



APPLICATIONS:

APPEAL APPLICATION

This application is to be used for any appeals authorized by the Los Angeles Municipal Code (LAMC) for discretionary actions administered by the Department of City Planning.

1. APPELLANT BODY/CASE INFORMATION

Appellant Body:

☐ Area Planning Commission ☐ City Planning Commission ☒ City Council ☐ Director of Planning

Regarding Case Number: CPC-2015-2893-VZC-HD-CUB-ZAA-SPR

Project Address: 6407-6411 West Sunset Boulevard, 1511 North Ivar Avenue, 1512 North Cahuenga Boulevard

Final Date to Appeal: 12/20/2016

Type of Appeal:

- ☐ Appeal by Applicant/Owner
☒ Appeal by a person, other than the Applicant/Owner, claiming to be aggrieved
☐ Appeal from a determination made by the Department of Building and Safety

2. APPELLANT INFORMATION

Appellant's name (print): Coalition for Responsible Equitable Economic Development c/o Rachael Koss

Company: _____

Mailing Address: 601 Gateway Blvd, Suite 1000

City: South San Francisco

State: CA

Zip: 94080

Telephone: (650) 589-1660

E-mail: rkoss@adamsbroadwell.com

- Is the appeal being filed on your behalf or on behalf of another party, organization or company?

☐ Self

☒ Other: Coalition for Responsible Equitable Economic Development ("CREED LA")

- Is the appeal being filed to support the original applicant's position?

☐ Yes

☒ No

3. REPRESENTATIVE/AGENT INFORMATION

Representative/Agent name (if applicable): Rachael koss

Jeff Modrajewski

Company: Adams Broadwell Joseph & Cardozo

Mailing Address: 601 Gateway Blvd, Suite 1000

City: South San Francisco

State: CA

Zip: 94080

Telephone: (650) 589-1660

E-mail: rkoss@adamsbroadwell.com

4. JUSTIFICATION/REASON FOR APPEAL

Is the entire decision, or only parts of it being appealed? ☒ Entire ☐ Part

Are specific conditions of approval being appealed? ☐ Yes ☒ No

If Yes, list the condition number(s) here: _____

Attach a separate sheet providing your reasons for the appeal. Your reason must state:

- The reason for the appeal
- How you are aggrieved by the decision
- Specifically the points at issue
- Why you believe the decision-maker erred or abused their discretion

5. APPLICANT'S AFFIDAVIT

I certify that the statements contained in this application are complete and true:

Appellant Signature: _____

Date: 12/19/16

6. FILING REQUIREMENTS/ADDITIONAL INFORMATION

- Eight (8) sets of the following documents are required for each appeal filed (1 original and 7 duplicates):
 - Appeal Application (form CP-7769)
 - Justification/Reason for Appeal
 - Copies of Original Determination Letter
- A Filing Fee must be paid at the time of filing the appeal per LAMC Section 19.01 B.
 - Original applicants must provide a copy of the original application receipt(s) (required to calculate their 85% appeal filing fee).
- All appeals require noticing per the applicable LAMC section(s). Original Applicants must provide noticing per the LAMC, pay mailing fees to City Planning's mailing contractor (BTC) and submit a copy of the receipt.
- Appellants filing an appeal from a determination made by the Department of Building and Safety per LAMC 12.26 K are considered Original Applicants and must provide noticing per LAMC 12.26 K.7, pay mailing fees to City Planning's mailing contractor (BTC) and submit a copy of receipt.
- A Certified Neighborhood Council (CNC) or a person identified as a member of a CNC or as representing the CNC may not file an appeal on behalf of the Neighborhood Council; persons affiliated with a CNC may only file as an individual on behalf of self.
- Appeals of Density Bonus cases can only be filed by adjacent owners or tenants (must have documentation).
- Appeals to the City Council from a determination on a Tentative Tract (TT or VTT) by the Area or City Planning Commission must be filed within 10 days of the date of the written determination of said Commission.
- A CEQA document can only be appealed if a non-elected decision-making body (ZA, APC, CPC, etc.) makes a determination for a project that is not further appealable. [CA Public Resources Code ' 21151 (c)].

This Section for City Planning Staff Use Only		
Base Fee: \$ 89.00	Reviewed & Accepted by (DSC Planner): <i>Tina Martin</i>	Date: 12/19/16
Receipt No: 0203316177	Deemed Complete by (Project Planner):	Date:
<input type="checkbox"/> Determination authority notified		<input type="checkbox"/> Original receipt and BTC receipt (if original applicant)

Findings
63 pgs.
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December 16, 2016

VIA HAND DELIVERY

City Council

City of Los Angeles

C/o Appeals Clerk

Marvin Braude San Fernando Valley Constituent Service Center

6262 Van Nuys Blvd., Room 251

Van Nuys, CA 91401

Re: Appeal to the Los Angeles City Council of the December 5, 2016 City Planning Commission Determination in Case No. CPC-2015-2893-VZC-HD-CUB-ZAA-SPR, ENV-2015-2895-MND

Dear Honorable Mayor Garcetti and City Council Members:

On behalf of Coalition for Responsible Equitable Economic Development ("CREED LA") we are writing to appeal the City Planning Commission's approvals of a Conditional Use Permit, Zoning Administrator's Adjustment and Site Plan Review for the Hollywood Ivar Gardens Project, CPC-2015-2893-VZC-HD-CUB-ZAA-SPR, ENV-2015-2895-MND ("Project"), including the City Planning Commission's reliance on the Project's Initial Study/Mitigated Negative Declaration ("IS/MND"). The Project is proposed by R.D. Olsen Development ("Applicant") and is located at 6407-6411 West Sunset Boulevard, 1511 North Ivar Avenue and 1512 North Cahuenga Boulevard. The Project involves the demolition of an existing fast food restaurant and surface parking, and the construction of a 21-story, 141,895 square-foot mixed-use building containing 275 hotel guestrooms with kitchenettes and 1,900 square feet of ground floor commercial space. The Project also includes four levels of subterranean parking. Project construction will require the export of approximately 3,882 square feet of demolition material and 56,000 cubic yards of soil.

Pursuant to the City of Los Angeles ("City") appeal procedures, we have attached 8 copies each of this letter with exhibits, the Appeal Application (form CP-

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7769), and the original Determination Letter. We have also enclosed a check for \$89 for the appeal fee.

The reason for this appeal is that the City Planning Commission abused its discretion and violated the California Environmental Quality Act (“CEQA”) when it approved the Conditional Use Permit, Zoning Administrator’s Adjustment and Site Plan Review for the Project. CEQA requires that the potential impacts of this Project be evaluated in an environmental impact report (“EIR”), not in an MND, because substantial evidence exists that the Project may have significant, unmitigated environmental impacts to air quality and public health, and from greenhouse gas emissions and hazardous materials.

Our July 6, 2016 and September 7, 2016 comment letters on the Project are attached hereto,¹ and the specific reasons for this appeal are set forth in detail in those letters and summarized below. In short, substantial evidence supports a fair argument that that Project will cause: (1) a significant, unmitigated cancer risk from toxic air contaminant emissions, (2) a potentially significant, unmitigated impact from greenhouse gas emissions, and (3) a significant, unmitigated impact from hazardous materials.

A. The Project Will Cause a Significant, Unmitigated Cancer Risk from Toxic Air Contaminants Emissions

The MND concludes that the health risk posed to nearby sensitive receptors from exposure toxic air contaminants (“TAC”), including diesel particulate matter (“DPM”) emissions, from Project construction and operation would be less than significant. We previously explained that the MND’s conclusion is unsupported because the City failed to quantify the risk and compare it to applicable thresholds of significance. We also provided substantial evidence that the Project would result in potentially significant health risks from DPM emissions. To date, the City has failed to adequately address our concerns.

