

## **II. Responses to Comments**

---

---

## **II. Responses to Comments**

---

### **A. Introduction**

Sections 21091(d) and 21092.5 of the Public Resources Code (PRC) and CEQA Guidelines Section 15088 govern the lead agency's responses to comments on a Draft 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 that were received during the notice comment period and any extensions and may respond to late comments." In accordance with these requirements, this section of the Final EIR provides the responses prepared by the City of Los Angeles Department of City Planning (City) to each of the written comments received regarding the Draft EIR.

Section II.B, Matrix of Comments Received on the Draft EIR, includes a table that summarizes the environmental issues raised by each commenter regarding the Draft EIR. Section II.C, Responses to Comments, provides the City's responses to each of the written comments raised in the comment letters received on the Draft EIR. Copies of the original comment letters are provided in Appendix FEIR-1 of this Final EIR.

## II. Responses to Comments

### B. Matrix of Comments Received on the Draft EIR

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

Letter No.	Commenter	Executive Summary	Project Description	Environmental Setting	Aesthetics	Air Quality	Biological Resources	Cultural Resources	Energy	Geology and Soils	Greenhouse Gas Emissions	Hazards and Hazardous Materials	Hydrology and Water Quality—Hydrology	Hydrology and Water Quality—Water Quality	Land Use	Noise	Population and Housing	Public Services—Fire Protection	Public Services—Police Protection	Public Services—Schools	Public Services—Parks and Recreation	Public Services—Libraries	Transportation	Tribal Cultural Resources	Utilities and Service Systems—Water Supply and Infrastructure	Utilities and Service Systems—Wastewater	Utilities and Service Systems—Solid Waste	Utilities and Service Systems—Energy Infrastructure	Cumulative Impact	Alternatives	General/Other	CEQA	Mitigation Measures	Support					
<b>STATE AND REGIONAL</b>																																							
1	Emily Gibson Associate Transportation Planner Local Development—IGR Caltrans District 7 100 S. Main St. (1-1-C) Los Angeles, CA 90012-3721																							X															
2	Emily Gibson Associate Transportation Planner Local Development—IGR Caltrans District 7 100 S. Main St., MS 16 Los Angeles, CA 90012-3721  Miya Edmonson IGR/CEQA Branch Chief Local Development—IGR Caltrans District 7 100 S. Main St., MS 16 Los Angeles, CA 90012-3721																																						X
3	Alex Campbell CEQA Assistant Project Manager Office of Environmental Health and Safety Los Angeles Unified School District 333 S. Beaudry Ave., Fl. 21 Los Angeles, CA 90017-1466																		X	X																	X		

(Continued)  
Matrix of Comments Received on the Draft EIR

Letter No.	Commenter	Executive Summary	Project Description	Environmental Setting	Aesthetics	Air Quality	Biological Resources	Cultural Resources	Energy	Geology and Soils	Greenhouse Gas Emissions	Hazards and Hazardous Materials	Hydrology and Water Quality—Hydrology	Hydrology and Water Quality—Water Quality	Land Use	Noise	Population and Housing	Public Services—Fire Protection	Public Services—Police Protection	Public Services—Schools	Public Services—Parks and Recreation	Public Services—Libraries	Transportation	Tribal Cultural Resources	Utilities and Service Systems—Water Supply and Infrastructure	Utilities and Service Systems—Wastewater	Utilities and Service Systems—Solid Waste	Utilities and Service Systems—Energy Infrastructure	Cumulative Impact	Alternatives	General/Other	CEQA	Mitigation Measures	Support																			
<b>ORGANIZATIONS</b>																																																					
4	Casey Maddren United Neighborhoods for Los Angeles cmaddren@gmail.com info@un4la.com					X					X								X									X																									
5	Alisha C. Pember Adams Broadwell Joseph & Cardozo 601 Gateway Blvd., Ste. 1000 South San Francisco, CA 94080-7037  Sheila M. Sannadan Legal Assistant Adams Broadwell Joseph & Cardozo 601 Gateway Blvd., Ste. 1000 South San Francisco, CA 94080-7037																																	X																			
6	Alisha C. Pember Adams Broadwell Joseph & Cardozo 601 Gateway Blvd., Ste. 1000 South San Francisco, CA 94080-7037  Sheila M. Sannadan Legal Assistant Adams Broadwell Joseph & Cardozo 601 Gateway Blvd., Ste. 1000 South San Francisco, CA 94080-7037																																	X																			
7	Alisha C. Pember Adams Broadwell Joseph & Cardozo 601 Gateway Blvd., Ste. 1000 South San Francisco, CA 94080-7037  Sheila M. Sannadan Legal Assistant Adams Broadwell Joseph & Cardozo 601 Gateway Blvd., Ste. 1000 South San Francisco, CA 94080-7037																																	X																			



(Continued)  
Matrix of Comments Received on the Draft EIR

Letter No.	Commenter	Executive Summary	Project Description	Environmental Setting	Aesthetics	Air Quality	Biological Resources	Cultural Resources	Energy	Geology and Soils	Greenhouse Gas Emissions	Hazards and Hazardous Materials	Hydrology and Water Quality—Hydrology	Hydrology and Water Quality—Water Quality	Land Use	Noise	Population and Housing	Public Services—Fire Protection	Public Services—Police Protection	Public Services—Schools	Public Services—Parks and Recreation	Public Services—Libraries	Transportation	Tribal Cultural Resources	Utilities and Service Systems—Water Supply and Infrastructure	Utilities and Service Systems—Wastewater	Utilities and Service Systems—Solid Waste	Utilities and Service Systems—Energy Infrastructure	Cumulative Impact	Alternatives	General/Other	CEQA	Mitigation Measures	Support																		
12	Lorrie J. LeLe Legal Assistant Adams Broadwell Joseph & Cardozo 601 Gateway Blvd., Ste. 1000 South San Francisco, CA 94080-7037					X																																														
13	Amalia Bowley Fuentes Legal Fellow Lozeau   Drury LLP 1939 Harrison St., Ste. 150 Oakland, CA 94612-3507  Richard Drury Lozeau   Drury LLP 1939 Harrison St., Ste. 150 Oakland, CA 94612-3507																																X																			
14	Brandon Young Office Manager Mitchell M. Tsai, Attorney at Law 139 S. Hudson Ave., Ste. 200 Pasadena, CA 91101-4990  SWRCC c/o Mitchell M. Tsai, Attorney at Law 139 S. Hudson Ave., Ste. 200 Pasadena, CA 91101-4990																																X																			
<b>INDIVIDUALS</b>																																																				
15	Rudraj Koppikar rudraj.koppikar@gmail.com																						X																													
16	Joseph Lazovsky yjmm22@gmail.com																						X									X																				
17	Alison Mannos 1554 N. Hobart Blvd., Apt. 6 Los Angeles, CA 90027-6925																															X																				

(Continued)  
Matrix of Comments Received on the Draft EIR

Letter No.	Commenter	Executive Summary	Project Description	Environmental Setting	Aesthetics	Air Quality	Biological Resources	Cultural Resources	Energy	Geology and Soils	Greenhouse Gas Emissions	Hazards and Hazardous Materials	Hydrology and Water Quality—Hydrology	Hydrology and Water Quality—Water Quality	Land Use	Noise	Population and Housing	Public Services—Fire Protection	Public Services—Police Protection	Public Services—Schools	Public Services—Parks and Recreation	Public Services—Libraries	Transportation	Tribal Cultural Resources	Utilities and Service Systems—Water Supply and Infrastructure	Utilities and Service Systems—Wastewater	Utilities and Service Systems—Solid Waste	Utilities and Service Systems—Energy Infrastructure	Cumulative Impact	Alternatives	General/Other	CEQA	Mitigation Measures	Support	
<b>LATE LETTERS</b>																																			
18	Jessica Bispels Land Use Specialist Solomon, Saltsman & Jamieson 426 Culver Blvd. Playa Del Rey, CA 90293-7766																															X			

## **II. Responses to Comments**

---

### **C. Comment Letters**

#### **Comment Letter No. 1**

Emily Gibson  
Associate Transportation Planner  
Local Development—IGR  
Caltrans District 7  
100 S. Main St. (1-1-C)  
Los Angeles, CA 90012-3721

#### **Comment No. 1-1**

My name is Emily Gibson and I am an LD-IGR Coordinator at Caltrans D7. I have been assigned your project, 5420 Sunset, to review.

#### **Response to Comment No. 1-1**

This introductory comment is noted for the record and will be provided to the decision-makers for their review and consideration.

#### **Comment No. 1-2**

I have some questions about the commercial VMT analysis that I am wondering if you can help me with. I've pasted a screenshot of the discussion of this analysis from the DEIR below:



*(a) Commercial VMT*

The Project would include up to 95,000 square feet of ground floor commercial uses, including market, retail, and restaurant, that would replace approximately 100,796 square

## IV.I Transportation

feet<sup>17</sup> of existing commercial supermarket, shopping center, and fast-food restaurant uses on the Project Site. Thus, the Project would result in a net reduction of 5,800 square feet in retail floor area and would not exceed the LADOT threshold of 50,000 square feet of net retail uses to warrant further VMT analysis. In addition, consistent with the existing uses, the Project does not propose the commercial uses as regionally serving retail uses and, therefore, would not lead to increased VMT. Therefore, the proposed commercial uses of the Project would not generate net new VMT and the Project would not result in a significant work VMT impact.

I get that the project will result in a net reduction in square feet (SF). I'm wondering though whether a reduction in SF necessarily means a reduction in VMT. For instance, I'm thinking that if a Barnes and Noble were replaced with an In N Out, this would likely result in a reduction in SF, but probably wouldn't result in a reduction in VMT. Thus, I am wondering, is there any other evidence I can review that this reduction in SF will also lead to a reduction in VMT? If missed this evidence in the DEIR or the appendices, sorry in advance!

**Response to Comment No. 1-2**

The comment requests clarification on the assumption that a net reduction in retail floor area would result in a reduction in VMT. As noted in Section d, Impact Analysis, of Section IV.I, Transportation, of the Draft EIR, the Project would replace the existing commercial uses currently occupying the Project Site and would result in an overall reduction in total commercial retail floor area<sup>1</sup>. Similar to the existing commercial uses on-

<sup>1</sup> *The existing 100,796 square feet of market, retail, and restaurant uses were occupied and operational when traffic data was collected and at the time of the MOU approval (Year 2016). However, approximately 18,525 square feet of retail space has since become vacant.*

site, the proposed commercial uses of the Project, including supermarket, and shopping center (retail and restaurant) uses, would serve the local community, and would not generate regional VMT. According to the *Technical Advisory on Evaluating Transportation Impacts in CEQA* (Office of Planning & Research [OPR], December 2018) (OPR Technical Advisory), because lead agencies will best understand their own communities and the likely travel behaviors of future project users, they are likely in the best position to decide when a project will likely be local serving. For these reasons, LADOT concurred with the findings of the transportation analysis, as detailed in *Inter-Departmental Correspondence: Updated Transportation Impact Assessment for Sunset/Western Mixed-Use Development Located at 5420 West Sunset Boulevard (ENV-2017-1084-EIR/ZA-2017-1083-MCUP-SPP-SPR)*, that the commercial uses of the Project would generally serve the local needs of the area. In addition, as stated in the OPR Technical Advisory (page 16), adding retail opportunities into the urban fabric improves retail destination proximity and therefore shortens trips and reduces VMT. Furthermore, as detailed in Appendix N, Transportation Analysis, of the Draft EIR, the commercial component of the Project would generate fewer trips than the existing commercial uses on-site, which would result in a net reduction in commercial VMT<sup>2</sup>. The Project would also implement a transportation demand management (TDM) program (Project Design Feature TR-PDF-1) consistent with City policies that would further reduce single occupancy vehicle trips and VMT.

### **Comment No. 1-3**

I also see in the above analysis that LADOT has a threshold of 50,000 SF of net retail uses to warrant further VMT analysis. The word “net” jumped out at me because in OPR’s Technical Advisory, while it does state that any retail development less than 50,000 SF can be considered local-serving and thus presumed to have a less than significant VMT impact, the advisory doesn’t say that a development that results in less than 50,000 SF net retail uses should be presumed to have a less than significant VMT impact. Of course, the City of LA has the discretion to choose its own VMT thresholds. I’m just looking for some additional evidence for why this net threshold was chosen over the threshold that OPR recommends.

### **Response to Comment No. 1-3**

As the commenter noted, the City as the Lead Agency has the discretion to select the appropriate thresholds of significance and methodologies for evaluating a project’s VMT, including whether or not to express the change in absolute terms, per capita, per household or in another measure. Per LADOT’s *Transportation Assessment Guidelines*

---

<sup>2</sup> With the recent vacancy of the retail space, the net increase in commercial retail floor area at the Project Site would continue to be less than 50,000 square feet. Thus, the conclusions of the transportation analysis would remain unchanged, and the commercial uses would not result in a significant VMT impact.

(July 2020; [TAG]), page 2-6, projects that propose less than 50,000 sf of net commercial uses, including retail and restaurant uses, would not meet the screening criteria for further VMT analysis, and the VMT impact related to the retail uses would be considered less than significant. The Project would result in a net decrease of 5,769 square feet of commercial uses and impacts were determined to be less than significant.

**Comment No. 1-4**

In sum, I'm wondering if you can provide/direct me to more evidence that shows why the commercial component of this project will have a less than significant VMT impact (as a side note, the Household VMT analysis makes a lot of sense to me). Please let me know your thoughts on the above when you get the chance. Thank you for your time and help!

**Response to Comment No. 1-4**

Refer to Response to Comment Nos. 1-2 and 1-3, above.

**Comment Letter No. 2**

Emily Gibson  
Associate Transportation Planner  
Local Development—IGR  
Caltrans District 7  
100 S. Main St., MS 16  
Los Angeles, CA 90012-3721

Miya Edmonson  
IGR/CEQA Branch Chief  
Local Development—IGR  
Caltrans District 7  
100 S. Main St., MS 16  
Los Angeles, CA 90012-3721

**Comment No. 2-1**

For your records, the attached letter is Caltrans District 7's response to the following project: **SCH # 2017061075, 5420 Sunset Project**. The Lead Agency under CEQA, which is the City of Los Angeles, is CC'ed on this email.

Please let me know if you have any questions or need anything else from me.

Thank you for including the California Department of Transportation (Caltrans) in the environmental review process for the above referenced DEIR. The Project proposes the development of a new mixed-use project on a 6.75-acre site located at 5420 Sunset Boulevard within the Hollywood Community Plan and Vermont/Western Station Neighborhood Area Specific Plan areas of the City of Los Angeles. It would replace an existing grocery store, vacant commercial space, fast-food restaurant, and associated parking areas with a new mixed-use development consisting of 735 multi-family residential units and up to 95,000 square feet of neighborhood-serving commercial uses, including market/retail and restaurant uses. The proposed uses would be provided within four buildings and supported by 1,419 vehicle parking spaces as well as 548 bicycle parking spaces. Overall, the Project would remove approximately 100,796 square feet of existing floor area and construct up to 882,250 square feet of new floor area, resulting in an increase of 781,454 square feet of net new floor area within the Project Site. The Floor Area Ratio (FAR) on the Project Site would be a maximum of 3 to 1. The City of Los Angeles is the Lead Agency under the California Environmental Quality Act (CEQA).

The project is located approximately 2,400 feet from the US-101 and SR-2 (also known as Santa Monica Boulevard) interchange.

---

**Response to Comment No. 2-1**

This introductory comment which summarizes the Project Description is noted for the record and will be provided to the decision-makers for their review and consideration. The Project Description identified above has been modified including, but not limited to, updates to open space, vehicular parking, and bicycle parking spaces. Refer to Section III, Revisions, Clarifications, and Corrections to the Draft EIR, of this Final EIR.

**Comment No. 2-2**

From reviewing the DEIR, Caltrans has the following comments.

Regarding the household Vehicle Miles Traveled (VMT) analysis, Caltrans supports the proposed Transportation Demand Management (TDM) strategies to reduce household VMT. These strategies include providing bike parking and implementing pedestrian network improvements.

**Response to Comment No. 2-2**

This comment, which provides support for the Project's proposed TDM strategies (pursuant to Project Design Feature TR-PDF-1), is noted for the record and will be forwarded to the decision-makers for their review and consideration.

**Comment No. 2-3**

Regarding the commercial VMT analysis, please provide additional evidence that a net reduction in square footage of commercial uses would necessarily result in a reduction in VMT. Also, please provide evidence for the LADOT threshold of 50,000 square feet of net retail uses to warrant a further VMT analysis. In the December 2018 Technical Advisory on Evaluating Transportation Impacts in CEQA by the California Governor's Office of Planning and Research (OPR) ([http://opr.ca.gov/docs/20190122-743\\_Technical\\_Advisory.pdf](http://opr.ca.gov/docs/20190122-743_Technical_Advisory.pdf)) it recommends a threshold of 50,000 square feet of total retail uses for conducting a more detailed VMT analysis.

**Response to Comment No. 2-3**

Refer to Response to Comment Nos. 1-2 and 1-3, above.

**Comment No. 2-4**

For more information on determining transportation impacts in terms of VMT on the State Highway System, see Caltrans' updated Vehicle Miles Traveled-Focused Transportation Impact Study Guide (TISG), dated May 2020 and released on Caltrans' website in July

2020: <https://dot.ca.gov/-/media/dot-media/programs/transportation-planning/documents/sb-743/2020-05-20-approved-vmt-focused-tisg-a11y.pdf>. Note that Caltrans' new TISG is largely based on OPR's 2018 Technical Advisory.

#### **Response to Comment No. 2-4**

As stated in the comment and noted in its *Vehicle Miles Traveled-Focused Transportation Impact Study Guide*, Caltrans recommends use of OPR's recommended thresholds for land use projects and notes a lead agency's discretion to choose the most appropriate methodology to evaluate a project's VMT. LADOT's TAG was adopted to conform to the requirements of SB 743, incorporate updates to the CEQA Guidelines with guidance provided in OPR's Technical Advisory, and be consistent with and implement the City's CEQA Threshold Guide.<sup>3</sup> Further, as stipulated in the Transportation Study, the VMT analysis was performed using the City's VMT Calculator Tool and adhering to the methodologies prescribed in the *City of Los Angeles VMT Calculator Documentation* (LADOT/Los Angeles Department of City Planning [LADCP], May 2020). As detailed in Section IV.I, Transportation, of the Draft EIR, the VMT Calculator estimated that the Project would generate average household VMT per capita of 4.6, which would fall below the significance threshold of 6.0 per capita for the Central Area Planning Commission (APC). Therefore, the Project's VMT impacts would be less than significant and no mitigation measures are required.

In addition, an analysis of Caltrans facilities was conducted in accordance with Caltrans' Transportation Impact Study Guide, as well as LADOT's *Interim Guidance for Freeway Safety Analysis* (May 1, 2020), which established interim guidance on conducting freeway safety analysis in accordance with SB 743 and OPR's Technical Advisory.<sup>4</sup> As detailed in pages 14 through 16 of Appendix N, Transportation Analysis, of the Draft EIR, the Project would not cause any queues along the nearby freeway off-ramp facilities to extend beyond the available capacity, and therefore, the Project would not result in a significant safety impact on Caltrans facilities. Thus, the Project would not require mitigation measures to address this less than significant impact.

---

<sup>3</sup> Refer to Section IV.I, Transportation, of the Draft EIR, pages IV.I-1 through IV.I-3 for a detailed discussion of SB 743 and the switch from vehicle delay to VMT as a measurement of transportation impacts. As discussed therein, SB 743 included the elimination of automobile delay, LOS, and other similar measures of vehicular capacity or traffic congestion as a basis for determining significant impacts for land use projects and plans in California.

<sup>4</sup> OPR, *Technical Advisory on Evaluating Transportation Impacts in CEQA*, December 2018.

**Comment No. 2-5**

The following information is included for your consideration. The mission of Caltrans is to provide a safe and reliable transportation network that serves all people and respects the environment. Furthermore, Caltrans encourages Lead Agencies to implement TDM strategies like those mentioned above, which will reduce VMT and Greenhouse Gas (GHG) emissions. To further reduce VMT, the City should consider providing less vehicle parking. The DEIR states that the project is offering the maximum number of vehicle parking spaces permitted based on the Hollywood Community Plan and Vermont/Western Station Neighborhood Area Specific Plan. We encourage the City to offer the minimum number of parking spaces permitted based on the Specific Plan. This is because parking research suggests that abundant car parking can encourage driving, induce VMT, and undermine a project's ability to encourage use of public transit options, like the Metro station near this project.

**Response to Comment No. 2-5**

This comment encourages the City to implement TDM strategies and suggests reducing the number of parking spaces provided. The Project will prepare and implement a TDM Program in accordance with Project Design Feature TR-PDF-1 which will meet City requirements. Furthermore, as discussed in Section IV.I, Transportation, of the Draft EIR, the Project would have a less than significant impact with respect to VMT. Therefore, while the Project provides the maximum number of parking spaces permitted under the Specific Plan, there is no requirement to further limit parking as CEQA does not require mitigation of less than significant impacts.

**Comment No. 2-6**

Finally, any transportation of heavy construction equipment and/or materials which requires use of oversized-transport vehicles on State highways will need a Caltrans transportation permit. Caltrans supports the measure in the proposed Construction Traffic Management Plan to limit construction traffic to off-peak periods, as this will minimize potential impacts on State facilities. If construction traffic is expected to cause issues on any State facilities, please send us this plan for our review.

**Response to Comment No. 2-6**

The comment states that transportation of heavy equipment and/or oversized vehicles on State highways requires a permit from Caltrans, and Caltrans supports that construction related traffic be limited to off-peak commute periods to the extent possible. The Project will comply with any Caltrans permit requirements regarding transportation of equipment or materials. This comment is noted for the record and will be forwarded to the decision makers for their review and consideration.

**Comment No. 2-7**

If you have any questions about these comments, please contact Emily Gibson, the project coordinator, at Emily.Gibson@dot.ca.gov, and refer to GTS # 07-LA-2017-03686.

**Response to Comment No. 2-7**

This comment, which concludes the letter and provides a point of contact, is noted for the record and will be forwarded to the decision-makers for their review and consideration.



---

**Comment Letter No. 3**

Alex Campbell  
CEQA Assistant Project Manager  
Office of Environmental Health and Safety  
Los Angeles Unified School District  
333 S. Beaudry Ave., Fl. 21  
Los Angeles, CA 90017-1466

**Comment No. 3-1**

The Los Angeles Unified School District's Office of Environmental Health and Safety would like the opportunity to comment on the project located at 5420 Sunset Boulevard. If you have any questions or concerns, please feel free to contact me.

Presented below are comments submitted on behalf of the Los Angeles Unified School District (LAUSD) regarding the subject project located at 5420 Sunset boulevard. [sic]

LAUSD is concerned about the potential negative impacts of the project on our students, staff and parents traveling to and from Grant Elementary School due to the fact that the project site is approximately 900 ft from the school. Based on the extent/location of the proposed development, it is our opinion that environmental impacts on the surrounding community (traffic, pedestrian safety) may occur. Since the project may have an environmental impact on LAUSD schools, recommended conditions designed to help reduce or eliminate potential impacts are included in this response.

**Response to Comment No. 3-1**

This comment expresses the commenter's belief that the Project would have a significant impact on LAUSD schools. As discussed in Section IV.H.3, Public Services—Schools, of the Draft EIR, impacts on LAUSD schools would be less than significant and as discussed in Section IV.I, Transportation, of the Draft EIR, impacts related to conflicts with plans, including those pertaining to pedestrian safety, as well as impacts related to hazardous geometric design features, would be less than significant. Specific issues raised by the commenter are addressed in Response to Comment Nos. 3-2 through 3-18, below. As discussed therein, the commenter did not provide any specific details related to unsafe conditions or provide significant evidence of an environmental impact. Lastly, as measured on ZIMAS, corner to corner, the Project Site is approximately 1,300 feet away from Grant Elementary School, not 900 feet as suggested by the commenter.

**Comment No. 3-2****Traffic/Transportation**

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

**Response to Comment No. 3-2**

This comment states that the Applicant is required to coordinate with LAUSD's Transportation Branch regarding school bus routes. The Applicant will adhere to all applicable LAUSD requirements if necessary and to the extent feasible; however, no significant impacts were identified in the Draft EIR and the commenter has not provided evidence of such. Nevertheless, the Project's Construction Traffic Management Plan (Project Design Feature TR-PDF-2) already includes a provision for advance, bilingual (English and Spanish) notification to nearby schools, notification to LAUSD's Transportation Branch will be added to the Construction Traffic Management Plan. This change is reflected in Section III, Revisions, Clarifications, and Corrections to the Draft EIR, of this Final EIR.

**Comment No. 3-3**

- School buses must have unrestricted access to schools.

**Response to Comment No. 3-3**

A Construction Traffic Management Plan (Project Design Feature TR-PDF-2) would be implemented to ensure that school bus access to schools would be unrestricted during construction activities. Specifically, the Construction Traffic Management Plan includes the following measures that would avoid interference with school bus routes:

- Advance, bilingual (English and Spanish) notification to adjacent property owners and occupants, and nearby schools, of upcoming construction activities, including durations and daily hours of operation.
- Prohibition of construction worker or equipment parking on adjacent residential streets.

- Temporary pedestrian and vehicular traffic controls during all construction activities adjacent to Sunset Boulevard, Western Avenue and Serrano Avenue, to ensure traffic safety on public rights-of-way. These controls shall include, but not be limited to, flag people trained in pedestrian safety at the Project Site.
- Temporary traffic control during all construction activities adjacent to public rights-of-way to improve traffic flow on public roadways (e.g., flag men).
- Scheduling of construction activities to reduce the effect on traffic flow on surrounding arterial streets.
- Construction-related vehicles/equipment shall not park on surrounding public streets.
- Safety precautions for pedestrians and bicyclists through such measures as alternate routing and protection barriers shall be implemented as appropriate, including along all identified Los Angeles Unified School District pedestrian routes to nearby schools.
- Scheduling of construction-related deliveries, haul trips, etc., so as to occur outside the commuter peak hours to the extent feasible, and so as to not impede nearby school drop-off and pick-up activities.
- The Applicant will notify LAUSD's Transportation Branch of the expected start and ending dates of construction for any portion of project construction that may affect traffic within school areas.<sup>5</sup>

In addition, operations of the Project would not impede school bus access to schools.

#### **Comment No. 3-4**

- During the construction phase, truck traffic and construction vehicles may not cause traffic delays for our transported students.

#### **Response to Comment No. 3-4**

Per SB 743, vehicle delay is no longer considered an impact within CEQA review.<sup>6</sup> Nonetheless, the Project includes Project Design Feature TR-PDF-2 which requires the

<sup>5</sup> Added per Response to Comment No. 3-3 above. Refer to Section III, Revisions, Clarifications, and Corrections to the Draft EIR, of this Final EIR.

<sup>6</sup> Refer to Section IV.I, Transportation, of the Draft EIR, pages IV.I-1 through IV.I-3 for a detailed discussion of SB 743 and the switch from vehicle delay to VMT as a measurement of transportation impacts. As (Footnote continued on next page)

preparation of a Construction Traffic Management Plan for LADOT review and approval. The Construction Traffic Management Plan would formalize how construction would be carried out and identify specific actions that would be required to reduce effects on the surrounding community. The Construction Traffic Management Plan will be based on the nature and timing of the specific construction activities and other projects in the vicinity of the Project Site, and will include, but not be limited to, the following elements, as appropriate:

- Advance, bilingual (English and Spanish) notification to adjacent property owners and occupants, and nearby schools, of upcoming construction activities, including durations and daily hours of operation.
- Prohibition of construction worker or equipment parking on adjacent residential streets.
- Temporary pedestrian and vehicular traffic controls during all construction activities adjacent to Sunset Boulevard, Western Avenue and Serrano Avenue, to ensure traffic safety on public rights-of-way. These controls shall include, but not be limited to, flag people trained in pedestrian safety at the Project Site.
- Temporary traffic control during all construction activities adjacent to public rights-of-way to improve traffic flow on public roadways (e.g., flag men).
- Scheduling of construction activities to reduce the effect on traffic flow on surrounding arterial streets.
- Construction-related vehicles/equipment shall not park on surrounding public streets.
- Safety precautions for pedestrians and bicyclists through such measures as alternate routing and protection barriers shall be implemented as appropriate, including along all identified Los Angeles Unified School District pedestrian routes to nearby schools.
- Scheduling of construction-related deliveries, haul trips, etc., so as to occur outside the commuter peak hours to the extent feasible, and so as to not impede nearby school drop-off and pick-up activities.

---

*discussed therein, SB 743 included the elimination of automobile delay, LOS, and other similar measures of vehicular capacity or traffic congestion as a basis for determining significant impacts for land use projects and plans in California.*

- Coordination with Metro to address the relocation of the bus stop located at the southeast corner of Sunset Boulevard and Western Avenue adjacent to the Project Site.

Therefore, even though vehicle delay is no longer considered an impact within CEQA review as per SB 743, the Project would not cause traffic delays for LAUSD students because the Construction Traffic Management Plan detailed above and in Section IV.I, Transportation, of the Draft EIR would maintain vehicle access on adjacent streets at all times. As no significant impacts were identified in the Draft EIR and the commenter has provided no evidence of such, the suggested mitigation measure will not be added to the Project mitigation measures.

### **Comment No. 3-5**

- During and after construction changed traffic patterns, lane adjustment, traffic light patterns, and altered bus stops may not affect school buses' on-time performance and passenger safety.

### **Response to Comment No. 3-5**

As discussed above in Response to Comment No. 3-4, the Construction Traffic Management Plan detailed above and in Section IV.I, Transportation, of the Draft EIR would maintain vehicle access on adjacent streets at all times. With respect to operation, the Project does not include changed traffic patterns, lane adjustments, or altered school bus stops that would affect school buses' on-time performance and passenger safety. As no significant impacts were identified in the Draft EIR and the commenter has provided no evidence of such, the suggested mitigation measure will not be added to the Project mitigation measures.

### **Comment No. 3-6**

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

### **Response to Comment No. 3-6**

Drivers of all vehicles in California, including construction trucks and vehicles, are required to adhere to the California Vehicle Code which includes construction trucks and other vehicles to stop when encountering school buses using red-flashing lights must stop indicators. As no significant impacts were identified in the Draft EIR and the commenter has provided no evidence of such, the suggested mitigation measure will not be added to the Project mitigation measures.

**Comment No. 3-7**

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

**Response to Comment No. 3-7**

All appropriate traffic controls are provided for under Project Design Feature TR-PDF-2 which requires the preparation of a Construction Traffic Management Plan for LADOT review and approval. Refer to Response to Comment No. 3-4, above. As no significant impacts were identified in the Draft EIR and the commenter has not provided evidence of an environmental impact, the suggested mitigation measure will not be added to the Project mitigation measures.

**Comment No. 3-8**

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

**Response to Comment No. 3-8**

As discussed above in Response to Comment No. 3-2, the Project's Construction Traffic Management Plan (TR-PDF-2) includes advanced bilingual (English and Spanish) notification to nearby schools of upcoming construction activities, including durations and daily hours of operation. As no significant impacts were identified in the Draft EIR and the commenter has provided no evidence of such, and because the measure suggested by the commenter is already included in the Project, no revisions are required.

**Comment No. 3-9**

- Parents dropping off their children must have access to the passenger loading areas.

**Response to Comment No. 3-9**

As noted above, the Project Site is approximately 1,300 feet away from the nearest school, Grant Elementary School, and would not affect passenger loading areas because the Project Site is separated from the school by multiple streets, including Sunset Boulevard, and the Project's haul route would not travel on any of the streets adjacent to the school. As no significant impacts were identified in the Draft EIR and the commenter has provided no evidence of such, the mitigation measure suggested by the commenter will not be added to the Project mitigation measures.

---

**Comment No. 3-10****Pedestrian Safety**

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

**Response to Comment No. 3-10**

Refer to Response to Comment No. 3-4, above. As discussed therein, the Project would include a Construction Traffic Management Plan (Project Design Feature TR-PDF-2) which will facilitate traffic and pedestrian movement, and minimize the potential conflicts between construction activities, street traffic, bicyclists, and pedestrians. Specific measures suggested by the commenter are addressed below in Response to Comment Nos. 3-11 through 3-18. As no significant impacts were identified in the Draft EIR and the commenter has provided no evidence of such, the following mitigation measures suggested by the commenter will not be added to the Project mitigation measures.

**Comment No. 3-11**

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

**Response to Comment No. 3-11**

As discussed above in Response to Comment No. 3-2 and 3-8, the Project's Construction Traffic Management Plan (TR-PDF-2) includes advanced bilingual (English and Spanish) notification to nearby schools of upcoming construction activities, including durations and daily hours of operation. As no significant impacts were identified in the Draft EIR and the commenter has provided no evidence of such, and because the measure suggested by the commenter is already included in the Project, no revisions are required.

**Comment No. 3-12**

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

**Response to Comment No. 3-12**

Refer to Response to Comment Nos. 3-2, 3-4, 3-8, and 3-11, above. The Project's Construction Traffic Management Plan (TR-PDF-2) already includes measures consistent with this request:

- Temporary pedestrian and vehicular traffic controls during all construction activities adjacent to Sunset Boulevard, Western Avenue and Serrano Avenue, to ensure traffic safety on public rights-of-way. These controls shall include, but not be limited to, flag people trained in pedestrian safety at the Project Site.
- Safety precautions for pedestrians and bicyclists through such measures as alternate routing and protection barriers shall be implemented as appropriate, including along all identified Los Angeles Unified School District pedestrian routes to nearby schools.

As no significant impacts were identified and the commenter has provided no evidence of such, and because the measure suggested by the commenter is already included in the Project, no revisions are required.

**Comment No. 3-13**

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

**Response to Comment No. 3-13**

Refer to Response to Comment Nos. 3-2, 3-4, 3-8, 3-11, and 3-12, above. The Project's Construction Traffic Management Plan (TR-PDF-2) already includes a provision for temporary pedestrian traffic controls. As no significant impacts are anticipated and the commenter has provided no evidence of such, the suggested mitigation measure will not be added to the Project mitigation measures.

**Comment No. 3-14**

- Haul routes are not to pass by any school, except when school is not in session.

**Response to Comment No. 3-14**

The Project's proposed haul route includes travel to and from the Hollywood Freeway along Western Avenue and Lexington Avenue, and does not pass by any LAUSD school facilities. As no significant impacts were identified in the Draft EIR and the



commenter has provided no evidence of such, the suggested mitigation measure will not be added to the Project mitigation measures.

### **Comment No. 3-15**

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

### **Response to Comment No. 3-15**

No staging or parking of Project construction vehicles will take place on or adjacent to school property as the closest school is Grant Elementary School approximately 1,300 feet away. Refer to Response to Comment Nos. 3-2, 3-3, and 3-7, above. In addition, the Project's Construction Traffic Management Plan (TR-PDF-2) includes the following measures related to construction worker and equipment parking:

- Prohibition of construction worker or equipment parking on adjacent residential streets.
- Construction-related vehicles/equipment shall not park on surrounding public streets.

As no significant impacts were identified in the Draft EIR and the commenter has provided no evidence of such, the suggested mitigation measure will not be added to the Project mitigation measures.

### **Comment No. 3-16**

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

### **Response to Comment No. 3-16**

This comment requests funding for crossing guards at the contractor's expense when construction activities may impact school crossings; however, the commenter does not identify any school crossings that would be impacted by the Project. As discussed above, the Project's Construction Traffic Management Plan (TR-PDF-2) includes numerous measures related to pedestrian safety including the following:

- Advance, bilingual (English and Spanish) notification to adjacent property owners and occupants, and nearby schools, of upcoming construction activities, including durations and daily hours of operation.

