

## **II. Responses to Comments**

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### **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 (including Paleontological Resources)	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	Alan Lin Transportation Engineer, Civil Department of Transportation 100 S. Main Street, MS 16 Los Angeles, CA 90012-3712  Miya Edmonson IGR/CEQA Branch Chief Department of Transportation 100 S. Main Street, MS 16 Los Angeles, CA 90012-3712																						X												
2	Shine Ling, AICP Manager, Development Review Team TOCs Metro Development Review One Gateway Plaza MS 99-22-1 Los Angeles, CA 90012-2952																						X												

Table II-1 (Continued)  
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<b>ORGANIZATIONS</b>																																				
3	<p>Alisha C. Pember Adams Broadwell Joseph &amp; Cardozo 601 Gateway Blvd., Ste. 1000 South San Francisco, CA 94080-7037</p> <p>Darien Key Adams Broadwell Joseph &amp; Cardozo 601 Gateway Blvd., Ste. 1000 South San Francisco, CA 94080-7037</p> <p>James J. J. Clark Clark &amp; Associates 12405 Venice Blvd., PMB 331 Los Angeles, CA 90066-3803</p> <p>Derek L. Watry Principal Wilson Ihrig 5900 Hollis St., Ste. T1 Emeryville, CA 94608-2008</p>					X					X			X	X																		X	X		
4	<p>Cari Wolk President Athena Parking Inc. 818 W. Seventh St., Ste. 860 Los Angeles, CA 90017-3566</p> <p>Stuart Morkun Vice President, Development Mitsui Fudosan America smorkun@mfamerica.com</p>																																			X
5	<p>Nejdeh Avedian General Manager Los Angeles United Investment Co. 650 S. Hill St., Ste. 1010 Los Angeles, CA 90014-1752</p>																																			X

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

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6	Amalia Bowley Fuentes 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	X																			
<b>INDIVIDUALS</b>																																																					
7	Herb Goodman nerbgood15@icloud.com		X		X																																																
8	Diane Kravif 645 W. Ninth St., Apt. 311 Los Angeles, CA 90015-1643											X											X											X	X																		
9	Dan & Patricia Louis 801 S. Grand Ave., Apt. 2005 Los Angeles, CA 90017-4673				X														X	X	X											X		X																			

## **II. Responses to Comments**

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### **C. Comment Letters**

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

Alan Lin  
Transportation Engineer, Civil  
Department of Transportation  
100 S. Main Street, MS 16  
Los Angeles, CA 90012-3712

Miya Edmonson  
IGR/CEQA Branch Chief  
Department of Transportation  
100 S. Main Street, MS 16  
Los Angeles, CA 90012-3712

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

Attached please find Caltrans comment letter.

Thank you for including the California Department of Transportation (Caltrans) in the environmental review process for the above referenced environmental document. The Project proposes to construct a 50-story mixed-use development comprised of 580 residential units and up to 7,499 square feet of ground floor commercial/retail/restaurant space on a 34,679-square-foot site. The Project would provide 636 vehicle parking spaces within three subterranean levels and eight above-grade levels and four vehicle parking spaces on the ground floor. To accommodate the Project, an existing surface parking lot and four-story parking structure would be demolished. Upon completion, the total building floor area would be 554,927 square feet with a maximum height of 592 feet and a Floor Area Ratio (FAR) of approximately 9.25:1.

The mission of Caltrans is to provide a safe and reliable transportation network that serves all people and respects the environment. Senate Bill 743 (2013) has codified into CEQA law and mandated that CEQA review of transportation impacts of proposed development be modified by using Vehicle Miles Traveled (VMT) as the primary metric in identifying transportation impacts for all future development projects. You may reference the Governor's Office of Planning and Research (OPR) for more information:

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<http://opr.ca.gov/ceqa/updates/guidelines/>

As a reminder, VMT is the standard transportation analysis metric in CEQA for land use projects after July 1, 2020, which is the statewide implementation date.

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

This introductory comment, which provides an overview of the Project and notes that VMT is now the standard transportation metric in CEQA, is noted for the record and will be forwarded to the decision-makers for their review and consideration. VMT has been used as the metric to evaluate transportation impacts of the Project as set forth in Section IV.G., Transportation, of the Draft EIR.

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

Caltrans is aware of challenges that the region faces in identifying viable solutions to alleviating congestion on State and Local facilities. With limited room to expand vehicular capacity, all future developments should incorporate multi-modal and complete streets transportation elements that will actively promote alternatives to car use and better manage existing parking assets. Prioritizing and allocating space to efficient modes of travel such as bicycling and public transit can allow streets to transport more people in a fixed amount of right-of-way.

Caltrans supports the implementation of complete streets and pedestrian safety measures such as road diets and other traffic calming measures. Please note the Federal Highway Administration (FHWA) recognizes the road diet treatment as a proven safety countermeasure, and the cost of a road diet can be significantly reduced if implemented in tandem with routine street resurfacing. Overall, the environmental report should ensure all modes are served well by planning and development activities. This includes reducing single occupancy vehicle trips, ensuring safety, reducing vehicle miles traveled, supporting accessibility, and reducing greenhouse gas emissions.

For City's reference, we encourage the Lead Agency to evaluate the potential of Transportation Demand Management (TDM) strategies and Intelligent Transportation System (ITS) applications in order to better manage the transportation network, as well as transit service and bicycle or pedestrian connectivity improvements. For additional TDM options, please refer to the Federal Highway Administration's Integrating Demand Management into the Transportation Planning Process: A Desk Reference (Chapter 8). This reference is available online at:

<http://www.ops.fhwa.dot.gov/publications/fhwahop12035/fhwahop12035.pdf>

You can also refer to the 2010 *Quantifying Greenhouse Gas Mitigation Measures* report by the California Air Pollution Control Officers Association (CAPCOA), which is available online at:

<http://www.capcoa.org/wp-content/uploads/2010/11/CAPCOA-Quantification-Report-9-14-Final.pdf>

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

While the comment does not address any inadequacies in the Draft EIR, it requests that the City evaluate multi-model and complete street transportation elements, TDM measures and GHG emissions reduction strategies. As discussed on pages IV.G-23 through IV.G-37 of Section IV.G., Transportation, of the Draft EIR, the Project supports City policies related to providing for various modes of travel, reducing vehicle trips, ensuring safety and accessibility, reducing the demand for parking, and reducing greenhouse gas emissions. As discussed in detail therein, the Project Site is an infill site that is well-served by a variety of public transit options, including Metro rail stations, bus transit lines, and local shuttle service. In addition, the Project would provide 251 bicycle parking spaces for the proposed residential and commercial uses and would also include streetscape improvements to promote safe pedestrian activity. As such, the Project would promote alternative forms of transportation and the reduction of vehicle trips. The mixed-use nature of the Project Site together with its urban location and proximity to employment opportunities also results in a reduction in vehicle miles traveled as people are able to reside and work in the same area thus reducing vehicular travel. Furthermore, the Project would provide reduced residential parking according to the Central City Parking Exception pursuant to LAMC Section 12.21-A.4(p).

With regard to TDM strategies, the City does promote the use of TDM strategies and also has set forth a TDM Ordinance (LAMC Section 12.26 -J) that includes a variety of TDM strategies related to reducing single occupancy vehicle trips and the distances people travel in cars. In addition, as described above, the Project's mixed-use nature, location within an infill urban site, proximity to transit, provision of bicycle parking and streetscape improvements are TDM strategies that promote a reduction in vehicle trips. . A

With regard to quantification of GHG emissions, the Project's GHG emissions are described and quantified on pages IV.C-69 through IV.C-79 of Section IV.C, Greenhouse Gas Emissions, of the Draft EIR. As demonstrated by the analysis in Section IV.C. Greenhouse Gas Emissions, of the Draft EIR, the Project's location, land use characteristics, and design render it consistent with statewide, regional and local climate change mandates, plans, policies, and recommendations. More specifically, the plan consistency analysis provided therein demonstrates that the Project complies with or exceeds the plans, policies, regulations and GHG reduction actions/strategies outlined in



CARB's 2008 Climate Change Scoping Plan and subsequent updates (2013 and 2017), SCAG's 2020–2045 RTP/SCS, and the City's Green New Deal, as well as the City's Green Building Code.

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

Also, Caltrans has published the VMT-focused Transportation Impact Study Guide (TISG), dated May 20, 2020 and the Caltrans Interim Land Development and Intergovernmental Review (LD-IGR) Safety Review Practitioners Guidance, prepared in On December 18, 2020. You can review these resources at the following links:

<https://dot.ca.gov/-/media/dot-media/programs/transportation-planning/documents/sb-743/2020-05-20-approved-vmt-focused-tisg-a11y.pdf>

<https://dot.ca.gov/-/media/dot-media/programs/transportation-planning/documents/sb-743/2020-12-22-updated-interim-ldigr-safety-review-guidance-a11y.pdf>

Caltrans encourages lead agencies to prepare traffic safety impact analysis for all future developments in the California Environmental Quality Act (CEQA) review process so that, through partnerships and collaboration, California can reach zero fatalities and serious injuries by 2050.

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

The Vision Zero Los Angeles program, implemented by LADOT, represents a specific citywide effort to eliminate traffic deaths in the City by 2025. Vision Zero has two goals: a 20-percent reduction in traffic deaths by 2017 and zero traffic deaths by 2025. In order to achieve these goals, LADOT has identified a network of streets, called the High Injury Network, which has a higher incidence of severe and fatal collisions. The High Injury Network, which was last updated in 2018, represents 6 percent of the City's street miles but accounts for approximately two thirds (64 percent) of all fatalities and serious injury collisions involving people walking and biking.

The comment encourages public agencies to comply with CEQA through preparation of a traffic safety impact analysis. The transportation analysis within Section IV.G, Transportation, of the Draft EIR follows the Los Angeles Department of Transportation (LADOT) Transportation Assessment Guidelines (TAG) dated July 2019, which establish the guidelines and methodology for assessing transportation impacts for development projects in the City, based on the updated CEQA guidelines from the State that require transportation impacts be evaluated based on VMT. In accordance with the TAG, Section IV.G, Transportation, also includes an analysis of the Project's consistency with programs, plans and policies related to the City's circulation system, including those

related to traffic safety and set forth in the City's Vision Zero Program (refer to pages IV.G-23 through IV.G-37) and concludes that the Project would not conflict with the applicable programs, plans and policies addressing the circulation system.

#### **Comment No. 1-4**

The Project Site is located in an area well-served by a variety of public transit options. The Project Site is transit accessible and is close to many bus transit-lines, rail lines, and local shuttle service. The Project Site is located approximately two blocks away from the Los Angeles County Metropolitan transportation [sic] Authority's (Metro's) 7th/Metro Center Metro Rail station. As a result, the Project is a pedestrian- and transit-oriented development, it would encourage ridesharing and the use of alternative mobility modes.

In addition, the Project Site located in an area with well-developed pedestrian facilities, including sidewalks on all streets and crosswalks at all intersections. There are signalized pedestrian crossings at the four closest intersections to the Project Site. Also, 8th Street has been identified in the High Injury Network. Therefore, the Project would support modifications to provide a safe and comfortable walking environment. The implementations are as follow:

- Streetscape amenities provided by the Project would include a row of street trees along 8th Street, Hope Street, and Grand Avenue as well as pedestrian-scale lighting fixtures and other streetscape elements such as public art, street furniture, infrastructure, and signage elements.
- An on-site porte-cochere located in the center of the site for pick-up and drop-off for visitors, taxis, and rideshare vehicles.
- The Project would comply with the LAMC and would provide 26 short-term and 224 long-term bicycle parking spaces.
- The Project proposes to install tactile warning strips on the street corners immediately adjacent to the site (northwest corner of Grand Avenue & 8th Street) and the northeast corner of Hope Street & 8th Street.

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

Consistent with the Draft EIR, this comment accurately states that the Project is a pedestrian- and transit-oriented development that would encourage ridesharing and the use of alternative mobility modes and that the Project would support modifications to provide a safe and comfortable walking environment. This comment is noted for the administrative record and will be forwarded to the decision-makers for review and consideration.

**Comment No. 1-5**

CEQA Analysis of Transportation Impacts (refer to Chapter 2 of Appendix G) identified that the Project would generate 1500 daily trips which is more than 250 new increased daily trips for threshold [sic]. As a result, a VMT analysis is required and it calculated that the Project's Household VMT per Capita would be 3.4 compared to the threshold of 6.0, and its Work VMT per Capita would be 0.0 compared to the threshold of 7.6. Therefore, it is concluded that the Project would not cause significant VMT impacts for both Household VMT and Work VMT.

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

This comment accurately summarizes the results of the VMT analysis for the Project that concludes VMT impacts would be less than significant. This comment is noted for the administrative record and will be forwarded to the decision-makers for review and consideration.

**Comment No. 1-6**

As required by LADOT's Interim Guidance for Freeway Safety Analysis, if a development project adds 25 or more trips to any freeway off-ramp in either the morning or afternoon peak hour, then that ramp should be studied for potential queueing impacts following the identified steps in the guidelines. If the project is not expected to generate more than 25 or more peak-hour trips at any freeway off-ramps, then a freeway ramp analysis is not required. As shown Table 2.5 on page 62 of the 8th Grand & Hope Project Transportation Assessment revised in December 2020 by The Mobility Group, the Project would add fewer than 25 trips to the I-110, I-10, and US-101 freeway off-ramps in both the morning and afternoon peak hours. Therefore, further analysis is not required.

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

This comment accurately states that the Project does not generate sufficient trips to require a freeway ramp analysis. This comment is noted for the administrative record and will be forwarded to the decision-makers for review and consideration.

**Comment No. 1-7**

Transportation of heavy construction equipment and/or materials, which requires the use of oversized-transport vehicles on State highways, will require a transportation permit from Caltrans. It is recommended that large size truck trips be limited to off-peak commute periods.

If you have any questions, please feel free to contact Mr. Alan Lin the project coordinator at (213) 269-1124 and refer to GTS # LA-2019-03770-DEIR.

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

The comment summarizes the requirement for a Caltrans permit for oversized-transport vehicles. Any oversized-transport vehicles utilizing State highways during construction of the Project will obtain a transportation permit as required by Caltrans. Alan Lin's contact information is noted for the administrative record.

**Comment Letter No. 2**

Shine Ling, AICP  
Manager, Development Review Team TOCs  
Metro Development Review  
One Gateway Plaza MS 99-22-1  
Los Angeles, CA 90012-2952

**Comment No. 2-1**

Please find Metro's comment letter on the DEIR for the 8th Grand & Hope Project, attached.

Thank you for coordinating with the Los Angeles County Metropolitan Transportation Authority (Metro) regarding the proposed 8th, Grand and Hope (Project) located at 754 Hope Street and 609 and 625 West 8th Street in the City of Los Angeles (City). Metro is committed to working with local municipalities, developers, and other stakeholders across Los Angeles County on transit-supportive developments to grow ridership, reduce driving, and promote walkable neighborhoods. Transit Oriented Communities (TOCs) are places (such as corridors or neighborhoods) that, by their design, allow people to drive less and access transit more. TOCs maximize equitable access to a multi-modal transit network as a key organizing principle of land use planning and holistic community development.

Per Metro's area of statutory responsibility pursuant to sections 15082(b) and 15086(a) of the Guidelines for Implementation of the California Environmental Quality Act (CEQA: Cal. Code of Regulations, Title 14, Ch. 3), the purpose of this letter is to provide the City with specific detail on the scope and content of environmental information that should be included in the Environmental Impact Report (EIR) for the Project. In particular, this letter outlines topics regarding the Project's potential impacts on the Metro West Santa Ana Branch (WSAB) and Metro bus facilities and services which should be analyzed in the EIR, and provides recommendations for mitigation measures as appropriate. Effects of a project on transit systems and infrastructure are within the scope of transportation impacts to be evaluated under CEQA.<sup>1</sup>

<sup>1</sup> [Footnote text not included in the letter.]

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

These introductory comments discuss TOCs and Metro's areas of responsibility and do not address adequacy of the Draft EIR. These comments are noted for the administrative record and will be forwarded to the decision-makers for review.

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**Comment No. 2-2**

In addition to the specific comments outlined below, Metro is providing the City and Mitsui Fudosan America (Applicant) with the Metro Adjacent Development Handbook (attached), which provides an overview of common concerns for development adjacent to Metro right-of-way (ROW) and transit facilities, available at <https://www.metro.net/devreview>.

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

The Metro Adjacent Development Handbook referred to in this comment has been reviewed by the City and Applicant. The Project will not affect the Metro 7th Street/Metro Center Station, which is the closest Metro Station to the Project Site and is located two blocks from the Project Site. In addition, in accordance with Project Design Feature TR-PDF-1, which is incorporated into the Mitigation Monitoring Plan (MMP) for the Project, the Applicant will coordinate any temporary bus stop relocations with Metro and other affected transit providers.

**Comment No. 2-3****Project Description**

The Project includes construction of a 50-story mixed-use development comprised of 580 residential units and up to 7,499 square feet of ground floor commercial/retail/restaurant space on a 34,679-square-foot site. The Project would provide 636 vehicle parking spaces within three subterranean levels and eight above-grade levels and four vehicle parking spaces on the ground floor.

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

This comment provides an accurate summary of the Project.

**Comment No. 2-4****Recommendations for EIR Scope and Content***Metro West Santa Ana Branch Transit Corridor Project Adjacency*

The West Santa Ana Branch Transit Corridor (WSAB) project is a 19-mile corridor that Metro is evaluating for a new light rail transit (LRT) line that would connect southeast LA County to downtown Los Angeles. This new LRT line would traverse through or be immediately adjacent to the cities and communities of Artesia, Cerritos, Bellflower, Paramount, Downey, South Gate, Cudahy, Bell, Huntington Park, Vernon, unincorporated Florence-Firestone and LA (downtown).

Metro released a Draft Environmental Impact Statement/Environmental Impact Report (Draft EIS/EIR) for the WSAB project in July 2021. A project terminus and Locally Preferred Alternative (LPA) will be considered during Metro's Planning and Programming Committee meeting on January 19, 2022, and a final decision is expected during Metro's Board of Directors meeting on January 27, 2022.

Additional information on the WSAB project and the Draft EIS/EIR can be found on the WSAB Project webpage at <https://www.metro.net/wsab>.

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

This comment discusses the WSAB Project proposed by Metro. The Metro Board adopted the approved route for the WSAB Project with a terminus at Union Station at its meeting on January 27, 2022. As such, the alignment option along 8th Street was not adopted, and the final alignment will not be in the vicinity of the Project. As such, the WSAB Project will not affect traffic patterns near the Project Site.

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

#### *Bus Stop Adjacency*

1. Service: Metro Bus Line 66 operates on West 8th Street, adjacent to the Project. One Metro Bus stop is directly adjacent to the Project site at West 8th Street and South Grand Avenue. In December 2021, Metro completed implementation of the NextGen Bus Plan, a major update to the bus service network and stop locations. The DEIR's discussion of existing transit service should be updated as appropriate. Additional information may be found at <https://www.metro.net/about/plans/nextgen-bus-plan/> and <https://mybus.metro.net/>. Other transit operators such as LADOT, Santa Monica Big Blue Bus, and Santa Clarita Transit may provide service in the vicinity of the Project and should be consulted.

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

This comment addresses Metro's recently adopted NextGen Plan. A full inventory of transit service and bus stop locations is provided in the Draft EIR, Appendix G, Transportation Assessment (TA), in Figure 1.3, Figure 1.4, and Table 1.2. This inventory identifies the bus stops adjacent to the Project Site on 8th Street as well as transit service by Metro and other operators in the area of the Project. Santa Clarita Transit also operates Route 799 on 8th Street, with average headways of approximately 24 minutes in the A.M. peak period and 40 minutes in the P.M. peak period. Table 1.2 in the TA has been revised to show the new service frequencies in the NextGen Bus Plan. Refer to the Final EIR, Section II, Revisions, Clarifications, and Corrections to the Draft EIR, for this updated table that describes existing transit service.

**Comment No. 2-6**

2. **Impact Analysis:** The EIR should analyze potential effects on Metro Bus service and identify mitigation measures as appropriate. Potential impacts may include impacts to transportation services, stops, and temporary or permanent bus service rerouting. Specific types of impacts and recommended mitigation measures to address them include, without limitation, the following:
  - a. **Bus Stop Condition:** The EIR should identify all bus stops on all streets adjacent to the Project site. During construction, the Applicant may either maintain the stop in its current condition and location, or temporarily relocate the stop consistent with the needs of Metro Bus operations. Temporary or permanent modifications to any bus stop as part of the Project, including any surrounding sidewalk area, must be Americans with Disabilities Act (ADA)-compliant and allow passengers with disabilities a clear path of travel between the bus stop and the Project. Once the Project is completed, the Applicant must ensure any existing Metro bus stop affected by the Project is returned to its pre-Project location and condition, unless otherwise directed by Metro.

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

The Draft EIR, TA followed the LADOT Guidelines for all transportation analyses. The TA, located in Appendix G of the Draft EIR, addresses transit in Section 3.2, page 64, and found no physical deficiencies or demand-based deficiencies with respect to the transit system. There are a total of four rail lines and 39 bus routes within 0.25 mile of the Project Site, that provide substantial transit service capacity.

In addition, as discussed in detail in Section IV.G, Transportation, of the Draft EIR, on 8th Street, the Project would close up to 8 feet of the curb lane during the 36-month construction period. These closures would occur with K-rail. This would require the relocation of the two bus stops on 8th Street (west of Grand Avenue and serving Metro Line 66, LADOT Express Lines 431 and 437, Antelope Valley Line 785, and Santa Clarita Transit Line 799). As part of Project Design Feature TR-PDF-1, construction plan details would be coordinated with emergency services and affected transit providers, including Metro. Specifically, the Applicant would coordinate with Metro and LADOT in the placement and operation of temporary bus stop locations within one (or at most two) blocks from the current location without rerouting any transit service.

**Comment No. 2-7**

- b. **Driveways:** Driveways accessing parking and loading at the Project site should be located away from transit stops, and be designed and configured to avoid potential conflicts with on-street transit services and pedestrian traffic to the greatest degree possible. Vehicular driveways should not be located in or



directly adjacent to areas that are likely to be used as waiting areas for transit.

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

As identified in the Draft EIR, Appendix G, Figure 0.2 of the TA, the Project driveways would be located on Grand Avenue and Hope Street. There would be no Project driveways on 8th Street. There are no bus stops on Grand Avenue or Hope Street adjacent to the Project Site. As such, there would be no conflicts of Project driveways with bus stops.