As it stands, substantial evidence supports a fair argument that the Project emissions from DPM will result in significant cancer risks. The City must therefore

¹ See **Exhibit 1**: Letter from Rachael Koss to Jordann Turner re: Comments on the Initial Study/Mitigated Negative Declaration for the Hollywood Ivar Gardens Project (ENV-2015-2895-MND; CPC 2015-2893-VZC-HD-CUB-SPR), July 6, 2016; and **Exhibit 2**: Letter from Rachael Koss to Jordann Turner re: Hollywood Ivar Gardens Project (ENV-2015-2895-MND; CPC 2015-2893-VZC-HD-CUB-SPR), September 7, 2016.
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prepare an EIR that includes a quantitative health risk assessment (“HRA”) to disclose and analyze the Project’s health risks from air pollutants, and compare the risks to applicable thresholds of significance. Indeed, the South Coast Air Quality Management District (“SCAQMD”) recommends that HRAs be prepared for development projects subject to CEQA. The City has not prepared a HRA and, as a result, has failed to disclose and analyze the Project’s significant health risks from the Project’s DPM emissions from trucks and off-road heavy equipment.

B. The Project Will Cause a Significant, Unmitigated Impact from Greenhouse Gas Emissions

We previously provided substantial evidence showing that the Project’s greenhouse gas (“GHG”) emissions would result in a significant, unmitigated impact. Specifically, the Project’s combined, amortized construction and operation emissions are 3,102 MTCO₂e/year, which exceed the SCAQMD’s screening threshold of 3,000 MTCO₂e/year. This remains a significant, unmitigated impact that the City has failed to disclose.

C. The Project May Result in a Significant, Unmitigated Impact from Hazardous Materials

We previously provided substantial evidence showing that the Project may result in a significant, unmitigated impact from on-site contamination. Specifically, the former dry cleaning and gas station uses on the Project site may have caused subsurface contamination that would pose a health risk to construction workers, hotel guests and hotel workers. Chemical contamination commonly associated with dry cleaners includes tetrachloroethylene (“PCE”), a likely carcinogen, and chemical contamination associated with gas stations includes benzene, a known human carcinogen and volatile organic compound (“VOC”). Hotel guests and hotel workers may be exposed to these contaminants through vapor intrusion, and construction workers may be exposed to these contaminants through contact with contaminated soil or by breathing vapors during excavation, grading and trenching. To date, the City has failed to analyze the Project’s potentially significant impacts from on-site contamination.

Rather, the MND and Phase I Environmental Site Assessment prepared for the Project *assume*, without any supporting sampling results or any evidence of investigations conducted for contamination from dry cleaning operations, that the former uses on the site will not result in a significant impact. As we previously

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explained, the City must include environmental sampling results in an EIR, including results for soil vapor, PCE and benzene. The EIR must compare soil sampling results to construction worker screening levels to determine the Project's potentially significant impacts from contamination. Without sampling results, there is no support for the MND's and Phase I ESA's conclusions. In addition, an investigation targeting contamination from dry cleaning operations must be performed and the results included in an EIR. Without a targeted investigation, there is no support for the MND's and Phase I ESA's conclusions.

As a result of these errors, the adoption of the MND and approval of the Conditional Use Permit, Zoning Administrator's Adjustment and Site Plan Review violated CEQA and must be overturned. We urge the City Council to grant our appeal and order the preparation of an EIR for the Project. Thank you for your attention to this important matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Rachael E. Koss".

Rachael Koss

REK:acp

EXHIBIT 1

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ELLEN L. WEHR

July 6, 2016

VIA EMAIL AND OVERNIGHT MAIL

Mr. Jordann Turner, City Planner
Department of City Planning
City of Los Angeles
200 North Spring Street, Room 750
Los Angeles, CA 90012
Email: jordann.turner@lacity.org

**Re: Comments on the Initial Study / Mitigated Negative Declaration
for the Hollywood Ivar Gardens Project (ENV-2015-2895-MND;
CPC 2015-2893-VZC-HD-CUB-SPR)**

Dear Mr. Turner:

We write on behalf of the Coalition for Responsible Equitable Economic Development ("CREED LA"), Thomas Brown, Luther Medina, John Ferruccio, Jorge L. Aceves, John P. Bustos, Gery Kennon, Chris S. Macias and Robert E. Murphy Jr., to provide comments on the Initial Study and Mitigated Negative Declaration ("MND") prepared by the City of Los Angeles ("City") for the Hollywood Ivar Gardens Project (ENV-2015-2895-MND; CPC 2015-2893-VXC-HD-CUB-SPR) ("Project"), proposed by R.D. Olson Development ("Applicant"). The Project is proposed to be located at 6409, 6411 and 6407 W. Sunset Boulevard, 1512 N. Cahuenga Boulevard and 1511 N. Ivar Avenue in the Hollywood Community Plan Area of the City of Los Angeles. The Project involves the demolition of an existing fast food restaurant and surface parking, and the construction of a 21-story, 141,895 square-foot mixed-use building containing 275 hotel guestrooms with kitchenettes and 1,900 square feet of ground floor commercial space. The Project also includes four levels of subterranean parking. Project construction will require the export of approximately 3,882 square feet of demolition material and 56,000 cubic yards of soil.

Based upon our review of the MND and supporting documentation, we conclude that the MND fails to comply with the requirements of the California

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Environmental Quality Act¹ (“CEQA”). The MND fails to provide a complete and accurate Project description and fails to identify the Project’s potentially significant environmental impacts and propose measures that can reduce those impacts to a less than significant level.

As explained in these comments, there is more than a fair argument that the Project will result in potentially significant impacts to air quality and public health, and from greenhouse gas emissions and hazardous materials. The City may not approve the Vesting Zone Change, Height District Change, Conditional Use Permit, Zoning Administrator’s Adjustment or Site Plan Review Findings for the Project until it prepares an environmental impact report (“EIR”) that adequately analyzes the Project’s potentially significant direct, indirect and cumulative impacts, and incorporates all feasible mitigation measures to avoid or minimize these impacts.

We prepared these comments with the assistance of air quality and hazards experts Matt Hagemann and Jessie Jaeger of Soil/Water/Air Protection Enterprise (“SWAPE”). SWAPE’s technical comments and curricula vitae are attached hereto as **Attachment A**. The City must address and respond to the comments of these experts separately.²

I. STATEMENT OF INTEREST

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

Individual members of CREED LA and its member organizations include Thomas Brown, Luther Medina, John Ferruccio, Jorge L. Aceves, John P. Bustos, Gery Kennon, Chris S. Macias, and Robert E. Murphy Jr., who live, work, recreate and raise their families in the City of Los Angeles and surrounding communities. Accordingly, they would be directly affected by the Project’s environmental and health and safety impacts. Individual members may also work on the Project itself.

¹ Pub. Resources Code §§ 21000 et seq.; 14 Cal. Code Regs. §§ 15000 et seq. (“CEQA Guidelines”).

² See CEQA Guidelines § 15088(a).

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They will be first in line to be exposed to any health and safety hazards that exist onsite.

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

II. AN EIR IS REQUIRED

CEQA requires that lead agencies analyze any project with potentially significant environmental impacts in an EIR.³ “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.”⁴ 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.”⁵

CEQA’s purpose and goals must be met through the preparation of an EIR, except in certain limited circumstances.⁶ CEQA contains a strong presumption in favor of requiring a lead agency to prepare an EIR. This presumption is reflected in the “fair argument” standard. Under that standard, a lead agency “shall” prepare an EIR whenever substantial evidence in the whole record before the agency supports a fair argument that a project may have a significant effect on the environment.⁷

³ See Pub. Resources Code § 21000; CEQA Guidelines § 15002.

⁴ *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564 (citations omitted).

⁵ *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

⁶ See Pub. Resources Code § 21100.

⁷ Pub. Resources Code §§21080(d), 21082.2(d); CEQA Guidelines §§ 15002(k)(3), 15064(f)(1), (h)(1); *Laurel Heights Improvement Assn. v. Regents of the Univ. of Cal.* (1993) 6 Cal.4th 1112, 1123; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 82; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-151; *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1601-1602.

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

(1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review *would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur*, and (2) there is *no substantial evidence* in light of the whole record before the public agency that the project, as revised, *may* have a significant effect on the environment.⁸

Courts have held that if “no EIR has been prepared for a nonexempt project, but substantial evidence in the record supports a fair argument that the project may result in significant adverse impacts, the proper remedy is to order preparation of an EIR.”⁹ The fair argument standard creates a “low threshold” favoring environmental review through an EIR, rather than through issuance of a negative declaration.¹⁰ An agency’s decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.¹¹

“Substantial evidence” required to support a fair argument is defined as “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.”¹² Substantial evidence can be provided by technical experts or members of the public.¹³

⁸ Pub. Resources Code § 21064.5 (emphasis added).