- Temporary pedestrian and vehicular traffic controls during all construction activities adjacent to Sunset Boulevard, Western Avenue and Serrano Avenue, to ensure traffic safety on public rights-of-way. These controls shall include, but not be limited to, flag people trained in pedestrian safety at the Project Site.
- Safety precautions for pedestrians and bicyclists through such measures as alternate routing and protection barriers shall be implemented as appropriate, including along all identified Los Angeles Unified School District pedestrian routes to nearby schools.
- Scheduling of construction-related deliveries, haul trips, etc., so as to occur outside the commuter peak hours to the extent feasible, and so as to not impede nearby school drop-off and pick-up activities.
- The Applicant will notify LAUSD's Transportation Branch of the expected start and ending dates of construction for any portion of project construction that may affect traffic within school areas.<sup>7</sup>

As no significant impacts are anticipated and there is no evidence of such, the suggested mitigation measure will not be added to the Project mitigation measures.

### **Comment No. 3-17**

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

### **Response to Comment No. 3-17**

As discussed in Section IV.H.2, Public Services—Police Protection, of this Draft EIR, the Project would include Project Design Feature POL-PDF-1 which requires implementation of temporary security measures including security fencing, lighting, and locked entry during construction. As no significant impacts are anticipated and there is no evidence of such, the suggested mitigation measure will not be added to the Project mitigation measures.

---

<sup>7</sup> *Added per Response to Comment No. 3-3 above. Refer to Section III, Revisions, Clarifications, and Corrections to the Draft EIR, of this Final EIR.*

**Comment No. 3-18**

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

**Response to Comment No. 3-18**

Project Design Feature POL-PDF-1 includes “regular and multiple security patrols during non construction hours”. Refer to Section IV.H.2, Public Services – Police Protection, page IV.H.2-10 of this Draft EIR. As discussed above in Response to Comment No. 3-17, Project Design Feature POL-PDF-1 also requires implementation of temporary security measures including security fencing, lighting, and locked entry during construction. Should additional security measures become necessary, the applicant/contractor will provide additional security measures as needed. As no significant impacts were identified in the Draft EIR and the commenter has provided no evidence of such, and because the measure suggested by the commenter is already included in the Project, the suggested mitigation measure will not be added to the Project mitigation measures.

**Comment No. 3-19**

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

Thank you for your attention to this matter. If you need additional information, please contact me at (323) 286-7377.

**Response to Comment No. 3-19**

As discussed above in Response to Comment Nos. 3-2 through 3-18, the Draft EIR adequately addressed all of the issues raised by the commenter. No new significant environmental impacts were identified in the Draft EIR and there are no unmitigated impacts to any school facility, and the comments and suggested mitigation measures are not supported by substantial evidence. As such, the suggested measures do not need to be included as conditions of approval or be added to the Project’s mitigation measures.

**Comment Letter No. 4**

Casey Maddren  
United Neighborhoods for Los Angeles  
cmaddren@gmail.com  
info@un4la.com

**Comment No. 4-1**

United Neighborhoods for Los Angeles would like to submit the attached comments on the EIR for the project referenced above.

Could you please send a brief e-mail to confirm that you received these comments?

United Neighborhoods for Los Angeles (UN4LA) is a community group formed to foster better planning and better government within the County of Los Angeles, and all cities and unincorporated areas contained within the County's borders. UN4LA's primary areas of focus are planning, development, the environment and budget/finance.

UN4LA has reviewed the DEIR for the 5420 Sunset project, and we believe the project will have significant impacts with regard to Air Quality, Public Services/Police, and Utilities/Solid Waste. Please see our detailed comments below.

**Response to Comment No. 4-1**

This introductory comment is noted for the record and will be forwarded to the decision-makers for their review and consideration. Specific issues raised by the commenter are addressed in Response to Comment Nos. 4-2 through 4-10, below.

**Comment No. 4-2****AIR QUALITY**

The EIR claims that the Project is consistent with the City's Air Quality Element, but in fact, the City has consistently failed to meet the goals and objectives of this Element of the General Plan. The City has assumed for years that simply building high-density projects near transit would reduce vehicle trips and associated emissions. In reality, the City has made no effort to actually assess vehicle miles travelled (VMT) and associated emissions, including greenhouse gas (GHG) emissions. The fact is that, in spite of the approval of thousands of new residential units near transit over the past decade, transit ridership has declined steadily since 2014. At the same time, per capita vehicle ownership has risen. See the following report from the UCLA Institute of Transportation Studies for details.

Falling Transit Ridership, UCLA Institute of Transportation Studies, January 2018  
[https://scag.ca.gov/sites/main/files/file-attachments/its\\_scag\\_transit\\_ridership.pdf](https://scag.ca.gov/sites/main/files/file-attachments/its_scag_transit_ridership.pdf)

### **Response to Comment No. 4-2**

This comment claims the Project is inconsistent with the City's Air Quality Element in the General Plan but bases the purported inconsistency on the City's failure to meet the goals and objectives of this Element, not the Project. Whether or not the City is meeting the goals and objectives of the Air Quality Element is not relevant to the Project's consistency and does not raise a CEQA impact issue in the EIR. Furthermore, this comment states that transit ridership has recently declined. While this claim may be supported by the study cited by the commenter, this information does not invalidate the fact that the Project Site is located within a Transit Priority Area pursuant to SB 743 and within a designated High Quality Transit Area under the Southern California Association of Government's (SCAG) Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS). Any adjustments to these designations based on transit ridership would be the responsibility of the City or SCAG and not individual projects. This comment does not raise any specific issues with the Project or deficiencies in the EIR, and the commenter failed to provide substantial evidence of such. Nevertheless, this comment is noted for the record and will be forwarded to the decision makers for their review and consideration.

### **Comment No. 4-3**

#### **GREENHOUSE GAS EMISSIONS**

We are puzzled by a number of seeming inconsistencies in Appendix B, Air Quality & GHG Emissions. Under the section entitled Sunset and Western—Project Operations (2026), we have compared tables 4.2 through 4.4, and can not reconcile what appear to be conflicting calculations. Starting with the first....

#### *Table 4.2 Trip Summary Information*

*Apartments High Rise*  
*Enclosed Parking with Elevator*  
*Regional Shopping Center*  
*Supermarket*  
*User Defined Commercial*  
*User Defined Residential*

All values for the first four categories are zero, and it appears that all trip summary information has been assigned to User Defined Commercial and User Defined Residential.

However, when we look at the next table...

*Table 4.3 Trip Type Information*

...we see that it contains values in all categories. This seems to conflict with Table 4.2. Furthermore, when we look at the following table....

*Table 4.4 Fleet Mix*

...we find that, not only does it contain values in all categories, but all values in each category appear to be equal. We don't understand how all values in each category can be equal, and would appreciate an explanation of the methodology used to arrive at these numbers. We would also appreciate an explanation of the fact that the values for the first four categories in Table 4.2 are given as zero, while the following tables contain values which seem to indicate impacts from vehicular activity.

**Response to Comment No. 4-3**

Appendix B-1 (Air Quality and Greenhouse Gas Methodology) of the Draft EIR provided a discussion of the methodology pertaining to CalEEMod modeling. Specifically, mobile source operational emissions were calculated based on the Project VMT estimates provided by Gibson Transportation Consulting.<sup>8</sup> As discussed in Section IV.I, Transportation, of the Draft EIR, to calculate peak daily trip estimates, the Los Angeles Department of Transportation (LADOT) VMT Calculator was used. Trip generation for land uses within CalEEMod was previously calculated based on survey data collected by the Institute of Transportation Engineers (ITE). However, these ITE trip generation rates were based on data collected at suburban, single-use, free standing sites, which may not be representative of urban mixed-use environments. Beginning in 2019, the USEPA has sponsored a study to collect travel survey data from mixed-use developments in order provide a more representative trip generation rate for multi-use sites. Results of the USEPA survey indicate that trip generation and VMT are affected by factors such as resident and job density, availability of transit, and accessibility of biking and walking paths. Based on these factors, the USEPA has developed equations known as the EPA Mixed-Use Development (MXD) model to calculate trip reductions for multi-use developments.<sup>9</sup> The LADOT VMT Calculator incorporates the USEPA MXD model and accounts for project

---

<sup>8</sup> *CEQA Thresholds Analysis for the Sunset and Western Project. Gibson Transportation Consulting, March 2020.*

<sup>9</sup> *USEPA, Mixed-Use Trip Generation Model, [www.epa.gov/smartgrowth/mixed-use-trip-generation-model](http://www.epa.gov/smartgrowth/mixed-use-trip-generation-model), accessed February 18, 2021.*

features such as increased density and proximity to transit, which would reduce VMT and associated fuel usage in comparison to free-standing sites.

In order to be consistent with the LADOT VMT Calculator trip/VMT generation rates, modifications within CalEEMod were required. This comment correctly cites that all trip summary information included in Table 4.2 (Trip Summary Information) has been assigned to User Defined Commercial and User Defined Residential. These two new categories account for the Project's total number of trips (User Defined Commercial) and the total number of pass-by trips (User Defined Residential). The term commercial or residential is not relevant to the analysis, but used simply as categories to capture total mobile source emissions. Please refer to Page B-92 of Appendix B of the Draft EIR for a summary of these calculations. As shown therein, total trips are consistent with Appendix N (Transportation Analysis) of the Draft EIR.

This comment also correctly identifies that Table 4.3 (Trip Type Information) contains values in all categories. As discussed above, only the two user-defined categories were used in the analysis which accounts for the total Project mobile source emissions. While the other categories still include CalEEMod default data, they could have also been zeroed out. This was unnecessary since the number of trips was set to zero for the specific land uses (i.e., multiplying by zero). Please note that the User Defined Commercial included 100 percent primary trips to avoid CalEEMod corrections that shorten trip lengths. User Defined Residential included 100% pass-by trips to account for the Project-related trips that result in pass-by trips.

This comment also correctly identifies that Table 4.4 (Fleet Mix) contain values in all categories, but all values are the same for each land use. Only the two user-defined categories were used in the analysis which accounts for the total Project mobile source emissions. The values are the same as the fleet mix reflects the CalEEMod default regional average within Los Angeles County. No changes to the default fleet mix were warranted for the Project. While the other categories still include CalEEMod default data, they could have also been zeroed out. This was unnecessary since the number of trips was set to zero for the specific land uses (i.e., multiplying by zero).

Please refer to Appendix B, page B-92, VMT Calculations for CalEEMod Inputs which provides details on how trip rates and VMT data was calculated for input into CalEEMod. There are no inconsistencies in the calculations and the analysis was conducted appropriately.

**Comment No. 4-4****PUBLIC SERVICES—POLICE**

On page 7 under LAPD Crime Statistics, the EIR says:

*Table IV.H.2-1 on page IV.H.2-8 shows a comparison of the Hollywood Division and Citywide data regarding crimes reported by the LAPD based on only residential populations. As shown therein, based on the most recent complete year data made available from LAPD for the year 2019, approximately 6,816 crimes were reported within the Hollywood Division<sup>14</sup> [sic] and 108,895 crimes were reported citywide. Based on the residential service population of the Hollywood Community Police Station, approximately 41.31 crimes per 1,000 residents (0.0207 crime per capita) were reported in the Hollywood Division and 27.09 crimes per 1,000 residents (0.0271 crime per capita) were experienced Citywide.*

Interestingly, the EIR correctly calculates that the Hollywood Division has 41.31 crimes per 1,000 residents, but immediately after states that this amounts to a per capita crime rate of 0.0207 per capita. The EIR goes on to compare this to a Citywide crime rate of 0.0271 per capita. This gives the misleading impression that crime in the Hollywood area is much lower than Citywide. The EIR must be corrected to say that the per capita crime rate in Hollywood Division is 0.0413, to show that the crime rate in Hollywood is actually far higher than the Citywide average.

**Response to Comment No. 4-4**

This comment points out a typographical error in the Draft EIR. This correction is reflected in Section III, Revisions, Clarifications, and Corrections to the Draft EIR, of this Final EIR. The error does not affect the determination of less than significant impacts on police services.

**Comment No. 4-5**

The Project proposes 735 new residential units. The US Census estimates that the average Los Angeles household contains 2.8 persons. This means that the Project could bring over 2,000 new residents to the area covered by the Hollywood Division. Since the Hollywood Division serves approximately 165,000 residents, this means that the Project could result in an increase of well over 1% in the population served by Hollywood Division. Given the fact that the crime rate in the area is already well above the Citywide average, it is questionable whether the Project can be adequately served by existing law enforcement services.

The EIR also states:



*Based on the number of sworn officers staffing the Hollywood Community Police Station (381 sworn officers), the 2019 ratio of crimes per officer was 17.9 crimes per officer.<sup>20</sup> [sic] In comparison, the citywide (10,033 sworn officers) ratio is 10.85 crimes per officer.<sup>21</sup> [sic] Thus, the Hollywood Division has a higher crime-per-officer ratio when compared to the City as a whole.*

It is clear that with a rate of 17.9 crimes per officer as opposed to 10.85 crimes per officer, Hollywood has a much higher rate of crime per officer than the Citywide average. Again, we must ask if police services are adequate to serve the proposed Project.

### **Response to Comment No. 4-5**

As discussed in Section IV.H.2, Public Services—Police Protection, of the Draft EIR, using a five-year American Community Survey average of 2.41 persons per multi-family unit, the Project would result in 1,771 residents. The Draft EIR fully discloses this increase in population on page IV.H.2-13. With respect to the number of crimes per officer, this data is provided for informational purposes and is not a metric used in the impact analysis. Lastly, as stated on page IV.H.2-14, consistent with *City of Hayward v. Trustees of California State University* (2015) 242 Cal.App.4th 833, significant impacts under CEQA consist of adverse changes in any of the physical conditions within the area of a project, and the protection of the public safety is the first responsibility of local government where local officials have an obligation to give priority to the provision of adequate public safety services. Using the appropriate significance threshold, the Draft EIR determined the Project would not result in a need to construct any new police facilities or modify any existing facilities. Accordingly, the Project would not result in substantial adverse physical impacts associated with the provision of new or physically altered government facilities, or the need for new or physically altered governmental facilities the construction of which would cause significant environmental impacts. Impacts with regard to police protection would be less than significant. (Draft EIR page IV.H.2-15.)

### **Comment No. 4-6**

#### **UTILITIES—SOLID WASTE**

It is disturbing that the EIR has relegated the discussion of solid waste to Chapter VI, Other CEQA Considerations. The City has failed miserably to comply with State law with regard to recycling, and some of the statements in the EIR regarding compliance with existing law have no basis in fact. For instance, the EIR says:

*The Project would generate a net increase of approximately 9,096 net pounds of solid waste more per day. Projected out annually, this would result in approximately 1,660 tons per year of solid waste. However, it is noted that the estimated solid waste is conservative*

because the waste generation factors used do not account for recycling or other waste diversion measures, such as compliance with AB 341, which requires California commercial enterprises and public entities that generate 4 or more cubic yards per week of waste, and multi-family housing with five or more units, to adopt recycling practices, or implementation of the City's upcoming Zero Waste LA franchising system, which is expected to result in a reduction of landfill disposal Citywide with a goal of reaching a Citywide recycling rate of 90 percent by the year 2025. [Emphasis added.]

The Zero Waste Franchising System, AKA RecycLA, has been in effect for years now. It is currently diverting less than 25% of the City's solid waste to recycling. The following statistics are from a response by LASAN to Public Records Act request:

Residential	2019	2020
Disposed	1,175,115	1,378,659
Recycled (green + blue)	460,868	393,668

Commercial	2,019	2,020
Disposed	1,599,231	1,365,014
Incinerated	1,795	3,222
Recycled (green + blue)	129,424	145,567

Total	2,019	2,020
Disposed	2,774,346	2,743,673
Incinerated	1,795	3,222
Recycled (green + blue)	590,292	539,235

#### **Response to Comment No. 4-6**

Regarding the placement of the discussion of solid waste, the Project's impacts regarding solid waste are discussed in the Initial Study for the Project, which is included in Appendix A of the Draft EIR. The Initial Study determined the landfills that serve the Project Site would have sufficient permitted capacity to accommodate the solid waste that would be generated by the construction and operation of the Project.<sup>10</sup> Therefore, impacts were determined to be less than significant, and no mitigation measures were required. No further evaluation of this topic in an EIR was required. Nevertheless, based on minor

<sup>10</sup> Refer to the Initial Study included as Appendix A of the Draft EIR, pages B-57 and B-58.

changes to the Project Description and City methodology, specifically as it relates to calculating service populations, the solid waste analysis was updated and included in Section VI, Other CEQA Considerations of the Draft EIR. As discussed therein (see pages VI-24 and VI-25), the estimated annual net increase in solid waste that would be generated by the Project represents approximately 0.04 percent of the 4,151,768 tons of solid waste disposed of by the City of Los Angeles in 2018 (the most recent year for which data is available) and approximately 0.002 percent of the remaining capacity at the Class III landfills serving the County. Furthermore, it is noted that the estimated solid waste is conservative because the waste generation factors used do not account for recycling or other waste diversion measures, such as compliance with Assembly Bill (AB) 341, which requires California commercial enterprises and public entities that generate 4 or more cubic yards per week of waste, and multi-family housing with five or more units, to adopt recycling practices, or implementation of the City's upcoming Zero Waste LA franchising system, which is expected to result in a reduction of landfill disposal Citywide with a goal of reaching a Citywide recycling rate of 90 percent by the year 2025. As such, the conclusion in the Initial Study remains unchanged.

This comment further states that the City is not meeting its waste diversion goals. Under state law, waste diversion is the responsibility of jurisdictions, not individual persons or projects. Nevertheless, the Project would comply with all applicable laws related to waste diversion and recycling. Specifically, the Project would provide adequate storage areas in accordance with the City of Los Angeles Space Allocation Ordinance (Ordinance No. 171,687), which requires that development projects include a recycling area or room of specified size on the Project Site. The Project would also comply with AB 939, AB 341, AB 1826, and City waste diversion goals, as applicable, by providing clearly marked, source sorted receptacles to facilitate recycling. Furthermore, during construction, the Project would implement a construction waste management plan to recycle and/or salvage a minimum of 75 percent of non-hazardous demolition and construction debris consistent with AB 341 and construction and demolition waste would be delivered to City-certified processors for diversion of recyclable materials per City Ordinance 181,519 and solid waste and recycling services per City Ordinance 184,665.

#### **Comment No. 4-7**

Due to s [sic] statewide recycling crisis, markets for recyclable materials have collapsed, and there is no realistic path for the City of LA to meet AB 939's requirement of diverting 50% of solid waste to recycling.

*California faces recycling crisis after China tightens rules, ABC News, December 2018*  
<https://abc7news.com/chinese-recycling-ban-china-recology-berkeley-ecology-center/4832542/>

The Statewide Commission on Recycling Markets and Curbside Recycling recently issued a report that estimates that California is nowhere near meeting goals for solid waste reductions under AB 341. See page 10 for the following assessment:

In 2012, the California Legislature declared under AB 341 (Chesbro) that it is the policy goal of the state that not less than 75% of solid waste generated be source reduced, recycled, or composted by the year 2020, and annually thereafter. The graphs that follow demonstrate that while California's communities have made great strides in recycling in some respects over the years, a 75% recovery rate will not be achieved in 2020. In fact, CalRecycle projects California's recovery rate in 2020 to be about half of that, closer to 37%. [Emphasis added.]

*Statewide Commission on Recycling Markets and Curbside Recycling, December 2020*  
<https://drive.google.com/drive/folders/17URSu4dubsoX4qV0qH3KciSWZhV595o5>

#### **Response to Comment No. 4-7**

This comment is unrelated to the environmental review for the Project. Therefore, it is noted for the record and will be forwarded to the decision-makers for their review and consideration. Nevertheless, as stated in Response to Comment No. 4-6 above, the Project would comply with all applicable laws related to waste diversion and recycling. Specifically, the Project would provide adequate recyclable storage areas in accordance with the City of Los Angeles Space Allocation Ordinance (Ordinance No. 171,687), which requires that development projects include a recycling area or room of specified size on the Project Site. The Project would also comply with AB 939, AB 341, AB 1826, and City waste diversion goals, as applicable, by providing clearly marked, source sorted receptacles to facilitate recycling. Furthermore, during construction, the Project would implement a construction waste management plan to recycle and/or salvage a minimum of 75 percent of non-hazardous demolition and construction debris consistent with AB 341 and construction and demolition waste would be delivered to City-certified processors for diversion of recyclable materials per City Ordinance 181,519. and solid waste and recycling services per City Ordinance 184,665

#### **Comment No. 4-8**

The EIR states that, pursuant to AB 341, the Project will adopt recycling practices, but does not list a single one, and provides no data on what percentage of sold waste might be recycled.

---

**Response to Comment No. 4-8**

Refer to Response to Comment No. 4-6 above. As stated therein, the Project would comply with all applicable laws related to waste diversion and recycling. Specifically, the Project would provide adequate storage areas in accordance with the City of Los Angeles Space Allocation Ordinance (Ordinance No. 171,687), which requires that development projects include a recycling area or room of specified size on the Project Site. The Project would also comply with AB 939, AB 341, AB 1826, and City waste diversion goals, as applicable, by providing clearly marked, source sorted receptacles to facilitate recycling. Furthermore, during construction, the Project would implement a construction waste management plan to recycle and/or salvage a minimum of 75 percent of non-hazardous demolition and construction debris consistent with AB 341 and construction and demolition waste would be delivered to City-certified processors for diversion of recyclable materials per City Ordinance 181,519 and solid waste and recycling services per City Ordinance 184,665.

**Comment No. 4-9**

The City will argue that this is not an issue, since adequate capacity exists to send all the Project's solid waste to landfill. However, landfills generate significant amounts of greenhouse gasses, and the EIR does not accurately assess greenhouse gas emissions from the Project under this scenario.

*Basic Information about Landfill Gas from US EPA*

<https://www.epa.gov/lmop/basic-information-about-landfill-gas>

In Appendix B, Air Quality & Greenhouse Gas Emissions, Table 8.2, Waste by Land Use, shows that the Project's unmitigated output of CO<sub>2</sub>e would be 379.4694 MT/yr. Under the same heading, it claims that the mitigated CO<sub>2</sub>e output would be 89.5548 MT/yr, in other words, about 25% of unmitigated emissions. This assumes a rate of diversion to recycling of about 75%. These figures do not match up with reality. The statistics cited above from LASAN show that, in fact, only about 20% of solid waste collected in the City of LA is diverted to recycling. Therefore, the EIR fails by a large margin to adequately assess GHG emissions from solid waste.

**Response to Comment No. 4-9**

As stated in Response to Comment No. 4-6 above, the Project would comply with all applicable laws related to waste diversion and recycling. Specifically, the Project would provide adequate storage areas in accordance with the City of Los Angeles Space Allocation Ordinance (Ordinance No. 171,687), which requires that development projects include a recycling area or room of specified size on the Project Site. The Project would

also comply with AB 939, AB 341, AB 1826, and City waste diversion goals, as applicable, by providing clearly marked, source sorted receptacles to facilitate recycling. Furthermore, during construction, the Project would implement a construction waste management plan to recycle and/or salvage a minimum of 75 percent of non-hazardous demolition and construction debris consistent with AB 341 and construction and demolition waste would be delivered to City-certified processors for diversion of recyclable materials per City Ordinance 181,519 and solid waste and recycling services per City Ordinance 184,665. The waste diversion rate assumed in the GHG analysis was cited on Page IV.D-73 which references a 76.4 percent diversion rate within the City of Los Angeles. What the solid waste collector does with the Project's recycled waste is not in the control of the Project and the commenter provides no substantial evidence of a significant GHG impact.

---

**Comment Letter No. 5**

Alisha C. Pember  
Adams Broadwell Joseph & Cardozo  
601 Gateway Blvd., Ste. 1000  
South San Francisco, CA 94080-7037

Sheila M. Sannadan  
Legal Assistant  
Adams Broadwell Joseph & Cardozo  
601 Gateway Blvd., Ste. 1000  
South San Francisco, CA 94080-7037

**Comment No. 5-1**

Please see the attached correspondence.

If you have any questions, please contact Sheila Sannadan.

We are writing on behalf of Coalition for Responsible Equitable Economic Development (“CREED LA”) to request **immediate access** to any and all documents referenced, incorporated by reference, or relied upon in the Draft Environmental Impact Report (“DEIR”) prepared for the 5420 Sunset Project (Case No. ENV-2017-1084-EIR) (“Project”), proposed by 5420 Sunset Boulevard LP, LLC (“Applicant”). This request excludes any documents that are currently available by URL link in the “References” sections of the DEIR.

**Response to Comment No. 5-1**

This comment requests immediate access to any and all documents referenced, incorporated by reference, or relied upon in the Draft EIR, excluding those already available by URL links in Section VII, References, of the Draft EIR. Access to the requested documents was provided by the City on August 30, 2021.

**Comment No. 5-2**

The Project proposes the development of four six-story mixed-use buildings across 882,250 square feet. The Project consists of 735 multi-family residential units, as well as residential lobbies and leasing offices, pools, spas, and recreational facilities, and up to 95,000 square feet of commercial uses, including market/retail and restaurant uses. The Project also proposes approximately 96,800 square feet of open space including landscaped courtyards, a public plaza, and landscaped paseos, as well as 1,419 parking

spaces in two subterranean parking levels and one at-grade parking level, and 548 bicycle parking spaces. The Project site is located at 5420 Sunset Boulevard, in the City of Los Angeles.

### **Response to Comment No. 5-2**

This comment summarizing the Project Description is noted for the record and will be forwarded to the decision-makers for their review and consideration. The Project Description identified above has been modified including, but not limited to, updates to open space, vehicular parking, and bicycle parking spaces. Refer to Section III, Revisions, Clarifications, and Corrections to the Draft EIR, of this Final EIR.

### **Comment No. 5-3**

Our request for ***immediate access*** to all documents referenced in the DEIR is made pursuant to the California Environmental Quality Act (“CEQA”), which requires that all documents referenced, incorporated by reference, and relied upon in an environmental review document be made available to the public for the entire comment period.<sup>1</sup> I will be contacting you to arrange for the review/duplication/transmission of the requested records soon. In the interim, if you have any questions or concerns regarding this request, my contact information is:

#### **U.S. Mail**

Sheila M. Sannadan  
Adams Broadwell Joseph & Cardozo  
601 Gateway Blvd., Ste. 1000  
South San Francisco, CA 94080-7037

#### **Email**

[ssannadan@adamsbroadwell.com](mailto:ssannadan@adamsbroadwell.com)

<sup>1</sup> See *Public Resources Code* § 21092(b)(1) (stating that “all documents referenced in the draft environmental impact report” shall be made “available for review”); *14 Cal. Code Reg. § 15087(c)(5)* (stating that all documents incorporated by reference in the EIR... shall be readily accessible to the public”); see also *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova (2007) 40 Cal.4th 412, 442, as modified (Apr. 18, 2007) (EIR must transparently incorporate and describe the reference materials relied on in its analysis); Santiago County Water District v. County of Orange (1981) 118 Cal.App.3rd 818, 831 (“[W]hatever is required to be considered in an EIR must be in that formal report...”), internal citations omitted.*

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

### **Response to Comment No. 5-3**

Refer to Response to Comment No. 4-1. This comment, which concludes the letter by reiterating the request for reference documents and providing a point of contact, is noted



for the record and will be forwarded to the decision-makers for their review and consideration.

## **Comment Letter No. 6**

Alisha C. Pember  
Adams Broadwell Joseph & Cardozo  
601 Gateway Blvd., Ste. 1000  
South San Francisco, CA 94080-7037

Sheila M. Sannadan  
Legal Assistant  
Adams Broadwell Joseph & Cardozo  
601 Gateway Blvd., Ste. 1000  
South San Francisco, CA 94080-7037

### **Comment No. 6-1**

Please see the attached correspondence.

If you have any questions, please contact Sheila Sannadan.

We are writing on behalf of Coalition for Responsible Equitable Economic Development (“CREED LA”) to request access to any and all public records referring or related to the 5420 Sunset Project (Case No. ENV-2017-1084-EIR) (“Project”), proposed by 5420 Sunset Boulevard LP, LLC (“Applicant”). This request includes, but is not limited to, any and all materials, applications, correspondence, resolutions, memos, notes, analyses, electronic mail messages, files, maps, charts, and/or any other documents related to the Project.

### **Response to Comment No. 6-1**

This comment requests immediate access to any and all public records referring to or related to the Project. Access to the requested documents was provided by the City on August 25, 2021.

### **Comment No. 6-2**

The Project proposes the development of four six-story mixed-use buildings across 882,250 square feet. The Project consists of 735 multi-family residential units, as well as residential lobbies and leasing offices, pools, spas, and recreational facilities, and up to 95,000 square feet of commercial uses, including market/retail and restaurant uses. The Project also proposes approximately 96,800 square feet of open space including landscaped courtyards, a public plaza, and landscaped paseos, as well as 1,419 parking spaces in two subterranean parking levels and one at-grade parking level, and 548 bicycle

parking spaces. The Project site is located at 5420 Sunset Boulevard, in the City of Los Angeles.

### **Response to Comment No. 6-2**

This comment summarizing the Project Description is noted for the record and will be forwarded to the decision-makers for their review and consideration. The Project Description identified above has been modified including, but not limited to, updates to open space, vehicular parking, and bicycle parking spaces. Refer to Section III, Revisions, Clarifications, and Corrections to the Draft EIR, of this Final EIR.

### **Comment No. 6-3**

We are making this request pursuant to the California Public Records Act (“Act”) and request the above documents pursuant to section 6253 of the Act. In addition, we request these materials pursuant to Article I, section 3(b) of the California Constitution, which provides a constitutional right of access to information concerning the conduct of the government. Article I, section 3(b) provides that any statutory right to information shall be broadly construed to provide the greatest access to government information and further requires that any statute that limits the right of access to information be narrowly construed.

If any of the requested items are available on the Internet, we request that the City of Los Angeles provide us with a direct link for downloading the responsive documents. Pursuant to Government Code section 6253.9, if the requested documents are in electronic format, please send them via a file hosting program such as Dropbox. Alternatively, if the electronic records are 10 MB or less (or can be easily broken into chunks of 10 MB or less), they can be emailed as attachments.

We will pay for any direct costs of duplication associated with filling this request up to \$200. However, please contact me at (650) 589-1660 with a cost estimate before copying/scanning the materials.

My contact information is:

#### **U.S. Mail**

Sheila M. Sannadan  
Adams Broadwell Joseph & Cardozo  
601 Gateway Blvd., Ste. 1000  
South San Francisco, CA 94080-7037

#### **Email**

[ssannadan@adamsbroadwell.com](mailto:ssannadan@adamsbroadwell.com)

I will be contacting you to arrange for duplication/transmission of the documents. If you have any questions, please call our South San Francisco office at (650) 589-1660. Thank you for your assistance with this matter.

**Response to Comment No. 6-3**

Refer to Response to Comment No. 5-1. This comment, which concludes the letter by reiterating the public records act request and providing a point of contact, is noted for the record and will be forwarded to the decision-makers for their review and consideration.

**Comment Letter No. 7**

Alisha C. Pember  
Adams Broadwell Joseph & Cardozo  
601 Gateway Blvd., Ste. 1000  
South San Francisco, CA 94080-7037

Sheila M. Sannadan  
Legal Assistant  
Adams Broadwell Joseph & Cardozo  
601 Gateway Blvd., Ste. 1000  
South San Francisco, CA 94080-7037

**Comment No. 7-1**

Please see the attached correspondence.

If you have any questions, please contact Sheila Sannadan.

We are writing on behalf of Coalition for Responsible Equitable Economic Development (“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 5420 Sunset Project (Case No. ENV-2017-1084-EIR) (“Project”), proposed by 5420 Sunset Boulevard LP, LLC (“Applicant”).

**Response to Comment No. 7-1**

The Commenter was added to the Project’s notification list as requested. It should be noted that the Commenter’s client, CREED LA, is included on the City’s standard distribution list and is notified of all EIRs.

**Comment No. 7-2**

The Project proposes the development of four six-story mixed-use buildings across 882,250 square feet. The Project consists of 735 multi-family residential units, as well as residential lobbies and leasing offices, pools, spas, and recreational facilities, and up to 95,000 square feet of commercial uses, including market/retail and restaurant uses. The Project also proposes approximately 96,800 square feet of open space including landscaped courtyards, a public plaza, and landscaped paseos, as well as 1,419 parking spaces in two subterranean parking levels and one at-grade parking level, and 548 bicycle parking spaces. The Project site is located at 5420 Sunset Boulevard, in the City of Los Angeles.

---

**Response to Comment No. 7-2**

This comment summarizing the Project Description is noted for the record and will be forwarded to the decision-makers for their review and consideration. The Project Description identified above has been modified including, but not limited to, updates to open space, vehicular parking, and bicycle parking spaces. Refer to Section III, Revisions, Clarifications, and Corrections to the Draft EIR, of this Final EIR.

**Comment No. 7-3**

**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, and 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 M. Sannadan  
Adams Broadwell Joseph & Cardozo  
601 Gateway Blvd., Ste. 1000  
South San Francisco, CA 94080-7037

**Email**

[ssannadan@adamsbroadwell.com](mailto: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. 7-3**

Refer to Response to Comment No. 6-1. This comment, which concludes the letter by reiterating the notification request and providing a point of contact, is noted for the record and will be forwarded to the decision-makers for their review and consideration.

**Comment Letter No. 8**

Sheila M. Sannadan  
Legal Assistant  
Adams Broadwell Joseph & Cardozo  
601 Gateway Blvd., Ste. 1000  
South San Francisco, CA 94080-7037

**Comment No. 8-1**

Could you please tell me whether there are any hearings scheduled, or tentatively scheduled, for the 5420 Sunset Project? Also, is there an estimate release date of the FEIR for this project?

**Response to Comment No. 8-1**

This comment inquires about any scheduled hearings and a possible release date for the Final EIR. The City responded on September 16, 2021, that no hearings were currently scheduled and because the Draft EIR had only recently been released, there was no estimated release date for the Final EIR.

**Comment Letter No. 9**

Sheila M. Sannadan  
Legal Assistant  
Adams Broadwell Joseph & Cardozo  
601 Gateway Blvd., Ste. 1000  
South San Francisco, CA 94080-7037

**Comment No. 9-1**

We are requesting *immediate access* to files from the DEIR's AERMOD dispersion model analysis for the 5420 Sunset Project. Specifically, we request access to the unlocked, underlying AERMOD files in their native format. These unlocked files are necessary for us to validate the findings in the DEIR's Health Risk Assessment. Our request is made pursuant to Pub. Resources Code § 21092(b)(1), which requires that "all documents referenced" and "all documents incorporated by reference" in an environmental review document shall be "readily accessible to the public during the lead agency's normal working hours" during the entire public comment period. On August 20, 2021, we requested that the City provide immediate access to any and all documents referenced or relied upon in the DEIR prepared for the Project. In response, the City provided us access to a physical case file in the City's planning department office. This file was missing the aforementioned AERMOD files.

Given the shortness of time before the current comment deadline on the DEIR, please send us the files via email as soon as possible.

Thank you for your assistance.

**Response to Comment No. 9-1**

The Project's freeway HRA was included as Appendix G of the Draft EIR and Appendix E of the HRA contains the AERMOD output files. As noted by the City in its October 4, 2021, response to the Commenter, "[t]he modeling output data and the assumptions underlying the Health Risk Assessment (HRA) are all included within the HRA itself, in Appendix G of the Draft EIR, which has been available throughout the duration of the public comment period." Furthermore, while the Commenter's initial request for reference documents (Comment Letter No. 4, above) did not specifically request these files in their "native format," sufficient backup in the form of risk calculation worksheets, emission rate calculation worksheets, a dispersion model input table, exposure duration and residency information, and dispersion model output summary files was provided with the HRA, which has been available on the City's website at the following address since the Draft EIR was released on August 19, 2021: <https://planning.lacity.org/development->



services/eir/5420-sunset-project-0. Lastly, the City is under no obligation to provide files in a particular format. In this case, the unformatted AERMOD output files cannot be opened by anyone who does not own the software, so the HRA included as Appendix G of the Draft EIR provided summary files in PDF format for review by the general public.