### **Comment No. 2-8**

- c. Bus Stop Enhancements: Metro encourages the installation of enhancements and other amenities that improve safety and comfort for transit riders. These include benches, bus shelters, wayfinding signage, enhanced crosswalks and ADA-compliant ramps, pedestrian lighting, and shade trees in paths of travel to bus stops. The City should consider requesting the installation of such amenities as part of the Project.

### **Response to Comment No. 2-8**

There is currently a bus bench at the two adjacent bus stops on 8th Street, which would be replaced with a new bench and bus stops after project construction, if necessary (refer to page 50 of the TA). The Project would include new ADA-compliant sidewalks, street trees and lighting and would locate bicycle parking along the sidewalks of Hope Street and Grand Avenue (refer to pages 26 and 41 of the TA).

### **Comment No. 2-9**

- d. Bus Operations Coordination: The Applicant shall coordinate with Metro Bus Operations Control Special Events Coordinator at 213-922-4632 and Metro's Stops and Zones Department at 213-922-5190 not later than 30 days before the start of Project construction. Other municipal bus services may also be impacted and shall be included in construction outreach efforts.

### **Response to Comment No. 2-9**

In accordance with Project Design Feature TR-PDF-1, the Applicant is required to coordinate with Metro during construction. Nonetheless, the specific details of this coordination included in this comment have been incorporated into the Project Design Feature. Refer to Section II, Revisions, Clarifications, and Corrections to the Draft EIR, of this Final EIR.

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**Comment No. 2-10****Transit Supportive Planning: Recommendations and Resources**

Considering the Project's proximity to the 7th Street/Metro Center Station, Metro would like to identify the potential synergies associated with transit-oriented development:

1. Transit Supportive Planning Toolkit: Metro strongly recommends that the Applicant review the Transit Supportive Planning Toolkit which identifies 10 elements of transit-supportive places and, applied collectively, has been shown to reduce vehicle miles traveled by establishing community-scaled density, diverse land use mix, combination of affordable housing, and infrastructure projects for pedestrians, bicyclists, and people of all ages and abilities. This resource is available at <https://www.metro.net/about/funding-resources/>.
2. Land Use: Metro supports development of commercial and residential properties near transit stations and understands that increasing development near stations represents a mutually beneficial opportunity to increase ridership and enhance transportation options for the users of developments. Metro encourages the City and Applicant to be mindful of the Project's proximity to the 7th Street/Metro Center Station, including orienting pedestrian pathways towards the station.

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

The Applicant has reviewed the Transit Supportive Planning Toolkit. The Project is an infill development that would provide housing and retail opportunities within downtown Los Angeles, a high-density employment base. The Project Site is also located within two blocks of a regional-serving transit hub (7th Street/Metro Center Station) with an abundance of bus routes. In addition, the Project has been designed to create a pedestrian friendly streetscape through new streetscape improvements such as improved sidewalks and human-scale commercial/retail/restaurant frontages on the ground floor and the introduction of neighborhood-serving commercial uses along the ground floor. The Project would also provide bicycle parking adjacent to public streets. As such, the Project is an example of a transit supportive project with elements that reduce vehicle miles traveled and support use of the nearby 7th Street/Metro Center Station. Note that due to the constrained size of the Project Site, there would not be any pedestrian pathways through the Project Site.

**Comment No. 2-11**

3. Transit Connections and Access: Metro strongly encourages the Applicant to install Project features that help facilitate safe and convenient connections for pedestrians, people riding bicycles, and transit users to/from the Project site and nearby destinations. The City should consider requiring the installation of such features as part of the conditions of approval for the Project, including:

- a. Walkability: The provision of wide sidewalks, pedestrian lighting, a continuous canopy of shade trees, enhanced crosswalks with ADA-compliant curb ramps, and other amenities along all public street frontages of the development site to improve pedestrian safety and comfort to access the nearby bus stop and 7th Street/Metro Center Station.

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

The Project would include new ADA-compliant sidewalks, street trees and lighting in accordance with City requirements (refer to pages 26 and 41 of the TA). The Project would also provide commercial uses along the ground floor to encourage pedestrian activity and would locate bicycle parking along the sidewalks of Hope Street and Grand Avenue. The Project is subject to the Downtown Street Standards, which require minimum sidewalk widths of 15 feet on Hope Street, 17 feet on Grand Avenue, and 12 feet on 8<sup>th</sup> Street. The Project would meet all of the required sidewalk widths. In addition, the Project would provide average sidewalk easements per the Downtown Street Standards, which further add to the width of the sidewalks and enhance public street frontages and the pedestrian environment. As such, there are no identified environmental impacts and additional conditions of approval are not required.

### **Comment No. 2-12**

- b. Transfer Activity: Given the Project's proximity to the Metro bus stop and rail station, the Project design should consider and accommodate transfer activity between bus and (bus or rail) lines that will [sic] occur along the sidewalks and public spaces. Metro has completed the Metro Transfers Design Guide, a best practices document on transit improvements. This can be accessed online at <https://www.metro.net/about/station-design-projects/>.

### **Response to Comment No. 2-12**

The Project Site is located within two blocks of the 7th Street/Metro Center Station. As such, due to short walking distance, transfers to this facility are not necessary. In addition, bus transfers to/from the existing bus stop locations on 8th Street would be accommodated by the improved sidewalks and existing crosswalks. As such, there are no identified environmental impacts and additional conditions of approval are not required.

### **Comment No. 2-13**

- c. Bicycle Use and Micromobility Devices: The provision of adequate short-term bicycle parking, such as ground-level bicycle racks, and secure, access-controlled, enclosed long-term bicycle parking for residents, employees, and guests. Bicycle parking facilities should be designed with best practices in mind, including highly visible siting, effective surveillance, ease to locate, and

equipment installation with preferred spacing dimensions, so bicycle parking can be safely and conveniently accessed. Similar provisions for micro-mobility devices are also encouraged.

### **Response to Comment No. 2-13**

The LAMC regulates bicycle parking and does not include provisions specifically related to micro-mobility devices. The Project will provide short-term and long-term bicycle parking as required by the LAMC. Overall, the Project would provide a total of 251 bicycle parking stalls, including 243 residential bicycle stalls and 8 bicycle stalls for the commercial/retail/restaurant uses. In addition, the Project would include a bicycle-friendly site design which would locate short-term bicycle parking near entrances to the commercial/retail/restaurant uses along the sidewalks of Hope Street and Grand Avenue. As such, additional conditions of approval are not required.

### **Comment No. 2-14**

- d. First & Last Mile Access: The Project should address first-last mile connections to transit and is encouraged to support these connections with wayfinding signage inclusive of all modes of transportation. For reference, please review the First Last Mile Strategic Plan, authored by Metro and the Southern California Association of Governments (SCAG), available on-line at: [http://media.metro.net/docs/sustainability\\_path\\_design\\_guidelines.pdf](http://media.metro.net/docs/sustainability_path_design_guidelines.pdf).

### **Response to Comment No. 2-14**

The Project is located in the downtown Los Angeles only two blocks from the 7th Street/Metro Center Station, and in close proximity to nearly 40 bus lines. First and last mile connections would therefore be very short and by walking. The existing sidewalks would accommodate all first- and last-mile activity. Existing bicycle lanes on Grand Avenue, Olive Street, 7th Street, and Figueroa Street, will accommodate bicycle traffic. As discussed above, the existing sidewalks would be improved, and accessible bicycle parking would be provided along Hope and Grand. As such, additional conditions of approval are not required.

### **Comment No. 2-15**

4. Parking: Metro encourages the incorporation of transit-oriented, pedestrian-oriented parking provision strategies such as the reduction or removal of minimum parking requirements and the exploration of shared parking opportunities. These strategies could be pursued to reduce automobile-orientation in design and travel demand.

**Response to Comment No. 2-15**

As discussed in Section II, Project Description, of the Draft EIR, the parking provided for the Project incorporates existing parking reduction opportunities. Specifically, the Project would provide parking for its residential uses at the ratios required by the Central City Parking Exception (LAMC Section 12.21 A.4(p)), which allows the Project to provide 361 less parking spaces as compared to typical LAMC requirements for projects located outside of the Central City Parking District. In addition, the Project would utilize a 5-percent bicycle parking reduction for a residential project located within 1,500 feet of a major transit stop (LAMC Section 12.21-A,4). Prior to the bike parking reduction, the Project would be required to provide 634 spaces for the 580 residential units; however, this would be reduced by 5 percent of the required parking spaces to 602 spaces through the bike parking replacement allowance for the residential component of the Project. Per the Central City Parking Exception District, no parking is required for the commercial/retail/restaurant component of the Project as the total square footage is less than 7,500 square feet. Thus, the Project would provide a total of 602 parking stalls to accommodate the Project's residential parking component, 34 spaces for an adjacent building located at 611 W. 6th Street per current parking agreements (as recorded covenants PKG-4743, PKG-5261, and PKG-5248), and four surplus parking spaces. Overall, the Project would provide 640 vehicle parking spaces using existing parking reduction opportunities.

**Comment No. 2-16**

5. Wayfinding: Any temporary or permanent wayfinding signage with content referencing Metro services or featuring the Metro brand and/or associated graphics (such as Metro Bus or Rail pictograms) requires review and approval by Metro Signage and Environmental Graphic Design.

**Response to Comment No. 2-16**

Any signage referencing Metro within the Project Site will be reviewed and approved by Metro in accordance with this comment. This provision has been incorporated as a Project Design Feature that will be included as part of the MMP for the Project. Refer to the Final EIR, Section II, Revisions, Clarifications, and Corrections to the Draft EIR, for this additional Project Design Feature that is also included in the MMP included as Section IV of this Final EIR.

**Comment No. 2-17**

6. Transit Pass Programs: Metro would like to inform the Applicant of Metro's employer transit pass programs, including the Annual Transit Access Pass (A-TAP), the Employer Pass Program (E-Pass), and Small Employer Pass (SEP) Program. These programs offer efficiencies and group rates that businesses can offer employees as an incentive to utilize public transit. The A-TAP can also be

used for residential projects. For more information on these programs, please visit the programs' website at <https://www.metro.net/riding/eapp/>.

**Response to Comment No. 2-17**

This comment has been forwarded to the Applicant and will also be noted for the administrative record and forwarded to the decision-makers for review and consideration.

**Comment No. 2-18**

If you have any questions regarding this letter, please contact me by phone at 213.547.4326, by email at [DevReview@metro.net](mailto:DevReview@metro.net), or by mail at the following address:

Metro Development Review  
One Gateway Plaza MS 99-22-1  
Los Angeles, CA 90012-2952

Attachments and links:

- Adjacent Development Handbook: <https://www.metro.net/devreview>

**Response to Comment No. 2-18**

The City appreciates the feedback provided by Metro and will contact Metro as indicated with any comments or questions. The attachment has been addressed in the comments above.

**Comment Letter No. 3**

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**Comment No. 3-1**

Please see the attachment correspondence.

If you have any questions, please contact Sheila Sannadan.

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

This comment is an email that transmits the comment letter and attachments from the Commenter. No additional response is necessary.

**Comment No. 3-2**

Please find attached **Comments on the Draft Environmental Impact Report for the 8th, Grand and Hope Project (SCH No. 2019050010, Environmental Case No. ENV-2017-506-EIR) and Attachments A-B.**

We are also providing a Dropbox link containing supporting references: <https://www.dropbox.com/sh/c18dsopj8bx9u2b/AACO5PbjtjtBj4-HI-My4MPBa?dl=0>.

A hard copy of our Comments and Attachments A-B will be sent out today via overnight delivery.

If you have questions, please contact Darien Key.

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

The comment letter and Attachments A and B referenced in this comment are included and responded to in the following comments and responses of this Comment Letter No. 3.

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

On behalf of Coalition for Responsible Equitable Economic Development Los Angeles (“CREED LA”), we submit these comments on the Draft Environmental Impact Report (“DEIR”) for the 8th, Grand and Hope Project (SCH No. 2019050010, Environmental Case No. ENV-2017-506-EIR) (“Project”), proposed by Mitsui Fudosan America (“Applicant”), and prepared pursuant to the California Environmental Quality Act (“CEQA”)<sup>1</sup> by the City of Los Angeles (“the City”).

The Project proposes to construct a 50-story mixed-use development comprised of 580 residential units and up to 7,499 square feet of ground floor commercial/retail/restaurant space on a 34,679-square-foot site. The Project would be located at 754 S. Hope Street and 609 and 625 W. 8th Street in the City of Los Angeles, California (Assessor’s Parcel Numbers 5144-011-009 and 5144-011-016).

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

These comments were prepared with the assistance of environmental health, air quality, and GHG expert Dr. James Clark, Ph.D., and noise expert Derek Watry of Wilson Ihrig. Comments and curriculum vitae of Mr. Clark are attached to this letter as Attachment A.<sup>3</sup> Mr. Watry’s comments and curriculum vitae are included as Attachment B.<sup>4</sup> Attachments A and B are fully incorporated herein and submitted to the City herewith. Therefore, the City must separately respond to the technical comments in Attachments A and B.



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

- <sup>1</sup> Public Resources Code § 21000 et seq.; 14 Cal. Code Regs. (“C.C.R.”) §§ 15000 et seq.
- <sup>2</sup> Pub. Res. Code § 21081; *Covington v. Great Basin Unified Air Pollution Control Dist.* (2019) 43 Cal.App.5th 867, 883.
- <sup>3</sup> Attachment A: Comments on 8th, Grand and Hope Project (SCH No. 2019050010, Environmental Case No. ENV-2017-506-EIR) (Jan. 5, 2022) (“Clark Comments”).
- <sup>4</sup> Attachment B: 8th, Grand and Hope Project (SCH No. 2019050010, Environmental Case No. ENV-2017-506-EIR) (Jan. 5, 2022), Comments on Noise Section by Wilson Ihrig (“Watry Comments”).
- <sup>5</sup> We reserve the right to supplement these comments at later hearings on this Project. Gov. Code § 65009(b); Public Resources Code § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal.App.4th 1184, 1199–1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal.App.4th 1109, 1121.

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

The summary description of the Project noted within this comment is accurate. Contrary to the opinion expressed in this comment, the Draft EIR is comprehensive and has been completed in full compliance with CEQA and there are no deficiencies that need to be remedied. The comments within Attachments A and B that include the input of Dr. James Clark, Ph.D., and Derek Watry of Wilson Ihrig are fully addressed in the response to comments below. As demonstrated by the response to comments below, the Draft EIR analyses regarding air quality, public health, noise, and GHG emissions are fully supported by substantial evidence and the Project includes feasible mitigation measures to address potentially significant impacts. In addition, the findings for a Statement of Overriding Considerations can be made. No substantial evidence that the Draft EIR is inadequate, nor that additional analysis is necessary, nor recirculation of the Draft EIR is required has been provided.

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

#### **I. STATEMENT OF INTEREST**

CREED LA is an unincorporated association of individuals and labor organizations formed to ensure that the construction of major urban projects in the Los Angeles region proceeds in a manner that minimizes public and worker health and safety risks, avoids or mitigates environmental and public service impacts, and fosters long-term sustainable construction and development opportunities. The association includes the Sheet Metal Workers Local 105, International Brotherhood of Electrical Workers Local 11, Southern California Pipe Trades District Council 16, and District Council of Iron Workers of the State of California, along with their members, their families, and other individuals who live and work in the Los Angeles region.

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

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

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

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

The description of CREED and its purpose is noted for the administrative record and will be forwarded to the decision-makers for review and consideration. The comment that residents and construction workers will be impacted by the Project's environmental and health, and safety impacts is unsupported by substantial evidence. As demonstrated by the response to comments below, the Draft EIR is comprehensive and has been completed in full compliance with CEQA. As discussed in detail on pages 56 through 60 of the Initial Study included as Appendix A of the Draft EIR and in Sections IV.A, Air Quality, and IV.G, Transportation, of the Draft EIR, the Project will not result in significant impacts related to public health, air quality or traffic. Furthermore, as discussed in Section IV.E, Noise, of the Draft EIR (refer to pages IV.E-24 through IV.E-29), noise impacts associated with the Project would be limited to peak construction activities associated with the Project.

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

### **II. LEGAL BACKGROUND**

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

CEQA has two primary purposes. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project.<sup>9</sup> “Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR ‘protects not only the environment but also informed self-government.’”<sup>10</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>11</sup> As the CEQA Guidelines explain, “[t]he EIR serves not only to protect the environment but also to demonstrate to the public that it is being protected.”<sup>12</sup>

Second, CEQA requires public agencies to avoid or reduce environmental damage when “feasible” by requiring consideration of environmentally superior alternatives and adoption of all feasible mitigation measures.<sup>13</sup> The EIR serves to provide agencies and the public with information about the environmental impacts of a proposed project and to “identify ways that environmental damage can be avoided or significantly reduced.”<sup>14</sup> If the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has “eliminated or substantially lessened all significant effects on the environment” to the greatest extent feasible and that any unavoidable significant effects on the environment are “acceptable due to overriding concerns.”<sup>15</sup>

While courts review an EIR using an “abuse of discretion” standard, “the reviewing court is not to ‘uncritically rely on every study or analysis presented by a project proponent in support of its position. [sic] *A clearly inadequate or unsupported study is entitled to no judicial deference.*”<sup>16</sup> As the courts have explained, a prejudicial abuse of discretion occurs “if the failure to include relevant information precludes informed decision-making and informed public participation, thereby thwarting the statutory goals of the EIR process.”<sup>17</sup> “The ultimate inquiry, as case law and the CEQA guidelines make clear, is whether the EIR includes enough detail ‘to enable who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.’”<sup>18</sup>

<sup>6</sup> Public Resources Code § 21100.

- <sup>7</sup> *Friends of College of San Mateo Gardens v. San Mateo County Community College Dist.* (2016) 1 Cal.5th 937, 944 (citation omitted).
- <sup>8</sup> *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 390 (internal quotations omitted).
- <sup>9</sup> Public Resources Code § 21061; 14 C.C.R. §§ 15002(a)(1); 15003(b)–(e); *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 517 (“[T]he basic purpose of an EIR is to provide public agencies and the public in general with detailed information about the effect [that] a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.”).
- <sup>10</sup> *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564, quoting *Laurel Heights*, 47 Cal.3d at 392.
- <sup>11</sup> *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810; see also *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm’rs.* (2001) 91 Cal.App.4th 1344, 1354 (“*Berkeley Jets*”) (purpose of EIR is to inform the public and officials of environmental consequences of their decisions before they are made).
- <sup>12</sup> 14 C.C.R. § 15003(b).
- <sup>13</sup> 14 C.C.R. § 15002(a)(2), (3); see also *Berkeley Jets*, 91 Cal.App.4th at 1354; *Citizens of Goleta Valley*, 52 Cal.3d at 564.
- <sup>14</sup> 14 C.C.R. § 15002(a)(2).
- <sup>15</sup> Public Resources Code § 21081(a)(3), (b); 14 C.C.R. §§ 15090(a), 15091(a), 15092(b)(2)(A), (B); *Covington v. Great Basin Unified Air Pollution Control Dist.* (2019) 43 Cal.App.5th 867, 883.
- <sup>16</sup> *Berkeley Jets*, 91 Cal.App.4th 1344, 1355 (emphasis added), quoting *Laurel Heights*, 47 Cal.3d at 391, 409, fn. 12.
- <sup>17</sup> *Berkeley Jets*, 91 Cal.App.4th at 1355; see also *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 722 (error is prejudicial if the failure to include relevant information precludes informed decision-making and informed public participation, thereby thwarting the statutory goals of the EIR process); *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1117 (decision to approve a project is a nullity if based upon an EIR that does not provide decision-makers and the public with information about the project as required by CEQA); *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 946 (prejudicial abuse of discretion results where agency fails to comply with information disclosure provisions of CEQA).
- <sup>18</sup> *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 516, quoting *Laurel Heights*, 47 Cal.3d at 405.

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

The comment provides legal background and does not raise any 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.

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**Comment No. 3-6****III. THE EIR FAILS TO ADEQUATELY ANALYZE AND MITIGATE POTENTIALLY SIGNIFICANT IMPACTS****A. The DEIR Fails to Disclose and Analyze the Health Risk Posed by the Project's Air Emissions from Construction and Operation**

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

An agency must support its findings of a project's potential environmental impacts with concrete evidence, with "sufficient information to foster informed public participation and to enable the decision makers to consider the environmental factors necessary to make a reasoned decision."<sup>19</sup> In particular, a project's health risks must be 'clearly identified' and the discussion must include 'relevant specifics' about the environmental changes attributable to the Project and their associated health outcomes."<sup>20</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>21</sup> In *Bakersfield*, the court found that the EIRs' description of health risks were insufficient and that after reading them, "the public would have no idea of the health consequences that result when more pollutants are added to a nonattainment basin."<sup>22</sup> Likewise in *Sierra Club*, the Supreme Court held that the EIR's discussion of health impacts associated with exposure to the named pollutants was too general and the failure of the EIR to indicate the concentrations at which each pollutant would trigger the identified symptoms rendered the report inadequate.<sup>23</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>24</sup> CEQA mandates discussion, supported by substantial evidence, of the nature and magnitude of impacts of air pollution on public health.<sup>25</sup>

The failure to provide information required by CEQA makes meaningful assessment of potentially significant impacts impossible and is presumed to be prejudicial.<sup>26</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>27</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>28</sup>

The DEIR claims that emissions of toxic air contaminants (“TACs”) will be less than significant without including a detailed or quantitative HRA to disclose the adverse health impacts that will be caused by exposure to TACs from the Project’s construction and operational emissions. As a result, the DEIR fails to disclose the potentially significant health risk posed to nearby residents and children from TACs, and fails to mitigate it. Because the DEIR fails to include the necessary analysis disclosing the extent and severity of the Project’s health risk, and fails to compare the Project’s TAC emissions to applicable significance thresholds, the DEIR lacks substantial evidence to support its conclusion that the Project will not have significant health impacts from human exposure to diesel particulate matter (“DPM”) emissions generated during Project construction and operation.

One of the primary emissions of concern regarding health effects for land development projects is DPM, which can be released during Project construction and operation. However, the DEIR failed to perform a quantitative assessment of the Project’s DPM emissions, instead concluding that the Project’s cancer risk from exposure to DPM would be less than significant based on the DEIR’s conclusion that the Project’s criteria pollutant emissions are less than significant.<sup>29</sup>

The DEIR’s failure to quantify the health risk from DPM exposure is a failure to proceed in the manner required by law. CEQA expressly requires that an EIR discuss, inter alia, “health and safety problems caused by the physical changes” resulting from the project.<sup>30</sup> When a project results in exposure to toxic contaminants, this analysis requires a “human health risk assessment.”<sup>31</sup> OEHHA<sup>32</sup> guidance also sets a recommended threshold for preparing an HRA of a construction period of two months or more.<sup>33</sup> Construction of the instant Project will last at least 36 months, as the DEIR puts forth a timeline for construction of 2022 through 2025.<sup>34</sup> A detailed health risk analysis is necessary to determine how significant those impacts will be and if mitigation measures are sufficient to avoid risks to public health.

