows for the widest range of industrial uses including commercial, manufacturing uses, and storage. The area assigned **Height District 1** allowing for up to **1.5:1 FAR** with no

> height limitations. The **Los Angeles River is an important ecological feature**, a portion of which is located in the Arts District on the eastern edge of the Downtown Plan Area. The Los Angeles River was once a free-flowing waterway but was encased in concrete in the 1930s as part of a flood control project undertaken by the United States Army Corps of Engineers ("CoE")**. Efforts being led** by the CoE and the City of Los Angeles are now underway **to restore some** of the **river's natural qualities** over the coming decades. The rail corridor that runs adjacent to the length of the River was constructed in the early 1900s, as part of the Atchison, Topeka & Santa Fe Railway operating a system of both passenger and freight services. The **area adjacent to the river** is regulated by the **River Improvement Overlay (RIO)** which is further described under Regulatory Setting: Specific Plans, Planning Overlays, and Redevelopment Plans.

(Draft EIR for the Downtown Community Plan, Project Description, p. 3-14, emph. Added.)[17]

In addition, the Downtown Community Plan emphasizes the *limitations* of the proposed Hybrid Industrial zoning, which the Draft EIR here does not mention:

> **Hybrid Industrial (13% of Downtown Plan Area)**
>
> Hybrid Industrial areas preserve productive activity and prioritize employment uses, but **may accommodate live/work uses** or **limited residential uses**. The building form ranges from Very Low Scale to Mid Rise. Uses include light industrial, commercial, and office, with selective live/work uses. The purpose of this designation is to balance live/work residential uses, with production and employment activity that is supported by commercial, retail, hotel, and community amenities. Hybrid Industrial areas are characterized by the Form Districts with maximum allowable FARs ranging from 3:1 to 6:1, with height limits for portions located in proximity to the river. Development regulations emphasize high-quality new construction and repurposed structures to promote a resourceful approach to urban development that can evolve over time. These Form Classes shape development patterns in traditionally industrial areas, and require that large blocks include new pedestrian connections to maintain a balance between facilitating goods movement activity and achieving pedestrian safety and comfort. Hybrid Industrial areas are characterized by the Industrial Mixed Use District, specifically, **Industrial-Mixed Hybrid 1 (IH1)** and Industrial-Mixed Hybrid 2 (IH2). These variations require each development to dedicate a base amount of floor area towards production spaces such as office, research & development, clean-tech, wholesale, heavy commercial, and light industrial uses supported by daily retail and service needs. **Live/work units and adaptive reuse** to household living are the **only permitted** types of **housing in IH2**, and IH1 allows for all types of

> housing. The IH2 use district includes **regulations for the size of live/work units** and requires a minimum area allocated towards non-residential uses permitted in the Office Use Group, or the Agricultural, Heavy Commercial, and Light Industrial Use Categories.

(Draft EIR of Community Plan Update, Project Description, p. 3-31, emph. Added.) The Draft EIR here does not address all the limitations in the updated Community Plan for the proposed change, including the addition of *restaurant* uses, and whether the proposed *construction* of 44 live-work units meet the narrow limitations in the new zoning even under the Community Plan update. Neither does the Draft EIR here explain how a 96-feet high building will meet the low FAR of 1.5:1, especially in view of the Project's proximity to the LA River and the efforts to restore the LA River's natural qualities in the next decades. To the extent the Applicant is miscalculating and understating the FAR here, including through suggested above-ground parking level and counting the easement and other areas for the FAR gross buildable area, the Draft EIR's description of the Alternative 3 is also inaccurate.

The Draft EIR's Alternative 3 is also ignoring the presence of the A+D Museum, and in fact appears to suggest that the A+D museum will be converted into a restaurant: "Alternative **3** would provide **8,149 square feet of new retail/restaurant** space, which would include the existing **7,800-square-foot building** fronting Colyton Street." (DEIR, p. II-29.) As such, Alternative 3 may have more impacts on the potentially historical resource, which the Draft EIR is silent about.

Footnotes:

[16] None of the City's provided hyperlinks or reference to the Downtown Community Plan leads to the actual Community Plan Draft. (E.g., at DEIR, p. I-29, fn. 9) The links lead to a general website where public has to research and conduct a separate search in order to find the Community Plan in question. (See, **Exhibit H** [printout of the link provided by the City at DEIR, p. I-19, fn. 9].) As such, the Draft EIR is also inadequate in its *quality* of presentation.

[17] https://planning.lacity.org/eir/downtownCP_newZoningCode/deir/Deir%20Sections/3_Project%20Description.pdf

Response to Comment No. 5-24

The Commenter questions the validity of Alternative 3, Downtown Community Plan Alternative. First, the Commenter asserts that the Draft EIR's description of Alternative 3 is inaccurate, because it "seeks to present it as compatible with the proposed community plan update." The Draft EIR in no way conceals the fact that the Downtown Community Plan has not yet been approved. Chapter VI, Alternatives, fully discloses that the

Downtown Community Plan is a proposed plan that has not yet been approved or adopted by the City (page VI-149). The Draft EIR further acknowledges that the development of Alternative 3 would require implementation of the Downtown Community Plan. The City Planning Commission recommended approval of the Downtown Community Plan on September 23, 2021. As adoption and implementation of the proposed plan is reasonably foreseeable, the City may use its discretion as the Lead Agency for the Project to consider an alternative to the Project that is consistent with the proposed Downtown Community Plan.

The Commenter also asserts that Alternative 3 is not compatible with the proposed Community Plan update in terms of mass, scale, and uses; however, they do not provide any evidence to support this claim; the Commenter only restates the Draft EIR's summary description of Alternative 3 and then provides an excerpt from the Downtown Community Plan Draft EIR that describes the land uses and zoning in the Arts District area, where the Project Site is located. The Commenter states that the Downtown community Plan Draft EIR underscores the importance of a lower FAR in the Arts District, including in order to preserve the ecological resource of the Los Angeles River. However, as stated in the Draft EIR (Chapter IV.H, Land Use and Planning, page IV.H-12), the Project Site is not located adjacent to the Los Angeles River, and the portion of the river located 0.35 miles to the east of the Los Angeles River is concrete-lined. Furthermore, as described in Chapter VI, Alternatives, page VI-95, of the Draft EIR, Alternative 3 would include a lower FAR of 1.5:1, as compared to the Project.

The Commenter also states that the draft downtown Community Plan emphasizes the limitations of the proposed Hybrid Industrial land use, implying that these limitations would preclude development of Alternative 3 under the draft Downtown Community Plan. However, the text quoted by the Commenter describing the Hybrid Industrial land use designation of the draft Downtown Community Plan fails to identify the specific zoning of the Project Site under the draft Downtown Community Plan. As described in Chapter VI, Alternatives, of the Draft EIR (pages VI-94 and VI-117), the draft Downtown Community Plan land use designation for the Project Site is proposed to be Hybrid Industrial, with base zoning of mid-rise broad form 3 (MB3), daylight factory frontage and development standard 5 (CDF1-5), and use district IX4, within the floor area density district that requires a minimum FAR of 1.5:1, if live/work uses were to be included in addition with other permitted (office or light industrial) uses. This zoning allows office, commercial, research and development, wholesale, light industrial, and live/work uses. Therefore, if adopted as drafted, Alternative 3 would not be in conflict with the draft Downtown Community Plan.

Lastly, the Commenter asserts that the description of Alternative 3 ignores the presence of the A+D Museum, suggests that the A+D museum will be converted into a restaurant, and claims that Alternative 3 would therefore result in impacts to the potentially historical resource. As described throughout the Draft EIR, the A+D Museum no longer operates

from the 7,800-square-foot building on the Project Site that fronts Colyton Street. Chapter VI, Alternatives (pages VI-137 and VI-140), of the Draft EIR discloses that, as there are no plans for reoccupation of the building, it is anticipated that it would be re-occupied with a use that is consistent with recent uses, such as the A+D. As described in detail in Response to Comment No. 5-18, the 7,800-square-foot building formerly occupied by the A+D Museum is not a historic resource.

With regard to the Commenter's Footnote 17, stating that the hyperlink to the Downtown Community Plan does not lead to the actual draft Downtown Community Plan, Footnote 9 on page I-29 of the Draft EIR and the provided hyperlink are not intended to lead the reviewer to the draft Downtown Community Plan. Rather, the hyperlink is to the website where the Draft EIR for the draft Downtown Community Plan is available. The referenced text on page I-29 of the Draft EIR (indicating that, following adoption, the draft Downtown Community Plan would guide development through the year 2040) is from the referenced webpage, not from the draft Downtown Community Plan. Therefore, the Draft EIR is not inadequate in its quality of presentation.

Comment No. 5-25

In addition, the EIR does not seem to include feasible alternatives. For example, there is no *purely industrial* development alternative, which would not include any *restaurant* use, to be consistent with the land use designation. There is no *development* alternative that would propose a low-rise development consistent with the FAR of 1.5:1 that would also be consistent with the efforts of preserving the LA River's natural qualities. There is no *development* alternative that unambiguously preserves the potentially historical resource of the existing 7,800 A+D Museum building and its associated 1,000 storage area, to also be consistent with the overall character of the historical district the Project is in.

Response to Comment No. 5-25

The Commenter suggests that the Draft EIR should have presented, and provided analysis for, additional alternatives to the Project. However, the CEQA Guidelines, Section 15126.6(a) specify that "An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. An EIR *need not consider every conceivable alternative to a project* [emphasis added]. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decision making and public participation." In conformance with the CEQA Guidelines, Chapter VI, Alternatives, of the Draft EIR (pages VI-24 through VI-149) evaluated three alternatives to the Project that would lessen the Project's significant effects. In addition, Chapter VI, Alternatives, of the Draft EIR (pages VI-8 through VI-11)

considered three alternative scenarios specifically to investigate whether a feasible alternative that avoids the Project's significant and unavoidable temporary, construction period noise and vibration impacts exists (but found that there is not, as described in greater detail in Response to Comment No. 5-29). Furthermore, the Commenter does not provide any evidence as to how the suggested alternatives would avoid or substantially lessen any of the significant effects of the Project and still meet the basic objectives of the Project; therefore, no additional analysis is required.

Comment No. 5-26

The EIR's discussion of alternatives is also incomplete as it does not list a *preferred* alternative, distinct from an environmentally superior one. While the EIR mentions that Alternative 2 is environmentally superior, it also lists a number of reasons against choosing it, leaving the public in doubt as to whether the City or the Applicant treats Alternative 2 as the *preferred* alternative. As in *Washoe Meadows Community v. Department of Parks & Recreation* (2017) 17 Cal.App.5th 277, 288-289 ("Washoe Meadows"), the EIR here with two inaccurately described development alternatives presents a "moving target" (*id*.) and precludes informed decisionmaking.

Response to Comment No. 5-26

The comment asserts that the Draft EIR is deficient for failure to identify a preferred alternative. However, the Commenter's reliance on the *Washoe Meadows Community v. Department of Parks & Recreation* (2017) 17 Cal.App.5th 277, 288-289 ("Washoe Meadows") case to support this contention is misplaced, as Washoe Meadows is not relevant to the Project. Due to the involvement of federal and regional agencies in the Washoe Meadows project, the environmental document also served as an environmental impact study (EIS) under the National Environmental Policy Act (NEPA). Therefore, the Draft EIR in that case did not identify a proposed project and instead described five alternatives that were under consideration, in conformance with NEPA. Further, the identification of a "preferred alternative" is required by NEPA. CEQA requires the identification of the "environmentally superior alternative," which the Draft EIR provides in Chapter VI, Alternatives (pages VI-148 and VI-149). As the Project does not include a federal nexus and is subject to CEQA and not NEPA, the identification of a "preferred alternative" is not required.

Comment No. 5-27

In sum, the EIR's description of Alternatives is inadequate in both quality and quantity and the EIR is therefore legally inadequate to be certified. The Draft EIR must be recirculated to provide a preferred alternative and an accurate range and description of alternatives, to allow a meaningful and informed evaluation of the Project's and its Alternatives' impacts and to enable an informed choice.

Response to Comment No. 5-27

The Commenter restates the assertion that the Draft EIR's description of Alternatives and its analysis are inadequate. This comment serves as a conclusory statement, summarizing Comment No. 5-22 through Comment No. 5-26. Please refer to Response to Comment No. 5-22 through Response to Comment No. 5-26 for the responses to these comments. As described therein, the Draft EIR's alternatives analysis (provided in Chapter VI) meets the requirements of CEQA, and recirculation of the Draft EIR is not required.

Comment No. 5-28

D. The Draft EIR Does Not Adequately Disclose the Project's Significant Impacts and Its Findings of Less Significant Impacts or No Impacts, Along with Mitigation Measures, Are Not Supported.

The EIR reviewed a number of potentially significant impacts but eventually found that the only significant and unavoidable impact is construction noise and vibration. These findings lack substantial evidence for several reasons. First of all, the Draft EIR understates the scope of the Project through misleading calculations of the FAR, misleading assumptions that certain proposed Community Plan updates or zone changes have already occurred, and therefore not considering the impacts of those changes here.

Second, to the extent the EIR's Alternative 3 proposes a development in line with the *proposed* community plan update, it fails to consider the impacts of such change. Yet, the City's Community Plan Updated Draft EIR identified several significant impacts, including on air quality, transportation, GHG, and historical resources.[18] The Community Plan Update EIR and its findings of various potential impacts is substantial evidence that the Project's Draft EIR's findings here of only *construction* noise impacts being significant and unavoidable is unsupported.

Third and more specifically, the EIR's analysis of various impacts is inaccurate as it omits critical information, as detailed in the Project Description, *supra* (e.g., omitted higher intensity use of the A+D Museum buildings; piecemeal increase of the Project since 2017) and as also further detailed below.

Footnote:

[18] See Draft EIR for the Community Plan, esp. pp. ES-5—7 at https://files.ceqanet.opr.ca.gov/102582/attachment/P_GlCt96PFCHYcApzG0dJ0S8DYnhikvGE7p2EFK- K8CqapYoQWCix9YBHYICzolSu5TbOSZFH7Sl3vYk0 See also, Draft EIR for Community Plan Update, p. 5-3, stating that air quality, biological, geology impacts and others were found to be significant but reduced through mitigation

measures; pp. ES-3 through ES-45, finding cumulative air quality, transportation, historical resources impacts to be significant.

We incorporate by reference all the findings and analysis of the Draft Community Plan Update EIR here.

Response to Comment No. 5-28

The Commenter first reiterates several assertions that the Draft EIR understates the scope of the Project, and therefore the Project's impacts, by incorrectly calculating the FAR and assuming that certain proposed Community Plan updates or zone changes have already occurred. The Commenter then claims that, as a result of these errors, the Draft EIR does not analyze the impacts of those Community Plan updates or zone changes. With regard to the Project's FAR, please refer to Responses to Comments Nos. 5-10 and 5-11. As described therein, the FAR was calculated correctly.

With regard to the Commenter's assertion that the Draft EIR assumed certain proposed Community Plan updates or zone changes have already occurred, this is incorrect. The Project includes the following requested entitlements: changes to the Project Site land use designation from Heavy Industrial to Regional Center Commercial, from the M3 Zone to the C2 Zone, and from Height District No. 1 to Height District No. 2, as described in Chapter II, Project Description (pages II-34 and II-35), and Section IV.H, Land Use and Planning (pages IV.H-18, 21, 28, 29, and 32). These requested entitlements are subject to the City's discretionary approval. The Project as defined includes these requested entitlements; therefore, the Draft EIR analysis appropriately evaluates the Project at the mass, scale, and density and with the land uses afforded by these changes.

The Commenter is also incorrect in their claim that the Draft EIR does not consider the impacts of Alternative 3. The impacts of Alternative 3, as compared to those of the Project, are evaluated in Chapter VI, Alternatives, of the Draft EIR (pages VI-94 through VI-148). The Commenter further suggests that, because the Draft EIR for the draft Downtown Community Plan identified significant impacts, including on air quality, transportation, GHG, and historical resources, Alternative 3, and also the Project, would result in the same significant impacts. However, as stated in the Draft EIR for the Downtown Community Plan Update/New Zoning Code for Downtown Community Plan, Chapter 1.0, Introduction, "An EIR on an individual development project will be more detailed in the specific effects of the project than will an EIR on the adoption of a community plan or zoning ordinance because the effects of the individual development can be predicted with greater accuracy. An EIR on a project such as the adoption of a community plan and/or zoning ordinance should focus on the secondary effects that can be expected to follow from the adoption, but need not be as detailed as the analysis on the specific construction project that might follow (Section 15146)." Stated differently, a program level of analysis

of an entire Community Plan must capture the full range of possible environmental impacts for that broad Community Plan area; however, project-specific and site-specific environmental analysis are more specific and may therefore yield different results, or findings of significant impacts.

Lastly, the Commenter reiterates their assertions that the Draft EIR analysis is inaccurate, as the Project and occupancy of the building formerly occupied by the A+D Museum changed since 2017. However, as described in Responses to Comments Nos. 5-7, 5-8, and 5-9, the Draft EIR analysis is based on the Project's site plans as described in Chapter II, Project Description, of the Draft EIR, and the baseline for analysis is appropriately set as the existing conditions at the time that the NOP for the Project was issued (September 20, 2017).

In addition, the Commenter incorporates by reference all the findings and analysis of the Draft EIR for the Downtown Community Plan Update/New Zoning Code for Downtown Community Plan. This incorporated material does not deal with the adequacy of the Draft EIR for this Project and, therefore, along with the previous comments that have been noted for the record, it requires no further response, but it will be forwarded to the decision-makers for their review and consideration.

Comment No. 5-29

1. Construction Noise Impacts

The Draft EIR admits that the construction noise impacts will be significant and unavoidable. And yet, it does not explain why those impacts will be unavoidable: the Project can be constructed in a reduced scale, which, in turn, may avoid those impacts. While construction of a reduced scale project may not be as preferable or profitable to the Applicant, it is not infeasible. The EIR thus fails to apply feasible mitigation.

In addition, the EIR provides *reasons* why City should approve the Project with significant and unavoidable construction/vibration noise impacts, which are primarily based on the overly narrow Project objectives of creating a higher density mixed use commercial development. (DEIR, pp. V4—7.) As such, the EIR's overly narrow Project objectives have tainted not only the *alternatives'* analysis (as noted *supra*), but also the noise (and other) *impacts* analysis. The EIR's analysis and reasoning is therefore legally inadequate as it relies on narrowly defined project objectives.

Response to Comment No. 5-29

The Commenter asserts that the Draft EIR fails to describe why the Project's significant and unavoidable noise impacts are unavoidable. The Commenter also asserts that the EIR provides reasons why City should approve the Project with significant and

unavoidable construction-period vibration and noise impacts, which are based on "overly narrow" Project objectives.

However, the Draft EIR explains in Section IV.I., Noise (pages IV.I-51 through IV.I-54, IV.I-62 through IV.I-68, and IV.I-77 and IV.I-78), that construction-period noise impacts would be significant and unavoidable, because they would remain significant after mitigation, or because no feasible mitigation measures are available. Specifically, the Project would result in the following significant construction-period noise impacts:

- Construction activities may exceed the recommended noise threshold of 75 dBA at the closest sensitive use (the roof-mounted trailer at 428 South Hewitt Street), and construction operations lasting more than 10 days may exceed existing ambient exterior noise levels by 5 dBA or more at the rooftop trailer at 428 South Hewitt Street, the live/work land use at 442 Colyton Street, and the live/work use at 449 South Hewitt Street. Noise generated at these locations by off-road construction equipment would be significant without mitigation.

- Three sensitive uses would experience noise levels in excess of the 5-dBA noise increase threshold as a result of the Project's composite on- and off-road construction activities; 428 South Hewitt Street, 442 Colyton Street, and 449 South Hewitt Street. It is primarily construction noise and not haul truck noise that would influence the composite significant impact. The composite noise levels at these locations during construction would be significant without mitigation.

A 24-foot ground on-site barrier was evaluated as part of Mitigation Measure NOI-MM-1 to reduce construction equipment noise levels at the roof-mounted trailer. In addition, to address noise during the demolition and grading periods, as well as during the portions of the building construction in which activity occurs only at the ground floor and second floor and paving phases, a temporary barrier around the trailer on the roof was also evaluated as part of Mitigation Measure NOI-MM-1. However, both the on-site ground floor barrier and the rooftop barrier located off-site would not reduce noise levels below the level of significance at 428 South Hewitt Street during building construction of the second through fifth floors and during paving of the second through fifth floors. As shown in Table IV.I-18, Mitigated Off-Road Construction Equipment Noise Levels at 428 South Hewitt Street, on page IV.I-53 of the Draft EIR, the 5-dBA noise increase threshold would still be exceeded; reaching increases of 7-dBA, 8.6-dBA, 9.5-dBA, and 11.3-dBA, depending on the phase of construction and the level of the Office Building that would be constructed, as well as whether one or both noise barriers would be utilized. In addition, as the neighboring property owner may not agree to the off-site rooftop barrier, the impact would remain significant and unavoidable. At 442 Colyton Street and 449 South Hewitt Street, it would be infeasible to construct a noise barrier within the Project Site that would block the line of sight between construction of the higher floors of the Office Building and

the receptors, and there is also insufficient space for a barrier along the southern property line due to the presence of existing buildings adjacent to the limits of demolition, excavation, and construction activity.

Three sensitive uses would experience noise levels in excess of the 5-dBA noise increase threshold as a result of the Project's composite on- and off-road construction activities as well; 428 South Hewitt Street, 442 Colyton Street, and 449 South Hewitt Street. It is primarily construction noise and not haul truck noise that would influence the composite significant impact. Mitigation Measure NOI-MM-1 would reduce composite construction noise to the extent feasible, but noise levels would remain above the threshold at 428 South Hewitt Street, 442 Colyton Street and 449 South Hewitt Street. As shown in Table IV.I-19, Mitigated Composite Construction Noise Levels at 428 South Hewitt Street, on page IV.I-54 of the Draft EIR, the 5-dBA noise increase threshold would still be exceeded; reaching increases of 5.4-dBA, 7.4-dBA, 7.6-dBA, 9.3-dBA, 9.4-dBA, 9.8-dBA, 11.4-dBA, and 11.5-dBA, depending on the phase of construction and the level of the Office Building that would be constructed, as well as whether one or both noise barriers would be utilized. (Mitigation is not set forth for the impacts at 442 Colyton Street and 449 South Hewitt Street, because, as stated above, it would be infeasible to construct a noise barrier within the Project Site that would block the line of sight between construction of the higher floors of the Office Building and the receptors, and there is also insufficient space for a barrier along the southern property line due to the presence of existing buildings adjacent to the limits of demolition, excavation, and construction activity.) Therefore, the combination of construction and haul truck noise at sensitive uses would also remain a significant and unavoidable impact.

Furthermore, reducing the scale of the Project would be a Project alternative, not a mitigation measure. Alternative 2 and Alternative 3 both propose a reduced amount of development as compared to the Project (see pages VI-41 through VI-148 of the Draft EIR). Alternative 2 and Alternative 3 would not reduce the Project's construction significant and unavoidable noise and vibration impacts to a less than significant level. Project-level and cumulative off-road construction noise, Project-level and cumulative composite construction noise, Project-level vibration (building damage) from off-road construction, and Project-level and cumulative vibration (human annoyance) from on-road construction vehicles (pages VI-65 through VI-72, and pages VI-118 through VI-124), would remain significant and unavoidable. As explained in the Draft EIR, pages IV.I-51 through IV.I-52, off-road construction noise and cumulative composite construction noise would still be significant and unavoidable, because the same construction equipment would be used, producing the same noise levels. Construction period building damage vibration impacts would still be significant and unavoidable because of the proximity to adjacent structures and construction period human annoyance vibration

impacts would still be significant and unavoidable due to the proximity of sensitive structures along the haul route.

As to the Commenter's assertion that the Project objectives are "overly narrow," please refer to Response to Comment No. 5-15, which describes that the Project objectives are based on the underlying purpose of the Project, which is to provide a mixed-use, commercial office project that provides job opportunities in proximity to public transit and other commercial and residential land uses. (Please also note that, as described in Response to Comment No. 5-15, the Project objectives that are listed in the Draft EIR on pages II-33 and II-34 of Chapter II, Project Description, have been revised to omit the term "high-density," as "density" is a term that refers to residential units, rather than commercial or office space.) The Project objectives are broad enough to facilitate a meaningful alternatives analysis, which is provided in Chapter VI, Alternatives, of the Draft EIR. In addition to Alternative 2 and Alternative 3, the alternatives analysis in the Draft EIR (pages VI-8 through VI-11) also discussed three infeasible alternatives that could potentially avoid the significant and unavoidable construction period noise and vibration impacts of the Project, but none would be able to avoid the significant and unavoidable impact. The first, omission of subterranean parking levels and excavation activities by relocating four subterranean parking levels to above grade, would involve the same pieces of equipment and generate the same levels of noise and vibration. The second, extending the duration of the construction period to reduce the amount of daily construction activity, would still result in an exceedance of the construction noise thresholds even with less equipment operating at once, because of the proximity of the closest sensitive receptor. Similarly, vibration levels would remain above the construction period vibration damage thresholds due to the proximity to adjacent structures, and above construction period human annoyance thresholds due to the proximity of sensitive structures along the haul route. The third and final, a reduction of the building footprint to a central development location, would still result in significant and unavoidable impacts from construction noise and construction vibration due to limited space for setbacks within the Project Site and because demolition and excavation activities would involve the same activities. The Commenter provides no evidence to support claims that the objectives precluded consideration of other reasonable alternatives for achieving the underlying purpose of the Project, nor do they provide a different alternative that would both avoid or mitigate the significant environmental effects in addition to achieving the basic Project objectives.

Additionally, a Statement of Overriding Consideration discussing the considerations that outweigh the significant and unavoidable impacts of the Project will be provided to the decision-maker prior to certification of the EIR.

Comment No. 5-30

Further, the EIR's analysis that the Project will comply with certain code regulations is improperly listed as a reason to allow the significant noise impacts. Yet, compliance with code is mandatory and is not a reason to relax noise thresholds. In addition, the Project is proposed in the River Improvement Overlay Zone, which provides strict requirements as to noise increases not to exceed 5 dBA. Yet, the EIR does not analyze whether the Project is consistent with the RIO requirements and appears to bluntly violate those.

Response to Comment No. 5-30

The Commenter asserts that the Draft EIR improperly relies on compliance with regulations to permit significant impacts. The Draft EIR noise analysis in Chapter IV.I, Noise, does not use compliance with City Municipal Code regulations to conclude that any of the impacts are less than significant or as mitigation measures. The Draft EIR includes an extensive discussion of City noise thresholds (pages IV.I 14 and IV.I-15 and pages IV.I 27 and IV.I-28 of the Draft EIR), and some of these thresholds are based on the City Municipal Code noise regulations, as explained in the Draft EIR. Moreover, the Draft EIR is an informational document and not an approval of the Project. Should the City decide to proceed with the Project, after certification of the EIR, the City would be required to adopt a Statement of Overriding Considerations listing the reasons why the Project is being approved even with significant and unavoidable impacts.