The information provided in the freeway HRA is robust and sufficient to attest to its adequacy. A complete listing of model inputs were provided including output summary files which allow for a review of the freeway HRA's dispersion model settings. Nevertheless, copies of both input and output files associated with the assessment of freeway source emissions have been provided to the City for the administrative record. Provision of complete modeling files is not a basis for recirculating the Draft EIR as there is no change to the analysis nor its determination.

**Comment Letter No. 10**

Alisha C. Pember  
Adams Broadwell Joseph & Cardozo  
601 Gateway Blvd., Ste. 1000  
South San Francisco, CA 94080-7037

Aidan P. Marshall  
Adams Broadwell Joseph & Cardozo  
601 Gateway Blvd., Ste. 1000  
South San Francisco, CA 94080-7037

**Comment No. 10-1**

Please see the attached correspondence re our **Request to Extend the Public Review and Comment Period for the Draft Environmental Impact Report for 5420 Sunset Project (Case No. ENV-2017-1084-EIR) and Exhibits A–B.**

We will also upload the attached to the online PRA portal.

If you have any questions, please contact Aidan Marshall.

Thank you.

On behalf of Coalition for Responsible Equitable Economic Development Los Angeles (“CREED LA”), we respectfully request that the City of Los Angeles (“City”) extend the public review and comment period for the Draft Environmental Impact Report (“DEIR”) prepared for the 5420 Sunset Project (Case No. ENV-2017-1084-EIR), proposed by 5420 Sunset Boulevard LP, LLC (“Applicant”) due to the City’s failure to provide timely access to documents referenced in the DEIR to the public for the entire comment period.

The California Environmental Quality Act (“CEQA”) and the CEQA Guidelines require that “all documents referenced” and “all documents incorporated by reference” in an environmental review document shall be “readily accessible to the public during the lead agency’s normal working hours” during the entire public comment period.<sup>1</sup> On August 20, 2021, we requested that the City provide immediate access to any and all documents referenced or relied upon in the DEIR prepared for the Project.<sup>2</sup> On August 30, 2021, the City informed us that the documents referenced in the Draft EIR are contained on a CD in a physical case file in the City’s planning department office.

<sup>1</sup> Pub. Resources Code § 21092(b)(1); 14 C.C.R. § 15072(g)(4); see *Ultramar v. South Coast Air Quality Man. Dist.* (1993) 17 Cal.App.4th 689, 699.

- <sup>2</sup> Exhibit A: Letter from Adams, Broadwell, Joseph & Cardozo (“ABJC”) to the City of Los Angeles re: Request for Immediate Access to All Documents Referenced in the Draft Environmental Impact Report for 5420 Sunset Project (Case No. ENV-2017-1084-EIR) (August 20, 2021).

### **Response to Comment No. 10-1**

This comment requests to extend the comment period. Refer to Response to Comment Nos. 10-2 through 10-5, below. As discussed therein, sufficient backup in the form of risk calculation worksheets, emission rate calculation worksheets, a dispersion model input table, exposure duration and residency information, and dispersion model output summary files was provided with the HRA and was available throughout the comment period and continues to be available from the following Los Angeles City Planning website link <https://planning.lacity.org/development-services/eir/5420-sunset-project-0>. The request to extend the comment period was therefore denied by the City via email response on October 4, 2021.

### **Comment No. 10-2**

After copying and reviewing the contents of this CD, we learned that it did not contain critical reference documents. Specifically, the City failed to provide access to files from the DEIR’s AERMOD dispersion model analysis. Access to the unlocked, underlying AERMOD files in their native format is necessary for the public to validate the findings in the DEIR’s Health Risk Assessment. As soon as we became aware these files were missing from the City’s production of documents, we emailed the City requesting immediate access to the files.<sup>3</sup> As of the time of this letter, we have not received a response from the City regarding this request.

- <sup>3</sup> Exhibit B: Email from Sheila M. Sannadan, ABJC, to Polonia Majas, City of Los Angeles, re: 5420 Sunset Project—AERMOD files (native format) (September 28, 2021).

### **Response to Comment No. 10-2**

Refer to Response to Comment Nos. 8-1 and 9-1, above.

### **Comment No. 10-3**

The courts have held that the failure to provide even a few pages of a CEQA document for a portion of the review and comment period invalidates the entire CEQA process, and that such a failure must be remedied by permitting additional public comment.<sup>4</sup> It is also well settled that a CEQA document may not rely on hidden studies or documents that are not provided to the public.<sup>5</sup> By failing to make all documents referenced and incorporated by reference in the DEIR “readily available” during the current comment period, the City is violating the clear procedural mandates of CEQA to the detriment of CREED LA and other members of the public who wish to meaningfully review and comment on the DEIR.

Without access to all of the relevant documents relied upon and incorporated by reference by the City in its preparation of the DEIR during the entire public comment period, CREED LA and other members of the public are precluded from having this meaningful opportunity to review the DEIR. In particular, the public is unable to evaluate the accuracy of the analyses contained in the DEIR and the significance of any impacts the Project may or may not have on the environment.

<sup>4</sup> *Ultramar*, 17 Cal.App.4th at 699.

<sup>5</sup> *Santiago Cty. Water Dist. v. Cty. of Orange* (1981) 118 Cal.App.3d 818, 831 (“Whatever is required to be considered in an EIR must be in that formal report; what any official might have known from other writings or oral presentations cannot supply what is lacking in the report.”).

### **Response to Comment No. 10-3**

As noted above in Response to Comment No. 5-1, the Project’s reference documents were provided by the City on August 30, 2021. As further noted in Response to Comment No. 9-1, above, while the Commenter’s initial request for reference documents did not specifically request these files in their “native format,” sufficient backup in the form of risk calculation worksheets, emission rate calculation worksheets, a dispersion model input table, exposure duration and residency information, and dispersion model output summary files was provided with the HRA and continues to be available from the following Los Angeles City Planning website link <https://planning.lacity.org/development-services/eir/5420-sunset-project-0>. As also noted above, the City is under no obligation to provide files in a particular format. In this case, the unformatted AERMOD output files cannot be opened by anyone who does not own the software, so the HRA included as Appendix G of the Draft EIR provided summary files in PDF format for review by the general public.

### **Comment No. 10-4**

Accordingly, we request that:

- 1) The City immediately provide us with access to the unlocked, underlying files from the DEIR’s AERMOD dispersion model analysis in their native format, files from all other technical analyses in their native formats, as well any other documents referenced in the DEIR not included in the previous production of documents.

### **Response to Comment No. 10-4**

Refer to Response to Comment Nos. 9-1 and 10-3, above. As discussed therein, while the Commenter’s initial request for reference documents did not specifically request these files in their “native format,” sufficient backup in the form of risk calculation worksheets, emission rate calculation worksheets, a dispersion model input table, exposure

duration and residency information, and dispersion model output summary files was provided with the HRA and continues to be available from the following Los Angeles City Planning website link <https://planning.lacity.org/development-services/eir/5420-sunset-project-0>. As also noted above, the City is under no obligation to provide files in a particular format. In this case, the unformatted AERMOD output files cannot be opened by anyone who does not own the software, so the HRA included as Appendix G of the Draft EIR provided summary files in PDF format for review by the general public.

With respect to other technical analyses, similar to the issue with AERMOD, the CalEEMod output files used for air quality, energy, and greenhouse gas modeling, as well as the SoundPlan and Federal Highway Administration Traffic Noise Model output files used for noise and vibration modeling, are not accessible to members of the public who do not have the appropriate software. The output files were converted to PDF, which is standard practice, and included as part of Appendices B, D, and H, of the Draft EIR, respectively. Provision of these files in their native format is not a basis for recirculating the Draft EIR as there is no change to the analysis nor its determination.

#### **Comment No. 10-5**

- 2) The City extend the public review and comment period for the DEIR by at least 30 days from the date on which the City releases these documents for public review.

Given the shortness of time before the current comment deadline, please contact me as soon as possible with your response to this request, but no later than Friday, October 1, 2021.

#### **Response to Comment No. 10-5**

As noted by the City in its October 4, 2021, email response to the commenter, “[t]he modeling output data and the assumptions underlying the Health Risk Assessment (HRA) are all included within the HRA itself, in Appendix G of the Draft EIR, which has been available throughout the duration of the public comment period.” The request to extend the comment period was therefore denied.

#### **Comment No. 10-6**

Exhibit A: Adams Broadwell Joseph & Cardozo comment letter from Sheila M. Sannadan, dated August 20, 2021

**Response to Comment No. 10-6**

This exhibit consists of Comment Letter 5 in its entirety. Refer to Response to Comment Nos. 5-1 through 5-3, above.

**Comment No. 10-7**

Exhibit B: Adams Broadwell Joseph & Cardozo e-mail from Sheila Sannadan, dated September 28, 2021

**Response to Comment No. 10-7**

This exhibit consists of Comment Letter 9 in its entirety. Refer to Response to Comment No. 9-1, above.

**Comment Letter No. 11**

Lorrie J. LeLe  
Legal Assistant  
Adams Broadwell Joseph & Cardozo  
601 Gateway Blvd., Ste. 1000  
South San Francisco, CA 94080-7037

Aidan P. Marshall  
Adams Broadwell Joseph & Cardozo  
601 Gateway Blvd., Ste. 1000  
South San Francisco, CA 94080-7037

James J. J. Clark  
Clark & Associates  
12405 Venice Blvd., PMB 331  
Los Angeles, CA 90066-3803

**Comment No. 11-1**

Please find attached comments.

We are writing on behalf of Coalition for Responsible Equitable Economic Development Los Angeles (“CREED LA”) to provide comments on the Draft Environmental Impact Report (“DEIR”) prepared by the City of Los Angeles (“City”) for the 5420 Sunset Project (Case No. ENV-2017-1084-EIR; SCH No. 2017061075) (“Project”), proposed by 5420 Sunset Boulevard LP, LLC (“Applicant”).

The Project proposes the development of four six-story mixed-use buildings across 882,250 square feet. The Project consists of 735 multi-family residential units, as well as residential lobbies and leasing offices, pools, spas, and recreational facilities, and up to 95,000 square feet of commercial uses, including market/retail and restaurant uses. The Project also proposes approximately 96,800 square feet of open space including landscaped courtyards, a public plaza, and landscaped paseos, as well as 1,419 parking spaces in two subterranean parking levels and one at-grade parking level, and 548 bicycle parking spaces. The Project site is located at 5420 Sunset Boulevard, in the City of Los Angeles.

Several discretionary approvals are required to implement the Project, including a Main Conditional Use Permit (“MCUP”) pursuant to Los Angeles Municipal Code (“LAMC”) Section 12.24(W)(1) for the sales and/or dispensing of alcoholic beverages within the

commercial uses of the Project, Site Plan Review pursuant to LAMC Section 16.05, Project Permit Compliance Review under the Vermont/Western Station Neighborhood Area Specific Plan, haul route approval, and construction permits.<sup>1</sup>

<sup>1</sup> DEIR, pg. II-29.

### **Response to Comment No. 11-1**

This introductory comment summarizes the Project Description and requested entitlements for the Project. The Project Description identified above has been modified including, but not limited to, updates to open space, vehicular parking, and bicycle parking spaces. Refer to Section III, Revisions, Clarifications, and Corrections to the Draft EIR, of this Final EIR. Specific issues raised by the commenter in their letter and associated exhibits are addressed in Response to Comment Nos. 11-6 through 11-63, below.

### **Comment No. 11-2**

We have conducted our review of the DEIR with the assistance of air quality and hazardous resources expert James J. Clark, Ph.D.<sup>2</sup> The City must separately respond to his technical comments.

<sup>2</sup> Dr. Clark's technical comments and curricula vitae are attached hereto as Exhibit A.

### **Response to Comment No. 11-2**

Responses to Dr. Clark's technical comments are provided in Response to Comment Nos. 11-33 through 11-59, below.

### **Comment No. 11-3**

Based upon our review of the DEIR and supporting documentation, we conclude that the DEIR fails to comply with the requirements of CEQA. The DEIR fails to adequately disclose significant air quality, public health, and noise impacts. As a result of its shortcomings, the DEIR lacks substantial evidence to support its conclusions and fails to properly mitigate the Project's significant environmental impacts. Further, the City cannot make the requisite findings under the LAMC for an MCUP. The City cannot approve the Project until the errors and omissions in the DEIR are remedied, and a revised DEIR is recirculated for public review and comment which fully discloses and mitigates the Project's potentially significant environmental and public health impacts.



---

**Response to Comment No. 11-3**

This comment expresses the Commenter's belief that the Project's Draft EIR did not adequately disclose significant air quality, public health, and noise impacts and cannot make the requisite findings under the LAMC for a Main CUP. Specific issues raised by the Commenter are addressed in Response to Comment Nos. 11-5 through 11-63, below. As demonstrated therein, the Draft EIR meets the standards of CEQA and recirculation is not warranted. Nevertheless, this comment is noted for the record and will be forwarded to the decision-makers for their review and consideration.

**Comment No. 11-4****I. STATEMENT OF INTEREST**

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

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

CREED LA seeks to ensure a sustainable construction industry over the long-term by supporting projects that have positive impacts for the community, and which minimize adverse environmental and public health impacts. CREED LA has an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for business and industry to expand in the region, and by making the area less desirable for new businesses and new residents. Indeed, continued environmental degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduce future employment opportunities.

---

**Response to Comment No. 11-4**

This comment is the commenter's statement of interest. It is noted for the record and will be forwarded to the decision-makers for review and consideration.

**Comment No. 11-5****II. LEGAL BACKGROUND**

CEQA has two basic purposes, neither of which the DEIR satisfies. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project.<sup>3</sup> CEQA requires that an agency analyze potentially significant environmental impacts in an EIR.<sup>4</sup> The EIR should not rely on scientifically outdated information to assess the significance of impacts, and should result from "extensive research and information gathering," including consultation with state and federal agencies, local officials, and the interested public.<sup>5</sup> To be adequate, the EIR should evidence the lead agency's good faith effort at full disclosure.<sup>6</sup> 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."<sup>7</sup> "Thus, the EIR protects not only the environment but also informed self-government."<sup>8</sup>

Second, CEQA directs public agencies to avoid or reduce environmental damage when possible by requiring alternatives or mitigation measures.<sup>9</sup> 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."<sup>10</sup> If a project has a significant effect on the environment, the agency may approve the project only upon a 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 section 21081.<sup>11</sup>

As these comments will demonstrate, the DEIR fails to comply with the requirements of CEQA and may not be used as the basis for approving the Project. It fails in significant aspects to perform its function as an informational document that is meant "to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment" and "to list ways in which the significant effects of such a project might be minimized."<sup>12</sup> The DEIR also lacks substantial evidence to support the City's proposed findings that the Project will not result in any significant, unmitigated impacts.

<sup>3</sup> CEQA Guidelines, § 15002, subd. (a)(1).

- <sup>4</sup> See Pub. Resources Code, § 21000; CEQA Guidelines, § 15002.
- <sup>5</sup> *Berkeley Keep Jets Over the Bay Comm. v. Board of Port Comm.* (“*Berkeley Jets*”) (2001) 91 Cal.App.4th 1344, 1367.; *Schaeffer Land Trust v. San Jose City Council* (1989) 215 Cal.App.3d 612, 620.
- <sup>6</sup> CEQA Guidelines, § 15151; see also *Laurel Heights Improvement Assn. v. Regents of University of California* (“*Laurel Heights I*”) (1988) 47 Cal.3d 376, 406.
- <sup>7</sup> *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.
- <sup>8</sup> *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564 (citations omitted).
- <sup>9</sup> CEQA Guidelines, § 15002, subd. (a)(2)–(3); *Berkeley Jets*, *supra*, 91 Cal.App.4th at 1354.
- <sup>10</sup> CEQA Guidelines, § 15002, subd. (a)(2).
- <sup>11</sup> *Id.*, subd. (b)(2)(A)–(B).
- <sup>12</sup> *Laurel Heights I*, *supra*, 47 Cal.3d at p. 391.

### **Response to Comment No. 11-5**

This comment provides the commenter’s version of the legal background on the EIR process. It is noted for the record and will be forwarded to the decision-makers for review and consideration.

### **Comment No. 11-6**

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

The City violated CEQA and improperly truncated the DEIR public comment period by failing to make all documents referenced or relied on in the DEIR available for public review during the Project’s public comment period.<sup>13</sup> As a result, CREED LA was unable to complete its review and analysis of the DEIR and its supporting evidence during the current public comment period, which ends on October 4, 2021. Our request that the City extend the public comment period was denied. We therefore provide these initial comments on the DEIR and reserve our right to submit supplemental comments on the DEIR at a future date.

Access to all of the documents referenced in the DEIR is necessary to conduct a meaningful review of its analyses, conclusions, and mitigation measures and to assess the Project’s potential environmental impacts. CEQA requires that “all documents referenced” and “incorporated by reference” in the draft environmental impact report be available for review and “readily accessible” during the entire comment period.<sup>14</sup> The courts have held that the failure to provide even a few pages of a CEQA document for a portion of the review and comment period invalidates the entire CEQA process, and that such a failure must be remedied by permitting additional public comment.<sup>15</sup> It is also well-settled that a CEQA document may not rely on hidden studies or documents that are not provided to the public.<sup>16</sup>

The Notice of Availability for the DEIR states that “the documents referenced in the DEIR are available for public review during office hours, Monday–Friday, 9:00am–4:00pm [sic] by appointment only.”<sup>17</sup> In compliance with those instructions, on August 20, 2021, we requested that the City provide immediate access to any and all documents referenced or relied upon in the DEIR prepared for the Project.<sup>18</sup> On August 30, 2021, the City informed us that the documents referenced in the Draft EIR are contained on a CD in a physical case file in the City’s planning department office. A representative from CREED LA thereafter copied the contents of the CD at the City.

After reviewing the contents of this CD, we learned that it did not contain critical DEIR reference documents. Specifically, the City failed to provide access to files from the DEIR’s AERMOD dispersion model analysis. The City only provided the first two pages of each dispersion model analysis, which is not a sufficient method for validating the model results.<sup>19</sup> Access to the complete, unlocked AERMOD files in their native format is necessary for the public to validate the findings in the DEIR’s Health Risk Assessment.<sup>20</sup> As soon as we became aware these files were missing from the City’s production of documents, we emailed the City again requesting immediate access to the files.<sup>21</sup> We specifically requested the “unlocked, underlying files from the DEIR’s AERMOD dispersion model analysis in their native format.”<sup>22</sup>

Having received no response from the City regarding this request, we submitted an additional letter requesting the extension of the comment period in light of these missing files.<sup>23</sup> On October 4, 2021, the last day of the comment period, we received an email from the City stating that “[t]he modeling output data and the assumptions underlying the Health Risk Assessment (HRA) are all included within the HRA itself.”<sup>24</sup> This statement is incorrect, as the HRA only included the first two pages of each dispersion model. The City did not provide the files in their native format per our request, thus hiding the City’s full dispersion modeling analysis from public view, and the City denied our request to extend the comment period.

CEQA requires that all documents referenced, incorporated by reference, and relied upon in a DEIR be readily available to the public during the entire CEQA public comment period. Despite CREED LA’s efforts to obtain “immediate access” to all materials referenced in the DEIR during the public comment period, the City failed to provide access to critical reference documents, then failed to respond to our subsequent requests for missing files, and declined to extend the public comment period. The City’s actions violate CEQA’s disclosure requirements.<sup>25</sup> By failing to make all documents referenced and incorporated by reference in the DEIR “readily accessible” to the public during the entire comment period, the City violated the clear procedural mandates of CEQA, to the prejudice of CREED LA and other members of the public.

In order to comply with CEQA, the City must immediately make the missing AERMOD files available to CREED LA, then extend the public comment period on the DEIR for and additional 30 days after those files are made available.

<sup>13</sup> See PRC § 21092(b)(1); 14 CCR § 15087(c)(5).

<sup>14</sup> PRC § 21092(b)(1) (emphasis added); 14 CCR § 15087(c)(5).

<sup>15</sup> See *Ultramar v. South Coast Air Quality Man. Dist.* (1993) 17 Cal.App.4th 689, 699.

<sup>16</sup> *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 831 (“Whatever is required to be considered in an EIR must be in that formal report; what any official might have known from other writings or oral presentations cannot supply what is lacking in the report.”).

<sup>17</sup> See Notice of Completion and Availability of DEIR, 5420 Sunset Project (August 19, 2021).

<sup>18</sup> *Exhibit B*: Letter from Adams, Broadwell, Joseph & Cardozo (“ABJC”) to the City of Los Angeles re: Request for Immediate Access to All Documents Referenced in the Draft Environmental Impact Report for 5420 Sunset Project (Case No. ENV-2017-1084-EIR) (August 20, 2021).

<sup>19</sup> James Clark Comments (“Clark”), pg. 8.

<sup>20</sup> *Id.*

<sup>21</sup> *Exhibit C*: Email from Sheila M. Sannadan, ABJC, to Polonia Majas, City of Los Angeles, re: 5420 Sunset Project—AERMOD files (native format) (September 28, 2021).

<sup>22</sup> *Id.*

<sup>23</sup> *Exhibit D*: Letter from ABJC to the City of Los Angeles re: Request to Extend the Public Review and Comment Period for the Draft Environmental Impact Report for 5420 Sunset Project (Case No. ENV-2017-1084-EIR) (September 30, 2021).

<sup>24</sup> *Exhibit E*: Email from William Lamborn, City of Los Angeles, to Alicia C. Pember, ABJC, re: Request to extend the public review and comment period ENV-2017-1084-EIR (October 4, 2021).

<sup>25</sup> *Id.*; Gov. Code § 6253(a) (requires public records to be “open to inspection at all times during the office hours of the state or local agency” and provides that “every person has a right to inspect any public record.”).

### **Response to Comment No. 11-6**

Refer to Response to Comment Nos. 10-2 through 10-5, above. As discussed therein, sufficient backup was provided with the HRA and other technical studies and was available throughout the comment period. Refer to Appendices B through U of the Draft EIR. Since access to these files was readily available, the request to extend the comment period was therefore denied on October 4, 2021.

### **Comment No. 11-7**

## **IV. THE DEIR FAILS TO ADEQUATELY ANALYZE, QUANTIFY, AND MITIGATE THE PROJECT’S POTENTIALLY SIGNIFICANT IMPACTS**

An EIR must fully disclose all potentially significant impacts of a project, [sic] and implement all feasible mitigation to reduce those impacts to less than significant levels.

The lead agency's significance determination with regard to each impact must be supported by accurate scientific and factual data.<sup>26</sup> An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.<sup>27</sup>

Moreover, the failure to provide information required by CEQA is a failure to proceed in the manner required by law.<sup>28</sup> 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.<sup>29</sup> In reviewing challenges to an agency's approval of an EIR based on a lack of substantial evidence, the court will "determine de novo whether the agency has employed the correct procedures, scrupulously enforcing all legislatively mandated CEQA requirements."<sup>30</sup>

Even when the substantial evidence standard is applicable to agency decisions to certify an EIR and approve a project, reviewing courts will not 'uncritically rely on every study or analysis presented by a project proponent in support of its position. A clearly inadequate or unsupported study is entitled to no judicial deference."<sup>31</sup>

<sup>26</sup> 14 CCR § 15064(b).

<sup>27</sup> *Kings Cty. Farm Bur. v. Hanford* (1990) 221 Cal.App.3d 692, 732.

<sup>28</sup> *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236.

<sup>29</sup> *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.

<sup>30</sup> *Id.*; *Madera Oversight Coal., Inc. v. County of Madera* (2011) 199 Cal. App. 4th 48, 102.

<sup>31</sup> *Berkeley Jets*, 91 Cal.App.4th at 1355.

### **Response to Comment No. 11-7**

Refer to Response to Comment Nos. 11-6, above and 11-8 through 11-63, below. As discussed therein, the analysis included in the Draft EIR adequately analyzed and disclosed the Project's impacts and recirculation is not warranted.

### **Comment No. 11-8**

#### **A. The DEIR Fails to Disclose and Mitigate Significant Health Risks from Construction and Operational Emissions**

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."<sup>32</sup> 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.”<sup>33</sup>

Courts have held that an environmental review document must disclose a project’s potential health risks to a degree of specificity that would allow the public to make the correlation between the project’s impacts and adverse effects to human health.<sup>34</sup> In *Bakersfield Citizens for Local Control v. City of Bakersfield*, the court found that the EIRs’ [sic] 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.”<sup>35</sup> Likewise, in *Sierra Club*, the California Supreme Court held that the EIR’s discussion of health impacts associated with exposure to the named pollutants was too general and the failure of the EIR to indicate the concentrations at which each pollutant would trigger the identified symptoms rendered the report inadequate.<sup>36</sup> 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.”<sup>37</sup> CEQA mandates discussion, supported by substantial evidence, of the nature and magnitude of impacts of air pollution on public health.<sup>38</sup>

The failure to provide information required by CEQA makes meaningful assessment of potentially significant impacts impossible and is presumed to be prejudicial.<sup>39</sup> 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.<sup>40</sup> 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.”<sup>41</sup>

<sup>32</sup> *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 516.

<sup>33</sup> *Id.* at 518.

<sup>34</sup> *Id.* at 518–520; *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184.

<sup>35</sup> *Id.* at 1220.

<sup>36</sup> *Sierra Club*, at 521.

<sup>37</sup> *Id.* at 519, citing *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 514–515.

<sup>38</sup> *Sierra Club*, 6 Cal.5th at 518–522.

<sup>39</sup> *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236–1237.

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

---

<sup>41</sup> *Id.* (internal quotations omitted).

### **Response to Comment No. 11-8**

Refer to Response to Comment Nos. 11-9 through 11-11, below.

### **Comment No. 11-9**

#### **i. The DEIR Fails to Disclose the Project's Diesel Particulate Matter Emissions.**

The DEIR acknowledges that the Project's construction activities would create Toxic Air Contaminant ("TAC") emissions.<sup>42</sup> Specifically, operation of heavy equipment would generate Diesel Particulate Matter ("DPM"), a type of TAC. The DEIR further acknowledges that DPM is carcinogenic.<sup>43</sup> However, the DEIR fails to plainly disclose the Project's DPM emissions.<sup>44</sup>

The DEIR does indeed disclose the Project's emission of criteria pollutants, but it is important to note that DPM is not a criteria pollutant.<sup>45</sup> Criteria pollutants are defined as "very small solid or liquid particles that can be suspended in the atmosphere," and do not themselves contain toxic chemicals.<sup>46</sup> TACs, by contrast, are defined as "air pollutant[s] which may cause or contribute to an increase in mortality or in serious illness, or which may pose a present or potential hazard to human health. Unlike regular particulate matter, DPM contains toxic chemicals which are not evaluated in a criteria pollutant analysis.

CEQA requires that 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."<sup>47</sup> Therefore, the DEIR must be revised to clearly quantify the extent of the Project's DPM emissions.

#### **ii. The DEIR Fails to Adequately Disclose and Mitigate the Project's Significant Health Risks from Construction Emissions.**

The DEIR claims that adverse health impacts caused by exposure to TACs from the Project's construction emissions will be less than significant. However, the DEIR failed to conduct a quantified health risk analysis ("HRA") to measure the Project's TAC emissions and disclose the resultant health impacts to sensitive receptors. The DEIR relies on flawed reasoning to justify this omission, arguing that the City does not need to analyze health impacts from the Project's construction TAC emissions because construction will only last for four years.<sup>48</sup> The City reasons that health effects from TACs are measured in terms of individual cancer risk. Individual cancer risk is measured in terms of exposure to TACs over a 70-year life. Because construction will only last four years, "the Project would not



result in a long-term (i.e. [sic] 70-year) source of TAC emissions.”<sup>49</sup> The City concludes that analysis of health impacts from construction emissions is unnecessary.

<sup>42</sup> DEIR, pg. IV.A-61.

<sup>43</sup> DEIR, pg. IV.A-61.

<sup>44</sup> DEIR, pg. IV.A-61.

<sup>45</sup> DEIR, pg. IV.A-59.

<sup>46</sup> *CURE v. Mojave Desert Air Qual. Mgm't Dist.* (2009) 178 Cal. App. 4th 1225, 1231–32; see 40 C.F.R. § 50.6(c).

<sup>47</sup> *Id.* at 518.

### **Response to Comment No. 11-9**

This comment correctly identifies that the Draft EIR discloses the Project's emissions of criteria pollutants. South Coast Air Quality Management District (SCAQMD) provides pound per day regional and localized criteria pollutant emission significance thresholds (pounds per day) for both construction and operational activities. SCAQMD's recommended model, CalEEMod Version 2016.3.2, was used to calculate the Project's emissions of criteria pollutant emissions for purposes of comparing to the daily emission significance thresholds.<sup>11</sup> Unlike criteria pollutants, TACs do not have an emissions threshold for comparison to a SCAQMD emissions threshold since the dose to which receptors are exposed to a TAC is the primary factor used to determine health risk (i.e., not the emission rate). Dose is a function of the concentration of a substance or substances in the environment and the duration of exposure to the substances. Dose is positively correlated with the concentration of a toxic substance, which generally disperses with distance from the emission source. Dose is also positively correlated with time, meaning that a longer exposure period would result in a higher exposure level for an exposed individual. Thus, the risks estimated for a receptor are higher if a fixed exposure occurs over a longer period. Based on this information, “plainly disclosing” DPM emissions was not pertinent to the discussion in the Draft EIR referenced in this comment (Draft EIR, pg. IV.A-61). Instead, the Draft EIR provided a discussion of exposure duration as the result of construction DPM emissions.

<sup>11</sup> *While there is a new version of CalEEMod, CalEEMod 2016.3.2 was the version in place at the time of the posting of the NOP. The analyses prepared under CalEEMod 2016.3.2 are generally more conservative than those prepared under CalEEMod 2020.4.0. The older model was based on CARB's EMFAC2014 emissions model, which did not capture more recent advanced clean car regulations adopted after 2015 and the accelerated phase-in of partial Zero Emission Vehicles. In addition, CalEEMod 2016.3.2 did not factor in California's 2019 Title 24 standards, which have more stringent energy standards that reduce energy-related emissions from electricity and natural gas use.*

The Draft EIR correctly identified that proposed construction activities would be limited in duration and considered a short-term source of TAC emissions. SCAQMD's 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 exposed to concentrations of toxic air contaminants (TACs) over a 70-year lifetime will contract cancer based on the use of standard risk assessment methodology.<sup>12</sup> Because the construction schedule for the Project estimates that the phases which require the most heavy-duty diesel equipment and truck<sup>13</sup> usage, such as site grading/excavation, would last for a much shorter duration (e.g., approximately seven months) (refer to page B-29 of Appendix B), and the overall construction schedule (refer to page B-29 of Appendix B) would be limited to approximately four years, 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 (4 years out of a 70-year lifetime), further evaluation of construction TAC emissions within the Draft EIR was not warranted. This supporting information is also consistent with *2006 L.A. City CEQA Thresholds Guide* in making a case-by-case basis determination of significance.<sup>14</sup> 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.

An HRA is not required by SCAQMD or the City, and no guidance for health risk assessments for construction has been adopted by SCAQMD or the City. Nonetheless, a combined construction and operational HRA has been prepared pursuant to the California Air Pollution Control Officers Association (CAPCOA) Guidance Document for Health Risk Assessments for Proposed Land Use Projects in response to this comment to confirm, as

---

<sup>12</sup> SCAQMD CEQA Handbook, 1993. Chapters 5, 9, and 10.

<sup>13</sup> *Heavy-Duty trucks range between Class 5 through Class 8 Truck (Weight Classification). A Class 5 heavy duty truck with a Gross Vehicle Weight Rating of 16,001 to 19,500 pounds, equipped with a medium-heavy duty engine (e.g., utility bucket truck). A Class 6 heavy duty truck with a Gross Vehicle Weight Rating of 19,501 to 26,000 pounds, equipped with a medium-heavy duty engine (e.g., school bus). A Class 7 heavy duty truck with a Gross Vehicle Weight Rating of 26,001 to 33,000 pounds (e.g., delivery truck), equipped with either a medium-heavy duty engine or a heavy-heavy duty engine. A Class 8 Truck with a heavy duty truck with a Gross Vehicle Weight Rating of 33,001 pounds or greater, equipped with a heavy-heavy duty engine (e.g., concrete/dump truck).*

<sup>14</sup> *The Department of City Planning now uses the CEQA Appendix G environmental checklist questions as thresholds of significance. The 2006 L.A. CEQA Thresholds Guide is no longer the City's default threshold, but may be used as a reference guide.*

the Draft EIR concludes, that no significant health risk impacts would occur from the Project. The HRA is provided as Appendix FEIR-2 of this Final EIR. The HRA demonstrates that health risks from the Project (combined construction and operation) would result in a maximum incremental cancer risk of 6.9 in one million people. This maximum impact would occur at residences located east of the Project Site, across Serrano Avenue (for combined construction and operational emissions). The Project-related incremental cancer risk is below the applicable SCAQMD significance threshold of 10 in one million people.<sup>15</sup>

### **Comment No. 11-10**

This reasoning is flawed. Individual cancer risk is not just affected by the duration of exposure to TACs, but also the concentration of the individual's unique exposure scenario and the toxicity of the chemical. Accordingly, OEHHA<sup>50</sup> guidance sets a recommended threshold for preparing an HRA of a construction period of two months or more.<sup>51</sup> Because the DEIR contains no quantitative analysis of TAC emissions, the City lacks substantial evidence to support the DEIR's untenable conclusion that exposing sensitive receptors to TACs over the Project's 4-year construction period would not result in health impacts or increase the cancer risk to those receptors. As construction of the instant Project will last at least four years,<sup>52</sup> an HRA must be prepared.

The DEIR's failure to prepare a construction HRA violates CEQA. In *Sierra Club*, the Supreme Court of California disapproved of an EIR that failed to compare the health effects from exposure to ozone emissions against applicable thresholds.<sup>53</sup> The Court held that it insufficient to merely state that "exposure to ambient levels of ozone ranging from 0.10 to 0.40 [parts per million of ozone] has been found to significantly alter lung functions"—the EIR must also compare the Project's impacts against this threshold.<sup>54</sup> Here, the City appropriately discloses that health impacts are significant when the Project exposes sensitive receptors to air contaminants that exceed the maximum incremental cancer risk of 10 in one million.<sup>55</sup> However, since the City did not perform a construction HRA, it does not compare the Project's impacts against the applicable threshold.

In summary, the DEIR fails to disclose the potentially significant risk posed to nearby residents from TACs, and fails to mitigate it. Because the DEIR fails to support its conclusion that the Project will not have significant health impacts from TAC emissions with the necessary analysis, this finding is not supported by substantial evidence. The DEIR must be revised to include a construction HRA.

<sup>48</sup> DEIR, pg. IV.A-61.

<sup>15</sup> SCAQMD, *South Coast AQMD Air Quality Significance Thresholds*, April 2019.

- <sup>49</sup> *Id.*
- <sup>50</sup> 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>.
- <sup>51</sup> 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](http://oehha.ca.gov/air/hot_spots/hotspots2015.html) (“OEHHA Guidance”), p. 8-18.
- <sup>52</sup> DEIR, pg. IV.A-61.
- <sup>53</sup> *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1219-20.
- <sup>54</sup> *Id.*
- <sup>55</sup> DEIR, pg. IV.A-33.