<sup>19</sup> *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 516.

<sup>20</sup> *Id.* at 518.

<sup>21</sup> *Id.* at 518–520; *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184.

<sup>22</sup> *Id.* at 1220.

<sup>23</sup> *Sierra Club*, at 521.

<sup>24</sup> *Id.* at 519, citing *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 514–515.

<sup>25</sup> *Sierra Club*, 6 Cal.5th at 518–522.

<sup>26</sup> *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236–1237.

<sup>27</sup> *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.

<sup>28</sup> *Id.* (internal quotations omitted).

<sup>29</sup> Clark Comments, pp. 4–5.; DEIR, p. IV.A-45.

<sup>30</sup> 14 C.C.R § 15126.2(a).

<sup>31</sup> *Sierra Club*, 6 Cal.5th at 520; *Berkeley Keep Jets Over the Bay Com. v. Bd. of Port Comrs.* (“*Berkeley Jets*”) (2001) 91 Cal.App.4th 1344, 1369; *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1219–1220 (CEQA requires that there must be some analysis of the correlation between the project’s emissions and human health impacts).

<sup>32</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>33</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>34</sup> DEIR, p. IV.A-52 [sic]

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

This comment cites case law and expresses the commenter’s opinion on case law which requires no further response. This comment also asserts that the Draft EIR failed to disclose and analyze the health risk posed by the Project’s air emissions from construction and operations. This comment incorrectly states that the Draft EIR concluded that the Project’s cancer risk from exposure to DPM would be less than significant based on the Draft EIR’s conclusion that the Project’s criteria pollutant emissions are less than significant (referenced in this comment (Draft EIR, pg. IV.A-52)). This comment also incorrectly states that the Draft EIR “fails to compare the Project’s TAC emissions to applicable significance thresholds.” Unlike criteria pollutants, TACs do not have an emissions threshold for comparison. South Coast Air Quality Management District’s (SCAQMD) threshold is primarily based on the type of pollutant (toxicity of pollutant) and dose to which receptors are exposed to a TAC which is then 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, this comment incorrectly conflates thresholds of significance for criteria pollutants and TAC emissions. Instead, the Draft EIR provided a discussion of exposure duration as the result of TAC (construction DPM) emissions (Draft EIR, page. IV.A-57).

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.

Because the construction schedule for the Project estimates that the overall construction schedule would be limited to approximately three 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 as the Project does not include any substantial operational sources of TAC emissions (e.g., warehouse distribution facility). Because there is such a short-term exposure period (3 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 *L.A. City CEQA Thresholds Guide* in making a case-by-case basis determination of significance. As such, the Draft EIR correctly concluded that Project-related TAC emission impacts during construction would be less than significant and consequently not result in a potential health risk impact.

From an operational standpoint, the Draft EIR correctly identified that the Project would not support any land uses or activities that would involve the use, storage, or processing of carcinogenic toxic air contaminants. In addition, the proposed land uses would not generally involve the use of heavy-duty diesel trucks with the exception of occasional moving trucks, trash trucks or delivery trucks. The Commenter is referred to SCAQMD guidance below that provides clarification as to when 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>1</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).*

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<sup>1</sup> SCAQMD, *Guidance Document for Addressing Air Quality Issues in General Plans and Local Planning*, May 6, 2005.



As discussed above, the Project includes the development of up to 580 (547,428 square feet) residential units and 7,499 square feet of ground level commercial/retail/restaurant uses. A conservative estimate of the number of daily truck trips is provided below based on the National Cooperative Highway Research Program (NCHRP) Truck Trip Generation Data.<sup>2</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 two truck trips per day ((7,499 sf/1,000 sf) x 0.324 trips/1,000 sf/day) for the Project's retail/restaurant uses. This assumes that all trucks would be diesel even though many retail/restaurant truck deliveries are from smaller gasoline trucks (e.g., UPS or FedEx).
- 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 six truck trips per day ((547,428 sf/1,000 sf) x 0.011 trips/1,000 sf/day). Once again, 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).

As shown above, the Project is conservatively estimated to generate approximately eight trucks per day. 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.

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

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<sup>2</sup> National Cooperative Highway Research Program (NCHRP) Synthesis 298 Truck Trip Generation Data, 2001, [http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp\\_syn\\_298.pdf](http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_syn_298.pdf).

the Preparation of Risk Assessments (new Guidance Manual) in March of 2015.<sup>3</sup> The Guidance Manual was developed by OEHHA, in conjunction with 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 nearby sensitive receptors.” As discussed above, this guidance is not applicable to the Project.

An HRA is not required by SCAQMD or the *L.A. City CEQA Thresholds Guide*, 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 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 be a maximum of 3.9 in one million for residences located east of the Project Site, across South Grand Avenue (for combined construction and operational emissions), which is below the applicable SCAQMD significance threshold of 10 in one million.

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<sup>3</sup> See OEHHA, *Notice of Adoption of Air Toxics Hot Spots Program Guidance Manual for the Preparation of Health Risk Assessments 2015*, [www.oehha.ca.gov/air/hot\\_spots/hotspots2015.html](http://www.oehha.ca.gov/air/hot_spots/hotspots2015.html).

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**Comment No. 3-7****1. The DEIR Fails to Evaluate the Project's TAC Emissions Against Applicable Significance Thresholds.**

The DEIR relies on the South Coast Air Quality Management District's ("SCAQMD") cancer risk significance thresholds for TACs to evaluate the Project's health risk, which includes the following:

Maximum incremental cancer risk 10 in 1 million  
Cancer Burden >0.5 excess cancer cases (in areas  $\geq 1$  in 1 million)  
Chronic and acute hazard index 1.0 (project increment).<sup>35</sup>

SCAQMD Rule 1401 health risk thresholds apply to operational impacts from the Project's diesel backup generator ("BUG"). Those thresholds provide that permits to operate may not be issued when emissions of TACs result in a maximum incremental cancer risk greater than 1 in 1 million without application of best available control technology for toxics ("T-BACT"), or a maximum incremental cancer risk greater than 10 in 1 million with the application of T-BACT, or if the cumulative cancer burden (i.e., increase in cancer cases in the population) from all TACs emitted from a single piece of equipment exceeds 0.5, or a health hazard index (chronic and acute) greater than 1.0.<sup>36</sup>

The DEIR concludes that Project construction "would not result in any substantial emissions of acute or chronic TACs during construction activities,"<sup>37</sup> and regarding Project operation, concludes that "the proposed project would not release substantial TACs."<sup>38</sup> However, as discussed above, the DEIR failed to quantify the Project's DPM emissions from construction or operation.<sup>39</sup> The City also failed to perform the necessary step of comparing the Project's DPM emissions to the applicable significance thresholds to determine whether or not they exceed the thresholds, nor could it have because the DEIR lacks the emissions calculations with which to do so. The City, therefore, lacks any quantitative evidence demonstrating that the Project's DPM emissions will not exceed thresholds.

The DEIR also fails to address that the Applicant would be required to work with the SCAQMD to obtain permits to operate for the BUG, and does not address any of SCAQMD's future analysis to determine whether or not the BUG poses a significant health risk.<sup>40</sup> This approach is prohibited by CEQA. The lead agency may not completely defer analysis of potential environmental impacts to an outside regulatory scheme, as the City has done here.<sup>41</sup>

The DEIR must be revised and recirculated to accurately analyze the health risks from the Project, determine whether they exceed the applicable SCAQMD significance thresholds,

and to incorporate binding mitigation to reduce potentially significant health risk impacts to less than significant levels.<sup>42</sup>

<sup>35</sup> See DEIR Table IV.A-3 (SCAQMD Air Quality Significance Thresholds).

<sup>36</sup> See DEIR Table IV.A-3 (SCAQMD Air Quality Significance Thresholds).

<sup>37</sup> DEIR, p. IV.A-57.

<sup>38</sup> DEIR, p. IV.A-61.

<sup>39</sup> The DEIR includes an assumption that the BUG will operate 12 hours/year for testing, but did not quantify any other operational use of the BUG, or any other operational emissions that may result in TAC emissions.

<sup>40</sup> DEIR IV.A.

<sup>41</sup> See *Californians for Alternatives to Toxics v. Dep't of Food & Agric.* (2005) 38 Cal. Rptr. 3d 638, 648; *Oro Fino Gold Mining Corp. v. County of El Dorado* (1990) 225 Cal.App.3d 872, 881–882 (court rejected assertion that noise level under proposed project would be insignificant simply by virtue of being consistent with general plan standards for zone in question).

<sup>42</sup> *Sierra Club*, 6 Cal.5th at 520.

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

The comment asserts that the Draft EIR fails to evaluate the Project's TAC emissions against applicable significance thresholds. As discussed above in Response to Comment No. 3-6, SCAQMD's CEQA Air Quality Handbook does not recommend analysis of TACs from short-term construction activities associated with land use development projects. Consistent with the *L.A. City CEQA Thresholds Guide*, the Draft EIR provided supporting information to make a case-by-case basis determination of significance and an HRA was not warranted. Contrary to what is stated in this comment, DPM emissions from construction activities were calculated in the Draft EIR. Please refer to Appendix B of the Draft EIR on page 46 within the CalEEMod output file, which provides exhaust emissions of PM<sub>10</sub> (surrogate for DPM emissions) from proposed construction activities. No comparison of the Project's DPM emissions to significance thresholds was warranted consistent with the *L.A. City CEQA Thresholds Guide*.

There was no operational 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 be limited. As discussed above in Response to Comment No. 3-6, the Project is conservatively estimated to generate approximately eight trucks per day and 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 (SCAQMD *Guidance Document*

*for Addressing Air Quality Issues in General Plans and Local Planning*). Regarding the proposed emergency diesel generator (referred to as “BUG” in this comment letter), it is acknowledged that the unit would be subject to SCAQMD Rule 1401 (New Source Review of Toxic Air Contaminants) as a regulatory requirement. As such, a Project Design Feature or Mitigation Measure specifically stating that the Project would adhere to the permitting process was not necessary to include in the Draft EIR because the generator would have to comply with this regulation regardless of any identified impact. Contrary to what is stated in this comment, emergency diesel generator emissions were included in the Draft EIR. Specifically, Table IV.A-5 provides the emissions under “Stationary” in which PM<sub>10</sub> emissions would represent DPM emissions. Also, refer to Appendix B of the Draft EIR (on Page 28 of the CalEEMod output file) which shows 0.0724 pounds per day of exhaust PM<sub>10</sub>/DPM and would represent the limited emissions on a routine testing day. Performance of a quantitative HRA was not warranted consistent with SCAQMD’s *Guidance Document for Addressing Air Quality Issues in General Plans and Local Planning*.

The ARB and SCAQMD guidance documents do not consider emergency diesel generators (again referred to as BUGs in this comment letter) as a substantial source of air toxic emissions warranting a detailed HRA. 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 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 be a maximum of 3.9 in one million for residences located east of the Project Site, across South Grand Avenue (for combined construction and operational emissions), which is below the applicable SCAQMD significance threshold of 10 in one million.

### **Comment No. 3-8**

#### **2. The DEIR’s Analysis of Emissions From the On-Site Back Up Generator Ignores Substantial Emissions that Are Reasonably Likely to Occur From Non-Testing Operational Periods**

The DEIR’s analysis of the air quality impacts from the BUG makes two improper assumptions. First, it assumes the BUG will be maintained and tested for no more than 12 hours per year even though SCAQMD permits up to 200 hours of testing per year.<sup>43</sup> As Dr. Clark explains, the “City’s assumption that the BUG would operate at a substantially reduced rate ignores the legally acceptable threshold outlined in SCAQMD Rule 1470.”<sup>44</sup> The City has therefore failed to properly measure the potential impact of DPM emissions from the BUG on the receptors nearby, and from BUG emissions of NO<sub>x</sub>. Thus, the DEIR’s conclusion that there will be less than significant impacts from the BUG is unsupported.

Secondly, the DEIR fails to analyze all uses that stem from the reasonably foreseeable increase of generator use during Public Safety Power Shutoff (“PSPS”) events and extreme heat events (“EHEs”). The recent rise of Extreme Heat Events in the State has increased the amount of PSPS events and thus increased the amount of time generators are being run.<sup>45</sup>

Dr. Clark explains that EHEs “are defined as periods where in the temperatures throughout California exceed 100 degrees Fahrenheit.”<sup>46</sup> In 2021 alone, the Governor released one Executive Order regarding EHEs and one Proclamation for a State of Emergency with the intention to help avoid PSPS events.<sup>47</sup> CARB notes though that the number of Extreme Heat Events is likely to increase, and thereby PSPS events, with the continuing change in climate that the State is currently undergoing.<sup>48</sup>

According to the California Public Utilities Commission (“CPUC”) de-energization report<sup>49</sup> in October 2019, there were almost 806 PSPS events 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>50</sup> Dr. Clark notes that CARB concluded that PSPS events in October of 2019 alone generated 126 tons of NOx, 8.3 tons of particulate matter, and 8.3 tons of DPM.<sup>51</sup>

Dr. Clark concludes that “power produced [from generators] during PSPS or extreme heat events is expected to come from [diesel] engines” and would result in increased DPM that the DEIR did not analyze.

While the City is not required to analyze the worst case scenarios, there is substantial evidence demonstrating that PSPS events and EHE are reasonably foreseeable events which will require the use of the BUG beyond mere testing operations. A detailed analysis of the emissions and noise from these additional hours of BUG operation should be included in a revised EIR, including the extra time the BUG will need to run to account for EHEs and PSPS.

<sup>43</sup> SCAQMD Rule 1407.

<sup>44</sup> Clark Comments, p. 6.

<sup>45</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>46</sup> Governor of California. 2021. Proclamation of a state of emergency. June 17, 2021; Clark Comments, pp. 6–7.

- <sup>47</sup> Cal. Governor Executive Order N-11-21, <https://www.gov.ca.gov/wp-content/uploads/2021/07/EO-N-11-21-Extreme-Heat-Event-07.10.21.pdf>; Cal. Governor Proclamation of a State of Emergency, June 16, 2021, <https://www.gov.ca.gov/wp-content/uploads/2021/06/6.17.21-Extreme-Heat-proclamation.pdf>.
- <sup>48</sup> CARB 2017 Scoping Plan, p. 6, [https://ww2.arb.ca.gov/sites/default/files/classic/cc/scopingplan/scoping\\_plan\\_2017.pdf](https://ww2.arb.ca.gov/sites/default/files/classic/cc/scopingplan/scoping_plan_2017.pdf) [sic]
- <sup>49</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.
- <sup>50</sup> CARB, 2020. Potential Emission Impact of Public Safety Power Shutoff (PSPS), Emission Impact: Additional Generator Usage associated With Power Outage.
- <sup>51</sup> Clark Comments p. 7.

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

This comment summarizes the more specific comments provided by Clark. A detailed response to the potential increase in operation of the emergency generator and related emissions is provided below in Response to Comment Nos. 3-9 and 3-10. As discussed below, SCAQMD will require a permit application to be submitted to obtain 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 that time. The CEQA 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 (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.

Regulatory limits may be established by various agencies but are not a required CEQA analytical assumption or a significance threshold per se. In addition, the data provided in this comment from CARB indicated power outages on a Statewide basis for a single month with varying assumptions on emergency generator usage. The commenter has not provided any substantial evidence that use of the backup emergency generator 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 emergency 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.

This comment misconstrues the emissions data presented in the Draft EIR regarding the emergency generator and the requirements of SCAQMD Rule 1470. As discussed in more detail in Response to Comment No. 3-11, Clark used a diesel exhaust emission factor that is not applicable to the Project and is approximately 15 times more than what is allowed under Rule 1470. SCAQMD Rule 1470 was amended on October 1, 2021 and provides a new PM<sub>10</sub> emission standard 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 of SCAQMD Rule 1470). As shown in Figure IV.A-4 (Sensitive Receptors) of the Draft EIR, residential uses are located on the southwest corner of Hope Street and 8<sup>th</sup> Street approximately 40 meters of the proposed location of the emergency generator (see Figure II-11 of the Draft EIR)<sup>4</sup>. As shown in Appendix B-2.4 (CalEEMod Outputs, page 19 of 19) of the Draft EIR, the proposed emergency generator would be 300 hp). Thus, use of 0.15 g/bhp-hr is not applicable to the Project, and the use of 0.01 g/bhp-hr is the appropriate standard.

In addition, Clark incorrectly used the SCAQMD's RiskTool screening spreadsheet for calculating potential health risk impacts. Some outputs from the SCAQMD RiskTool were provided, but the summary sheet which contains the input parameters was omitted. Upon further review of the health risk analysis performed by Clark, the diesel generator was entered in as a non-combustion source. The SCAQMD RiskTool spreadsheet has separate dispersion parameters for both combustion and non-combustion sources, which are only displayed on the summary sheet containing input parameters. As a result of entering the diesel generator as a non-combustion source, concentrations and health risk calculated are more than doubled in comparison to a combustion source. Please refer to SCAQMD Rule 1401, Permit Application Package "N" guidance, Table 6.1A. As the summary sheet with input parameters was omitted from Clark's health risk analysis, and no supporting evidence was provided to characterize the source as non-combustion, health risk calculations provided by Clark are erroneous and should not be considered further.

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 use of all 200 hours to further demonstrate that health risks from the Project would be a maximum of 3.9 in one million for residences directly east of the Project Site (for combined construction and operational emissions) and is below the

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<sup>4</sup> Distance measurement was conducted using Google Earth Pro, October 16, 2022.



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. Furthermore, the emergency generator represented 0.04 of the 3.9 in one million calculated risk.

With regard to noise, noise associated with the backup emergency generator is exempt from the City's noise limits, as the generator would only be used during emergencies per Section 111.01(d) of the LAMC. In addition, the periodic maintenance or testing of the emergency generator would also be exempt from the City's noise limits per Section 112.02(b) of the LAMC. Furthermore, as demonstrated within the Draft EIR's Project Description Section II, page II-18, Figure II-11, the emergency generator would be located inside an enclosed room on the ground level at the west side of the building, which would be shielded from all off-site noise sensitive receptor locations. Therefore, noise impacts associated with the emergency generator would be less than significant and no additional noise analysis is warranted.

### **Comment No. 3-12**

#### **B. The DEIR Fails to Accurately Disclose and Mitigate Significant GHG Impacts**

CEQA requires the lead agency to use scientific data to evaluate GHG impacts directly and indirectly associated with a project.<sup>52</sup> The analysis must "reasonably reflect evolving scientific knowledge and state regulatory schemes."<sup>53</sup> In determining the significance of GHG emissions impacts, the agency must consider the extent to which the project may increase GHG emissions compared to the existing environmental setting and the "extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions."<sup>54</sup>

The DEIR claims that GHG emissions impacts will be less than significant because the Project is consistent with the LA Green New Deal, the 2008 Climate Change Scoping Plan, and the 2020–2045 RTP/SCS.<sup>55</sup> Specifically, Appendix R1: CAP Consistency Checklist states that the Project's inclusion of bike parking, electric vehicle charging infrastructure, designated parking spaces, and a Transportation Demand Management Program satisfies CAP Strategy 3: Bicycling, Walking, Transit & Land Use.<sup>56</sup> However, as explained below, the Project is inconsistent with the CAP and Regional Transportation Plan in key ways and the DEIR's GHG analysis is also deficient for its failure to consider and mitigate significant long-term GHG impacts.

<sup>52</sup> See 14 C.C.R. § 15064.4(a) (lead agencies "shall make a good-faith effort, based to the extent possible on scientific and factual data, to describe, calculate or estimate the amount of greenhouse gas emissions

resulting from a project); 14 C.C.R. § 15064(d) (evaluating significance of the environmental effect of a project requires consideration of reasonably foreseeable indirect physical changes caused by the project); 14 C.C.R. § 15358(a)(2) (defining “effects” or “impacts” to include indirect or secondary effects caused by the project and are “later in time or farther removed in distance, but are still reasonably foreseeable” including “effects on air”); CEQA Guidelines, Appendix G, § VIII: Greenhouse Gas Emissions (stating agencies should consider whether the project would “generate greenhouse gas emissions, **either directly or indirectly**, that may have a significant impact on the environment.”) (emphasis added).

<sup>53</sup> 14 C.C.R. § 15064.4(b); see also *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 504 (holding that lead agencies have an obligation to track shifting regulations and to prepare EIRs in a fashion that keeps “in step with evolving scientific knowledge and state regulatory schemes”).

<sup>54</sup> 14 C.C.R. § 15064.4(b)(1), (3).

<sup>55</sup> DEIR, p. IV.C-48 [sic]

<sup>56</sup> DEIR, Appendix R1: Climate Action Plan Consistency Checklist (“CAP Checklist”), pp. 7–10, Attachment D.

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

The comment asserts that the Draft EIR fails to accurately disclose and mitigate significant GHG impacts. The California Supreme Court’s decision published on November 30, 2015, in the *Center for Biological Diversity v. California Department of Fish and Wildlife* (Case No. 217763) (also known as *CBD v. CDFW* or the Newhall Ranch Case) reviewed the methodology used to analyze GHG emissions in an EIR. The California Supreme Court suggested regulatory consistency as a potential “pathway to compliance,” by stating that a lead agency might assess consistency with AB 32’s goal in whole or in part by looking to compliance with regulatory programs designed to reduce GHG emissions from particular activities. The Court recognized that to the extent a project’s design features comply with or exceed the regulations outlined in the *Climate Change Scoping Plan* and adopted plans by CARB or other state agencies, a lead agency could appropriately rely on their use as showing compliance with performance-based standards adopted to fulfill a statewide plan for the reduction or mitigation of GHG emissions. This approach is consistent with CEQA Guidelines Section 15064, which provides that a determination that an impact is not cumulatively considerable may rest on compliance with previously adopted plans or regulations, for the reduction of GHG emissions.

Section 15064.4 of the CEQA Guidelines recommends that lead agencies quantify GHG emissions of projects and consider several other factors that may be used in the determination of significance of GHG emissions from a project: the extent to which the project may increase or reduce GHG emissions; whether a project exceeds an applicable significance threshold; and the extent to which the project complies with regulations or requirements adopted to implement a reduction or mitigation of GHGs.