Regarding noise regulations in the RIO zone, those regulations only apply to projects in the inner core of the zone, which is defined as sites *adjacent* to the river. The Project Site is not located adjacent to the river and thus is not located in the inner core. In fact, the Project Site is located approximately 0.35 miles west of the river, as described in the Draft EIR, Chapter IV.H, Land Use and Planning (page IV.H-12). This RIO noise standard is therefore inapplicable and irrelevant to the Project and no violation would occur.

Comment No. 5-31

To the extent the EIR's reasoning for allowing the noise impacts to remain significant and unavoidable may will [sic] later be claimed as a reasoning for the Statement of Overriding Considerations ("**SOC**"), such reasoning is legally and factually unsupported for all the reasons stated above.

Response to Comment No. 5-31

The Commenter is incorrect in their claim that the Draft EIR offers reasoning for "allowing" noise impacts to remain significant and unavoidable. Section IV.I, Noise, of the Draft EIR (pages IV.I-51, IV.I-61, and IV.I-62) evaluates potential feasible mitigation measures to avoid or lessen the Project's significant and unavoidable noise and vibration impacts that

would occur during the construction period. Some of the mitigation measures, though physically feasible, cannot be relied upon due to the fact that they require commitments by off-site property owners. In other cases, despite the implementation of mitigation measures, impacts would remain significant and unavoidable (refer to Draft EIR pages IV.I-51 through IV.I-54, IV.I-62 through IV.I-68, and pages IV.I-77 and IV.I-78). Further, even though the mitigation measures are not able to mitigate impacts to below significance, the Project would implement six project design features (Draft EIR pages IV.I-31 and IV.I-32) and four mitigation measures (Draft EIR pages IV.I-51 through IV.I-54, IV.I-62 through IV.I-68, and pages IV.I-77 and IV.I-78) in order to lessen the Project's noise and vibration impacts as much as possible. The Commenter makes an assumption of what information will be used to prepare the Statement of Overriding Considerations and states that the reasoning is legally and factually unsupported. However, the Statement of Overriding Considerations has not yet been prepared; therefore, no such conclusion can be drawn at this time.

Comment No. 5-32

2. Air Quality Impacts

The EIR's air quality analysis is inadequate in view of significant omissions and failures of good faith disclosure. First, in a *footnote,* the Draft EIR suggests that the A+D Museum building will continue operating with uses consistent with the Museum:

> At the time that the Notice of Preparation for the Project was issued (September 20, 2017), the CEQA baseline for this Project, the building was occupied by the A+D Museum. In the summer of 2020, the A+D Museum moved out of the building and began operating virtually. The building is currently vacant. While there are no plans for reoccupation as of the date of this Draft EIR, **it is anticipated** that the building would be **re-occupied** with a **use** that is **consistent** with **recent uses**, such as the **A+D Museum**, for which the building interior is customized. The Project's requested discretionary approvals would not **physically** alter the 7, 800-sf building.

(DEIR, p. IV.A-23, fn. 26, emph. Added.) And yet, the above-quoted footnote 26 critically *leaves out* what *other* footnotes in the Draft EIR have disclosed earlier:

> While there **are no plans for reoccupation as of the date of this EIR**, it is **anticipated** that the building would be **re-occupied** with a use that is **consistent** with recent uses, such as the **A+D Museum**, for which the building interior is customized. The Project's requested discretionary approvals would not **physically** alter the 7,800-sf building. The Project's **proposed C2-2-RIO zoning would allow for a similar range of commercial land uses** as **compared to the existing M3-1-RIO** zoning. The proposed change in zoning would not expand or increase the

> intensity of the **allowable uses** within the building. The zoning change of the Project would actually limit the use, as some of the **currently allowed** manufacturing and industrial uses **would not** be allowed with the **proposed C2-2-RIO zoning**.

(DEIR, p. I-8, fn. 6, emph. Added; see also DEIR, p. II-4, fn. 3.) The above-quoted passage clearly shows that a *more intensive* C2 use will be allowed and is contemplated, and yet it is not properly disclosed in the appropriate *air quality* impacts section. Even if the A+D building is not *physically* altered, it is reasonably foreseeable that it can be put into yet another higher intensity *restaurant* use under the proposed C2 zoning under the Project. In that case, the Project's air quality emissions of the A+D Museum's 32 trips disclosed in the EIR will be far exceeded and are yet being ignored in the EIR. Thus, the EIR is inadequate for both failure of making a good faith disclosure of the anticipated and reasonably foreseeable higher intensity uses in the A+D Museum building and for failure to analyze, quantify and mitigate the *additional* air quality impacts that such higher intensity uses may allow at the Project site.

Moreover, to the extent the A+D Museum's operation – now virtual, per the EIR – may be relocated to another place, that relocation and its associated impacts are still part of this Project and must be analyzed and factored in. Those are not eliminated and instead have to be added to the Project's air quality analysis.

The EIR admits that there are at least two sensitive receptors next to the Project. (DEIR, p. IV.A-24.) So the Draft EIR's omission of air quality impacts associated with the potential higher intensity use of the A+D Museum building as well as the relocation of the Museum's operation to another place caused by the Project may have more severe air quality impacts on those sensitive receptors, which have not been adequately addressed in the EIR.

Response to Comment No. 5-32

The Commenter asserts that the Draft EIR is inadequate for failure to analyze a more intense use for the building formerly occupied by the A+D Museum. The A+D Museum was operating at the time that the NOP for the Project was issued (September 20, 2017). As explained in Response to Comment No. 5-7, the CEQA baseline for the Draft EIR environmental analysis was formulated by the existing conditions at the time that the NOP for the Project was issued, in accordance with the CEQA Guidelines, Section 15125(a)(1), which states that "Generally, the lead agency should describe physical environmental conditions as they exist at the time the notice of preparation is published…". As further detailed by Section 15125(a)(1), the CEQA Guidelines state that, "Where existing conditions change or fluctuate over time, and where necessary to provide the most accurate picture practically possible of the project's impacts, a lead agency may define

existing conditions by referencing historic conditions, or conditions expected when the project becomes operational, or both, that are supported with substantial evidence."

As a leased space, tenants and therefore specific uses, of the building formerly occupied by the A+D Museum may fluctuate over time; therefore, the most reliable indicator of the future use is the most recent use in operation before the building became vacant. No substantial evidence exists to support the Commenter's claim that the building formerly occupied by the A+D Museum will be occupied by a higher intensity land use under the rezoning of the Project Site to C2-2-RIO from M3-1-RIO upon Project approval. Due to the range of potential, specific uses that could possibly occupy the building formerly occupied by the A+D Museum per the LAMC and proposed C2 zoning, it would be speculative to assume that any one of these uses would replace the most recent use. As CEQA specifies that speculation is not substantial evidence per Section 21080(e)(2), the Draft EIR correctly utilizes the operating A+D Museum as the environmental baseline for analysis, and the assumption that the future use of the now vacant building would be similar to the A+D Museum use is justified. In the event that a substantially different or more intensive land use is proposed to occupy the space formerly occupied by the A+D Museum, a Subsequent EIR, Supplement to an EIR, or an EIR Addendum pursuant to CEQA Guidelines Sections 15162, 15163, or 15164, respectively, would be required to document the changes to the Project description and evaluate the associated impacts and mitigation measures, if any.

The Commenter also speculates that "the A+D Museum's operation – now virtual, per the EIR – may be relocated to another place", and opines that such a hypothetical relocation [of the A+D Museum] and its associated impacts are still part of this Project and must be analyzed and "have to be added to the Project's air quality analysis." The comment does not speculate as to where they would presume such a relocation may occur or discuss how the Draft EIR should evaluate air quality impacts of a hypothetical A+D Museum. In fact, such an analysis could not be undertaken, as the location, surroundings, and potential sensitive receptors cannot be known. Contrary to the Commenter's assertion, any hypothetical relocation of the A+D Museum would not be part of the Project under CEQA. The A+D Museum has vacated the current location due to factors unrelated to the Project, and therefore it is not reasonable to conclude that approval of the Project would in some way force the A+D Museum to move to an alternate physical location. Further, as stated above, CEQA specifies that speculation is not substantial evidence per Section 21080(e)(2), thus the Draft EIR correctly does not speculate that the A+D Museum may relocate to some unknown location and speculate about air quality impacts of such a hypothetical relocation.

Comment No. 5-33

Second, the Draft EIR's analysis of air quality impacts improperly relies on the comparison of increase of jobs under the Project with the *regional* assumptions under 2016-2040 RTP/SCS and concludes that the air quality impacts of the Project are not significant only because the Project will bring "a net increase in employment opportunities of 1,270 employees" as compared with the 2.5 million jobs projected in the City, representing a 0.05 or 0.06 percent increase. (DEIR, p. IV.A-35—36.) But the Draft EIR ignores the fact that the 2016-2040 RTP/SCS assumptions are based on the zoning and development under the *existing* General Plan and Community Plan or land use designations in the City (i.e., low intensity heavy industrial M3 zone), whereas the Project is absolutely inconsistent with those uses and seeks to amend those plans and zoning to put the Project site to more intensive uses than were assumed by SCAG.

Response to Comment No. 5-33

The Commenter asserts that the Draft EIR analysis of air quality impacts improperly relies on the comparison of the Project's increase in jobs with the regional assumptions under 2016-2040 RTP/SCS. The comparison is provided in response to the CEQA threshold question asking whether the Project would conflict with or obstruct implementation of the applicable air quality plan, which is a regional document by nature. In accordance with the SCAQMD's CEQA Air Quality Handbook, the City used several criteria to determine whether the Project would conflict with the SCAQMD's 2016 AQMP, and the evaluation of Criterion 2 considers whether the Project would exceed the assumptions utilized in preparing the Air Quality Management Plan (AQMP), which are mainly the population, housing, and employment growth projections included in SCAG's RTP/SCS. As the current AQMP is based on SCAG's 2016-2040 RTP/SCS, the discussion in the Draft EIR (Chapter IV.A, Air Quality, pages IV.A-34 through IV.A-37) is based on the 2016-2040 RTP/SCS projections.

The Commenter further asserts that the Draft EIR ignores the fact that the RTP/SCS assumptions are based on the zoning and development under the existing General Plan and Community Plan land use designations, whereas the Project seeks a General Plan Amendment and a Zone Change. The 2016-2040 RTP/SCS includes a regional growth forecast that reflects past and recent trends and was developed by working with local jurisdictions, including the City of Los Angeles, using the most recent land use plans and policies and planning assumptions. Growth projections by SCAG at the neighborhood level adhere to general plan maximum densities as conveyed by individual jurisdictions; therefore, the projections assume some change in land use development to accommodate growth in population, residences, and employment. The SCAG projected that, during the planning horizon of the 2016-2040 RTP/SCS, population and households are projected to grow at the annual average growth rate of 0.7, while employment grows

faster at two percent until 2020, and then stabilizes at 0.7 percent.[15] The growth projections for the region and the City that are included in the Draft EIR are based on SCAG data. Furthermore, page IV.A-35 of the Draft EIR conveys that the Applicant is requesting a General Plan Amendment and Vesting Zone Change to construct and operate the Project, and that the General Plan Amendment would change the current land use designation from Heavy Industrial, as identified in the approved Community Plan, to Regional Center Commercial, which would permit a variety of commercial and residential uses. The Draft EIR, page IV.A-35, also notes that a Vesting Zone Change would change the current zone from M3 to C2, which would allow for the Project's proposed range of commercial uses, and that the approval of these requests would increase the intensity of development on the Project Site, leading to the net increase in employment of 1,270 jobs. As stated in Chapter IV.A, Air Quality, of the Draft EIR (page IV.A-36), the Project would represent 0.05 percent of the 2012 through 2040 regional growth in employment, or 0.06 percent of the overall employment projected for the City in 2040, which does not represent substantial unplanned growth.

The Commenter also asserts that the Project's air quality impacts are determined to be not significant "only because the Project will bring a net increase in employment opportunities of 1,270 employees as compared with the 2.5 million jobs projected in the City." Contrary to the Commenter's assertion, the comparison between the Project's number of projected employees to the number of employees projected under the 2016 RTP/SCS is not the sole analysis for determining whether the Project would result in significant and unavoidable air quality impacts. The Project's projected number of employees was compared to the 2016 RTP/SCS to determine whether the Project would conflict with or obstruct implementation of the applicable air quality plan, (specifically whether the Project would exceed the assumptions utilized in preparing the AQMP), which is one of the four thresholds analyzed when concluding whether air quality impacts would be significant and unavoidable. Further, the Draft EIR (refer to pages IV.A-34 through IV.A-39) not only considers the increase in employment, but also whether the Project would: 1) result in an increase in the frequency or severity of existing air quality violations, cause or contribute to new air quality violations, and/or delay timely attainment of air quality standards or the interim emission reductions specified in the AQMP and 2) conflict with the goals, objectives, and/or policies from the Air Quality Element that apply to the Project. As evaluated in Section IV.A, Air Quality, of the Draft EIR (pages IV.A-39 through IV.A-47), Project construction and operation would not exceed SCAQMD's regional or local of significance for thresholds for NOx, CO, sulfur dioxide (SO_2), PM_{10}, or $PM_{2.5}$, or reactive organic gases (ROG), a precursor for the formation of ozone (O_3). The Project would also not exceed toxic air contaminant (TAC) and CO hot spot standards. Therefore, the Project would not exceed the applicable ambient air quality standards, it

[15] Southern California Association of Governments, 2016. 2016-2040 RTP/SCS Demographics & Growth Forecast Appendix. April.

would not increase the frequency or severity of existing air quality violations, cause or contribute to new air quality violations, or delay attainment of air quality standards. Furthermore, the Project would provide spaces for commercial uses (i.e., restaurant businesses) that would support existing and planned residences in the vicinity, and it would also provide office spaces that would generate new job opportunities. The Project Site is located in an infill location in a live/work community, and it would increase land use density within an area that is served by public transit. The Project Site is located 0.5 miles south of the Metro L (Gold) Line Little Tokyo/Arts District Station and is also served by bus transit along 1st Street, 3rd Street, 4th Street, 6th Street, 7th Street, Olympic Boulevard, Central Avenue, Boyle Avenue, and Soto Street. The Project Site is also served by LADOT's Downtown Area Short Hop A commuter line. In addition, the Project would provide bicycle parking spaces (and showers for Project users) to incentivize bicycle use and encourage the use of alternative modes of transportation.

On the basis of all of these factors, the Draft EIR properly concluded that the Project would not conflict with the applicable AQMP.

Comment No. 5-34

Third, the Draft EIR's *cumulative* air quality impacts analysis is flawed as it relies on: (1) claimed *speculative* nature of impacts of the 137 related projects and is based on the 137 related projects' list that has not been updated since 2017 or 2019; and (2) claim that since its estimate of the Project's individual air quality impacts is less than significant, then its cumulative air quality impacts are also less than significant. Since the EIR's *individual* air quality analysis for the Project is flawed (including due to the omission of higher intensity uses in the A+D Museum building, relocation of the Museum, as well as the flawed consistency analysis under SCAG's 2016-2040 RTP/SCS assumptions), the Draft EIR's conclusion as to *cumulative air quality impacts* is also flawed.

Response to Comment No. 5-34

The Commenter incorrectly states that the DEIR's cumulative air quality impacts analysis relies on the *speculative* nature of impacts of the 137 Related Projects. As described in Response to Comment No. 5-20, the Related Projects list is based on information provided by LADOT and the Department of City, case filings of major discretionary projects, and transportation studies prepared for projects located within 1.5 miles of the Project Site as of the date of the September 20, 2017 NOP and as subsequently updated between 2018 and 2019 by the LADOT and Department of City Planning to 1) remove duplicate listings of projects, ministerial projects that did not warrant transportation or CEQA analysis, and projects that had been terminated; and 2) to add projects for which new case filings had been submitted since 2017.

With respect to the Project's construction-related air quality emissions and potential cumulative impacts, in accordance with the SCAQMD, individual construction projects that exceed the SCAQMD's recommended daily thresholds for project-specific impacts would cause a cumulatively considerable increase in emissions for those pollutants and precursors for which the Air Basin is in non-attainment. For operational-related air quality emissions, the Project relies on the SCAQMD's recommended methodology; if an individual project results in air emissions of criteria pollutants that exceed the SCAQMD's recommended daily thresholds for project-specific impacts, then the project would also result in a cumulatively considerable net increase of these criteria pollutants. Thus, the Commenter's claim that the Project-level less than significant air quality impact does not equate to a less than significant air quality cumulative impact is incorrect.

Lastly, the Commenter alleges that the Project's air quality analysis is flawed, as it accounted for a similar use in the building formerly occupied by the A+D Museum as opposed to the highest intensity use possible. Please refer to Response to Comments Nos. 5-32 and 5-33 that address the Commenter's concerns regarding speculation about higher intensity uses in the building formerly occupied by the A+D Museum, relocation of the A+D Museum, and the incorrect assertion that the consistency analysis is flawed.

Comment No. 5-35

Lastly, the Draft EIR does not consider the air quality impacts associated with the transportation of hazardous materials and potentially contaminated soil (for which a Phase II environmental site assessment is deferred and is to be conducted), as well as the air quality impacts of the remedial measures associated with the removal and cleanup of the Project site in accordance with Phase II Subsurface Site Investigation recommendations, as well as grading and construction in an officially mapped methane zone where the Project is. The noted issues may significantly increase the air quality pollution and impacts and affect the sensitive receptors nearby; yet, they are not duly accounted for in the Draft EIR's individual and cumulative air quality analysis.

Response to Comment No. 5-35

The Commenter asserts that the Draft EIR fails to consider the air quality impacts associated with the excavation and possible transport and remediation of potentially contaminated soil as well as the impacts of grading in a methane zone.

With regard to Project impacts related to grading in a methane zone, Section IV.F, Hazards and Hazardous Materials, of the Draft EIR fully discloses that the Project Site is located in a City-designated Methane Zone (page IV.F-22). The Draft EIR details the methods used to assess the methane levels present at the Project Site (pages IV.F-22 and IV.F-23). As described on pages IV.F-17 and IV.F-18 of the Draft EIR, the LAMC provides methane seepage regulations for the construction of new projects located within

a Methane Zone. These regulations provide the minimum requirements of the City for the control of methane intrusion emanating from geologic formations. The general methane requirements stated in LAMC Chapter IX, Article 1, Division 71, Sections 91.7103 and 91.7104 require that site testing of subsurface geological formations be conducted in accordance with the Methane Mitigation Standards under the supervision of a licensed Architect or registered Engineer or Geologist, as was performed for the Project. As described in detail in Section IV.F, Hazards and Hazardous Materials, of the Draft EIR (pages IV.F-23 and IV.F-29), based on the Phase II Subsurface Site Investigation prepared for the Project (also refer to Appendix G2 to the Draft EIR), the Project Site meets the minimum methane mitigation requirements for Site Design Level II, which requires a passive mitigation system, with sub-slab venting and an impervious membrane for the new structure. This methane mitigation system would be incorporated into the Project design to achieve compliance with LAMC Sections 91.7103 and 91.7104. Passive mitigation systems typically rely on the natural rising characteristics of methane and do not require mechanical systems. The Project must comply with LAMC requirements related to methane mitigation systems. The implementation of systems to achieve compliance with this regulation is considered regulatory compliance rather than a CEQA-required mitigation measure. Without specific designs that are developed and reviewed by the LADBS, which is the enforcement and monitoring agency, the quantification of emissions from methane mitigation activities would be speculative. Regardless, and as stated on pages IV.F-17 and IV.F-18 of the Draft EIR, the Project would be subject to the application of design remedies for reducing potential methane impacts, which are designed so that, when properly implemented, they reduce methane-related risks to a less than significant level.

The Commenter also expresses concern that the excavation, transport, and remediation of hazardous materials and contaminated soils, if present, would result in significant air quality impacts that are not addressed in the Draft EIR. Section IV.F, Hazards and Hazardous Materials, of the Draft EIR (page IV.F-23) details the results of the Phase I ESA and Phase II Subsurface Site Investigation that were prepared for the Project and are attached to the Draft EIR as Appendices G1 and G2, respectively. As described therein, the concentrations of the metals detected were all below their respective USEPA Regional Screening Levels (RSLs) and represent naturally occurring background levels. However, due to the occupied use of the garage, office building and parking lot, a Phase II Subsurface Site Investigation could not be performed on the on-site wastewater clarifier, auto repair floor pit, and several wastewater separator structures.

The Project is anticipated to require excavation across the Project Site to a depth of 38 feet to accommodate subterranean parking levels, as detailed in the Draft EIR, pages IV.F-29 and IV.F-30. This grading activity and the transport of soils off-site would occur, regardless of whether or not the soil is contaminated. Excavation would produce an

estimated 75,200 cy of soil that would be exported from the Project Site. The Draft EIR analyses (including Section IV.A, Air Quality and Appendix B, Air Quality Impact Analysis[16]) assume that excavated soils and demolition and construction waste would be transported to the Azusa Land Reclamation Landfill, located in Azusa approximately 25 miles northeast of the Project Site. According to CalRecycle, the Azusa Land Reclamation Landfill accepts contaminated soils.[17] Therefore, air quality emissions associated with the transport of excavated soils were considered in the air quality analysis, and, as described on page IV.A-40 of the Draft EIR, the construction-period air quality impacts of the Project, including emissions associated with the excavation of soil (i.e., the operation of heavy equipment) and soil export hauling (i.e., the generation of truck trips), were determined to be less than significant.

Although subsurface investigations completed to date have not detected hazardous soil conditions, access was limited due to existing development at the Project Site. Due to the proposed excavation activities, historical occupancies of the Project Site for vehicle repair and truck washing, and limited access to investigate the subsurface conditions in some on-site locations, the Project has the potential to uncover hazardous soil conditions that may create a significant hazard to the public or the environment. The Draft EIR discloses that the potential presence of soil contamination in untested areas of the Project Site is considered a potentially significant impact, and Mitigation Measures HAZ-MM-1 and HAZ-MM-2 are required to reduce this impact to a less-than-significant level.

Contrary to the Commenter's assertion, Section IV.F, Hazards and Hazardous Materials of the Draft EIR (pages IV.F-27 through IV.F-31) evaluates Project impacts related to the transport and release of hazardous materials into the environment. As described therein, the Project's transport, use, and disposal of construction-related hazardous materials would occur in accordance with the manufacturers' specifications for each material, as well as in conformance with applicable local, State, and federal regulations governing such materials and activities, which include the Toxic Substances Control Act (TSCA); Resource Conservation and Recovery Act (RCRA); federal OSHA; Cal/OSHA; Hazardous Materials Transportation Act (HMTA); California Code of Regulations; California Health and Safety Code; SCAQMD Rules 1113, 1166, and 1403; and the LAMC (including but not limited to Section 91.7104, addressing methane). More specifically, and as described in the Environmental Setting discussion of Section IV.F, Hazards and Hazardous Materials of the Draft EIR, the RCRA regulates the generation, transportation, treatment, storage, and disposal of hazardous waste. In addition, pursuant to OSHA, a developer that undertakes a construction project that involves the handling of contaminated site conditions must prepare and implement a Health and Safety Plan

[16] Refer to page 2 of 34 in Appendix A, CalEEMod Version 2016.3.2 Computer Model Output, of the 4th and Hewitt Project Air Quality Impact Analysis, of the Draft EIR, which conservatively assumed a 27-mile distance for hauling.

[17] CalRecycle. SWIS Facility/Site Activity Details, Azusa Land Reclamation Co. Landfill (19-AA-0013). Available at: https://www2.calrecycle.ca.gov/SolidWaste/SiteActivity/Details/3532?siteID=1001. Accessed on August 25, 2022.

(HASP) that sets forth the measures that would be undertaken to protect those that may be affected by the construction project. A HASP is typically appended to a Soil Management Plan if this document is required by the Certified Unified Program Agency (CUPA), which is the City of Los Angeles Fire Department (LAFD) with regard to the Project Site. The HASP, if required, would be prepared in accordance with the most current OSHA regulations. Further, per the HMTA, the U.S. Department of Transportation (USDOT) prescribes strict regulations for the safe transportation of hazardous materials, including requirements for hazardous waste containers and licensed haulers who transport hazardous waste on public roads. The HMTA requires that every employee who transports hazardous materials receive training to recognize and identify hazardous materials and become familiar with hazardous materials requirements. Furthermore, as stated above, the Draft EIR analyses assume that excavated soils and demolition and construction waste would be transported to the Azusa Land Reclamation Landfill, located in Azusa approximately 25 miles northeast of the Project Site. According to CalRecycle, the Azusa Land Reclamation Landfill accepts contaminated soils.[18]

In addition to required compliance with the regulations discussed in Section IV.F, Hazards and Hazardous Materials, of the Draft EIR and summarized here, the Project is required to implement Mitigation Measure HAZ-MM-1, a Supplemental Phase II Subsurface Site Investigation, as well as HAZ-MM-2, a Soil Management Plan, to assure that Project impacts related to the routine transport, use, or disposal of hazardous materials (including soils), would be less than significant. The determination of the extent and type of contaminated soil and/or other types of subsurface hazardous materials cannot be made until the demolition of on-site structures is completed. Therefore, the specific type of remedial activities, if any, and the potential quantification of emissions from those activities (beyond emissions associated with vehicle trips, as noted here), would be speculative. Nevertheless, required compliance with the aforementioned regulations would assure that Project impacts (direct and cumulative impacts) related to the removal, transport, and remediation of such materials to construction workers, the public, and the environment would be less than significant.

Comment No. 5-36

In sum, the Draft EIR's air quality analysis is flawed in light of critical omissions, and the Project may have significant impacts, including on sensitive receptors and human beings nearby, requiring mandatory findings of significance for both adverse impacts on human beings as well as the cumulative impacts of the Project.

[18] CalRecycle. SWIS Facility/Site Activity Details, Azusa Land Reclamation Co. Landfill (19-AA-0013). Available at: https://www2.calrecycle.ca.gov/SolidWaste/SiteActivity/Details/3532?siteID=1001. Accessed on August 25, 2022.

Response to Comment No. 5-36

The Commenter restates the assertion that the Draft EIR's air quality analysis is flawed and incomplete. This comment serves as a conclusory statement, summarizing Comment No. 5-32 through Comment No. 5-35. Please refer to Response to Comment No. 5-32 through Response to Comment No. 5-35 for the responses to these comments.

Comment No. 5-37

3. Biological and Other Impacts

The EIR improperly dismisses numerous Project impacts. First, as a general matter, to the extent the Draft EIR's conclusion of no impacts is based on the discussions and conclusion in the 2017 Initial Study, those conclusions lack substantial evidence in view of significant changes in the Project itself (it grew much bigger after 2017), as well as in the Project's surrounding circumstances. The Draft EIR states:

> As **evaluated** in **Appendix A2, Initial Study**, and Chapter V, Other CEQA Considerations, The Project would not result in significant impacts related to Aesthetics, Agriculture and Forestry Resources, **Biological Resources**, Mineral Resources, Public Services -School Services, Public Services -Parks, **Public Services** -Other **Public Facilities**, Recreation, or Wildfire. Therefore, no further analysis of **these topics** is required or provided in this alternatives analysis.