### **Response to Comment No. 11-10**

The comment identifies that the Office of Environmental Health Hazard Assessment (OEHHA) adopted a new version of the Air Toxics Hot Spots Program Guidance Manual for the Preparation of Risk Assessments (new Guidance Manual) in March of 2015.<sup>16</sup> The Guidance Manual was developed by OEHHA, in conjunction with the California Air Resources Board (CARB), for use in implementing the Air Toxics “Hot Spots” Program (Health and Safety Code Section 44360 et seq.). The Air Toxics “Hot Spots” Program requires stationary sources to report the types and quantities of certain substances routinely released into the air. The goals of the Air Toxics “Hot Spots” Act are to collect emission data, to identify facilities having localized impacts, to ascertain health risks, to notify nearby residents of significant risks, and to reduce those significant risks to acceptable levels.

The new Guidance Manual provides recommendations related to cancer risk evaluation of certain short-term projects. As discussed in Section 8.2.10 of the Guidance Manual, “The local air pollution control districts sometimes use the risk assessment guidelines for the Hot Spots program in permitting decisions for short-term projects such as construction or waste site remediation.” Short-term projects that would require a permitting decision by SCAQMD typically would be limited to site remediation (e.g., stationary soil vapor extractors) and would not be applicable to the Project. The new Guidance Manual does not provide specific recommendations for evaluation of short-term use of mobile sources (e.g., heavy-duty diesel construction equipment). This comment misrepresents OEHHA’s guidance in Section 8.2.10 (page 8-18) that “the OEHHA document recommends that all short-term projects lasting at least two months be evaluated for cancer risks to

---

<sup>16</sup> See OEHHA, Notice of Adoption of Air Toxics Hot Spots Program Guidance Manual for the Preparation of Health Risk Assessments 2015, <https://oehha.ca.gov/air/cnrn/notice-adoption-air-toxics-hot-spots-program-guidance-manual-preparation-health-risk-0>, accessed November 17, 2021.

nearby sensitive receptors.” As discussed above, this guidance is not applicable to the Project.

As discussed in Response to Comment No. 11-9, the combined construction and operational HRA prepared in response to these comments demonstrates that health risks from the Project would be a maximum of 6.9 in one million for residences east of the Project site, which is below the applicable SCAQMD significance threshold of 10 in one million. It is noted that this risk assumes an outdoor exposure for the entire length of construction and 70-years of operational delivery trucks and does not account for any reductions from the time spent indoors, where air quality tends to be better. Please refer to Response to Comment No. 11-43 for a detailed breakdown of Project-related operational delivery trucks (e.g., type and fuel).

### **Comment No. 11-11**

#### **iii. The DEIR Fails to Adequately Disclose and Mitigate the Project’s Significant Health Risks from Operational Emissions.**

The DEIR also claims that adverse health impacts caused by exposure to TACs from the Project’s operational emissions will be less than significant. The DEIR justifies its failure to conduct a quantified HRA by claiming that the Project would not contain substantial TAC sources.<sup>56</sup> The DEIR observes that SCAQMD recommends conducting an HRA for Projects with substantial sources of DPM (e.g. [sic] facilities that generate more than 100 trucks per day).<sup>57</sup> The DEIR claims that since the Project would not generate over 100 trucks per day, there is no need for an HRA. But the DEIR’s conclusion is false, as elsewhere the DEIR provides that the Project would generate 287 truck trips per day.<sup>58</sup> Therefore, according to SCAQMD guidance, the City must conduct an HRA to disclose the health risks from the Project’s operational emissions. Since the City failed to conduct this HRA, it fails to support its conclusion that operational health impacts are less than significant with substantial evidence. Further, as will be discussed below, Dr. Clark conducted an HRA that shows that the Project’s operations would, in fact, have significant health impacts.

<sup>56</sup> DEIR, pg. IV.A-65.

<sup>57</sup> DEIR, pg. IV.A-64.

<sup>58</sup> Clark, pg. 9. Dr. Clark explains, according to the CalEEMOD analysis presented in Appendix B of the DEIR, an estimated 8,655 vehicle trips will occur every weekday and an estimated 12,465.96 vehicle trips will occur each weekend day. Those trips will be solely associated with the commercial development installed on the Project site. The CalEEMOD analysis further details that 3.3% of the traffic is expected to be heavy duty trucks (which emit the most DPM), or approximately 287 trucks will be entering and leaving the Project site daily.

### **Response to Comment No. 11-11**

Refer to Response to Comment No. 11-43, below for a specific response regarding the number of delivery trucks during Project operations. However, it should be noted that this comment is somewhat confusing in that it claims that “those trips will be solely associated with the commercial development installed on the Project site.” Given that the Project includes 735 multi-family residential units which generate approximately 51 percent of the total daily trips, the commenter’s statement that the trips would only be associated with commercial development is incorrect.

### **Comment No. 11-12**

#### **B. The DEIR Fails to Disclose Significant Impacts in its Air Quality Analysis and HRA.**

##### **i. The Operational HRA’s Air Dispersion Model Relies on Inaccurate Traffic Counts, and Does Not Include All of the Sources of Criteria Air Pollutants and Toxic Air Contaminants from the Project.**

The City prepared an HRA to analyze the potential effects of pollutants on individuals who will reside at the proposed Project site during Project operation.<sup>59</sup> The HRA included air quality modeling using the AMS/EPA Regulatory Model AERMOD to assess the downwind extent of mobile source emissions within 1,000 feet of the Project site.<sup>60</sup> Dr. James Clark, in the attached comments, explains that the HRA’s modeling contains flaws that result in inaccurate estimates of health impacts.

Vehicles and back-up generator are sources of TACs, which cause health impacts analyzed in an HRA. Dr. Clark found that the City’s model does not include an analysis of the emissions from vehicles coming to and from the Project site as well as the emissions from the back-up generator(s) that will be utilized on-site.<sup>61</sup> As a result, the DEIR underestimates the Project’s operational TAC emissions, and underestimates the health impacts of the project on the residents of the Project.<sup>62</sup> This underestimation of mobile-source TAC emissions is substantial, as the DEIR’s Traffic Study concluded that there would be a net increase of 2,369 extra trips per day over the existing project, representing a 45% increase in traffic in the Project area of influence.<sup>63</sup>

Mobile source emissions from State [sic] Route 101 are a major potential cause of health impacts on the Project’s future residents. The volume of traffic on State [sic] Route 101 is directly related to the severity of health impacts at the Project site. Dr. Clark found that the HRA relies on incorrect average freeway traffic volumes.<sup>64</sup> The HRA states that its data was based on the California Department of Transportation’s (“CalTrans”) [sic] Performance Measurement System (“PeMS”). But when Dr. Clark reviewed the database, he found that PeMS reported a higher volume of traffic than the DEIR reported. Specifically, the values

used in the HRA for northbound and southbound traffic are 2.2 to 2.5 times lower than the values reported by CalTrans.<sup>65</sup> [sic] Because the DEIR underestimates State [sic] Route 101's health impact at the Project site, the City must re-evaluate the air quality impacts using correct traffic counts in a revised EIR.

Because of these flaws, the conclusions in the DEIR's HRA lack substantial evidence. The DEIR must be revised and recirculated.

<sup>59</sup> DEIR, Appendix G, pg. 1.

<sup>60</sup> *Id.*, pg. 5.

<sup>61</sup> Clark, pg. 3.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*, pg. 7.

<sup>64</sup> *Id.*, pg. 5.

<sup>65</sup> *Id.*, pg. 5.

### **Response to Comment No. 11-12**

This comment summarizes the more specific comments provided by Clark and Associates (Clark) which asserts that the HRA's modeling contains flaws that result in inaccurate estimates of health impacts. Detailed responses to these comments are provided below in Response to Comment Nos. 11-36 through 11-50.

This commenter asserts that the Draft EIR's HRA does not include an analysis of the emissions from vehicles coming to and from the Project Site as well as the emissions from the back-up generator(s) that will be utilized on-site. As discussed in Response to Comment No. 11-36 below, the comment misconstrues the purpose of the HRA provided in the Draft EIR in which it was designed to address the CARB advisory recommendation regarding siting sensitive land uses such as residential occupancies within 500 feet of a freeway, urban roads with 100,000 vehicles per day, or rural roads with 50,000 vehicles per day. As also discussed in Response to Comment No. 11-36, the two roadways (Sunset Boulevard and Western Avenue) cited by Clark do not meet the criteria for further evaluation in an HRA. In addition, the emergency generator is not considered a substantial source of toxic air contaminants and did not warrant including in an HRA (Response to Comment No. 11-36).

As also discussed in Response to Comment No. 11-36 and contrary to what is stated in this comment, the DEIR does not underestimate the Project's operational TAC emissions, and does not underestimate the health impacts of the Project on the residents of the Project.

As discussed in Response to Comment 11-38, the commenter appears to misunderstand the traffic data provided by Caltrans and the traffic counts utilized and presented by the commenter did not come from the PeMS database, as claimed. The freeway traffic volumes were used correctly in the HRA provided in the Draft EIR.

As shown below, responses to Clark's comments do not change any of the conclusions in the Draft EIR.

### **Comment No. 11-13**

#### **ii. A Re-Calculated HRA Shows that the Project has Significant Health Impacts.**

Dr. Clark reconducted the City's HRA to find that the health impacts on the Project's future tenants will be significant. His HRA also shows that the Project has cumulatively significant health impacts on the community.

As explained above, the City's HRA is deficient because it fails to consider the impacts of emissions associated with the Project. Dr. Clark's analysis corrects this error by considering TAC emissions from trips generated by the Project. Specifically, he considers DPM emissions from the 287 trucks trips the DEIR assumes the Project generates daily:

According to the CalEEMOD analysis presented in Appendix B of the DEIR , [sic] an estimated 8,655 vehicle trips will occur every weekday and an estimated 12,465.96 vehicle trips will occur each weekend day. Those trips will be solely associated with the commercial development installed on the Project site. The CalEEMOD analysis further details that 3.3% of the traffic is expected to be heavy duty trucks (which emit the most DPM), or approximately 287 trucks will be entering and leaving the Project site daily. On the weekends there could be more (approximately 414).<sup>66</sup>

The City's HRA is also deficient because it only considers impacts on the Project site itself. Dr. Clark's HRA considers sensitive receptors in the surrounding community, as well as three schools, including Grant Elementary school (located approximately 0.2 miles [sic] northwest of the Project site), Joseph Le Conte Middle School (located approximately 0.5 miles [sic] south-southwest of the Project site), and Bernstein High School (located 0.3 miles [sic] west of the Project site).<sup>67</sup>

The findings of Dr. Clark's corrected dispersion modeling are contained in Table 1, below.



Table 1.<sup>68</sup>

Receptor	DPM Concentration From Freeway	DPM Concentration From Mobile Sources Project	DPM Cumulative Concentration
	ug/m <sup>3</sup>	ug/m <sup>3</sup>	ug/m <sup>3</sup>
Maximum On Site	5.11 E-03	5.40E-02	5.96E-02
Residents North of Sunset	1.47E-03	3.675E-2	3.82E-02
Grant Elementary School	1.11E-03	3.74E-03	8.02E-03
Joseph Le Conte Middle School	1.39E-03	2.01E-03	5.66E-03
Bernstein High School	2.09E-03	6.15E-03	1.08E-02

Dr. Clark next calculated the residential risk from exposure to DPM using CARB's HARP2 Risk Assessment Standalone Tool. The results of this analysis are contained in Table 2, below.

Table 2.

Receptor	DPM Cumulative Concentration ug/m <sup>3</sup>	Cumulative Risk
		Per million
Maximum On Site	5.96E-02	52.7
Residents North of Sunset	3.82E-02	33.8
Grant Elementary School	8.02E-03	2.1
Joseph Le Conte Middle School	5.66E-03	0.4
Bernstein High School	1.08E-02	1.5

The above health risks are significant impacts. SCAQMD's CEQA Air Quality Handbook provides that health impacts are significant when the Project exposes sensitive receptors to air contaminants that exceed the maximum incremental cancer risk of 10 in one million.<sup>69</sup> Here, the cancer risk exceeds 10 in one million for sensitive receptors at the Project site, and residents North of Sunset. Therefore, the Project has significant cumulative health impacts. These significant impacts are not disclosed or mitigated by the Project. The Project must reconduct its HRA, update its significance findings, and adopt binding mitigation to address the Project's impacts.

<sup>66</sup> Clark, pg. 9.

<sup>67</sup> *Id.*, pg. 11.

<sup>68</sup> Clark, pg. 11.

<sup>69</sup> DEIR, pg. IV.A-33.

### **Response to Comment No. 11-13**

This comment summarizes the more specific comments provided by Clark. Detailed responses to these comments are provided below. Specifically, as discussed in Response to Comment No. 11-43, the methodology Clark used to calculate the number of delivery trucks is fundamentally flawed and overestimates the number of Project-related delivery trucks by an order of magnitude (10 times); as discussed in Response to Comment No. 11-44, Clark compounds this error by assuming the trip length extends well beyond the Project area (approximately 3,500 feet) when the Draft EIR analysis clearly cites freeways/roadways within 1,000 feet of the Project Site with 100,000 vehicles per day are to be considered; and as discussed in Response to Comment No. 11-39, none of the roadways cited by Clark meet the criteria for further evaluation in an HRA. In addition, Clark uses heavy-heavy duty trucks (HHDTs) for analyzing operational delivery trucks. Use of HHDTs is appropriate for construction haul truck trips transporting soil export or demolition debris, but overstates emissions from operational delivery trucks (e.g., smaller trucks and not all diesel). Furthermore, Clark failed to provide the HARP2 output files which does not allow for review of potentially additional errors. The findings of Clark's HRA are inapplicable based on these errors and flawed methodology. As discussed in Response to Comment No. 11-36, the Draft EIR correctly analyzed potential health risk impacts to proposed sensitive land uses from freeways/urban roadways with 100,000 vehicles per day within 1,000 feet of the Project Site.

The HRA prepared for the Project and included as Appendix G of the Draft EIR was prepared based on the Project's proximity to the Hollywood Freeway in accordance with City Zoning Information File 2427. The comment incorrectly conflates Project-generated impacts with impacts on Project residents from the adjacent freeway. Nevertheless, a combined construction and operational HRA (see Appendix FEIR-2 of this Final EIR) has been prepared in response to these comments to confirm, as the Draft EIR analyzes and concludes (refer to Section IV.A, Air Quality pages IV.A-60 through IV.A-66), that no significant health risk impacts would occur from on-site Project emissions (e.g., off-road construction equipment, delivery trucks accessing the Project site, and the emergency generator) on nearby sensitive land uses (i.e., residential uses north of the Project site across Western Sunset Boulevard and residential use east of the Project site across Serrano Avenue).<sup>17</sup> The combined construction and operational HRA demonstrates that health risks from the Project would be a maximum of 6.9 in one million for residences located east of the Project Site, across Serrano Avenue (for combined construction and operational emissions) which is below the applicable SCAQMD significance threshold of 10 in one million.

---

<sup>17</sup> Appendix C of Appendix FEIR-2 of this Final EIR provides a source receptor diagram which identifies the specific receptors included in the HRA).

**Comment No. 11-14****iii. The City's Air Quality Analysis Underestimates Back-Up Generator Emissions, thus Underestimating Air Quality, GHG, and Health Impacts.**

The Project includes a diesel-powered back-up generator.<sup>70</sup> Such generators can significantly impact air quality, GHG emissions, and public health through DPM emissions.<sup>71</sup> In the City's air quality analysis, it assumed that the back-up generator will be maintained and tested for no more than 12 hours per year.<sup>72</sup>

The City's conclusion is unsupported. According to SCAQMD Rules 1110.2<sup>73</sup> and 1470,<sup>74</sup> back-up generators are allowed to operate for up to 200 hours per year, [sic] and operate for maintenance up to 50 hours per year. Thus, it is reasonably foreseeable [sic] that the Project may use its back-up generator for more than 12 hours, [sic] and is legally allowed to operate it for up to 200 hours per year. In order to accurately quantify the extent of the Project's potential generator emissions, the City should have analyzed emissions at the maximum usage authorized under existing regulations.

Further, the DEIR's analysis does not account for back-up generator operation during unscheduled events like Public Safety Power Shutoff ("PSPS") events and extreme heat events ("EHEs"). Courts have explained that an EIR 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."<sup>75</sup> Dr. Clark's comments show that although such events are unscheduled, they occur frequently enough in California that they are reasonably foreseeable.<sup>76</sup>

For example, the total duration of PSPS events in California lasted between 141 hours to 154 hours in 2019.<sup>77</sup> In 2021, two EHEs have been declared so far, which lasted 120 hours combined.<sup>78</sup> Dr. Clark explains that these two EHEs would have tripled the calculated yearly DPM emissions from the Project.<sup>79</sup> These conditions are expected to increase in severity.<sup>80</sup> Therefore, the DEIR's failure to consider this source of emissions drastically underestimates the Project's air quality, GHG, and public health impacts.

<sup>70</sup> DEIR, Appendix B-14.

<sup>71</sup> California Air Resources Board, Emission Impact: Additional Generator Usage Associated with Power Outage (January 30, 2020), available at <https://ww2.arb.ca.gov/resources/documents/emissions-impact-generator-usage-during-psps> (showing that generators commonly rely on gasoline or diesel, and that use of generators during power outages results in excess emissions); California Air Resources Board, Use of Back-up Engines for Electricity Generation During Public Safety Power Shutoff Events (October 25, 2019), available at <https://ww2.arb.ca.gov/resources/documents/use-back-engines-electricity-generation-during-public-safety-power-shutoff> ("When electric utilities de-energize their electric lines, the demand for back-up power increases. This demand for reliable back-up power has health impacts of its own. Of particular concern are health effects related to emissions from diesel back-up engines. Diesel particulate matter (DPM) has been identified as a toxic air contaminant, composed of carbon particles and numerous organic compounds, including over forty known cancer-causing organic substances. The majority of

DPM is small enough to be inhaled deep into the lungs and make them more susceptible to injury. Much of the back-up power produced during PSPS events is expected to come from engines regulated by CARB and California's 35 air pollution control and air quality management districts (air districts)").

<sup>72</sup> DEIR, Appendix B-87.

<sup>73</sup> Available at <http://www.aqmd.gov/docs/default-source/rule-book/reg-xi/rule-1110-2.pdf>.

<sup>74</sup> Available at <https://www.aqmd.gov/docs/default-source/rule-book/reg-xiv/rule-1470.pdf?sfvrsn=4>.

<sup>75</sup> *Laurel Heights I, supra*, 47 Cal. 3d 376, 398 (emphasis added); see also *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal. 4th 412, 449-50.

<sup>76</sup> Clark, pg. 16–17.

<sup>77</sup> *Id.*, pg. 16.

<sup>78</sup> *Id.*, pg. 17.

<sup>79</sup> *Id.*, pg. 17.

<sup>80</sup> OEHHA, Extreme Heat Events, February 11, 2019, <https://oehha.ca.gov/epic/changes-climate/extreme-heat-events> (showing that frequency of extreme heat events is increasing); NASA Earth Observatory, California Heatwave Fits a Trend, September 6, 2020, <https://earthobservatory.nasa.gov/images/147256/california-heatwave-fits-a-trend> (showing trends toward longer and more intense heatwaves in Southern California).

### **Response to Comment No. 11-14**

This comment summarizes the more specific comments provided by Clark. Detailed responses to these comments are provided below in Response to Comment Nos. 11-50 and 11-51.

### **Comment No. 11-15**

#### **iv. The DEIR Underestimates Construction Emissions, thus Underestimating Resultant Air Quality, GHG, and Health Impacts.**

To calculate the Project's emissions of NO<sub>x</sub> during construction, it is important to accurately account for emissions from heavy-duty trucks. However, the DEIR underestimates running emissions and idle emissions for heavy-duty trucks. The values the DEIR provides for running and idle emissions are 25% and 54% lower, respectively, than values reported in the Emission FACtor ("EMFAC") database. EMFAC is CARB's model that estimates the official emissions inventories of onroad and offroad mobile sources in California.

Dr. Clark's comments show that, for running emissions, the DEIR's value of 3.071 grams per mile is significantly lower than the average value for trucks produced in 2007 through 2022 (4.088 grams per mile).<sup>81</sup> Thus, instead of producing an estimated NO<sub>x</sub> emission rate of 60.93 lbs per day for trucks hauling materials away from the construction site, the average value for emissions should be reported as 81.11 lbs per day. For idling emissions, the DEIR's value of 32.49 grams of NO<sub>x</sub> per hour of idling is significantly lower than the

average value for trucks produced in 2007 through 2022 (70.59 grams of NO<sub>x</sub> per hour of idling). Thus, instead of producing an estimated NO<sub>x</sub> emission rate of 3.22 lbs per day for idling trucks, the average value for emissions should be reported as 7.00 lbs per day. When these errors are corrected, Dr. Clark calculates the averaged total emissions per day for the Project's construction phase during 2022 should be reported as 89.87 lbs per day.<sup>82</sup>

<sup>81</sup> Clark, pg. 20.

<sup>82</sup> Clark, pg, [sic]; DEIR, Appendix B-22 (The DEIR's estimate is 65.91 lbs per day).

### **Response to Comment No. 11-15**

This comment summarizes the more specific comment provided by Clark. A detailed response to this comment is provided below in Response to Comment No. 11-53.

### **Comment No. 11-16**

Dr. Clark identified another related analytical error: it is inaccurate to merely rely on the *average* total emissions per day of the construction vehicles. Rather, the DEIR should have relied on *the 95 percent upper confidence limit (95% UCL) of the mean* of the running emissions rates and idling rates. A 95% UCL is used when the distribution of values around a mean is uncertain. Here, the emissions rate of the Project's construction vehicles is uncertain, as City cannot predict the year of production of vehicles coming to and leaving the Project site.<sup>83</sup> Applying a 95% UCL to the Project's construction emissions, Dr. Clark determined that the total NO<sub>x</sub> emissions using the 95% UCL method would produce 123.88 lbs of NO<sub>x</sub> per day, well in excess of the SCAQMD threshold of significance for NO<sub>x</sub>.<sup>84</sup>

As a result, the DEIR fails to disclose the Project's significant construction emissions and resultant impacts on public health. The City must revise the analyses that rely on the underestimated heavy truck emissions.

<sup>83</sup> DEIR, pg. IV.A-15, 16. The DEIR merely requires that "[d]uring the grading phase, all trucks hauling the export of soil material and demolished site improvements shall be model 2007 or newer." The DEIR acknowledges that not all trucks 2007 or newer have the same emissions rates.

<sup>84</sup> Clark, pg. 21.

### **Response to Comment No. 11-16**

This comment summarizes the more specific comment provided by Clark. A detailed response to this comment is provided below in Response to Comment No. 11-53.

**Comment No. 11-17****C. THE DEIR FAILS TO CONSIDER AND ANALYZE CUMULATIVE IMPACTS**

CEQA requires an evaluation of cumulative impacts, defined as “two or more individual effects which, when considered together, are considerable.”<sup>85</sup> Such impacts may “result from individually minor but collectively significant projects taking place over a period of time.”<sup>86</sup> Lead agencies must consider whether a project’s potential impacts, although individually limited, are cumulatively considerable.<sup>87</sup> “Cumulatively considerable” under CEQA means that “the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.”<sup>88</sup>

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.”<sup>89</sup> “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.”<sup>90</sup>

<sup>85</sup> 14 C.C.R. § 15355; see also Staff Report, Attachment 10, pp. 894–896 (explaining IS/MND’s failure to analyze cumulative impacts from habitat loss).

<sup>86</sup> 14 C.C.R. § 15355(b).

<sup>87</sup> PRC § 21083(b); 14 CCR §§ 15064(h)(1), 15065(a)(3).

<sup>88</sup> CEQA Guidelines §15064(h)(1).

<sup>89</sup> 14 C.C.R. § 15130(b)(1).

<sup>90</sup> *Id.*; see *Id.* § 15130(a) (stating that the lead agency shall describe its basis for concluding that an incremental effect is not cumulatively considerable).

**Response to Comment No. 11-17**

Refer to Response to Comment Nos. 11-18 through 11-22, below.

**Comment No. 11-18****i. The DEIR Fails to Disclose, Analyze, and Mitigate Cumulative Noise Impacts**

The DEIR acknowledges that vibration impacts on a nearby multi-story office building and parking structure would be significant if the Project’s construction activities were concurrent

with those of Related Project 42.<sup>91</sup> Related Project 42 is 125 feet south of the Project site and is adjacent to the office building and parking structure.<sup>92</sup> However, the DEIR claims that there would be a less than significant cumulative impact. The DEIR reasons that Related Project 42 is subject to provisions in the Los Angeles Municipal Code that require neighboring buildings to be protected from damage during construction. Further, Related Project 42 would undergo CEQA review, and be required to adopt mitigation.

The DEIR's reasoning is flawed:

First, the DEIR already acknowledges that the Project's on-site vibration impacts are significant before mitigation. The DEIR uses the thresholds in the Federal Transit Administration's ("FTA's") Transit Noise and Vibration Assessment to assess the significance of the Project's noise and vibration impacts.<sup>93</sup> The FTA sets a 0.5 peak particle velocity ("PPV") threshold for vibration impacts on concrete, steel, or timber buildings. The DEIR acknowledges the Project has 0.523 PPV vibration impacts on the office building and parking structure, in excess of the threshold.<sup>94</sup> Since cumulative vibration impacts are measured against the same threshold,<sup>95</sup> it is illogical for the City to claim that the cumulative are less than significant. The City lacks substantial evidence to support the DEIR's conclusion that cumulative noise impacts are less than significant.

<sup>91</sup> DEIR, pg. IV.F-46, 56–59.

<sup>92</sup> DEIR, pg. IV.F-59.

<sup>93</sup> DEIR, pg. IV.F-21.

<sup>94</sup> DEIR, pg. IV.F-46.

<sup>95</sup> DEIR, pg. IV.F-51.

### **Response to Comment No. 11-18**

As analyzed in the Draft EIR (see Table IV.F-22 on page IV.F-46 of Section IV.F, Noise), the estimated ground vibration level due to Project construction at the multi-story office building and parking structure south of the Project Site would exceed the 0.5 PPV significance criteria. However, as concluded in the Draft EIR (page IV.F-51), with implementation of Mitigation Measure NOI-MM-2 and compliance with LAMC Section 91.3307, vibration levels at the exterior of the multi-story office building south of the Project Site would not exceed the significance criteria of 0.5 PPV. In any event, Related Project

No. 42 was terminated on July 25, 2018).<sup>18</sup> As such there can be no significant cumulative vibration impact between the proposed Project and Related Project No. 42.

### **Comment No. 11-19**

Second, CEQA prohibits abdicating responsibility for mitigating an impact to another Project. CEQA's requirements that mitigation be enforceable, be effective, and not be improperly deferred militate against the DEIR's approach.<sup>96</sup>

<sup>96</sup> 14 Cal. Code Regs. § 15126.4

### **Response to Comment No. 11-19**

The Draft EIR states that "if concurrent construction activities were to occur, the multi-story office building and parking structure could potentially be exposed to vibration levels exceeding acceptable thresholds due to construction activities from both the Project and the Related Project No. 42. However, potential cumulative vibration impacts with respect to the building damage from the Project and Related Project No. 42 would be less than significant for the following reasons: **Like the Project, Related Project No. 42 would be subject to the provisions of LAMC Section 91.3307 (Protection of Adjoining Property, including Section 91.3307.1 (Protection Required) which requires that adjoining public and private property shall be protected from damage during construction, remodeling and demolition work.**" (Draft EIR, Section IV.F, Noise, page IV.F-59 [Emphasis added].) Specifically, Section 91.3307.1 provides "Adjoining public and private property **shall** be protected from damage during construction, remodeling and demolition work. Protection must be provided for footings, foundations, party walls, chimneys, skylights and roofs. Provisions shall be made to control water runoff and erosion during construction or demolition activities." (Emphasis added.) Compliance with the law is not "abdicating responsibility for mitigating an impact to another Project" particularly when the proposed Project will not have a significant vibration impact on the adjoining building with implementation of Mitigation Measure NOI-MM-2. In any event, Related Project No. 42 was terminated on July 25, 2018.<sup>19</sup>

Furthermore, the Commenter has not identified any aspect of NOI-MM-2 that is either unenforceable or improper deferred mitigation. NOI-MM-2 contains specific

<sup>18</sup> *City of Los Angeles, Termination Letter for Case No. DIR-2016-4510-DB-SPR-WDI, July 25, 2018, <https://planning.lacity.org/pdiscaseinfo/document/MTk1NTAy0/03b6cd7a-61f3-4d27-8bc5-9bb6e20119bc/pdd>, accessed April 5, 2022.*

<sup>19</sup> *City of Los Angeles, Termination Letter for Case No. DIR-2016-4510-DB-SPR-WDI, July 25, 2018, <https://planning.lacity.org/pdiscaseinfo/document/MTk1NTAy0/03b6cd7a-61f3-4d27-8bc5-9bb6e20119bc/pdd>, accessed April 5, 2022.*



performance criteria for the vibration monitoring program and NOI-MM-2 will be included in the Mitigation Monitoring and Reporting Program (see Section IV, Mitigation Monitoring Program, of this Final EIR). In addition, separate from the CEQA requirement of enforceability of a Mitigation Monitoring Program, the City's standard project conditions include the enforcement of the entirety of the Mitigation Monitoring Program.

### **Comment No. 11-20**

Third, the DEIR provides no evidence that Related Project 42 is subject to CEQA review.

### **Response to Comment No. 11-20**

Any project that requires a discretionary action is subject to CEQA review. Related Project No. 42 was assigned Case Number ENV-2016-4511-MND and the Mitigated Negative Declaration (MND) was released for public comment on November 14, 2017.<sup>20</sup> Related Project No. 42 sought two discretionary entitlements—Site Plan Review and Density Bonus Compliance Review. An MND is one form of CEQA review. Related Project No. 42 was terminated on July 25, 2018.<sup>21</sup>

### **Comment No. 11-21**

Fourth, the City lacks any evidence to suggest that it is feasible for Related Project 42 to mitigate its vibration impacts.

### **Response to Comment No. 11-21**

The Commenter is mistaken that the EIR for this Project needs to establish the feasibility of mitigation for a related project particularly when compliance with the law, LAMC Section 91.3307, requires that adjoining public and private property be protected from damage during construction, remodeling, and demolition work. Moreover, the MND for Related Project No. 42 determined less than significant cumulative construction noise impacts (ENV-2016-4511-MND, pages III-89-90).<sup>22</sup> In any event, Related Project No. 42

---

<sup>20</sup> City of Los Angeles, Case Summary & Documents, ENV-2016-4511-MND, <https://planning.lacity.org/pdiscaseinfo/search/encoded/MjExMjA00>, accessed April 5, 2022.

<sup>21</sup> City of Los Angeles, Termination Letter for Case No. DIR-2016-4510-DB-SPR-WDI, July 25, 2018, <https://planning.lacity.org/pdiscaseinfo/document/MTk1NTAy0/03b6cd7a-61f3-4d27-8bc5-9bb6e20119bc/pdd>, accessed April 5, 2022.

<sup>22</sup> City of Los Angeles, Case Summary & Documents, ENV-2016-4511-MND, <https://planning.lacity.org/pdiscaseinfo/search/encoded/MjExMjA00>, accessed April 5, 2022.

was terminated on July 25, 2018.<sup>23</sup> As such there can be no significant cumulative vibration impact between the Project and Related Project No. 42.

### **Comment No. 11-22**

Fifth, even if the City could rely on another project to mitigate the Project's cumulative impacts, the DEIR compresses analysis of the Project's unmitigated impacts and mitigation to avoid making the finding that the Project has cumulatively significant vibration impacts. The City acknowledges that vibration impacts on a nearby multi-story office building and parking structure would be significant if the Project's construction activities were concurrent with those of Related Project 42, so it must formally find that the Project's cumulative vibration impacts are significant.<sup>97</sup> Only after the City makes that finding can it argue that these impacts are mitigated by Related Project 42's speculative mitigation.

The City must find that the Project has cumulatively significant vibration impacts, and adopt legally-binding mitigation.

<sup>97</sup> DEIR, pg. IV.F-46, 56–59.

### **Response to Comment No. 11-22**

See Response to Comment Nos. 11-18 through 11-21. As noted above, Related Project No. 42 was terminated on July 25, 2018.<sup>24</sup> As such, there is no possibility of a significant cumulative vibration impact.

### **Comment No. 11-23**

#### **D. The DEIR's Proposed Mitigation Measures are Inadequate**

CEQA prohibits agencies from approving projects with significant environmental impacts when feasible mitigation measures can substantially lessen or avoid such impacts.<sup>98</sup> An agency may not approve a project unless it has "[e]liminated or substantially lessened all significant effects on the environment where feasible."<sup>99</sup> The mitigation measures that are adopted by the agency must be enforceable through conditions of approval, contracts, or other means that are legally binding.<sup>100</sup> Incorporating mitigation measures into conditions

<sup>23</sup> *City of Los Angeles, Termination Letter for Case No. DIR-2016-4510-DB-SPR-WDI, July 25, 2018, <https://planning.lacity.org/pdiscaseinfo/document/MTk1NTAy0/03b6cd7a-61f3-4d27-8bc5-9bb6e20119bc/pdd>, accessed April 5, 2022.*

<sup>24</sup> *City of Los Angeles, Termination Letter for Case No. DIR-2016-4510-DB-SPR-WDI, July 25, 2018, <https://planning.lacity.org/pdiscaseinfo/document/MTk1NTAy0/03b6cd7a-61f3-4d27-8bc5-9bb6e20119bc/pdd>, accessed April 5, 2022.*

of approval ensures that the measures will be implemented, not merely adopted and ignored.<sup>101</sup> Therefore, a project proponent's agreement to a mitigation measure, by itself, is insufficient under CEQA. The mitigation measure must be adopted in a way that makes it an enforceable agreement that actually mitigates the significant environmental impact.<sup>102</sup>

<sup>98</sup> Pub. Resources Code § 21002.

<sup>99</sup> CEQA Guidelines § 15092(b)(2).

<sup>100</sup> Pub. Resources Code § 21081.6(b).

<sup>101</sup> *Federation of Hillside & Canyon Ass'ns v. City of Los Angeles* (2000) 83 CA 4th 1252, 1261.

<sup>102</sup> *Woodward Park Homeowners Ass'n v. City of Fresno* (2007) 150 CA 4th 683, 730.

### **Response to Comment No. 11-23**

Refer to Response to Comment Nos. 11-24 through 11-27, below for specific comments regarding proposed mitigation measures. With respect to the general comment about the enforceability of the mitigation measures, all of the Project's mitigation measures and project design features are included in Section IV, Mitigation Monitoring Plan (MMP), of this Final EIR. The MMP was prepared in compliance with the requirements of CEQA Section 21081.6 and CEQA Guidelines Section 15097, and includes the enforcement agency, monitoring agency, monitoring phase, monitoring frequency, and action indicating compliance for each of the Project's mitigation measures and project design features. Compliance with the MMP will be a Condition of Approval by the City.

### **Comment No. 11-24**

#### **i. The DEIR Fails to Demonstrate the Feasibility of Proposed Mitigation Measures for Significant Air Quality Impacts from Construction Emissions**

The DEIR acknowledges that the Project has significant construction emissions impacts. The DEIR purports to mitigate these impacts through mitigation measures AIR-MM-1, AIR-MM-2, and AIR-MM-6.

AIR-MM-1 requires that all off-road diesel-powered equipment over 50 hp used during project grading/excavation activities meet USEPA Tier 4 Final emissions standards.<sup>103</sup> Requiring construction equipment to meet USEPA Tier 4 Final emissions standards would result in substantial decreases in emissions.

However, the DEIR fails to include an analysis of the feasibility of obtaining exclusively Tier 4 Final construction equipment for the Project's projected 4-year construction period.