CEQA Guidelines Section 15064.4 does not establish a threshold of significance. Lead agencies have the discretion to establish significance thresholds for their respective jurisdictions, and in establishing those thresholds, a lead agency may appropriately look to the thresholds developed by other public agencies, or suggested by other experts, such as the California Air Pollution Control Officers Association (CAPCOA), as long as any threshold chosen is supported by substantial evidence (see CEQA Guidelines Section 15064.7(c)). The CEQA Guidelines also clarify that the effects of GHG emissions are cumulative, and should be analyzed in the context of CEQA's requirements for cumulative impact analysis (see CEQA Guidelines Section 15130(f)). As a note, the CEQA Guidelines were amended in response to Senate Bill (SB) 97.<sup>5</sup> In particular, the CEQA Guidelines were amended to specify that compliance with a GHG emissions reduction plan may appropriately be determined to render a cumulative GHG impact less than significant.

Thus, per CEQA Guidelines Section 15064(h)(3), a project's incremental contribution to a cumulative impact can be found not cumulatively considerable if the project would comply with an approved plan or mitigation program that provides specific requirements that would avoid or substantially lessen the cumulative problem within the geographic area of the project. To qualify, such plans or programs must be specified in law or adopted by the public agency with jurisdiction over the affected resources through a public review process to implement, interpret, or make specific the law enforced or administered by the public agency. Examples of such programs include a "water quality control plan, air quality attainment or maintenance plan, integrated waste management plan, habitat conservation plan, natural community conservation plans [and] plans or regulations for the reduction of greenhouse gas emissions." Put another way, CEQA Guidelines Section 15064(h)(3) allows a lead agency to make a finding of less than significant impact on GHG emissions if the project complies with adopted programs, plans, policies and/or other regulatory strategies to reduce GHG emissions.

In the absence of any adopted numeric threshold, the significance of the Project's GHG emissions is evaluated consistent with CEQA Guidelines Section 15064.4(b)(2) by considering whether the Project complies with applicable plans, policies, regulations and requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of GHG emissions. For this Project, as a land use development project, the most directly applicable adopted regulatory plan to reduce GHG emissions is the 2020–2045 RTP/SCS, which is designed to achieve regional GHG reductions from the land use and transportation sectors as required by SB 375 and the State's long-term climate goals. This analysis also considers consistency with regulations or requirements adopted by the AB

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<sup>5</sup> *SB 97 requires OPR to prepare and develop guidelines for the mitigation of GHG emissions or the effects thereof, including, but not limited to, the effects associated with transportation and energy consumption.*

32<sup>6</sup> Climate Change Scoping Plan, which meets the criteria for appropriate analysis under the CEQA Guidelines.

The Draft EIR provides a thorough analysis of the Project's GHG impacts within Section IV.E, Greenhouse Gas Emissions of the Draft EIR. The analysis includes quantification of construction and operational GHG emissions, quantification of applicable reduction measures, and consistency with applicable local plans and policies. However, critically, the threshold of significance adopted by the City for analysis here is qualitative and based on the Project's consistency with appropriate laws, regulations, plans, and policies. Thus, the quantitative data and analysis is provided for informational purposes only, but nonetheless demonstrates with substantial evidence that the Project's consistency with applicable laws, regulations, plans, and policies in fact results in notable GHG emissions reductions.

This comment also cites "the Project is inconsistent with the CAP and Regional Transportation Plan in key ways" and makes a reference to an "Attachment D." The comment letter did not include an Attachment D nor are there any specific comments providing substantial evidence that the Project would be inconsistent with a CAP and Regional Transportation Plan. The City Los Angeles does not have a CAP and thus, no consistency analysis with a CAP for the City was conducted. The City is unsure of what the commenter means when referring the consistency of the Project with a CAP. As discussed on Page IV.C-78 of the Draft EIR, the Draft EIR correctly concluded that the Project would result in less than significant GHG impacts. No substantial evidence to the contrary has been provided by the Commenter requiring mitigation of significant long-term GHG impacts or requiring additional analysis.

### **Comment No. 3-13**

#### **1. The City's Greenhouse Gas (GHG) Analysis Fails To Account For The Significant Increase in GHG Emissions That Will Be Realized With The Operation Of The BUGS Beyond 12 Hours Of Test Per Year.**

The City's GHG analysis calculates that BUGs at the Project Site will generate 1.3757 tons per year of CO<sub>2</sub> equivalent for each 12 hours of operation. Therefore, a revised DEIR must be written for the Project that includes an analysis of the additional operation of the

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<sup>6</sup> *SB 375 links regional planning for housing and transportation with the GHG reduction goals outlined in AB 32. Reductions in GHG emissions would be achieved by, for example, locating employment opportunities close to transit. Under SB 375, each Metropolitan Planning Organization (MPO) is required to adopt a Sustainable Community Strategy (SCS) to encourage compact development that reduces passenger VMT and trips so that the region will meet a target, created by CARB, for reducing GHG emissions*

BUG that will occur at the project site that is not accounted for in the current GHG analysis and then compare those results against the goals in the LA Green New Deal, the 2008 Climate Change Scoping Plan, and the 2020-2045 RTP/SCS.

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

This comment summarizes the more specific comment provided by Clark. A detailed response to this comment is provided below in Response to Comment No. 3-14.

As discussed below, use of 12 hours per year was a reasonable estimate of usage for the emergency generator. This comment fails to account for an increase in use of the emergency generator as the result of power outages could potentially result in an overall decrease in GHG emissions when accounting for a decrease in off-site electricity requirements and natural gas usage. The emergency generator would primarily supply necessary lighting and electrical needs during electricity outages. Thus, natural gas usage would also be limited (e.g., boilers and heating associated with HVAC) which require electricity usage. Assuming 200 hours of emergency generator usage would result in approximately 22.9 MTCO<sub>2</sub>e/yr (scaled from 1.376 MTCO<sub>2</sub>e/yr over 12 hours). However, conversely the Project would result in 200 hours less LADWP supplied energy usage. As shown in Table IV.C-9 of the Draft EIR, the Project results in 1,057 MTCO<sub>2</sub>e/yr. This is equivalent to 24.1 MTCO<sub>2</sub>e/yr over 200 hours. Thus, according to this calculation, an increase in the use of the emergency generator would result in a reduction of 1.2 MTCO<sub>2</sub>e/yr of Project-related GHG emissions over 200 hours when accounting for the curtailment of LADWP supplied electricity. Thus, contrary to what is stated in this comment increased usage of the emergency generator would result in a reduction in Project-related GHG emissions. The analysis in the Draft EIR is correct and a revised Draft EIR is not required.

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

#### **2. The City's Greenhouse Gas Analysis Relies On An Unsupported Threshold**

The City has not adopted a numerical significance threshold for assessing impacts related to GHG emissions and has not formally adopted a local plan for reducing GHG emissions. The DEIR concludes that the Project's GHG impacts would be less than significant based on the Project's consistency with the goals and actions to reduce GHG emissions found in the City's Green New Deal, and the 2017 California Climate Change Scoping Plan. While the City claims compliance with AB 32 Cap-and-Trade, the Project is not subject to Cap-and-Trade. Claims by the City that the compliance by third parties (those they are reliant on for energy) to reduce GHG emissions will reduce the Project's GHG emissions are unsupported and cannot be viewed as a reliable mitigation measure.<sup>57</sup> Furthermore, the City relies on "project design features" and credits when analyzing the Project's GHG

impacts even though these measures are not legally enforceable like mitigation measures are.<sup>57</sup> The City must correct these assumptions regarding the GHG analysis in a revised EIR.

<sup>57</sup> DEIR. 2021. Appendix IV.C. pg IV.C-78; IV.C-45; *Golden Door Properties, LLC v. County of San Diego* (2020) 50 Cal.App.5th 467.

<sup>58</sup> DEIR, p. IV.C-46.

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

The comment asserts that the Draft EIR's GHG analysis relies on unsupported thresholds. The comment misreads the relevant respective 2009 and 2019 statements of reasons for regulatory actions by the Natural Resources Agency. First, CEQA Guidelines Section 15064.4(a)(2) allows, in determining the significance of a project's impacts, a "qualitative" or "performance based" standard. Section 15064.4(b)(3) states that "[i]n determining the significance of impacts, the lead agency may consider a project's consistency with the State's long-term climate goals or strategies, provided that substantial evidence supports the agency's analysis of how those goals or strategies address the project's incremental contribution to climate change and its conclusion that the project's incremental contribution is not cumulatively considerable."

CEQA Guidelines Section 15064(h)(3) states, in relevant part, that a:

*...lead agency may determine that a project's incremental contribution to a cumulative effect is not cumulatively considerable if the project will comply with the requirements in a previously approved plan or mitigation program... that provides specific requirements that will avoid or substantially lessen the cumulative problem within the geographic area in which the project is located. Such plans or programs must be specified in law or adopted by the public agency with jurisdiction over the affected resources through a public review process to implement, interpret, or make specific the law enforced or administered by the public agency. 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.*

In the Draft EIR, the Project's GHG impacts are analyzed in Section IV.C and in Appendix B, the Project's Air Quality and GHG Emissions technical report. The analysis includes a quantified assessment of the Project's GHG emissions utilizing CalEEMod modeling software. As discussed therein, the Project includes characteristics that have been identified to reduce GHG emissions through reductions of VMT in accordance with the

LADOT VMT Calculator, which include the densification, location, and measures incorporated into the Project that are demonstrated through quantitative analysis to result in a 60 percent reduction in mobile-source GHG emissions and a 46 percent reduction overall as compared to a project that would not include the same VMT/GHG reducing elements and measures. (See Draft EIR, at p. IV.C-72.)

The Draft EIR includes a detailed point-by-point analysis of the Project's consistency with SCAG's 2020–2045 RTP/SCS, the *Climate Change Scoping Plan* and related regulations adopted to reduce GHG emissions and the City's Green New Deal. The analysis concludes that the Project is consistent with the plans' key GHG reducing goals and requirements. In particular, the Project represents an infill development within an existing urbanized area that would concentrate new residential within a HQTAs located approximately two blocks from the Los Angeles County Metropolitan Transportation Authority's (Metro's) 7th/Metro Center Metro Rail station, which contains the Metro Red, Purple, Blue, and Expo Lines and is a hub of the regional rail network. Based on the Project's location, use, design features, and regulatory compliance measures, the Project was determined to be consistent with key GHG reduction goals and requirements of the analyzed plans. The effectiveness of this compliance is further demonstrated through a quantitative analysis provided for informational and demonstrative purposes. Based on these factors, the Draft EIR concluded the Project would result in a less than significant impact with respect to GHG emissions. This determination is well supported by substantial evidence.

As discussed above in Response to Comment No. 3-9, the GHG analysis complies with the requirements of CEQA relative to an impact analysis based on consistency with appropriate plans. First, under CEQA Guidelines Section 15064.4(a)(2), the robust consistency analysis of the Project with the Scoping Plan and its subsequent updates and key regulations meets the Guideline's allowance of an analysis of project consistency with the "State's long-term climate goals or strategies." (See also, *Center for Biological Diversity v. Cal. Dept. of Fish and Wildlife* (2015) 62 Cal.4th 204, 229-230 [Agency "did not proceed in violation of CEQA by its choice of Assembly Bill 32 consistency as a significance criterion.'].) Here, substantial evidence in terms of that consistency analysis itself and the demonstration of the effectiveness of that consistency through quantitative means provide ample substantial evidence to support the conclusion that the Project's incremental contribution to climate change is less than significant.

Second, the Draft EIR's robust analysis of the Project's consistency with the 2020–2045 RTP/SCS is consistent with the requirements of Section 15064(h)(3) because the plan "provides specific requirements that will avoid or substantially lessen the cumulative problem within the geographic area in which the project is located," and is both "specified in law" and is "adopted by the public agency with jurisdiction over the affected resources through a public review process to implement, interpret, or make specific the law enforced

or administered by the public agency.”<sup>7</sup> Namely, the 2020–2045 RTP/SCS was adopted by SCAG pursuant to a certified EIR that includes various requirements and control and mitigation measures that are demonstrated to achieve the quantified GHG reduction targets set in the plan. The Draft EIR for the Project further explains on pages IV.C-48 through IV.C-68 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. This analysis is thus consistent with the Guidelines and demonstrates with substantial evidence that the Project would result in less than significant GHG emissions impacts consistent with the requirements of CEQA.

The administrative record for the CEQA Guidelines Amendments also clarifies that “the effects of greenhouse gas emissions are cumulative, and should be analyzed in the context of California Environmental Quality Act’s requirements for cumulative impact analysis.”<sup>8</sup> As such, it is appropriate that the Draft EIR analysis evaluated consistency with the AB 32 Scoping Plan. Given that energy use and mobile source emissions are the two main sources of GHG emissions, consistency with applicable rules and regulations (e.g., Cap-and-Trade, Renewables Portfolio Standard, and Low Carbon Fuel Standards) is related to the Project. These important regulations/standards serve to substantially reduce project-related emissions.

Regarding Cap-and-Trade, this comment misrepresents what is stated in the Draft EIR to suggest that the Draft EIR is inconsistent with CARB guidance. Specifically, page IV.C-49 states:

*As required by AB 32 and the Climate Change Scoping Plan, the Cap-and-Trade Program covers the GHG emissions associated with electricity consumed in California, whether generated in-state or imported. Accordingly, this regulatory program applies to electric service providers and not directly to land use development. That being said, the Project would benefit from this regulatory program in that the GHG emissions associated with the Project’s electricity usage per year presented in Table IV.C-9 on page IV.C-72 would indirectly be covered by the Cap-and-Trade Program. Furthermore, the Cap-and-Trade Program also covers the GHG emissions associated with the combustion of transportation fuels in California, whether refined in-state or imported. While not quantified in this analysis, the Project would benefit from this regulatory program in that the GHG emissions associated with the*

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<sup>7</sup> CEQA Guidelines 15064(h)(3).

<sup>8</sup> Letter from Cynthia Bryant, Director of the Governor’s Office of Planning and Research to Mike Chrisman, California Secretary for Natural Resources, dated April 13, 2009.



*Project's electricity and fuel usage would indirectly be covered by the Cap-and-Trade Program.*

Contrary to what is suggested in this comment, nowhere in the cited language does it suggest that Cap-and-Trade covers mobile emissions from local land use projects.

Contrary to what is stated in this comment, compliance with an ordinance or rule is not considered mitigation. Nor can such compliance be “eliminated.” As an example, CalEEMod 2016.3.2 energy demand default parameters only include compliance with 2016 Title 24 standards. Therefore, a conservative 10 percent reduction was applied within CalEEMod to account for the more stringent mandatory 2019 Title 24 standards required of the Project. Furthermore, the California Energy Commission voted on November 13, 2019, to ban the sale of inefficient light bulbs starting January 1, 2020. The Energy Independence and Security Act of 2007 (EISA) requires approximately 25 percent greater efficiency for light bulbs by phasing out incandescent light bulbs between 2012 and 2014. Based on this information, it was appropriate to conservatively include a 25 percent reduction with installation of high efficiency lighting required by Title 24. Compliance with Title 24 is enforced through the building permit process and is therefore appropriate to include this reduction in the CalEEMod modeling. This comment incorrectly states that the proposed Project Design Features and compliance with regulatory requirements are unenforceable. 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. Furthermore, compliance with regulatory requirements (e.g., Title 24) is mandatory and is enforced through the building permit process.

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

#### **3. The DEIR Relies on Project Design Features to Reduce GHG Impacts and Fails to Adopt All Feasible Mitigation Measures to Reduce Significant GHG Impacts**

The Project includes Project Design Feature GHG-PDF-1 which includes many measures to help reduce the overall GHG impact of the Project. As a Project design feature though, there is no requirement that the Project follows through with these designs once the proper permitting has been approved. The only way to make these features legally enforceable is to make them mitigation measures under CEQA.<sup>59</sup> This, combined with the unaccounted for GHG emissions above, places the burden on the City to explain specifically why the proposed mitigation is not feasible.<sup>60</sup> All feasible mitigation should be adopted in a revised DEIR.

<sup>59</sup> PRC § 21081.6(b); 14 C.C.R § 15126.4(a)(2); *Lotus v. Dep't of Transp.* (2014) 223 Cal. App. 4th 645, 651–52.

<sup>60</sup> See *Covington*, 43 Cal.App.5th at 879–883 (holding that revised EIR was required where respondent failed to explain why the petitioners’ proposed mitigation measure was not feasible).

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

This comment incorrectly states that the proposed Project Design Features are unenforceable. 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. Implementation of the Mitigation Monitoring Plan would be required as part of the Conditions of Approval for the Project. As discussed above in Response 3-16, the Draft EIR provides a thorough analysis of the Project’s GHG impacts within Section IV.E, Greenhouse Gas Emissions, of the Draft EIR. The analysis includes quantification of construction and operational GHG emissions, quantification of applicable reduction measures, and consistency with applicable local plans and policies. As discussed on Page IV.C-78 of the Draft EIR, the Draft EIR demonstrates with substantial evidence that the Project’s consistency with applicable laws, regulations, plans, and policies in fact results in notable GHG emissions reductions and would result in less than significant GHG impacts. No substantial evidence to the contrary has been provided by the Commenter requiring consideration of mitigation of significant long-term GHG impacts or requiring additional analysis.

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

#### **C. The DEIR Fails to Accurately Disclose and Mitigate Significant Noise Impacts**

The CEQA Guidelines require an EIR to consider “whether a project would result in... [g]eneration of a substantial temporary or periodic increase in ambient noise levels in the vicinity of the project...”<sup>61</sup> The DEIR’s noise analysis fails to accurately disclose the Project’s noise impacts for several reasons.

<sup>61</sup> CEQA Guidelines, Appendix G, Sec. XII(d).

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

As demonstrated within the response to comments below, the analysis of noise in Section IV.E, Noise, of the Draft EIR is comprehensive and potential impacts are disclosed and mitigated with feasible mitigation measures.

**Comment No. 3-18****1. The DEIR Fails to Require All Feasible Mitigation Measures to Reduce Significant Impacts**

Mr. Watry concludes that the mitigation measures for construction noise offered by the DEIR may be insufficient. While Mr. Watry agrees that the temporary sound barriers would not reduce noise impacts to levels above the barrier.<sup>62</sup> Mr. Watry's analysis identified additional feasible mitigation that would further reduce the Project's construction noise impacts, which are not discussed in the DEIR. Mr. Watry recommends that the DEIR's mitigation measure be revised to provide either plexiglass barriers or sound blankets attached to scaffolding for each story of adjacent buildings during Project construction in order to further reduce noise above the DEIR's proposed noise barrier.<sup>63</sup>

The DEIR's failure to implement all feasible mitigation measures to reduce construction noise impacts before declaring them significant and unavoidable is a separate CEQA violation. The DEIR concludes that construction noise impacts are significant and unavoidable. Therefore, the DEIR must adopt all feasible mitigation measures to reduce construction noise impacts to the greatest extent feasible, including but not limited to those recommended by Mr. Watry.<sup>64</sup>

<sup>62</sup> Watry Comments, p. 2.

<sup>63</sup> Watry Comments, pp. 2–3.

<sup>64</sup> *Covington*, 43 Cal.App.5th at 883.

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

Refer to Response to Comment Nos. 3-35 and 3-36 below regarding the infeasibility of the additional mitigation measures suggested by Mr. Watry. As discussed in more detail in these responses below, these suggested measures would require additional street/lane closures and the use of additional construction vehicles. The Draft EIR includes feasible mitigation measures to reduce the construction-related noise impacts of the Project. Refer to Mitigation Measures NOI-MM-1 and NOI-MM-2 of the Draft EIR and to the Mitigation Monitoring Plan included in Section IV. of this Final EIR.

**Comment No. 3-19****D. The DEIR Fails to Adequately Analyze the Project's Cumulative Impacts**

CEQA requires the lead agency to include a reasonable and good faith analysis of cumulative impacts in an EIR.<sup>65</sup> The analysis must be sufficiently detailed to correspond to the severity of the impact and the likelihood that it will occur.<sup>66</sup> While an EIR may provide less detail in its cumulative impact analysis than for project-specific effects, the discussion

must provide sufficient specificity to enable the agency to make findings that a project will, or will not, have a significant cumulative impact where the possible effects of the project are “individually limited but cumulatively considerable.”<sup>67</sup>

The DEIR’s cumulative impact analysis fails to comply with CEQA in at least two major ways. First, the DEIR fails to analyze the cumulative health risk of the Project with other nearby projects that are within 1000 feet of the Project site and may undergo concurrent construction, including the Arts Club Project and 9034 Sunset, both of which have pending CEQA documents before the City.<sup>68</sup>

<sup>65</sup> 14 §§ C.C.R 15130(a); 15065(a); 15355(b); *Cadiz Land Co., Inc. v. Rail Cycle, L.P.* (2000) 83 Cal.App.4th 74, 109.

<sup>66</sup> 14 C.C.R § 15130(b); *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 729 (EIR inadequate for failure to include “some data” on cumulative groundwater impacts).

<sup>67</sup> PRC § 21083(b)(2); 14 C.C.R §§ 15064(h)(1), 15065(a)(3); 14 C.C.R § 15130(b).

<sup>68</sup> See City environmental docs list: <https://www.weho.org/city-government/city-departments/planning-and-development-services/current-and-historic-preservation-planning/environmental-documents>.

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

The comment asserts that the Draft EIR fails to analyze adequately the Project’s cumulative impacts when combined to nearby projects that may have concurrent construction activity. 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 and IV.A-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 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 *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>9</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 including the two cited projects. 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. Note that the two projects cited in the comment are located in the City of West Hollywood and are not close to or within 1,000 feet of the Project Site. As further indicated by the footnote in this comment, the Commenter appears to be using response to comments for another Project in the City of West Hollywood that are not applicable to this Project.

As discussed above, the analysis of health risk impacts was conducted consistent with *L.A. City CEQA Thresholds Guide* and the *SCAQMD Guidance Document for Addressing Air Quality Issues in General Plans and Local Planning*. The Project is not considered to be a substantial source of diesel particulate matter warranting a refined HRA. 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 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 be a maximum of 3.9 in one million for residences located east of the Project Site, across South Grand Avenue (for combined construction and operational emissions) which is below the applicable SCAQMD significance threshold of 10 in one million. Consistent with SCAQMD's cumulative impact methodology, the Draft EIR's conclusion that cumulative air toxic impacts would be less than significant is correct and no additional analysis is warranted.

### **Comment No. 3-20**

#### **1. The DEIR Fails to Evaluate Cumulative Air Quality Impacts**

CEQA requires analysis of cumulative impacts, defined as "two or more individual effects which, when considered together, are considerable."<sup>69</sup> Such impacts may "result from

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<sup>9</sup> *White Paper on Potential Control Strategies to Address Cumulative Impacts from Air Pollution. Appendix D, South Coast Air Quality Management District, August 2003.*

individually minor but collectively significant projects taking place over a period of time.”<sup>70</sup> Cumulatively considerable means that “the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.”<sup>71</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>72</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>73</sup>

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

The DEIR similarly fails to evaluate the Project’s cumulative impacts through its relationship with the LA Green New Deal or how compliance with the plan will ensure impacts are not cumulatively considerable. Thus, the DEIR fails to conduct the cumulative air quality, GHG, and noise impacts analysis as required by CEQA.