⁹ E.g. *Communities for a Better Env’t. v. South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 319-320.

¹⁰ *Citizens Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 754.

¹¹ *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th, 1307, 1318; see also *Friends of B Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002 (“If there was substantial evidence that the proposed project might have a significant environmental impact, evidence to the contrary is not sufficient to support a decision to dispense with preparation of an EIR and adopt a negative declaration, because it could be ‘fairly argued’ that the project might have a significant environmental impact”).

¹² CEQA Guidelines § 15384(a).

¹³ E.g. *Citizens for Responsible and Open Gov’t. v. City of Grand Terrace* (2008) 160 Cal.App.4th 1323, 1340 (substantial evidence regarding noise impacts included public comments at hearings that selected air conditioners are very noisy); see also *Architectural Heritage Assn. v. County of Monterey*

According to the CEQA Guidelines, when determining whether an EIR is required, the lead agency is required to apply the principles set forth in Section 15064(f):

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

Furthermore, CEQA documents, including EIRs and MNDs, must mitigate significant impacts through measures that are “fully enforceable through permit conditions, agreements, or other legally binding instruments.”¹⁴ Deferring formulation of mitigation measures to post-approval studies is generally impermissible.¹⁵ Mitigation measures adopted after Project approval deny the public the opportunity to comment on the Project as modified to mitigate impacts.¹⁶ If identification of specific mitigation measures is impractical until a later stage in the Project, specific performance criteria must be articulated and further approvals must be made contingent upon meeting these performance criteria.¹⁷ The Courts have held that simply requiring a project applicant to obtain a future report and then comply with any recommendations that may be made based upon the report is insufficient to meet the standard for properly deferred mitigation.¹⁸

With respect to this Project, the MND fails to satisfy the basic purposes of CEQA. The MND fails to adequately disclose, investigate, and analyze the Project’s potentially significant impacts, and fails to provide substantial evidence to conclude that impacts will be mitigated to a less than significant level. Because the MND lacks basic information regarding the Project’s potentially significant impacts, the

(2004) 122 Cal.App.4th 1095, 1117-1118 (substantial evidence regarding impacts to historic resource included fact-based testimony of qualified speakers at the public hearing); *Gabric v. City of Rancho Palos Verdes* (1977) 73 Cal.App.3d 183, 199.

¹⁴ CEQA Guidelines § 15126.4(a)(2).

¹⁵ *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 308-309; CEQA § 21061.

¹⁶ *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1393; *Quail Botanical Gardens Foundation v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1604, fn. 5.

¹⁷ *Id.*

¹⁸ *Id.*

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MND's conclusion that the Project will have a less than significant impact on the environment is unsupported.¹⁹ The City failed to gather the relevant data to support its finding of no significant impacts, and substantial evidence shows that the Project may result in potentially significant impacts. Therefore, a fair argument can be made that the Project may cause significant impacts requiring the preparation of an EIR.

III. THE MND FAILS TO ADEQUATELY DESCRIBE THE PROJECT

The MND does not meet CEQA's requirements because it fails to include a complete and accurate project description, rendering the entire impact analysis inherently unreliable. An accurate and complete project description is necessary to perform an evaluation of the potential environmental effects of a proposed project.²⁰ Without a complete project description, the environmental analysis will be impermissibly narrow, thus minimizing the project's impacts and undercutting public review.²¹ The courts have repeatedly held that "an accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient [CEQA document]."²² Only through an accurate view of the project may affected outsiders and public decision makers balance the proposal's benefit against its environmental costs.²³

A. The MND Fails to Adequately Describe the Haul Route

The MND fails to adequately describe the haul route or the number of trucks that will be used to export 3,882 square feet of demolition material and 56,000 cubic yards of soil during Project construction. The MND identifies two potential haul routes: (1) 12.71 miles (each way) to the Bradley Landfill; and (2) 27.61 miles (each way) to the Manning Pit. However, the MND acknowledges that the haul route that will be used for the Project will not be determined until prior to construction.²⁴ Further, according to the MND, the haul route may be modified.²⁵ As a result, the

¹⁹ Pub. Resources Code § 21064.5.

²⁰ See, e.g., *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376.

²¹ See *id.*

²² *County of Inyo v. County of Los Angeles* (1977) 71 Cal.App.3d 185, 193.

²³ *Id.* at 192-193.

²⁴ MND, p. II-30.

²⁵ *Id.*

analysis of environmental and public health and safety impacts associated with the Project's haul route has been improperly deferred.

The haul route may create a disturbance to adjacent residents and schools. Therefore, the determination of which route Project haul trucks will follow is a key determination required to inform the City's analysis of potentially significant impacts from noise, safety, traffic, and toxic air contaminant exposure to the sensitive receptors that will be affected by trucks travelling along the haul route. Depending on which haul route is selected, different homes and schools would be affected. Residents and school patrons may be required to modify their own schedules and practices in order to accommodate, or avoid the adverse effects of, the haul trucks in their neighborhood. The City must also analyze the impacts that each potential haul route will cause to the differently affected neighborhoods, and must identify appropriate mitigation measures that will mitigate significant impacts to each neighborhood.

B. The MND Fails to Adequately Describe the Project's Construction Water Demand

To reduce fugitive dust, the MND states that "[a]ll unpaved demolition and construction areas shall be wetted at least twice daily during excavation and construction," "[t]he construction area shall be kept sufficiently dampened to control dust caused by grading and hauling," [a]ll dirt/soil shall be secured by trimming, watering or other appropriate means" and "[a]ll dirt/soil materials transported off-site shall be either sufficiently watered or securely covered."²⁶ Yet, the MND fails to describe the amount of water necessary to water dirt, soil and other unpaved portions of the Project site during the 18 months of demolition/site clearing, excavation, grading and construction.²⁷ Further, the MND fails to provide any evidence that the amount of water required for construction (whatever that may be) is available from any service providers. The City must provide this basic information so that the public and decision makers can meaningfully assess the Project's potential impacts. Further, without this information, there is no support for the City's conclusion that the Project's impacts to water supply are less than significant.

²⁶ *Id.*, p. III-26.

²⁷ *Id.*, pp. II-28-29.

C. The MND Fails to Adequately Describe Construction Parking and Staging Areas

A complete description of the Project's construction parking and staging areas is necessary to assess the Project's impacts. Project construction entails demolition, site clearing, excavation, grading and the export of soil,²⁸ all of which requires the use of large construction equipment. In addition, Project construction will require truck deliveries and worker vehicles. The MND fails to adequately identify where delivery trucks and worker vehicles will park or where construction equipment will be staged. The MND does not indicate the size of parking or staging areas, or where they will be located. Depending on the use, size, surface composition and location, the Project's staging and parking areas could cause unanalyzed and unmitigated impacts. The City must adequately describe the Project's construction staging and parking areas so that decision makers and the public can adequately assess the Project's impacts.

IV. THERE IS A FAIR ARGUMENT THAT THE PROJECT MAY RESULT IN SIGNIFICANT IMPACTS THAT REQUIRE THE CITY TO PREPARE AN EIR

Under CEQA, a lead agency must prepare an EIR whenever substantial evidence in the whole record before the agency supports a fair argument that a project may have a significant effect on the environment.²⁹ The fair argument standard creates a "low threshold" favoring environmental review through an EIR, rather than through issuance of a negative declaration or notices of exemption from CEQA.³⁰ An agency's decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.³¹ Substantial evidence can be provided by

²⁸ *Id.*

²⁹ Pub. Resources Code § 21082.2; CEQA Guidelines § 15064(f), (h); *Laurel Heights Improvement Ass'n v. Regents of the University of California* (1993) 6 Cal. 4th 1112, 1123; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68, 75, 82; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-151; *Quail Botanical Gardens Foundation, Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1601-1602.

³⁰ *Citizens Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 754.

³¹ *Sierra Club v. County of Sonoma*, (1992) 6 Cal.App.4th, 1307, 1318; *see also Friends of "B" Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002 ["If there was substantial evidence that the proposed project might have a significant environmental impact, evidence to the contrary is not sufficient to support a decision to dispense with preparation of an [environmental impact report] and adopt a negative declaration, because it could be 'fairly argued' that the project might have a significant environmental impact"].

technical experts or members of the public.³² “If a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect.”³³

As discussed below, there is a fair argument supported by substantial evidence that the Project may result in significant impacts on air quality and public health, and from greenhouse gas emissions and hazardous materials. The City is required to prepare an EIR to evaluate the Project’s impacts and propose all mitigation measures that are necessary to reduce those impacts to a less-than-significant level.