The DEIR fails to explain that Tier 4 Final equipment is of limited availability. As a result, the Project Applicant may not be able to gain access to this equipment in a timely manner in the quantity required for Project construction. Dr. Clark explains that the type of Tier 4 Final 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), is still in short supply in California.<sup>104</sup>

CEQA requires mitigation measures to be feasible and enforceable.<sup>105</sup> A public agency may not rely on mitigation measures of uncertain efficacy or feasibility.<sup>106</sup> The City must provide documentation in a revised DEIR showing that the Project Applicant can actually obtain Tier 4 Final equipment. Otherwise, there is no evidence AIR-MM-1 will actually mitigate the Project's significant construction emission impacts.

<sup>103</sup> DEIR, pg. I-21.

<sup>104</sup> Clark, pg. 23.

<sup>105</sup> 14 CCR §§ 15126.4(a)(2), 15364.

<sup>106</sup> *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727–728.

<sup>107</sup> *Id.*

<sup>108</sup> DEIR, pg. IV.A-58.

### **Response to Comment No. 11-24**

This comment summarizes the more specific comment provided by Clark. A detailed response to this comment is provided below in Response to Comment No. 11-54. The SCAQMD recommended EMFAC2021 web database shows that the County-wide fleet mix is 56 percent Tier 4 Final compliant for bore/drill rigs (Clark shows 31 percent), 37 percent for cranes (Clark shows 11 percent), 64 percent for excavators (Clark shows 49 percent), and 28 percent for rubber tired dozers (Clark shows 11 percent) within Los Angeles County in Year 2022. These pieces of equipment are used during the Project's grading/excavation phase. Such levels demonstrate that equipment meeting the requirements of Mitigation Measure AIR-MM-1 are available and the Project is required to the use of equipment meeting these requirements. Furthermore, this comment focuses on phases of construction not addressed by Mitigation Measure AIR-MM-1 (i.e., this mitigation measure is not directed at demolition, site preparation, or paving operations). Specifically, Mitigation Measure AIR-MM-1 requires all off-road diesel-powered equipment greater than 50 hp used during Project grading/excavation activities to meet USEPA Tier 4 Final emissions standards. It is unclear why much of this comment focuses on other phases of construction that are not required to use Tier 4 Final equipment.

**Comment No. 11-25**

AIR-MM-2 provides that “[d]uring the grading phase, all trucks hauling the export of soil material and demolished site improvements shall be model 2007 or newer.”<sup>107</sup> The DEIR states that this mitigation measure would significantly reduce construction NOx emissions from 107 to 71 pounds per day in 2022, below the SCAQMD significance threshold of 100 pounds per day.<sup>108</sup> Absent an analysis of the feasibility of obtaining Tier 4 Final construction equipment, this reduction in emissions not guaranteed by AIR-MM-2. The DEIR acknowledges that, although diesel particulate filters and emission control features began to be required by the California Air Resources Board (“CARB”) in 2007, implementation of NOx emission controls was staggered—the largest fleets were not in compliance until 2014.<sup>109</sup> Therefore, the DEIR may overestimate the reduction in emissions from AIR-MM-2. The DEIR must either recalculate AIR-MM-2’s emissions reductions to address actual quantifiable emissions reductions that would be achieved by AIR-MM-2, as currently drafted, or rework the mitigation measure to add more stringent requirements.

<sup>109</sup> DEIR, pg. IV.A-15, 16.

**Response to Comment No. 11-25**

This comment asserts that the reduction in emissions is not guaranteed by AIR-MM-2 absent an analysis of the feasibility of obtaining Tier 4 Final construction equipment. However, Tier 4 Final construction equipment (requirement of AIR-MM-1 for off-road diesel equipment (e.g., backhoe) has absolutely nothing to do with requiring on-road trucks to meet model 2007 or newer standards as required by AIR-MM-2. Nevertheless, as detailed in Response to Comment No. 11-54, below, the use of Tier 4 Final construction equipment was evaluated and determined to be feasible for the Project. This comment also references that the largest fleets were not in compliance until 2014, which implies that they have been in compliance for the last 8 years. The “largest fleets” referred to on pages IV.A-15 and 16 of Section IV.A, Air Quality, of the Draft EIR is in reference to off-road diesel construction equipment such as bulldozers, loaders, and backhoes. This comment appears to confuse the requirements for off-road equipment applicable to AIR-MM-1 and requirements for on-road truck requirements applicable to AIR-MM-2. This commenter has not provided substantial evidence to support their claim that AIR-MM-1 and AIR-MM-2 are not feasible measures.

**Comment No. 11-26**

AIR-MM-6 requires the use of solar-powered generators, to the extent commercially available, should generators be required during construction.<sup>110</sup> An EIR must implement all feasible mitigation to reduce significant impacts to less than significant levels. AIR-MM-6 should be revised to require that generators be powered by solar *or electricity*, not just

solar. Project Design Feature AQ-PDF-1 already requires generators used during construction to be powered by solar or electricity where possible,<sup>111</sup> so the City should include use of electric-powered generators in its enforceable monitoring program.

<sup>110</sup> DEIR, pg. I-22.

<sup>111</sup> DEIR, pg. I-20.

### **Response to Comment No. 11-26**

As discussed on page IV.A-58 and shown in Table IV.A-8 of Section IV.A, Air Quality, of the Draft EIR, implementation of the mitigation measures would reduce construction emissions below SCAQMD's regional construction significance threshold. The reduction in construction emissions was based on Mitigation Measure AIR-MM-1 (i.e., use of EPA Tier 4 emissions compliant equipment during grading/excavation) and Mitigation Measure AIR-MM-2 (i.e., use of 2007 or newer haul trucks during grading/excavation). As regional construction impacts were reduced to less than significant with implementation of the two mitigation measures (AIR-MM-1 and AIR-MM-2), no further mitigation is required. AIR-MM-6 was not required to reduce impacts to a less than significant level, is not a quantifiable reduction, and was not included in the air quality modeling. Based on this comment Mitigation Measure AIR-MM-6 requiring the use of solar generators, which again is not required to reduce impacts to a less than significant level, will be removed since Project Design Feature AQ-PDF-1 already includes the use of electricity from power poles and/or solar-powered generators. This revision is reflected in Section III, Revisions, Clarifications, and Corrections to the Draft EIR, of this Final EIR.

### **Comment No. 11-27**

#### **E. The DEIR Conceals Potentially Significant Environmental Impacts by Disguising Mitigation Measures as Project Design Features**

Under CEQA, it is improper to attempt to disguise mitigation measures as part of the project's design if this obfuscates the potential significance of environmental impacts.<sup>112</sup> In *Lotus v. Department of Transportation*, an EIR prepared by the California Department of Transportation ("CalTrans") [sic] contained measures to help minimize potential stress on redwood trees during highway construction, such as restorative planting, invasive plant removal, watering, and use of an arborist and specialized excavation equipment.<sup>113</sup> The Court of Appeal held that because the EIR relied on these measures to reduce adverse impacts, they were actually mitigation measures.<sup>114</sup> The Court of Appeal held that the EIR improperly compressed the analysis of impacts and mitigation measures into a single issue because the EIR did not designate the measures as mitigation and concluded that because of the measures, no significant impacts were anticipated.<sup>115</sup> The Court explained that a significance determination must be made independent of mitigation first, then mitigation can be incorporated, and the effectiveness of those measures can be evaluated.<sup>116</sup>

“Absent a determination regarding the significance of the impacts to the root systems of the old growth redwood trees, it is impossible to determine whether mitigation measures are required or to evaluate whether other more effective measures than those proposed should be considered.”<sup>117</sup> To ensure that mitigation measures are binding, they must be identified as mitigation measures in an enforceable monitoring program.

<sup>112</sup> *Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 658 (compression of mitigation measures into project design without acknowledging potentially significant impact if effects were not mitigated violates CEQA)

<sup>113</sup> *Id.* at 650.

<sup>114</sup> *Id. Lotus v. Dep’t of Transp.* (2014) 223 Cal. App. 4th 645, 651-52.

<sup>115</sup> *Id.* at 656.

<sup>116</sup> *Id.* at 654–656.

### **Response to Comment No. 11-27**

This comment incorrectly states that the Draft EIR disguises mitigation measures as project design features, and suggests they are non-binding. The proposed Project Design Features are not intended to be mitigation and do not “mitigate” any significant impacts but are expressly features of the Project. Furthermore, as is the case with every Draft EIR published by the City, the proposed Project Design Features are included in Section IV, Mitigation Monitoring Program, of this Final EIR, along with details about the enforcement and monitoring agencies, timing, and action indicating compliance. All of the necessary and required impact analysis is contained in the Draft EIR. As such, the *Lotus* case has no relevance.

### **Comment No. 11-28**

#### **i. NOI-PDF-1 through NOI-PDF-5**

The DEIR concludes that the Project’s on-site construction noise and vibration impacts are significant and unavoidable with all feasible mitigation incorporated.<sup>118</sup> The City therefore has a corresponding duty to require all feasible mitigation to reduce the Project’s construction noise impacts to the greatest extent feasible before declaring the impact significant and unavoidable.<sup>119</sup> The City fails to require all feasible mitigation because it fails to include Project Design Features NOI-PDF-1 through NOI-PDF-5 in an enforceable monitoring program.

<sup>118</sup> See e.g. [sic] DEIR, pg. I-16 to 17.

<sup>119</sup> Pub. Res. Code § 21081; 14 CCR §§ 15090, 15091; *Covington v GBUAPCD* (2019) 43 Cal.App.5th 867, 879-883 (before impact can be declared significant and unavoidable, lead agency must first adopt all feasible mitigation to reduce impact to greatest extent feasible).

---

**Response to Comment No. 11-28**

As discussed in Response to Comment No. 11-27, above, the proposed Project Design Features are included in Section IV, Mitigation Monitoring Program, of this Final EIR, along with details about the enforcement and monitoring agencies, timing, and action indicating compliance.

**Comment No. 11-29**

Additionally, the DEIR underestimates the severity of the Project's unmitigated noise impacts by incorporating Project Design Features NOI-PDF-1 through NOI-PDF-5 into the DEIR's analysis of the Project's unmitigated impacts. This approach violates CEQA because it improperly compresses the analysis of impacts and mitigation measures into a single issue. Here, Project Design Features NOI-PDF-1 through NOI-PDF-5 are all noise-reducing mitigation measures.<sup>120</sup> NOI-PDF-1 requires construction equipment to be equipped with noise-muffling devices.<sup>121</sup> NOI-PDF-2 requires screening-off mechanical equipment from noise-sensitive receptors. NOI-PDF-3 imposes maximum noise levels on outdoor amplified sound systems. NOI-PDF-4 screens-off loading docks from sensitive receptors. NOI-PDF-5 provides that Project construction will not utilize drive pile systems. Like the tree-sensitive construction techniques in *Lotus*, use of these noise-muffling techniques are not ordinarily required to construct a mixed-use development—these techniques are only included in the DEIR to mitigate impacts. Further, as in *Lotus*, these noise-muffling techniques are not specifically mandated by law—the Los Angeles Municipal Code only imposes noise thresholds the Project must meet. Instead, the purpose of NOI-PDF-1 through NOI-PDF-5 is to reduce the Project's admittedly significant noise impacts. These PDFs are thus actually mitigation measures. The DEIR must reconduct its noise analyses to disclose the true noise impact of the Project, and must include Project Design Features NOI-PDF-1 through NOI-PDF-5 in an enforceable mitigation monitoring program.

<sup>120</sup> DEIR, I-21.

<sup>121</sup> *Id.*

**Response to Comment No. 11-29**

This comment claims that the inclusion of Project Design Features (PDFs) in the Draft EIR related to noise and vibration violates CEQA and the PDFs are mitigation measures, so that the Draft EIR failed to disclose the full unmitigated impact. This comment also implies that PDFs are not enforceable.

To start with, the mere inclusion of a PDF in a draft EIR does not violate CEQA. CEQA permits the incorporation of features of a project to the impact analyses, including features proposed by an applicant that are intended to avoid or minimize the project's environmental effects. These PDFs may be included as part of a project, but should be



distinguished from proposed mitigation measures required to reduce or avoid a specific significant impact caused by the project. See CEQA Guidelines Section 15126.4(a)(1)(A). Here, the PDFs were clearly identified in the Draft EIR, properly distinguished from the mitigation measures, and incorporated as part of the Project. As discussed in Response to Comment No. 10-27, above, PDFs are also binding and legally enforceable as part of Mitigation Monitoring Program set forth in Section IV of the Final EIR, which directly contradicts the comment's claims to the contrary. This approach is standard practice by the Department of City Planning, as demonstrated most recently in the Final EIRs for the 3003 Runyon Canyon Project, the 656 South San Vicente Medical Office Project, the 3<sup>rd</sup> and Fairfax Mixed-Use Project, and the 1111 Sunset Project.<sup>25</sup>

In Section IV.F, Noise, of the Draft EIR, the pre-mitigation on-site construction noise modeling did not include any reductions or offsets accounting for NOI-PDF-1, which requires power construction equipment to be equipped with state-of-the-art noise shielding and muffling devices. The noise modeling provided a conservative analysis (without accounting for NOI-PDF-1) based on typical construction equipment noise data published by the Federal Highway Administration's (FHWA) "Roadway Construction Noise Model" (FHWA 2006). The Draft EIR provides a clear conclusion that the Project's on-site construction noise impact would be significant prior to any potential mitigation (see pages IV.F-25 through IV.F-28 and Table IV.F-11 in Section IV.F, Noise, of the Draft EIR). The analysis and significance conclusion would remain the same with or without NOI-PDF-1 incorporated. The Draft EIR also includes a post-mitigation conclusion on pages IV.F-43 and IV.F-44, including Table IV.F-21. The post-mitigation impact conclusion is based on NOI-MM-1 (installation of a temporary sound barrier), but not NOI-PDF-1. This conclusion is supported by the noise modeling contained in Appendix H, Noise Calculation Worksheets of the Draft EIR. Unlike *Lotus*, the Draft EIR includes analysis both with and without the implementation of NOI-MM-1. As such, the Draft EIR did not compress the analysis or preclude identification of the potential environmental consequences arising from the Project related to on-site construction noise impacts. This approach is consistent with CEQA.

Similarly, NOI-PDF-5 prohibits the use of drive pile systems during construction. Instead, drilling methods to minimize vibration generation during shoring and foundation activities would be used. Because drive pile systems activities are not contemplated as part of construction of the Project, drive pile systems were not included in the construction assumptions used for the vibration modeling. As such, no offsets or reductions were assumed for NOI-PDF-5. The analysis and significance conclusions (human annoyance and building damage) in the Draft EIR would remain the same with or without NOI-PDF-5.

---

<sup>25</sup> *City of Los Angeles, Department of City Planning, Environmental Impact Reports, <https://planning.lacity.org/development-services/eir>, accessed April 14, 2022.*

The other three PDFs related to noise also do not run afoul of *Lotus*. As explained in Section IV.F, Noise, of the Draft EIR, the Project includes permanent noise barriers (NOI-PDF-2 and NOI-PDF-4) and sound-attenuating features (NOI-PDF-3) that are part of the Project's design and therefore part of the Project itself. These PDFs were properly factored into the modeling for Project's operational noise impact. Specifically, NOI-PDF-2 requires that all outdoor mechanical equipment be screened from off-site noise-sensitive receptors and ensures that the noise from the mechanical equipment on-site would be consistent with LAMC Section 111.02, which prohibits noise from air conditioning, refrigeration, heating, pumping, and filtering equipment from exceeding the ambient noise levels on the premises of other occupied properties by more than 5 dBA. This screening is part of the Project design. Similarly, NOI-PDF-4 requires that all loading docks will be acoustically screened from off-site noise sensitive receptors. This screening is included on the Project's plans and is an inherent part of its design. Lastly, NOI-PDF-3 involves the type of amplified sound system incorporated into the Project's outdoor spaces. Specifically, it requires that the outdoor amplified sound systems be designed to not exceed a maximum noise level of 71 dBA ( $L_{eq-1hr}$ ) at a distance of 25 feet from the amplified speaker sound systems at the Ground Level (Outdoor Dining, Plaza, and Paseo) and 85 dBA ( $L_{eq-1hr}$ ) at the Levels 2 and 3 (Courtyards at Buildings 1, 2, 3, and 4, and Paseo) and at the Recreation Building Roof Level Terrace. This measure was incorporated to ensure consistency with LAMC Section 111.02, which prohibits a noise level increase of 5 dBA over the existing average ambient noise level as measured at an adjacent property line. Specifically, as provided in Table IV.F-15 of the Draft EIR, the estimated noise levels from outdoor uses (including the amplified speaker sound systems) ranged from 49.1 dBA  $L_{eq}$  at receptor R2 to 63.6 dBA  $L_{eq}$  at receptor R3, which would be below the existing ambient noise levels of 56.1 dBA  $L_{eq}$  and 66.0 dBA  $L_{eq}$  at receptors R2 and R3, respectively.

### **Comment No. 11-30**

#### **F. The City Cannot Approve the Project's Main Conditional Use Permit**

The Project seeks approval of a Main Conditional Use Permit ("MCUP") pursuant to LAMC Section 12.24(W)(1) for the sales and/or dispensing of alcoholic beverages within the commercial uses of the Project.<sup>122</sup> LAMC Section 12.24(E) provides that a decision-maker shall not grant a conditional use permit—including for sale of alcoholic beverages—without finding "that the project's location, size, height, operations and other significant features will be compatible with and will not adversely affect or further degrade adjacent properties, the surrounding neighborhood, or the public health, welfare, and safety."

The DEIR acknowledges that the Project has significant and unavoidable impacts on the environment and health of the community.<sup>123</sup> The DEIR also fails to accurately disclose and mitigate other significant impacts, as discussed herein. Therefore, the Project currently fails to meet the LAMC requirements to obtain a MCUP.

Additionally, Section 12.24(W)(1)(a)(3) requires the below finding be made to approve the MCUP:

“the proposed use will not detrimentally affect nearby residentially zoned communities in the area of the City involved, after giving consideration to the distance of the proposed use from residential buildings, churches, schools, hospitals, public playgrounds and other similar uses, and other establishments dispensing, for sale or other consideration, alcoholic beverages, including beer and wine.”

The Project is located directly across Serrano Avenue from residential buildings. Given this close proximity to residential uses, the City must provide evidence demonstrating that issuance of the MCUP to allow alcohol sales will not detrimentally affect these residences.

<sup>122</sup> DEIR, pg. II-29.

<sup>123</sup> DEIR, pg. I-18–19 (On-site noise, cumulative off-site noise, and on-site vibration (human annoyance) are all significant and unavoidable impacts).

### **Response to Comment No. 11-30**

Findings in support of a Main Conditional Use Permit for alcohol are not a CEQA issue. In any event, the only Project significant and unavoidable impacts are for construction noise and vibration—not operations. Thus, there is no nexus between operational alcohol sales and construction noise or vibration that could result in “detrimental” effects on nearby residences.

### **Comment No. 11-31**

#### **G. The Statement of Overriding Consideration Must Consider Whether the Project Provides Employment Opportunities for Highly Trained Workers**

As previously stated, the City concluded in the DEIR that the Project will have significant and unavoidable environmental impacts related to on-site noise and vibration during construction.<sup>124</sup> Therefore, in order to approve the Project, CEQA requires the City to adopt a statement of overriding considerations, providing that the Project’s overriding benefits outweigh its environmental harm.<sup>125</sup> An agency’s determination that a project’s benefits outweigh its significant, unavoidable impacts “lies at the core of the lead agency’s discretionary responsibility under CEQA.”<sup>126</sup>

The City must set forth the reasons for its action, pointing to supporting substantial evidence in the administrative record.<sup>127</sup> This requirement reflects the policy that public agencies must weigh a project’s benefits against its unavoidable environmental impacts,

and may find the adverse impacts acceptable only if the benefits outweigh the impacts.<sup>128</sup> Importantly, a statement of overriding considerations is legally inadequate if it fails to accurately characterize the relative harms and benefits of a project.<sup>129</sup>

In this case, the City must find that the Project's significant, unavoidable impacts are outweighed by the Project's benefits to the community. CEQA specifically references employment opportunities for highly trained workers as a factor to be considered in making the determination of overriding benefits.<sup>130</sup> Currently, there is not substantial evidence in the record showing that the Project's significant, unavoidable impacts are outweighed by benefits to the community. For example, there is no evidence in the record that the Applicant has made any commitments to employ graduates of state approved apprenticeship programs or taken other steps to ensure employment of highly trained and skilled craft workers on Project construction, an action contemplated by CEQA Section 21081. Absent substantial evidence in the record demonstrating that the Project's benefits outweigh its environmental costs, the City would not fulfill its obligations under CEQA if it adopted a statement of overriding considerations and approved the Project.

We urge the City to prepare and circulate a revised DEIR which identifies the Project's potentially significant impacts, requires all feasible mitigation measures and analyzes all feasible alternatives to reduce impacts to a less than significant level. If a Statement of Overriding Considerations is adopted for the Project, we urge the City to consider whether the Project will result in employment opportunities for highly trained workers.

<sup>124</sup> DEIR, pg. VI-1

<sup>125</sup> CEQA Guidelines, § 15043.

<sup>126</sup> *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392.

<sup>127</sup> Pub. Resources Code, § 21081, subd. (b); CEQA Guidelines, § 15093, subds. (a) and (b); *Cherry Valley Pass Acres & Neighbors v. City of Beaumont* (2010) 190 Cal.App.4th 316, 357.

<sup>128</sup> Pub. Resources Code, § 21081(b); CEQA Guidelines, § 15093, subds. (a) and (b)

<sup>129</sup> *Woodward Park Homeowners Association v. City of Fresno* (2007) 150 Cal.App.4th 683, 717.

<sup>130</sup> Pub. Resources Code, § 21081, subds. (a)(3) and (b).

### **Response to Comment No. 11-31**

The Draft EIR is not required to include a statement of overriding considerations, same as for a Final EIR. A statement of overriding considerations is required pursuant to CEQA Guidelines section 15093 and is only required to be "included in the record of project approval." The Project has yet to complete its environmental review process, let alone begin project approval hearings; as such preparation of a statement of overriding considerations, which will be prepared, is not yet timely. Comments regarding benefits that should be considered as part of the balancing City decision-makers will need to undertake and set forth in the statement of overriding considerations will be forwarded to the decision-

makers for review. The City decision-makers will consider all appropriate benefits in consideration of the Project's limited, temporary significant and unavoidable impacts in compliance with CEQA Guidelines sections 15093 and 15043(b).

### **Comment No. 11-32**

#### **V. CONCLUSION**

The DEIR is inadequate and must be withdrawn. We urge the City to prepare and circulate a revised DEIR which accurately discloses all of the Project's potentially significant impacts, and requires all feasible mitigation measures to reduce the Project's significant environmental and public health impacts. We thank you for the opportunity to provide these comments on the DEIR.

### **Response to Comment No. 11-32**

This comment concludes the letter and reiterates the commenter's belief that the Draft EIR does not meet the requirements of CEQA. Specific issues raised by the commenter in their letter and associated exhibits are addressed in Response to Comment Nos. 11-6 through 11-63. As discussed therein, the analysis included in the Draft EIR adequately analyzed and disclosed the Project's impacts and recirculation is not warranted.

### **Comment No. 11-33**

At the request of Adams Broadwell Joseph & Cardozo (ABJC), Clark and Associates (Clark) has reviewed materials related to the 2021 City of Los Angeles Draft Environmental Impact Report (DEIR) of the above referenced project.

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

### **Response to Comment No. 11-33**

This introductory comment is noted for the administrative record. Specific comments regarding the Draft EIR are provided and responded to below.

### **Comment No. 11-34**

#### **Project Description:**

The Project proposes the development of a new mixed-use project (the Project) on a 6.75-acre site located at 5420 Sunset Boulevard (the Project Site) within the Hollywood

Community Plan and Vermont/Western Station Neighborhood Area Specific Plan (Specific Plan) areas of the City of Los Angeles (City). The Project would replace an existing grocery store, vacant commercial space, fast-food restaurant, and associated parking areas within the Project Site with a new mixed-use development consisting of 735 multi-family residential units and up to 95,000 square feet of neighborhood-serving commercial uses, including market/retail and restaurant uses. The proposed uses would be provided within four buildings that would be up to six stories with a maximum height of 75 feet.

The proposed uses would be supported by approximately 1,419 vehicle parking spaces that would be distributed throughout the Project Site in two subterranean parking levels and in one at grade parking level. A total of approximately 548 bicycle parking spaces would be provided within the Project Site and on adjacent sidewalks. The Project would include residential lobbies and leasing offices, pools, spas, and other recreational facilities. The Project would provide approximately 96,800 square feet of open space, including landscaped courtyards, a public plaza fronting Sunset Boulevard, and landscaped paseos at the ground level that would be publicly accessible from Sunset Boulevard. Overall, the Project would remove approximately 100,796 square feet of existing floor area and construct up to 882,250 square feet of new floor area, resulting in an increase of 781,454 square feet of net new floor area within the Project Site. The Floor Area Ratio (FAR) on the Project Site would be a maximum of 3 to 1. To provide for the Project, the existing grocery store, vacant commercial space, fast-food restaurant, and associated surface parking areas would be demolished.

### **Response to Comment No. 11-34**

This comment summarizing the Project Description is noted for the record and will be forwarded to the decision makers for their review and consideration. The Project Description identified above has been modified including, but not limited to, updates to open space, vehicular parking, and bicycle parking spaces. Refer to Section III, Revisions, Clarifications, and Corrections to the Draft EIR, of this Final EIR.

### **Comment No. 11-35**

#### **General Comments:**

According to the City's DEIR, the Project would result in significant and unavoidable impacts related to on-site noise during construction and on-site vibration during construction (pursuant to the threshold for human annoyance). Cumulative impacts with respect to off-site construction noise would also be significant and unavoidable. All other potential impacts would be less than significant or mitigated to less-than-significant levels. The assessment from the City provided in the DEIR misses the significant impacts associated with air quality that have been ignored by the City. The conclusion from the City that all other potential impacts would be less than significant is, in fact, without merit.

There are substantial impacts that are not addressed in the City's analysis that must be addressed in a revised environmental impact report (REIR).

### **Response to Comment No. 11-35**

This comment generally summarizes the significant and unavoidable impacts related to noise and vibration during construction. This comment incorrectly suggests that the Project would result in significant air quality impacts based on the subsequent comments. The commenter also incorrectly states that the "conclusion from the City that all other potential impacts would be less than significant is, in fact, without merit." All other potential environmental impacts were sufficiently analyzed with substantial documentation that was included within the analysis to determine less than significant impacts and the commenter has provided no evidence to the contrary. Please refer to Response to Comment No. 11-36 through 11-63 for responses to more detailed comments regarding air quality impacts.

### **Comment No. 11-36**

#### **Specific Comments:**

- 1. The Air Dispersion Model Utilized In The Health Risk Analysis Was Deficient, Used Inaccurate Traffic Counts, and Did Not Include All Of The Sources Of Criteria Air Pollutants and Toxic Air Contaminants From The Project.**

In Appendix G of the DEIR,<sup>1</sup> the description provided to the City states that a health risk assessment (HRA) was prepared to assess the potential effects of pollutants (sic, specifically from roadway emissions associated with State [sic] Route 101) on individuals who utilize/reside at the proposed project site. The model fails to accurately assess the concentrations of toxic air contaminants (TACs) released from activities associated with the operation of the Project and underestimates the health impacts of the project on the residents of the Project and the surrounding community since it does not include an analysis of the emissions from vehicles coming to and from the Project site as well as the emissions from the back-up generator(s) that will be utilized on-site.

<sup>1</sup> Appendix G of DEIR. 2021. Sunset/Western Mixed-Use Project Health Risk Assessment. Prepared for Eyestone Environmental by Air Quality Dynamics. Dated May, 2018. Section 1.0 Introduction. Page 4 of 142.

### **Response to Comment No. 11-36**

This comment misconstrues the purpose of the HRA provided in the Draft EIR. Specifically, the commenter asserts that:

*The model fails to accurately assess the concentrations of toxic air contaminants (TACs) released from activities associated with the operation of the Project and underestimates the health impacts of the project on the residents of the Project and the surrounding community since it does not include an analysis of the emissions from vehicles coming to and from the Project site as well as the emissions from the back-up generator(s) that will be utilized on-site.*

As noted in the freeway HRA included as Appendix G of the Draft EIR, it was clearly stated that it is stand-alone document designed to address the CARB advisory recommendation regarding siting sensitive land uses such as residential occupancies within 500 feet of a freeway, urban roads with 100,000 vehicles per day, or rural roads with 50,000 vehicles per day. It was also stated that the Los Angeles City Planning Commission notes long-standing concern for siting sensitive land uses within 1,000 feet of a freeway. As such, the freeway HRA was prepared to address these concerns as negative health outcomes may occur to residential receptors located within this domain. The freeway HRA does not address general operational emissions as that is not within the scope of a freeway HRA. Based upon the criteria for inclusion of vehicular sources, the adjoining freeway (U.S. Route 101) exceeds the identified daily traffic volumes of 100,000 vehicles per day. Traffic counts for vehicles coming to and from the site are well below the identified vehicular threshold and are considered *de minimus* to warrant inclusion in the freeway HRA. Specifically, as shown in pages 112 through 113 of Appendix H, Noise, of the Draft EIR, Sunset Boulevard would result in a maximum of 43,780 average daily trips between Bronson Avenue and Wilton Place and Western Avenue would result in a maximum of 24,390 average daily trips between Franklin Avenue and Hollywood Boulevard in Year 2026.

Furthermore, the Draft EIR correctly identified that 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 an 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 cleaners, and gasoline dispensing facilities).<sup>26</sup> The SCAQMD recommends that HRAs be conducted for substantial sources of DPM (e.g., truck stops and*

---

<sup>26</sup> SCAQMD, Guidance Document for Addressing Air Quality Issues in General Plans and Local Planning, May 6, 2005.



*warehouse distribution facilities that generate more than 100 trucks per day or more than 40 trucks with operating transport refrigeration units).*

As discussed above in Response to Comment No. 11-11, the proposed uses are conservatively estimated to generate approximately 35 trucks per day of which six trucks would be equipped with TRUs. Please note that this estimate of truck trips are for proposed uses and does not take credit for the removal of existing uses (18,525 sf of vacant commercial uses, 3,943 sf fast food restaurant, and a 78,328 sf grocery store). Furthermore, SCAQMD guidance does not list emergency generators as a use warranting additional analysis in an HRA. 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 of TAC emissions provided in the *SCAQMD 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 diesel particulate matter 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.

An HRA related to potential impacts from activities on the Project Site to nearby sensitive land uses is not required by SCAQMD or the City. Nonetheless, a combined construction and operation HRA has been prepared in response to this comment to confirm, as the Draft EIR concludes, that no significant health risk impacts would occur from activities on the Project Site on nearby sensitive receptors. The construction and operation HRA is provided as Appendix FEIR-2 of this Final EIR. The HRA demonstrates that health risks from the Project (combined construction and operation) would be a maximum of 6.9 in one million for residences located east of the Project Site, across Serrano Avenue (for combined construction and operational emissions) which is below the applicable SCAQMD significance threshold of 10 in one million.

Lastly, CEQA does not require an analysis of project-on-project impacts as suggested by the commenter. (See *California Building Industry Association v. Bay Area Air Quality Management District* (2015) 62 Cal.4th 369 (CEQA requires analysis of a project's impacts on the existing environment, not the existing environment's impacts on future occupants and users).)

### **Comment No. 11-37**

According to Appendix G of the DEIR<sup>2</sup>, "The (air) modeling analysis also considered the spatial distribution of mobile source activity in relation to the proposed site. To accommodate a Carteseian [sic] grid format, direction dependent calculations were obtained by identifying the uniformly placed to provide coverage across the identified transverse mercator (UTM) coordinates for each volume source location. On-site receptors

were uniformly placed to provide coverage across the identified project boundary commensurate with residential uses and areas of common access. Terrain height adjustments were incorporated into the modeling exercise to account for the discrepancy in source elevations and the average grade plane of the proposed project.”

Based upon the source description in the HRA, it is clear that the model includes Dispersion Model Input Table, included Appendix C to the HRA, identifies 64 discrete sources. Thirteen (13) sources are identified for north bound traffic on State [sic] Route 101, thirteen (13) sources are identified for south bound traffic on State [sic] Route 101, ten (10) sources are identified for the southbound offramp leading to Western Avenue, and twenty-eight (28) sources are identified for the northbound onramp for Western Avenue. No source is directly attributed to the emissions from vehicles entering and leaving the Project site.

Figure 2  
Source-Receptor Grid Network

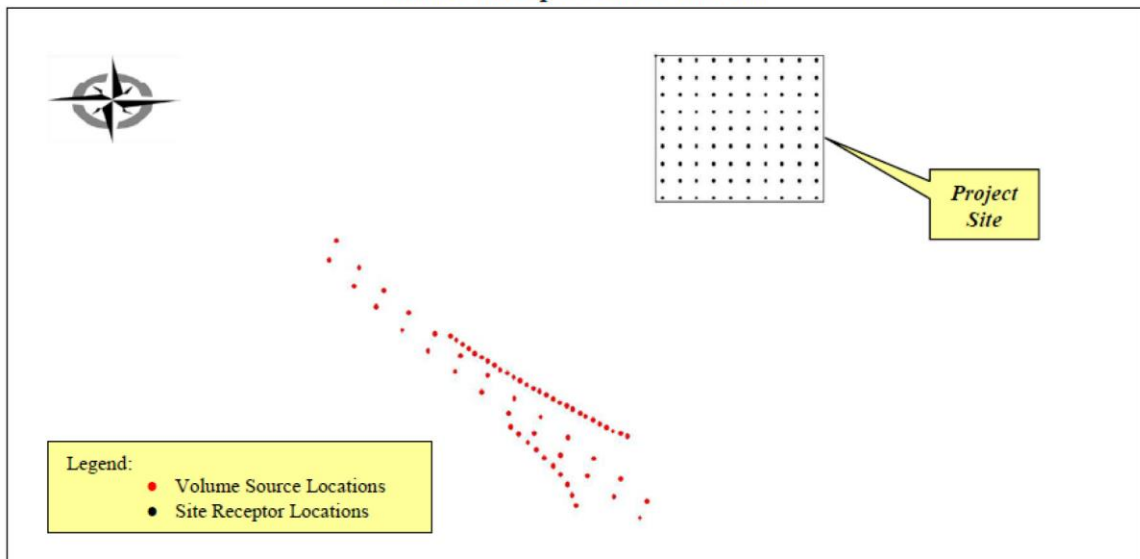


Figure 1: Model Domain From City's Analysis

**Response to Comment No. 11-37**

Refer to Response to Comment No. 11-36 above. Neither of the roadways cited by the commenter meet the criteria for further evaluation in an HRA. Specifically, as shown in pages 112 through 113 of Appendix H, Noise, of the Draft EIR, Sunset Boulevard would result in a maximum of 43,780 average daily trips between Bronson Avenue and Wilton Place and Western Avenue would result in a maximum of 24,390 average daily trips between Franklin Avenue and Hollywood Boulevard in Year 2026.

**Comment No. 11-38**

In the Source Identification section of the HRA<sup>3</sup>, the report states that based upon the arithmetic average of traffic flow identified in the Performance Measurement System (PeMS) operated by the California Department of Transportation (CalTrans), [sic] hourly traffic volumes for the north and southbound freeway segments were identified. Ramp volumes were assumed by the report to have a uniform distribution and were averaged to produce an hourly traffic profile.<sup>4</sup> The PeMS data utilized in the analysis was for the 2017 calendar year.