(DEIR, p. IV-12, emph. added.) The emphasized impacts' findings are particularly inaccurate as they rely on the 2017 data and ignore the changes that occurred later.

Response to Comment No. 5-37

The Commenter's assertion that the impact findings of the IS are inaccurate, because they rely on 2017 data and ignore changes to the Project, is incorrect. With regard to Biological Resources, as explained in the IS (Draft EIR Appendix A2, pages B-10 thorough B-12), the Project Site is an urban infill property that does not contain wetlands, riparian habitat, or other sensitive natural communities. Further, the Projects analyzed in the 2017 IS and the 2022 Draft EIR would not remove, or modify the habitat of, any identified candidate, sensitive, or special status species. Please refer to Responses to Comments Nos. 5-38 and 5-39 for additional information related to biological resources and the Project Site.

As described in the IS (Draft EIR Appendix A2, pages B-6 thorough B-8), no agricultural or forestry uses or related operations are present on the Project Site or in the surrounding urban area. The Project Site is not located on designated Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program), the Project Site is not zoned

for agricultural or forestry use, and the Project Site is not under a Williamson Act contract. These conditions did not change between the time of the 2017 IS and the 2022 Draft EIR, regardless of the Project details; therefore, the Project would not result in significant impacts to these resources. Similarly, as described in the IS (Draft EIR Appendix A2, pages B-25 and B-26), the Project Site is located in a Mineral Resource Zone-2 area, which is a California Geological Survey classification that denotes an area in which deposits, in this case sand and gravel, are of significance to the State. However, there are no known mineral resources at the Project Site, there are no active aggregate mines on the Project Site or within the vicinity, and the Project Site is not designated as a current mineral resource extraction area by the State of California Department of Conservation. The Project Site has been previously developed with non-mining land uses, and this general condition would continue with development of the Project. Therefore, the Project would not result in the loss of a locally important mineral resource recovery site. These conditions did not change between the time of the 2017 IS and the 2022 Draft EIR, regardless of the Project details; therefore, the Project would not result in significant impacts to mineral resources.

With regard to Aesthetics, as explained in Chapter II, Project Description, of the Draft EIR, the Project is located in a TPA and is exempt from the Aesthetics analysis, per SB 743 and the City's ZI File No. 2452.

With regard to Wildfire, the urban infill Project Site is not located in a State Responsibility Areas or in a Very High Fire Severity Zone, and no wildlands are present on the Project Site or surrounding area; therefore, the Project would not result in significant impacts associated with Wildfire (refer to Chapter V, Other CEQA Considerations, page V-15 of the Draft EIR).

Lastly, the 2017 IS (Draft EIR Appendix A2, pages B-29 thorough B-31), determined that the Project would not result in significant impacts related to school services, park/recreation, and libraries, because it would not generate a residential population that creates additional demand for these Public Services. The Project that is analyzed in the Draft EIR similarly does not propose residential uses and would not result in significant impacts to these Public Services.

Comment No. 5-38

Second, particularly as to the Project's biological impacts, there is no substantial evidence that the Project will have no impacts as the EIR claims. Thus, as of 2017, when the initial study was conducted, the A+D Museum was operating; yet, since 2020 and through this date, the A+D Museum and its related structures, including storage areas, are reportedly "vacant." As such, the *vacant* A+D Museum and the structures nearby may now house bats, which are on decline in California and are especially protected by the California

Department of Fish and Wildlife ("**CDFW**"). In fact, CDFW requires to report bat colonies and to prevent their decline.[19] The EIR fails to address the issue of vacant structures on the Project site.

Footnote:

[19] https://wildlife.ca.gov/Conservation/Mammals/Bats/Report-Colony

Response to Comment No. 5-38

The Commenter asserts that there is no substantial evidence that the Project will have no impacts on biological resources. The Commenter also asserts that, because the building formerly occupied by the A+D Museum and its associated structures have been vacated, they may now house bats, implying that the Project may potentially result in impacts to bats specifically.

With regard to Project impacts to biological resources, the 2017 IS, included as part of the Draft EIR (see Appendix A2), analyzed potential impacts to biological resources and found that the Project would result in no impact or less than significant impacts to biological resources (see Section IV, Biological Resources, pages B-10 thorough B-12, of the IS).

The Commenter's assertion that the building formerly occupied by the A+D Museum and its associated structure may now house bats, because they have been vacated, is speculative. The likelihood of bats residing in the structures is low, because these structures are located immediately adjacent to occupied commercial uses to the east and south, as well as to the East 4th Street and Colyton Street roadways, which represent a busy, urban environment that does not provide ideal habitat. In addition, the building formerly occupied by the A+D Museum (and its storage structure) are fully enclosed/locked and also lack architectural features, such as eaves, on the exterior that may be suitable for bat roosting. Furthermore, the Project proposes no modifications to the building formerly occupied by the A+D Museum. Lastly, the Commenter provides no evidence that the structures are supporting bat colonies. However, in the unlikely event that bats were discovered on the Project Site and in the area proposed to be disturbed by construction activities, the Applicant would be required to comply with regulations adopted to protect bats; mainly, Sections 2000, 2014, 3007, and 4150 of the California Fish and Game Code related to the take or willful destruction of birds, mammals, fish, reptiles, or amphibia.

The Commenter also claims that the California Department of Fish and Wildlife (CDFW) "requires" individuals to report bat colonies. However, as stated clearly on the website referenced by the Commenter in Comment Letter No. 5, the CDFW *invites* individuals to report bat colonies, stating "If you are lucky enough to see a group of roosting bats, CDFW

would like to know about it!" "You can help CDFW track bat populations in California by reporting bat colonies or their roost sites."

Based on the information provided in the Draft EIR and the lack of evidence provided by the Commenter, no additional analysis with regard to Project impacts on biological resources is warranted.

Comment No. 5-39

In addition, the Draft EIR mentions about the removal of several trees in the public right of way; it is unclear what kind of trees are those and what kind of trees or shrubs are generally present on the Project's site. It is also unclear if the Project site contains valuable habitat for special status species, plants, animals or wildlife, especially in view of its proximity to the LA River.

Response to Comment No. 5-39

The Commenter claims that the Draft EIR is not clear in the description of trees and shrubs that are located on the Project Site. As disclosed in both the IS (page B-10 and Appendix IS-1, Biological Resources) and Draft EIR (Chapter II, Project Description, pages II-25 through II-28), the street trees around portions of the perimeter of the Project Site are non-native species and are not protected by the City by LAMC Section 17.02. As described in the IS and Draft EIR, there are three Brisbane box street trees located within the adjacent public right-of-way on East 4th Street along the Project Site frontage, ranging between three and six inches in diameter.

The Commenter also asserts that it is unclear if the Project Site contains valuable habitat for special status species, plants, animals or wildlife, especially in view of its proximity to the LA River. This issue is not evaluated in the Draft EIR, because it was not found to warrant analysis in the 2017 IS (Draft EIR Appendix A2, pages B-10 thorough B-12), which stated:

> The Project Site is located in an urban area that does not contain a natural drainage channel to the river, riparian habitat, or other sensitive natural communities as indicated in the City or regional plans or in regulations by the California Department of Fish and Wildlife (CDFW) or U.S. Fish and Wildlife Service (USFWS). Furthermore, the Project Site is not located in, or adjacent to, a Significant Ecological Area within the City of Los Angeles. Therefore, the Project would not have an adverse effect on any riparian habitat or other sensitive natural community. No impact would occur and no mitigation measures are required. No further analysis of this topic in the EIR is required.

With regard to the Commenter's implication that the Project Site's "proximity" to the Los Angeles River would make it more likely to contain valuable habitat, the Project Site is actually located approximately 0.35 miles west of the river, as described in Chapter IV.H, Land Use and Planning, of the Draft EIR (page IV.H-12). Urban development surrounds the area between the Los Angeles River and the Project Site, and the portion of the Los Angeles River that is located in the Project Area is concrete-lined and void of vegetation.

Therefore, no additional analysis with regard to Project impacts on biological resources is warranted.

Comment No. 5-40

Third, in view of the continual increase of the Project and its intensity, as well as the reasonably foreseeable higher intensity use of the A+D Museum building upon re- zoning of the Project site as proposed, the Project may have more severe impacts on *public services* and require more police or firefighter facilities than considered in the 2017 Initial Study.

Thus, the Draft EIR's conclusions of no impacts are unsupported.

Response to Comment No. 5-40

The Commenter asserts that the Project's impacts on public services may be more severe than considered in the 2017 IS, due to the evolution of the Project design and the vacancy of the building and storage structure previously occupied by the A+D Museum. However, the potential impacts of the currently proposed Project design on fire and police protection services are evaluated in the Draft EIR. As described in Sections IV.K.1, Public Services – Fire Protection Services, and IV.K.2, Public Services – Police Protection Services, of the Draft EIR, the analysis of Project impacts to fire protection services and police protection services is based on a variety of factors, including, for example, the employee population (occupancy) of the Project, the crime prevention and life saving features that are incorporated into the building design and are practiced during operations, and the proximity of the Project Site to police and fire department stations. The public services analyses included in the Draft EIR are based on the Project details that are conveyed in Chapter II, Project Description, of the Draft EIR, not on the details in the 2017 IS. With regard to the Commenter's assertion that a higher intensity use for the A+D Museum is "reasonably foreseeable," please refer to Response to Comment No. 5-9. As described therein, as a leased space, tenants and therefore specific uses, of the building formerly occupied by the A+D Museum is purely speculative and may fluctuate over time. As such, the most reliable indicator of the future use is the most recent use in operation before the building became vacant. No substantial evidence exists to support the Commenter's claim that the building formerly occupied by the A+D Museum will be occupied by a higher intensity land use under the rezoning of the Project Site to C2-2-RIO from M3-1-RIO upon

Project approval. As described in the Draft EIR (pages II-4, 8, and 10), the zone change of the Project would actually limit the type of use, as some of the currently allowed manufacturing and industrial uses that are permitted in the M3 Zone would not be allowed with the proposed C2 Zone. Due to the range of potential, specific uses that could possibly occupy the building formerly occupied by the A+D Museum per the LAMC and proposed C2 zoning, it would be speculative to assume that any one of these uses would replace the most recent use. Therefore, the Project would not result in "more severe" impacts on public services than are already evaluated in the Draft EIR.

Comment No. 5-41

4. Cultural and Historical Resources

The EIR underreports impacts to cultural resources and critically omits information about potential historical resources at and around the site which may be impacted by the Project. First, the documents obtained through our Public Records Act ("**PRA**") request show that the City did not conduct an adequate tribal consultation as required by law, short of a formality. (**Exhibit I** [January 4-11, 2022 Email Correspondence and the attached January 6, 2022 Letter; December 28, 2021 Email Correspondence to/from City/Tribe; and 7/12/2017 Email to City from the Tribe requesting tribal monitoring during Project construction].)

As evidenced by **Exhibit I**, *supra*, the tribal consultation (under AB 52) with Gabrieleño Band of Mission Indians – Kizh Nation ("**Tribe**") on December 15, 2022 resulted in a disagreement with the City, where the Tribe reported that the Project site is sensitive but the City found that the Tribe provided no specifics as to the Project Site so as to mandate monitoring by the Tribe during grading. Yet, the Tribe provided detailed reasons on why it believes the Project site is sensitive and may contain tribal and cultural resources.

As to AB 52 and CEQA requirements and mitigation of impacts on cultural resrouces [sic], City only added what seems to be an *ineffective* mitigation measure as a condition of approval: it only requires the Permittee to "temporarily stop" grading if they encounter an archeological resource and to report it to the City, and it further provides that the City attorney may consider the information confidential and not share it with the public. Also, per the devised condition of approval, "[t]he project Permittee shall implement the tribe's recommendations if a qualified archaeologist, retained by the City and paid for by the project Permittee, reasonably concludes that the tribe's recommendations are reasonable and feasible." (**Exhibit I** [Last page, Conditions of Approval].) The City's produced email omitted the attached file with the mitigation condition as devised and requested by the Tribe, and the City's ultimate conditions show that they provide for no permanent monitoring by the Tribe during the entire construction period, as previously requested by

the Tribe in 2017. As such, City's tribal consultation violates AB 52 and the City's devised conditions of approval or mitigation measure are illusory and non-binding.

Response to Comment No. 5-41

The Commenter claims that the City violated Assembly Bill (AB) 52, because the tribal resources consultation conducted by the City was inadequate. In addition, the Commenter asserts that the City violated AB 52, because the tribal resources consultation concluded in disagreement between the City and the Gabrieleño Band of Mission Indians – Kizh Nation tribal representative with regard to: 1) whether the tribal representative had provided substantial evidence that tribal cultural resources may be located on the Project Site; and 2) whether Native American monitoring is required throughout the construction period.

Chapter IV.M, Tribal Cultural Resources, of the Draft EIR describes in detail the requirements of AB 52 for notifying Native American tribes with cultural affiliation to the Project area and for consultation with the Native American tribes that request such consultation (refer to pages IV.M-1 through IV.M-3 of the Draft EIR). As detailed in Chapter IV.M, pages IV.M-9 through IV.M-13, the City notified all known tribes culturally affiliated with the area and as requested, consulted with the Gabrieleño Band of Mission Indians – Kizh Nation tribal representative as required. The fact that the consultation concluded in disagreement does not render the consultation inadequate or indicate that it violates AB 52. As stated in PRC Section 21080.3.2(a), consultation is considered concluded when either: (1) the parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or (2) a party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. In the case of the Project, the City determined that the documents provided for review by the tribal representative did not provide any site-specific evidence of tribal cultural resources occurring within the Project Site. Therefore, as described in Chapter IV.M, Tribal Cultural Resources, the City, after acting in good faith and after reasonable effort, concluded that mutual agreement cannot be reached for purposes of AB 52 (refer to page IV.M-12 of the Draft EIR). Based on the lack of specificity and/or relevance to the Project Site contained in the evidence presented during the tribal consultation and the search of records for cultural resources conducted for the Project Site, and as fully explained on pages IV.M-10 through IV.M-13 of the Draft EIR, the City determined that no substantial evidence existed to support a conclusion that the Project would cause a significant impact on tribal cultural resources. Therefore, the City has no basis under CEQA to impose any related mitigation measures. Nevertheless, as stated on pages IV.M-12 through IV.M-13 of the Draft EIR, the City will add its standard Condition of Approval under its police powers to protect the inadvertent discovery of tribal cultural resources.

Comment No. 5-42

Second, the Draft EIR admits that the Project Site is included in a historically significant district. (DEIR, p. IV.B-30—37.) The Draft EIR acknowledges the presence of several buildings described as A+D Museum *on* the Project site. (*Id*. and esp. DEIR, pp. IV-B-33—36.) City acknowledged that the Project site contains "A+D Museum" building: "The proposed project remains to be the construction of 311,682 square feet of office space and 8,149 square feet of commercial space and **retention** of the **existing A+D Museum** building." (**Exhibit F** [1/6/2022 Email Correspondence].) Yet, the Draft EIR downgrades the existence of the "museum" building, stating: "The Project Site is currently comprised of a building **formerly occupied** by the A+D Museum and an associated storage building, a law office and associated garage/warehouse, and surface parking areas." (DEIR, p. IV.B-33, emph. added.) The Draft EIR lists various alterations that occurred in A+D buildings (DEIR, pp. IV.B-33—36), including due to fire damage, and concludes *in the alternative*:

> As supported by the SurveyLA findings,[32] a **lack** of California Historical Resources Inventory and SCCIC records for these properties, **and**/**or** the **alterations** conveyed above from the Historical Resources Technical Report (**Appendix C2**), the **four structures** and the **parking lot** located on the Project Site are **not individually eligible** for listing as historical resources and **do not contribute** to the historical significance of the **potential Historic District**. **Therefore**, the **existing** structures/features that are located on the Project Site are **not considered** historical resources for purposes of this CEQA analysis.
>
> **Fn. 32**: "Los Angeles Historic Resources Survey. 2016. SurveyLA: Central City North Individual Resources. September 29."

(DEIR, p. IV.B-36, emph. added.) The EIR's *alternative* conclusion is speculative and unsupported to qualify for substantial evidence.

Similarly, the Draft EIR admitted that the 2022 Historical Resources Technical Report in Appendix C2 relied on the prior 2016 SurveyLA finding, but performed no specific historical resource study for the Project site:

> As outlined in guidance provided by the **OHR[20]** and described in the Historical Resources Technical Report (Appendix C2), **if** a SurveyLA **finding is not** in question, an **assessment** of **significance** and **eligibility** evaluation for an individual resource or a historic district is **not required**. The Historical Resources Technical Report (Appendix C2) accepts the SurveyLA findings and **does not re-evaluate** the on-site structures or contributing properties in the Project vicinity for individual eligibility.31

> **Fn. 31**: Historic Resources Group. 2022. Historical Resources Technical Report for the 4th and Hewitt Project . February.

(DEIR, p. IV.B-31, emph. added.) The EIR's reliance on the 2016 SurveyLA findings is misplaced in view of limitations of that survey and its purposes.

The Draft EIR's analysis of historical resources *existing* on the Project site and the Project's impacts thereon is inadequate for several reasons. First of all, it refers the public to Appendix C2, which further appears to rely on the 2016 Survey, which itself is not provided in either the EIR, Appendix C2 or in a link.[21] The public is not required to ferret out the relevant information:

> A reader of the FEIR could not reasonably be expected to ferret out an unreferenced discussion in the earlier Water Forum Proposal, interpret that discussion's unexplained figures without assistance, and spontaneously incorporate them into the FEIR's own discussion of total projected supply and demand. The data in an EIR must not only be sufficient in quantity, it must be presented in a manner calculated to adequately inform the public and decision makers, who may not be previously familiar with the details of the project. "[I]nformation 'scattered here and there in EIR appendices' or a report 'buried in an appendix,' is not a substitute for 'a good faith reasoned analysis.' " (*California Oak, supra,* 133 Cal.App.4th at p. 1239, 35 Cal.Rptr.3d 434, quoting *Santa Clarita, supra,* 106 Cal.App.4th at pp. 722–723, 131 Cal.Rptr.2d 186.)

(*Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 442.)

Second, there is no substantial evidence that the alterations over time were indeed so "substantial" as to strip the *four* Museum buildings of any historical significance under CEQA Guidelines § 15064.5(a)(3). City's *arguments* that the Project does not qualify under any of the prongs of Guidelines § 15064.5(a)(3) (DEIR, p. IV.B-31) are also unsupported and do not qualify for a substantial evidence under CEQA Guidelines 15384, as they do not provide facts or expert opinion based on facts, beyond *arguments*:

> No structures located on the Project Site were identified as contributors to the potential Historic District by SurveyLA, nor were they identified in SurveyLA as being individually eligible for historic listing or designation per federal, State, or local criteria as described in the Historical Resources Technical Report (Appendix C2). In addition, none of the structures located on the Project Site are listed in the BERD. None of these properties were identified as individually significant for an association with an important event (Criterion **A/1/1**); none were found individually significant for an association with an important person (Criterion **B/2/2**); and none were identified as individually significant as an example of a style, type, period, or

> method of construction, or as a notable work of a master (Criterion **C/3/3**). These properties are not reflective of relevant themes developed in the Los Angeles Citywide HCS; therefore, they do not meet eligibility criteria for individual historic listing or designation at the federal, State or local levels.[29]
>
> **Fn. 29**: Historic Resources Group. 2022. Historical Resources Technical Report for the 4th and Hewitt Project . February.

(DEIR, p. IV.B-31, emph. added.)

Further, the fact that the Project site was never nominated for listing or was not listed as a historical resource anywhere is not conclusive, since CEQA protects not only the listed historical resources but also those that were proposed for listing and even determined to not be eligible for listing:

> The fact that a resource is **not** listed in, **or determined to be eligible** for listing in the California Register of Historical Resources, **not included** in a local register of historical resources (pursuant to section 5020.1(k) of the Public Resources Code), or identified in an historical resources survey (meeting the criteria in section 5024.1(g) of the Public Resources Code) does not preclude a lead agency from determining that the resource may be an historical resource as defined in Public Resources Code sections 5020.1(j) or 5024.1.

(Guidelines 15064.5(a)(4), emph. added.)

Footnotes:

[20] The Draft EIR explains earlier that the OHR is part of the *City's* Planning Department: "The Historical Resources Technical Report was reviewed by the Los Angeles Department of City Planning's Office of Historic Resources (OHR) and approved in March 2022.1" (DEIR, p. IV.B-1.)

[21] Upon individual research, we were able to locate the referenced 2016 Historical Survey, which we incorporate by reference herein, as part of the administrative record. See, http://13.56.149.169/documents/fileuploads/files/SurveyLACentralCity_SurveyReport. pd f Yet, we were unable to locate any reference in the 2016 Historical Survey to what the Draft EIR defines as a "potential Downtown Los Angeles Historical Industrial District" and the Draft EIR does not reference a particular page in the Survey to verify the information. (DEIR, p. IV.B-31.)

In addition, the 2016 Survey provides its scope and limitations and mentions that it expressly did not include consideration of properties which are covered by HPOZ or that were concurrently (in 2016) reviewed by the Redevelopment Agency. Also, the 2016 Historical Survey defines Historical Districts as: "areas that are related

geographically and by theme. Historic districts may include single or multiple parcels depending on the resource. Examples of resources that may be recorded as historic districts include residential neighborhoods, garden apartments, commercial areas, large estates, school and hospital campuses, and industrial complexes." (2016 Historical Survey, p. 2.) Thus, it is unclear *where* the Draft EIR or its Appendix C2 takes the definition of a "potential" historic district to conclude that the impact of the Project on the existing and adjacent historical resources and the historical district will be less than significant.

Response to Comment No. 5-42

The Commenter questions the validity of the Draft EIR's historic analysis, suggesting that the Project Site is located in a historic district and the "four museum" structures on the Project Site may qualify as historic resources. The Project Site is located within the potential Downtown Los Angeles Historic Industrial District but is not located in an approved/adopted historic district. Further, there are not four museum buildings located on the Project Site. As described in Chapter II, Project Description, of the Draft EIR (page II-4), the Project Site is occupied by four structures, one of which is a vacant building formerly occupied by the A+D Museum, at the southeast corner of Colyton Street and East 4th Street. This single-story, 7,800-square-foot building would remain in place as part of the Project. The second structure is a storage space for the former A+D Museum (located to the southeast in a separate 1,000-square foot structure). The other two structures consist of a one-story office structure that fronts South Hewitt Street, and a related garage/storage space (6,030 square feet combined). As referenced by the Commenter in Comment No. 5-42, the Draft EIR analysis of Project impacts to historic resources in Chapter IV.B, Cultural Resources (pages IV.B-40 through IV.B-45) is supported by the Historical Resources Technical Report prepared by Historic Resources Group (HRG) for the Project, included in Appendix C2 of the Draft EIR. As described by HRG:

> The Project Site and surrounding area were surveyed by SurveyLA, Los Angeles' citywide survey of historical resources, as part of the survey for the Central City North Community Plan Area (CPA), completed in September 2016. According to SurveyLA methodology, properties were evaluated for individual eligibility and as potential contributors to historic districts, using relevant contexts and themes developed in the Citywide Historic Context Statement, and established eligibility criteria and integrity thresholds for listing in the National Register of Historic Places, the California Register of Historical Resources, and for designation as City of Los Angeles Historic-Cultural Monuments (HCMs) or Historic Preservation Overlay Zones (HPOZs). None of the properties comprising the Project Site were identified in SurveyLA as being individually eligible for historic listing or designation. In addition, none of these buildings are listed in the Built Environment Resource Directory (BERD), a database maintained by the

> California Office of Historic Preservation (OHP) of previously evaluated resources throughout the state. No information related to the buildings on the Project Site was located as part of the records search conducted by the South Central Coastal Information Center. As outlined in guidance provided by the City's Office of Historic Resources [OHR], if a SurveyLA finding is not in question, a re-assessment of significance and eligibility evaluation for an individual resource or a historic district is not required.

The Requirements for Historical Resources Assessment Reports (July 2017), which was prepared by the OHR, is clear that if a SurveyLA finding is not in question, a re-assessment of significance and eligibility evaluation for an individual resource or a historic district is not required. As described in Section IV.B, Cultural Resources, of the Draft EIR (pages IV.B-18 and IV.B-19), SurveyLA is a citywide survey that identifies and documents potentially significant historical resources representing important themes in the City's history. The survey and resource evaluations were completed by consultant teams under contract to the City and under the supervision of the OHR. The field surveys performed as part of SurveyLA cumulatively covered broad periods of significance, from approximately 1850 to 1980 depending on the location, and included individual resources such as buildings, structures, objects, natural features and cultural landscapes as well as areas and districts. The survey identified a wide variety of potentially significant resources that reflect important themes in the City's growth and development in various areas including architecture, City planning, social history, ethnic heritage, politics, industry, transportation, commerce, entertainment, and others. All tools, methods, and criteria developed for SurveyLA were created to meet State and federal professional standards for survey work. The Los Angeles Citywide HCS was designed for use by SurveyLA field surveyors and by all agencies, organizations, and professionals completing historical resources surveys in the City. The context statement was organized using the Multiple Property Documentation format developed by the National Park Service for use in nominating properties to the National Register. This format provided a consistent framework for evaluating historical resources. It was adapted for local use to evaluate the eligibility of properties for City, State, and federal designation programs. The HCS used Eligibility Standards to identify the character defining, associative features and integrity aspects a property must retain to be a significant example of a type within a defined theme. As such, the Commenter's assertion that the Draft EIR lacks substantial evidence that the buildings on the Project Site are not historic resources is incorrect, as the Draft EIR is supported by the Historical Resources Technical Report and SurveyLA, both of which were prepared under the supervision of the OHR (the findings of the Historical Resources Technical Report were reviewed by the OHR and approved in March 2022). Moreover, the comment contains no evidence to contradict the Draft EIR's conclusions.

With regard to the Commenter's statement that they should not have to "ferret out the relevant information" that is referenced or cited in the Draft EIR, the documents, including webpages, that are referenced in the Draft EIR are part of the Project's administrative record and which the City makes available upon request. The City has two CDs and two USBs that include the Draft EIR reference files. The Commenter notes that they located the 2016 SurveyLA report for the Community Plan area at http://13.56.149.169/documents/fileuploads/files/SurveyLACentralCity_SurveyReport.pdf in Footnote 21; however, the document provided at this webpage is the 2016 SurveyLA report for the *Central City* Community Plan area, not for the *Central City North* Community Plan area, in which the Project Site is located. The 2016 SurveyLA report for the Central City North Community Plan area is available at https://planning.lacity.org/odocument/4004f839-e03a-43a2-a759-7ad60d40f19b/SurveyLACentralCityNorth_SurveyReport_RevMay18.pdf, as of the date of this Final EIR.