A. Substantial Evidence Supports a Fair Argument that Project Construction and Operation Will Cause a Significant Cancer Risk from Emissions of Toxic Air Contaminants that the MND Fails to Disclose and Mitigate

The MND concludes that the health risk posed to nearby sensitive receptors from exposure to toxic air contaminants (“TACs”), including diesel particulate matter (“DPM”) emissions, from Project construction and operation would be less than significant.³⁴ The MND’s conclusion is unsupported because the City failed to quantify the risk and compare it to applicable thresholds of significance.

The MND’s “analysis” of the Project’s health risks from TACs is merely a statement that: (1) the Project does not warrant the need for a health risk assessment (“HRA”) because Project operation does not consist of land uses that include typical sources of toxic air contaminants; and (2) Project construction “would be subject to the regulations and laws relating to toxic air pollutants at the regional, State and federal level that would protect sensitive receptors from substantial concentrations of emissions.”³⁵ SWAPE reviewed the MND’s “analysis”

³² See, e.g., *Citizens for Responsible and Open Government v. City of Grand Terrace* (2008) 160 Cal.App.4th 1323, 1340 [substantial evidence regarding noise impacts included public comments at hearings that selected air conditioners are very noisy]; see also *Architectural Heritage Ass’n v. County of Monterey*, 122 Cal.App.4th 1095, 1117-1118 [substantial evidence regarding impacts to historic resource included fact-based testimony of qualified speakers at the public hearing]; *Gabric v. City of Rancho Palos Verdes* (1977) 73 Cal.App.3d 183, 199.

³³ CEQA Guidelines § 15062(f).

³⁴ MND, p. III-32.

³⁵ *Id.*

of the Project's health risks from TACs and found it to be wholly inadequate and unsupported.

First, SWAPE explains that Project operation will generate vehicle trips, which will result in DPM emissions.³⁶ Thus, the MND's statement that the Project would not involve sources of TACs is entirely false. The City must quantify the DPM emissions and associated health risks from Project operation, and compare the results to the South Coast Air Quality Management District's ("SCAQMD") threshold to determine the Project's health risk impacts.

Second, SWAPE explains that even if Project construction is subject to regulations and laws related to toxic air pollutants, Project construction could still have significant health risks from TACs. This is because "current regulations can only reduce emissions; they do not get rid of them entirely."³⁷ Thus, the City must quantify the DPM emissions and associated health risks from Project construction, and compare the risks to the SCAQMD's threshold to determine the Project's health risk impacts.

Third, by failing to prepare a HRA, the MND is inconsistent with the Office of Environmental Health Hazard Assessment ("OEHHA") *Risk Assessment Guidelines: Guidance Manual for Preparation of Health Risk Assessments* ("OEHHA Guidelines"). The OEHHA Guidelines describe the types of projects that warrant the preparation of HRAs. The OEHHA Guidelines recommend that all short-term projects lasting at least two months be evaluated for cancer risks to nearby sensitive receptors.³⁸ Project construction would last 22 months, which is significantly longer than the two-month short-term threshold set by OEHHA to trigger the requirement for a HRA. Thus, the City must prepare a HRA for Project construction. Further, the OEHHA Guidelines recommend that exposure from projects lasting more than six months should be evaluated for the duration of the project using an exposure length of 30 years. Since Project operation would last substantially longer than six months, the City must prepare a HRA for the lifetime of Project operation (likely, at least 30 years).

³⁶ **Attachment A:** Letter from Matt Hagemann and Jessie Jaegar to Rachael Koss re: Comments on the Hollywood Ivar Gardens Project, July 5, 2016 ("SWAPE Comments"), p. 2.

³⁷ *Id.*

³⁸ "Risk Assessment Guidelines: Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, p. 8-18.

To demonstrate the Project's potential health risks to nearby sensitive receptors, SWAPE prepared a preliminary screening-level HRA. SWAPE found that Project construction and operation would result in potentially significant health risks from DPM emissions. SWAPE used the U.S. Environmental Protection Agency's AERSCREEN model, sensitive receptor information from the MND and OEHHA guidance for its preliminary HRA. SWAPE found that Project construction would generate approximately 363 pounds of DPM over 22 months,³⁹ and Project operation would generate approximately 97.8 pounds of DPM per year.⁴⁰ SWAPE calculated the emission rates for Project construction and operation and, using the model, generated maximum reasonable estimates of single hour DPM concentrations from the Project. SWAPE then calculated the excess cancer risk for each sensitive receptor for adults, children and infants. SWAPE's calculations show that Project construction results in cancer risks of 8.6 (adults), 63 (children) and 120 (infants) in one million.⁴¹ SWAPE's calculations also show that the cancer risk over the course of a residential lifetime (30 years) is 190 in one million.⁴² The infant, child and lifetime cancer risks to nearby sensitive receptors all exceed the SCAQMD threshold of 10 in one million. The MND fails to disclose and mitigate the Project's significant cancer risks.

B. Substantial Evidence Supports a Fair Argument that the Project May Result in Potentially Significant Impacts from Greenhouse Gas Emissions

To assess the Project's greenhouse gas emissions (GHG) impacts, the MND compares the Project's GHG emissions after GHG reduction measures to the business as usual scenario ("BAU") (emissions that would be generated by the Project in the absence of any GHG reduction measures). Using this method, the MND finds that the Project would achieve a 46 percent reduction in GHGs between the BAU and the proposed Project. The MND concludes that the Project would result in a less than significant impact from GHG emissions because the 46 percent reduction greatly exceeds the California Air Resources Board's ("CARB") Climate Change Scoping Plan and AB 32 statewide reduction goals.⁴³ The MND's analysis is flawed and its conclusion is unsupported.

³⁹ SWAPE Comments, p. 3.

⁴⁰ *Id.*, p. 4.

⁴¹ *Id.*, p. 5.

⁴² *Id.*

⁴³ MND, p. III-51.

First, the use of CARB's Climate Change Scoping Plan and AB 32 statewide GHG reduction goals as a threshold of significance for project-specific impacts was struck down by the California Supreme Court. The California Supreme Court held that making a straight-line comparison between statewide reduction goals and project-specific reductions is improper. Without "a quantitative equivalence between the [AB 32] Scoping Plan's statewide comparison" and the MND's "own project-level comparison," the use of a BAU comparison to demonstrate consistency with GHG emission reductions set forth by AB 32, is not an acceptable method for determining CEQA impacts.⁴⁴ In *Center for Biological Diversity v. California Department of Fish and Wildlife and the Newhall Land and Farming Company* ("Newhall"), the project EIR evaluated GHG impacts using a BAU comparison, comparing the percent reduction in GHG emissions between the proposed project's BAU and 2020 scenarios to the statewide 2020 reduction goal in the CARB Scoping Plan. The EIR concluded that, because the project-specific GHG reduction exceeded the statewide reduction goal in the AB 32 Scoping Plan, the project's GHG emissions would result in a less than significant impact. The California Supreme Court rejected this approach, holding that agencies cannot use the statewide GHG emission reduction percentage as the CEQA significance threshold for project-specific impacts.⁴⁵

The *Newhall* Court stated that there is "no substantial evidence that Newhall Ranch's project-level reduction of 31 percent in comparison to business as usual is consistent with achieving AB 32's statewide goal of a 29 percent reduction from business as usual..."⁴⁶ Further,

the Scoping Plan nowhere related that statewide level of reduction effort to the percentage of reduction that would or should be required from individual projects, and nothing DFW or Newhall have cited in the administrative record indicates the required percentage reduction from business as usual is the same for an individual project as for the entire state population and economy.⁴⁷

⁴⁴ *Center for Biological Diversity et al. v. California Department of Fish and Wildlife and the Newhall Land and Farming Company* (2015) 62 Cal.4th 204, 227.

⁴⁵ *Newhall*, 62 Cal.4th at 204.

⁴⁶ *Id.*, p. 225.

⁴⁷ *Id.*, pp. 225-226.