Table 1  
Hourly Freeway Traffic Volumes

Roadway Segment	Speed Scenario	Traffic Volumes		
		All	Gas	Diesel
U.S. Route 101 Northbound	Average	4904	4699	205
U.S. Route 101 Southbound	Average	3670	3517	153
U.S. Route 101 Northbound	Minimum	1416	1357	59
U.S. Route 101 Southbound	Minimum	2928	2806	122
Southbound Off/Western Avenue	Average Minimum	408	391	17
Northbound On/Western Avenue	Average Minimum	518	496	22

A review of the PeMS database for the year 2017 shows a very different picture of the northbound and southbound average traffic rates. The southbound traffic the hourly average traffic flow is between 8,167 vehicles per hour to 9,042 vehicles per hour in the segment between Western Avenue and Sunset Boulevard. The value used in the HRA for the southbound traffic is 2.2 to 2.5 times lower than the values reported by CalTrans. [sic]

DESCRIPTION	Southbound Peak Hour	Southbound Peak MADT	Southbound AADT	Southbound Hourly Ave
<b>LOS ANGELES, WESTERN AVENUE</b>	<b>11600</b>	<b>201000</b>	<b>196000</b>	<b>8167</b>
<b>LOS ANGELES, SUNSET/HOLLYWOOD BOULEVARD</b>	<b>13000</b>	<b>222000</b>	<b>217000</b>	<b>9042</b>

The northbound traffic the hourly average traffic flow is between 8,167 vehicles per hour to 9,042 vehicles per hour in the segment between Western Avenue and Sunset Boulevard. The value used in the HRA for the northbound traffic is 2.2 to 2.5 times lower than the values reported by CalTrans. [sic]

DESCRIPTION	Northbound Peak Hour	Northbound Peak MADT	Northbound AADT	Northbound Hourly Ave
<b>LOS ANGELES, WESTERN AVENUE</b>	<b>13000</b>	<b>222000</b>	<b>217000</b>	<b>9042</b>
<b>LOS ANGELES, SUNSET/HOLLYWOOD BOULEVARD</b>	<b>11900</b>	<b>200000</b>	<b>196000</b>	<b>8167</b>

Assuming the same ratios as the table supplied in the DEIR would produce the following traffic estimates for freeway traffic.

Roadway Segment	Speed Scenario	Traffic Volumes		
		All	Gas	Diesel
Route 101 Northbound	Average	9042	8665	377
Route 101 Southbound	Average	8167	7827	340
Route 101 Northbound	Minimum	2611	2502	109
Route 101 Southbound	Minimum	6516	6244	272
Southbound Off/Western Ave	Average	908	870	38
	Minimum			
Northbound On/Western Avenue	Average	955	915	41
	Minimum			

It is evident that the DEIR's analysis of air quality impacts are based upon emission values that are significantly lower than the numbers reported by CalTrans. [sic] The DEIR's analysis therefore underestimates actual emissions and is not supported by substantial evidence. The City must re-evaluate the air quality impacts using correct traffic counts in a revised EIR.

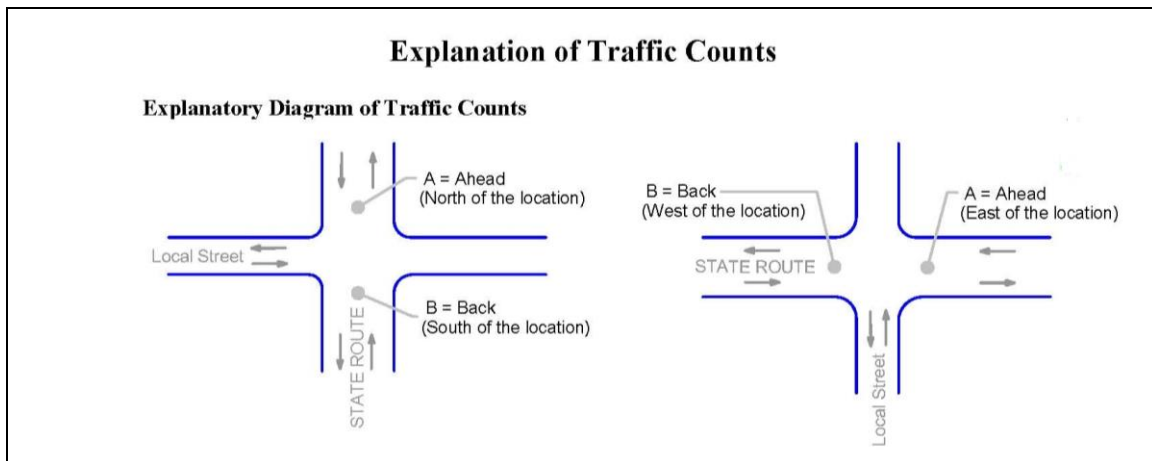
- <sup>2</sup> Appendix G of Draft EIR. 2021. Sunset/Western Mixed-Use Project Health Risk Assessment. Prepared for Eyestone Environmental by Air Quality Dynamics. Dated May, 2018. Section 5.0 Exposure Quantification. Page 9 of 142.
- <sup>3</sup> Appendix G of Draft EIR. 2021. Sunset/Western Mixed-Use Project Health Risk Assessment. Prepared for Eyestone Environmental by Air Quality Dynamics. Dated May, 2018. Section 3.0 Source Identification. Page 6 of 142.

<sup>4</sup> Appendix G of Draft EIR. 2021. Sunset/Western Mixed-Use Project Health Risk Assessment. Prepared for Eyestone Environmental by Air Quality Dynamics. Dated May, 2018. Section 3.0 Source Identification. Page 6 of 142.

**Response to Comment No. 11-38**

As noted by the commenter, the HRA utilized hourly traffic vehicle counts from the California Department of Transportation (Caltrans) Performance Measurement System (PeMS) for the main northbound and southbound freeway links to characterize hourly traffic volumes and speed scenarios. However, the commenter states that upon their review of PeMS data the traffic volumes reported in the freeway HRA are 2.2 to 2.5 lower than traffic counts reported by Caltrans. The commenter is incorrect.

This commenter appears to misunderstand the traffic data provided by Caltrans. To begin, the traffic counts utilized and presented by the commenter did not come from the PeMS database, as claimed. For the commenter’s reference, the following link is provided to the PeMS website (<https://pems.dot.ca.gov/>). The vehicle counts reported by the commenter were taken from the Caltrans Traffic Census Program website which publishes annual vehicular counts to view on-line or download via PDF or Excel formats. The information provided by the Traffic Census Program reports peak hour, peak monthly, and annual average daily traffic volumes. The data is further characterized by “ahead” or “back” traffic volumes associated with a given postmile location. Below is a graphic from the Caltrans Traffic Census Program website which provides clarification on the traffic counts associated with ahead and back reported traffic volumes. As noted, traffic movements within a given roadway segment account for all vehicles both north and south or east and west of a given postmile.



An understanding of the terms ahead and back is most relevant and necessary to effectively characterize traffic flow. The commenter appears to be unaware of the above terminology. The commenter believes that ahead refers to northbound traffic and back

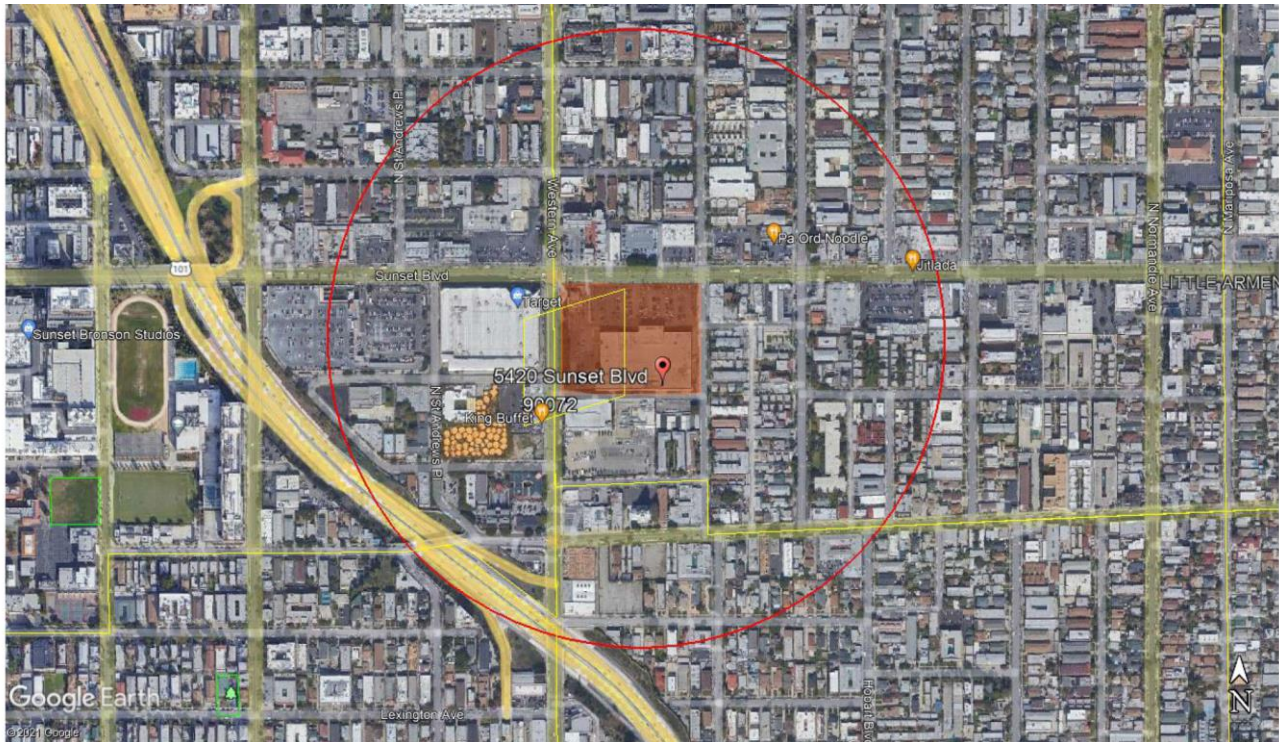
refers to southbound traffic. As noted above, this is not the case and undermines the commenter's evaluation of the validity of traffic counts for the identified freeway segments considered in the freeway HRA.

As such, the commenter's reported traffic estimates are twice those provided by Caltrans for the northbound and southbound segments of the freeway; in other words, the commenter is double counting which is not an accurate traffic estimation. Notwithstanding, as noted in the freeway HRA, PeMS data was utilized for the main freeway links as it provides discrete analytical capabilities for the elucidation of hourly traffic data to identify traffic volumes for both northbound and southbound vehicular movements. The commenter's assertion that the traffic counts considered in the freeway HRA are inaccurate is incorrect and revisions to the freeway HRA is not warranted nor required. An Excel file which includes the PeMS raw data vehicle counts considered in the freeway HRA is included as Appendix FEIR-3 for the administrative record. Furthermore, the 2017 PeMS data was the current traffic data available at the time of preparation of the HRA in 2018. Newer PeMS data that would have been collected during the COVID pandemic would show less traffic and, therefore, be less conservative. As such, the traffic data used was appropriate for when the HRA was prepared.

#### **Comment No. 11-39**

As for other mobile sources in the area that will impact the Project, it is clear that the model created for the air quality impact analysis is missing a significant number of sources within 1,000 feet of the proposed project site. In the figure below the red circle indicates an approximate 1,000 foot radius from the edge of the proposed project site. In the figure it is evident that the Sunset Boulevard exit lies just outside the 1,000 foot radius (approximately 1,600 feet to the start of the north bound Sunset Boulevard offramp). Vehicles exiting towards west bound Sunset Boulevard via a dedicated offramp while vehicles exiting towards east bound Sunset Boulevard proceed down Wilton Place to Sunset Boulevard.





**Figure 2: 1,000 Foot Boundary From Project Site**

In the Transportation Study, Appendix P of the DEIR<sup>5</sup>, the following descriptions of the area around the project are provided:

- **Sunset Boulevard**—Sunset Boulevard is a designated Avenue I in the Mobility Plan and a designated Major Highway Class II in the General Plan and travels in the east-west direction. It forms the northern boundary of the Project Site and provides six 10-to 15-foot travel lanes, three lanes in each direction, and left-turn lanes at intersections.
- **Western Avenue**—Western Avenue is a designated Avenue I in the Mobility Plan and a designated Major Highway Class II in the General Plan and travels in the north-south direction. It forms the western boundary of the Project Site and provides four 10-to 18-foot travel lanes, three lanes in each direction, and left-turn lanes at intersections.

<sup>5</sup> Appendix P of DEIR. 2021. Transportation [sic] Impact Study For The Sunset/Western Mixed-Use Project, Hollywood, California. Prepared for 5420 Sunset Boulevard LP, LLC, prepared by Gibson Transportation [sic] Consulting, Inc. Dated May, 2018. Page 24 of 531.

### **Response to Comment No. 11-39**

Refer to Response to Comment No. 11-36 above. Neither of the roadways cited by the commenter meet the criteria for further evaluation in an HRA. Specifically, as shown in

pages 112 through 113 of Appendix H, Noise, of the Draft EIR, Sunset Boulevard would result in a maximum of 43,780 average daily trips between Bronson Avenue and Wilton Place and Western Avenue would result in a maximum of 24,390 average daily trips between Franklin Avenue and Hollywood Boulevard in Year 2026. Again, the HRA that was conducted was a freeway HRA and thus looked only at freeway/qualifying roadway sources and not sources within 1,000 feet of the proposed Project Site. Therefore, including other emissions sources are not appropriate for a freeway HRA.

### **Comment No. 11-40**

For the trip generation associated with the project, the Proponent used the rates published in the Trip Generation, 9th Edition (out of date). The study concluded that there would be a *net increase of 2,369 extra trips per day* over the existing project (a total of 7,620 daily trips). The increase represents a 45% increase in traffic in the project area of influence. The study also concluded that four of the study intersections (Van Ness Avenue and Sunset Boulevard; Wilton Place and Hollywood Boulevard; Western Avenue and Hollywood Boulevard; and, Western Avenue and Sunset Boulevard) were determined to be significant under Existing with Project Conditions during either the morning or afternoon peak hour. Mitigation was required to offset these impacts.

### **Response to Comment No. 11-40**

As detailed in Section IV.I, Transportation, of the Draft EIR, the Project's impacts on transportation were evaluated based on VMT rather than intersection LOS or any metric based on automobile delay. As detailed in the Draft EIR, the Project would not result in a significant traffic impact related to VMT, and no mitigation measures were required. Furthermore, comment misconstrues information provided in the Draft EIR regarding trip generation and "increase in traffic in the project area." While the comment correctly identifies that the Project would result in 2,369 daily trips as compared to the existing trip generation for the Project Site based on ITE's *Trip Generation, 9th Edition* (2012), the accepted reference at the time of the MOU and Traffic Study approval, the increase does not represent a 45 percent increase in traffic in the project area and this comment misinterprets the Project's contribution to traffic in the surrounding area. In addition, a comparison of trip estimates using the latest trip rates from ITE's *Trip Generation, 11th Edition* (2021) found that the Project trip estimates using rates from *Trip Generation, 9th Edition* were more conservative (refer to Appendix FEIR-4 of this Final EIR). Of the four intersections referenced in this comment, the Project resulted in the highest percent increase in traffic at the intersection of Western Avenue and Sunset Boulevard. With implementation of the Project's Transportation Demand Management Program, the Project would increase traffic at this intersection by a total of 62 vehicles in the A.M. peak hour and 84 vehicles in the P.M. peak hour. This would equate to an increase of approximately 1.6 percent in both the A.M. and A.M. peak hours under Existing Conditions and approximately 1.0 percent in the A.M. peak hour and 1.4 percent in the P.M. peak hour



under Future Conditions<sup>27</sup>. As shown in this response, this comment exaggerates the Project's contribution to traffic within the study area. Nevertheless, as detailed in the Transportation Analysis included as Appendix N of the Draft EIR, the Project would contribute towards intersection improvements to address congestion.

### **Comment No. 11-41**

Given the significant net increase of traffic found within the Traffic Study (an extra 2,369 trips per day), the City must add these sources in a revised dispersion model of the project impacts. After accounting for the increased number of vehicles, the model must account for the TACs released from the vehicles, including diesel particulate matter (DPM) and volatile organic compounds (VOCs) from diesel and gasoline powered vehicles. The City must re-evaluate the air quality impacts using the correct number of vehicles associated with the project and re-run the dispersion model (and health risk analysis) in a revised EIR.

### **Response to Comment No. 11-41**

As discussed above in Response to Comment No. 11-40, the comment purports that the Project would result in a "45% increase in traffic in the project area of influence" when the Traffic Study shows that the Project would increase traffic approximately 1.6 percent at the intersection of Western Avenue and Sunset Boulevard under the Existing with Project (mitigated) Conditions. As further discussed in Response to Comment 10-39, none of the roadways in the study area met the criteria for further evaluation in an HRA. As shown in pages 112 through 113 of Appendix H, Noise, of the Draft EIR, the maximum daily trips along the roadway segments in the study area was 43,780 average daily trips along Sunset Boulevard between Bronson Avenue and Wilton Place. As such, any further evaluation of these roadway segments is not warranted in an HRA based on SCAQMD and CARB guidance.<sup>28</sup>

### **Comment No. 11-42**

#### **2. The Results Of The Health Risk Analysis Cannot Be Verified Since The City Has Not Included The Underlying Files From The AERMOD Dispersion**

---

<sup>27</sup> *The peak hour traffic volumes for the intersection of Western Avenue and Sunset Boulevard under Existing and Future without Project Conditions is presented in Figures 4 and 7, respectively, of the Traffic Study provided in Appendix P of the Draft EIR.*

<sup>28</sup> *CARB, Air Quality and Land Use Handbook, a Community Health Perspective (Table 1-1), April 2005; SCAQMD, Guidance Document for Addressing Air Quality Issues in General Plans and Local Planning (Page 2-4), May 6, 2005. Avoid siting new sensitive land uses within 500 feet of a freeway, urban roads with 100,000 vehicles/day, or rural roads with 50,000 vehicles/day.*

### **Model Analysis Which Would Have Been Used To Calculate The Ground-Level Concentration Of Toxic Air Contaminants On and Off Site.**

While the City claims that a Health Risk Assessment (HRA) in Appendix G of the DEIR<sup>6</sup> was prepared to assess the potential effects of pollutants (sic, specifically from roadway emissions associated with State [sic] Route 101) on individuals who utilize/reside at the proposed Project site or the other residents nearby to the Project site, the results of the HRA cannot be verified without the underlying input and output files from the AERMOD dispersion model of the project. Simply providing the first 2 pages of the output from the model runs is not a sufficient method for validating the model results. The City must disclose the underlying files so that the health impacts from the operational emissions can be validated. The files must be included in a revised DEIR for the project.

<sup>6</sup> Appendix G of DEIR. 2021. Sunset/Western Mixed-Use Project Health Risk Assessment. Prepared for Eyestone Environmental by Air Quality Dynamics. Dated May, 2018. Section 1.0 Introduction. Page 4 of 142.

### **Response to Comment No. 11-42**

As discussed in Response to Comment No. 9-1, the information provided in the freeway HRA is robust and sufficient to attest to its adequacy. A complete listing of model inputs was provided including output summary files which allow for a review of the freeway HRA's dispersion model settings. Nevertheless, copies for both input and output files associated with the assessment of freeway source emissions have been provided to the City for the administrative record. Provision of complete modeling files is not a basis for recirculating the Draft EIR as there is no change to the analysis nor its determination.

### **Comment No. 11-43**

#### **3. A Site Specific Health Risk Analysis Of Emissions From The Project Shows That The Emissions Of Diesel Particulate Matter From Heavy Duty Trucks Using The Project Site During The Operational Phase Will Have A Significant Impact On The Community And Residents Of The Project Site.**

As is documented above in Comment 1, the health risk analysis (HRA) presented in the DEIR is deficient since it fails to assess the impacts of emissions associated with the Project on the residents of the Project and the surrounding community. According to the CalEEMOD analysis presented in Appendix B of the DEIR<sup>7</sup>, an estimated 8,655 vehicle trips will occur every weekday and an estimated 12,465.96 vehicle trips will occur each weekend day. Those trips will be solely associated with the commercial development installed on the Project site. The CalEEMOD analysis further details that 3.3% of the traffic is expected to be heavy duty trucks (which emit the most DPM), or approximately 287 trucks will be entering and leaving the Project site daily. On the weekends there could be more (approximately 414). None of the emissions from those vehicles, whether while

moving along the surface streets adjacent to the Project or idling on site are accounted for in the City's analysis.

<sup>7</sup> Appendix B of DEIR. 2021. Air Quality and Greenhouse Gas Emissions. Prepared by Eyestone Environmental. Dated July, 2021. Page B-134.

### **Response to Comment No. 11-43**

From an operational standpoint, the Draft EIR correctly identified (Page IV.A-64 of Section IV.A, Air Quality) that the primary source of potential air toxics associated with Project operations is DPM from delivery trucks (e.g., truck traffic on local streets and idling on adjacent streets). However, these activities, and the land uses associated with the Project, are not considered land uses that generate substantial TAC emissions. The commenter is referred to SCAQMD guidance below that provides clarification as to when an 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 cleaners, and gasoline dispensing facilities).<sup>29</sup> 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).*

This comment cites the CalEEMOD Version 2016.3.2 analysis presented in Appendix B of the DEIR which provides an estimated 8,655 vehicle trips will occur every weekday and an estimated 12,466 vehicle trips will occur each weekend day. The comment goes on to detail that the CalEEMod analysis includes 3.3 percent of the traffic as heavy-duty trucks (287 trucks will be entering and leaving the Project Site daily). This methodology is fundamentally flawed. An understanding of how the default fleet mix is developed within CalEEMod is required. CalEEMod provides the fleet mix calculated using EMFAC2014 based on the selected county. Specifically, EMFAC2014 calculates the fleet mix by vehicle type based on the total trips and vehicle population data for the designated county. Thus, for Los Angeles County, CalEEMod would use the same default fleet mix for all land uses within the county regardless of land use type (i.e., CalEEMod uses the same fleet mix whether the user selects an industrial park, retail, or dwelling units). CalEEMod is

<sup>29</sup> SCAQMD, Guidance Document for Addressing Air Quality Issues in General Plans and Local Planning, May 6, 2005.

designed to calculate regional emissions from a project based on regional data. It is fundamentally flawed to apply a regional fleet mix designed for all land uses with the region to a single project. Furthermore, even if this flawed methodology was used, it would be half the number calculated in this comment since CalEEMod calculates a trip as either entering or leaving the Project Site and not “entering and leaving the Project site” daily.

In response to this comment, a conservative estimate of the number of daily truck trips from proposed uses is provided below based on the National Cooperative Highway Research Program Truck Trip Generation Data and Transportation Northwest Truck Trip Generation by Grocery Stores.<sup>30,31</sup>

- Table D-2c of the NCHRP data (Trip Generation Summary—Daily Commercial Vehicle Trips per 1,000 sf of Building Space for Retail (includes restaurants)) provides an average of 0.324 truck trips per 1,000 sf or approximately 8.4 truck trips per day for the Project’s retail/restaurant uses (26,000 sf). It is conservatively assumed that all trucks would be diesel even though many retail//restaurant truck deliveries are from smaller gasoline trucks (e.g., UPS or FedEx). The NCHRP data did not provide the percentage of trucks that would be equipped with a transportation refrigeration units (TRUs). For the purposes of this analysis, it was estimated that one of the trucks per day would be equipped with a TRU related to restaurant use.
- Table D-2e of the NCHRP data (Trip Generation Summary—Daily Commercial Vehicle Trips per 1,000 sf of Building Space for Other Land Uses (includes housing)) provides 0.011 truck trips per 1,000 sf or approximately 8.7 truck trips per day for the Project’s residential uses (787,250 sf). It is conservatively assumed that all of these delivery trucks would be heavy-duty diesel trucks even though many residential truck deliveries are from smaller gasoline trucks (e.g., UPS or FedEx).
- Supermarket: Findings from the Grocery Store Study show that grocery stores in the study generated an average of 18 trucks trip per day on a typical peak weekday. It was estimated that five of the trucks per day would be equipped with transportation refrigeration units (TRUs).

As shown above, proposed uses are conservatively estimated to generate approximately 35 trucks per day of which six trucks would be equipped with TRUs. Please note that this estimate of truck trips is for proposed uses and does not take credit for the

---

<sup>30</sup> *National Cooperative Highway Research Program (NCHRP) Synthesis 298 Truck Trip Generation Data, 2001.*

<sup>31</sup> *Transportation Northwest, Truck Trip Generation by Grocery Stores, Final Report TNW2010-04, August 2010.*

removal of existing uses (18,525 sf of vacant commercial uses, 3,943 sf fast food restaurant, and a 78,328 sf grocery store). 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 of TAC emissions provided in the *SCAQMD 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 diesel particulate matter 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.

Based on the above information, the Draft EIR correctly concluded that an operational HRA was not warranted.

Furthermore, as discussed in Response to Comment No. 11-9, the HRA prepared in response to these comments demonstrates that health risks from the Project would be a maximum of 6.9 in one million for residences east of the Project Site, which is below the applicable SCAQMD significance threshold of 10 in one million. It is noted that this risk assumes an outdoor exposure for the entire length of construction and does not account for any reductions from the time spent indoors, where air quality tends to be better.

#### **Comment No. 11-44**

Using the results of the traffic analysis (Appendix P to the DEIR), the City has estimated that approximately 5% [sic] of the traffic will be headed north on surface street (14 total), 10% will head south (43 total), 25% will head east (72 total), 35% to the west (100 total), 10% to the northwest to US 101 (29 total), 10% to the southwest to US 101 (29 total). The routes are demonstrated below in the attached figure.

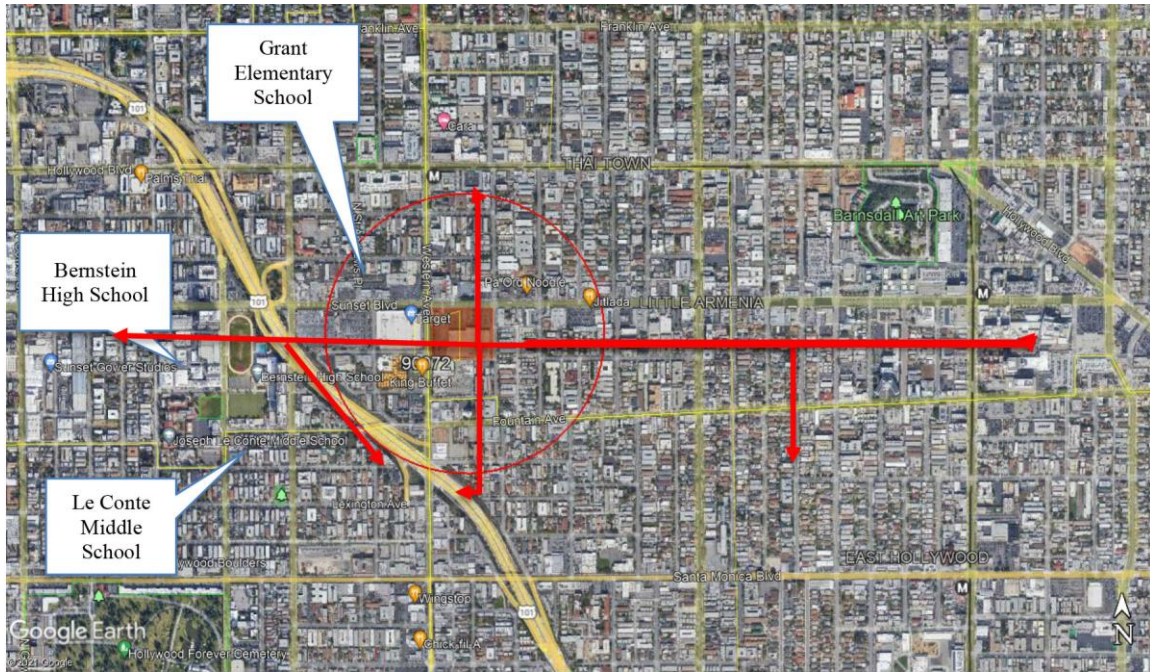


Figure 3: Sensitive Receptor Sites And Truck Routes

Using the same emission rates as cited by the City in Appendix B (emission rate of diesel particulate matter (DPM) while vehicles are moving and while idling), the total DPM emissions for heavy duty trucks using the Project site are presented in the table below.

Direction	Trips per day	miles per trip	grams DPM/mile	lbs/day
Northbound	14	0.33	0.024	2.44E-04
Southbound	43	0.65	0.024	1.48E-03
Eastbound	72	0.65	0.024	2.48E-03
Westbound	100	0.65	0.024	3.44E-03
NW on 101	29	0.5	0.024	7.67E-04
SW on 101	29	0.65	0.024	9.97E-04

**Response to Comment No. 11-44**

The traffic distribution assumptions identified by the commenter reflects the general regional distribution patterns for visitors and employees of the Project’s commercial uses during commuter peak hours, and do not apply to the trucks generated to the Project Site who travel to the Project Site during non-commuter peak hours. The commercial trip distribution patterns illustrated in Figures 8A and 8B of the Traffic Study included as Appendix P of the Draft EIR were based on the location of employment and commercial centers from which employees and patrons of the Project would be drawn, characteristics of the street system serving the Project Site, and the level of accessibility of the routes to and from the Project Site, existing intersection traffic volumes, the site access and

circulation plan, and input from LADOT staff. In addition, the routes developed by the commenter are not consistent with the detailed distribution assumptions provided in Figures 8A and 8B of the Traffic Study included as Appendix P of the Draft EIR. For example, the routes shown in Figure 3 provided by the commenter identifies a route traveling southbound along Kenmore Avenue, which was not identified in the Traffic Study. Furthermore, Project-generated trucks would utilize City-approved routes (i.e., to and from the Hollywood Freeway via Western Avenue and Lexington Avenue), and would not utilize local residential streets, as indicated by the commenter.

Additionally, as discussed above in Response to Comment No. 11-43, Clark has substantially overestimated the number of diesel truck trips and assumed that they are all heavy-heavy duty trucks (HHDTs). Use of HHDTs is appropriate for construction haul truck trips transporting soil export or demolition debris, but overstates operational delivery trucks (e.g., smaller trucks and not all diesel). Furthermore, the data cited from Appendix P of the Draft EIR is appropriate for evaluating traffic from the Project, but is unlikely relevant to operational delivery trucks given that the trip data does not distinguish between passenger vehicles and trucks. Clark compounds this error by assuming the trip length extends well beyond the Project area (approximately 3,500 feet) when the Draft EIR analysis clearly cites freeways/roadways within 1,000 feet of the Project Site are to be considered (see Page 1, Appendix G, Health Risk Assessment, of the Draft EIR). Furthermore, as discussed in Response to Comment No. 11-39, none of the roadways cited in this comment meet the criteria for further evaluation in an HRA.

### **Comment No. 11-45**

For idling vehicles, it was assumed that trucks would not be allowed to idle for more than 5 minutes. The emissions per day for 287 trucks was calculated to be 0.001 lbs per day.

Source	Trucks per day	Total Idling Time (hrs)	grams DPM/hr	lbs/day
Idling	287	23.92	0.02	1.05E-03

For the idling and the mobile source emissions were restricted to a 12-hour period from approximately 7:00 am to 7:00 pm.

### **Response to Comment No. 11-45**

As discussed above in Response to Comment No. 11-44, Clark has substantially overestimated the number of diesel truck trips. None of the roadways cited in this comment meet the criteria for further evaluation in an HRA.



**Comment No. 11-46**

In addition to the receptor grid placed over the Project site, three sensitive receptor sites [sic] were identified for inclusion in the model. Those sensitive receptor sites included Grant Elementary school, located approximately 0.2 miles [sic] northwest of the Project site; Joseph Le Conte Middle School, located approximately 0.5 miles [sic] south-southwest of the Project site; and, Bernstein High School, located 0.3 miles [sic] west of the Project site were included in the dispersion model domain.

**Response to Comment No. 11-46**

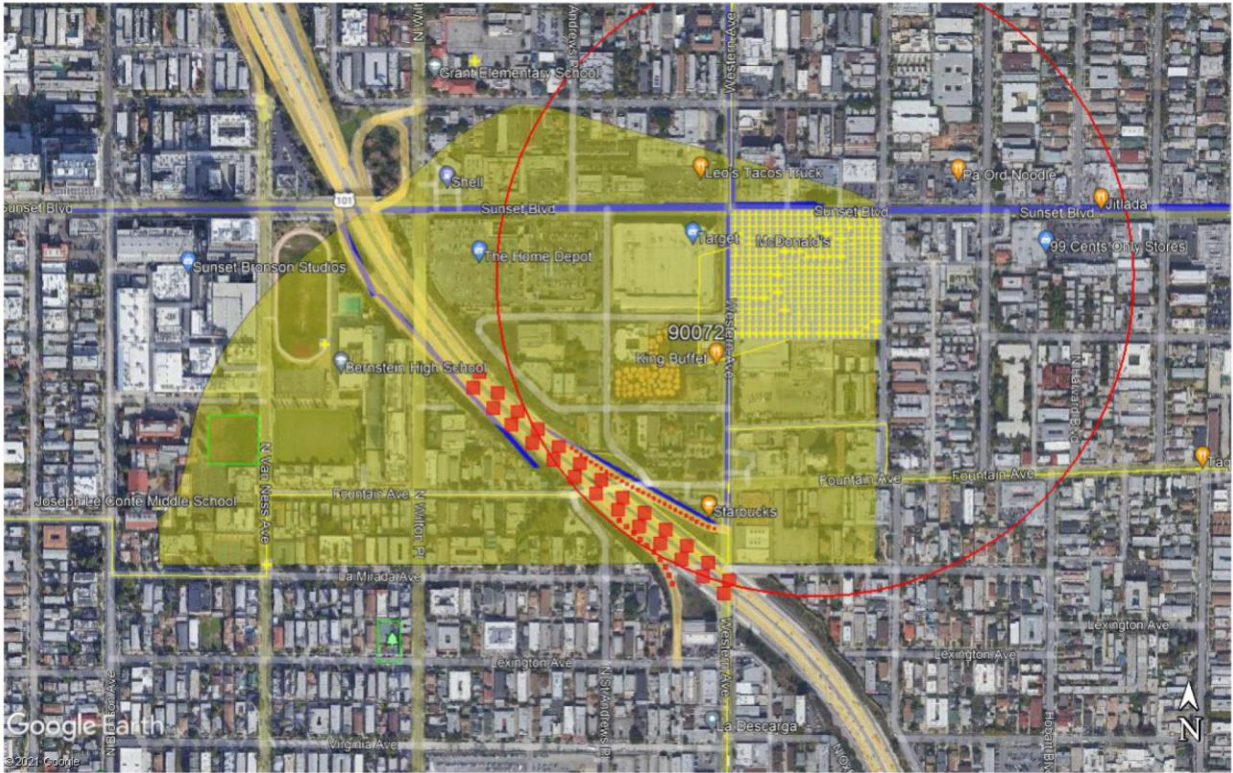
As discussed above in Response to Comment No. 11-36, the purpose of the freeway HRA included as Appendix G of the Draft EIR correctly analyzed potential health risk impacts to proposed sensitive land uses from freeways/urban roadways with 100,000 vehicles per day within 1,000 feet of the Project Site. Including additional off-site sensitive receptors is not relevant to the purpose of the HRA analysis. The HRA analysis consisted of impacts specifically from the freeway which included impacts from the Hollywood Freeway on the Project Site.

**Comment No. 11-47**

Using the same meteorological data and digital elevation models that were used in the City's analysis, the impacts of the freeway emissions and the operational emissions of DPM from the Project site have been calculated on an annual basis. The results of the dispersion modeling exercise are presented below in the attached table and figures, as well as in Attachment B to this letter.