Lastly, as part of Footnote 21, the Commenter asserts that the Draft EIR is unclear with regard to the definition of a "potential" historic district and on what basis the Draft EIR concludes that the impact of the Project on the existing and adjacent historical resources and the historical district will be less than significant. Chapter IV.B, Cultural Resources, pages IV.B-3 through IV.B-4, of the Draft EIR describe the basis upon which historic districts derive their significance, as well as what qualifies buildings within a historic district as contributing and non-contributing to the historic significance of the historic district. Page IV.B-31 of the Draft EIR explains that the Project Site is located in the potential Historic District, as it is eligible for listing in the National Register and California Register, as well as for local designation for its association with the City's industrial development. Although not formally listed, the potential Historic District is treated as a historic district for purposes of the Draft EIR analysis. While no structures located on the Project Site were identified as contributors to the potential Historic District by SurveyLA, five properties located adjacent to or across Colyton Street or South Hewitt Street from the Project Site were evaluated by SurveyLA as contributors to the potential Historic District; the properties at 407 Colyton Street, 421 Colyton Street, 424 Colyton Street, 427 South Hewitt Street, and 428 South Hewitt Street. (None of the five properties located adjacent to or across Colyton Street or South Hewitt Street from the Project Site were determined by SurveyLA to be eligible for listing individually as historical resources as defined by CEQA.) Pages IV.B-32 through IV.B-37 of the Draft EIR document the significance of the potential Historic District and the historic significance, or lack of historic significance, of the structures on the Project Site and adjacent to the Project Site. Pages IV.B-37 through IV.B-40 of the Draft EIR provide the methodology for determining the significance of Project impacts to historic resources, and pages IV.B-40 through IV.B-45 provide the detailed historic resource impacts analysis. As determined by the Draft EIR, Project impacts to historical resources would be less than significant without mitigation.

Comment No. 5-43

The EIR's distinction between the *individual* historical significance of the A+D Museum buildings on the Project site and their historical significance *as part* of a historical district is unavailing. There is substantial evidence that the Project site contains potentially historical resources either individually or as part of a historic district, which have not been adequately studied for purposes of this Project.

In addition, the Draft EIR admits that there are other historical resources immediately adjacent to and across from the Project. (DEIR, p. IV.B-31.)

Response to Comment No. 5-43

The Commenter reasserts the contention that there are buildings on the Project Site that were not adequately analyzed in the Draft EIR and that are either individually historic and/or significant as part of a historic district. As described in Response to Comment No. 5-42 and in Section IV.B, Cultural Resources, of the Draft EIR (pages IV.B-30 through IV.B-37 and IV.B-40 through IV.B-45), and as supported by the Historical Resources Technical Report prepared by HRG for the Project (Appendix C2 of the Draft EIR), no structures located on the Project Site were identified as contributors to the potential Historic District by SurveyLA, nor were they identified in SurveyLA as being individually eligible for historic listing or designation per federal, State, or local criteria. In addition, none of the structures located on the Project Site are listed in the OHP-maintained BERD. None of these properties were identified as individually significant for an association with an important event (Criterion A/1/1); none were found individually significant for an association with an important person (Criterion B/2/2); and none were identified as individually significant as an example of a style, type, period, or method of construction, or as a notable work of a master (Criterion C/3/3). These properties are not reflective of relevant themes developed in the Los Angeles Citywide HCS; therefore, they do not meet eligibility criteria for individual historic listing or designation at the federal, State or local levels. The Commenter does not provide substantial evidence that the Project Site contains potentially historic resources either individually or as part of a historic district, whereas the substantial evidence provided in the Draft EIR is comprised of the Project-specific Historical Resources Technical Report prepared by HRG (Appendix C2 to the Draft EIR), as well as by the findings of SurveyLA, which were prepared under the supervision of and reviewed by the OHR and determined that no historic resources are located on the Project site, and none of the structures on the Project site contribute to the significance of the potential Historic District.

Comment No. 5-44

As such, there is substantial evidence that, in view of the Project's mass, scale and design, extending to 297 feet height [sic] (Appendix C2, Executive Summary, fn. 1 ["1 The

Office Building would have a maximum height of 297 feet, including the elevator shaft/overrun."]), the Project may overpower and overshadow the historically significant resources at the Project site and adjacent and across from it and thereby may detract from and adversely affect their historical significance. Stated otherwise, there is no evidence that the 2016 Survey, on which the Appendix C2 relies, has ever considered a 297-feet high Project proposed here or has made an expert determination whether such a structure will be compatible with or impact the overall historic district.

Response to Comment No. 5-44

The Commenter again incorrectly asserts that there are historic resources on the Project Site without providing any substantial evidence. This issue is addressed above in Response to Comment Nos. 5-42 and 5-43. With regard to potential impacts to the historic resources adjacent to, and across from, the Project Site, there are five such properties that were evaluated by SurveyLA as contributors to the potential Historic District; the properties at 407 Colyton Street, 421 Colyton Street, 424 Colyton Street, 427 South Hewitt Street, and 428 South Hewitt Street. However, none of the five properties were determined by SurveyLA to be eligible for listing individually as historical resources as defined by CEQA.

The Commenter is correct that SurveyLA does not provide a Project-specific analysis regarding potential impacts to these five contributors to the potential Historic District related to the mass, scale and design of the Project's 297-foot-high Office Building. However, pages IV.B-43 through IV.B-45 of the Draft EIR include a detailed analysis of the Project's impacts to the potential Historic District. In summary, based on the factors listed below, the introduction of the Project as a new visual element does not constitute a substantial adverse change, and the Project would not impair the integrity of the potential Historic District as a whole to the degree that the potential Historic District would no longer be eligible for listing under the National or California Registers or for local landmark designation programs:

- The design of the Project includes industrial elements and materials;
- The Project would maintain pedestrian-oriented development (including new sidewalks) while maintaining the industrial aesthetic of the existing street, which slightly slopes downward from each edge of the roadway towards the concrete centerline for drainage [a reverse crown]);
- The five buildings that are contributing properties to the potential Downtown Los Angeles Historic Industrial District in the Project vicinity are physically separated from each other; and

- Visual continuity is not a factor of the historic significance of the potential Historic District.

Therefore, the Project would not result in significant and unavoidable impacts to the potential Historic District.

Comment No. 5-45

Moreover, there is substantial evidence – including in view of the Draft EIR's findings of the Project's significant and unavoidable *noise* and *vibration* impacts – that the Project's extensive demolition, grading, and construction activities may also physically affect the historical resources at, adjacent to, and across from the Project Site.

Response to Comment No. 5-45

The Commenter asserts that there is evidence that the Project may impact the on-site and adjacent historic resources, implying that the Draft EIR fails to address this potential. However, contrary to this insinuation, the Draft EIR discloses the significant and unavoidable impact related to vibration-induced damage to fragile buildings (418 Colyton Street, 424 Colyton Street, and 427 South Hewitt Street) that may occur during Project construction in Chapter IV.I, Noise, of the Draft EIR (pages IV.I-55 through IV.I-57). As evaluated therein and also summarized in Response to Comment No. 9-2, the fragile buildings adjacent to the Project Site are of such an age that they may be considered sensitive to the structural effects of vibration. Without mitigation, the Project impact related to building damage due to vibration during the construction period would be significant. Implementation of Mitigation Measures NOI-MM-2, NOI-MM-3, and NOI-MM-4 would reduce the vibration-induced building damage impact to a less-than-significant level. However, because NOI-MM-2, NOI-MM-3, and NOI-MM-4 require the consent of other property owners, who may not agree to implement all components of the recommended mitigation measures, implementation of the provided mitigation measures cannot be guaranteed, as stated on pages IV.I-61 and IV.I-62 of the Draft EIR. Thus, the Draft EIR conservatively concluded that vibration impacts related to potential building damage on the structure located at 418 Colyton Street (as well as 424 Colyton Street and 427 South Hewitt Street) would be significant and unavoidable.

However, as evaluated in Chapter IV.B, Cultural Resources, of the Draft EIR (IV.B-42 and IV.B-43), the potential Historic District contains 196 individual buildings, 104 of which have been evaluated as district contributors, or approximately 53 percent. Assuming a scenario wherein the two contributing properties to the potential Historic District at 424 Colyton Street and 427 South Hewitt Street (418 Colyton Street is not a contributing building) were both damaged or destroyed by structural vibration impacts to the extent that they could no longer convey their significance as contributors to the potential Historic District, the number of district contributors would be reduced to 102, or approximately 52

percent from the current 53 percent. Therefore, even in the worst case scenario of extreme damage or destruction of both buildings, the Project would have a negligible impact on the overall integrity of the potential Historic District and a less-than-significant cultural resources impact.

Comment No. 5-46

As such, the Draft EIR's conclusions about less than significant cultural and historical impacts and the mitigation measures for cultural resources (which exclude monitoring by the Tribe) are procedurally and factually inadequate.

Response to Comment No. 5-46

The Commenter summarizes the assertions contained in the prior comments regarding cultural resources. Please refer to Responses to Comments Nos. 5-41 through 5-45. As described therein, the Draft EIR provides the required analyses of Project impacts to cultural resources, including historic resources, and to tribal cultural resources in Chapter IV.B, Cultural Resources; Chapter IV.I, Noise; and Chapter IV.M, Tribal Cultural Resources. The Draft EIR also requires the implementation of mitigation measures, where appropriate (refer to Chapter IV.B, Cultural Resources, of the Draft EIR and Mitigation Measures CUL-MM-1, CUL-MM-2, and CUL-MM-3, as well as Chapter IV.I, Noise, of the Draft EIR and Mitigation Measures NOI-MM-2, NOI-MM-3, and NOI-MM-4).

Comment No. 5-47

5. Geology Impacts

The Draft EIR's analysis of geology and soils impacts is also outdated, incomplete and inaccurate. First, it relies on a 2016 Geotechnical Engineering Investigation, whereas the Project was proposed in 2017 and has significantly grown since then. The description of the 2016 Geotechnical Investigation confirms it did not consider the proposed 297-feet high Project:

> The site is proposed to be developed with a mixed-use structure. The structure is proposed to be **eleven stories in height**, and will be built over **three subterranean parking levels**. It is anticipated that the finished floor elevation of the lowest subterranean parking levels will extend to an approximate depth of 29 feet below the existing grade.

(DEIR, Appendix E.1, p. 1, emph. added [2016 Geotechnical Investigation].)

Response to Comment No. 5-47

The Commenter asserts that the Draft EIR analysis of geological impacts is inadequate in part because of its reliance on a 2016 geotechnical report and in part because of the

evolution of the Project's design. The Commenter is incorrect in the assertion that the Draft EIR relies solely on the 2016 Geotechnical Engineering Investigation. As conveyed in Section IV.D, Geology and Soils, of the Draft EIR (page IV.D-1), subsequent updates to the 2016 Geotechnical Engineering Investigation were also prepared, and the 2019 Update of Geotechnical Engineering Investigation, included in Appendix E3 of the Draft EIR, addressed the Project as described in Chapter II, Project Description, of the Draft EIR (i.e., including all subterranean and above ground levels). All geotechnical engineering investigations prepared for the Project are appended to the Draft EIR as Appendices E1 (2016 Geotechnical Engineering Investigation), E2 (2018 Geotechnical Update), and E3 (2019 Update of Geotechnical Engineering Investigation).

Comment No. 5-48

Contrary to this description, the proposed Project now includes 19 stories, with two mezzanine levels (adding additional height); also, parking is marked as "stacked" on the draft entitlement set, whereas the Draft EIR does not disclose that "stacked" parking or its feasibility and associated impacts. (**Exhibit J** [Draft Entitlement Set].)

Response to Comment No. 5-48

The comment appears to imply that the Draft EIR is deficient due to the height of the proposed new building and the stacked parking configuration. The Commenter incorrectly states that the Project includes 19 stories. As described in Chapter II, Project Description, of the Draft EIR (page II-1 and Figures II-6 through II-9), the Project is accurately described as having 18 stories. Pursuant to LAMC 12.03, "story" is defined as "the space in a Building between two vertically adjacent finished floor levels or, for the topmost level of a Building, the space between its finished floor level and the roof directly above it. Finished floor levels within four vertical feet of each other shall be deemed a single Story."

The Draft EIR, page II-29, has been revised to clarify that the Project would include mechanical double stackers, as follows and as shown in Chapter III, Revisions, Clarifications, and Corrections to the Draft EIR, of the Final EIR:

"The Project would include 660 vehicle parking spaces. The parking calculations for the Project are provided in Table II-3, Vehicle Parking, below. A portion of the spaces provided on the 2nd through 5th floors of the Office Building would be comprised of mechanical double stackers."

Installation and operation of the mechanical stackers would not result in new significant impacts not already identified in the Draft EIR.

Comment No. 5-49

In fact, the 2016 Geotechnical Investigation provides:

> **Any changes** in the **design** of the **project** or **location** of any structure, as outlined in this report, should be reviewed by this office. The recommendations contained in this report should not be considered valid **until reviewed** and modified or reaffirmed, in writing, subsequent to such review.

(DEIR, Appendix E.1, p. 2, emph. added.) To the extent no such *subsequent* review has occurred or is disclosed in the Draft EIR, the Draft EIR's reliance on the findings of the 2016 Geotechnical investigation is misplaced.

In addition, the 2016 Geotechnical Report found:

> Fill materials were encountered during exploration to depths ranging between 2½ and 5 feet below the existing site grade. The **existing fill** materials are **unsuitable** for **support** of **new foundations** and **concrete slabs**-on-**grade**. It is anticipated that the **existing fill will be removed** during excavation for the proposed subterranean parking levels, which are expected to extend to a depth of 29 feet below the existing site grade. The proposed mixed-use structure may be supported by conventional foundations bearing in the native alluvial soils expected at the subgrade of the proposed subterranean levels.

(DEIR, Appendix E.1, p. 9, emph. added.) As such, the 2016 Geotechnical Report does not provide substantial evidence of no geology impacts.

Response to Comment No. 5-49

This comment again asserts that the Draft EIR relied solely on the 2016 geotechnical report. Please refer to Response to Comment 5-47, which documents that updated geotechnical engineering investigations were prepared after 2016 to address changes to the Project.

Comment No. 5-50

Second, the Draft EIR fails to adequately address the fact that the Project site is in close proximity to a drilled oil well and is also in the methane zone. (DEIR, p. IV.D- 9.) And yet, there is a high potential for fire hazards, where there is a high concentration of methane gas in close proximity to the oil well, since methane gas seeks to exit and, where more impervious surfaces are added, the drilled oil wells can serve as conduits for methane gas to escape.[22] Disturbing the soil and adding more impervious area, and further placing a 297-feet structure in a methane zone and prone to fire is substantial evidence that the Project may have significant geology impacts on the environment or may exacerbate the existing conditions at and near the Project site. The fact that methane concentrations were checked in 2016 and were found to be less than hazardous to the public does not

mean that is the case in 2022 and certainly does not rule out the possibility of fire or geology impacts or instability.

In addition, also applicable to hazards impacts, Hazards and dangers of methane gas have been acknowledged by the City of Los Angeles,[23] including Division 71, Sec 91.7101 through 91.7109, as well as CA Building Code, both of which require specific mitigation measures.

Based on So-Cal's caution:

> "**METHANE AND HEALTH AND SAFETY**
>
> Methane is non-toxic and creates no hazard when inhaled in limited quantities; however, if large quantities of natural gas or methane is allowed to displace air, lack of oxygen may result in suffocation.
>
> Methane can be flammable when mixed with air between certain concentrations (4.5 percent to 15 percent) and where there is an ignition source.
>
> SoCalGas® conducts extensive safety programs to prevent the escape of natural gas from its system; and as a health and safety precaution, adds a distinctive odor to natural gas so most people can easily notice its presence.
>
> If you smell a natural gas odor, hear the hissing sound of gas escaping or see other signs of a leak, REMAIN calm. DON'T smoke or light a match, candle or other flame. DON'T turn electrical appliances or lights on or off, operate machinery, or use any device that could create a spark.
>
> IMMEDIATELY EVACUATE the area, and from a safe location, call SoCalGas at 1-800-427-2200, or call 911 if the damage results in a natural gas leak that may endanger life or cause bodily harm or property damage."[24]

Thus, methane gas may be dangerous to public health depending on its concentrations. In addition, the City's Methane Ordinance mentions about *fire* hazards of methane:

> "WHEREAS, there was a **fire** in the **Fairfax Area** of the City of Los Angeles in **1985**, due to **high volume** of **methane gas seepage** through cracks in the concrete floor of a building;
>
> WHEREAS, in Council File No. 01-1305, the City Council directed the City's Departments of Building and Safety, Engineering, and Planning, as well as, the Chief Legislative Analyst and Office of Administrative and Research Services, to form a work group and recommend uniform safety requirements regarding methane, for **all future** development throughout the City;

> WHEREAS, a study by the work group was conducted regarding areas throughout the City of Los Angeles **to identify areas** where subsurface methane gas may be found;..."

In light of these fire hazards and according to these directives, the City mapped *all* the sites in the Project as being in *methane zone.* The City's methane ordinance provides *general* methane mitigation measures, and *specific* methane mitigation measures. Thus, under SEC. 91.7103. GENERAL METHANE MITIGATION REQUIREMENTS:

> All new buildings and paved areas located in a Methane Zone or Methane Buffer Zone shall comply with these requirements and the Methane Mitigation Standards established by the Superintendent of Building. The Methane Mitigation Standards provide information describing the installation procedures, design parameters and test protocols for the methane gas mitigation system, which are not set forth in the provisions of this division.

The City's methane ordinance then lists numerous mitigation standards, including methane testing at the project sites, that must be complied with.

In addition, the Methane Ordinance provides *additional* remedial measures:

> "SEC. 91.7109. ADDITIONAL REMEDIAL MEASURES. 91.7109.1. **General Remedial Measures.**
>
> In the event the concentration of methane gas in any building located in a Methane Zone or Methane Buffer Zone reaches or exceeds 25 percent of the minimum concentration of gas that will form an ignitable mixture with air at ambient temperature and pressure, the owner shall hire an engineer to investigate, recommend and implement mitigating measures. These measures shall be subject to approval of this Department and the Fire Department. 91.7109.2.
>
> **Abandoned Oil Well.**
>
> Any abandoned oil well encountered during construction shall be evaluated by the Fire Department and may be required to be re- abandoned in accordance with applicable rules and regulations of the Division of Oil, Gas and Geothermal Resources of the State of California. Buildings shall comply with these provisions and the requirements of **Section 91.6105 of this Code**, **whichever is more restrictive**."

(Emph. added.)

And Section 91.6105 of the Building Code provides:

SEC. 91.6105. SEPARATION FROM OIL WELLS. (Amended by Ord. No. 186,488, Eff. 12/27/19.)

No school, hospital, sanitarium or **assembly occupancy** shall be within **200 feet** from the center of the oil well casing.

No public utility fuel manufacturing plant or public utility electrical generating, receiving or distribution plant shall be located within 200 feet from the center of the oil well casing.

No building more than 400 square feet (37 m 2) in area **and taller than 36 feet in height** shall be erected **within 50 feet** from the center of an oil well casing.

A distance separation between the exterior wall of the building and the **center of an oil well casing** shall be maintained with a horizontal distance equal to **1-1/2 times the building's height,** provided however, that that distance need not exceed 200 feet. The building height for this provision shall be measured vertically from the adjacent lowest ground elevation to the ceiling of the top story.

EXCEPTIONS: The distance separation may be reduced to the following:

1. 35 feet separation if a solid 6 inches thick masonry wall and no shorter than 6 feet tall to be constructed within 50 feet from the building in between the oil well and all portions of the building.

2. 26 feet if any portion of the building exterior walls within 50 feet from the center of an oil well casing shall be constructed with no openings and one hour fire resistive construction with a 3 foot high fire rated parapet.

3. 15 feet if any portion of the building exterior walls within 50 feet from the center of an oil well casing shall be constructed with no openings and two-hour fire resistive construction with a 3 foot high fire rated parapet.

The provisions specified within this section shall not apply to oil wells that have been abandoned per LAMC Section 57.5706.3.16 and in accordance with the applicable rules and regulations of the Division of Oil, Gas and Geothermal Resources of the State of California.

The Draft EIR admits that there is a drilled oil well within 1,000 feet of the Project, although it provides no specific address for it. (DEIR, p. IV.D-9, but see DEIR, Appendix G1, pdf p. 778 [Map].) In fact, it appears that the oil well in the Appendix G1 was measured from the farthest point of the Project (926 E. 4th St.) to the oil well, whereas the closest point of the Project (e.g., 414 S. Colyton) is 851 feet away. (**Exhibit K** [ZIMAS map measurement].)

The proximity of the oil well and the fact that the Project is in [sic] methane zone requires that the Draft EIR provide accurate disclosures and accurate testing of the entire Project site against the possibility of methane fire or geology hazards.

Footnotes:

[22] See, https://www.bloomberg.com/news/features/2020-09-17/abandoned-gas-wells-are- left-to-spew-methane-for-eternity

[23] https://www.ladbs.org/docs/default-source/publications/ordinances/methane-code---ordinance-no-175790.pdf?sfvrsn=d8eeb53_10

[24] https://www.socalgas.com/stay-safe/methane-emissions/methane-and-health-and-safety#:~:text=Methane%20is%20non%2Dtoxic%20and,oxygen%20may%20result%20in %20suffocation.

Response to Comment No. 5-50

The Commenter asserts that disturbing the soil at the Project Site, adding more impervious area, and placing a 297-foot structure in a methane zone for which the Commenter believes is prone to fire, is substantial evidence that the Project may have significant geology impacts on the environment or may exacerbate the existing conditions at and near the Project Site and that proximity to an oil well increases fire and geology safety issues.

To clarify, while the Project Site is located in methane zone and the Project would entail earthwork to construct the parking levels below grade, the Project would *not* add more impervious area to the Project Site. As described in Section IV.G, Hydrology and Water Quality, of the Draft EIR (pages IV.G-17 through IV.G-19), the Project Site is comprised of approximately 1.31 acres with an average imperviousness of 98.5 percent. There are no known stormwater treatment best management practices (BMPs) at the existing Project Site, meaning that stormwater, with potential pollutants, currently sheet flows from the Project Site into the public right-of-way, where it is conveyed to the local storm drain system and ultimately to the Pacific Ocean. As described in Section IV.G, Hydrology and Water Quality, of the Draft EIR (page IV.G-26), the Project would include more landscaping than is currently on the Project Site, which would result in lowering the average imperviousness of the Site to 94 percent. By reducing the imperviousness of the Project Site, the Project would result in a slight reduction in stormwater runoff compared to the existing conditions.

With regard to impacts associated with methane, Section IV.F, Hazards and Hazardous Materials, of the Draft EIR discloses that the Project Site is located in a City-designated Methane Zone (page IV.F-22). In addition, the Draft EIR details the methods used to

assess the methane levels present at the Project Site (pages IV.F-22 and IV.F-23). As described in the Draft EIR, the LAMC provides methane seepage regulations for the construction of new projects located within a Methane Zone (pages IV.F-17 and IV.F-18). These regulations provide minimum requirements of the City for control of methane intrusion emanating from geologic formations. The general methane requirements stated in LAMC Section 91.7104 require that site testing of subsurface geological formations be conducted in accordance with the Methane Mitigation Standards under the supervision of a licensed Architect or registered Engineer or Geologist, as was performed for the Project. As described in Section IV.F, Hazards and Hazardous Materials, of the Draft EIR (pages IV.F-23 and IV.F-29), during the Phase II Subsurface Site Investigation prepared for the Project (also refer to Appendix G2 to the Draft EIR), methane was not detected at or above the minimum detection limit and no vapor pressures were observed above two inches of water from any of the soil vapor probes installed at depths ranging from five to 60 ft bgs. Based on the concentrations detected and that total pressure was less than two inches of water, the Project Site meets the minimum methane mitigation requirements for Site Design Level II, which requires a passive mitigation system, with sub-slab venting and an impervious membrane for the new structure. This methane mitigation system would be incorporated into the Project design to achieve compliance with LAMC Section 91.7104. Therefore, construction and operation of the Project, which are required to occur in compliance with the LAMC, would not create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of methane into the environment, and impacts would be less than significant. No additional mitigation measures are required by the Project for impacts related to methane.

With regard to the off-site oil well, as specified in the Phase I ESA prepared for the Project (Appendix G1 to the Draft EIR), the closest oil well to the Project Site is located 811 ft southwest of the Project Site. The well operator is Atlantic Richfield Company, and the status of the well is inactive and plugged. Given the distance between the Project Site and the oil well, none of the text quoted by the Commenter from Section 91.6105 of the Building Code is relevant to the Project. Further, the Phase I ESA does not identify the oil well as a Recognized Environmental Condition (REC) for the Project.

Based on the information provided in the Draft EIR and summarized above, the surveys and technical analyses provided in support of the Draft EIR are adequate to assess Project impacts related to methane and oil wells.

Comment No. 5-51

Lastly, the Draft EIR's *cumulative* geology impacts analysis is defective since it is based on the understated *individual* geology impacts and relies on regulatory measures that only control the Project's own envelope but do not address the question of whether the Project should or should not be built in its proposed mass, scale, and intensity or what

the Project's cumulative impacts will be along with other similar higher intensity development in the industrial low-density or low-intensity zone or close to a driller [sic] oil well and in a methane zone.

Response to Comment No. 5-51

The Commenter asserts that the cumulative geology impacts analysis is defective due to understated Project-level impacts. As described in Response to Comment Nos. 5-47 and 5-49, the Project's geology and soils impacts analysis is not understated, as the Draft EIR is supported by geotechnical investigations that were updated following review of the current Project Description. The Commenter further asserts that the cumulative geology impacts analysis is defective, because it relies on regulatory measures that control the Project's own envelope and does not evaluate the Project's cumulative impacts in light of other development. However, as discussed on page IV.D-26 of the Draft EIR, soil and seismicity impacts are generally confined to a project site and the properties within its immediate vicinity. Construction of a series of properties that are located in close proximity could be subject to similar soil characteristics and the same fault rupture system, and development located where such hazards are present could potentially exacerbate these existing geologic hazards. However, the Project and the Related Projects would be required to comply with the California Building Code and the City's Building Code, as well as implement the conditions of the approval of the LADBS Grading Division and the recommendations of the LADBS-approved final geotechnical report, all of which address seismic loads, structural design, and foundation design. Therefore, the Project's contribution to cumulative impacts would not be cumulatively considerable, and cumulative impacts regarding geology and soils would be less than significant.

Comment No. 5-52

In sum, the Draft EIR's conclusion of no significant geology impacts is legally inadequate due to omissions and reliance on an outdated geotechnical investigation.

Response to Comment No. 5-52

The Commenter restates the assertion that the Draft EIR analysis of Project impacts related to geology is inadequate. This comment serves as a conclusory statement, summarizing Comment No. 5-47 through Comment No. 5-52. Please refer to Response to Comment No. 5-47 through Response to Comment No. 5-52 for the responses to these comments.