Rather, “[t]he EIR simply assumes that the level of effort required in one context, a 29 percent reduction from business as usual statewide, will suffice in the other, a specific land use development.”⁴⁸

Despite this ruling, the MND relies upon the same method expressly rejected in *Newhall* to conclude that the Project’s GHG emissions would result in a less than significant impact. Specifically, using the anticipated year of Project buildout, the MND takes the statewide reduction goal for 2020 and determines the percent reduction from BAU that the Project would need to meet to achieve statewide goals.⁴⁹ Using a straight-line comparison between Project-specific and statewide GHG emission reductions, the MND states that the Project would reduce its GHG emissions by 46 percent, which, according to the MND, is consistent with the statewide reduction goal.⁵⁰ As a result, the MND concludes the Project would have a less than significant impact from GHG emissions.⁵¹ SWAPE explains that:

[r]educing the Project’s emissions to below statewide business as usual levels would not be sufficient to reduce the entire state’s GHG impacts to below a level of significance unless all developments currently in operation, and all future projects in California, of any size, were also required to reduce their emissions to below business as usual by the same percentage.⁵²

Newhall makes clear that the approach used in the MND is unsupported and improper. The City cannot use the statewide GHG emission reduction percentage goal as the CEQA threshold to determine whether a specific project has significant GHG emissions.

Second, the City improperly used outdated interim GHG reduction goals for 2020 that were superseded by Executive Order B-30-15. Executive Order B-30-15 requires emissions reductions above those mandated by AB 32 to reduce GHG emissions 40 percent below their 1990 levels by 2030. 1990 statewide GHG emissions are estimated to be approximately 431 million MMTCO_{2e}. Therefore, SWAPE provides that, by 2030, California will be required to reduce statewide emissions by 172 MMTCO_{2e}, which results in a statewide limit on GHG emissions

⁴⁸ *Id.*, p. 227.

⁴⁹ MND, p. III-51.

⁵⁰ *Id.*, p. III-52.

⁵¹ *Id.*

⁵² SWAPE Comments, p. 7.

of 259 MMTCO₂e.⁵³ 2020 BAU levels are estimated to be approximately 509 MMTCO₂e. SWAPE explains that, to successfully reach the 2030 statewide goal of 259 MMTCO₂e, California would have to reduce its emissions by 49 percent below the BAU levels.⁵⁴ Thus, the Project should demonstrate, at a minimum, a reduction of 49 percent below BAU levels.⁵⁵ SWAPE notes “that this reduction percentage is applicable to statewide emissions, not project-specific emissions. Therefore, this percent reduction may be higher when scaled down to the project-level.”⁵⁶

Finally, even if the MND’s approach was appropriate, the Project’s GHG emissions with GHG reduction measures (the “As Proposed scenario”), the BAU GHG emissions and the percent reduction between the two scenarios were incorrectly calculated in the MND. SWAPE explains that a correct BAU analysis compares the emissions that would be generated by the Project in the absence of any GHG reduction measures to the emissions that would be generated by the Project when GHG reduction measures are included. Then, the percent reduction in GHG emissions should be compared to an applicable threshold.⁵⁷ However, the calculation in the MND improperly accounts for emissions generated by the existing land uses on the Project site. In the MND, the 46 percent reduction in GHG emissions is derived by subtracting the existing on-site emissions from the As Proposed scenario GHG emissions. SWAPE explains that is totally incorrect. The City should have compared the BAU scenario to the As Proposed scenario.⁵⁸ Further, the calculations used to estimate the BAU GHG emissions are incorrect. The BAU scenario in the MND accounts for the emissions generated by existing land uses on the site, and then compares this 46 percent reduction to the statewide reduction goal for 2020. Once again, SWAPE explains that accounting for existing GHG emissions on-site is totally incorrect.⁵⁹ As a result, the City’s conclusion about the Project’s impact from GHG emissions is unsupported. When the existing on-site emissions are not included in the analysis, the Project would achieve only a 13 percent reduction in GHG emissions between the BAU and As Proposed Scenarios.⁶⁰ Even if comparing a project’s emission reductions to the AB 32 statewide reduction goal was proper (which it is not), the Project’s GHG emissions reduction of 13

⁵³ *Id.*, p. 8.

⁵⁴ *Id.*

⁵⁵ *Id.*, p. 9.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*, pp. 9-10.

percent would not meet the 15 percent reduction required by AB 32 to reduce statewide emissions to 1990 levels by 2020. Further, the MND includes incorrect models for the BAU and the As Proposed scenarios. SWAPE explains that, according to the modeling output files, the operational year for both the As Proposed and BAU scenarios is 2018, not 2020. As a result, “the Project’s GHG emissions cannot be directly compared to the GHG reduction target for 2020, as specified in CARB’s Scoping Plan.”⁶¹ Therefore, the emissions estimates in the MND and associated estimated emissions reductions could not be used to show compliance with AB 32 and CARB’s Scoping Plan.⁶²

SWAPE conducted an independent analysis of the Project’s GHG emissions using the SCAQMD screening threshold of 3,000 metric tons of carbon dioxide equivalents per year (MTCO₂e/year) and found that the Project’s GHG emissions would result in a significant impact. Project construction would generate 21 MTCO₂e/year (when amortized over 30 years) and Project operation would generate 3,081 MTCO₂e/year.⁶³ SWAPE found that, when the Project’s amortized construction emissions and operation emissions are combined, the emissions are 3,102 MTCO₂e/year, which exceed the SCAQMD’s screening threshold of 3,000 MTCO₂e/year.⁶⁴ This is a significant, unmitigated impact that the City failed to disclose in the MND.

C. Substantial Evidence Supports a Fair Argument that the Project May Result in Potentially Significant Impacts from Hazardous Materials

The MND states that prior uses on the Project site include a dry cleaner and gas station. SWAPE explains that these uses may have caused subsurface contamination that would pose a health risk to construction workers, hotel guests and hotel workers.⁶⁵ Specifically, chemical contamination commonly associated with dry cleaners includes tetrachloroethylene (“PCE”), a likely carcinogen, and chemical contamination associated with gas stations includes benzene, a known human carcinogen and volatile organic compound (“VOC”).⁶⁶ Hotel guests and hotel

⁶¹ *Id.*, p. 10.

⁶² *Id.*

⁶³ *Id.*, p. 11.

⁶⁴ *Id.*

⁶⁵ *Id.*, p. 12.

⁶⁶ *Id.*

workers may be exposed to these contaminants through vapor intrusion, and construction workers may be exposed to these contaminants by touching contaminated soil or breathing vapors during excavation, grading and trenching.⁶⁷

The MND states “there have been various subsurface investigations conducted on the Project Site and it received closure from the Regional Water Quality Control Board” and “the Project Site presumably met the standard at the time, indicating the solvents used for the Hollywood Laundry did not contaminate the groundwater and soil or were remediated.”⁶⁸ The Phase I Environmental Site Assessment (“Phase I ESA”) prepared for the Project states that “the Project site presumably met the commercial/industrial standard” under the 1986 Los Regional Water Quality Control Board closure of the gas station and, therefore, did not “find a recognized environmental condition (REC) in connection with the property in relation to the presence of a Texaco previously occupying the Project site.”⁶⁹ The MND’s and Phase I ESA’s presumptions and conclusions are unsupported for two reasons.

First, neither the Phase I ESA nor the MND contain any sampling results supporting the presumptions and conclusions. The MND states:

the Phase I ESA was unable to obtain information regarding the sampling activities conducted on the Project Site to determine if the Project site was monitored/sampled for contamination during former groundwater/vapor monitoring activities. As a result, the most recent levels of contamination from the Texaco and the Hollywood Laundry at the Project Site are unknown.⁷⁰

SWAPE explains that the City must include environmental sampling results in an EIR, including results for soil vapor, PCE and benzene.⁷¹ The EIR must compare soil sampling results to construction worker screening levels to determine the Project’s potentially significant impacts from contamination.⁷² Without sampling results, there is no support for the MND’s and Phase I ESA’s conclusions.

⁶⁷ *Id.*

⁶⁸ MND, p. III-55.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ SWAPE Comments, p. 12.

⁷² *Id.*, pp. 12-13.

Second, SWAPE explains that investigations conducted for contamination from a gas station are inapplicable to contamination from dry cleaning operations.⁷³ “Gas station investigations are focused on releases of petroleum compounds at locations where underground storage tanks are located. In contrast, dry cleaner investigations focus on sampling for the compound PCE in locations where it may have leaked through cracks in the concrete flooring or was dumped outside.”⁷⁴ Without an investigation targeting contamination from dry cleaning operations, there is no support for the MND’s and Phase I ESA’s conclusions.