Receptor	DPM Concentration From Freeway	DPM Concentration From Mobile Sources Project	DPM Cumulative Concentration
	ug/m <sup>3</sup>	ug/m <sup>3</sup>	ug/m <sup>3</sup>
Maximum On Site	5.11 E-03	5.40E-02	5.96E-02
Residents North of Sunset	1.47E-03	3.675E-2	3.82E-02
Grant Elementary School	1.11E-03	3.74E-03	8.02E-03
Joseph Le Conte Middle School	1.39E-03	2.01E-03	5.66E-03
Bernstein High School	2.09E-03	6.15E-03	1.08E-02





**Figure 4: DPM Emissions From Freeway Sources**

Figure 4 shows the impacts of emissions from freeway sources on the Project site and the surrounding community based on the City’s assumptions. For the figure above the yellow contour indicates a concentration of DPM of approximately  $0.00147 \text{ ug/m}^3$ .

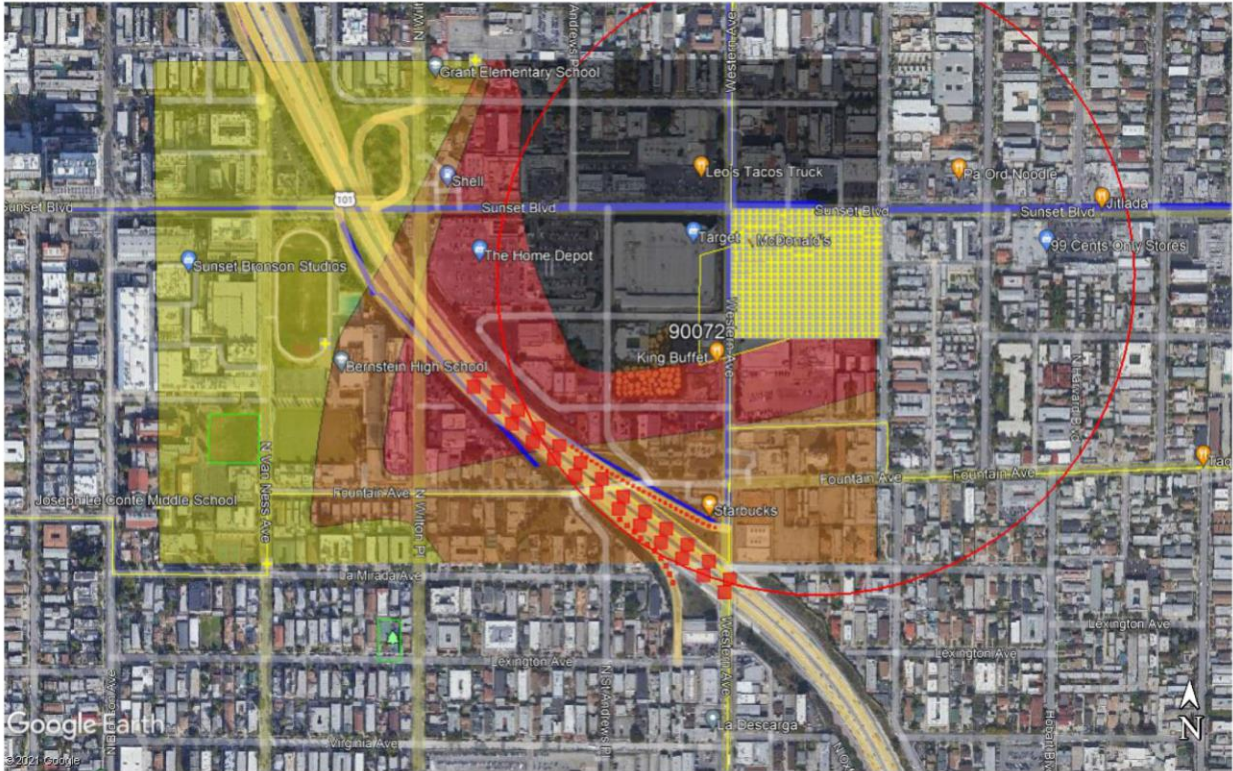
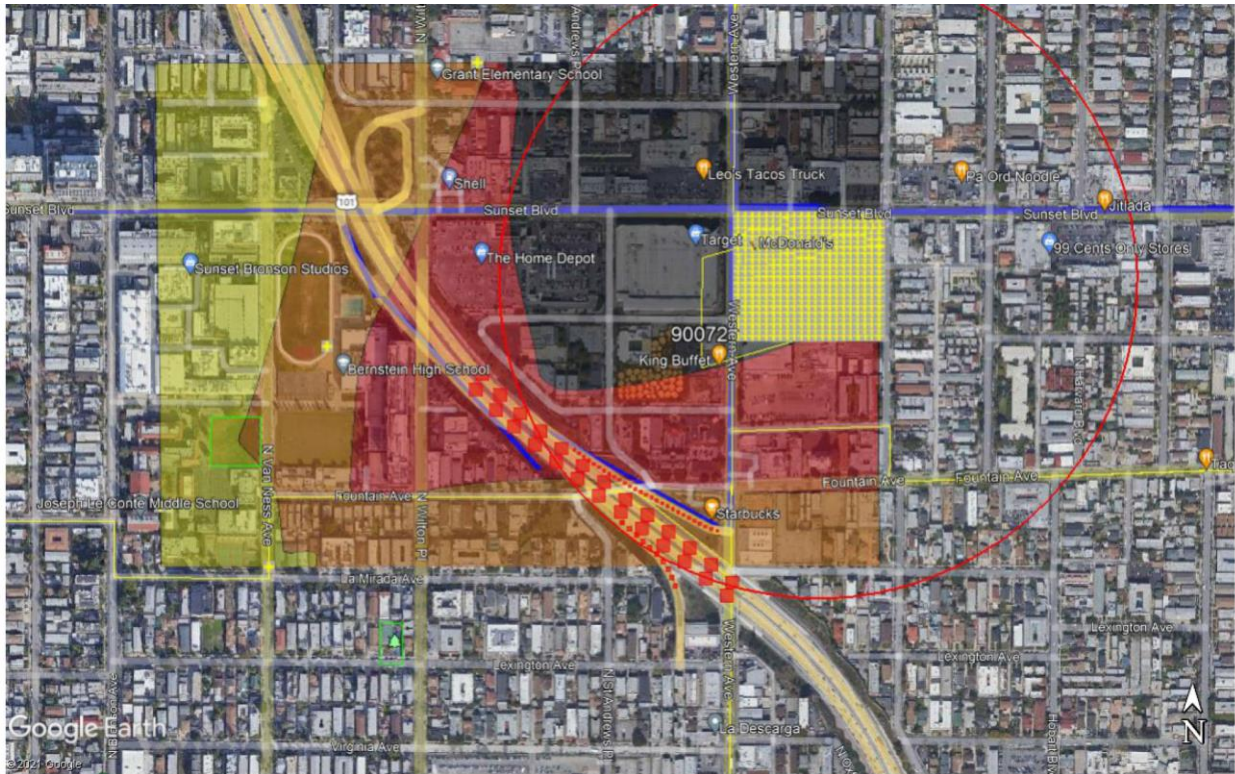


Figure 5: Impact Of Project Site Mobile Sources

Figure 5 shows the impacts of emissions from mobile sources associated with the Project. For the figure above the yellow contour indicates a concentration of DPM of approximately  $0.00147 \text{ ug/m}^3$ . The orange contour indicates a concentration of DPM of approximately  $0.00735 \text{ ug/m}^3$ . The red contour indicates a concentration of DPM of approximately  $0.0147 \text{ ug/m}^3$ . The black contour indicates a concentration of DPM of approximately  $0.03675 \text{ ug/m}^3$ .





**Figure 6: Cumulative Impacts Of All Sources**

Figure 6 shows the impacts of all emissions sources associated with the Project and the freeway on the community. For the figure above the yellow contour indicates a concentration of DPM of approximately  $0.00147 \text{ ug/m}^3$ . The orange contour indicates a concentration of DPM of approximately  $0.00735 \text{ ug/m}^3$ . The red contour indicates a concentration of DPM of approximately  $0.0147 \text{ ug/m}^3$ . The black contour indicates a concentration of DPM of approximately  $0.03675 \text{ ug/m}^3$ .

### **Response to Comment No. 11-47**

This comment confuses the scope of the freeway HRA with that of an operational HRA. As noted in the freeway HRA prepared for the Project, it was clearly stated that it is stand-alone document designed to address the CARB advisory recommendation regarding siting sensitive land uses such as residential occupancies such as the Project within 500 feet of a freeway, urban roads with 100,000 vehicles per day or rural roads with 50,000 vehicles per day. It was also stated that the Los Angeles City Planning Commission notes long-standing concern for siting sensitive land uses within 1,000 feet of a freeway.<sup>32</sup> As

<sup>32</sup> *City of Los Angeles, Department of City Planning, Zoning Information File No. 2427, Freeway Adjacent Advisory Notice, Effective September 17, 2018. The Project is consistent with the project features and design alternatives contained therein.*

such, the freeway HRA was prepared to address these concerns as negative health outcomes may occur to residential receptors located within this domain. The freeway HRA does not address general operational emissions as that is not within the scope of a freeway HRA. The freeway HRA is accurate in its determination of less than significant impacts for purposes of evaluating CARB’s advisory recommendation (siting sensitive land uses such as residential occupancies such as the Project within 500 feet of a freeway, urban roads with 100,000 vehicles per day or rural roads with 50,000 vehicles per day).

The commenter’s assertion that off-site and on-site emissions should be combined in an HRA is incorrect and would be inconsistent with SCAQMD guidance for purposes of evaluating a project’s localized air quality impacts. Page 3-2 of SCAQMD’s Final Localized Significance Threshold Methodology, Revised June 2008, clearly states the following: “The emissions include only on-site activities and the emission rate must be expressed in pounds per day.” (Please note that “only” is underlined in the guidance document and not for emphasis in this response.) The commenter has not provided any evidence why SCAQMD’s methodology should not have been used in the Draft EIR.

For purposes of evaluating Project impacts (i.e., Project’s on-site emissions that may potentially impact off-site sensitive land uses) under CEQA, a qualitative analysis was sufficient to determine that the Project would result in less than significant air toxic impacts. However, in response to these comments, a combined construction and operational HRA from on-site sources was conducted and included as Appendix FEIR-2 of this Final EIR. That separate HRA confirmed that health risks from the Project would be a maximum of 6.9 in one million for residences located east of the Project Site, across Serrano Avenue (for combined construction and operational emissions) which is below the applicable SCAQMD significance threshold of 10 in one million. See Response to Comment No. 11-58 regarding errors and omissions in the data used to create the contours.

**Comment No. 11-48**

The results of the model and the input/output files are included as an attachment to this comment letters. In order to calculate the residential risk from exposure to DPM on and off-site, the CARB’s HARP2 Risk Assessment Standalone Tool (date 15065) was used to calculate the health risk to the community by modeling the cancer risk for an individual resident over 30-years using the OEHHA derived method (default assumptions) for community members and site-specific parameters for students (most sensitive receptor) at the schools. The results are presented in Attachment C to this letter.

Receptor	DPM Cumulative Concentration ug/m <sup>3</sup>	Cumulative Risk
		Per million
Maximum On Site	5.96E-02	52.7

Receptor	DPM Cumulative Concentration ug/m <sup>3</sup>	Cumulative Risk
		Per million
Residents North of Sunset	3.82E-02	33.8
Grant Elementary School	8.02E-03	2.1
Joseph Le Conte Middle School	5.66E-03	0.4
Bernstein High School	1.08E-02	1.5

The model with the mobile sources from the Project site shows that the risk to the residents of the Project site will exceed 10 in 1,000,000 as well as residents nearby the site. Risks to sensitive receptor sites would exceed 1 in 1,000,000 on average. The City must perform its own analysis of the impacts of traffic associated with the Project in a new air dispersion model and health risk analysis as well as derive mitigation measures specific for the project that will reduce the number of diesel powered vehicles entering and exiting the site, reduce idling times for vehicles, and modify pathways to and from the site to prevent exposure of residents on and off site.. The results must be presented in a revised EIR.

#### **Response to Comment No. 11-48**

This comment again confuses the scope of the freeway HRA with that of an operational HRA. As noted in the freeway HRA prepared for the Project, it was clearly stated that it is stand-alone document designed to address the CARB advisory recommendation regarding siting sensitive land uses such as residential occupancies within 500 feet of a freeway, urban roads with 100,000 vehicles per day or rural roads with 50,000 vehicles per day. It was also stated that the Los Angeles City Planning Commission notes long-standing concern for siting sensitive land uses within 1,000 feet of a freeway. As such, the freeway HRA was prepared to address these concerns as negative health outcomes may occur to residential receptors located within this domain. The freeway HRA does not address general operational emissions as that is not within the scope of a freeway HRA.

Separately, a combined construction and operational HRA was conducted, which demonstrates that health risks from the Project (would be a maximum of 6.9 in one million for residences located east of the Project Site, across Serrano Avenue which is below the applicable SCAQMD significance threshold of 10 in one million. As this determination is consistent with the Draft EIR's determination that the Project would not result in a significant TAC impact, no revised EIR is necessary or required.

**Comment No. 11-49****4. DEIR Falsely Asserts That The Project Would Not Exposure [sic] Sensitive Receptors To Substantial Pollutant Concentrations From Toxic Air Contaminants Emitted During The Construction Phase Of The Project.**

In the DEIR analysis of construction emissions, the City asserts that the project would not expose sensitive receptors to substantial pollutants concentrations from TACs emitted during the construction phase of the project but does not substantiate the claim quantitatively. On page IV.A-61 of the DEIR the City states first that the short-term construction schedule of four years would not result in a long-term source of TAC emissions. This assertion completely misses the point of the type of chemicals being emitted. The risk of developing cancer from exposure to TACs is a function of the duration of exposure, the concentration of the individual's unique exposure scenario, and the toxicity of the chemical. In the case of diesel exhaust there is a clear link to a range of serious health problems including an increase in respiratory disease, lung damage, cancer, and premature death.<sup>8,9,10</sup> 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.<sup>11</sup> 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.<sup>12</sup> DPM is a TAC that is recognized by state and federal agencies as causing severe health risk because it contains toxic materials, unlike PM<sub>2.5</sub> and PM<sub>10</sub>.<sup>13</sup> Without quantifying the concentration of the DPM for the sensitive receptors during the construction phase of the Project, the City has failed to meet its responsibility to assess all of the potential impacts. The City must correct this error in a revised environmental impact report.

<sup>8</sup> 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>.

<sup>9</sup> U.S. EPA, Health Assessment Document for Diesel Engine Exhaust, Report EPA/600/8-90/057F, May 2002.

<sup>10</sup> 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](http://www.edf.org/documents/4941_cleanerdieselhandbook.pdf), accessed July 5, 2020.

<sup>11</sup> California Air Resources Board, Initial Statement of Reasons for Rulemaking, Proposed Identification of Diesel Exhaust as a Toxic Air Contaminant, Staff Report, June 1998.

<sup>12</sup> Findings of the Scientific Review Panel on The Report on Diesel Exhaust as adopted at the Panel's April 22, 1998 Meeting.

<sup>13</sup> 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.”)

### **Response to Comment No. 11-49**

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 an HRA 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 exposed to concentrations of toxic air contaminants (TACs) over a 70-year lifetime will contract cancer based on the use of standard risk assessment methodology.<sup>33</sup> Because the construction schedule for the Project estimates that the phases which require the most heavy-duty diesel vehicle usage, such as site grading/excavation, would last for a much shorter duration (e.g., approximately 6.5 months), and the overall construction schedule would be limited to approximately four years, 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 (4 out of a 70-year lifetime), further evaluation of construction TAC emissions within the Draft EIR was not warranted. This supporting information is consistent with *2006 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.

An HRA is not required by SCAQMD or the City, and no guidance for health risk assessments for construction has been adopted by SCAQMD or the City. Nonetheless, a combined construction and operational HRA has been prepared pursuant to the CAPCOA Guidance Document for Health Risk Assessments for Proposed Land Use Projects<sup>34</sup> in response to this comment to confirm, as the Draft EIR concludes, that no significant health risk impacts would occur from the Project. The combined HRA is provided as Appendix FEIR-2 of this Final EIR. The HRA demonstrates that health risks from the Project (combined construction and operation) would be a maximum of 6.9 in one million for residences located east of the Project Site, across Serrano Avenue which is below the applicable SCAQMD significance threshold of 10 in one million.

---

<sup>33</sup> SCAQMD CEQA Handbook, 1993. Chapters 5, 9, and 10.

<sup>34</sup> CAPCOA, *Health Risk Assessments for Proposed Land Use Projects*, July 2009, [www.capcoa.org/wp-content/uploads/2020/12/with-stamp\\_CAPCOA\\_HRA\\_LU\\_Guidelines\\_8-6-09-min.pdf](http://www.capcoa.org/wp-content/uploads/2020/12/with-stamp_CAPCOA_HRA_LU_Guidelines_8-6-09-min.pdf), accessed April 13, 2022.



**Comment No. 11-50****5. The City's Analysis Of Emissions From The Back Up Generator (BUG) On-Site Ignores The Substantial Emissions That Will Occur From Non-Testing Periods Of The BUG**

In the City's air quality analysis, it assumed that the BUG will be maintained and tested for no more than 12 hours per year. Based on the City's CalEEMOD analysis of the 350 hp diesel generator that will be operated on site, the City calculates an emission rate of 0.000942 lbs of DPM per hour.

According to SCAQMD Rules 1110.2, 1470, BUGs are allowed to operate for up to 200 hours per year and maintenance cannot exceed more than 50 hours per year. Instead of emitting the 0.0113 lbs for 12 hours of operation, the City should be calculating the impact for operation of up to 200 hours per year or 0.18833 lbs of DPM per year. The City's assumption that the BUG would operate at a substantially reduced rate ignores the legally acceptable threshold outlined in SCAQMD Rule 1470. The City has therefore failed to properly measure the potential impact of DPM emissions from the BUG on the receptors nearby.

**Response to Comment No. 11-50**

SCAQMD requires a Permit to Construct/Operate before installing an emergency generator on the Project Site. The internal combustion engine will be required to meet SCAQMD Best Available Control Technology (BACT) requirements. Allowable hours of operation and specific permitting conditions will be determined by SCAQMD at permit issuance. The Draft EIR analysis made appropriate assumptions regarding how many hours annually the emergency generator would operate. Newer generators are typically tested every week, all year round for approximately 10 minutes at a time (equates to approximately nine hours per year). This weekly activity is often programmed for automatic run time. Therefore, use of 12 hours per year in the Draft EIR for routine testing and maintenance of the emergency generator was an appropriate estimate. Specific operating hours for routine testing and maintenance will be conducted consistent with manufacturer's specifications and will be determined at the time of SCAQMD permitting.

This comment misconstrues the emissions data presented in the Draft EIR regarding the emergency generator. The CalEEMod output file provided in the Draft EIR showed that the 350 hp diesel generator would emit 0.0113 lb. of PM<sub>10</sub> per day (conservatively assumed to operate one hour for routine testing and maintenance) and not 0.000942 lbs. of DPM per hour. The error is then compounded by assuming 200 hours of operation at that emission rate. This comment also cites Rule 1470, but fails to disclose that it was amended on October 1, 2021 (subsequent to preparation of the Draft EIR). SCAQMD's new PM<sub>10</sub> emission standards for emergency generators located at sensitive receptors (e.g.,



residences) or within 50 meters from a sensitive receptor provides a limit of 0.01 g/bhp-hr of PM<sub>10</sub> (engines between 175 hp and 750 hp) (See Table 1 on pages 17 and 18 of SCAQMD Rule 1470).<sup>35</sup> The Draft EIR calculated emergency generator emissions consistent with requirements at the time of preparation of the analysis (0.02 g/bhp-hr). Therefore, PM<sub>10</sub> emissions from the emergency generator would decrease from 0.0113 lbs to 0.00565 lbs/hr in compliance with updated SCAQMD Rule 1470. If the emergency generator operated 200 hours per year, then the annual emissions would equal 1.13 lbs/yr of PM<sub>10</sub>.

Regulatory limits may be established by various agencies but are not a required CEQA analytical assumption or a significance threshold per se. The commenter has not provided any substantial evidence that use of the backup generators would exceed SCAQMD limits and to assume otherwise is speculation which CEQA does not permit. (CEQA Guidelines Section 15145.) Moreover, the Draft EIR reasonably estimated, based on the specifics of this Project, that backup generator annual hours would be consistent with infrequent emergency usage, and therefore, significantly below that which is allowed under SCAQMD rules (12 versus 200 hours); just because the SCAQMD rules allow for longer annual hours does not mean that this specific Project's estimate is inaccurate and the commenter has provided no substantial evidence establishing otherwise.

While the Draft EIR provided a reasonable estimate of annual hourly usage of the emergency generator for maintenance and testing, the HRA prepared in response to these comments and included as Appendix FEIR-2 of this Final EIR, conservatively includes use of all 200 hours to further demonstrate that health risks from the Project would be a maximum of 6.9 in one million for residences directly east of the Project site and is below the applicable SCAQMD significance threshold of 10 in one million. It is noted that this risk assumes an outdoor exposure for the entire length of construction and does not account for any reductions from the time spent indoors, where air quality tends to be better.

### **Comment No. 11-51**

In addition, the DEIR ignores the substantial increase in operational emissions from BUGs in the Air Basin due to unscheduled events, including but not limited to Public Safety Power Shutoff (PSPS) events and extreme heat events. Extreme heat events are defined as periods where in the temperatures throughout California exceed 100 degrees Fahrenheit.<sup>14</sup> From January, 2019 through December, 2019, Southern California Edison reported 158 of their circuits underwent a PSP event<sup>15</sup>. In Los Angeles County, two circuits had 4 PSPS events during that period, lasting an average of 35 to 38 hours. The total duration of the

---

<sup>35</sup> SCAQMD, Rule 1470, last amended October 1, 2021, <http://www.aqmd.gov/docs/default-source/rule-book/reg-xiv/rule-1470.pdf>, accessed April 5, 2022.

PSPS events lasted between 141 hours to 154 hours in 2019. This would equate to an additional 0.13 to 0.14 lbs of DPM that are not accounted for in the City's model. In 2021, the Governor Of California declared that during extreme heat events the use of stationary generators shall be deemed an emergency use under California Code of Regulations (CCR), title 17, section 93115.4 sub. (a) (30) (A)(2). The number of Extreme Heat Events is likely to increase in California with the continuing change in climate the State is currently undergoing.

Power produced during PSPS or extreme heat events is expected to come from engines regulated by CARB and California's 35 air pollution control and air quality management districts (air districts).<sup>16</sup> Of particular concern are health effects related to emissions from diesel back-up engines. Diesel particulate matter (DPM) has been identified as a toxic air contaminant, composed of carbon particles and numerous organic compounds, including over forty known cancer-causing organic substances. The majority of DPM is small enough to be inhaled deep into the lungs and make them more susceptible to injury.

According to the California Public Utilities Commission (CPUC) de-energization report<sup>17</sup> in October 2019, there were almost *806 PSPS events* (emphasis added) that impacted almost 973,000 customers (~7.5% of households in California) of which ~854,000 of them were residential customers, and the rest were commercial/industrial/medical baseline/other customers. CARB's data also indicated that on average each of these customers had about 43 hours of power outage in October 2019.<sup>18</sup> Using the actual emission factors for each diesel BUG engines in the air district's stationary BUGs database, CARB staff calculated that the 1,810 additional stationary running during a PSPS in October 2019 generated 126 tons of NOx, 8.3 tons or particulate matter, and 8.3 tons of DPM.

For every PSPS or Extreme Heat Event (EHE) triggered during the operational phase of the project, significant concentrations of DPM will be released that are not accounted for in the City's analysis. In 2021, two EHEs have been declared so far. For the June 17, 2021 Extreme Heat Event, the period for which stationary generator owners were allowed to use their BUGs lasted 48 hours. For the July 9, 2021 EHE, the period for which stationary generator owners were allowed to use their BUGs lasted 72 hours. These two events would have tripled the calculated DPM emissions from the Project for the year if the project had been completed.

The DEIR must be revised to include an analysis of the additional operation of the BUG that will occur at the project site that is not accounted for in the current air quality analysis.

<sup>14</sup> Governor of California. 2021. Proclamation of a state of emergency. June 17, 2021.

<sup>15</sup> SCAQMD. 2020. Proposed Amendment To Rules (PARS) 1110.2, 1470, and 1472. Dated December 10, 2020. [http://www.aqmd.gov/docs/default-source/rule-book/Proposed-Rules/1110.2/1110-2\\_1470\\_1472/par1110-2\\_1470\\_wgm\\_121020.pdf?sfvrsn=6](http://www.aqmd.gov/docs/default-source/rule-book/Proposed-Rules/1110.2/1110-2_1470_1472/par1110-2_1470_wgm_121020.pdf?sfvrsn=6).

- <sup>16</sup> CARB. 2019. Use of Back-up Engines For Electricity Generation During Public Safety Power Shutoff Events. October 25, 2019.
- <sup>17</sup> <https://www.cpuc.ca.gov/deenergization/> as cited in CARB, 2020. Potential Emission Impact of Public Safety Power Shutoff (PSPS), Emission Impact: Additional Generator Usage associated With Power Outage.. [sic]
- <sup>18</sup> CARB, 2020. Potential Emission Impact of Public Safety Power Shutoff (PSPS), Emission Impact: Additional Generator Usage associated With Power Outage.. [sic]

### **Response to Comment No. 11-51**

As discussed in Response to Comment No. 11-50, use of 12 hours per year was a reasonable estimate of usage for the emergency generator. Cancer risk is calculated over a 70-year exposure duration. This comment seems to suggest that the analysis should assume LADWP will need PSPS events every year over the next 70 years, which would be speculative and should not be considered in the Draft EIR. (CEQA Guidelines Section 15145.) Furthermore, SCAQMD does not include these events in their permitting requirements.

While the Draft EIR provided a reasonable estimate of annual hourly usage of the emergency generator for maintenance and testing, the HRA prepared in response to these comments conservatively includes 200 hours (which would account for the PSPS or EHE events cited by the commenter in 2021 (approximately 120 hours)) to further demonstrate that health risks from the Project would be a maximum of 6.9 in one million for residences east of the Project site and is below the applicable SCAQMD significance threshold of 10 in one million. It is noted that this risk assumes an outdoor exposure for the entire length of construction as well as 70-years of operational truck emissions and does not account for any reductions from the time spent indoors, where air quality tends to be better.

### **Comment No. 11-52**

#### **6. The Air Quality Analysis And Project Description In The DEIR Are In Conflict With The Air Quality Analysis And Project Description In Appendix B To The DEIR**

In Table IV.A.6 of the Impact Analysis For Air Quality of DEIR, the unmitigated emissions of the nitrogen oxides (NOx) emissions would exceed the SCAQMD threshold for significance. After mitigation (Mitigation Measure AIR-MM-1), which involves the requirement that all off-road diesel-powered equipment over 50 hp used during project grading/excavation activities meet USEPA Tier 4 Final emissions standards, the DEIR claims that construction emission would be reduced from 134 lbs per day to 107 pounds per day in Year 2022. Incorporating Mitigation Measure AIR-MM-2, which requires the use of 2007 or newer haul trucks would reduce peak daily construction emissions from 107 to 71 pounds per day of NOx in Year 2022.<sup>19</sup> The DEIR goes on to state that the peak daily

NO<sub>x</sub> emission over the duration of construction would be 97 pounds per day of NO<sub>x</sub> during Year 2022. This is not reflected in Table IV.A-8 of the DEIR.

**Table IV.A-8**  
**Estimate of Maximum Regional Project Daily Construction Emissions—Mitigated**  
**(pounds per day)**

Construction Year	VOC <sup>b</sup>	NO <sub>x</sub>	CO	SO <sub>x</sub>	PM <sub>10</sub>	PM <sub>2.5</sub>
<b>Regional Construction Emissions</b>						
Year 2022	3	71	49	<1	4	2
Year 2023	5	97	55	<1	46	13
Year 2024	8	43	78	<1	15	5
Year 2025	31	41	76	<1	14	5
Year 2026	28	21	49	<1	12	4
<b>Maximum Unmitigated Construction Emissions<sup>c</sup></b>	<b>31</b>	<b>97</b>	<b>78</b>	<b>&lt;1</b>	<b>46</b>	<b>13</b>
<b>SCAQMD Daily Significance Thresholds</b>	<b>75</b>	<b>100</b>	<b>550</b>	<b>150</b>	<b>150</b>	<b>55</b>
<b>Over/(Under)</b>	<b>(44)</b>	<b>(3)</b>	<b>(472)</b>	<b>(150)</b>	<b>(104)</b>	<b>(42)</b>
<b>Maximum Unmitigated Construction Emissions Exceed Threshold?</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>	<b>No</b>
<p>Numbers may not add up exactly due to rounding.</p> <p><sup>a</sup> The CalEEMod model printout sheets and/or calculation worksheets are presented in Appendix B (CalEEMod Output) of this document.</p> <p><sup>b</sup> Please note that the 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.</p> <p><sup>c</sup> Mitigated scenario assumes compliance with SCAQMD Rule 403 requirements for fugitive dust and AIR-MM-1 and AIR-MM-2.</p> <p>Source: Eyestone Environmental, 2021.</p>						

<sup>19</sup> DEIR. 2021. Environmental Impact Analysis—Air Quality. Page 59 of 69.

### **Response to Comment No. 11-52**

This comment provides a summary of the construction NO<sub>x</sub> emissions and the reductions associated with Mitigation Measures AIR-MM-1 and AIR-MM-2. This comment identifies an error on Table IV-A-8 on page IV.A-59 of the Draft EIR. The peak daily NO<sub>x</sub> emissions over the duration of construction would be 97 pounds per day of NO<sub>x</sub> (mat foundation) but would occur in Year 2023 and not Year 2022. This correction is reflected in Section III, Revisions, Clarifications, and Corrections to the Draft EIR, of this Final EIR. This correction does not alter the analysis or impact determination.

### **Comment No. 11-53**

In the Air Quality Analysis, the Construction analysis for NO<sub>x</sub> assumed values for NO<sub>x</sub> running emissions and idling emissions (page B-22 of Appendix B) that do not match the

data presented in the EMFAC database. According to the California Air Resources Board<sup>20</sup> (CARB), EMFAC is the official database of emission inventories of onroad and offroad mobile sources. The values for running emissions and idle emissions for heavy duty trucks listed below were used in the DEIR, are 25% and 54%, respectively, lower than the values reported in the EMFAC database. The source of the data is not listed in the DEIR.

### Sunset Western

#### Heavy Duty Diesel Truck Emissions Calculations

**Construction Year** 2022  
**Truck Model Year** 2007

#### Run Emissions

Trips per Day	360					
Trip Length (mi.)	25					
Daily VMT	9000					
	TOG_RUNEX	CO_RUNEX	NOx_RUNEX	PM10_RUNEX	PM2_5_RUNEX	SOx_RUNEX
Run Emission Factors (g/mi) <sup>1</sup>	0.068	0.289	3.071	0.024	0.023	0.013
Run Emissions (lbs/day)	1.36	5.73	60.93	0.48	0.46	0.26
On-site Emissions (lbs/day)	0.01	0.06	0.61	0.00	0.00	0.00

#### Idle Emissions

Loads per Day	180					
Idle Time Per Truck (min.)	15					
Daily Idle Time (hrs)	45.00					
	TOG	CO	NOx	PM10	PM2_5	SOx
Idle Emission Factors (g/hr) <sup>2</sup>	2.70	32.10	32.49	0.02	0.02	0.06
Idle Emissions (lbs/day)	0.27	3.18	3.22	0.00	0.00	0.01

Region	Calendar Year	Vehicle Category	Model Year	Speed	Fuel	NOx_RUNEX	NOx_IDLEX
South Coast AQMD	2022	HHDT	2007	Aggregate	Diesel	10.49	64.77
South Coast AQMD	2022	HHDT	2008	Aggregate	Diesel	8.97	124.71
South Coast AQMD	2022	HHDT	2009	Aggregate	Diesel	8.90	72.30
South Coast AQMD	2022	HHDT	2010	Aggregate	Diesel	8.22	70.38
South Coast AQMD	2022	HHDT	2011	Aggregate	Diesel	5.02	52.05
South Coast AQMD	2022	HHDT	2012	Aggregate	Diesel	3.93	38.13
South Coast AQMD	2022	HHDT	2013	Aggregate	Diesel	3.73	50.56
South Coast AQMD	2022	HHDT	2014	Aggregate	Diesel	2.50	56.19
South Coast AQMD	2022	HHDT	2015	Aggregate	Diesel	2.14	61.55
South Coast AQMD	2022	HHDT	2016	Aggregate	Diesel	2.06	82.82
South Coast AQMD	2022	HHDT	2017	Aggregate	Diesel	1.92	69.29
South Coast AQMD	2022	HHDT	2018	Aggregate	Diesel	1.80	75.37
Region	Calendar Year	Vehicle Category	Model Year	Speed	Fuel	NOx_RUNEX	NOx_IDLEX
South Coast AQMD	2022	HHDT	2019	Aggregate	Diesel	1.65	76.59
South Coast AQMD	2022	HHDT	2020	Aggregate	Diesel	1.51	78.76
South Coast AQMD	2022	HHDT	2021	Aggregate	Diesel	1.36	80.72
South Coast AQMD	2022	HHDT	2022	Aggregate	Diesel	1.20	75.24
					<b>Average</b>	4.088	70.59
					<b>95% UCL</b>	5.753	80.44

For the running emissions, the value of 3.071 grams per mile is significantly lower than the average value for trucks produced in 2007 through 2022 (4.088 grams per mile). Instead of producing an estimated NOx emission rate of 60.93 lbs per day for trucks hauling materials away from the construction site, the average value for emissions should be reported as 81.11 lbs per day.

For the idling emissions, the value of 32.49 grams of NOx per hour of idling is significantly lower than the average value for trucks produced in 2007 through 2022 (70.59 grams of NOx per hour of idling). Instead of producing an estimated NOx emission rate of 3.22 lbs

per day for idling trucks, the average value for emissions should be reported as 7.00 lbs per day.

Assuming the starting emission values are correct in the DEIR, the averaged cumulative emissions per day for the project construction phase during 2022 should be reported as 89.87 lbs per day, not 65.91 lbs per day. Given that the number of trucks for any specific year of vehicle production cannot be ascertained at this time a better method for determining the most likely emission rates would be to use a confidence interval around the average value. In this approach, the emission rates could reasonably be anticipated to not exceed the value calculated. This approach is used commonly in air quality analyses and health risk analyses presented to regulatory agencies, including the U.S. EPA and the California Environmental Protection Agency. The 95 percent upper confidence limit (95% UCL) of the mean of the running emissions rates and idling rates are 5.753 grams of NOx per mile and 80.44 grams of NOx per hour, respectively. Using the 95% UCL values produces running emission rates of 114.15 lbs per day and idling emission rates of 7.98 lbs per day of NOx. The total NOx emissions using the 95% UCL method would produce 123.88 lbs of NOx per day, well in excess of the SCAQMD threshold of significance for NOx. The City must address the significance level change of construction NOx emissions for the project in a revised DEIR.

<sup>20</sup> CARB. 2021. EMFAC Website. <https://arb.ca.gov/emfac/>

### **Response to Comment No. 11-53**

Contrary to what is stated in this comment, the source of the data for calculating heavy duty diesel truck emissions in the Draft EIR was provided on the referenced page cited in this comment. Specifically, page B-22 of Appendix B of the Draft EIR provided a footnote “EMFAC2017 Web Database-Los Angeles County, EMFAC2007 Categories, HHDT.” As with the Draft EIR analysis, Clark also used EMFAC2017 to generate emission factors. Unfortunately, Clark employed a simplistic methodology that inadvertently skewed the emissions artificially higher. Clark’s calculations assume that the truck fleet is evenly distributed amongst all the model years. This calculation methodology is inconsistent with how CalEEMod calculates emission factors. CalEEMod derives vehicle emission rates from EMFAC based on aggregated model year and aggregated speeds. EMFAC2017 provides the population (number of trucks and VMT) by model year, which is omitted from Clark’s calculations and misrepresents the weighted average emission factors.