The law is clear that individually insignificant incremental contributions to air pollution are part of a cumulatively considerable impact requiring analysis in an EIR.<sup>75</sup> In *Kings County Farm Bureau v. City of Hanford*, the City of Hanford prepared an EIR for a 26.4-megawatt coal-fired cogeneration plant.<sup>76</sup> Notwithstanding the fact that the EIR found that the project region was out of attainment for PM<sub>10</sub> and ozone, the City failed to incorporate mitigations for the project’s cumulative air quality impacts from project emissions because it concluded that the Project would contribute “less than one percent of area emissions for all criteria pollutants.”<sup>77</sup> The Court held that it was an error for the City to not take into account the nonattainment with air quality standards.<sup>78</sup> Regarding ozone, the Court reasoned that “[t]he relevant question to be addressed in the EIR is not the relative amount of [ozone] precursors emitted by the project when compared with preexisting emissions, but whether any additional amount of precursor emissions should be considered significant in light of the serious nature of the ozone problems in this air basin.”<sup>79</sup> In addition, the Court generally held that the EIR improperly sidestepped the cumulative impacts analysis when it “focused on the individual project’s relative effects and omitted facts relevant to an analysis of the collective effect this and other sources will have upon air quality.”<sup>80</sup>

Here, the DEIR acknowledges that the SCAQMD is in nonattainment for state air quality standards for O<sub>3</sub>, PM<sub>2.5</sub>, and PM<sub>10</sub>.<sup>81</sup> Given these background conditions, even marginal contributions of O<sub>3</sub>, PM<sub>2.5</sub>, and PM<sub>10</sub> from the Project and other projects in the vicinity can have a significant cumulative effect of exacerbating the already serious nonattainment of air quality standards. Under *Kings County*, the Project's small and incremental contribution to air pollution in the SCAB must be understood in the context of poor air quality that currently exists.<sup>82</sup> Yet the DEIR does not even mention O<sub>3</sub>, PM<sub>2.5</sub>, and PM<sub>10</sub> in its discussion of Cumulative Impacts.<sup>83</sup> The DEIR must be revised to consider the circumstances of the O<sub>3</sub>, PM<sub>2.5</sub>, and PM<sub>10</sub> problem in the region in conjunction with the cumulatively considerable air quality effects from this source of O<sub>3</sub>, PM<sub>2.5</sub>, and PM<sub>10</sub> emissions.

The DEIR must be revised and recirculated to analyze all cumulative projects in the City of Los Angeles and Los Angeles County generally which may have relevant cumulative air quality, health risk, GHGs, and noise impacts when combined with the Project's impacts.

<sup>69</sup> 14 C.C.R. § 15355.

<sup>70</sup> 14 C.C.R. § 15355(b).

<sup>71</sup> 14 C.C.R. § 15064(h)(1).

<sup>72</sup> 14 C.C.R. § 15130(b)(1).

<sup>73</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).

<sup>74</sup> DEIR, p. III-7 to -13, Table III-1.

<sup>75</sup> *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692.

<sup>76</sup> *Id.* at 706.

<sup>77</sup> *Id.* at 719.

<sup>78</sup> *Id.* at 718–721.

<sup>79</sup> *Id.* at 718.

<sup>80</sup> *Id.* at 721.

<sup>81</sup> DEIR, p. IV.A-10.

<sup>82</sup> *Kings County*, 221 Cal.App.3d at 718–721.

<sup>83</sup> DEIR, p. IV.A-10.

### **Response to Comment No. 3-20**

This comment asserts that the Draft EIR fails to evaluate cumulative air quality impacts. As discussed above in Response to Comment No. 3-15, the cumulative analysis of air quality impacts within the Draft EIR appropriately followed 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.

Related to Kings County, the City prepared a guidance document (Air Quality and Health Effects (*Sierra Club v. County of Fresno*)), that addresses the potential for identifiable health impacts to result from air pollutants analyzed in City environmental documents prepared pursuant to CEQA.<sup>10</sup> The discussion focuses on significant impacts identified in City EIRs and the feasibility of directly relating any identified significant adverse air quality impact to likely health consequences.

The California Supreme Court opinion in Friant Ranch requires projects with significant air quality impacts to “relate the expected adverse air quality impacts to likely health consequences or explain why it is not feasible at the time of drafting to provide such an analysis, so that the public may make informed decisions regarding the costs and benefits of the project.”<sup>11</sup> The Friant Ranch decision also states that providing “only a general description of symptoms that are associated with exposure”... “fail[s] to indicate the concentrations at which such pollutants would trigger the identified symptoms....” and “the public would have no idea of the health consequences that result when more pollutants are added to a nonattainment basin.”

The City's guidance document provides information to the public regarding the health consequences associated with exposure to air pollutants and explains why direct correlation of a project's pollutant emissions and anticipated health effects is currently infeasible, as no expert agency has approved a quantitative method to reliably and meaningfully translate mass emission estimates of criteria air pollutants to specific health effects for the scale of projects typically analyzed in City EIRs.<sup>12</sup>

In the case of the Project, the regional construction and operational emissions would not exceed SCAQMD's recommended daily significance thresholds. As such, no additional discussion of non-attainment pollutants under cumulative impacts was provided and is consistent with City's guidance document.

As explained in the Draft EIR, the analysis of a project's GHG emissions is inherently a cumulative impacts analysis because climate change is a global problem and

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<sup>10</sup> *City of Los Angeles, Air Quality Health Effects (Sierra Club v. County of Fresno), October 2019.*

<sup>11</sup> *Fifth Appellate District, Fresno County Superior Court, Sierra Club v. County of Fresno Opinion, December 2018.*

<sup>12</sup> *City of Los Angeles, Department of City Planning, Air Quality and Health Effects, October 2019.*



the emissions from any single project alone would be negligible. Accordingly, the analysis took into account the potential for the Project to contribute to the cumulative impact of global climate change. Table IV.C-9 on page IV.C-72 of the Draft EIR illustrated that implementation of the Project's regulatory requirements and project design features, including State mandates, would contribute to GHG reductions. These reductions support State goals for GHG emissions reduction. Given the Project's consistency with statewide, regional, and local plans adopted for the reduction of GHG emissions, the Project's incremental contribution to greenhouse gas emissions and their effects on climate change were concluded not to be cumulatively considerable.

### **Comment No. 3-21**

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

The Project requires a Specific Plan Adjustment.<sup>84</sup> This adjustment requires the City to make findings regarding land use consistencies and/or environmental factors. As discussed throughout this letter, the DEIR fails to disclose the Project's potentially significant, unmitigated impacts on air quality, health risk, and noise. These impacts create inconsistencies with the Specific Plan Project Permit adjustment and the VTTM which the DEIR fails to disclose and mitigate. As a result of these impacts, the City is unable to make the necessary findings under the City's municipal codes and State land use laws to approve the Project's local land use permits.

<sup>84</sup> DEIR, p. II-36.

### **Response to Comment No. 3-21**

As discussed above in Response to Comment No. 3-4, the Project will not result in significant impacts related to public health, air quality or traffic. Furthermore, as discussed in Section IV.E, Noise, of the Draft EIR, noise impacts associated with the Project would be limited to peak construction activities associated with the Project. Section IV.E, Noise, of the Draft EIR fully discloses the Project's significant and unavoidable noise impacts associated with construction activities and provides feasible measures to reduce such impacts. Furthermore, the comment that the Specific Plan Adjustment and VTTM findings cannot be made due to inconsistencies caused by significant environmental impacts under CEQA is unfounded and not supported by substantial evidence. The commenter does not provide any supportable nexus between land use inconsistencies and environmental impacts.

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**Comment No. 3-22****A. The City Cannot Make the Required Findings for a Specific Plan Project Permit Adjustment**

In order to approve the Project's conditional use permits, the City's Municipal Code requires the City to make a finding that the permit sought will "incorporate mitigation measures, monitoring of measures when necessary, or alternatives identified in the environmental review which would mitigate the negative environmental effects of the project, to the extent physically feasible."<sup>85</sup>

As discussed herein, the Project has potentially significant, unmitigated impacts on air quality, health risk, and noise that are likely to harm public health and welfare if not fully mitigated. In particular, the DEIR's proposed finding that the Project will result in significant and unavoidable construction noise impacts<sup>86</sup> demonstrates that the Project's construction noise will constitute an ongoing menace to local sensitive receptors from noise throughout the Project's 3-year construction period. Furthermore, as Mr. Watry notes, existing ambient noise levels at two receptors near the Project will move from "conditionally acceptable" to "normally unacceptable" due to noise emanating from the Project. As such the City should not approve the Specific Plan Project Permit unless those noise levels can be mitigated to conditionally acceptable levels.<sup>87</sup>

These unmitigated impacts render the Project inconsistent with the use permit standards set forth in the Municipal Code. The City therefore cannot make the necessary findings under the Code to approve the Project's Specific Plan Project Permit adjustment until these deficiencies in the DEIR are corrected, and until these impacts are fully mitigated.

<sup>85</sup> LAMC Section 12.22-A,30(e) [sic]

<sup>86</sup> DEIR, p. IV.E-42.

<sup>87</sup> Watry Comments, pp. 3-4.

**Response to Comment No. 3-22**

Contrary to this comment, a Conditional Use Permit is not requested for the Project. Furthermore, as discussed above in Response to Comment No. 3-4 and as demonstrated by the response to comments herein, the only significant and unavoidable impacts that would result from the Project are related to noise and vibration impacts during construction. Furthermore, feasible mitigation measures have been included to reduce the significant noise impacts. As stated in Response to Comment No. 3-17 above, the comment that the Specific Plan Adjustment findings cannot be made due to inconsistencies caused by significant environmental impacts under CEQA is unfounded and not supported by

substantial evidence. Refer to Response to Comment Nos. 3-37 and 3-38 regarding Mr. Watry's incorrect claim that the Project would result in significant operational noise impacts.

### **Comment No. 3-23**

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

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

Government Code, section 66474, provides:

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

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

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

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

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

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

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

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

to determine that the public at large has acquired easements for access through or use of property within the proposed subdivision.

(Emphasis added.)

Furthermore, where an EIR has been prepared, and demonstrates that there will be significant and unavoidable environmental impacts, a Vesting Tentative Map (“VTM”) can be certified only if the decision makers issue a statement of overriding considerations, per Government Code, section 66474.01:

Notwithstanding subdivision (e) of Section 66474, a local government may approve a tentative map, or a parcel map for which a tentative map was not required, if an environmental impact report was prepared with respect to the project and a finding was made pursuant to paragraph (3) of subdivision (a) of Section 21081 of the Public Resources Code that specific economic, social, or other considerations make infeasible the mitigation measures or project alternatives identified in the environmental impact report.<sup>88</sup>

Government Code, section 66474, subsections (e) and (f) implicate CEQA, and prohibit decision makers from approving a tract map where the project is “likely to cause substantial environmental damage” or “cause serious public health problems.”<sup>89</sup> And the City is unable to make a statement of overriding considerations for the Project under CEQA because the City has not mitigated the Project’s construction noise impacts to the greatest extent feasible, and has not demonstrated that the Project’s benefits outweigh its costs, including providing employment opportunities for highly trained workers.<sup>90</sup>

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

<sup>88</sup> Gov. Code, § 66474.01.

<sup>89</sup> Gov. Code, § 66474, subs. (e), (f).

<sup>90</sup> Pub. Res. Code § 21081(a)(3), (b).

**Response to Comment No. 3-23**

As discussed above in Response to Comment No. 3-4 and as demonstrated by the response to comments herein, the only significant and unavoidable impacts that would result from the Project are related to short-term noise and vibration impacts during construction. Furthermore, feasible mitigation measures have been included to reduce the significant noise impacts. As demonstrated by the detailed analyses in the Draft EIR, the Project will not result in any significant impacts associated with air quality or public health. The Commenter has not provided substantial evidence to demonstrate that the Project would result in substantial environmental damage or cause serious public health problems. Furthermore, the comment that the VTTM findings cannot be made due to inconsistencies caused by significant environmental impacts under CEQA is unfounded and not supported by substantial evidence. The commenter does not provide any supportable nexus between VTTM findings and air quality or public health. Rather, the City has provided substantial evidence in the Draft EIR regarding the environmental impacts of the Project. Furthermore a Statement of Overriding Considerations would be incorporated into the findings for the Project.. Refer to Section IV.D, Land Use, of the Draft EIR for a discussion of the Project's consistency with the City's zoning and land use policies and compatibility of the Project with existing and proposed uses within the Project vicinity.

**Comment No. 3-24****V. CONCLUSION**

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

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

**Response to Comment No. 3-24**

As demonstrated in the responses to comments above, the Draft EIR is comprehensive and fully complies with CEQA requirements which includes adequately analyzing the Project's potential and significant environmental impacts. The Commenter has not provided any substantial evidence to show that the Project would result in additional significant and unavoidable impacts beyond those already disclosed in the Draft EIR. Revision to and recirculation of the Draft EIR is, therefore, not required. This closing

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

### **Comment No. 3-25**

#### **Attachment A**

At the request of Adams Broadwell Joseph & Cardozo (ABJC), Clark and Associates (Clark) has reviewed materials related to the 2021 City of Los Angeles Mitigated 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. 3-25**

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

### **Comment No. 3-26**

#### **Project Description:**

The Project involves the construction of a 50-story mixed-use development comprised of 580 residential units and up to 7,499 square feet of ground floor commercial/retail/restaurant space on a 34,679-square-foot site. The Project would provide 636 vehicle parking spaces within three subterranean levels and eight above-grade levels and four vehicle parking spaces on the ground floor. To accommodate the Project, an existing surface parking lot and four-story parking structure would be demolished. Upon completion, the total building floor area would be 554,927 square feet with a maximum height of 592 feet and a Floor Area Ratio (FAR) of approximately 9.25:1.

The Project is located at 754 South Hope Street and 609 and 625 West 8th street in the City of Los Angeles. The parcels that comprise the Project Site are rectangular in shape and the site is comprised of two tax assessor parcels (APNs: 5144-011-009 and 5144-011-016), which encompass a total of approximately 34,679 square feet of lot area (0.83 acre). The Project Site is currently developed with a low-rise four-story parking structure and a surface parking lot that is entirely paved and devoid of landscaping. The currently existing commercial parking structure provides 324 parking spaces.

The maximum depth of the subterranean levels (parking) for the Project would be approximately 63 feet below ground level. The building would include levels 1 through 50

with a maximum height of 592 feet above grade to the top of the parapet. The ground floor of the new building would be occupied by a residential lobby on 8th Street, as well as commercial/retail/restaurant uses, which will be located on the corner of Hope Street and 8th Street and at the corner of Grand Avenue and 8th Street.

Construction of the Project would commence with site clearance and demolition of the existing parking structure and parking lot, resulting in approximately 15,000 cubic yards of demolition debris, followed by grading and excavation for the subterranean levels. Construction is anticipated to occur over a 36-month period and is anticipated to be completed in 2025. Approximately 89,750 cubic yards of soil would be exported and hauled away from the Project Site during the excavation phase.

### **Response to Comment No. 3-26**

This comment summarizing the Project Description is noted for the record and will be forwarded to the decision makers for their review and consideration.

### **Comment No. 3-27**

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 traffic 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.

**Table I-2  
Summary of Impacts Under the Project**

Environmental Issue	Proposed Project Impact
<b>A. AIR QUALITY</b>	
Construction	
<i>Regional Emissions</i>	Less Than Significant
<i>Localized Emissions</i>	Less Than Significant
<i>Toxic Air Contaminants</i>	Less Than Significant
Operation	
<i>Regional Emissions</i>	Less Than Significant
<i>Localized Emissions</i>	Less Than Significant
<i>Toxic Air Contaminants</i>	Less Than Significant
<b>B. ENERGY</b>	
Wasteful, Inefficient, or Unnecessary Consumption of Energy Resources	
<i>Construction</i>	Less Than Significant
<i>Operation</i>	Less Than Significant
Conflict with Plans for Renewable Energy or Energy Efficiency	Less Than Significant
<b>C. GREENHOUSE GAS EMISSIONS</b>	
	Less Than Significant
<b>D. LAND USE</b>	
Physical Division of a Community	
	Less Than Significant
Conflict with Land Use Plans	
	Less Than Significant
<b>E. NOISE</b>	
Construction	
<i>On-Site Noise</i>	<b>Significant and Unavoidable<sup>4</sup></b>
<i>Off-Site Noise</i>	Less Than Significant <sup>5</sup>
<i>On-Site Vibration (Building Damage)</i>	Less Than Significant with Mitigation
<i>On-Site Vibration (Human Annoyance)</i>	<b>Significant and Unavoidable</b>
<i>Off-Site Vibration (Building Damage)</i>	Less Than Significant
<i>Off-Site Vibration (Human Annoyance)</i>	<b>Significant and Unavoidable<sup>6</sup></b>
Operation	
<i>On-Site Noise</i>	Less Than Significant
<i>Off-Site Noise</i>	Less Than Significant
<i>Vibration</i>	Less Than Significant

### **Response to Comment No. 3-27**

This comment describes some of the significant and unavoidable impacts related to noise and vibration during construction. However, this comment fails to note the short-term off-site vibration impacts associated with human annoyance during construction, the cumulative on-site construction noise impacts, and the cumulative off-site vibration impacts associated with human annoyance that were fully disclosed in the Draft EIR (and are included in Table 2 below). This comment also incorrectly suggests that the Project would result in significant air quality impacts based on the subsequent comments. Please refer to



Response to Comment No. 3-24 through 3-29 for responses to more detailed comments regarding air quality impacts.

### **Comment No. 3-28**

#### **Specific Comments:**

#### **1. The City's Air Quality Analysis Fails To Include A Quantitative Health Risk Analysis Of The Impacts Of Toxic Air Contaminants From The Construction Phase And Operational Phase Of The Project For The Nearest Sensitive Receptor(s)**

The City has failed to conduct a numerical health risk analysis (HRA) for Project. The DEIR states that, for the purposes of assessing pollution concentrations upon sensitive receptors, the SCAQMD has developed LSTs that are based on the number of pounds of emissions per day that can be generated by a project that would cause or contribute to adverse localized air quality impacts.<sup>1</sup> For the Criteria Pollutants assessed under CEQA, this is correct. For toxic air contaminants (TACs), there are no LSTs, nor levels of significance based on the pounds per day. Instead, the determination of a significance threshold is based on a **quantitative risk analysis** that requires the City to perform a multistep, quantitative health risk analysis.

TACs, including diesel particulate matter (DPM)<sup>2</sup>, contribute to a host of respiratory impacts and may lead to the development of various cancers. Failing to quantify those impacts places the community at risk for unwanted adverse health impacts. *Even brief exposures to the TACs could lead to the development of adverse health impacts over the life of an individual.*

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

Diesel exhaust has been linked to a range of serious health problems including an increase in respiratory disease, lung damage, cancer, and premature death.<sup>3,4,5</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>6</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>7</sup> DPM is a TAC that is recognized by state and federal agencies as causing severe health risk because it contains toxic materials, unlike PM2.5 and PM10.<sup>8</sup>

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

There are several sensitive receptors in the direct vicinity of the Project site, including residences and businesses located near the Project site. The two closest residential/sensitive receptors to the Project Site are located at the Eighth and Grand development (a mid-rise residential complex with a ground floor market at 788 S. Grand Avenue) and the 8th and Hope Apartments (located at 801 South Hope Street). Both receptors are less than 200 feet (61 meters) from the Project Site location. The nearest commercial receptors are located across 8th Avenue (approximately 80 feet or 25 meters).

These receptors would be exposed to TACs released during Project construction and operation, including DPM. No effort is made in the DEIR to quantify the potential health impacts from DPM generated by construction activities or operational activities from the Project on these sensitive receptors. The DEIR incorrectly states that it is not necessary to evaluate long-term cancer impacts from construction activities which occur over a relatively short duration.<sup>9</sup> The City's failure to perform such an analysis is clearly a major flaw in the DEIR and may be placing the residents of the adjacent structures at risk from the construction and operational phases of the Project.

<sup>1</sup> City of Los Angeles. 2021. DEIR of 8th, Grand, and Hope Project. Pg IV.A-58

<sup>2</sup> Because DPM is a TAC, it is a different air pollutant than criteria particulate matter (PM) emissions such as PM10, PM2.5, and fugitive dust. DPM exposure causes acute health effects that are different from the effects of exposure to PM alone.

<sup>3</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>4</sup> U.S. EPA, Health Assessment Document for Diesel Engine Exhaust, Report EPA/600/8-90/057F, May 2002.

<sup>5</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>6</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>7</sup> Findings of the Scientific Review Panel on The Report on Diesel Exhaust as adopted at the Panel's April 22, 1998 Meeting.
- <sup>8</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.")
- <sup>9</sup> City of Los Angeles. 2021. DEIR of 8th, Grand, and Hope Project. Pg IV.A-57

### **Response to Comment No. 3-28**

This comment asserts that the Draft EIR fails to include a quantitative health risk analysis of Project-related construction and operational toxic air contaminants. 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.

Because the construction schedule for the Project estimates that the overall construction schedule would be limited to approximately three 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 (3 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 *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 would not result in a potential health risk impact.

The comment cites that "*even brief exposures to the TACs could lead to the development of adverse health impacts over the life of an individual.*" It is important to note that DPM does not have an acute (i.e., 1-hour) short-term risk exposure, which contradicts the commentor's assertion (CARB, The Identification of Federal Hazardous Air Pollutants as Toxic Air Contaminants, June 1993).

From an operational standpoint, the Draft EIR correctly identified that the Project would not support any land uses or activities that would involve the use, storage, or

processing of carcinogenic toxic air contaminants. In addition, the proposed land uses would not generally involve the use of heavy-duty diesel trucks with the exception of occasional moving trucks, trash trucks or delivery trucks. The Commenter is referred to SCAQMD guidance below that provides clarification as to when 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>13</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).*

As discussed above, the Project includes the development of approximately 580 (547,428 square feet) residential units and up to 7,499 square feet of ground level commercial/retail/restaurant uses. A conservative estimate of the number of daily truck trips is provided below based on the National Cooperative Highway Research Program Truck Trip Generation Data.<sup>14</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 two truck trips per day for the Project's retail/restaurant uses. This assumes that all trucks would be diesel even though many retail//restaurant truck deliveries are from smaller gasoline trucks (e.g., UPS or FedEx).
- 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 10,000 sf or approximately six truck trips per day. Once again, 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).