Rather than conduct an adequate investigation of contamination now, the MND defers an investigation and potential cleanup of contamination until after Project approval. This is a blatant violation of CEQA.⁷⁵ Moreover, the MND requires the investigation and cleanup of potentially contaminated soil and groundwater to be conducted under oversight by the Los Angeles Fire Department. SWAPE explains that the Los Angeles Fire Department is not an appropriate agency to oversee the investigation and cleanup of groundwater contamination or where human health may be at risk from sources other than underground storage tanks.⁷⁶ Rather, the Los Angeles Fire Department must refer sites with groundwater contamination to the Regional Water Quality Control Board.⁷⁷ SWAPE explains that for sites with potential health risks from contamination, the Department of Toxic Substances Control, in conjunction with the Office of Health Hazard Assessment, is the appropriate agency to oversee the environmental assessment of the site.⁷⁸

Further, the MND completely fails to address SCAQMD Rule 1166, Volatile Organic Compound Emissions from Decontamination of Soil. Under Rule 1166, the potential for VOC contamination requires the Applicant to submit, and the SCAQMD to approve, a VOC mitigation plan prior to commencement of Project construction. Rule 1166 prohibits the uncontrolled release of VOC-contaminated soil vapor during Project construction. Rule 1166 provides that “[a] person shall not engage in or allow any on-site or off-site spreading, grading or screening of VOC-contaminated soil, which results in uncontrolled evaporation of VOC to the

⁷³ *Id.*, p. 13.

⁷⁴ *Id.*

⁷⁵ *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296; *Madera Oversight Coalition, Inc. v. County of Madera* (2011) 199 Cal.App.4th 48.

⁷⁶ SWAPE Comments, pp. 13-14.

⁷⁷ *Id.*, p. 14.

⁷⁸ *Id.*

atmosphere.”⁷⁹ In other words, no excavation may take place unless a Rule 1166 permit is in place for the Project. Rule 1166 also requires project applicants to implement robust vapor-control mitigation measures to ensure that the excavation of VOC-contaminated soil does not result in significant releases of VOCs through soil vapor. The Rule further requires that all persons conducting soil excavation or grading for a project in a location that may contain VOC-contaminated soil monitor for VOC contamination “*at least once every 15 minutes*” for the duration of the excavation, and *record all VOC concentration readings* in a format approved by the SCAQMD.⁸⁰ If VOC-contaminated soil is detected during excavation or grading, Rule 1166 requires the project manager to notify SCAQMD within 24 hours of the detection, and immediately implement the SCAQMD-approved mitigation plan.⁸¹ Finally, the mitigation plan must include specific measures to reduce dust and odor, and to govern the handling and disposal of VOC-contaminated soil.⁸² The MND fails to mention Rule 1166, and fails to state whether the Applicant has applied for or obtained a Rule 1166 permit, despite the fact that compliance with the Rule is mandatory.⁸³ The MND also fails to include any mitigation measures to address the potential risk of disturbance of VOC-contaminated soil during Project construction.

The MND’s and Phase I ESA’s conclusions regarding contamination on the Project site are unsupported. As it stands, substantial evidence supports a fair argument that the Project may result in health impacts to construction workers, hotel guests and hotel workers from on-site contamination. The City must prepare an EIR that quantitatively assesses and mitigates these impacts. The EIR must also discuss Rule 1166 compliance and must incorporate Rule 1166’s mitigation requirements.

V. CONCLUSION

There is substantial evidence supporting a fair that the Project may result in significant adverse impacts that were not identified in the MND, and that are not adequately analyzed or mitigated. We urge the City to fulfill its responsibilities

⁷⁹ SCAQMD Rule 1166, available at <http://www.aqmd.gov/docs/default-source/rule-book/reg-xi/rule-1166.pdf?sfvrsn=4>.

⁸⁰ SCAQMD Rule 1166(c)(1)(C).

⁸¹ *Id.* at subs. (c)(1)(D).

⁸² *Id.*

⁸³ See *California Bldg. Industry Ass’n v. San Joaquin Valley Air Pollution Control Dist.* (2009) 178 Cal.App.4th 120, 137 (air districts are authorized to regulate and mandate mitigation requirements for development projects).

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under CEQA by withdrawing the MND and preparing a legally adequate EIR to address the potentially significant impacts described in this comment letter and the attached letter. Only by complying with all applicable laws will the City and the public be able to ensure that the Project's significant environmental impacts are mitigated to less than significant levels.

Thank you for your attention to these comments.

Sincerely,

A handwritten signature in cursive script, appearing to read "Rachael Koss", followed by a horizontal line.

Rachael Koss

REK:ric

Attachment



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July 5, 2016

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Subject: Comments on the Hollywood Ivar Gardens Project (ENV-2015-2895-MND)

Dear Ms. Koss:

We have reviewed the June 9, 2016 Initial Study/Mitigated Negative Declaration (IS/MND) for the proposed Hollywood Ivar Gardens Project (ENV-2015-2895-MND) ("Project") located in the City of Los Angeles. The Proposed Project includes the demolition of an existing fast food restaurant ("Jack in the Box") and a surface parking lot, and the construction and development of a mixed-use building with a maximum of 275 guestroom units with kitchenettes (142 guest suites, 132 guestrooms, and 1 two-bedroom suite) and approximately 1,900 square feet of ground floor commercial space. According to the IS/MND, export of approximately 3,882 square feet of demolition material and approximately 56,000 cy of soil would be required.

We conclude that the IS/MND fails to adequately evaluate the Project's Air Quality, Greenhouse Gas and Hazard and Hazardous Waste impacts. As a result, air pollutant, greenhouse gas (GHG) emissions and health impacts associated with construction and operation of the Project are underestimated. The potential impacts of hazardous chemicals in the subsurface have not been properly investigated and disclosed. A Draft Environmental Impact Report (DEIR) should be prepared to adequately assess and mitigate the Project's potentially significant air quality, GHG and hazardous waste impacts.

Air Quality

Diesel Particulate Matter Health Risk Emissions Inadequately Evaluated

The IS/MND concludes that the health risk posed to nearby sensitive receptors from exposure to diesel particulate matter (DPM) emissions released during Project construction and operation would be less than significant, yet fails to actually quantify this risk and compare it to applicable thresholds (p. III-32). The IS/MND attempts to justify the omission of an actual health risk assessment (HRA) by stating the following:

“The Proposed Project consists of a mixed-use hotel development with retail uses and would not support any land uses or activities that would involve the use, storage, or processing of carcinogenic or non-carcinogenic toxic air contaminants. As such no significant toxic airborne emissions would result from Proposed Project implementation. In addition, construction activities would be subject to the regulations and laws relating to toxic air pollutants at the regional, State, and federal level that would protect sensitive receptors from substantial concentrations of these emissions. Therefore, impacts associated with the release of toxic air contaminants would be less than significant” (p. III-32).

This justification, however, is incorrect, as operation of the Project will generate vehicle trips, which will generate diesel exhaust emissions. Diesel particulate matter (DPM), which is a component of diesel exhaust, is a known carcinogen. Therefore, the IS/MND’s statement that operation of the Project would not result in toxic airborne emissions is entirely incorrect. Furthermore, even though “construction activities would be subject to the regulations and laws relating to toxic air pollutants at the regional, State, and federal level that would protect sensitive receptors,” this does not automatically mean that the Project’s construction-related emissions would not have a potentially significant health risk impact, as current regulations can only reduce emissions; they do not get rid of them entirely. The proposed Project will generate diesel exhaust emissions during construction from on-road vehicle and off-road equipment usage that will also contribute to the Project’s DPM emissions, and thus, health risk. As a result, until the Project’s construction and operational health risk impacts are adequately quantified and compared to applicable thresholds, the IS/MND cannot make any conclusions with regards to the Project’s health risk impacts.