Comment No. 5-53

6. GHG Impacts

The Draft EIR's GHG impacts' analysis is flawed for several reasons. First, it does not consider the reasonably foreseeable higher intensity use at the A+D Museum building and it does not consider the GHG emissions of the Museum if/when it relocates to another place. As noted above, there is no evidence in the Draft EIR that the Museum has stopped working and that its operation will be *eliminated* as part of the Project: it is now functioning *virtually* and, even if the Museum does not return to the Project site, it may move elsewhere due to the Project and still have impacts.

Response to Comment No. 5-53

The Commenter asserts that the GHG analysis is flawed due to inadequate analysis of the A+D Museum. Please refer to Response to Comment Nos. 5-7 and 5-32, which describe 1) that the A+D Museum was operating at the time that the NOP for the Project was issued (September 20, 2017), and that this is the CEQA baseline for the Draft EIR environmental analysis; 2) that no substantial evidence exists to support the Commenter's claim that the building formerly occupied by the A+D Museum will be occupied by a higher intensity land use under the rezoning of the Project Site to C2-2-RIO from M3-1-RIO (when in fact the C2 zoning would limit the land uses by not permitting some industrial and manufacturing uses that are permitted in the M3 Zone); 3) that the A+D Museum vacated the Project Site location due to factors unrelated to the Project; and 4) that it does not fall under the purview of CEQA to analyze hypothetical relocation of the A+D Museum (or any other tenant on the Project Site), as the location, surroundings, and potential receptors cannot be known.

Comment No. 5-54

Second, the Draft EIR is unclear and incoherent in its analysis and conclusion of whether the Project will have *operational* GHG impacts; it states:

> Due to the **global nature of GHG emissions**, changes in GHG emissions attributed to operations of a single development project **are difficult** to **discern**, as a project may cause only a shift in the locale for some type of GHG emissions, rather than causing "new" GHG emissions (i.e., mobile emissions from an individual employee's vehicle use would presumably occur elsewhere in the absence of a project, as the employee would likely still commute to a job somewhere else). **As a result**, there is a **lack** of **clarity** as to whether a project's GHG emissions represent a **net global increase**, a **net global** reduction, or **no net global** change in GHG emissions that would exist if the project were not implemented. Therefore, the analysis of the Project's GHG emissions is

> particularly conservative in that it assumes all of the Project's net GHG emissions are new additions to the atmosphere, and that **no portion** consists of already existing emissions that would simply be shifted from one location to another.

(DEIR, p. IV.E-38, emph. added.) The rest of the Draft EIR provides extensive blanket recitations of various rules, which bury any analysis the EIR provides about the Project.

Response to Comment No. 5-54

The Commenter reiterates text from the Draft EIR, which explains that the estimation of GHG emissions is conservative, as it is based on the Project's total emissions rather than the Project's net change in emissions. The Commenter also asserts that "the rest of the Draft EIR provides extensive blanket recitations of various rules, which bury any analysis the EIR provides about the Project." As described in the Draft EIR, Section IV.E, Greenhouse Gas Emissions (page IV.E-55), the determination of significance of GHG impacts is based on Project consistency with applicable plans, policies, and regulations that were adopted for the purpose of reducing GHG emissions, as no numeric threshold of significance has been adopted by the SCAQMD or the City. Therefore, the Draft EIR's evaluation of Project consistency with these plans, policies, and regulations, as provided on pages IV.E-42 through IV.E-52 of the Draft EIR, is relied upon to determine the significance of the Project impact and is appropriate.

Comment No. 5-55

To the extent the Draft EIR's analysis is concerned with the "net" GHG increase, it is also improper. Relying on the proposed Project's *net* GHG emissions, rather than the Project's *total* GHG emissions, is incorrect and inconsistent with recent guidance set forth by the Office of Planning and Research ("**OPR**"). In the Final Statement of Reasons for the GHG-specific Guidelines,[25] OPR concluded that lead agencies cannot simply consider whether a project increases or decreases GHG emissions at the project site, but must consider the effect that the project will have on the larger environment. Accordingly, if a lead agency wants to use a *net* approach by subtracting existing on-site emissions from the project emissions, it must support that decision with substantial evidence showing that those existing emissions sources will be **extinguished** and not simply displaced.[26]

Footnotes:

[25] Final Statement of Reasons, pp. 83-84, *available at*. http://resources.ca.gov/ceqa/docs/Final_Statement_of_Reasons.pdf

[26] See CEQA Guidelines § 15064.4, subd. (a) ("The determination of the significance of greenhouse gas emissions calls for a careful judgement by the lead agency consistent with the provisions in section 15064. A lead agency should make a good-faith effort

based on available information, to describe, calculate or estimate the amount of available greenhouse gas emissions resulting from a project.")

Response to Comment No. 5-55

The Commenter incorrectly states that the Draft EIR analysis is concerned with the "net" GHG increase. As stated in Chapter IV.E, Greenhouse Gas Emissions, of the Draft EIR, page IV.E-54, the evaluation conservatively assumes no credit for GHG reductions associated with the removal of existing buildings or land uses from the Project Site (see also Draft EIR, Table IV.E-8). Further, as stated in the Draft EIR, page IV.E-55, "in accordance with CEQA Guidelines Section 15064.4(b)(3), the determination of the significance of the Project's GHG emissions impact is based on a qualitative analysis considering the Project's consistency with applicable statewide, regional, and local plans adopted for the purpose of reducing GHG emissions" rather than a numeric threshold, due to there being no adopted numeric threshold for the analysis of GHG impacts that would be relevant to the Project (see Draft EIR, page IV.E-36).

Comment No. 5-56

Lastly, to the extent the Draft EIR's GHG analysis and calculation of the Project's construction and operational impacts (DEIR, p. IV.E-54) omit the potential higher intensity uses of the A+D Museum, as well as the remedial activities that may be required to ensure the soils are stable and suitable to build on and to also clean up the potentially contaminated soil that is yet to be screened through a Supplemental Phase II ESA and other mitigation measures, the calculations are incomplete and inaccurate and cannot serve as a substantial evidence of less than significant GHG impacts as the Draft EIR claims. For the same reasons, the Draft EIR's conclusion of no *cumulative* GHG impacts is also flawed as it relies on the *individual* GHG findings. (DEIR, p. IV.E-56—57.)

Response to Comment No. 5-56

The Commenter asserts that the Draft EIR's analysis of GHG impacts is incomplete and inaccurate, because it does not evaluate the potential higher intensity uses of the building formerly occupied by the A+D Museum, it does not evaluate the remedial activities that may be required to ensure that Project Site soils are stable and suitable, and its cumulative findings rely on individual GHG findings.

With regard to the Commenter's claim that the Draft EIR's GHG impacts analysis is flawed because it omits the potential higher intensity uses of the A+D Museum, please refer to Response to Comment No. 5-9. As a leased space, tenants, and therefore specific uses, of the building formerly occupied by the A+D Museum may fluctuate over time. No substantial evidence exists to support the Commenter's claim that the building formerly occupied by the A+D Museum will be occupied by a higher intensity land use under the

rezoning of the Project Site to C2-2-RIO from M3-1-RIO. Therefore, the most reliable indicator of the future use is the most recent use in operation before the building became vacant, which is the A+D Museum. Due to the range of potential, specific uses that could possibly occupy the building formerly occupied by the A+D Museum per the LAMC and proposed C2 zoning, it would be speculative to assume that any one of these uses would replace the most recent use. As such, Section IV.E, Greenhouse Gas Emissions, of the Draft EIR (page IV.E-54) correctly identifies that the existing 7,800-square-foot building on the Project Site (formerly occupied by the A+D Museum) would be retained by the Project, and as the future use is anticipated to be similar to the prior use, emissions associated with that former use are not included in the evaluation of the Project's increase in GHG emissions over existing conditions since there would be no net change with the Project. In the event that a substantially different or more intensive land use is proposed to occupy the space formerly occupied by the A+D Museum, a Subsequent EIR, Supplement to an EIR, or an EIR Addendum pursuant to CEQA Guidelines Sections 15162, 15163, or 15164, respectively, would be required to document the changes to the Project description and evaluate the associated impacts and mitigation measures, if any.

With regard to the Commenter's claim that the Draft EIR's GHG impacts analysis is flawed because it does not evaluate the remedial activities that may be required to ensure that Project Site soils are suitable, please refer to Response to Comment No. 5-35. As summarized therein, and described in greater detail in the Environmental Setting discussion of Section IV.F, Hazards and Hazardous Materials, of the Draft EIR, the Project's transport, use, and disposal of construction-related hazardous materials would occur in accordance with the manufacturers' specifications for each material, as well as in conformance with applicable local, State, and federal regulations governing such materials and activities, which include the TSCA; RCRA; federal OSHA; Cal/OSHA; HMTA; California Code of Regulations; California Health and Safety Code; SCAQMD Rules 1113, 1166, and 1403; and the LAMC (including but not limited to Section 91.7104, addressing methane). Pursuant to OSHA, a construction project that involves the handling of contaminated site conditions must prepare and implement a HASP that sets forth the measures that would be undertaken to protect those that may be affected by the construction project. In addition to required compliance with the regulations discussed in Section IV.F, Hazards and Hazardous Materials, of the Draft EIR, the Project is required to implement Mitigation Measure HAZ-MM-1, a Supplemental Phase II Subsurface Site Investigation, as well as HAZ-MM-2, a Soil Management Plan, to assure that Project impacts related to the routine transport, use, or disposal of hazardous materials (including soils), would be less than significant. The determination of the extent and type of contaminated soil and/or other types of subsurface hazardous materials cannot be made until the demolition of on-site structures is completed. Therefore, the specific type of remedial activities, if any, and the potential quantification of emissions from those activities, including GHG emissions, would be speculative. However, the Draft EIR

analyses do account for the heavy equipment and truck-related GHG emissions that would result from the excavation of soils and the transport of soils to the Azusa Land Reclamation Landfill. As discussed in Response to Comment No. 5-35, the Project design requires the excavation and disposal of soils from the Project Site regardless of whether they are determined to be contaminated, and the Azusa Land Reclamation Landfill accepts contaminated soil. The GHG emissions associated with soil excavation (i.e., the use of heavy equipment) and soil export hauling activities (i.e., the generation of truck trips) are accounted for in Table IV.E-7, Construction Period Emissions of the Project, of the Draft EIR (page IV.E-53).

The Commenter also asserts that the Draft EIR's GHG analysis is flawed because it does not evaluate the remedial activities that may be required to ensure that Project Site soils are stable. As described in Section IV.D, Geology and Soils, of the Draft EIR (page IV.D-22), the Geotechnical Engineering Investigation (Appendix E1 to the Draft EIR) revealed that fill materials were discovered in all exploratory excavations to depths of between 2.5 to 5 feet below existing grade. These materials consist of a mixture of sands and silty sands, which are moist, medium dense, and fine grained. These fill materials would be unsuitable for supporting the proposed structure's foundation and concrete slabs on-grade, but they will be removed during excavation for the proposed subterranean parking levels. Native alluvial soils underlie the existing fill, comprising interlayered mixtures of silty sands and sands. These soils are slightly moist to wet, medium dense to very dense, and fine to coarse grained, with occasional gravel and cobbles. According to the Geotechnical Engineering Investigation, the proposed structure may be supported by conventional foundations bearing in the native alluvial soils. The Project would be required to implement the City-approved recommendations of the Geotechnical Engineering Investigation and LADBS-approved final geotechnical report. Such recommendations include, but would not be limited to, temporary shoring in order to provide stability during excavation. As described above, the Project design requires the excavation and disposal of soils from the Project Site regardless of whether they are determined to be contaminated, and the Draft EIR's GHG analysis accounts for the GHG emissions associated with soil excavation (i.e., the use of heavy equipment) and soil export hauling activities (i.e., the generation of truck trips). Beyond the excavation of soils and the transport of soils from the Project Site, the matter of soil stability is irrelevant to the analysis of GHG impacts.

With regard to the Commenter's assertion that the Draft EIR's conclusion of no cumulative GHG impacts is flawed because it relies on the individual GHG findings, please refer to Response to Comment No. 4-16. As stated in Chapter IV.E, Greenhouse Gas Emissions, of the Draft EIR (page IV.E-56), the contribution of GHG emissions to global climate change is inherently a cumulative issue. Therefore, a project's potential GHG impacts are exclusively cumulative impacts, as there are no non-cumulative GHG emission impacts

from a climate change perspective. The Draft EIR evaluation concludes that the City has determined that the Project's contribution to cumulative GHG emissions and climate change would not be cumulatively considerable and cumulative impacts would be less than significant, based on the consistency of the Project with applicable plans and regulations that have been adopted to reduce GHG emissions, including plans at the State, regional, and local levels. The quantification of GHG emissions resulting from construction and operation of the Project is provided in Section IV.E, Greenhouse Gas Emissions, of the Draft EIR for informational purposes. Per the City's methodology, the determination of the less-than-significant Project and cumulative GHG emissions impact is based on the consistency of the Project with applicable plans and regulations that have been adopted to reduce GHG emissions (refer to pages IV.E-42 through IV.E-52 for the Draft EIR's detailed analysis of Project consistency with GHG and climate change-related policies and regulations).

Comment No. 5-57

In sum, the Draft EIR's GHG analysis is legally inadequate due to omissions and erroneous assumptions.

Response to Comment No. 5-57

This comment serves as a conclusory statement, summarizing Comment No. 5-53 through Comment No. 5-56. Please refer to Response to Comment No. 5-53 through Response to Comment No. 5-56 for the responses to these comments.

Comment No. 5-58

> **7. Hazards and Hazardous Materials Impacts.**

The Draft EIR's findings of no hazards impacts are legally unsupported for several reasons. First, the Draft EIR relies on outdated studies:

> The following hazards and hazardous materials analysis is based on the applicable regulations and thresholds of significance described in the following discussion, as well as the **Phase I ESA** and **Phase II Subsurface Site Investigation** prepared by **Citadel Environmental Services, Inc.,** which are included in **Appendix G1 and G2** of this Draft EIR, respectively. The Phase I ESA provides an overview of existing and historic Project Site conditions based on field reconnaissance; interviews; a review of aerial photographs, building permits, fire insurance maps, City parcel profiles, and topographic maps; and findings of an Environmental Data Research Inc. (EDR) records search. The Phase II Subsurface Site Investigation includes the results of Citadel's subsequent methane and soils study.

(DEIR, p. IV.F-26—27, emph. added.)

Response to Comment No. 5-58

The Commenter asserts that the Draft EIR's findings of no hazards impacts are legally unsupported, because the Draft EIR relies on outdated studies. First, for purposes of assessing the existing conditions at the Project Site that were present at the time the 2017 NOP and IS were prepared (the baseline for the environmental analyses), the 2017 Phase I ESA and 2017 Phase II Subsurface Site Investigation are not outdated. The Commenter provides no substantial evidence demonstrating that conditions at the Project Site have changed to the extent that the results of these investigations would provide substantially different information. Nevertheless, Citadel Environmental Services, Inc. (Citadel) prepared a Site Review on April 12, 2023 (attached in Appendix FEIR-D), documenting that, based on a visual survey of the Project Site on May 14, 2023, the uses and surface conditions appeared consistent with those observed during the Phase I ESA investigation and Phase II Subsurface Investigation.[19]

The Commenter also states that the Draft EIR found the Project would result in no hazards impacts. In fact, as detailed in Section IV.F, Hazards and Hazardous Materials, of the Draft EIR, the Project would result in a significant impact related to soil conditions and upset and accident conditions, which would be reduced to a less-than-significant level following implementation of Mitigation Measures HAZ-MM-1 and HAZ-MM-2 (refer to pages IV.F-29 through IV.F-31 of the Draft EIR). The Project would result in less than significant impacts related to the transport, use, or disposal of hazardous materials; upset and accident conditions related to methane and hazardous building materials; and the impairment of emergency response plans or emergency evacuation plans, as it would handle hazardous materials in accordance with the manufacturers' specifications for each material and in compliance with applicable local, State, and federal regulations during both construction and operations (refer to pages IV.F-27 through IV.F-31 and pages IV.F-34 through IV.F-36 of the Draft EIR). In addition, to ensure that the Project would not adversely affect implementation of an adopted emergency response plan or emergency evacuation plan, a construction traffic management plan would be implemented as Project Design Feature TRANS-PDF-1, as described in Section IV.L, Transportation, of the Draft EIR (refer to pages IV.L-30 and IVL-31 of the Draft EIR). As described on page IV/F-35 of the Draft EIR, the Project does not include design features that would impede emergency access and would not permanently close any existing streets during operations. As required, the Project is designed to meet LAMC standards for adequate emergency access and to comply with the Fire Code's access, driveway, parking, and building standards.

[19] Citadel Environmental Services, Inc. 2023. Site Review – March 14, 2023, 405-411 Hewitt Street, 900, 910 and 926 E. 4th Street, and 412 Colyton Street. April 12. (Appendix FEIR-D of this Final EIR.)

Comment No. 5-59

The Draft EIR also notes that the Project requires a *Supplemental* Phase II Subsurface Site Investigation, to investigate the potential soil contamination with petroleum or oil products and undertake remedial actions, if needed (HAZ-MM-1). (DEIR, p. V-12.) In addition, the Draft EIR provides for an additional soils management plan to be developed (HAZ-MM-2). (*Ibid*.) And yet, the noted measures HAZ-MM-1 and HAZ- MM-2, respectively, are improperly deferred mitigation in violation of CEQA since there is no reason why such investigation or planning has not already been conducted and their results were not included in the EIR.

Response to Comment No. 5-59

The Commenter notes that the Draft EIR includes mitigation measures that require a Supplemental Phase II Subsurface Investigation and Soil Management Plan and also asserts that these mitigation measures (HAZ-MM-1 and HAZ-MM-2, respectively) are deferred mitigation, which is in violation of CEQA. Please refer to Response to Comment No. 4-9 for detailed evidence as to why additional investigation is not reasonably feasible at this time and why Mitigation Measures HAZ-MM-1 and HAZ- MM-2 are not improperly deferred mitigation. As described therein, physical inaccessibility due to the existing development precludes additional investigation at this time. As such, the Supplemental Phase II Subsurface Investigation and Soil Management Plan that are required by Mitigation Measures HAZ-MM-1 and HAZ-MM-2, respectively, are not improperly deferred mitigation. Furthermore, Chapter IV of the Final EIR is comprised of the MMP for the Project, and for each mitigation measure required by the Draft EIR, the MMP identifies the responsible enforcement and monitoring agencies; establishes the phase, frequency, and duration of monitoring; and conveys the manner by which the Project is required to achieve compliance and the materials that document compliance for the record. In the case of Mitigation Measures HAZ-MM-1 and HAZ-MM-2, the LADBS would be the primary agency with authority to enforce and monitor implementation.

Comment No. 5-60

Second, the 2016-2017 Phase I ESA does not provide substantial evidence of no significant impacts or no hazards on the Project site; to the opposite, it shows that there *may* be *recognized environmental conditions* ("**REC**") or historical RECs ("**HREC**"):

> Based on our review of these databases, reported release incidents that would represent RECs in connection with the Site or a source of a release that would be likely to contribute to a VEC were not identified. Based on these reviews, the closure of the former USTs at the **Site represents a HREC**. No further investigation is recommended for the **former USTs**.

> No evidence for designating the Site as a RECs or CRECs from reviews of historical documents and present Site conditions was found. However, the **clarifier identified in the Citadel 2010** report was **not observed during this assessment**; and **may** represent an **environmental concern**.
>
> According to information provided by the Client, the Site will be redeveloped and a majority of the Site will be excavated to develop a subterranean parking structure. Since **no information** was provided or available for review regarding the **closure status of the clarifier**, Citadel recommends **preparing Soil Management Plan** to provide guidance for **response actions** in the event the **clarifier or unknown/undiscovered subsurface features are encountered** at the Site during redevelopment.

(DEIR, Appendix G1, p. 24 [Phase I ESA], emph. added.)

Response to Comment No. 5-60

The Commenter asserts that the Draft EIR found the Project would result in no significant impacts and that no potential hazards are present on the Project Site; however, the Commenter is incorrect in their assertion. Please refer to Response to Comment 5-59 for the correct characterization of Project impacts related to hazards and hazardous materials. Furthermore, Chapter IV.F, Hazards and Hazardous Materials, of Draft EIR, pages IV.F-19 through IV.F-25, summarize the findings of the 2017 Phase I ESA and 2017 Phase II Subsurface Site Investigation prepared for the Project, accounting for both historic land uses and existing site conditions, including hydrologic conditions, methane conditions, soil conditions, hazardous building materials, and radon.

Comment No. 5-61

Also, Phase I ESA identifies prior uses at the Project site, including: “Single-family residences; hotel; window shade factory; stores; **leather curing**/**animal hair** processing; carton paper storage; **asbestos fabrication**; **mattress manufacturer**; **woodworking company**; **truck storage yard**; café/restaurant; **warehouse**; **auto repair shop**, **food processing company**; offices; and museum.” (DEIR, Appendix G.1, pdf p. 5, emph. added.) The emphasized items reveal heavy industrial activity which may include arsenic and lead (especially for woodwork[27]), oil and petroleum (especially for auto repair shop and truck storage), asbestos (for asbestos fabrication)[28] and imply a potential of soil contamination or storage of hazardous materials at the Project site that has not been revealed in the Draft EIR. Neither does the Phase II Subsurface Investigation provide the costs for remedial actions, to ensure that the site is clean and safe to be developed or that it would be feasible to clean the site of all the hazards.

Footnotes:

[27] See, medical conditions and hazardous materials associated with woodwork and arsenic at https://haz-map.com/JobTasks/179 ; https://www.epa.gov/ingredients-used-pesticide- products/chromated-arsenicals-cca

[28] See medical conditions associated with asbestos. https://www.atsdr.cdc.gov/asbestos/health_effects_asbestos.html

Response to Comment No. 5-61

The Commenter asserts that the historic uses of the Project Site indicate heavy industrial activity that may have included arsenic and lead (especially for woodwork), oil and petroleum (especially for auto repair shop and truck storage), and asbestos (for asbestos fabrication) and that imply a potential of soil contamination or storage of hazardous materials at the Project Site that has not been revealed in the Draft EIR. In fact, the potential presence of all these materials (arsenic, lead, oil and petroleum, and asbestos) at the Project Site is accounted for in Chapter IV.F, Hazards and Hazardous Materials, of the Draft EIR, as follows:

- Draft EIR page IV.F-21: "Additionally, no historical releases of petroleum products from a LUST [leaking underground storage tank] occurred within 0.25 miles and upgradient of the Project Site. The Historical Gas Station database identified two properties located within 0.125 miles and upgradient of the Project Site. The properties were located at the Project Site (occupied by Quality Auto Repair, in 1999 and 2001) and 350 ft east of the Project Site (Al Woods gasoline and oil service station, from 1933 to 1942). According to the Project's Phase I ESA, Quality Auto Repair is not likely to have adversely affected the Project Site, as no USTs were associated with the facility, and due to the distance to the Project Site, the Al Woods gasoline and oil service station is also unlikely to have adversely affected the Project Site."

- Draft EIR page IV.F-23: "According to the Phase I ESA, a subsurface investigation of the subsurface clarifier associated with the auto/truck washing equipment noted above was performed in 2004 by Smith-Emery Geoservices. The investigation included an analysis of soil samples for TPH and VOCs. No contaminants were identified in the soil samples collected. As described in the Phase II Subsurface Site Investigation, further investigation of the clarifier is not feasible due to current on-site development. As no information was available or provided for review regarding the closure status of the clarifier during preparation of the Project's Phase I ESA, the clarifier is assumed to be potentially present in the Project Site subsurface."

"However, soil samples were collected at approximately 10, 20 and 30 ft bgs [below ground surface] from Borings 1, 2 and 3 on April 29, 2017, as part of the Phase II Subsurface Site Investigation. The samples were field screened for VOCs using a Photoionization Device and utilized for descriptive purposes. The soil samples were analyzed for chemicals of potential concern consisting of Gasoline Range Organics (GRO), Diesel Range Organics (DRO) and Motor Oil Range Organics (MORO) by USEPA Method 8015B and VOCs by USEPA Method 8260B. Title 22 metals were analyzed by USEPA Methods 6020/7471 in one sample (B1) for waste disposal purposes. MORO was detected in B2 at 10 ft bgs at a concentration of 81 milligrams per kilogram (mg/kg). This location may have previously been used as a truck wash rack. The concentration of MORO is below the USEPA's Regional Screening Levels (RSL). No GRO, DRO or VOCs were detected in the samples analyzed."

- Draft EIR page IV.F-23: "Metals detected in a soil sample collected for the purpose of waste profiling and disposal included arsenic, barium, chromium, cobalt, copper, lead, nickel, vanadium, and zinc. The concentrations of the metals detected were all below their respective RSLs [Regional Screening Levels] and represent naturally occurring background levels."

- Draft EIR page IV.F-30: "The Project Site buildings vary in age but were constructed prior to the placement of governmental limitations and bans on the use of ACMs [asbestos-containing materials], LBP [lead-based paint], and PCBs [Polychlorinated Biphenyls] in building and electrical equipment." "Prior to demolition of building components, an investigation of the existing structures would be conducted to identify existing ACMs, LBP, or PCBs. All identified asbestos would be abated in accordance with the SCAQMD's Rule 1403, and all identified LBP and PCBs would be abated in accordance with applicable City, State, and federal regulations to ensure proper handling and disposal and to allow for measures to protect worker safety during demolition."

- Draft EIR pages IV.F-30 and IV.F-31: "The following mitigation measures are proposed to address the potential impacts related to reasonably foreseeable upset and accident conditions involving the release of hazardous materials from soil conditions into the environment:

  HAZ-MM-1 Following demolition of on-site structures and prior to redevelopment of the Project Site, the Applicant shall retain a qualified environmental professional to perform a Supplemental Phase II Subsurface Site Investigation. The Supplemental Phase II Subsurface Site Investigation shall focus on soils in those areas that were identified as

inaccessible during the Phase II Subsurface Site Investigation: the areas of the on-site wastewater clarifier, auto repair floor pit, and wastewater separator structures. In addition, due to the low level of petroleum hydrocarbons reported at B2 at 10 feet below ground surface (bgs), the Supplemental Phase II Subsurface Site Investigation shall also include the area of the former truck wash rack. In the event that soils contaminated by petroleum products or other hazardous chemicals are encountered during the investigation, a qualified environmental professional shall be retained to oversee the proper characterization and disposal of waste and remediation of impacted soil and/or materials, as necessary.

HAZ-MM-2 Prior to the commencement of soil-disturbing activities, the Applicant shall retain a qualified environmental professional to prepare a Soil Management Plan for review and approval by the City of Los Angeles Department of Building and Safety. Soil-disturbing activities include excavation, grading, trenching, utility installation or repair, and other human activities that may potentially bring contaminated soil to the surface. The approved Soil Management Plan shall be implemented during soil-disturbing activities on the Project Site and shall establish policies and requirements for the testing, management, transport, and disposal of soils. The Soil Management Plan shall describe specific soil-handling controls required to assure compliance with local, State and federal overseeing agencies, as well as to prevent unacceptable exposure to contaminated soil and prevent the improper disposal of contaminated soils, if encountered."