As shown above, the Project is conservatively estimated to generate approximately eight trucks per day. Based on SCAQMD guidance, there was no quantitative analysis

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<sup>13</sup> SCAQMD, *Guidance Document for Addressing Air Quality Issues in General Plans and Local Planning*, May 6, 2005.

<sup>14</sup> *National Cooperative Highway Research Program (NCHRP) Synthesis 298 Truck Trip Generation Data*, 2001, [http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp\\_syn\\_298.pdf](http://onlinepubs.trb.org/onlinepubs/nchrp/nchrp_syn_298.pdf).

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. Contrary to the commentor's assertion that "the inherent toxicity of the TACs requires the City to first quantify the concentration release into the environment at each of the sensitive receptor locations through air dispersion modeling, calculate the dose of each TAC at that location, and quantify the cancer risk and hazard index for each of the chemicals of concern", an HRA is not required by SCAQMD or the *L.A. City CEQA Thresholds Guide*, 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 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 be a maximum of 3.9 in one million for residences located east of the Project Site, across South Grand Avenue (for combined construction and operational emissions), which is below the applicable SCAQMD significance threshold of 10 in one million.

### **Comment No. 3-29**

#### **2. The Air Quality Analysis For The Project Fails To Include The Impacts From The Emergency Generator That Will Be Installed Onsite.**

In Appendix B to City's DEIR of Project, the air quality analysis assumes that the back up generator (BUG) on site will only be operated for 12 hours a year (testing and maintenance). According to SCAQMD Rules 1110.2, 1470, back-up generators (BUGs) are allowed to operate for up to 200 hours per year and maintenance cannot exceed more than 50 hours per year. The City must revise its air quality analysis to include the use of BUGs onsite in a EIR.

In addition to the testing emissions the air quality analysis must include 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>10</sup> From January, [sic] 2019 through December, [sic] 2019, Southern California Edison reported 158 of their circuits underwent a PSP event<sup>11</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 PSPS events in Los Angeles lasted between 141 hours to 154 hours in 2019. 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>12</sup> Of particular concern are health effects related to emissions from diesel back-up engines. 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 people more susceptible to further injury.

According to the California Public Utilities Commission (CPUC) de-energization report<sup>13</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. CARB's data also indicated that on average each of these customers had about 43 hours of power outage in October 2019.<sup>14</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 generators (like those proposed for the Project) running during a PSPS in October 2019 generated 126 tons of NOx, 8.3 tons of 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 were declared. For the June 17, 2021 EHE, stationary generator owners were allowed to use their BUGs for 48 hours. For the July 9, 2021 EHE, the stationary generator owners were allowed to use their BUGs for 72 hours. These two events would have increased 10 fold the calculated DPM emissions from the Project if only the 12 hours of testing claimed in the DEIR were to be true. An EIR must be written for the Project that includes 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>10</sup> Governor of California. 2021. Proclamation of a state of emergency. June 17, 2021.

<sup>11</sup> SCAQMD. 2020. Proposed Amendment [sic] 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>12</sup> CARB. 2019. Use of Back-up Engines For Electricity Generation During Public Safety Power Shutoff Events. October 25, 2019.
- <sup>13</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>14</sup> CARB, 2020. Potential Emission Impact of Public Safety Power Shutoff (PSPS), Emission Impact: Additional Generator Usage associated With Power Outage.

### **Response to Comment No. 3-29**

This comment asserts that the Draft EIR fails to include the impacts from the potential operational hours for the proposed emergency generator. SCAQMD will require a permit application to be submitted to obtain 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 that time. The CEQA analysis made appropriate assumptions regarding how many hours the emergency generator would operate, annually. Newer generators are typically tested every week, all year round, for approximately 10 minutes at a time (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.

Regulatory limits may be established by various agencies but are not a required CEQA analytical assumption or a significance threshold per se. In addition, the data provided in this comment from CARB indicated power outages on a Statewide basis for a single month with varying assumptions on emergency generator usage. The commenter has not provided any substantial evidence that use of the backup emergency 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 emergency 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 of which 50 hours could be used for routine maintenance); 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 conservatively includes use of all 200 hours to further demonstrate that health risks from the Project would be a maximum of 3.9 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. Furthermore, the emergency generator represented 0.04 of the 3.9 in one million calculated risk.

### **Comment No. 3-30**

3. Using the South Coast Air Quality Management District's Rule 1401 the City's emissions estimates for criteria pollutants do not substitute for a health risk analysis of the cancer risk posed by exposure to TACs, in particular DPM, released during Project construction and operation. This broad-brushed, non-quantitative approach ignores the substantial health impacts from criteria pollutants and TACs that will be emitted from the Project's BUG. **Given The Proximity Of Sensitive Receptors To The Site And The Nature of The Toxic Air Contaminants Emitted, The Operational Emissions From The Back Up Generator Will Cause A Significant Health Risk To Residents Near The Project Site.** [sic]

According to the DEIR<sup>15</sup>, the proposed project would not result in non-permitted stationary sources that would emit substantial air pollutants or TACs. Routine testing and maintenance of the diesel emergency generator would result in emissions of DPM. However, the applicant would be required to work with the SCAQMD in order to obtain permits to operate. As part of the permit process, the SCAQMD will evaluate compliance with Rule 1401, New Source Review of Toxic Air Contaminants, and Rule 1401.1, Requirements for New and Relocated Facilities Near Schools. Rule 1401.1 identifies acceptable risk levels and emissions control requirements for new and modified facilities that may emit additional TACs. Under Rule 1401, permits to operate may not be issued when emissions of TACs result in a maximum incremental cancer risk greater than 1 in 1 million without application of best available control technology for toxics (TBACT), or a maximum incremental cancer risk greater than 10 in 1 million with application of T-BACT, or if the cumulative cancer burden (i.e., increase in cancer cases in the population) from all TACs emitted from a single piece of equipment exceeds 0.5, or a health hazard index (chronic and acute) greater than 1.0 (SCAQMD 2017b).

According to the DEIR, the proposed emergency generator would be operated for a limited time (12 hours or less per year for testing and maintenance) and would be required to meet the required emissions rates for DPM at the time of installation, and must be demonstrated to meet the requirements of all applicable rules before the SCAQMD can issue the permits to operate stationary source equipment.

Using the SCAQMD's Rule 1401 Risk Assessment Programs Risk Tool V1.103 software, it is possible to generate a site-specific screening level HRA for emissions from the back-up



generator (BUG). Assuming the system is restricted to maintenance and testing for 12 hours per year or less, the model calculates emissions of DPM of approximately 1.07 lbs per year. This value is the same as the amount reported in the DEIR for the operational analysis of the site.

Assuming the generator's emissions will be vented at the ground level, the vent to the generator would be approximately 14 feet above grade level. For the Risk Tool inputs, the stack height (exit point of the generator) was set to 14 feet above grade.

Based on the emission of 1.07 lbs per year of DPM, the SCAQMD Risk Tool calculates a risk of 3.08 in 1,000,000 for residents living within 180 feet (60.96 meters) of the Project Site. Commercial workers located within 80 feet (25 meters) of the site face a potential health risk of 6.26 in 1,000,000. The model was set to assume T-BACT controls were in place for the generator.

Assuming the system is maintained and operated for 200 hours per year or less, the model calculates emissions of DPM of approximately 17.8 lbs per year.

Based on the emission of 17.8 lbs per year of DPM, the SCAQMD Risk Tool calculates a risk of 51.4 in 1,000,000 for residents living within 180 feet (60.96 meters) of the Project Site. Commercial workers located within 80 feet (25 meters) of the site face a potential health risk of 104 in 1,000,000. The model was set to assume T-BACT controls were in place for the generator.

All of the results for this analysis are presented in Exhibit B to this letter. The City must address this significant error in their air quality analysis in a revised EIR.

<sup>15</sup> City of Los Angeles. 2021. DEIR of 8th, Grand, and Hope Project. Pg IV.A-58

### **Response to Comment No. 3-30**

This comment asserts that the Draft EIR failed to identify operational emissions from the emergency generator that will cause a significant health risk to residents near the Project Site. 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 300 hp diesel generator would emit 0.0724 pounds of PM<sub>10</sub> per day (conservatively assumed to operate one hour for routine testing and maintenance). Operation for 12 hours per year would equate to 0.8688 pounds per year. It is not clear how Clark calculated 1.07 pounds per year as this value is not the same as the amount reported in the Draft EIR. Clark provides no citation in the Draft EIR for this incorrect value. Furthermore, Clark compounds the error by citing that their calculations assumed compliance with T-BACT controls for the generator. T-BACT would further decrease the

0.8688 pounds per year by approximately 93 percent or 0.0579 pounds per year (operated 12 hours per year). It also appears that Clark assumed a load factor of 90 percent instead of the CalEEMod default value of 73 percent. Clark provides no supporting documentation for this change.

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 of SCAQMD Rule 1470). Residential uses are located on the southwest corner of Hope Street and 8<sup>th</sup> Street within 50 meters of the proposed location of the emergency generator (see Figure II-11 of the Draft EIR). The Draft EIR calculated emergency generator emissions consistent with requirements at the time of preparation of the analysis (0.15 g/bhp-hr). Therefore, DPM emissions from the emergency generator would decrease from 0.0724 pounds per hour to 0.0048 pounds per hour in compliance with updated SCAQMD Rule 1470. If the emergency generator operated 200 hours per year, then the annual emissions would equal 0.97 pounds per year of PM<sub>10</sub> and substantially less than purported by Clark (17.8 pounds per year). Health risk calculations provided by Clark are erroneous and should not be considered further. In review of health risk assessments prepared for SCAQMD as part of permitting requirements of emergency generators (SCAQMD FIND database) within the South Coast Air Basin, the City did not find emergency generators incorporating T-BACT within Los Angeles that result in an impact of over 100 in a million (threshold of 10 in a million) as Clark determined.

In addition, Clark had provided a health risk analysis using the SCAQMD's RiskTool screening spreadsheet. Some outputs from the SCAQMD RiskTool were provided, but the summary sheet which contains the input parameters was omitted. Upon further review of the health risk analysis performed by Clark, the diesel generator was entered in as a non-combustion source. The SCAQMD RiskTool spreadsheet has separate dispersion parameters for both combustion and non-combustion sources which is only displayed on the summary sheet containing input parameters. As a result of entering the diesel generator as a non-combustion source, concentrations and health risk calculated are more than doubled in comparison to a combustion source. Please refer to SCAQMD Rule 1401, Permit Application Package "N" guidance, Table 6.1A. As the summary sheet with input parameters was omitted from Clark's health risk analysis, this would suggest that the analyzing the diesel generator as a non-combustion source was intentional in order to misrepresent and overstate the health risk impacts.

As discussed above in Response to Comment 3-30, the HRA prepared in response to these comments conservatively includes use of all 200 hours to further demonstrate that health risks from the Project would be a maximum of 3.9 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. Furthermore, the emergency generator represented 0.04 of the 3.9 in one million calculated risk.

### **Comment No. 3-31**

#### **4. The City's Greenhouse Gas (GHG) Analysis Fails To Account For The Significant Increase in GHG Emissions That Will Be Realized With The Operation Of The BUGS Beyond 12 Hours Of Test Per Year.**

The City's GHG analysis calculates that BUGs at the Project Site will generate 1.3757 tons per year of CO<sub>2</sub> equivalent for each 12 hours of operation. As is demonstrated in Comment 3, operation of the BUGs is likely to exceed 17 times the number assumed in the DEIR (12 hours). Therefore a revised DEIR must be written for the Project that includes an analysis of the additional operation of the BUG that will occur at the project site that is not accounted for in the current GHG analysis.

### **Response to Comment No. 3-31**

This comment asserts that the Draft EIR failed to account for GHG emissions from the emergency generator beyond routine testing. As discussed in Response to Comment No. 3-25, use of 12 hours per year was a reasonable estimate of usage for the emergency generator. This comment fails to account for an increase in use of the emergency generator as the result of power outages could potentially result in an overall decrease in GHG emissions when accounting for a decrease in off-site electricity requirements and natural gas usage. The emergency generator would primarily supply necessary lighting and electrical needs during electricity outages. Thus, natural gas usage would also be limited (e.g., boilers and heating associated with HVAC) which require electricity usage. Assuming 200 hours of emergency generator usage would result in approximately 22.9 MTCO<sub>2</sub>e/yr (scaled from 1.376 MTCO<sub>2</sub>e/yr over 12 hours). However, conversely the Project would result in 200 hours less energy usage. As shown in Table IV.C-9 of the Draft EIR, the Project results in 1,057 MTCO<sub>2</sub>e/yr. This is equivalent to 24.1 MTCO<sub>2</sub>e/yr over 200 hours. Thus, additional use of the emergency generator could result in a reduction of Project-related GHG emissions.

### **Comment No. 3-32**

#### **5. The City's Greenhouse Gas Analysis Relies On An Unsupported Threshold**

The City has not adopted a numerical significance threshold for assessing impacts related to GHG emissions and has not formally adopted a local plan for reducing GHG emissions.

The DEIR concludes that the Project's GHG impacts would be less than significant based on the Project's consistency with the goals and actions to reduce GHG emissions found in the City's Green New Deal, and the 2017 California Climate Change Scoping Plan. While the City claims compliance with AB 32 Cap-and-Trade, the Project is not subject to Cap-and-Trade. Claims by the City that the compliance by third parties (those they are reliant on for energy) to reduce GHG emissions will reduce the Project's GHG emissions are unsupported and cannot be viewed as a reliable mitigation measure.<sup>16</sup> The City must correct these assumptions regarding the GHG analysis in a revised EIR.

<sup>16</sup> DEIR. 2021. Appendix IV.C. pg IV.C-78.

### **Response to Comment No. 3-32**

This comment asserts that the City's GHG analysis relies on an unsupported threshold. The comment misreads the relevant respective 2009 and 2019 statements of reasons for regulatory actions by the Natural Resources Agency. First, CEQA Guidelines Section 15064.4(a)(2) allows, in determining the significance of a project's impacts, a "qualitative" or "performance based" standard. Section 15064.4(b)(3) states that "[i]n determining the significance of impacts, the lead agency may consider a project's consistency with the State's long-term climate goals or strategies, provided that substantial evidence supports the agency's analysis of how those goals or strategies address the project's incremental contribution to climate change and its conclusion that the project's incremental contribution is not cumulatively considerable."

CEQA Guidelines Section 15064(h)(3) states, in relevant part, that a:

*...lead agency may determine that a project's incremental contribution to a cumulative effect is not cumulatively considerable if the project will comply with the requirements in a previously approved plan or mitigation program... that provides specific requirements that will avoid or substantially lessen the cumulative problem within the geographic area in which the project is located. Such plans or programs must be specified in law or adopted by the public agency with jurisdiction over the affected resources through a public review process to implement, interpret, or make specific the law enforced or administered by the public agency. 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.*

In the Draft EIR, the Project's GHG impacts are analyzed in Section IV.C and in Appendix B, the Project's Air Quality and GHG Emissions technical report. The analysis

includes a quantified assessment of the Project's GHG emissions utilizing CalEEMod 2016.3.2 modeling software. As discussed therein, the Project includes characteristics that have been identified to reduce GHG emissions through reductions of VMT in accordance with the LADOT VMT Calculator, which include the densification, location, and measures incorporated into the Project that are demonstrated through quantitative analysis to result in a 60-percent reduction in mobile-source GHG emissions and a 46-percent reduction overall as compared to a project that would not include the same VMT/GHG reducing elements and measures. (See Draft EIR, at p. IV.C-72.)

The Draft EIR includes a detailed point-by-point analysis of the Project's consistency with SCAG's 2020–2045 RTP/SCS, the *Climate Change Scoping Plan* and related regulations adopted to reduce GHG emissions and the City's Green New Deal. The analysis concludes that the Project is consistent with the plans' key GHG reducing goals and requirements. In particular, the Project represents an infill development within an existing urbanized area that would concentrate new residential within a HQTAs and is located approximately two blocks from the Los Angeles County Metropolitan Transportation Authority's (Metro's) 7th/Metro Center Metro Rail station, which contains the Metro Red, Purple, Blue, and Expo Lines and is a hub of the regional rail network. Based on the Project's location, use, design features, and regulatory compliance measures, the Project was determined to be overall consistent with key GHG reduction goals and requirements of the analyzed plans. The effectiveness of this compliance is further demonstrated through a quantitative analysis provided for informational and demonstrative purposes. Based on these factors, the Draft EIR concluded the Project would result in a less than significant impact with respect to GHG emissions. This determination is well supported by substantial evidence.

As discussed in Response to Comment No. 3-9, the GHG analysis complies with the requirements of CEQA relative to an impact analysis based on consistency with appropriate plans. First, under CEQA Guidelines Section 15064.4(a)(2), the robust consistency analysis of the Project with the Scoping Plan and its subsequent updates and key regulations meets the Guideline's allowance of an analysis of project consistency with the "State's long-term climate goals or strategies." (See also, *Center for Biological Diversity v. Cal. Dept. of Fish and Wildlife* (2015) 62 Cal.4th 204, 229-230 [Agency "did not proceed in violation of CEQA by its choice of Assembly Bill 32 consistency as a significance criterion.'].) Here, substantial evidence in terms of that consistency analysis itself and the demonstration of the effectiveness of that consistency through quantitative means provide ample substantial evidence to support the conclusion that the Project's incremental contribution to climate change is less than significant.

Second, the Draft EIR's robust analysis of the Project's consistency with the 2020–2045 RTP/SCS (Draft EIR, Section IV.C, pg. IV.C-56) is consistent with the requirements of Section 15064(h)(3) because the plan "provides specific requirements that will avoid or

substantially lessen the cumulative problem within the geographic area in which the project is located,” and is both “specified in law” and is “adopted by the public agency with jurisdiction over the affected resources through a public review process to implement, interpret, or make specific the law enforced or administered by the public agency.”<sup>15</sup> Namely, the 2020–2045 RTP/SCS was adopted by SCAG pursuant to a certified EIR that includes various requirements and control and mitigation measures that are demonstrated to achieve the quantified GHG reduction targets set in the plan. The Draft EIR for the Project further explains in Section IV.C, Greenhouse Gas Emissions, on pages IV.C-48 through 68 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. This analysis is thus consistent with the Guidelines and demonstrates with substantial evidence that the Project would result in less than significant GHG emissions impacts consistent with the requirements of CEQA.

The administrative record for the CEQA Guidelines Amendments also clarifies that “the effects of greenhouse gas emissions are cumulative, and should be analyzed in the context of California Environmental Quality Act’s requirements for cumulative impact analysis.”<sup>16</sup> As such, it is appropriate that the Draft EIR analysis evaluated consistency with the AB 32 Scoping Plan. Given that energy use and mobile source emissions are the two main sources of GHG emissions, consistency with Cap-and-Trade, Renewables Portfolio Standard, and Low Carbon Fuel Standards) is related to the Project. These important regulations/standards serve to substantially reduce project-related emissions.

Regarding Cap-and-Trade, this comment misrepresents what is stated in the Draft EIR to suggest that the Draft EIR is inconsistent with CARB guidance. Specifically, Section IV.D, Greenhouse Gas Emissions, on page IV.C-49 states:

*As required by AB 32 and the Climate Change Scoping Plan, the Cap-and-Trade Program covers the GHG emissions associated with electricity consumed in California, whether generated in-state or imported. Accordingly, this regulatory program applies to electric service providers and not directly to land use development. That being said, the Project would benefit from this regulatory program in that the GHG emissions associated with the Project’s electricity usage per year presented in Table IV.C-9 on page IV.C-72 would indirectly be covered by the Cap-and-Trade Program. Furthermore, the Cap-and-Trade Program also covers the GHG emissions associated with the combustion of transportation fuels in California, whether refined in-state or*

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<sup>15</sup> CEQA Guidelines 15064(h)(3).

<sup>16</sup> Letter from Cynthia Bryant, Director of the Governor’s Office of Planning and Research to Mike Chrisman, California Secretary for Natural Resources, dated April 13, 2009.

*imported. While not quantified in this analysis, the Project would benefit from this regulatory program in that the GHG emissions associated with the Project's electricity and fuel usage would indirectly be covered by the Cap-and-Trade Program.*

Contrary to what is suggested in this comment, nowhere in the cited language does it suggest that Cap-and-Trade covers mobile emissions from local land use projects.

Contrary to what is stated in this comment, compliance with an ordinance or rule is not considered mitigation. Nor can such compliance be "eliminated." As an example, CalEEMod 2016.3.2 energy demand default parameters only include compliance with 2016 Title 24 standards. In fact, energy/lighting usage factors are based on the 2010 CEC-sponsored California Commercial End-Use Survey (CEUS) and 2006 California Residential Appliance Saturation Survey (RASS) studies.<sup>17</sup> The data are specific for climate zones; therefore, Zone 11 was selected for the Project Site based on the ZIP Code tool. Since these studies are based on older buildings, a conservative 10-percent reduction was applied within CalEEMod to account for the more stringent mandatory 2019 Title 24 standards required of the Project. A newer version of CalEEMod 2020.4.0 was released in May 2021, subsequent to the NOP publication date. CalEEMod 2020.4.0 accounts for the 2019 Title 24 standards. As an example, Title 24 electricity usage rate for the apartments was reduced from 164.54 kW-hr/unit/yr (CalEEMod 2016.3.2) to 35.05 kW-hr/unit/yr (CalEEMod 2020.4.0) and well above a 10-percent reduction.<sup>18</sup>

Furthermore, the California Energy Commission voted on November 13, 2019, to ban the sale of inefficient light bulbs starting January 1, 2020. The Energy Independence and Security Act of 2007 (EISA) requires approximately 25 percent greater efficiency for light bulbs by phasing out incandescent light bulbs between 2012 and 2014. In addition, Project Design Feature GHG-PDF-1 requires installation of high efficiency lighting (e.g., use of light-emitting diode (LED) lighting or other energy-efficient lighting technologies, such as occupancy sensors or daylight harvesting and dimming controls, where appropriate, to reduce electricity use). Based on this information, it was appropriate to include a 25-percent reduction for lighting electricity usage. Compliance with Title 24 is enforced through the building permit process and is therefore appropriate to include this reduction in the CalEEMod modeling. This comment incorrectly states that the proposed Project Design Features and compliance with regulatory requirements are unenforceable. The proposed Project Design Features are included in Section IV, Mitigation Monitoring

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<sup>17</sup> CEC, *Commercial End-Use Survey, March 2006, and California Residential Appliance Saturation Survey, October 2010.*

<sup>18</sup> *CalEEMod, Appendix D (Default Tables), Table 8.1 (Energy Use by Climate Zone and Land Use Type) for Apartments High-Rise.*

Program, of this Final EIR, along with details about the enforcement and monitoring agencies, timing, and action indicating compliance. Furthermore, compliance with regulatory requirements (e.g., Title 24) is mandatory and is enforced through the building permit process.