By failing to prepare a construction or an operational health risk assessment, the IS/MND is inconsistent with recommendations set forth by the Office of Environmental Health Hazard Assessment (OEHHA), the organization responsible for providing recommendations for health risk assessments in California. In February of 2015, OEHHA released its most recent *Risk Assessment Guidelines: Guidance Manual for Preparation of Health Risk Assessments*, which was formally adopted in March of 2015.¹ This guidance document describes the types of projects that warrant the preparation of a health risk assessment. Construction of the Project will produce emissions of DPM, a human carcinogen, through the exhaust stacks of construction equipment over a construction period of 22 months, from August 2016 to January 2018 (Appendix A, pp. 31). The OEHHA document recommends that all short-term projects lasting at least two months be evaluated for cancer risks to nearby sensitive receptors.² Therefore, per OEHHA guidelines, health risk impacts from Project construction should have been evaluated by the IS/MND. Furthermore, once construction of the Project is complete, the Project will operate for a long period of time. During operation, the Project will generate vehicle trips, which will generate additional exhaust emissions, thus continuing to expose nearby sensitive receptors to emissions. The OEHHA document

¹ “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

² “Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, available at: http://oehha.ca.gov/air/hot_spots/2015/2015GuidanceManual.pdf, p. 8-18

recommends that exposure from projects lasting more than 6 months should be evaluated for the duration of the project, and recommends that an exposure duration of 30 years be used to estimate individual cancer risk for the maximally exposed individual resident (MEIR).³ Even though we were not provided with the expected lifetime of the Project, we can reasonably assume that the Project will operate for at least 30 years, if not more. Therefore, health risks from Project operation should have also been evaluated by the IS/MND, as a 30-year exposure duration vastly exceeds the 2-month and 6-month requirements set forth by OEHHA. These recommendations reflect the most recent health risk policy, and as such, an updated assessment of health risks to nearby sensitive receptors from construction and operation should be included in a revised CEQA evaluation for the Project. In an effort to demonstrate the potential risk posed by the Project to nearby sensitive receptors, we prepared a simple screening-level health risk assessment. The results of our assessment, as described below, demonstrate that construction and operation related DPM emissions may result in a potentially significant health risk impact.

As of 2011, the EPA recommends AERSCREEN as the leading air dispersion model, due to improvements in simulating local meteorological conditions based on simple input parameters.⁴ The model replaced SCREEN3, which is included in OEHHA⁵ and CAPCOA⁶ guidance as the appropriate air dispersion model for Level 2 health risk screening assessments ("HRSAs"). A Level 2 HRSA utilizes a limited amount of site-specific information to generate maximum reasonable downwind concentrations of air contaminants to which nearby sensitive receptors may be exposed. If an unacceptable air quality hazard is determined to be possible using AERSCREEN, a more refined modeling approach is required prior to approval of the Project.

We prepared a preliminary health risk screening assessment of the Project's construction and operational impact to sensitive receptors using the annual estimates from the IS/MND's air model. The IS/MND states that the closest sensitive receptors to the Project site are located within 345 feet, or approximately 105 meters away (p. III-31). Consistent with recommendations set forth by OEHHA, we used a residential exposure duration of 30 years, starting from the infantile stage of life. We also assumed that construction and operation of the Project would occur concurrently, with no gaps between each Project phase. The CalEEMod model's annual emissions indicate that construction activities will generate approximately 363 pounds of DPM over a 660 day (22 month) construction period. The AERSCREEN model relies on a continuous average emissions rate to simulate maximum downwind concentrations from point, area, and volume emissions sources. To account for the variability in construction equipment usage over the many phases of Project construction, we calculated an average DPM emissions rate for construction by the following equation.

³ "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, *available at*: http://oehha.ca.gov/air/hot_spots/2015/2015GuidanceManual.pdf, p. 8-6, 8-15

⁴ "AERSCREEN Released as the EPA Recommended Screening Model," USEPA, April 11, 2011, *available at*: http://www.epa.gov/ttn/scram/guidance/clarification/20110411_AERSCREEN_Release_Memo.pdf

⁵ "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, *available at*: http://oehha.ca.gov/air/hot_spots/2015/2015GuidanceManual.pdf

⁶ "Health Risk Assessments for Proposed Land Use Projects," CAPCOA, July 2009, *available at*: http://www.capcoa.org/wp-content/uploads/2012/03/CAPCOA_HRA_LU_Guidelines_8-6-09.pdf

$$\text{Emission Rate } \left(\frac{\text{grams}}{\text{second}} \right) = \frac{363.2 \text{ lbs}}{660 \text{ days}} \times \frac{453.6 \text{ grams}}{\text{lb}} \times \frac{1 \text{ day}}{24 \text{ hours}} \times \frac{1 \text{ hour}}{3,600 \text{ seconds}} \approx 0.0029 \text{ g/s}$$

Subtracting the 22-month construction duration from the total residential exposure duration of 30 years, we can reasonably assume that after Project construction, the MEIR would be exposed to the Project's operational DPM emissions for an additional 28.19 years (10,290 days). The CalEEMod model's annual emissions indicate that operational activities will generate approximately 97.8 pounds of DPM per year, or approximately 2,757 pounds of DPM over a 28.19 year operational period. Applying the same equation used to estimate the construction DPM emission rate, we estimated the following emission rate for Project operation.

$$\text{Emission Rate } \left(\frac{\text{grams}}{\text{second}} \right) = \frac{2,757.16 \text{ lbs}}{10,290 \text{ days}} \times \frac{453.6 \text{ grams}}{\text{lb}} \times \frac{1 \text{ day}}{24 \text{ hours}} \times \frac{1 \text{ hour}}{3,600 \text{ seconds}} \approx 0.0014 \text{ g/s}$$

Construction and operational activity was simulated as a 0.54 acre rectangular area source in AERSCREEN, with dimensions of 55 meters by 40 meters. A release height of three meters was selected to represent the height of exhaust stacks on construction equipment and other heavy duty vehicles, and an initial vertical dimension of one and a half meters was used to simulate instantaneous plume dispersion upon release. An urban meteorological setting was selected with model-default inputs for wind speed and direction distribution.

The AERSCREEN model generated maximum reasonable estimates of single hour DPM concentrations from the Project site. EPA guidance suggests that in screening procedures, the annualized average concentration of an air pollutant be estimated by multiplying the single-hour concentration by 10%.⁷ There are residences located approximately 105 meters away from the Project boundary. The single-hour concentration estimated by AERSCREEN for Project construction is approximately 3.59 µg/m³ DPM at approximately 100 meters downwind. Multiplying this single-hour concentration by 10%, we get an annualized average concentration of 0.359 µg/m³ for construction. For Project operation, the single-hour concentration in AERSCREEN is approximately 1.75 µg/m³ DPM at approximately 105 meters downwind. Again, multiplying this single-hour concentration by 10%, we get an annualized average concentration of 0.175 µg/m³ for operation.

We calculated the excess cancer risk for each sensitive receptor for adults, children, and/or infant receptors using applicable HRA methodologies prescribed by OEHHA. The annualized average concentration for construction was used for the infantile stage of life (0-2 years) and the beginning of the child stage (1 month), and the annualized average concentration for operation was used for the remainder of the 30 year exposure period, which makes up the rest of the child (2.06 to 16 years) and adult stages of life (16 to 30 years). OEHHA recommends the use of Age Sensitivity Factors (ASFs) to account for the heightened susceptibility of young children to the carcinogenic toxicity of air pollution.⁸ According to the revised guidance, quantified cancer risk should be multiplied by a factor of ten during

⁷ http://www.epa.gov/ttn/scram/guidance/guide/EPA-454R-92-019_OCR.pdf

⁸ "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, available at: http://oehha.ca.gov/air/hot_spots/2015/2015GuidanceManual.pdf

the first two years of life (infant), and by a factor of three for the subsequent fourteen years of life (child aged two until sixteen). Furthermore, in accordance with guidance set forth by OEHHA, we used 95th percentile breathing rates for infants and 80th percentile breathing rates for children and adults.⁹ We used a cancer potency factor of 1.1 (mg/kg-day)⁻¹ and an averaging time of 25,550 days. The results of our calculations are shown below.