With regard to the Commenter's statement that the Draft EIR and Phase II Subsurface Investigation do not provide the costs for any remedial actions that may be necessary, no such economic analysis is required under CEQA.

Comment No. 5-62

In addition, it is questionable whether Phase I ESA is accurate, since among addresses it investigated it does not list the Project's addresses of "406, 408, and 414 Colyton Street," but instead it notes 412 Colyton Street only. To the extent, Phase I ESA searched the databases for hazardous conditions with the wrong (or non-existent) 412 Colyton

Street address and omitted a search of 406, 408, and 414 Colyton Streets, it is possible that those sites could contain RECs that have not been studied or identified.

Response to Comment No. 5-62

The Commenter questions the validity of the Phase I ESA on the basis that the addresses used for the Project Site do not specifically match those used in the Draft EIR. However, in searching various databases for information regarding past and current site uses and conditions, the preparer of the Phase I ESA, not only searches by address, but they also search by Assessor's Parcel Numbers and by mapped locations, because addresses and street names in Los Angeles have changed over time. Page 2 of the Phase I ESA, provided as Appendix G1 to the Draft EIR, lists the Assessor's Parcel Numbers that comprise the Project Site, which match those conveyed in the Draft EIR (Table II-1): 5163-022-001, 5163-022-002, 5163-022-003, 5163-022-005, 5163-022-022, and 5163-022-023. In addition, the maps included in the Phase I ESA (refer to Appendix A, Figures; Appendix B, Aerial Photographs; and Appendix E, Sanborn Map Report to Draft EIR Appendix G1) clearly depict the correct extent of the Project Site. As such, the Phase I ESA correctly captured the Project Site.

Comment No. 5-63

Similarly, it appears that the subsequent Phase II Subsurface Investigation was limited and was not intended to address the presence of petroleum products or site contamination but was rather to detect the presence and levels of methane gas:

> The current investigation was intended to provide an independent assessment of **methane risks** based on the location of the site within the LADBS Methane Zone. Methane was not detected above the Landtec's minimum detection limit from any of the soil vapor probes installed at depths ranging from five to 60 feet bgs and pressures were less than two inches H2O in all probes.

(DEIR, Appendix G2, p. 5 [Phase II Subsurface Investigation Report], emph. added.)

There is further evidence that the Project site may have contaminated soils due to previous industrial uses:

> The proposed assessment of the areas associated with the **former vehicle maintenance operations** was not conducted due to **current use of the garage and the adjacent office building**.
>
> Due to **historical occupancies** of the Site for **vehicle repair** and **truck washing**, limited access to evaluate the subsurface conditions and the **presence** of **subsurface MORO** at one location, Citadel recommends that a **soil management plan (SMP)** be completed for the Site prior to demolition of structures and soil

> disturbance activities. The objective of the SMP is to establish policy and requirements for the **management** and disposal of soils generated during construction, maintenance, and other activities that might disturb **potentially contaminated soil**.
>
> The purpose of the SMP is to describe specific soil-handling controls required for complying with local, state and federal overseeing agencies; prevent unacceptable exposure to contaminated soil, and prevent the improper disposal of contaminated soils. Soil-disturbing activities include excavation, grading, trenching, utility installation or repair, and any other human activities that could potentially bring contaminated soil to the surface.
>
> Further, Citadel recommends that a **supplemental subsurface investigation** be conducted of those areas that were **not accessible** during this Phase II Subsurface Investigation prior to any redevelopment at the Site. Due to the **low level of petroleum hydrocarbons** as MORO **reported** at B2 at 10 feet bgs, the supplemental Phase II would include **the former truck wash rack**.

(DEIR, Appendix G2, p. 6, emph. added.)

It is questionable as to why – in view of substantial evidence of RECs identified in the Phase I ESA and Phase II Subsurface Study – no supplemental studies have been conducted to date and no remedial plan was prepared. The preparation of a SMP and even a supplemental Phase II Subsurface Study is first improperly deferred mitigation in view of the currently vacant Project site providing ample access since 2020 to conduct such studies, as well as the fact that the *studies* themselves are not a guarantee that remedial actions *will* be taken or that the study findings will be objectively accurate. The findings as to the Project site's soil contamination and methane levels throughout the entire site had to be investigated and included in the Draft EIR, but they are not. Further, those post-approval studies amount to post hoc rationalization and cannot guarantee that the impacts of hazards will indeed be less than significant as the Draft EIR concludes.

Any transport of such contaminated soils and haul route may further cause significant hazards and air quality impacts, which are not duly addressed in the Draft EIR.

Response to Comment No. 5-63

The Commenter again asserts that soils at the Project Site may potentially be contaminated due to previous industrial uses, that additional supplemental studies should be conducted as part of the Draft EIR, that the Draft EIR improperly defers mitigation, and that the transport of contaminated soils along the haul route may further cause significant hazards and air quality impacts. As described in Response to Comment No. 4-9, additional investigation is not reasonably feasible at this time due to physical

inaccessibility that precludes additional investigation at this time, and Mitigation Measures HAZ-MM-1 and HAZ- MM-2 are not improperly deferred mitigation. Furthermore, Chapter IV of the Final EIR is comprised of the MMP for the Project, and for each mitigation measure required by the Draft EIR, the MMP identifies the responsible enforcement and monitoring agencies; establishes the phase, frequency, and duration of monitoring; and conveys the manner by which the Project is required to achieve compliance and the materials that document compliance for the record.

The Commenter also restates the assertion that the transport of contaminated soils may further cause significant hazards and air quality impacts, and that these are not duly addressed in the Draft EIR. A detailed response to this comment is provided in Response to Comment No. 5-35. As stated therein and described in Chapter IV.F, Hazards and Hazardous Materials, the concentrations of the metals detected were all below their respective RSLs and represent naturally occurring background levels. However, due to the proposed excavation activities, historical occupancies of the Project Site for vehicle repair and truck washing, and limited access to investigate the subsurface conditions in some on-site locations, the Project has the potential to uncover hazardous soil conditions that may create a significant hazard to the public or the environment. The Draft EIR discloses that the potential presence of soil contamination in untested areas of the Project Site is considered a potentially significant impact. In addition to required compliance with the regulations discussed in Section IV.F, Hazards and Hazardous Materials, of the Draft EIR and Response to Comment No. 5-35, the Project is required to implement Mitigation Measure HAZ-MM-1, a Supplemental Phase II Subsurface Site Investigation, as well as HAZ-MM-2, a Soil Management Plan, to assure that Project impacts related to the transport, use, or disposal of hazardous materials (including soils), would be less than significant. The determination of the extent and type of contaminated soil and/or other types of subsurface hazardous materials cannot be made until the demolition of on-site structures is completed. Therefore, the specific type of remedial activities, if any, and the potential quantification of emissions from those activities would be speculative. Nevertheless, required compliance with the aforementioned regulations would assure that Project impacts related to the removal, transport, and remediation of such materials to construction workers, the public, and the environment would be less than significant.

Comment No. 5-64

In sum, the Draft EIR's conclusions as to hazards and hazardous materials are legally inadequate since they rely on outdated and limited Phase I ESA and Phase II Subsurface Study (for methane only) and improperly deferred mitigation, despite the evidence of potential hazards on site and the need for remedial measures.

Response to Comment No. 5-64

The Commenter restates the assertion that Draft EIR's hazards and hazardous materials analysis is legally inadequate. This comment serves as a conclusory statement, summarizing Comment No. 5-58 through Comment No. 5-64. Please refer to Response to Comment No. 5-58 through Response to Comment No. 5-64 for the responses to these comments.

Comment No. 5-65

8. Land Use Impacts

The EIR claims that the Project complies with all applicable land use plans and yet proposes numerous amendments to the General Plan, zoning, and other regulations of intensity. The Draft EIR's analysis is based on several significant omissions and errors. First, the Draft EIR relies on the *proposed* Community Plan Update, which may or may not be adopted and further may or may not be legally challenged, to become final. In any event, the Draft EIR's conflating of the proposed changes in the Community Plan with the existing inconsistency of the Project with *applicable existing* community plan and land use designation is an error.

Response to Comment No. 5-65

The Commenter implies that the Project cannot comply with the applicable land use plans, because it requires amendments to the General Plan, zoning, and other regulations of intensity. The Commenter also asserts that the Draft EIR relies on the proposed Central Downtown Community Plan Update, which has not yet been adopted.

Please refer to Response to Comment No. 5-12 for information regarding how the Project, including the requested entitlements that are subject to the City's discretionary approval, would not conflict with the 2020-2045 RTP/SCS, the General Plan (and applicable elements, including the Framework Element, Mobility Plan, Community Plan, and Plan for a Health Los Angeles), the LAMC, the Citywide Design Guidelines, and the RIO District that were specifically adopted for the purpose of avoiding or mitigating an environmental effect.

The Commenter also asserts that the Draft EIR relies on the proposed Community Plan Update (i.e., the draft Downtown Community Plan), which may or may not be adopted and further, may or may not be legally challenged, to become final. In fact, the Draft EIR does not rely on the draft Downtown Community Plan. Appendix I, Land Use Policy Consistency Tables, to the Draft EIR includes an evaluation of Project consistency with the Central City North Community Plan. As described in detail in Table IV.H-4 of Appendix I (and summarized on pages IV.H-21 and IV.H-22 of Section IV.H, Land Use and

Planning, of the Draft EIR), the Project would not be in conflict with the applicable policies of the Central City North Community Plan adopted for the purpose of avoiding or mitigating an environmental effect and impacts would be less than significant. Where relevant, the Draft EIR discusses the pending adoption of the Downtown Community Plan. However, only Alternative 3, Downtown Community Plan Alternative, evaluated in Chapter VI, Alternatives, of the Draft EIR (pages VI-94 through VI-148), considers this plan as part of the environmental analysis of Alternative 3. Refer to Response to Comment Nos. 5-24 and 5-28 for additional information regarding Alternative 3 and the draft Downtown Community Plan.

Comment No. 5-66

Second, the Draft EIR erroneously claims that the restaurant uses are allowed in the M3 zone and provides a link to the permitted zoning, as accessed in 2017:

> The M3 Zone permits a range of heavy (M3), light (M2), restricted light (MR2), limited (M1), and restricted (MR1) industrial uses, as well as commercial manufacturing (CM), commercial (C2), and limited commercial (C1 and C1 .5) uses.**14** Permitted manufacturing and industrial uses in the M3 Zone include animal keeping, mortuaries, enclosed composting, machine shops, and storage yards, among others. The commercial uses of a lower intensity permitted in the M3 Zone include restaurant, bar, brewery, retail
>
> **FN 14:** City of Los Angeles, Department of City Planning. Generalized Summary of Zoning Regulations. Available at: https://planning.lacity.org/zone_code/Appendices/sum_of_zone.pdf. Accessed on **March 24, 2017**.

(DEIR, p. IV.H-10—11, emph. added.)

However, as noted earlier, the permitted uses in the M3 zone do not include a restaurant, contrary to the EIR's claims; and the link in *footnote 14* leads to nowhere specific. (**Exhibit L** [Printout of the footnote 14 link, accessed 7/7/2022].)

Response to Comment No. 5-66

The Commenter questions whether restaurants are permitted in the M3 Zone. As stated in Section 12.20, "M3" Heavy Industrial Zone, of the LAMC, the M3 Zone allows any use permitted in the M2 Zone, with some exceptions that are of residential, hospital, and industrial nature. Section 12.19, "M2" Light Industrial Zone, of the LAMC further permits any use permitted in the M1 and MR2 Zones, with some exceptions that are residential and industrial in nature. According to Section 12.17.6 of the LAMC, the "M1" Limited Industrial Zone allows any commercial use permitted in the C2 Zone, except sanitariums

and hospitals, provided that these uses are conducted in accordance with all building enclosure and fence enclosure limitations of the C2 Zone. Section 12.14, "C2" Commercial Zone, of the LAMC allows any use permitted in the "C1.5" Limited Commercial Zone by Section 12.13.5 A.2. of the LAMC or in the "C1" Limited Commercial Zone by Section 12.13 A.2. of the LAMC, as well as restaurants, according to Section 12.14.A.1(a)(10) of the LAMC, as follows:

> Restaurant, tea room or cafe (including entertainment other than dancing) or a ground floor restaurant with an outdoor eating area. An outdoor eating area for ground floor restaurants may be located anywhere between the building and any required side or rear yard. (Amended by Ord. No. 165,403, Eff. 2/17/90.)

As demonstrated, restaurants are therefore permitted in the M3 Zone, as stated in the Draft EIR (pages II-8 and IV.H-10).

With regard to the Commenter's statement that the footnote in the Draft EIR "leads to nowhere specific," the information that is referenced or cited in the Draft EIR, including webpages (which, because they are subject to change over time, are saved in the format in which they existed at the time they were consulted/referenced), is part of the Project's administrative record and can be made available by the City upon request.

Comment No. 5-67

Third, it is undisputed that the Project is not conforming to the General Plan's and Community Plan's density and intensity controls, as well as zoning. Those intensity, mass and scale controls are adopted to mitigate various impacts. As such, the Project may have significant land use impacts by trying to deviate from the established intensity, mass and scale controls. Moreover, to the extent the Project *further reduces* the stock of the *industrial* zoned land and proposes to change it to *commercial* zoning, it may have further significant impact on the environment and conflict with the policies in the General Plan and Community Plan as to such industrial zoning or its preservation.

Response to Comment No. 5-67

The Commenter claims that the Project does not conform to the zoning, density, and intensity controls of the General Plan and Community Plan, which are "adopted to mitigate various impacts." The Commenter also asserts that the Project may have significant land use impacts by "trying to deviate from" the established intensity, mass and scale controls, including those related to the loss of industrial zoned land.

As described in Response to Comment No. 5-28, the Project includes the following requested entitlements: changes to the Project Site land use designation from Heavy Industrial to Regional Center Commercial, from the M3 Zone to the C2 Zone, and from

Height District No. 1 to Height District No. 2, as described in Chapter II, Project Description, and Section IV.H, Land Use and Planning. These requested entitlements are subject to the City's discretionary approval. The Project, with its mix of land uses and at the density and height described in Chapter II, Project Description, of the Draft EIR, includes these requested entitlements (refer to the required permits and approvals of the Project on pages II-34 and II-35 of the Draft EIR). The impacts of the Project that is described in Chapter II are evaluated throughout the sections that comprise Chapter IV, Environmental Impact Analysis, of the Draft EIR. Therefore, the Draft EIR analysis appropriately evaluates the Project at the mass, scale, and density and with the land uses afforded by these changes. In addition, please refer to Response to Comment No. 5-12 for information regarding how the Project, including the requested entitlements that are subject to the City's discretionary approval, would not conflict with the applicable land use plans, policies, or regulations that were adopted for the purpose of avoiding or mitigating an environmental effect, including the 2020-2045 RTP/SCS, General Plan (and applicable elements, including the Framework Element, Mobility Plan, Community Plan, and Plan for a Health Los Angeles), LAMC, Citywide Design Guidelines, and RIO District.

With regard to Project impacts related to industrial-zoned land and the loss of industrial-zoned land, the Draft EIR evaluates these potential impacts in Chapter IV.H, Land Use and Planning (pages IV.H-18 to IV.H-20, pages IV.H-21 to IV.H-22, and page IV.H-23). As described therein, the Framework Element and the Community Plan include some policies that were not specifically adopted for the purpose of avoiding or mitigating an environmental effect but relate to the retention of industrial land. Although these industrial land use policies were not specifically adopted for the purpose of avoiding or mitigating an environmental effect and therefore would not be required to be evaluated under CEQA, the Draft EIR addresses industrial zoning and industrial land use policies for informational purposes. As further detailed in Appendix I to the Draft EIR (Table IV.H-2), the Project meets the Framework Element's Policy 3.14.6 that sets forth criteria to redesignate marginal industrial lands for alternative uses. Appendix I to the Draft EIR (Table IV.H-3) also describes that the Project would not conflict with the Community Plan's Policy 3-1.1 to designate lands for the continuation of existing industry and development of new industrial parks, research and development uses, light manufacturing, and similar uses which provide employment opportunities. As detailed on pages IV.H-21 through IV.H-23 of the Draft EIR, the Project Site does not currently contain any warehouse/industrial uses; therefore, the Project would not convert existing industrial land to other uses. Furthermore, the Project Site is unlikely to accommodate viable industrial development given its size, location, and other land uses in the immediate vicinity. The Project Site is relatively small in size for industrial development, at 1.31 acres, and it is bounded on three sides by the existing roadway network. Further, the Applicant does not own or control the remaining adjacent parcels. Therefore, it is not feasible to assemble adjacent parcels to create a larger, unified site that would support a viable industrial development. The area

immediately surrounding the Project Site is also already comprised of a mix of industrial and manufacturing, commercial, residential, and live/work uses. Therefore, the Project land uses would not result in a fragmented pattern of development. Lastly, according to the Community Plan, there are 914 acres planned for industrial use (approximately 45.5 percent of the 2,010-acre total) in the Community Plan area. The Project Site comprises 1.31 acres, or approximately 0.14 percent of the industrially-zoned land in the Community Plan area. Therefore, adequate land would remain for industrial uses and industrial job opportunities.

Comment No. 5-68

Lastly, the Draft EIR fails to note that the Project is included in the River Improvement Overlay ("**RIO**") Zone (apart from simply referencing it as a zoning designation), the Project's consistency with that Overlay requirements and policies,[29] and the fact that there are currently efforts taken to restore the LA River's natural resources, which the Project may hinder, in view of its mass and scale.

Footnote:

[29] See, various requirements, including but not limited to noise attenuation, special landscaping, buffers, etc., at http://zimas.lacity.org/documents/zoneinfo/zi2358.pdf

Response to Comment No. 5-68

The Commenter asserts that the Draft EIR only acknowledges the Project Site location in the RIO Zone and implies that no further analysis of Project conflicts with that zoning is provided. However, Chapter IV.H, Land Use and Zoning, of the Draft EIR (pages IV.H-27 to IV.H-28) evaluates any potential impacts related to conflicts with the purposes of the RIO District and determined that impacts would be less than significant. Further, the Project Site is approximately 0.5 mile from the River and not located within its greenway or immediately adjacent to it; therefore, it is not located in, or subject to the RIO provisions for properties located in the Inner Core, as defined in the RIO ordinance.

Nevertheless, page IV.H-12 of Chapter IV.H, Land Use and Zoning, of the Draft EIR has been revised and as is also shown in Chapter III, Revisions, Clarifications, and Corrections to the Draft EIR, of the Final EIR, to provide additional details regarding the RIO District Development Regulations that apply to the Project Site:

"The Project Site is located within the RIO District, and as codified in LAMC Section 13.17 and Ordinance 183,145, the Development Regulations that are applicable to the Project Site (which is located in the Outer Core and not in the Inner Core, as it is located approximately 0.5 mile from the River) include the following:

1. Landscaping shall conform to the following regulations: 75 percent of any Project's newly landscaped area shall be planted with any combination of the following: native trees, plants and shrubs, or species defined as Watershed Wise, or species listed in the Los Angeles County River Master Plan Landscaping Guidelines and Plant Palettes. This requirement is for new landscaping only and does not apply to existing landscaping.
2. Screening/Fencing.

(a) Loading areas and off-street parking facilities of three spaces or more, either on a surface lot or in a structure, shall be screened from the abutting public right-of-way and the River. However, such screening shall not obstruct the view of a driver entering or leaving the loading area or parking facility, or the view from the street of entrances and exits to a loading area or parking facility, and shall consist of one or a combination of the following:

(i) A strip at least 5 feet in width of densely planted shrubs or trees which are at least 2 feet high at the time of planting and are of a type that may be expected to form, within three years after time of planting, a continuous, unbroken, year round visual screen; or

(ii) A wall, barrier or fence of uniform appearance. Such wall, barrier or fence may be opaque or perforated, provided that not more than 50 percent of the face is open. The wall, barrier or fence shall, when located in either the rear or side yards, be at least 4 feet and not more than 6 feet in height.

(b) Electrical transformers, mechanical equipment, water meters and other equipment shall be screened from public view. The screening may be opaque or perforated, provided that not more than 50 percent of the face is open. The screen shall be at least 6 inches taller than the equipment and not more than 2 feet taller than the equipment.

(c) Exterior trash enclosures shall:

(i) be designed to complement the primary building with a wall height that exceeds the disposal unit it is designed to contain by at least 18 inches;

(ii) have a solid roof to deter birds and block views from adjacent properties;

(iii) have solid metal doors that accommodate a lock and remain closed when not in use; and

(iv) not be constructed of chain link or wood.

(d) With the exception of single-family homes, all projects facing a street that crosses the river or terminates at the river or a river frontage road shall have all fences within the front or side yards visible from said street consistent with the fence designs identified in the Los Angeles County River Master Plan Landscape Guidelines.

3. Exterior Site Lighting.

(a) All site and building mounted lighting shall be designed such that it produces a maximum initial luminance value no greater than 0.20 horizontal and vertical foot candles at the site boundary, and no greater than 0.01 horizontal foot candles 15 feet beyond the site. No more than 5.0 percent of the total initial designed lumens shall be emitted at an angle of 90 degrees or higher from nadir (straight down).

(b) All low pressure sodium, high pressure sodium, metal halide, fluorescent, quartz, incandescent greater than 60 watts, mercury vapor, and halogen fixtures shall be fully shielded in such a manner as to not exceed the limitations in Subdivision 3(a), above."

Page IV.H-28 of Chapter IV.H, Land Use and Zoning, of the Draft EIR has also been revised and as is shown in Chapter III, Revisions, Clarifications, and Corrections to the Draft EIR, of the Final EIR, to evaluate potential Project impacts related to the RIO District Development Regulations specifically:

"The Project would similarly not conflict with the RIO District Development Regulations, as described in detail below.

- Per the Project Landscape Plans, the Project would provide landscaping that is comprised of 75 percent native species, WatershedWise species, and/or species listed in the Los Angeles County River Master Plan Landscaping Guidelines and Plant Palettes. Therefore, the Project would not conflict with the RIO District Development Regulation contained in LAMC Section 13.17 F.1.

- The entrance and exit ramps to the Project parking structure would be located on East 4th Street, and the loading dock would be located on South Hewitt Street. The aboveground parking areas would be screened from the right-of-way by a combination of board form concrete, non-operable windows, and metal screening. Five street trees on East 4th Street and five street trees on South Hewitt Street, which would be a minimum of two feet in height at the time of planting, would provide additional screening and would exceed the five-foot landscaping strip requirement. Therefore, the Project would not conflict with the RIO District Development Regulation contained in LAMC Section 13.17 F.2.a.

- The Project's electrical and mechanical equipment would be located interior to the Office Building or on the roof behind metal screening. Therefore, such equipment would be screened from public view and the Project would not conflict with the RIO District Development Regulation contained in LAMC Section 13.17 F.2.b.

- Trash enclosures would be located interior to the Office Building in the loading area (which is enclosed behind bifold doors); therefore, the Project would not conflict

with the RIO District Development Regulation contained in LAMC Section 13.17 F.2.c.

- The Project Site does not include fencing; therefore, the Project would not conflict with the RIO District Development Regulation contained in LAMC Section 13.17 F.2.d.

- Exterior Project Site lighting would be designed to comply with the requirements of the LAMC, including the RIO District Development Regulations. Therefore, the Project would not conflict with the RIO District Development Regulation contained in LAMC Section 13.17 F.3."

With regard to the stated purposes of the RIO District, since the Project Site is located approximately 0.5 mile from the River and is not located within the River greenway or immediately adjacent to the River (also referred to as the Inner Core in the RIO ordinance), the Project would not conflict with the RIO District functions. The Project would promote bicycle connections within the RIO District by providing short- and long-term bicycle parking, as well as showers for tenants. The proposed Colyton and South Hewitt Street sidewalks, the landscaped courtyard, and the passageway would improve pedestrian access and safety, and the proposed concrete seat walls and fixed wood and metal furniture would encourage public gathering.

In addition, the Project would protect water quality and therefore promote sustainability in the vicinity of the Los Angeles River, as discussed in Section IV.G, Hydrology and Water Quality, of the Draft EIR (pages IV.G-23 through IV.G-28). As such, the Project would not conflict with the RIO District, and impacts would be less than significant.

With regard to the Commenter's Footnote 29 and noise regulations in the RIO zone, and as stated in Response to Comment No. 5-30, those regulations only apply to projects in the inner core of the zone, which is defined as sites *adjacent* to the river. The Project Site is not located adjacent to the river and thus is not located in the inner core. In fact, the Project Site is located approximately 0.35 miles west of the river, as described on page IV.H-12 in Chapter IV.H, Land Use and Planning, of the Draft EIR. This RIO noise standard is therefore inapplicable and irrelevant to the Project and no violation would occur.

As described in Chapter IV.H, Land Use and Zoning, of the Draft EIR, Project impacts related to conflicts with the RIO District would be less than significant.

Comment No. 5-69

In sum, the Draft EIR's analysis of the Project's land use impacts is legally inadequate as it fails to provide good faith disclosure required by CEQA.

Response to Comment No. 5-69

The Commenter asserts that the Draft EIR analysis of Project land use impacts is inadequate and does not provide the disclosure required by CEQA. This comment serves as a conclusory statement, summarizing Comment No. 5-65 through Comment No. 5-68. Please refer to Response to Comment No. 5-65 through Response to Comment No. 5-68 for the responses to these comments.

Comment No. 5-70

9. Traffic, Emergency, and Cumulative Impacts

The record shows that the Project relies on the LADOT traffic assessment, recycled from 2020, which finds that nothing has changed ever since. Yet, significant changes have occurred since 2020: (1) circumstances in 2020, where COVID-19 was first alerted and stay-at-home orders were issued, dramatically *decreasing* traffic everywhere in California, have now changed in 2022 and are back to high levels; (2) the Project has changed as well and increased in its mass and scale and derivatively in its intensity. The reasons provided by the City in finding no change since 2020 (**Exhibit F** [1/6/2022 Email Correspondence]) are unfounded.

In addition, the Project's traffic analysis does not include the reasonably foreseeable development of the A+D Museum buildings with higher intensity uses.

As such, the Project's findings of no traffic impacts, relying on the LADOT statement of no change, are unsupported.

Response to Comment No. 5-70

The Commenter asserts that the Project improperly relies on a 2020 LADOT traffic assessment when changes have occurred since 2020 as a result of the Covid-19 pandemic. The Commenter also asserts that the mass and scale of the Project have changed and implies that these changes are not reflected in the Draft EIR transportation analysis. Lastly, the Commenter asserts that the Project's transportation analysis does not include the reasonably foreseeable development of the A+D Museum buildings with higher intensity uses.