### **Comment No. 3-33**

#### **Conclusion**

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

### **Response to Comment No. 3-33**

As demonstrated in Response to Comment Nos. 3-24 through 3-28, no changes to the significance conclusions would occur based on the Clark comment letter. As no new significant and unavoidable impacts were identified, there is no need to recirculate the Draft EIR.

### **Comment No. 3-34**

**Attachment:** Worksheets (28 pages)

### **Response to Comment No. 3-34**

As discussed above in Response to Comment No. 3-25, the modeling output file provided by Clark contains numerous errors (e.g., incorrect emission rate not based on data provided in the Draft EIR and no reduction in emissions required under SCAQMD Rule 1470 even though Clark states otherwise). Health risk calculations provided by Clark are erroneous and should not be considered further. In review of health risk assessments included within the SCAQMD FIND database, the City did not find emergency generators within Los Angeles that would use T-BACT and still result in an impact of over 100 in a million (threshold of 10 in a million). If these types of equipment would result in impacts specified by Clark, it is not clear how SCAQMD would be able to permit such a source.

### **Comment No. 3-35**

**Attachment:** James J. J. Clark Résumé (18 pages)



**Response to Comment No. 3-35**

This attachment is the curriculum vitae for the preparer of Exhibit A. This comment is noted for the record and will be forwarded to the decision-makers for their review and consideration.

**Comment No. 3-36****Attachment B**

As requested, we have reviewed the information and noise impact analyses in the following document:

*8th, Grand and Hope Project, Los Angeles, California  
Draft Environmental Impact Report ("DEIR")  
November 2021*

This letter reports our comments on the noise analysis in the subject document.

Wilson, Ihrig & Associates, Acoustical Consultants, has practiced exclusively in the field of acoustics since 1966. During our 56 years of operation, we have prepared hundreds of noise studies for Environmental Impact Reports and Statements. We have one of the largest technical laboratories in the acoustical consulting industry. We also utilize industry-standard acoustical programs such as Environmental Noise Model (ENM), Traffic Noise Model (TNM), SoundPLAN, and CADNA. In short, we are well qualified to prepare environmental noise studies and review studies prepared by others.

**Response to Comment No. 3-36**

The information regarding Wilson, Ihrig & Associates is noted for the administrative record and will be forwarded to the decision-makers for review and consideration.

**Comment No. 3-37****Adverse Effects of Noise<sup>1</sup>**

Although the health effects of noise are not taken as seriously in the United States as they are in other countries, they are real and, in many parts of the country, pervasive.

***Noise-Induced Hearing Loss.*** If a person is repeatedly exposed to loud noises, he or she may experience noise-induced hearing impairment or loss. In the United States, both the Occupational Health and Safety Administration (OSHA) and the National Institute for

Occupational Safety and Health (NIOSH) promote standards and regulations to protect the hearing of people exposed to high levels of industrial noise.

**Speech Interference.** Another common problem associated with noise is speech interference. In addition to the obvious issues that may arise from misunderstandings, speech interference also leads to problems with concentration fatigue, irritation, decreased working capacity, and automatic stress reactions. For complete speech intelligibility, the sound level of the speech should be 15 to 18 dBA higher than the background noise. Typical indoor speech levels are 45 to 50 dBA at 1 meter, so any noise above 30 dBA begins to interfere with speech intelligibility. The common reaction to higher background noise levels is to raise one's voice. If this is required persistently for long periods of time, stress reactions and irritation will likely result. The problems and irritation that are associated with speech disturbance have become more pronounced during the COVID-19 pandemic because many people find themselves and the people they live with trying to work and learn simultaneously in spaces that were not designed for speech privacy.

**Sleep Disturbance.** Noise can disturb sleep by making it more difficult to fall asleep, by waking someone after they are asleep, or by altering their sleep stage, e.g., reducing the amount of rapid eye movement (REM) sleep. Noise exposure for people who are sleeping has also been linked to increased blood pressure, increased heart rate, increase in body movements, and other physiological effects. Not surprisingly, people whose sleep is disturbed by noise often experience secondary effects such as increased fatigue, depressed mood, and decreased work performance.

**Cardiovascular and Physiological Effects.** Human's bodily reactions to noise are rooted in the "fight or flight" response that evolved when many noises signaled imminent danger. These include increased blood pressure, elevated heart rate, and vasoconstriction. Prolonged exposure to acute noises can result in permanent effects such as hypertension and heart disease.

**Impaired Cognitive Performance.** Studies have established that noise exposure impairs people's abilities to perform complex tasks (tasks that require attention to detail or analytical processes) and it makes reading, paying attention, solving problems, and memorizing more difficult. This is why there are standards for classroom background noise levels and why offices and libraries are designed to provide quiet work environments. While sheltering-in-place during the COVID-19 pandemic, many people are finding working and learning more difficult because their home environment is not as quiet as their office or school was.

<sup>1</sup> More information on these and other adverse effects of noise may be found in *Guidelines for Community Noise*, eds B Berglund, T Lindvall, and D Schwela, World Health Organization, Geneva, Switzerland, 1999. (<https://www.who.int/docstore/peh/noise/Comnoise-1.pdf>)

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**Response to Comment No. 3-37**

This comment provides information related to potential adverse impacts that can be associated with exposure to noise. This comment does not raise any specific points related to the Project's noise analysis included in the Draft EIR. This comment is noted for the record and will be forwarded to the decision-makers for their review and consideration.

**Comment No. 3-38****Comments on Construction Noise Mitigation**

The construction noise analysis in the DEIR is thorough, transparent, and reasonable. The DEIR correctly includes that, *sans* mitigation, the on-site construction noise impacts would be significant under CEQA at five nearby noise-sensitive receptors. [DEIR at p. IV.E-30] In Mitigation Measure NOI-MM-1, the DEIR commits to erecting a number of sound barriers around the site to reduce construction noise to levels less than the threshold of significance at ground-level receptors. However, the DEIR preparers recognize that these walls will not provide any noise relief to residents on the upper floors of neighboring buildings:

However, the temporary sound barriers would not be effective in reducing the construction-related noise levels for the upper levels of these residential buildings, including the 7-story apartment building at receptor location R1, the 33-story apartment building at receptor location R2, the 9-story apartment building at receptor location R4, the 24-story apartment building at receptor location R5, and the 22-story apartment building at receptor location R6. [DEIR at p. IV.E-42]

The DEIR states that it is infeasible to build sound barriers at the edge of the Project site that are tall enough to block the construction noise at the higher elevations, and that it is also infeasible to use "movable noise barriers". I concur with the infeasibility of both of these noise control methods, however, there are two other options not discussed in the DEIR which may be feasible.

**Response to Comment No. 3-38**

This comment summarizes the findings of the construction noise analysis included in Section IV.E, Noise, of the Draft EIR. The comment concurs with the Draft EIR's conclusion that it would be infeasible to build a sound barrier tall enough to mitigate construction noise at the upper floors of the adjacent high-rise buildings or to mitigate construction noise impacts through the use of moveable noise barriers. The comment also mentions two other options to reduce the on-site construction noise which are described in subsequent comments and addressed in Response to Comment Nos. 3-35 and 3-36.

**Comment No. 3-39**

The first is to erect scaffolding to support construction noise control blankets at the façades of impacted receptors (R1, R2, R4, R5, and R6). R1, R5, and R6 are literally across the street from the Project site. Because scaffolding attaches directly to the buildings for lateral support, it is reasonably economical to erect tall “sound barrier” walls. The light and aesthetic issues may be somewhat ameliorated by using clear vinyl for at least some of the “panels”. This was done (using standard construction noise control blankets) in San Francisco some years ago to shield the headquarters of a major financial company from noise during construction of a large project nearby. The financial building is 8-stories high. R1 is 9-stories high, which is similar, and it may not be necessary for the scaffolding to extend the full height of the R5 (24-story) or R6 (22-story) buildings.

**Response to Comment No. 3-39**

The comment suggests erecting scaffolding along the façades of the impacted off-site receptors and then placing a sound blanket with clear vinyl panels along the scaffolding. This would require physical construction activities to be implemented at the high-rise residential buildings that are not owned or operated by the Applicant. Specifically, heavy construction equipment (e.g., forklifts and aerial lifts) would be needed to attach the scaffolding and blankets along the entire extent of the adjacent building façades, which are up to 33 stories. Noise levels associated with forklifts, aerial lifts, and tools to erect the scaffolding and attach the noise blankets would be approximately 82.0 dBA when operating adjacent to the residential building, which would exceed the ambient noise levels (as measured at receptor R1) by up to 15.7 dBA and would also result in significant noise impacts. In addition, daylight into these buildings would be severely impacted and the outdoor balconies on one of the buildings (R1) would not be usable if scaffolding and a sound blanket were to be erected. Therefore, in addition to creating impacts of its own, this mitigation measure would require the approval of other property owners to implement, and that approval cannot be guaranteed. As such, this suggested mitigation measure is not reasonable or feasible.

**Comment No. 3-40**

A second option which may be feasible would be to install heavy Plexiglass or other clear panels around the edges of balconies that face the Project site to act as sound barriers without much affecting the light or view. As the photographs in Figure 1 below show, the balconies at R1 and R6 already have glass in the parapets, so it would simply be a matter of fitting Plexiglass on the upper portions. Because noise would reflect off the bottom of the balcony above, the panels would likely need to extend from the existing parapet to the balcony floor above with only a small opening for ventilation. The panels would need to be able to withstand wind loads, and there may be other code requirements. Determining the

exact number of balconies that would require treatment would require a detailed noise analysis.

### **Response to Comment No. 3-40**

As discussed in Response to Comment No. 3-35, the Applicant does not own or operate the nearby buildings that include residential uses. Furthermore, fitting of plexiglass for the two receptors that have balconies as suggested by the commenter would have its own construction noise impacts associated with construction equipment used to install the plexiglass, such as forklifts, aerial lifts and hand tools. As provided above, noise levels associated with forklifts, aerial lifts, and tools would be approximately 82.0 dBA when operating adjacent to the residential building, which would exceed the ambient noise levels by up to 15.7 dBA. Thus, for the same reasons as discussed above for the first suggested mitigation measure, this suggested mitigation measure is not reasonable or feasible.

### **Comment No. 3-41**

#### **Comments on Relativistic Threshold of Significance**

Beginning on page IV.E-38, the DEIR presents the “composite” noise level impact analysis from Project operations. This analysis, all too often not done, considers the summation of noise from all of the individual operational noises that had previously been analyzed: traffic, mechanical, parking, loading, trash compacting, and outdoor spaces. The results of the analysis are presented in Table IV.E-20 of the DEIR [p. IV.E-40]. A footnote in the table explains that

Significance criteria are equivalent to the existing ambient plus 3 dBA if the estimated noise levels (ambient plus Project) fall with the “normally unacceptable” or “clearly unacceptable” land use categories or ambient plus 5 dBA if the estimated noise levels fall with the “normally acceptable” or “conditionally acceptable” land use categories, per the City of Los Angeles Noise Element. [DEIR at p. IV.E-40, Table IV.E-20]

The obvious problem with this relativistic approach is that there is effectively no limit to noise exposure. For example, this approach would allow three successive projects that each add 2.9 dBA (the baseline resetting to the new post-project noise level after each), resulting in a total increase of 9.7 dBA which is clearly unacceptable. This illustrates how the relativistic threshold of significance utilized in the DEIR is incapable of preventing the continual degradation of the noise environment because it is always relative to the then-existing environment.

### **Response to Comment No. 3-41**

The comment indicates that the Project composite noise analysis underestimates the potential noise impacts using the noted threshold of significance. As indicated in the Draft EIR on page IV.E-20, the threshold of significance for the composite noise analysis is based on the *L.A. CEQA Thresholds Guide*, which includes an increase in ambient noise level of 3 dBA or 5 dBA in CNEL (depending on the land use category). In addition, the comment incorrectly aligns the composite noise analysis (a project-level impact) with the impacts of other related projects (cumulative-level impacts). Nevertheless, the Project utilized the appropriate project-level threshold of significance, as provided by the *L.A. CEQA Thresholds Guide*. Additionally, the Draft EIR does analyze the potential for cumulative construction and operational noise impacts. As described on pages IV.E-51 through IV.E-54 and IV.E-59 through IV.E-60 of the Draft EIR, cumulative-level construction noise impacts would be significant and unavoidable after implementation of mitigation. In addition, as described on pages IV.E-54 through IV.E-56 of the Draft EIR, cumulative-level operational noise impacts would be less than significant.

### **Comment No. 3-42**

The obvious solution to this problem is to also incorporate absolute thresholds, and the City of Los Angeles Guidelines for Noise Compatible Land Use are ideal for this use. [The Guidelines are presented in Table IV.E-2 of the DEIR at p. IV.E-7]. Currently, the existing ambient noise levels in the Project area are “conditionally acceptable” ( $60 \leq \text{CNEL} < 70$ ) at five of the receptors analyzed and “normally unacceptable” ( $70 \leq \text{CNEL} < 75$ ) at the other four as seen in the excerpt from DEIR Table IV.E-20 below (Figure 2).<sup>2</sup> Also seen in Figure 2, the composite noise from the Project will cause two of the receptors (R5 and R9) to crossover from the “conditionally acceptable” category (yellow) to the “normally unacceptable” category (red). The very fact that these receptors have been pushed from a category that is fundamentally “acceptable” to one that is fundamentally “unacceptable” should in and of itself be a threshold of significance. Incorporating an absolute threshold of significance is the only way to identify the indefinite degradation of the noise environment in Los Angeles.

<sup>2</sup> These are the values for “Residential—Multi-Family” buildings. “Conditionally acceptable” levels are highlighted in yellow; “normally unacceptable” levels are highlighted in red.

### **Response to Comment No. 3-42**

As indicated in the Draft EIR, the City’s thresholds of significance (which are based on the *L.A. CEQA Thresholds Guide*) provide two levels of thresholds for composite noise increases: a 3-dBA noise increase when the Project plus the ambient noise level fall within the “normally unacceptable” or “clearly unacceptable” category or a 5-dBA noise increase when the Project plus the ambient noise level fall within the “normally acceptable” or

“conditionally acceptable” category. As the Project’s composite noise levels at receptor locations R5 and R9 would change the noise exposure category of these receptors from the “conditionally acceptable” category to the “normally unacceptable,” the more stringent 3 dBA significance threshold was used, per the *L.A. CEQA Thresholds Guide* (Draft EIR, Table IV.E-20). The comment appears to suggest using a threshold of significance that is based on the change in the land use noise compatibility category only (e.g., a noise level change from “acceptable” to “unacceptable” without accounting for the incremental change). This approach would not be reasonable. For example, a noise level increase from 69.9 dBA CNEL (conditionally acceptable) to 70.0 dBA CNEL (normally unacceptable) for residential uses, would result in a maximum 0.1 dBA, increase, which would not be perceptible in an outdoor environment. Furthermore, the Project’s maximum increase in composite noise levels would be 2.6 dBA, which is less than the 3 dBA noise increase that is considered just perceptible. In summary, the Project utilizes the appropriate threshold of significance, as provided by the *L.A. CEQA Thresholds Guide*. Nevertheless, the comment will be forwarded to the decision-makers for their review and consideration.

### **Comment No. 3-43**

#### **Conclusion**

The DEIR correctly identifies that Project construction will cause a significant noise impact to residents in the area, but claims that there is no feasible mitigation. I suggest that either scaffolding-supported noise control blankets/panels or temporary Plexiglass barriers on individual balconies may be feasible options. Either of these would certainly work from a technical standpoint.

The DEIR follows the Los Angeles CEQA Threshold Guidelines which, for composite operational noise, is a relativistic standard based on the existing ambient. The repeated use of a relativistic standard means, effectively, there is no limit to how loud an area can become. Meanwhile, the Los Angeles General Plan Noise Element has absolute guidelines for land use compatibility given the noise exposure, and the Project noise would cause the noise environments at one residential building and one hotel to degrade from an “acceptable” category to an “unacceptable” category. Despite the fact that the relative increases fail to exceed the adopted relative threshold of significance, this absolute degradation should be a separate and distinct threshold. As such, the Project noise should be identified as significant.

### **Response to Comment No. 3-43**

This comment, which summarizes the previous comments and concludes the letter, is noted for the record and will be forwarded to the decision-makers for their review and consideration. Please refer to Response to Comment Nos. 3-35 and 3-36 for responses to

the specific issues of additional mitigation measures and Response to Comment Nos. 3-37 and 3-38 for responses to the specific issue of composite noise analysis.

**Comment No. 3-44**

Please contact me if you have any question about this review of the noise analysis in the *8th, Grand and Hope Project DEIR*.

**Response to Comment No. 3-44**

This comment does not raise any environmental issues requiring response. This comment is noted for the administrative record and will be forwarded to the decision-makers for review and consideration.

**Comment No. 3-45**



FIGURE 1 BALCONIES AT RESIDENTIAL RECEPTORS R1 AND R6



Receptor Location	Existing Ambient Noise Levels (CNEL (dBA)) (A)	Calculated Project-Related Noise Sources (CNEL (dBA))					Project Composite Noise Levels (CNEL (dBA)) (G=B+C+D+E+F) <sup>b</sup>	Ambient Plus Project Composite Noise Levels (CNEL (dBA)) (H=A+G) <sup>b</sup>	Increase in Noise Levels due to Project (CNEL (dBA)) (H-A)
		Traffic (B)	Mechanical (C)	Parking (D)	Loading & Trash Compactor (E)	Outdoor Spaces <sup>c</sup> (F)			
R1	70.7	57.4	49.0	43.3	51.8	55.4	60.6	71.1	0.4
R2	70.2	44.1	52.8	40.7	25.8	52.6	56.1	70.4	0.2
R3	68.4	54.8	44.2	32.3	24.7	45.7	55.6	68.6	0.2
R4	69.5	54.8	45.1	45.5	44.6	51.9	57.4	69.8	0.3
R5	69.4	<del>45.2</del>	<del>49.9</del>	<del>48.3</del>	<del>28.6</del>	<del>68.4</del>	68.5	72.0	2.6
R6	71.5	45.7	52.2	46.8	23.1	67.3	67.5	73.0	1.5
R7	72.4	47.7	47.4	51.1	19.6	63.4	63.9	73.0	0.6
R8	67.8	53.0	51.3	46.1	27.4	52.0	57.3	68.2	0.4
R9	69.4	<del>44.1</del>	<del>50.7</del>	<del>44.6</del>	<del>40.7</del>	<del>61.3</del>	61.9	70.1	0.7

FIGURE 2 EXCERPT OF DEIR TABLE IV.E-20: COMPOSITE NOISE IMPACTS

**Attachment:** Derek L. Watry Résumé [3 pages]

**Attachment:** Cleaner Diesel Handbook (Environmental Defense, April 2005) [85 pages]

**Attachment:** Overview: Diesel Exhaust & Health (CARB Web page) [8 pages]

**Attachment:** Emission Impact: Additional Generator Usage Associated with Power Outage (CARB, Potential Emissions Impact of Public Safety Power Shutoff, January 30, 2020) [4 pages]

**Attachment:** Guidelines for Community Noise (World Health Organization) [21 pages]

**Attachment:** PARs 1110.2, 1470, & 1472 Working Group Meeting #1 Zoom Webinar Slides (SCAQMD, December 10, 2020) [38 pages]

**Response to Comment No. 3-45**

These photographs and attachments to this comment letter correspond with previous comments within this comment letter that are responded to above.

**Comment Letter No. 4**

Cari Wolk  
President  
Athena Parking Inc.  
818 W. Seventh St., Ste. 860  
Los Angeles, CA 90017-3566

Stuart Morkun  
Vice President, Development  
Mitsui Fudosan America  
smorkun@mfamerica.com

**Comment No. 4-1**

We recently had the pleasure of seeing the design mock-ups for the referenced Mitsui Fudosan America housing project. It is visually a beautifully designed building and will be a welcome addition to the Downtown Los Angeles skyline.

It is also an incredibly well thought out project that will serve the community in its continuing quest for live, work, play and much needed housing.

We wholeheartedly support the Mitsui Fudosan America project at 8th Grand & Hope.

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

This comment indicating support for the Project is noted for the administrative record and will be forwarded to the decision-makers for review and consideration.

**Comment Letter No. 5**

Nejdeh Avedian  
General Manager  
Los Angeles United Investment Co.  
650 S. Hill St., Ste. 1010  
Los Angeles, CA 90014-1752

**Comment No. 5-1**

Recently I was briefed by Stuart Morkun of Mitsui Fudosan America on the above referenced project. As a Downtown Los Angeles stakeholder, I support the construction of more housing in order to help alleviate the city's housing crisis and make Downtown Los Angeles a thriving and more dynamic place to work, play, and live. I feel this is a very important step in helping with the lack of housing in DTLA.

Therefore, please accept this letter as my expression of support for the proposed project at 8th Grand & Hope.

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

This comment indicating support for the Project is noted for the administrative record and will be forwarded to the decision-makers for review and consideration.

**Comment Letter No. 6**

Amalia Bowley Fuentes  
Lozeau Drury LLP  
1939 Harrison St., Ste. 150  
Oakland, CA 94612-3507

Richard Drury  
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**Comment No. 6-1**

On behalf of Supporters Alliance for Environmental Responsibility (“SAFER”), attached please find comments on the DEIR for the 8th, Grand and Hope Project (ENV-2017-506-EIR; SCH 2019050010).

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 8th, Grand and Hope Project (ENV-2017-506-EIR; SCH 2019050010), including all actions related or referring to the development of a 50-story mixed-use building consisting of 580 residential units, up to 7,499 square feet of ground floor commercial/retail/restaurant space, and parking within 3 subterranean levels and 8 above-grade levels (“Project”).

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 Planning and Development Services Department address these shortcomings in a revised draft environmental impact report (“RDEIR”) and recirculate the RDEIR prior to considering approvals for the Project.

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

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

The Draft EIR is thorough and has been completed in full compliance with CEQA. This comment provides no evidence to substantiate otherwise. This comment is noted for

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

**Comment Letter No. 7**

Herb Goodman  
nerbgood15@icloud.com

**Comment No. 7-1**

We live directly across 8th in Sky Lofts from where the new building is going to be built. We understood that the portion being built on the Hope side is only around 17 stories and that the taller part would be on the Grand Ave side. Can you please let us know if that is the case.

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

The comment requests clarification on the height of the Project. As described in detail in Section II, Project Description, of the Draft EIR, the Project would involve the development of a 50-story, high-rise, mixed-use building with three below-grade parking levels. The building would have a maximum height of 592 feet above grade to the top of the parapet. The proposed building would be comprised of four above-ground tiers with varying stepbacks from Hope Street. As shown in Figure II-9 of Section II, Project Description, the first tier of the building adjacent to Hope Street would include nine levels with the next three tiers stepping back with the tallest height along Grand Avenue.