Clark cites an idle emission rate of 70.59 grams per hour based on EMFAC2017 web database outputs. However, this is incorrect as the emissions presented in Clarks’ table are for grams per day—not per hour. Please see the attached EMFAC2017 output file included as Appendix FEIR-5 which clearly states that units for idle emissions are in

grams per day. Incorrectly assuming a daily emission rate as an hourly emission rate overstates the idle emissions by a factor of 24 (24 hours per day).

The idle emission factor used in the Draft EIR is obtained from EMFAC2017 Project Level (EMFAC2017 PL) (cited on Page B-22 of Appendix B of the Draft EIR) which is a stand-alone software program designed to provide more details than the EMFAC2017 web database used by Clark. The EMFAC2017-PL software is able to provide an hourly idle emission rate which is not available in the EMFAC2017 web database. Idle emissions were calculated for all haul trucks visiting the site and idle time was assumed consistent with the CARB ATCM idle time limit of 5 minutes per instance.

Use of a confidence interval methodology for developing a composite emission factor based on EMFAC2017 data is completely misguided and inappropriate for this Project. The confidence level is the percentage of times you expect to get close to the same estimate if you run an experiment again or resample the population you are studying. A good example is when calculating health risk impacts from contaminated soil where you don't know the amount of contamination throughout the site and are basing the analysis on a certain number of samples with varying contaminant levels. This is simply not the case within EMFAC2017. EMFAC2017 data is based on the California Department of Motor Vehicle registration data. The commenter's suggested approach has no merit regarding this Project and is not employed within CalEEMod. Furthermore, Clark's 95% UCL assumes an equal weighting for all model years which misrepresents the weighted average emission factors. No changes to the emission factors used in the Draft EIR construction analysis are warranted based on this comment.

#### **Comment No. 11-54**

##### **7. The DEIR Fails to Demonstrate the Feasibility of Obtaining Exclusively Tier 4 Final Construction Equipment in Light of The Limited Availability Of Tier 4 Equipment In The State Of California And The Potential Impacts That a Shortage Would Have On The Duration Of The Construction Phase Of The Project.**

Mitigation (Mitigation Measure AIR-MM-1) involves the requirement that all off-road diesel-powered equipment over 50 hp used during project grading/excavation activities meet USEPA Tier 4 Final emissions standards. The DEIR relies on AIR-MM-1 to conclude that construction air quality impacts would be mitigated below levels of significance. However, the DEIR fails to consider the limited availability of Tier 4 Final equipment, and fails to include evidence demonstrating that Tier 4 Final equipment can be reasonably procured for this Project during its projected construction period.



Although off-road Tier 4 Final equipment is available for purchase, it is still new technology that may not yet be readily available at all construction equipment vendors, and may require special procurement by the Proponent. 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-1
	T0	T1	T2	T3	T4F	T4I	
Aerial Lifts	1.63%	4.67%	14.86%	4.08%	<b>48.64%</b>	<b>26.12%</b>	74.76%
Boom	0.15%	0.77%	5.22%	1.59%	<b>76.20%</b>	<b>16.06%</b>	92.26%
Bore/Drill Rigs	11.53%	15.42%	16.86%	21.76%	<b>17.72%</b>	<b>14.34%</b>	32.06%
Bucket	8.33%	18.33%	10.00%	6.67%	<b>33.33%</b>	<b>23.33%</b>	56.67%
Concrete Mixer	0.00%	0.00%	0.00%	14.29%	<b>85.71%</b>	<b>0.00%</b>	85.71%
Concrete Pump	1.30%	7.79%	40.26%	1.30%	<b>32.47%</b>	<b>16.88%</b>	49.35%

Equipment Type (> 50 hp)	U.S. EPA Emission Tier Level						Percent Total Meeting Requirement MM AQ-1
	T0	T1	T2	T3	T4F	T4I	
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%
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%

Equipment Type (> 50 hp)	U.S. EPA Emission Tier Level						Percent Total Meeting Requirement MM AQ-1
	T0	T1	T2	T3	T4F	T4I	
Surfacing Equipment	15.38%	14.25%	10.18%	23.08%	<b>19.23%</b>	<b>17.65%</b>	36.88%
Sweepers/Scrubbers	11.02%	20.84%	16.57%	6.61%	<b>25.75%</b>	<b>19.06%</b>	44.81%
Tank Truck	4.05%	6.76%	8.11%	27.03%	<b>37.84%</b>	<b>16.22%</b>	54.05%
Tanker Truck Trailer	0.00%	18.18%	0.00%	0.00%	<b>63.64%</b>	<b>18.18%</b>	81.82%
Telescopic Handler	1.33%	0.00%	2.67%	0.00%	<b>80.00%</b>	<b>16.00%</b>	96.00%
Tow Tractor	0.00%	100.00%	0.00%	0.00%	<b>0.00%</b>	<b>0.00%</b>	0.00%
<b>Tractors/Loaders/Backhoes</b>	<b>13.53%</b>	<b>16.50%</b>	<b>18.73%</b>	<b>8.96%</b>	<b>29.23%</b>	<b>13.05%</b>	<b>42.28%</b>
Trenchers	21.86%	19.57%	20.87%	3.28%	<b>21.86%</b>	<b>12.57%</b>	34.43%
Vacuum Truck	2.21%	18.38%	15.44%	25.00%	<b>13.24%</b>	<b>14.71%</b>	27.94%
Water Truck	21.79%	8.21%	16.43%	16.07%	<b>23.57%</b>	<b>13.57%</b>	37.14%
Workover Rig (Mobile)	5.99%	15.14%	9.78%	17.35%	<b>7.10%</b>	<b>13.56%</b>	20.66%
Yard Goat	4.40%	4.58%	9.41%	18.31%	<b>41.71%</b>	<b>21.33%</b>	63.04%

It is clear from the CARB data that access to Tier 4 final 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 limited supply in the State. In particular, Tier 4 final 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 MM AQ-1. Absent evidence demonstrating that the Proponent can feasibly obtain Tier 4 Final equipment for all off-road diesel equipment required for Project construction, it is unreasonable to presume that the Proponent will fully comply with MM AQ-1, or that the proposed construction schedule is feasible. The DEIR should be revised to provide this evidence and analysis.

### **Response to Comment No. 11-54**

Mitigation Measure AIR-MM-1 requires all off-road diesel-powered equipment greater than 50 hp used during Project grading/excavation activities to meet USEPA Tier 4 Final emissions standards. It is unclear why much of this comment focuses on other phases of construction that are not required to use Tier 4 Final equipment. Furthermore, it appears that the commentor did not account for the Project-specific equipment list for grading/excavation activities included in Appendix B of the Draft EIR since this comment cites scrapers, off-highway trucks, and tractors/loaders/backhoes. The Project-specific equipment mix provided for grading/excavation activities includes two bore/drill rigs, one crane, three excavators, one generator, one water truck, one pump, one dozer, and one

welder. Furthermore, use of State data instead of more specific SCAQMD data included in the HRA prepared in response to these comments (Appendix A [Emission Calculations] of Appendix FEIR-2 of this Final EIR), skews the availability percentage to make it appear that less Tier 4 Final equipment is available at the local level. Also, as a point of clarification, Tier 4 Interim equipment cited above by Clark (Table 1) does not meet the requirements of Mitigation Measure AIR-MM-1. This demonstrates that Clark fails to understand the data and provides inaccurate information to the decision makers.

As CARB DOORS data is not publicly available and Clark did not provide the raw data, it is not possible to review the claims by Clark regarding Tier 4 final equipment availability at the State level. Furthermore, the data may not take into account recent years of Tier 4 final equipment market penetration and does not account for equipment availability at the regional level. EMFAC2021 is more suited to determine the availability of certain types of off-road equipment and especially at the regional level. Based on the EMFAC2021 web database, the availability of Tier 4 final equipment within Los Angeles County is higher than claimed by Clark. EMFAC2021 shows that 56 percent of bore/drill rigs (Clark shows 31 percent), 37 percent of cranes (Clark shows 11 percent), 64 percent of excavators (Clark shows 49 percent), and 28 percent of rubber tired dozers (Clark shows 11 percent) within Los Angeles County in Year 2022 are Tier 4 Final compliant, all of which are used during the Project's grading/excavation phase. Such levels demonstrate that equipment meeting the requirements of Mitigation Measure AIR-MM-1 are available and the Project is required to the use of equipment meeting these requirements.

### **Comment No. 11-55**

#### **8. The DEIR Fails To Perform An Accurate Cumulative Impact Analysis On Air Quality.**

A proper cumulative impact analysis is vital for an environmental analysis "because the full environmental impact of a proposed project cannot be gauged in a vacuum. One of the most important environmental lessons that has been learned is that the environmental damage often occurs incrementally from a variety of small sources with which they interact."<sup>21</sup> The DEIR's conclusion is flawed for the following reasons.

First, the discussion in the comments above indicates that the Project would contribute to an existing significant impact, i.e. [sic] degraded air quality in the South Coast air basin as evidenced by frequent violations of PM<sub>10</sub>, PM<sub>2.5</sub> and ozone ambient air quality standards. The Project would increase the emissions of PM<sub>10</sub>, PM<sub>2.5</sub>, and ozone precursors and thus would contribute to these existing exceedances of ambient air quality standards. Thus, the Project's contribution is per se cumulatively significant.

Second, a cumulative impacts analysis must consider past projects, the effects of other current projects, and the effects of probable future projects.”<sup>22</sup> The DEIR did not identify any other closely related, past, present, or reasonably foreseeable probable future projects let alone attempt to quantify their emissions and, thus, to evaluate them cumulatively with the Project.

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

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

The City’s air quality cumulative analysis is clearly deficient and must be supported by the preparation of a revised EIR.

<sup>21</sup> *Bakersfield Citizens* (2004) 124 Cal. App. 4th at 1214 (quoting *Communities for a Better Environment v. California Resources Agency* 103 Cal.App.4th at 116).

<sup>22</sup> CEQA Guidelines §15355(b)

### **Response to Comment No. 11-55**

The definition of a cumulative impact is included on pages III-3 and III-4 of Section III, Environmental Setting, of the Draft EIR. The Draft EIR appropriately uses specific analyses for each cumulative analysis impact category. The air quality cumulative impact methodology was provided on pages IV.A-34 through 35 of the Draft EIR and is explained below. SCAQMD shares responsibility with CARB for ensuring that all federal and state ambient air quality standards are achieved and maintained throughout all of Orange County and the urban portions of Los Angeles, Riverside, and San Bernardino counties. SCAQMD developed methodologies and thresholds of significance that are widely used by lead agencies throughout the air basin. As set forth in the *2006 LA CEQA Thresholds Guide*,



the City adopted SCAQMD thresholds to assess the significance of a project's project-specific and cumulative air quality impacts. SCAQMD's White Paper on Potential Control Strategies to Address Cumulative Impacts From Air Pollution prepared in August 2003 specifically states:

*As Lead Agency, the AQMD uses the same significance thresholds for project specific and cumulative impacts for all environmental topics analyzed in an Environmental Assessment or EIR.... Projects that exceed the project-specific significance thresholds are considered by the SCAQMD to be cumulatively considerable. This is the reason project-specific and cumulative significance thresholds are the same. Conversely, projects that do not exceed the project-specific thresholds are generally not considered to be cumulatively significant.<sup>36</sup>*

The cumulative analysis of air quality impacts within the Draft EIR appropriately follows SCAQMD's specified methodology. Furthermore, air quality impacts are basin-wide, and air quality is affected by all pollutant sources in the basin. Therefore, the ambient air quality measurements provide a summary of basin-wide cumulative air quality impacts. As the individual project thresholds are designed to help achieve attainment with cumulative basin-wide standards, they are also appropriate for assessing the Project's contribution to cumulative impacts. As discussed above in Response to Comments Nos. 11-33 through 11-34, these comments did not change any of the significance conclusions for the Project in the Draft EIR.

### **Comment No. 11-56**

#### **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 draft environmental impact report.

### **Response to Comment No. 11-56**

As demonstrated in Response to Comment Nos. 11-33 through 11-55, no changes to the significance conclusions would occur based on the Clark comment letter. As no new

---

<sup>36</sup> *White Paper on Potential Control Strategies to Address Cumulative Impacts from Air Pollution. Appendix D, South Coast Air Quality Management District, August 2003.*

significant and unavoidable impacts were identified, there is no need to recirculate the Draft EIR.

**Comment No. 11-57**

Attachment A: CV [11 pages]

**Response to Comment No. 11-57**

This attachment is the curriculum vitae for Exhibit A's preparers. This comment is noted for the record and will be forwarded to the decision-makers for their review and consideration.

**Comment No. 11-58**

Attachment B: Dispersion Model Input/Output Files [84 pages]

**Response to Comment No. 11-58**

A review of the dispersion model used indicates that the commenter failed to follow appropriate SCAQMD modeling guidance. For instance, the model was set to rural for this urban setting which is incorrect. In addition, the meteorological data set does not appear to be consistent with the SCAQMD meteorological data set for Central Los Angeles. Most significantly, the commenter provides no supporting background documentation for the identified emission rates for the area line sources. This comment is noted for the record and will be forwarded to the decision-makers for their review and consideration.

**Comment No. 11-59**

Attachment C: Health Risk Analysis Outputs [11 pages]

**Response to Comment No. 11-59**

The HARP output file provided in Comment No. 11-59 only displays parameters used in the risk analysis. Please note that the HARP software output consists of several files including pollutant emission rates, concentrations and health risk values. The output file provided does not contain emissions data or health risk values. Based on this incomplete dataset, it would not be possible to review or verify claims of the commenter regarding health risk impacts.

**Comment No. 11-60**

Attachment: Exhibit B: Adams Broadwell Joseph & Cardozo letter dated August 20, 2021, from Sheila M. Sannadan to Vince Bertoni, Holly L. Wolcott, and Polonia Majas [3 pages]

**Response to Comment No. 11-60**

This exhibit consists of Comment Letter 5 in its entirety. Refer to Response to Comment Nos. 5-1 through 5-3, above.

**Comment No. 11-61**

Attachment: Exhibit C: Adams Broadwell Joseph & Cardozo e-mail dated September 28, 2021, 11:09 AM, from Sheila Sannadan to Polonia Majas [2 pages]

**Response to Comment No. 11-61**

This exhibit consists of Comment Letter 9 in its entirety. Refer to Response to Comment No. 9-1, above.

**Comment No. 11-62**

Attachment: Exhibit D: Adams Broadwell Joseph & Cardozo letter dated September 30, 2021, from Aidan P. Marshall to Polonia Majas and Planning Records Management Department (with two attachments labeled Exhibit A and Exhibit B) [9 pages]

**Response to Comment No. 11-62**

This exhibit consists of Comment Letter 10 in its entirety. Refer to Response to Comment Nos. 10-1 through 10-7, above.

**Comment No. 11-63**

Attachment: Exhibit E: William Lamborn e-mail dated October 4, 2021, 9:40 AM, from William Lamborn to Alisha C. Pember [2 pages]

**Response to Comment No. 11-63**

This exhibit consisting of an email from the Department of City Planning directing the Commenter to the HRA output files is noted for the record and will be forwarded to the decision-makers for their review and consideration.



**Comment Letter No. 12**

Lorrie J. LeLe  
Legal Assistant  
Adams Broadwell Joseph & Cardozo  
601 Gateway Blvd., Ste. 1000  
South San Francisco, CA 94080-7037

**Comment No. 12-1**

Please find attached the comment references for your convenience that go along with our comments filed earlier this date.

**Response to Comment No. 12-1**

This introductory comment is noted for the record and will be forwarded to the decision-makers for review and consideration.

**Comment No. 12-2**

Attachment: Environmental Defense, Cleaner Diesel Handbook: Bring Cleaner Fuel and Diesel Retrofits into Your Neighborhood (April 2005) [85 pages]

**Response to Comment No. 12-2**

This attachment is noted for the record and will be forwarded to the decision-makers for their review and consideration.

**Comment No. 12-3**

Attachment: CARB, Draft Potential Emissions Impact of Public Safety Power Shutoff (PSPS) Draft (January 30, 2020) [4 pages]

**Response to Comment No. 12-3**

This attachment is noted for the record and will be forwarded to the decision-makers for their review and consideration.

**Comment No. 12-4**

Attachment: CARB, Overview: Diesel Exhaust & Health (printout of Web site) [8 pages]

**Response to Comment No. 12-4**

This attachment is noted for the record and will be forwarded to the decision-makers for their review and consideration.

**Comment No. 12-5**

Attachment: SCAQMD, December 20, 2020, m. Zoom meeting presentation [38 pages]

**Response to Comment No. 12-5**

This attachment is noted for the record and will be forwarded to the decision-makers for their review and consideration.

**Comment No. 12-6**

Attachment: Adams Broadwell Joseph & Cardozo letter dated October 4, 2021 [175 pages]

**Response to Comment No. 12-6**

This attachment consists of Comment Letter 11 in its entirety. Refer to Response to Comment Nos. 11-1 through 11-63, above.

**Comment Letter No. 13**

Amalia Bowley Fuentes  
Legal Fellow  
Lozeau | Drury LLP  
1939 Harrison St., Ste. 150  
Oakland, CA 94612-3507

Richard Drury  
Lozeau | Drury LLP  
1939 Harrison St., Ste. 150  
Oakland, CA 94612-3507

**Comment No. 13-1**

On behalf of the Supporters Alliance for Environmental Responsibility (“SAFER”), attached please find comments on the Draft Environmental Impact Report for the 5420 Sunset Project (ENV-2017-1084-EIR).

Thank you for your assistance. If you could please confirm receipt of this e-mail and the attached comments it would be appreciated. Thank you for considering these comments.

I am writing on behalf of Supporters Alliance For Environmental Responsibility (“SAFER”) regarding the Draft Environmental Impact Report (“DEIR”) prepared for the 5420 Sunset Project (ENV-2017-1084-EIR), including all actions related or referring to the proposed development of a mixed-use project consisting of 735 multi-family residential units and up to 95,000 square feet of neighborhood-serving commercial uses, provided within four buildings up to six stories tall, with 1,419 vehicle parking spaces provided within two subterranean parking levels and one at-grade parking level.

**Response to Comment No. 13-1**

This introductory comment, which summarizes the Project Description, is noted for the record and will be forwarded to the decision makers for their review and consideration. The Project Description identified above has been modified including, but not limited to, updates to open space, vehicular parking, and bicycle parking spaces. Refer to Section III, Revisions, Clarifications, and Corrections to the Draft EIR, of this Final EIR.

**Comment No. 13-2**

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.

### **Response to Comment No. 13-2**

This comment concludes the Draft EIR fails as an informational document and fails to impose all feasible mitigation measures to reduce the Project’s impact but provides no specific evidence to support these claims. This comment further requests the City address the shortcomings in a revised Draft EIR and recirculate prior to approval. Lastly, this comment states it reserves the right to supplement the comments during the review of the Final EIR for the Project and at the public hearings. Overall, the comment does not identify any specific shortcomings of the Draft EIR analysis or mitigation measures, and no specific response is therefore required. Furthermore, the Draft EIR complied fully with all of CEQA’s mandates and the comment presents no information or substantial evidence about any specific impact area, and as such, would not meet any of the criteria for recirculation of the Draft EIR. This comment is noted for the record and will be forwarded to the decision-makers for review and consideration.

### **Comment No. 13-3**

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. 13-3**

This comment states that the Commenter reserves the right to supplement their comments and cites a 1997 court decision which set aside an EIR for construction of a new dam and reservoir because it did not adequately evaluate impacts on nearby vineyards. With no additional information, it is unclear how this court decision would affect the Project’s Draft EIR. The surrounding uses are described in detail in Section II, Project Description, and Section III, Environmental Setting, of this Draft EIR, and impacts are fully evaluated throughout Section IV, Environmental Impact Analysis, of the Draft EIR. Nevertheless, this comment is noted for the record and will be forwarded to the decision-makers for review and consideration.

**Comment Letter No. 14**

Brandon Young  
Office Manager  
Mitchell M. Tsai, Attorney at Law  
139 S. Hudson Ave., Ste. 200  
Pasadena, CA 91101-4990

SWRCC  
c/o Mitchell M. Tsai, Attorney at Law  
139 S. Hudson Ave., Ste. 200  
Pasadena, CA 91101-4990

**Comment No. 14-1**

Please see the attached Public Records Act and Notice List Request on the above referenced Project and confirm receipt of this email and its attachment.

On behalf of Southwest Regional Council of Carpenters (“**SWRCC**” or “**Southwest Carpenters**”) and its members, this Office requests that the City of Los Angeles (“**City**”) provide any and all information referring or related to the 5420 Sunset Boulevard Project (SCH#: 2017061075) (“**Project**”) pursuant to the California Public Records Act (“**PRA**”), Cal. Government (“**Gov’t**”) Code §§ 6250–6270 (collectively “**PRA Request**”).

Moreover, SWRCC requests that City 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.

The Southwest Regional Council of 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 and addressing the environmental impacts of development projects, such as the Project.

**Response to Comment No. 14-1**

This introductory comment summarizing the commenter’s interest in the Project and requesting access to public records and to be added to the Project’s notification list is noted

for the record and will be forwarded to the decision-makers for their review and consideration.

## **Comment No. 14-2**

### **I. PUBLIC RECORDS ACT REQUEST.**

Southwest Carpenters is requesting any and all information referring or related to the Project.

The Public Records Act defines the term “public record” broadly as “any writing containing information relating to the conduct of the public’s business ... regardless of physical form and characteristics.” Gov’t Code § 6252(d). “Records” includes all communications relating to public business regardless of physical form or characteristics, including but not limited to any writing, picture, sound, or symbol, whether paper, magnetic, electronic, text, other media, or written verification of any oral communication. Included in this request are any references in any appointment calendars and applications, phone records, or text records. These “records” are to include, but are not limited to correspondences, e-mails, reports, letters, memorandums, and communications by any employee or elected official of the City of Los Angeles concerning the Project.

Please include in your response to this request the following examples of “records,” as well as any similar physical or electronic forms of communication: any form of writing such as correspondence, electronic mail records (“email”), legal and factual memoranda, facsimiles, photographs, maps, videotapes, film, data, reports, notes, audiotapes, or drawings. Cal. Government Code § 6252(g) (defining a writing to including “any record thereby created, regardless of the manner in which the record has been stored”). Responsive correspondence should include, inter alia, emails, text messages, or any other form of communication regardless of whether they were sent or received on public or privately-owned electronic devices “relating to the conduct of the public’s business.” Cal. Government Code § 6252(e); *Citizens for Ceres v. Super. Ct.* (“Ceres”) (2013) 217 Cal. App. 4th 889, 909; *Citizens for Open Gov’t v. City of Lodi* (“Lodi”) (2012) 205 Cal.App.4th 296, 307, 311; *City of San Jose v. Superior Court* (2017) 2 Cal. 5th 608, 625 (finding that a public employee or officer’s “writings about public business are not excluded” from the California Public Records Act “simply because they have been sent, received, or stored in a personal account.”) .

This Office requests any and all information referring or related to the Project, including but not limited to:

- (1) All Project application materials;

- (2) All staff reports and related documents prepared by the City with respect to its compliance with the substantive and procedural requirements of the California Environmental Quality Act, Public Resources Code § 21000 et seq., and the CEQA Guidelines, title 14, California Code of Regulations, § 15000 et seq. (collectively “**CEQA**”) and with respect to the action on the Project;
- (3) All staff reports and related documents prepared by the City and written testimony or documents submitted by any person relevant to any findings or statement of overriding considerations adopted by the agency pursuant to CEQA;
- (4) Any transcript or minutes of the proceedings at which the decision making body of the City heard testimony on, or considered any environmental document on, the Project, and any transcript or minutes of proceedings before any advisory body to the public agency that were presented to the decision making body prior to action on the environmental documents or on the Project;
- (5) All notices issued by the City to comply with CEQA or with any other law governing the processing and approval of the Project;
- (6) All written comments received in response to, or in connection with, environmental documents prepared for the Project, including responses to the notice of preparation;
- (7) All written evidence or correspondence submitted to, or transferred from, the City with respect to compliance with CEQA or with respect to the Project;
- (8) Any proposed decisions or findings submitted to the decision making body of the City by its staff, or the Project proponent, Project opponents, or other persons;
- (9) The documentation of the final City decision and approvals, including the final environmental impact report, mitigated negative declaration, negative declaration, or notice of exemption, and all documents, in addition to those referenced in paragraph (3), cited or relied on in the findings or in a statement of overriding considerations adopted pursuant to CEQA;
- (10) Any other written materials relevant to the public agency’s compliance with CEQA or to its decision on the merits of the Project, including the initial study, any drafts of any environmental document, or portions

thereof, that have been released for public review, and copies of studies or other documents relied upon in any environmental document prepared for the Project and either made available to the public during the public review period or included in the City 's files on the Project, and all internal agency communications, including staff notes and memoranda related to the Project or to compliance with CEQA; and

- (11) The full written record before any inferior administrative decision making body whose decision was appealed to a superior administrative decision making body prior to the filing of any litigation.

Please respond within 10 days from the date you receive this request as to whether this request specifies identifiable records not exempt from disclosure under the PRA or otherwise privileged or confidential, and are therefore subject to disclosure. This Office understands that this time may be extended up to 14 days for unusual circumstances as provided by Cal. Government Code § 6253(c), and that we will be notified of any extension and the reasons justifying it.

We request that you provide all documents in electronic format and waive any and all fees associated with this Request. SWRCC is a community-based organization. Please notify and obtain express approval from this Office before incurring any duplication costs.

If any of the above requested documents are available online, please provide us with the URL web address at which the documents may be downloaded. If any of the requested documents are retained by the City of Los Angeles in electronic computer-readable format such as PDF (portable document format), please provide us with pdf copies of the documents via email, or inform us of the location at which we can copy these documents electronically.

In preparing your response, please bear in mind that you have an obligation under Government Code section 6253.1 to (1) identify all records and information responsive to our request or the purpose of our request; (2) describe the information technology and physical location in which the records exist; and (3) provide suggestions for overcoming any practical basis for denying access to the records or information sought.

In responding to this request, please bear in mind that any exemptions from disclosure you may believe to be applicable are to be narrowly construed. *Marken v. Santa Monica–Malibu Unif. Sch. Dist.* (2012) 202 Cal. App. 4th 1250,1262; and may be further narrowed or eliminated by the adoption of Proposition 59, which amended article I, section 3(b)(2) of the California Constitution to direct that any “statute ... or other authority ... [that] limits the right of access” to “information concerning the conduct of the people’s business” must be “narrowly construed.”



As for any records that you nonetheless decline to produce on the grounds of an exemption, please bear in mind that the case law under the Public Records Act imposes a duty on you to distinguish between the exempt and the non-exempt portion of any such records, and to attempt in good faith to redact the exempt portion and to disclose the balance of such documents.

Please bear in mind further that should you choose to withhold any document from disclosure, you have a duty under Government Code section 6255, subd. (a) to “justify withholding any record by demonstrating that the record in question is exempt under express provisions” of the Public Records Act or that “the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record.”

Finally, please note that you must retain and not destroy any and all records, notwithstanding any local record retention or document destruction policies. As the Court noted in *Golden Door Properties, LLC v. Superior Court of San Diego County* (2020) 53 Cal.App.5th 733 that a public agency “must retain ‘[a]ll written evidence or correspondence submitted to, or transferred from’ ... with respect to” CEQA compliance or “with respect to the project.”

### **Response to Comment No. 14-2**

This comment requests immediate access to any and all public records referring to or related to the Project. The City responded to the PRA request on October 6, 2021. The City provided responsive documents on October 18, 2021.

### **Comment No. 14-3**

## **II. NOTICE LIST REQUEST.**

We also ask that you put this Office on its notice list for any and all notices issued under the CEQA and the Planning and Zoning Law.

In particular, we request that the City of Los Angeles send by mail or electronic mail notice of any and all actions or hearings related to activities undertaken, authorized, approved, permitted, licensed, or certified by the City and any of its subdivision for the Project, or supported, in whole or in part, through permits, contracts, grants, subsidies, loans, or other forms of approvals, actions or assistance, including but not limited to the following:

- Notices of any public hearing held in connection with the Project; as well as

- Any and all notices prepared pursuant to CEQA, including but not limited to:
- Notices of determination that an Environmental Impact Report (“EIR”) or supplemental EIR is required for a project, prepared pursuant to Public Resources Code Section 21080.4;
- Notices of availability of an EIR or a negative declaration for a project prepared pursuant to Public Resources Code Section 21152 and Section 15087 of Title 14 of the California Code of Regulations;
- Notices of approval or determination to carry out a project, prepared pursuant to Public Resources Code Section 21152 or any other provision of law;
- Notice of approval or certification of any EIR or negative declaration prepared pursuant to Public Resources Code Section 21152 or any other provision of law;
- Notice of exemption from CEQA prepared pursuant to Public Resources Code section 21152 or any other provision of law; and
- Notice of any Final EIR prepared pursuant to CEQA.

This Office is requesting notices of any approvals or public hearings under CEQA and the California Planning and Zoning Law. This request is filed pursuant to California Public Resources Code Sections 21092.2, and 21167(f) and Government Code Section 65092 requiring 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 notice by regular and electronic mail to:

Mitchell M. Tsai, Attorney at Law  
139 S. Hudson Ave., Ste. 200  
Pasadena, CA 91101-4990  
Em: [mitch@mitchtsailaw.com](mailto:mitch@mitchtsailaw.com)  
Em: [mary@mitchtsailaw.com](mailto:mary@mitchtsailaw.com)  
Em: [brandon@mitchtsailaw.com](mailto:brandon@mitchtsailaw.com)  
Em: [cindy@mitchtsailaw.com](mailto:cindy@mitchtsailaw.com)  
Em: [info@mitchtsailaw.com](mailto:info@mitchtsailaw.com)

We look forward to working with you. If you have any questions or concerns, please do not hesitate to contact our Office.

**Response to Comment No. 14-3**

This comment requests to be added to the Project's notification list and concludes the letter. The Commenter has been added to the Project's notification list as requested.

**Comment Letter No. 15**

Rudraj Koppikar  
rudraj.koppikar@gmail.com

**Comment No. 15-1**

I support the initiative, but would be concerned about lane closures and the adverse affect they tend to have—Such as when Metro renovations earlier this summer closed lanes on Western north of Sunset, which caused traffic to back up all the way to Western & Franklin on certain days.

**Response to Comment No. 15-1**

This comment expresses concern about lane closures associated with the Project. As discussed in Section IV.I, Transportation, of the Draft EIR, Project Design Feature TR-PDF-2 requires the Project to prepare a detailed Construction Traffic Management Plan, including street closure information, a detour plan, haul routes, and a staging plan. The Construction Traffic Management Plan (Project Design Feature TR-PDF-2) would formalize how construction would be carried out and identify specific actions that would be required to reduce effects on the surrounding community. Specific measures related to potential lane closures include the following:

- Temporary pedestrian and vehicular traffic controls during all construction activities adjacent to Sunset Boulevard, Western Avenue and Serrano Avenue, to ensure traffic safety on public rights-of-way. These controls shall include, but not be limited to, flag people trained in pedestrian safety at the Project Site.
- Temporary traffic control during all construction activities adjacent to public rights-of-way to improve traffic flow on public roadways (e.g., flag men).
- Scheduling of construction activities to reduce the effect on traffic flow on surrounding arterial streets.
- Scheduling of construction-related deliveries, haul trips, etc., so as to occur outside the commuter peak hours to the extent feasible, and so as to not impede nearby school drop-off and pick-up activities.

Lane closures associated with Project operations would not occur. Furthermore, all Project-related loading activities would occur on-site so as to not disrupt traffic operations along the public right-of-way. Nevertheless, this comment is noted for the record and will be forwarded to the decision makers for their review and consideration.

**Comment Letter No. 16**

Joseph Lazovsky  
yjmm22@gmail.com

**Comment No. 16-1**

I owe [sic] few properties in neighborhood of above mentioned development.I [sic] really applaude [sic] for upcoming projects, but have this concerne : [sic]

1, Traffic : [sic] Is the project to be required with highway dedication?I [sic] think that size of project should have at least 2 lanes on each side (Sunset, Western) to be dedicated.

**Response to Comment No. 16-1**

As detailed in Section d, Analysis of Impacts, of Section IV.I, Transportation, of the Draft EIR, the Project would comply with the dedication and improvement requirements consistent with Section 12.37 of the Los Angeles Municipal Code to meet Mobility Plan 2035 standards along all Project frontages, including Western Avenue, a designated Modified Avenue I; Sunset Boulevard, a designated Avenue I; and Serrano Avenue a designated Local Street. The commenter suggests that the Project should dedicate at least two lanes on Sunset Boulevard and Western Avenue due to the size of the Project. The dedication requirements for the Project are based on the roadway and right-of-way standards defined in the Mobility Plan for Sunset Boulevard, a designated Avenue I, which requires a 35-foot half-roadway and a 50-foot half-right-of-way, and Western Avenue, a designated Modified Avenue I, which requires a 37-foot half-roadway and a 102-foot half-right-of-way, and are not based solely on the size of the proposed development.

**Comment No. 16-2**

2, Proposed use : [sic] Existing market is being demolished and the neighborhood will be in need for replacement with other supermarket at least in size of demolished one.

**Response to Comment No. 16-2**

This comment does not raise CEQA issues with respect to the Draft EIR or any of the impact analyses therein. Nevertheless, the existing 78,328-square-foot grocery store would be replaced with a 69,000-square-foot grocery store. This comment is noted for the record and will be forwarded to the decision makers for their review and consideration.

**Comment No. 16-3**

I don't know if your agency has jurisdiction about our above mentioned concerns , [sic] if not ,could [sic] you please direct me to propriert agencies [sic] so I can properly address those above ? [sic]

**Response to Comment No. 16-3**

Responses to the issues raised by the Commenter are provided in Response to Comment Nos. 16-1 and 16-2, above.

**Comment Letter No. 17**

Alison Mannos  
1554 N. Hobart Blvd., Apt. 6  
Los Angeles, CA 90027-6925

**Comment No. 17-1**

My name is Allison Mannos, and I am a homeowner and resident in the East Hollywood area that the 5420 project is planned within. I am writing to make public comment on the project DEIR. I'm concerned about the project's impact on displacement of low-income renters in our community.

The project website didn't list the number of affordable/TOC incentive affordable units the developer would provide, and the developer's staff or contractor who called me a year ago also didn't seem to have that information. While I am a homeowner, I was a renter for almost a decade in this neighborhood prior, and there have been a great deal of housing developments greenlit by the City that seem aimed at driving displacement along the Western Avenue corridor.

By approving market rate, even luxury housing in a predominantly low-income, immigrant neighborhood without requirements for greater numbers of affordable units, the City is further exacerbating the housing affordability and homelessness crisis.

My request is that the City Planning staff and Planning Commission do not advance this project without securing greater low-income units included in the project.

**Response to Comment No. 17-1**

This Project is not proceeding by way of density bonus or TOC and, therefore, is not required to provide affordable housing. This comment, which does not raise CEQA issues with respect to the Draft EIR or any of the impact analyses therein, is noted for the record and will be forwarded to the decision makers for their review and consideration.

**Comment Letter No. 18**

Jessica Bispels  
Land Use Specialist  
Solomon, Saltsman & Jamieson  
426 Culver Blvd.  
Playa Del Rey, CA 90293-7766

**Comment No. 18-1**

My name is Jessica Bispels. I am emailing regarding the EIR referenced in the subject line of this email. I understand the comment period is over, and would like to know if any comments were received, and if so, what they are.

If this information can be found on the city website, do you mind directing me to the correct location?

**Response to Comment No. 18-1**

This comment, which requests information on the number and types of comments received on the Draft EIR, is noted for the record and will be forwarded to the decision makers for their review and consideration.