With regard to findings of significance for transportation impacts, the Project analysis of VMT is based on the TIS, which was prepared pursuant to the LADOT's Transportation Assessment Guidelines (TAG) (July 2019) and is included in Appendix L1 to the Draft EIR. The TIS evaluated the Project that is described in Chapter II, Project Description, of the Draft EIR, not the version originally contemplated in the 2017 NOP and IS, as the Commenter implies (refer to Table IV.L-5 on page IV.L-41 of the Draft EIR, which sets forth the Project specifications on which the VMT analysis is based). The TAG established

the guidelines and methodology for assessing transportation impacts for development projects based on the updated CEQA Guidelines from the State that require transportation impacts be evaluated based on VMT rather than level of service (LOS) or any other measure of a project's effect on automobile delay. As such, the volume of traffic related to COVID-19 conditions is not relevant to the finding that the Project would result in a less-than-significant impact related to VMT.

The LADOT-developed City of Los Angeles VMT Calculator Version 1.3 (May 2020) (VMT Calculator) was used as part of the TIS to estimate the Project VMT. As described in Chapter IV.L, Transportation, of the Draft EIR (pages IV.L-41 and IV.L-42), the VMT Calculator estimates that the Project would generate 9,216 total work VMT and 1,279 jobs. Therefore, the Project would generate an average work VMT per employee of 7.2, which falls below the significance threshold for the Central APC (7.6 work VMT per employee). In addition, the TMO program and TDM program that are described in Chapter IV.L, Transportation, of the Draft EIR (pages IV.L-30 through IV.L-33) that would be developed will encourage the use of alternative transportation modes and increase transit and mode choices in the Project area (Project Design Features TRANS-PDF-2, and TRANS-PDF-3, respectively). As the TDM and TMO project design features were not included in the VMT calculator, this VMT analysis is conservative and VMT would likely be less than reported in the Draft EIR. Therefore, the Project would result in a less-than-significant VMT impact.

The methodology for the analysis of the Project's cumulative transportation impacts is described in Chapter IV.L, Transportation, of the Draft EIR (pages IV.L-26 through IVL-30), and the cumulative impact analysis is provided on Draft EIR pages IV.L-47 through IV.L-49. Short-term cumulative VMT effects are based on the Project- level VMT analysis that is performed for a particular project, per the TAG. As the Project's Work VMT per Capita would be less than significant, the Project's short-term cumulative VMT impacts would be less than significant. Long-term cumulative effects of the Project and Related Projects are determined through a consistency check with the RTP/SCS, as directed by the TAG. Projects that are consistent with the RTP/SCS for development location, density, and intensity are part of the regional solution for meeting air pollution and GHG goals. Projects that are deemed to be consistent would have a less-than-significant cumulative impact on VMT. The Project is located within a TPA and includes the Office Building located within 0.5 miles of the Metro Gold Line Little Tokyo/Arts District Station. The Project Site is also well-served by various bus and shuttle lines. In addition, the Project would be designed to further reduce single occupancy trips to the Project Site through various TDM strategies including bicycle amenities, ground floor restaurant uses, and a pedestrian passageway that would contribute to the walkability of the Arts District. In addition, the Project would also participate as a member in the Downtown/Arts District TMO to increase transit and mode choices in the Arts District. Thus, through the

implementation of Project Design Features TRANS-PDF-1 and TRANS-PDF-2, the Project encourages a variety of transportation options and is consistent with the RTP/SCS goal of maximizing mobility and accessibility in the region. The Project would also contribute to the productivity and use of the regional transportation system by providing employment near transit and encourage active transportation by providing new bicycle parking and active street frontages, consistent with RTP/SCS goals. As detailed in Section IV.H, Land Use and Planning (page IV.H-17), and Section IV.J, Population and Housing (pages IV.J-11 through IV.J-15), of the Draft EIR, the Project would be consistent with the location, density, intensity, and growth projections in the RTP/SCS. Therefore the Project's long-term cumulative VMT impacts would be less than significant.

As to the Commenter's statement that the Project's traffic analysis does not include the development of the A+D Museum buildings with "higher intensity uses," please refer to Response to Comment No. 5-9, which describes that, due to the range of potential, specific uses that could possibly occupy the building formerly occupied by the A+D Museum per the LAMC and proposed C2 zoning, it would be speculative to assume that any one of these uses would replace the most recent use. As CEQA specifies that speculation is not substantial evidence per Section 21080(e)(2), the Draft EIR correctly utilizes the operating A+D Museum as the environmental baseline for analysis, including the transportation analysis, which assumes that the past use and future use of the building formerly occupied by the A+D Museum would be similar (refer to Table IV.L-5 on page IV.L-41 of the Draft EIR).

Comment No. 5-71

III. VIOLATION OF STATE PLANNING AND ZONING LAWS FOR GENERAL PLAN INCONSISTENCY AND DERIVATIVE VIOLATION OF CEQA.

As detailed above, the Project is not consistent with the applicable General Plan; it also seeks extensive amendments to the General Plan to allow higher intensity uses. Since 2018, the Project is required to be consistent with the City's General Plan, pursuant to changes in the State Planning and Zoning Law. Because the Project is not consistent, it is in violation of the State Law and cannot be approved.

Derivatively, the Draft EIR's failure to adequately disclose such General Plan inconsistency and instead its attempt to conceal such inconsistency (as detailed above) is a violation of CEQA, which specifically requires the respective General Plan consistency analysis in the EIR.

Response to Comment No. 5-71

The Commenter claims that the Project violates State planning and zoning law as well as the City's General Plan. The Commenter does not include any specific comments

regarding how the Project conflicts with the City's General Plan and State planning and zoning law. As discussed in great detail in Response to Comment No. 4-18, the Project, including the requested discretionary action of a General Plan Amendment, would not present conflicts with the applicable land use plans and policies from SCAG's 2020-2045 RTP/SCS, Framework Element, Community Plan, A Plan for a Healthy Los Angeles, LAMC (including the stated purposes and Development Regulations of the RIO District), and the Citywide Design Guidelines that were adopted for the purpose of avoiding or mitigating a significant environmental effect, as evaluated in Section IV.H, Land Use and Planning (pages IV.H-14 through IV.H-33), and Appendix I, Land Use Policy Consistency Tables, of the Draft EIR. Therefore, the Commenter's claims that the Project violates the State planning and zoning law and is not consistent with the applicable General Plan are unfounded.

Comment No. 5-72

IV. CONCLUSION.

In view of the above-noted concerns, we respectfully request that the EIR be recirculated to include the omitted information and to provide meaningful analysis, identification, and mitigation of impacts as CEQA requires.[30] We also request that a [sic] broader Phase II ESA or Supplemental Phase II Subsurface Site Investigation be conducted, as well as SMP be prepared and/or conducted to resolve and investigate issues Phase I ESA identified and Phase II Subsurface Site Investigation confirmed, and to provide the remedial actions that are needed and their feasibility. "CEQA contemplates *serious* and not superficial or pro forma consideration of the potential environmental consequences of a project." (*Leonoff v. Monterey County Bd. of Supervisors* (1990) 222 Cal.App.3d 1337, 1347, 272 Cal.Rptr. 372; emphasis added*; Burbank-Glendale-Pasadena Airport Authority v. Hensler* (1991) 233 Cal.App.3d 577, 593, fn. 3.)

If the City has any questions or concerns, please feel free to contact my Office.

Footnotes:

[30] As further evidence of inadequate disclosures, the City's official planning case information site still contains the prior project's design for a 11-story building, instead of the now proposed 19 stories. (**Exhibit M** [Printouts of the Case Information for the three case numbers associated with the Case, accessed on. 7/8/2022].)

Response to Comment No. 5-72

The Commenter requests that the EIR be recirculated for public review, that broader Phase II ESA or Supplemental Phase II Subsurface Site Investigations be conducted,

and that a SMP be prepared. This comment serves as a conclusory statement, summarizing Comment No. 5-1 through Comment No. 5-71. Please refer to Response to Comment No. 5-1 through Response to Comment No. 5-71 for the responses to these comments.

With regard to the Commenter's Footnote 30, which indicates that the City's official case information site still contains the prior Project's design for a 11-story building, rather than the current 18-story design (not 19 stories as the Commenter states), the case information site contains the plans that were current at the time of the initial Project case filing. The Draft EIR analysis is based on the Project as described in Chapter II, Project Description, of the Draft EIR, which also includes figures based on the most recent entitlement plan set, which depict the 18-story design. As such, plans in the case information site are irrelevant to the Draft EIR analysis.

Comment No. 5-73

Attached:

March 8, 2021 SWAPE Letter to Mitchell M. Tsai re Local Hire Requirements and Considerations for Greenhouse Gas Modeling (**Exhibit A**);

Air Quality and GHG Expert Paul Rosenfeld CV (**Exhibit B**); and Air Quality and GHG Expert Matt Hagemann CV (**Exhibit C**);

10/15/2019 Email correspondence re Project Changes, along with the Project's 2017 Initial Study (**Exhibit D**)

4/8/2020 Email Communication of the City to LADWP and 7/29/2020 Email from City to LADWP (**Exhibit E**)

1/6/2022 LADOT assessment **(Exhibit F**)

8/15/2017 Applicant's email to the City re FAR **(Exhibit G**)

Printout of the link provided by the City at DEIR, p. I-19, fn. 9 (**Exhibit H**)

January 4-11, 2022 Email Correspondence and the attached January 6, 2022 Letter; December 28, 2021 Email Correspondence to/from City/Tribe; and 7/12/2017 Email to City from the Tribe requesting tribal monitoring during Project construction (**Exhibit I**);

Draft Entitlement Set (**Exhibit J**);

414 S. Colyton St. ZIMAS map measurement to Oil Well (**Exhibit K**);

Printout of the link at footnote 14 in the Draft EIR, accessed 7/7/2022 (**Exhibit L**);

Printouts of the Case Information for the three case numbers associated with the Case, accessed on 7/8/2022 (**Exhibit M**)

Response to Comment No. 5-73

This comment introduces Exhibits A through M of the comment letter. Specific issues are raised by the Commenter in Comment Nos. 5-1 through 5-72 and are addressed in Response to Comment Nos. 5-1 through 5-72 above, as well as in the responses to Comment Letter No. 5A, below. No additional direct responses related to Exhibits B through M are required, as they do not raise any specific CEQA issues related to the Project and Draft EIR. This comment and attachments are noted for the record and will be forwarded to the decision-makers for their review and consideration along with all of the submitted comments.

COMMENT LETTER NO. 5A (SWAPE LETTER, ATTACHMENT A)

Soil Water Air Protection Enterprise (SWAPE)

Matt Hagemann, P.G., C.Hg. and Paul E. Rosenfeld, Ph.D.
2656 29th Street, Suite 201
Santa Monica, CA 90405

Comment No. 5A-1

Soil Water Air Protection Enterprise ("SWAPE") is pleased to provide the following draft technical report explaining the significance of worker trips required for construction of land use development projects with respect to the estimation of greenhouse gas ("GHG") emissions. The report will also discuss the potential for local hire requirements to reduce the length of worker trips, and consequently, reduced or mitigate the potential GHG impacts.

Response to Comment No. 5A-1

This introductory comment identifies the Commenter and describes the general content of the letter. As this comment does not raise any specific CEQA issues related to the Project and Draft EIR, no further response is required. This comment is noted for the record and will be forwarded to the decision-makers for their review and consideration along with all of the submitted comments.

Comment No. 5A-2

Worker Trips and Greenhouse Gas Calculations

The California Emissions Estimator Model ("CalEEMod") is a "statewide land use emissions computer model designed to provide a uniform platform for government agencies, land use planners, and environmental professionals to quantify potential criteria pollutant and greenhouse gas (GHG) emissions associated with both construction and operations from a variety of land use projects."[1] CalEEMod quantifies construction-related emissions associated with land use projects resulting from off-road construction equipment; on-road mobile equipment associated with workers, vendors, and hauling; fugitive dust associated with grading, demolition, truck loading, and on-road vehicles traveling along paved and unpaved roads; and architectural coating activities; and paving.[2]

The number, length, and vehicle class of worker trips are utilized by CalEEMod to calculate emissions associated with the on-road vehicle trips required to transport workers to and from the Project site during construction.[3]

Specifically, the number and length of vehicle trips is utilized to estimate the vehicle miles travelled ("VMT") associated with construction. Then, utilizing vehicle-class specific EMFAC 2014 emission factors, CalEEMod calculates the vehicle exhaust, evaporative, and dust emissions resulting from construction-related VMT, including personal vehicles for worker commuting.[4]

Specifically, in order to calculate VMT, CalEEMod multiplies the average daily trip rate by the average overall trip length (see excerpt below):

"$VMT_d = \Sigma(\text{Average Daily Trip Rate}_i * \text{Average Overall Trip Length}_i)_n$

Where:

n = Number of land uses being modeled."[5]

Furthermore, to calculate the on-road emissions associated with worker trips, CalEEMod utilizes the following equation (see excerpt below):

"$\text{Emissions}_{pollutant} = VMT * EF_{running,pollutant}$

Where:

$\text{Emissions}_{pollutant}$ = emissions from vehicle running for each pollutant

VMT = vehicle miles traveled

$EF_{running,pollutant}$ = emission factor for running emissions."[6]

Thus, there is a direct relationship between trip length and VMT, as well as a direct relationship between VMT and vehicle running emissions. In other words, when the trip length is increased, the VMT and vehicle running emissions increase as a result. Thus, vehicle running emissions can be reduced by decreasing the average overall trip length, by way of a local hire requirement or otherwise.

Footnotes:

[1] "California Emissions Estimator Model." CAPCOA, 2017, available at: http://www.aqmd.gov/caleemod/home.

[2] "California Emissions Estimator Model." CAPCOA, 2017, available at: http://www.aqmd.gov/caleemod/home.

[3] "CalEEMod User's Guide." CAPCOA, November 2017, available at: http://www.aqmd.gov/docs/default- source/caleemod/01_user-39-s-guide2016-3-2_15november2017.pdf?sfvrsn=4, p. 34.

[4] "Appendix A Calculation Details for CalEEMod." CAPCOA, October 2017, *available at:* http://www.aqmd.gov/docs/default-source/caleemod/02_appendix-a2016-3-2.pdf?sfvrsn=6, p. 14-15.

[5] "Appendix A Calculation Details for CalEEMod." CAPCOA, October 2017, *available at:* http://www.aqmd.gov/docs/default-source/caleemod/02_appendix-a2016-3-2.pdf?sfvrsn=6, p. 23.

[6] "Appendix A Calculation Details for CalEEMod." CAPCOA, October 2017, *available at:* http://www.aqmd.gov/docs/default-source/caleemod/02_appendix-a2016-3-2.pdf?sfvrsn=6, p. 15.

Response to Comment No. 5A-2

The Commenter recites and/or paraphrases information provided by the California Air Pollution Control Officers Association (CAPCOA) regarding the CalEEMod and concludes that vehicle running emissions can be reduced by decreasing the average overall trip length by way of a local hire requirement or otherwise. As noted in the Draft EIR, Sections IV.A, Air Quality (pages IV.A-39 through IV.A-49), IV.E, Greenhouse Gas Emissions (pages IV.E-52 through IV.E-55), and IV.L, Transportation (page IV.L-41), the Project would result in less than significant impacts related to criteria pollutant and GHG emissions and VMT. This comment does not directly address any aspect of the Draft EIR analysis and provides no evidence of a significant impact related to these topics requiring mitigation. As such, this comment is noted for the record and will be forwarded to the decision-makers for their review and consideration along with all of the submitted comments.

Comment No. 5A-3

Default Worker Trip Parameters and Potential Local Hire Requirements

As previously discussed, the number, length, and vehicle class of worker trips are utilized by CalEEMod to calculate emissions associated with the on-road vehicle trips required to transport workers to and from the Project site during construction.[7] In order to understand how local hire requirements and associated worker trip length reductions impact GHG emissions calculations, it is important to consider the CalEEMod default worker trip parameters. CalEEMod provides recommended default values based on site-specific information, such as land use type, meteorological data, total lot acreage, project type and typical equipment associated with project type. If more specific project information is known, the user can change the default values and input project- specific values, but the California Environmental Quality Act ("CEQA") requires that such changes be justified by substantial evidence.[8] The default number of construction-related worker trips is calculated by multiplying the number of pieces of equipment for all phases by 1.25, with

the exception of worker trips required for the building construction and architectural coating phases.[9] Furthermore, the worker trip vehicle class is a 50/25/25 percent mix of light duty autos, light duty truck class 1 and light duty truck class 2, respectively."[10] Finally, the default worker trip length is consistent with the length of the operational home-to-work vehicle trips.[11] The operational home-to-work vehicle trip lengths are:

> "[B]ased on the *location* and *urbanization* selected on the project characteristic screen. These values were *supplied by the air districts or use a default average for the state*. Each district (or county) also assigns trip lengths for urban and rural settings" (emphasis added). [12]

Thus, the default worker trip length is based on the location and urbanization level selected by the User when modeling emissions. The below table shows the CalEEMod default rural and urban worker trip lengths by air basin (see excerpt below and Attachment A).[13]

Worker Trip Length by Air Basin		
Air Basin	**Rural (miles)**	**Urban (miles)**
Great Basin Valleys	16.8	10.8
Lake County	16.8	10.8
Lake Tahoe	16.8	10.8
Mojave Desert	16.8	10.8
Mountain Counties	16.8	10.8
North Central Coast	17.1	12.3
North Coast	16.8	10.8
Northeast Plateau	16.8	10.8
Sacramento Valley	16.8	10.8
Salton Sea	14.6	11
San Diego	16.8	10.8
San Francisco Bay Area	10.8	10.8
San Joaquin Valley	16.8	10.8
South Central Coast	16.8	10.8
South Coast	19.8	14.7
Average	**16.47**	**11.17**
Minimum	**10.80**	**10.80**
Maximum	**19.80**	**14.70**
Range	**9.00**	**3.90**

As demonstrated above, default rural worker trip lengths for air basins in California vary from 10.8- to 19.8- miles, with an average of 16.47 miles. Furthermore, default urban worker trip lengths vary from 10.8- to 14.7- miles, with an average of 11.17 miles. Thus, while default worker trip lengths vary by location, default urban worker trip lengths tend to be shorter in length. Based on these trends evident in the CalEEMod default worker trip lengths, we can reasonably assume that the efficacy of a local hire requirement is especially dependent upon the urbanization of the project site, as well as the project location.

Footnotes:

[7] "CalEEMod User's Guide." CAPCOA, November 2017, *available at:* http://www.aqmd.gov/docs/default-source/caleemod/01_user-39-s-guide2016-3-2_15november2017.pdf?sfvrsn=4, p. 34.

[8] CalEEMod User Guide, *available at:* http://www.caleemod.com/, p. 1, 9.

[9] "CalEEMod User's Guide." CAPCOA, November 2017, *available at:* http://www.aqmd.gov/docs/default-source/caleemod/01_user-39-s-guide2016-3-2_15november2017.pdf?sfvrsn=4, p. 34.

[10] "Appendix A Calculation Details for CalEEMod." CAPCOA, October 2017, *available at:* http://www.aqmd.gov/docs/default-source/caleemod/02_appendix-a2016-3-2.pdf?sfvrsn=6, p. 15.

[11] "Appendix A Calculation Details for CalEEMod." CAPCOA, October 2017, *available at:* http://www.aqmd.gov/docs/default-source/caleemod/02_appendix-a2016-3-2.pdf?sfvrsn=6, p. 14.

[12] "Appendix A Calculation Details for CalEEMod." CAPCOA, October 2017, *available at:* http://www.aqmd.gov/docs/default-source/caleemod/02_appendix-a2016-3-2.pdf?sfvrsn=6, p. 21.

[13] "Appendix D Default Data Tables." CAPCOA, October 2017, *available at:* http://www.aqmd.gov/docs/default-source/caleemod/05_appendix-d2016-3-2.pdf?sfvrsn=4, p. D-84 – D-86.

Response to Comment No. 5A-3

The Commenter opines that a local hire requirement would reduce worker trip lengths and therefore Project impacts related to GHG emissions. The Draft EIR was prepared in conformance with the requirements of CEQA, which is intended to inform government decision-makers and the public about the potential environmental effects of proposed activities and to prevent significant, avoidable environmental damage. It is therefore beyond the scope of the Draft EIR to require a local hire provision. Further, as detailed in the Draft EIR, Sections IV.A, Air Quality (pages IV.A-39 through IV.A-49), IV.E, Greenhouse Gas Emissions (pages IV.E-52 through IV.E-55), and IV.L, Transportation (page IV.L-41), the Project would not result in significant and unavoidable environmental impacts associated with air quality, GHG emissions and transportation; impacts would be less than significant. Therefore, no mitigation is necessary and requiring implementation of a skilled labor or local hire requirement to further reduce/mitigate impacts is not warranted. No revision of the Draft EIR analyses is required to address this comment.

Comment No. 5A-4

Practical Application of a Local Hire Requirement and Associated Impact

To provide an example of the potential impact of a local hire provision on construction-related GHG emissions, we estimated the significance of a local hire provision for the Village South Specific Plan ("Project") located in the City of Claremont ("City"). The Project proposed to construct 1,000 residential units, 100,000-SF of retail space, 45,000-SF of office space, as well as a 50-room hotel, on the 24-acre site. The Project location is classified as Urban and lies within the Los Angeles-South Coast County. As a result, the Project has a default worker trip length of 14.7 miles.[14] In an effort to evaluate the potential for a local hire provision to reduce the Project's construction-related GHG emissions, we prepared an updated model, reducing all worker trip lengths to 10 miles (see Attachment B). Our analysis estimates that if a local hire provision with a 10-mile radius were to be implemented, the GHG emissions associated with Project construction would decrease by approximately 17% (see table below and Attachment C).

Local Hire Provision Net Change	
Without Local Hire Provision	
Total Construction GHG Emissions (MT CO_2e)	3,623
Amortized Construction GHG Emissions (MT CO_2e/year)	120.77
With Local Hire Provision	
Total Construction GHG Emissions (MT CO2e)	3,024
Amortized Construction GHG Emissions (MT CO_2e/year)	100.80
% Decrease in Construction-related GHG Emissions	***17%***

As demonstrated above, by implementing a local hire provision requiring 10 mile worker trip lengths, the Project could reduce potential GHG emissions associated with construction worker trips. More broadly, any local hire requirement that results in a decreased worker trip length from the default value has the potential to result in a reduction of construction-related GHG emissions, though the significance of the reduction would vary based on the location and urbanization level of the project site.

This serves as an example of the potential impacts of local hire requirements on estimated project-level GHG emissions, though it does not indicate that local hire requirements would result in reduced construction-related GHG emission for all projects. As previously described, the significance of a local hire requirement depends on the worker trip length enforced and the default worker trip length for the project's urbanization level and location.

Footnote:

[14] "Appendix D Default Data Tables." CAPCOA, October 2017, *available at:* http://www.aqmd.gov/docs/default-source/caleemod/05_appendix-d2016-3-2.pdf?sfvrsn=4, p. D-85.

Response to Comment No. 5A-4

The Commenter again opines that a local hire requirement would reduce worker trip lengths and therefore Project impacts related to GHG emissions, citing a project in the City of Claremont as an example. Please refer to Response to Comment No. 5A-3, which describes that no revision of the Draft EIR analyses is required to address this comment.

Comment No. 5A-5

Disclaimer

SWAPE has received limited discovery. Additional information may become available in the future; thus, we retain the right to revise or amend this report when additional information becomes available. Our professional services have been performed using that degree of care and skill ordinarily exercised, under similar circumstances, by reputable environmental consultants practicing in this or similar localities at the time of service. No other warranty, expressed or implied, is made as to the scope of work, work methodologies and protocols, site conditions, analytical testing results, and findings presented. This report reflects efforts which were limited to information that was reasonably accessible at the time of the work, and may contain informational gaps, inconsistencies, or otherwise be incomplete due to the unavailability or uncertainty of information obtained or provided by third parties.

Response to Comment No. 5A-5

The Commenter provides a disclaimer indicating that comments are based on limited discovery. The Commenter retains the right to revise or amend comments when additional information becomes available. This comment does not raise any CEQA issues. The comment is noted for the record and will be forwarded to the decision-makers for their review and consideration along with all of the submitted comments.

Comment No. 5A-6

This comment includes Attachment A to the comment letter, which is comprised of additional air basin and trip length data.

Response to Comment No. 5A-6

The comment includes additional air basin and trip length data. This comment does not raise any specific CEQA issues. The comment is noted for the record and will be forwarded to the decision-makers for their review and consideration along with all of the submitted comments.

Comment No. 5A-7

This comment includes Attachment B to the comment letter, which is comprised of Worker Trip Length by Air Basin, as well as CalEEMod outputs for the Village South Specific Plan project.

Response to Comment No. 5A-7

This comment includes worker trip lengths by air basin, as well as CalEEMod outputs for the Village South Specific Plan project. This comment does not raise any specific CEQA issues. The comment is noted for the record and will be forwarded to the decision-makers for their review and consideration along with all of the submitted comments.

Comment No. 5A-8

This comment includes Attachment C to the comment letter, which is comprised of a table showing the net change in GHG emissions related to local hiring for the Village South Specific Plan project.

Response to Comment No. 5A-8

This comment provides the net change in GHG emissions related to local hiring for the Village South Specific Plan project. This comment does not raise any specific CEQA issues. The comment is noted for the record and will be forwarded to the decision-makers for their review and consideration along with all of the submitted comments.

Comment No. 5A-9

This comment includes the professional resumes of Paul Rosenfeld, Ph.D., and Matthew F. Hagemann, P.G., C.Hg., QSD, QSP, preparers of Comment Letter No. 5A, which are Exhibits B and C of the letter.

Response to Comment No. 5A-9

This comment includes the resumes of the preparers of Comment Letter No. 5A. This comment does not raise any specific CEQA issues. The comment is noted for the record

and will be forwarded to the decision-makers for their review and consideration along with all of the submitted comments.

INDIVIDUAL COMMENTERS

COMMENT LETTER NO. 6

Andrea Taylor
ataylordesign@icloud.com

Comment No. 6-1

I'm writing to you about the 4th and Hewitt Project. I got a notice of Completion and Availability n [sic] the mail today and when I read it, I was sickened to see that there's a plan for an 18 story fairly useless building a half block from my building (Barker Block/ 510 Hewitt Street).

The case number is ENV-2017-470-EIR and the state clearinghouse number is 2017091054. The project applicant is LIG-900, 910 and 926 East 4th Street., 405-411 South Hewitt St LLC.

Response to Comment No. 6-1

This introductory comment, which provides general Project and Applicant information, does not raise CEQA issues with respect to the Draft EIR or any of the impact analyses in the Draft EIR, is noted for the record, and will be forwarded to the decision-makers for their review and consideration along with all of the submitted comments.

Comment No. 6-2

I'm truly wondering if you've visited the Arts District and noticed that there are no other 18 story high rises on this block or in the surrounding area. This is an area of low rise buildings. It's a quiet area of older warehouses that have been restored to look as they were when built and now people live and work in them. There are some new buildings, but they tried to fit in and none are 18 stories high.