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**Comment Letter No. 8**

Diane Kravif  
645 W. Ninth St., Apt. 311  
Los Angeles, CA 90015-1643

**Comment No. 8-1**

I received Notice of Completion and Availability dated 11/18/21 for the DEIR for the 8th, Grand and Hope project and have attached a 2-page PDF with my comments. Please let me know that you received it, since the PDF is almost 2 MB.

FYI, it wasn't an easy task to be able to review the document! In accordance with instructions in the letter, I tried to access it online at the City Planning website. I was able to get to the web page with links to download the various sections, but wasn't able to download even the Table of Contents and Executive Summary (which is pretty short) even though I tried three different browsers—Brave, Firefox, and Safari. Since I live downtown, I walked over to the Central Library and discovered that even though the 11/18 letter says they have a copy of the DEIR, they did not in fact have it. They directed me to the Little Tokyo Branch, where I was finally able to review it. Success! But perhaps you can alert your IT Department to my problem with the website, and also make sure the Central Libraries receives a(nother) copy.

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

Notification and distribution of the Draft EIR was conducted in accordance with the City's practices that extend beyond CEQA requirements. Access to the Draft EIR on the City's website was tested using several browsers and all files were able to be properly accessed. Once made aware of the commenter's technical issues with the website, the City's IT Department was immediately notified. Thumb drives that included the Draft EIR were also sent to the Central Library, Little Tokyo Branch Library, Pico Union Branch Library, Chinatown Branch Library, Echo Park Branch Library, and Felipe de Neve Branch Library. Confirmation of receipt of the thumb drives by the libraries was provided. When the City heard from the commenter that the thumb drive could not be located at the Central Library, staff immediately contacted a librarian and sent another thumb drive that can be accessed by the public.

**Comment No. 8-2**

I live in the Market Lofts at 9th & Hope. Currently two major developments are under construction in the vicinity: one on the northeast corner of 8th & Figueroa, and the other on the north side of 8th between Figueroa and Francisco. Both projects include 24-hour, 7-

day closures of the northernmost lane on 8th and often on adjacent lanes to the south; recently only one lane was available on 8th between Figueroa and Francisco. The northbound and southbound access ramps to the Harbor Freeway are located on 8th just west of Francisco.

The current construction-related lane closures cause traffic backups on 8th between the access ramps and Grand daily, both during evening rush hour and often during the day. Westbound vehicles enter the intersections of 8th & Hope, 8th & Flower, and 8th & Figueroa on a green light but become trapped in the intersection when the light changes. This in turn blocks north-south traffic on Hope, southbound traffic on Flower, and northbound traffic on Figueroa—also impeding emergency vehicle access. We poor pedestrians must thread our way between vehicles blocking the crosswalks on 8th, all the while hoping that the drivers see us.

I have reviewed the DEIR for the 8th, Grand and Hope project (referred to here as 8th G&H), ENV-2017-506-EIR. I am writing to express my concern that the DEIR does not address environmental impact on traffic, emergency access, nor pedestrian safety during construction. The two current development projects under construction on the north side of 8th provide a preview of the impact of 8th G&H project on traffic during construction. It is significant. According to the DEIR, 8th G&H project construction will start in 2022 and last 3 years. Even by itself, the project will have similarly significant impact on traffic during construction; its cumulative impact will be even greater if the other two projects are still ongoing.

### **Response to Comment No. 8-2**

Potential environmental impacts associated with transportation, emergency access and pedestrian safety are thoroughly addressed in the Transportation Assessment (refer to Section 3.4, page 93, and Section 4, page 108) and in Section IV.G, Transportation, of the Draft EIR. Refer to the following more detailed comments and responses below, including Response to Comment Nos. 8-3 and 8-5 with regard to pedestrian safety.

### **Comment No. 8-3**

Here are my specific comments:

1. Table I-2 Summary of Impacts Under the Project, Section G Transportation, identifies all impacts as “Less Than Significant” but apparently (since the separate subcategories of Construction and Operation are not identified under this heading) only addresses transportation impacts during operation,. [sic] Transportation impacts during construction will be as significant as those described above, and should be considered explicitly in the EIR. I recognize that the DEIR calls a number of times for an LADOT-approved Construction Traffic



Management Plan (CTMP) and Worksite Traffic Control Plan (WTCP), but I believe that it should also identify construction-related traffic impact mitigation measures that must be incorporated into the project specifications on which contractors will base their bids. I suggest one in the summary paragraph at the end of my comments.

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

As discussed in the Transportation Assessment and in Section IV.G, Transportation, of the Draft EIR, construction-related transportation impacts of the Project would be less than significant. Note that under CEQA traffic congestion is no longer a basis for determining significant impacts. Based on LADOT's TAG, therefore, construction-related transportation impacts are evaluated in the context of emergency access and safety.

As discussed in detail in Section IV.G. Transportation of the Draft EIR, construction of the Project would require temporary lane closures. On Grand Avenue, the Project would close the right turn lane and bike lane adjacent to the Project Site for the 36-month duration of the construction period. The configuration of southbound Grand Avenue approaching 8th Street would temporarily change from one right lane, bike lane, and three through lanes, to one shared right/through lane and two through lanes. The shared right/through lane would also be marked with sharrows to enable the continuation of the bike route. The sidewalk would be maintained through provision of a covered walkway for pedestrians.

On 8th Street, the Project would close up to 8 feet of the curb lane for the 36-month duration of the construction period. This would require the relocation of the two bus stops on 8th Street (west of Grand Avenue and serving Metro Line 66, LADOT Express Lines 431 and 437, Antelope Valley Line 785, and Santa Clarita Transit Line 799). As part of Project Design Feature TR-PDF-1, construction plan details would be coordinated with emergency services and affected transit providers to determine the need to temporarily close or relocate bus stops. The configuration of westbound 8th Street approaching Hope Street would temporarily change from one right lane, three through lanes, and one left turn lane to one shared through/right lane, two through lanes and one left turn lane. Construction would also require closure of 8th Street sidewalk adjacent to the Project Site. An alternative pedestrian route would be available on the south side of 8th Street. As the sidewalks on Grand Avenue and Hope Street would remain open, the northwest corner of the 8th & Grand intersection and the northeast corner of the 8th & Hope intersection would remain open for pedestrians with covered protections.

On Hope Street, the Project would temporarily close up to 8 feet of the curb lane on occasion as needed. Closures would occur only during off-peak periods, and would be implemented with traffic cones. In the event of these closures, two on-street parking spaces on Hope Street would need to be temporarily removed. The existing configuration

of two northbound lanes on Hope Street would be retained at all times, and the sidewalk would be maintained with a covered walkway for pedestrians.

In accordance with Project Design Feature TR-PDR-1, the Project would prepare a Construction Traffic Management Plan (CTMP) and Worksite Traffic Control Plan (WTCP) to be approved by LADOT, which would ensure that emergency access would not be impeded. These plans would specify the details of any sidewalk or lane closures, including the potential temporary lane and/or sidewalk closures on Hope Street, Grand Avenue and 8th Street, alternative pedestrian routes, and on-site/off-site construction staging procedures. The plans would identify all traffic control measures, signs, delineators, and work instructions to be implemented by the construction contractor through the duration of demolition and construction activities. The Project would coordinate the plan details with emergency services and affected transit providers including the need to temporarily close or relocate bus stops. As such, the plans would minimize the potential conflicts between construction activities, street traffic, bicyclists, and pedestrians. The plans will be based on the nature and timing of the specific construction activities and other projects in the vicinity of the Project Site. Both the CTMP and the WTCP will be prepared prior to the start of construction, in order to respond to conditions at that time. LADOT will have final approval of specific measures, which will be coordinated with any other construction activity in the area at that time. With implementation of these plans, the Project's construction-related impacts to emergency access and safety would be less than significant.

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

2. Section IV-G [sic] of the DEIR analyzes traffic impact during construction, specifically on emergency access. It discusses the required CTMP and WTCP and says, among other things, "The plans would identify all traffic control measures, signs, delineators, and work instructions to be implemented by the construction contractor through the duration of demolition and construction activities. The Project would coordinate the plan details with emergency services and affected transit providers.... As such, *the plans would minimize the potential conflicts between construction activities, street traffic, bicyclists, and pedestrians*" (emphasis mine). It concludes that "Therefore, Project impacts to emergency access, including emergency routes, during construction would be less than significant." Under Section (2) Mitigation Measures, the DEIR states that "Project-level impacts with regard to emergency access would be less than significant. Therefore, no mitigation measures are required." All you have to do is stand at the intersection of 8th & Hope, 8th & Flower, or 8th & Figueroa today to see that this is untrue.

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

The Transportation Assessment and Section IV.G, Transportation, of the Draft EIR provide a detailed analysis of emergency access during construction. As discussed above

in Response to Comment No. 8-3, a CTMP and WTCP would be approved by LADOT that specifies specific measures related to emergency access. In addition, the plan details will be coordinated with emergency services. The plans will be based on the nature and timing of the specific construction activities and other projects in the vicinity of the Project Site. Note that current traffic conditions do not necessarily represent conditions that will occur when construction starts on the 8th, Grand and Hope Project. In addition, the Project is located in a dense grid of downtown streets that provide many alternate routes for emergency vehicles to travel to their destination.

### **Comment No. 8-5**

3. Section IV-G [sic] of the DEIR does not specifically analyze construction-related impact on traffic other than on emergency access. Construction-related traffic impact on vehicle hours of delay, vehicle safety, and pedestrian safety are not even mentioned. Again, observe above-mentioned 8th St intersections during evening rush hour and you will see that this omission is serious.

### **Response to Comment No. 8-5**

The Transportation Assessment (see Section 3.4, page 93), and Section IV.G, Transportation, of the Draft EIR address vehicular delay, vehicle safety, and pedestrian safety during construction. The provisions of the CTMP and the WTCP will be approved by LADOT and will ensure that temporary lane closures do not create any safety hazards or issues. As discussed in Response to Comment No. 8-3, although the north sidewalk on 8th Street adjacent to the Project would be closed during construction, alternate sidewalk routes exist including the south side of 8th Street. All crosswalks would continue to function at adjacent intersections, and full pedestrian circulation in the area would be maintained,. The Project would not affect pedestrian, bicycle or vehicle activity to adjacent parcels and access to those parcels by all modes would be maintained.

### **Comment No. 8-6**

4. The Transportation Assessment by The Mobility Group, Section 3.4.5 Evaluation, Temporary Transportation Constraints, page 95 says, "Temporary closures of two right turn lanes (one on Grand Avenue and one on 8th Street) would occur for a period of 36 months.... 8th Street leads to the on-ramps to the SR-110 Freeway. *However, the streets are not congested (LOS B and LOS C at adjacent intersections)...*" (emphasis mine). I guarantee that 8th & Hope, 8th & Flower, and 8th & Figueroa are all currently at LOS F during the PM peak because of the impact of the current construction projects on traffic. Even if these projects are already complete when the 8th G&H project begins, the same will happen at least at 8th & Grand and perhaps at 8th & Olive.

**Response to Comment No. 8-6**

The Transportation Assessment accurately reflected typical existing conditions based on data measurements conducted by traffic engineers and reviewed and approved by LADOT. There is no certainty that temporary construction activities and lane closures of nearby projects will overlap time horizons. As identified in the response to comments above, both the CTMP and the WTCP will include detailed measures to respond to conditions at that time. The Draft EIR provides information on the types of measures that could be included. LADOT will have final approval of specific measures, which will be coordinated with any other construction activity in the area at that time. Other related projects that may be constructed at the same time as the Project would also be required to implement CTMP and WTCPs to ensure that emergency access and safety is maintained. These plans would then be coordinated by LADOT.

**Comment No. 8-7**

In summary, I believe that the DEIR should be revised to analyze the significant individual and possibly cumulative impact of the 8th G&H project on traffic during construction—specifically, on emergency access, vehicle safety, and pedestrian safety. I also believe that an appropriate mitigation measure would be to require the contractor selected by the developer to fund City of LA traffic control officers at the affected intersections, at least during evening rush hours, to keep the intersections clear.

**Response to Comment No. 8-7**

The above responses have demonstrated that the Draft EIR adequately addressed impacts on traffic, emergency vehicles, and vehicle and pedestrian safety, and provided appropriate mitigation measures. Also refer to Sections IV.F.1, Public Services—Police Protection, and IV.F.2, Public Services—Fire Protection, of additional discussion of how emergency access will be provided during construction and operation of the Project. In addition, refer to Section IV.D, Land Use, of the Draft EIR for a discussion of the Project's consistency with City policies related to safety. The suggestion for the provision of traffic control officers at intersections is noted. LADOT will determine if they believe such a measure is necessary in the CTMP and/or WTCP at that time.

**Comment Letter No. 9**

Dan & Patricia Lewis  
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**Comment No. 9-1**

Please find our attached letter submitting comments following our DEIR review. A hard copy of the letter is also being mailed today.

This letter is in response to the “Notice of Completion and Availability” dated November 18, 2021, that we received regarding the subject building development being proposed. We have been aware of this development and attended the Public Scoping Meeting on May 29, 2019. We are very concerned about this new development because we are owners of a 20/F condo directly south, opposite 8th Street. We have written previous letters on September 18, 2017 and May 19, 2019. Although the new arrangement of the development has evolved, many of our previous comments remain and are documented again in order of priority below.

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

This introductory comment is noted for the administrative record and will be forwarded to the decision-makers for review and consideration. Note that a letter from the Commenter dated June 9, 2019, is included in the NOP comment letters included as Appendix A to the Draft EIR.

**Comment No. 9-2**

**Aesthetics/Visual Resources—Light, Glare and Shading:** We live in the mixed-use building south of this development and our condominium will face directly at the new Amenity Deck levels being proposed. Although the residential tower is now further east, the light, glare and shading of this new high-rise building will still create adverse environmental impacts to us and other Sky residences. The new development will create impacts with regard to light, glare, and shading, including:

- a) Light impacts from night-time light, both point sources and indirect sources. The residences in our building should be recognized as light-sensitive because we have an expectation for privacy during evening hours and will be subject to disturbance by bright light sources.

- b) Glare will be experienced, primarily during daytime, caused by the reflection of sunlight or artificial light from the new building's highly-polished surfaces, window glass and/or reflective materials. Glare generation is expected to be significant.
- c) Shading is expected to have an adverse impact to our residences because the shading will substantially interfere with the enjoyment of sun-related activities. The proposed now 50-story tower would be much taller than our existing 22-story building and the new shadows created by this development would be correspondingly longer at all times of the year. Sunlight is important to us for our physical comfort and well-being, and direct sunlight for the Sky residences [sic] is an important environmental factor.

Aesthetics/Visual Quality/Views: Visual resources are an important component of the quality of life when living downtown. Significant adverse impacts on aesthetic/visual quality is expected, including:

- a) Adverse effects on scenic LA vistas.
- b) Degradation of the existing visual character and visual quality of our unit, and other Sky residences. We only purchased this condo in Jan. 2017 and the 20/F City views of our unit were a key attraction for us. Further to above, the proposed development will directly impact our City views and will adversely impact our enjoyment of our residence (and associated amenities), as well as our property values.

Aesthetics/Visual Resource Impact Mitigation: We believe that mitigation of the above-referenced Aesthetics/Visual Quality/View impacts is incumbent on the new development (particularly for impacted DTLA privately-owned [sic] residences such as ours) and we believe that **compensation is warranted to offset the impacts from the new tower**. This compensation could be done in many different ways, including one-time monetary payments to the affected owners, or allow affected unit owners free access to the amenities deck of the new development.

### **Response to Comment No. 9-2**

The comment asserts that the Project would have unmitigated aesthetic impacts. As discussed on page 32 of the Initial Study included in Appendix A of the Draft EIR, in accordance with Senate Bill (SB) 743 [Public Resources Code (PRC) §21099(d)]: "Aesthetic and parking impacts of a residential, mixed-use residential, or employment center project on an infill site within a transit priority area (TPA) shall not be considered significant impacts on the environment." As PRC Section 21099 applies to the Project, by law, the aesthetic impacts of the Project are considered less than significant. Nonetheless, for informational purposes only, pages 33 through 38 of the Initial Study provide an analysis of the Project's potential aesthetics impacts. As demonstrated therein, the Project

would not result in significant light, glare or shading impacts. The proposed lighting sources would be similar to other lighting sources in the Project vicinity and would not generate artificial light levels that are out of character with the surrounding area, which is densely developed and characterized by a high degree of human activity during the day and night. All exterior lighting would meet all applicable LAMC lighting standards. With regard to glare, the glass coating of the Project's façade would be carefully selected in order to achieve as much transparency as possible within the limits of Title 24 with as low reflectivity as possible. Therefore, the façade of the building would not have the potential to produce a substantial degree of glare. Relative to shading, 801 S. Grand Avenue, the building in which the commenter resides at, is located to the southwest of the Project Site. Shadows are generally cast in a northerly direction. As such, shading of the building at 801 S. Grand Avenue would be limited to the early morning hours during the summer solstice (refer to the shading diagrams included as Appendix 1 to the Initial Study), and no significant shading impacts would occur.

With regard to views and visual character, as discussed on pages 34 and 35 of the Initial Study included as Appendix A to the Draft EIR, the Project is located in the urbanized Downtown area of Los Angeles where existing high-rise buildings form the skyline. In addition, the Project would be consistent with LAMC regulations related to height and massing and the height of the building would be consistent with existing and approved building heights within the Project vicinity. As such, impacts associated with views and visual character would also be less than significant. Furthermore, CEQA does not provide a basis for requiring compensation to the commenter; accordingly, the request for compensation is not a comment on the adequacy of the Draft EIR and no further response is required.

Note that property values are not an environmental topic and are not evaluated under CEQA.

### **Comment No. 9-3**

Public Services—Sidewalks & Homeless Countermeasures: Based on the current plans, wide sidewalks are envisioned surrounding this development—this will be an important positive feature in enhancing DTLA living conditions. Similarly, good lighting and security provisions will be needed to ensure that homeless encampments are discouraged in this area. Although the homeless situation is far worse to the east of this area, greater mention is needed to solve the ongoing homeless issues, which present very real health and personal security hazards to DTLA residents.

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

The comment acknowledges that the Project would have sidewalk improvements, but asserts that the homeless situation should be addressed by the Draft EIR. As part of the Project, the adjacent sidewalks would be improved to promote pedestrian activity. Lighting along the sidewalks would be provided in accordance with LAMC requirements. Furthermore, the Project would include security measures (e.g., on-site security; a closed-circuit camera system; keycard entry for the residential building and residential parking areas; lighting of parking areas and lobbies; and visible entrances and walkways) and would not exacerbate the issue of homelessness within the Project vicinity. CEQA does not require an EIR to address general community issues related to homelessness and not caused by or exacerbated by the Project.

**Comment No. 9-4**

Parking: We have noted that this DTLA area has an excess of available parking and future parking requirements will need to consider the ongoing and planned improvements to public transportation, the prevalence of ride-sharing services, and the likelihood of future autonomous vehicle developments—all of these will further reduce personal car ownership in DTLA and consequently reduce the need for residential parking. In addition, any new parking should include generous provisions for Electric Vehicle (EV) hookups, preferably with some public access, as the share of EVs will undoubtedly be increasing going forward.

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

The comment contends that the Project should have reduced residential parking and should include EV hookups. As discussed on page II-29 of Section II, Project Description, of the Draft EIR, the Project would provide parking for its residential uses at the ratios required by the Central City Parking Exception (LAMC Section 12.21 A.4(p)), which would be less than the City's standard Code parking requirements. In addition, the Project would utilize a 5-percent bicycle parking reduction for a residential project located within 1,500 feet of a major transit stop (LAMC Section 12.21 A.4). Prior to the bike parking reduction, the Project would be required to provide 634 spaces for the 580 residential units; however, this amount would be reduced by 5 percent of the required parking spaces to 602 spaces through the bike parking replacement reduction for the residential component of the Project. Per the Central City Parking Exception District, no parking is required for the commercial/retail/restaurant component of the Project as the total square footage is less than 7,500 square feet. Overall, the Project would provide a total of 602 parking stalls to accommodate the Project's residential parking component, 34 spaces for an adjacent building located at 611 W. 6th Street per current parking agreements (as recorded covenants PKG-4743, PKG-5261, and PKG-5248), and four surplus parking spaces. As such, the Project would not result in an overabundance of parking spaces. In addition, as discussed on page II-34 of Section II, Project Description,



of the Draft EIR, pursuant to City of Los Angeles Ordinance 186,485 and Ordinance 186,488, 30 percent of the parking spaces in the Project would be capable of supporting future electric vehicle supply equipment and 10 percent of spaces would include EV charging stations. The request for public EV parking spaces is noted and will be forwarded to the decision-makers for review and consideration.

### **Comment No. 9-5**

Public Services—Charter School/Children’s Play Areas: We support the provisions for a school within the development. We note that DTLA is evolving quickly and we anticipate that more families will be attracted to the new residential options that are becoming available. We think new developments such as this need to be forward-looking and make provisions for future family needs, such as children’s play areas.

Public Services—Resident Pet Areas: We note that the development no longer includes a “Dog Park with AstroTurf”, [sic] which was shown in previous plans. We believe this should be reinstated as this amenity is critical to the planned development. The amount of pet ownership in DTLA is growing and there are currently not enough areas for dogs. which has led to frequent unsightly and unsanitary conditions on city sidewalks in this neighborhood. All such new developments need to show leadership in combating this adverse situation.

Please feel free to contact us at any time if there is a question regarding this letter.

### **Response to Comment No. 9-5**

The comment does not address the adequacy of the Draft EIR, but expresses support for a school project option, play area for families with children, and a dog park. The school option is no longer proposed as part of the Project. However, as discussed on page 73 of the Initial Study (Appendix A of the Draft EIR), the Project will be required to pay school fees in accordance with Government Code Section 65995 which constitute full and complete mitigation of a project’s impacts on existing school facilities. Therefore, with compliance with the Government Code Section 65995, the Project’s impacts on schools would be less than significant.

As discussed on page II-20 of Section II, Project Description, of the Draft EIR, the Project does include a number of indoor and outdoor common open space areas, including 13,140 square feet of indoor open space, 15,358 square feet of outdoor open space, and 8,596 square feet of outdoor covered open space. Recreational amenities within these areas would include a pool, gym, spa, yoga and fitness areas, juice bar, barbeque and dining areas, seating areas, event lawn, lounges, indoor fitness/recreation areas, and fire

pits. The Project would also provide two dog runs, pet amenity and a dog day care area that would not count towards the Project's open space requirement.