Response to Comment No. 6-2

The Commenter states that the Project area is comprised of low rise buildings and that none of these building reach 18 stories in height. Chapter II, Project Description, of the Draft EIR (pages II-3, 4, and 10) explains that the Project Site is located in the Arts District area of the City, within the Community Plan area, located in DTLA. The Project Site is also located within a TPA of the City. As discussed in Section IV.H, Land Use and Planning, of the Draft EIR (pages IV.H-19, 21, and 22, and 28 through 31), the Applicant is requesting a General Plan Amendment, which would change the current land use designation from Heavy Industrial, as identified in the current Community Plan, to Regional Center Commercial, which would permit a variety of commercial and residential

uses. In addition, the Vesting Zone Change would change the current zone from Manufacturing (M3), to Commercial (C2), which would allow for the proposed range of commercial uses. The Applicant is requesting a height district change from Height District No. 1 to Height District No. 2; Height District 2 imposes a maximum FAR of 6:1 but does not impose a maximum height for properties zoned C2. Thus, the Project's proposed 18-story building would be permitted if the requested Height District change is approved. The approval of these requests would increase the intensity of development on the Project Site and are subject to the City's discretionary review and approval process.

Section IV.H, Land Use and Planning, of the Draft EIR (pages IV.H-18, 19, and 25) explain that the Project would increase the height and density of the uses on the Project Site, which is consistent with more recently constructed and planned infill developments in the Arts District that include increased height and density compared to the land uses they replaced. For example, the Barker Lofts project, located southeast of the Project Site at 5th and South Hewitt Streets, is four stories in height; a multi-unit residential building located northwest of the Project Site at East 4th and Seaton Streets is six stories in height; and an eight-level parking garage was recently constructed northeast of the Project Site at East 4th Place and South Hewitt Street. A 35-story mixed-use project is under construction located at 520 Mateo Street, which is two blocks south and two blocks east of the Project Site, just east of Barker Lofts. The City has also approved one project located approximately 0.75 mile southeast of the Project Site at 2143 Violet Street that includes a 36-story residential tower and 8-story office building.

As evaluated in Appendix I, Land Use Policy Consistency Tables, to the Draft EIR (Table IV.H-2, Table IV.H-4), the Project would not be in conflict with the Urban Form and Neighborhood Design Chapter of the Framework Element or with the Community Plan's Site Planning and Height and Height and Building Design policies for individual projects. Furthermore, the Project has been reviewed by the City's Urban Design Studio, and Urban Design Studio suggestions were incorporated into the Project's site plans early in the design process. The Project consultant team also responded to the Urban Design Studio with written comments that are available upon request from the City.

Comment No. 6-3

Also, to build an office building in 2022 is just asking to build an empty building, isn't it? There are so many retail stores for rent in this area it seems insane to ok a gigantic complex that will be difficult at best to fill when it's got 17 tories [sic] of emptiness on top of it. Did someone fail a city planning course have some sort of dream that isn't reality??? I just don't see the point of blocking so much sunshine and creating environmental havoc for years to make this monster building happen. Are there guaranteed tenants? Everyone I know is reducing their amount of commercial space, not increasing it. This building seems misguided for the neighborhood. As someone who has lived her for almost 5 years,

I can tell you that there's enough construction going on with just buildings that are being rehabilitated. This project seems like greed on steroids that has a big chance of crashing and being an environmental blight.

Response to Comment No. 6-3

The Commenter objects to the Project's proposed office and commercial land uses. The Commenter states that the Project would block the sun.

As discussed in Section IV.H, Land Use and Planning, of the Draft EIR (pages IV.H-19, 21, and 22, and 28 through 31) and also noted in Response to Comment No. 6-2, the Applicant is requesting a General Plan Amendment, which would change the current land use designation from Heavy Industrial, as identified in the current Community Plan, to Regional Center Commercial, which would permit a variety of commercial and residential uses, including the office and restaurant uses proposed by the Project. The approval of this request is subject to the City's discretionary review and approval process.

With regard to the Project blocking the sun, Chapter II, Project Description, of the Draft EIR describes that the Project Site is located in a TPA. Aesthetic impacts, including shade and shadows, shall not be considered significant impacts on the environment, as directed by SB 743 (PRC Section 210099[d]) and the related Department of City Planning ZI File No. 2452, which is explained in the IS that was prepared for the Project (Draft EIR Appendix A2, page B-1).

With regard to construction, as summarized in Chapter I, Introduction and Executive Summary, of the Draft EIR (refer to Table I-1 on pages I-11 through I-16), the impacts of the Project that would occur during the construction period would be less than significant or less than significant with mitigation measures (Cultural Resources, Hazards and Hazards Materials, and Hydrology and Water Quality), with the exception of Noise. The Project-level and cumulative off-road construction equipment noise, Project-level and cumulative composite construction activity noise, Project-level off-road construction activity vibration (building damage), and Project-level and cumulative on-road construction vehicle vibration (human annoyance) would be significant and unavoidable. A statement of overriding considerations, as required by the CEQA Guidelines, Section 15093, will be prepared and included in the record of project approval. The statement of overriding considerations will be used by the decisionmakers to balance the economic, legal, social, technological, or other benefits of the Project against its significant and unavoidable impacts.

Comment No. 6-4

I think you might want to rethink this one. Big time.

I would like to register a negative reaction and a terrible citizen review.

Response to Comment No. 6-4

The comment expresses opposition to the Project but does not raise CEQA issues with respect to the Draft EIR or any of the impact analyses in the Draft EIR, is noted for the record, and will be forwarded to the decision-makers for their review and consideration along with all of the submitted comments.

COMMENT LETTER NO. 7

Robert Janik
bobjarch@gmail.com

Comment No. 7-1

I live at 825 E. 4th Street, #107, Beacon Lofts west of the project on 4th Street. Our building is an old furniture factory that was redeveloped 8-10 years ago. I am a retired architect and enjoy the ambiance of the dynamic Arts District even though it can be a bit rough and tumble at times. Obviously a neighborhood growing and transitioning.

Response to Comment No. 7-1

This introductory comment, which provides the address of the Commenter and other personal information, does not raise CEQA issues with respect to the Draft EIR or any of the impact analyses in the Draft EIR, is noted for the record, and will be forwarded to the decision-makers for their review and consideration along with all of the submitted comments.

Comment No. 7-2

The 4th and Hewitt project (Project) has been around since before the pandemic. I went to a public meeting in the old Architecture museum building and commented then that the project is too tall for the neighborhood. Our building is 6 stories high, which is the upper height of the context. with a few exceptions. The new Carmell [sic] project at 4th PL and Santa Fe is supposed to include a tower 32 stories. In my opinion, this is too tall. The nearby 4th and Hewitt project is 18 stories, also too tall adjacent to the LA River.

Response to Comment No. 7-2

The Commenter expresses the opinion that the height of the proposed Office Building is too tall for the Project area as compared to existing buildings in the vicinity. The commentor is directed to Response to Comment No. 6-2 regarding the Project's proposed height. As described in Response to Comment No. 6-2, structures in the Project area range from one to eight stories in height. As the Commenter points out, a 35-story mixed-use project is under construction located at 520 Mateo Street by Carmel Partners, which is two blocks south and two blocks east from the Project Site. The City has also approved one project located approximately 0.75 mile southeast of the Project Site at 2143 Violet Street that includes a 36-story residential tower and 8-story office building.

This response also corrects the Commenter's statement that the Project would be located adjacent to the Los Angeles River. The Project Site is located 0.35-miles to the west of

the Los Angeles River, as explained in Section IV.H, Land Use and Planning, page IV.H-12).

Comment No. 7-3

I don't understand the need for office buildings after the pandemic. This will add traffic during the rush hours in and out of the neighborhood. There are three literally empty new office buildings in the neighborhood. I would be supportive of the project if it was housing because of the need.

Response to Comment No. 7-3

The Commenter questions the need for office land uses at the Project Site. As discussed in Section IV.H, Land Use and Planning, of the Draft EIR (pages IV.H-18 and IV.H-21), the Applicant is requesting a General Plan Amendment, which would change the current land use designation from Heavy Industrial, as identified in the current Community Plan, to Regional Center Commercial, which would permit a variety of commercial and residential uses. In addition, the Vesting Zone Change would change the current zone from Manufacturing (M3), to Commercial (C2), which would allow for the proposed range of commercial uses. The approval of these requests are subject to the City's discretionary review and approval process.

With regard to the Project's transportation impacts, and as evaluated in Section IV.L, Transportation, of the Draft EIR (pages IV.L-33 and IV.L-41), the Project would result in less than significant impacts related to transportation, and no mitigation measures are required. It is noted here for the Commenter that, as explained on pages IV.L-1, 4, and 5 of the Draft EIR, while transportation impacts were historically determined by evaluating whether (and by how much) a project would cause vehicle delays at intersections and congestion on nearby highways (known as the Level of Service analysis that focused on traffic congestion), SB 743, enacted in 2013, resulted in updates to the CEQA Statute and Guidelines and changed the method by which lead agencies evaluate transportation impacts. Lead agencies are now required to analyze transportation impacts of projects based on a metric known as VMT instead of the LOS approach. The VMT approach measures the additional vehicle travel (miles driven) that a project would contribute to roads in a project area. If the project adds excessive VMT, the project may cause a significant transportation impact. The VMT impact of the Project would be less than significant.

Comment No. 7-4

The flyer speaks to the 7 levels or vehicular parking however no total space count. This does nothing for climate change. There is a space count for extensive bicycle parking.

My concern is that the base of the tower up to floor six is going to either be opaque or a visible open parking structure. I realize Ground floor will be more transparent.

Response to Comment No. 7-4

The Commenter asserts that the "flyer" (the Notice of Completion and Availability of the Draft Environmental Impact Report for the 4th and Hewitt Project, dated March 26, 2022) does not provide a total parking space count for the Project. The Notice of Completion and Availability of the Draft Environmental Impact Report for the 4th and Hewitt Project, dated March 26, 2022 includes only a summary of the Project Description and impacts of the Project; additional details are provided in the Draft EIR. Chapter II, Project Description, of the Draft EIR (pages II-29 and II-30), explains that the Project would provide 660 parking spaces, which would be provided in three subterranean levels and the 2nd through 5th floors of the Office Building.

The Draft EIR, pages II-2 and II-24, describes that the above-ground parking levels would be fully enclosed on three sides and screened on one side. The above-grade parking levels that face East 4th and South Hewitt Streets would be screened with non-operable, industrial steel frame windows, set into board form concrete walls. The parking levels facing the southern Project Site boundary and off-site adjacent structures would be enclosed behind board form concrete. The parking levels along Colyton Street, south of the courtyard and passageway and east of off-site adjacent structures, would also be enclosed behind board form concrete, and accented by murals. The parking levels along Colyton Street that face the existing 7,800-square-foot building, courtyard, and passageway would be concealed from public views behind a mix of non-operable, industrial steel frame windows; black metal screens; and an additional mural. Refer to Figure II-10, East and South Elevations, and Figure II-11, West and North Elevations, of Chapter II, Project Description, of the Draft EIR as well, for visual representations of these features.

Comment No. 7-5

The ground level landscape courtyard is a nice amenity, however I am concerned it will be private for the restaurant and likely fenced. Everything in this neighborhood is fenced or gated because of street theft and graffiti.

Response to Comment No. 7-5

The Commenter expressed concern that the landscaped courtyard will be fenced and utilized only by the proposed restaurants. The Project would include a landscaped outdoor courtyard on Colyton Street and a passageway that connects Colyton and South Hewitt Streets. The Draft EIR, page II-28, describes that, during normal business hours, access to commercial uses would be unrestricted and publicly accessible; however,

public access would be discontinued after businesses close. The gates on the western side of the building and the doorways on the eastern side of the building that lead to the passageway would be closed after business hours; however, tenants would be provided with access via keycards. Access to the courtyard is planned to remain open during ground floor business hours and similarly to the passageway, the courtyard gates would have controlled access for tenants after business hours.

Comment No. 7-6

In closing I am for improvements to my neighborhood, however do we need another tall empty office building with a giant garage? I think not.

Response to Comment No. 7-6

The comment expresses opposition to construction of the Office Building. This comment does not raise CEQA issues with respect to the Draft EIR or any of the impact analyses in the Draft EIR, is noted for the record, and will be forwarded to the decision-makers for their review and consideration along with all of the submitted comments.

COMMENT LETTER NO. 8

Merle and Joseph Suhayda
josephsuhayda@yahoo.com

Comment No. 8-1

We are owners of the property located at 418 Colyton St and are concerned about the effects of the construction of the project on a building located on our property.

Response to Comment No. 8-1

This introductory comment notes the location of the property owned by the Commenters adjacent to the Project Site and conveys a general concern regarding the construction period impacts of the Project. Sections A through N.4 of Chapter IV, Environmental Impact Analysis, of the Draft EIR address the construction period (and operational period) impacts of the Project under the "Analysis of Project Impacts" heading. This comment does not raise specific CEQA issues with respect to the Draft EIR or any of the impact analyses in the Draft EIR, is noted for the record, and will be forwarded to the decision-makers for their review and consideration along with all of the submitted comments.

Comment No. 8-2

We would like to receive all of the reports pertaining to the impacts of the project. We have a few questions concerning what reports are available.

We now have a copy of the Notice of Completion and Availability of the Draft Environmental Impact Report sent to us by City Planning, and a copy of the Initial Study dated September 2017 downloaded from the City Planning website - https://planning.lacity.org/development- services/eir/4th-and-hewitt-project.

Questions:

1. Is the Draft Environmental Impact Report referred to the Notice of Completion the same as the Initial Study report, or is it a new report?

2. Is the Draft Environmental Impact Report available on the City Planning website, because we could not find it. If not, we would like to buy a copy of the Draft EIR.

3. Is the geotechnical engineering investigation report referred to on pages B-15, B-16 and B-17 of the Initial Study Report available? If so, we would like to obtain a copy.

Response to Comment No. 8-2

The Commenter inquired as to what reports are available for the Project and requested access to the reports. The Commenter also acknowledged receipt of the NOP and Availability of the Draft EIR and indicated that they could access the IS from the City's website. Lastly, the Commenter requested 1) clarification regarding the Draft EIR, Notice of Completion and Availability, and IS; 2) access to the Draft EIR or a copy of the Draft EIR; and 3) access to the Geotechnical Engineering Investigation.

On Friday, May 27, 2022, Courtney Shum, City Planner with the Department of City Planning, responded to the Commenter's three questions with the following replies:

1. The Draft Environmental Impact Report and Initial Study are two separate documents. The Draft EIR provides a more in-depth analysis of the project's potential environmental impacts.

2. Yes, the Draft EIR is available online via the following link: https://planning.lacity.org/development-services/eir/4th-and-hewitt-project-0. Please use the dropdown menus at the bottom of the page to download the individual sections and appendices of the Draft EIR.

3. This document is available as an appendix to the Draft EIR and can be viewed via this link: https://planning.lacity.org/eir/4th-and-Hewitt/deir/HTML%20Files/images/DEIR_ Appendices/Appendix_E1.pdf.

These responses are incorporated into Comment Letter No. 8, which is included in Appendix FEIR-A, Comment Letters on the Draft EIR.

COMMENT LETTER NO. 9

Merle R. Suhayda
suhaydajn@yahoo.com

Comment No. 9-1

Thank you for allowing us to submit comments concerning the Draft Environmental Impact Report for the 4th and Hewitt Project (Case No. ENV-2017-470-EIR). We are owners of the property located at 418 Colyton St which is immediately adjacent to the project site and contains an office/studio building.

Response to Comment No. 9-1

This introductory comment notes the location of the property owned by the Commenter adjacent to the Project Site and notes that the existing use of the property is office/studio. This comment does not raise CEQA issues with respect to the Draft EIR or any of the impact analyses in the Draft EIR, is noted for the record, and will be forwarded to the decision-makers for their review and consideration along with all of the submitted comments.

Comment No. 9-2

The DEIR indicates that the project could result in “significant and unavoidable impacts” to our building in the form of building damage. This is of course of great concern to us. Nor does the DEIR or its appendices present reasoned, empirically-based data regarding the degree of tolerable vibration for our existing building, or that the proposed mitigation measures will be adequate to protect our building (which so far as I am aware has not been the subject of any assessment by a qualified structural engineer) from damage.

To deal with this uncertainty of outcome, the DEIR assumes that material risk to adjoining landowners is outweighed by perceived benefits of infill development. This assumption is especially questionable when the proposed project is as large as this one is, and so close to many existing structures.

The project proponent should be required to undertake more intensive studies of the effect of the project on the structural integrity of the surrounding buildings, including ours, and reasoned conclusions should be drawn therefrom regarding the consequences of the project on surrounding buildings, before any final EIR is considered for approved.

Thank you for considering these comments.

Response to Comment No. 9-2

This comment notes that the Draft EIR identifies a potential significant and unavoidable impact to the identified property at 418 Colyton Street in the form of building damage. The Commenter states that the Draft EIR and appendices do not include data regarding the degree of tolerable vibration for the identified property or adequate mitigation measures to protect it from damage. The Commenter also indicates that additional studies should be required to analyze the effects of the Project on the structural integrity of surrounding buildings.

As described in the Methodology discussion of Draft EIR Section IV.I, Noise (page IV.I-31), the City has no adopted standards of significance thresholds for vibration of their own and uses the Federal Transit Administration's (FTA's) adopted vibration criteria to evaluate potential structural damage to buildings by building category from construction activities. The analysis of groundborne vibration impacts during Project construction relies on published vibration data generated by construction equipment in the 2006 FTA Transit Noise and Vibration Impact Assessment, 2018 FTA guidance on the human response to transient vibration, and on FTA vibration levels associated with building damage. Estimated vibration levels from Project construction activities at the identified sensitive receptors were then compared to applicable vibration standards.

Several different methods are used to quantify vibration. The peak particle velocity (PPV) is defined as the maximum instantaneous peak of the vibration signal in inches per second (in/sec) and is most frequently used to describe vibration impacts to buildings. The vibration damage criteria adopted by the FTA are shown on page IV.I-10 in Table IV.I-1, Construction Vibration Damage Criteria, of the Draft EIR.

Table IV.I-1
Construction Vibration Damage Criteria

Building Category	PPV (in/sec)
I. Reinforced-concrete, steel, or timber (no plaster)	0.5
II. Engineered concrete and masonry (no plaster)	0.3
III. Non-engineered timber and masonry buildings	0.2
IV. Buildings extremely susceptible to vibration damage	0.12
Source: FTA. 2018. Transit Noise and Vibration Impact Assessment Manual. September.	

As noted in Section IV.I, Noise, of the Draft EIR (pages IV.I-55 through IV.I-57), vibration impacts from construction could impact adjacent, fragile structures even if the land uses occupying the structures are not considered sensitive (e.g., residential). Although vibration impacts diminish rapidly with distance from the vibration source, potential structural damage could occur.

The 418 Colyton Street structure is located immediately south of the Project Site along the western façade. This is a one-story industrial warehouse building constructed in 1960. The walls of the structure are comprised of concrete block. However, to provide a conservative analysis, it was assumed that all structures adjacent to and across the street from the Project would classify as Building Category IV - buildings extremely susceptible to vibrations. The impact threshold would be 0.12 in/sec PPV. Below this damage threshold there is virtually no risk of building damage.

The FTA lists predicted vibration levels generated by a select list of construction equipment. Table IV.I-20, Estimated Vibration Levels During Project Construction, of the Draft EIR (page IV.I-56) provides the vibration levels predicted to be generated by the equipment fleet to be utilized during Project construction.

Table IV.I-20
Estimated Vibration Levels During Project Construction

Equipment	PPV at 5 ft (in/sec)	PPV at 10 ft (in/sec)	PPV at 25 ft (in/sec)[a]	PPV at 50 ft (in/sec)
Large Bulldozer	0.995	0.352	0.089	0.031
Loaded Trucks	0.850	0.300	0.076	0.027
Jackhammer	0.391	0.138	0.035	0.012
Small Bulldozer	0.034	0.012	0.003	0.001

Source: Giroux & Associates and Envicom Corporation. 2022. Noise and Vibration Impact Analysis for the 4th and Hewitt Project, Los Angeles. April (Revised). (Appendix J.)

[a] FTA. 2006. Transit Noise and Vibration Impact Assessment. May.

Note: Only data for the above equipment list is available.

Minimum distances from construction equipment where PPV levels would be less than 0.12 in/sec are shown in Table IV.I-21, Minimum Distances for Vibration Building Damage, of the Draft EIR (page IV.I-56). PPV at a given distance was calculated using FTA methodology, as discussed in Appendix J, Noise and Vibration Impact Analysis, of the Draft EIR. When construction equipment is within these distances, the PPV level would exceed thresholds and could have a vibratory impact on buildings. Due to the close proximity to the receiving structures, construction equipment would be located within those distances at adjacent structures.

Table IV.I-21
Minimum Distances for Vibration Building Damage

Equipment	Distance to Impact (Threshold of 0.2 in/sec PPV) (ft)	Distance to Impact (Threshold of 0.12 in/sec PPV) (ft)
Large Bulldozer	15	20
Loaded trucks	13	18
Jackhammer	8	11

Equipment	Distance to Impact (Threshold of 0.2 in/sec PPV) (ft)	Distance to Impact (Threshold of 0.12 in/sec PPV) (ft)
Small Bulldozer	2	2
Source: Giroux & Associates and Envicom Corporation. 2022. Noise and Vibration Impact Analysis for the 4th and Hewitt Project, Los Angeles. April (Revised). (Appendix J.)		

As shown in Table IV.I-20, Estimated Vibration Levels During Project Construction, of the Draft EIR, the structures immediately adjacent to the Project Site, including 418 Colyton Street, may experience vibration that exceeds the adopted building damage threshold of 0.12 in/sec PPV if equipment is operated at the shared property line. The adjacent buildings are of such an age that they may be considered sensitive to the structural effects of vibration. Without mitigation, the Project impact related to building damage at 418 Colyton Street (and other adjacent properties as noted in the Draft EIR) due to vibration during the construction period would be significant.

The mitigation measures that would reduce this significant impact to a less than significant level and that are set forth in the Draft EIR (pages IV.I-61 and IV.I-62) are listed below.

NOI-MM-2 Prior to demolition, the Applicant shall retain the services of a structural engineer or other qualified professional to conduct pre-construction surveys to document the current physical conditions of the following identified vibration-sensitive receptors: 418 Colyton Street, 424 Colyton Street, and 427 South Hewitt Street.

NOI-MM-3 Prior to the issuance of grading permits, the Applicant shall retain the services of a structural engineer or other qualified professional to prepare a demolition and shoring plan to ensure the proper protection and treatment of the properties at 418 Colyton Street, 424 Colyton Street, and 427 South Hewitt Street during construction. The plan shall include appropriate measures to protect these properties from damage due to demolition of existing structures, excavation or other ground-disturbing activities, vibration, soil settlement, and general construction activities. The plan shall be submitted to the Los Angeles Department of City Planning's Office of Historic Resources for review and approval.

NOI-MM-4 Prior to the issuance of grading permits, the Applicant shall retain the services of an acoustical engineer or other qualified professional to develop and implement a structural monitoring program during construction. The

performance standards of the structural monitoring program shall include the following:

- Documentation, consisting of video and/or photographic documentation of accessible and visible areas on the exterior of the receptor buildings (refer to NOI-MM-2).
- A registered civil engineer, certified engineering geologist, or vibration control engineer shall review the appropriate vibration criteria for the identified vibration receptors, taking into consideration their age, construction, condition, and other factors related to vibration sensitivity in order to develop additional recommendations for the structural monitoring program.
- Vibration sensors shall be installed on and/or around the identified vibration receptors to monitor for horizontal and vertical movement. These sensors shall remain in place for the duration of excavation, shoring, and grading phases.
- The vibration sensors shall be equipped with real-time warning system capabilities that can immediately alert construction supervisors when monitored vibration levels approach or exceed threshold limits. The registered civil engineer, certified engineering geologist, or vibration control engineer shall determine the appropriate limits.
- Should an exceedance of vibration thresholds occur, work in the vicinity of the affected area shall be halted and the respective vibration receptor shall be inspected for any damage. Results of the inspection shall be logged. In the event that damage occurs, the damage shall be repaired in consultation with a qualified preservation consultant. In the event of an exceedance, feasible steps to reduce vibratory levels shall be undertaken, such as halting/staggering concurrent activities and utilizing lower-vibratory techniques.

However, because NOI-MM-2, NOI-MM-3, and NOI-MM-4 require the consent of other property owners, who may not agree to implement all components of the recommended mitigation measures as stated above, implementation of the provided mitigation measures cannot be guaranteed, as explained on page IV.I-62 of the Draft EIR. Thus, the Draft EIR conservatively concluded that vibration impacts related to potential building damage on the structure located at 418 Colyton Street (as well as 424 Colyton Street and

427 South Hewitt Street) would be significant and unavoidable. If the Commenter, as the owner of the property located at 418 Colyton Street, agrees to implement all components of the mitigation measures (NOI-MM-2, NOI-MM-3, and NOI-MM-4), the building damage impact related to vibration during the construction period would be reduced to less than significant.

It should be noted that, in the event that the property owners of the affected structures do not agree to implement all components of the mitigation measures (NOI-MM-2, NOI-MM-3, and NOI-MM-4), Project approval would not exempt the construction contractor, Project Applicant, or other responsible parties from a duty to avoid building damage to off-site buildings during construction, nor would it exempt them from liability for building damage to off-site buildings if such damage were to occur.

LATE COMMENTERS

COMMENT LETTER NO. 10

Rowena Lau, Division Manager
City of Los Angeles
Wastewater Engineering Services Division
LA Sanitation and Environment

chris.demonbrun@lacity.org

Comment No. 10-1

This is in response to your May 26, 2022 Notice of Completion and Availability of Draft Environmental Impact Report for the proposed mixed-use project located at 900-904, 906-910, and 926 E. 4th Street; 406, 408, and 414 Colyton Street; 405, 407, 411, 417, and 423 South Hewitt Street, Los Angeles, CA 90013. LA Sanitation, Wastewater Engineering Services Division has received and logged the notification. Upon review, it has been determined the project is in the final stages of the California Environmental Quality Act review process and requires no additional hydraulic analysis. Please notify our office in the instance that additional environmental review is necessary for this project.

If you have any questions, please call Christopher DeMonbrun at (323) 342-1567 or email at chris.demonbrun@lacity.org

Response to Comment No. 10-1

This letter, dated July 19, 2022, was received by the Department of City Planning following the close of the public review period for the Draft EIR. Nevertheless, a response is provided.

This introductory comment notes the location of the Project Site and confirms that the LA Sanitation, Wastewater Engineering Services Division received the Notice of Completion and Availability of Draft Environmental Impact Report for the Project. The Commenter indicates that no additional hydraulic analysis is required and requests notification in the event that additional environmental review is necessary. This comment does not raise CEQA issues with respect to the Draft EIR or any of the impact analyses in the Draft EIR, is noted for the record, and will be forwarded to the decision-makers for their review and consideration along with all of the submitted comments.