The Maximum Exposed Individual at an Existing Residential Receptor (MEIR)					
Activity	Duration (years)	Concentration (µg/m ³)	Breathing Rate (L/kg-day)	ASF	Cancer Risk
Construction	2.00	0.36	1090	10	1.2E-04
Infant Exposure Duration	2.00			Infant Exposure	1.2E-04
Construction	0.06	0.36	572	3	5.6E-07
Operation	13.94	0.18	572	3	6.3E-05
Child Exposure Duration	14.00			Child Exposure	6.3E-05
Operation	14.00	0.18	233	1	8.6E-06
Adult Exposure Duration	14.00			Adult Exposure	8.6E-06
Lifetime Exposure Duration	30.00			Lifetime Exposure	1.9E-04

The excess cancer risk to adults, children, and infants at a sensitive receptor located 105 meters away, over the course of Project construction and operation are 8.6, 63, and 120 in one million, respectively. Furthermore, the excess cancer risk over the course of a residential lifetime (30 years) is approximately 190 in one million. Consistent with OEHHA guidance, exposure was assumed to begin in the infantile stage of life to provide the most conservative estimates of air quality hazards. The infantile, child, and lifetime cancer risks all exceed the SCAQMD threshold of 10 in one million.

It should be noted that our analysis represents a screening-level health risk assessment, which is known to be more conservative, and tends to err on the side of health protection.¹⁰ The purpose of a screening-level health risk assessment, however, is to determine if a more refined health risk assessment needs to be conducted. If the results of a screening-level health risk are above applicable thresholds, then the Project needs to conduct a more refined health risk assessment that is more representative of site specific concentrations. Our screening-level health risk assessment demonstrates that construction and operation of the Project could result in a potentially significant health risk impact. As a result, a refined health risk assessment must be prepared to examine air quality impacts generated by Project construction using site-specific meteorology and specific equipment usage schedules. A DEIR must be prepared to adequately evaluate the Project's health risk impact, and should include additional mitigation measures to reduce these impacts to a less-than-significant level.

⁹ "Supplemental Guidelines for Preparing Risk Assessments for the Air Toxics 'Hot Spots' Information and Assessment Act," June 5, 2015, available at: <http://www.aqmd.gov/docs/default-source/planning/risk-assessment/ab2588-risk-assessment-guidelines.pdf?sfvrsn=6>, p. 19

"Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, available at: http://oehha.ca.gov/air/hot_spots/2015/2015GuidanceManual.pdf

¹⁰ http://oehha.ca.gov/air/hot_spots/2015/2015GuidanceManual.pdf p. 1-5

Greenhouse Gas

Failure to Adequately Assess the Project's Greenhouse Gas Impacts

In an effort to comply with CEQA and the California Global Warming Solution Act, AB 32, the IS/MND compares the Project's construction and operational GHG emissions (As Proposed) to the emissions that would be generated by the Project in the absence of any GHG reduction measures, also known as a Business As Usual scenario (BAU). Using this method, the IS/MND concludes that because the Project would achieve a 46 percent reduction in GHGs between the BAU and As Proposed scenarios, which greatly exceeds CARB's Scoping Plan and AB 32 statewide reduction goals, the Project would have a less than significant GHG impact (p. III-51). The use of this threshold to determine whether or not the Project would result in a significant GHG impact, and the conclusions made using this method, however, are flawed for several reasons. First, it is based on a reduction goal for statewide emissions, not on project-level reduction goals. Making a straight-line comparison between statewide reduction goals and project-specific reductions, however, was recently deemed improper by the California Supreme Court. Therefore, this threshold should not be used. Second, it relies on outdated interim GHG reduction goals for 2020 that have been superseded by Executive Order B-30-15. Third, the "As Proposed" Project GHG emissions, the "Business As Usual" Project GHG emissions, and the percent reduction between the two scenarios have been incorrectly calculated. Due to these reasons, we find the IS/MND's GHG analysis to be incorrect and unreliable, and it should not be used to determine Project significance.

Incorrectly Used Statewide Reduction Goals to Determine Project Significance

In light of the recent California Supreme Court case *Center for Biological Diversity et al. v. California Department of Fish and Wildlife and the Newhall Land and Farming Company* 2015 Cal. LEXIS 9478 (*Newhall Case*),¹¹ the use of a BAU comparison to demonstrate consistency with GHG emission reductions set forth by AB 32 is no longer considered to be an accurate, acceptable method. The *Newhall Case* concludes that lead agencies cannot use the statewide GHG emission reduction percentage as the CEQA threshold to determine whether a specific project has significant GHG emissions.¹² As a result, this method of determining Project significance is incorrect and should not be relied upon.

The Newhall Ranch project located in Santa Clarita was a mixed-use project, in which various commercial uses, schools, golf courses, parks and community facilities, as well as approximately 20,885 dwelling units were proposed for development. Similar to the Hollywood Ivar Gardens Project IS/MND, the EIR for the proposed Newhall Ranch project evaluated whether or not the project's GHG emissions would comply with the reduction goals set forth by AB 32 by 2020 using a project versus BAU comparison. Specifically, the Newhall EIR compared the percent reduction in GHG emissions between the Project's BAU and 2020 scenarios (resulted in a 31% reduction) to the statewide 2020 reduction goal of 29% set forth by the CARB Scoping Plan. Using this method, the Newhall EIR concluded that because the Project-specific GHG reduction exceeded the statewide reduction goal set forth by AB 32 and the Scoping Plan, the Project's GHG emissions would result in a less than significant GHG impact.

¹¹ <http://www.courts.ca.gov/opinions/documents/S217763.PDF>

¹² <http://www.arb.ca.gov/cc/ab32/ab32.htm>

Similar to the Newhall Ranch EIR, the IS/MND here relies on the BAU method to determine the Project's GHG impacts. According to the IS/MND, the Project would have to achieve a 46 percent reduction from BAU that is consistent with the CARB Scoping Plan to result in a less than significant GHG impact. Using the anticipated year of Project buildout, the IS/MND takes the statewide reduction goal for 2020 and determines the percent reduction from BAU that the Project would need to meet in order to achieve statewide goals (p. III-51). Using a straight-line comparison between Project-specific and statewide GHG emission reductions, the Hollywood Ivar Gardens Project would reduce its GHG emissions by 46 percent, which, according to the IS/MND, is consistent with the statewide reduction goal (p. III-52). As a result, the IS/MND concludes that the Project would have a less than significant GHG impact (p. III-52).

The use of a "straight-line" comparison between Project-specific and statewide GHG emissions, both by the Newhall Ranch EIR and the Hollywood Ivar Gardens Project IS/MND, is flawed because the percent reduction required by the proposed Project at the project-level is not directly comparable to the percent reduction required to meet the statewide goal. Reducing the Project's emissions to below statewide business as usual levels would not be sufficient to reduce the entire state's GHG impacts to below a level of significance unless all developments currently in operation, and all future projects in California, of any size, were also required to reduce their emissions to below business as usual by the same percentage. The *Newhall Case* makes clear that this approach utilized in the IS/MND to achieve compliance with AB 32 is improper. The *Newhall Case* concludes that agencies cannot use the statewide GHG emission reduction percentage as the CEQA threshold to determine whether a specific project has significant GHG emissions.¹³

As explained in the *Newhall Case*, there is currently "no substantial evidence that Newhall Ranch's project-level reduction of 31 percent in comparison to business as usual is consistent with achieving AB 32's statewide goal of a 29 percent reduction from business as usual..."¹⁴ As the *Newhall Case* explained in striking down the California Fish and Wildlife GHG analysis:

"The Scoping Plan set out a statewide reduction goal and a framework for reaching it—a set of broadly drawn regulatory approaches covering all sectors of the California economy and projected, if implemented and followed, to result in a reduction to 1990-level greenhouse gas emissions by the year 2020. The plan expressed the overall level of conservation and efficiency improvements required as, among other measures, a percentage reduction from a hypothetical scenario in which no additional regulatory actions were taken. But the Scoping Plan nowhere related that statewide level of reduction effort to the percentage of reduction that would or should be required from individual projects, and nothing DFW or Newhall have cited in the administrative record indicates the required percentage reduction from business as usual is the same for an individual project as for the entire state population and economy. Plaintiffs put forward one ready reason to suspect that the percent reduction is not the same, and that in fact

¹³ <http://www.arb.ca.gov/cc/ab32/ab32.htm>

¹⁴ <http://www.courts.ca.gov/opinions/documents/S217763.PDF>, p. 19

a greater degree of reduction may be needed from new land use projects than from the economy as a whole ... The administrative record does not establish a firm ground for the efficiency comparison the EIR makes and thus, for this reason as well, does not substantially support the EIR's conclusion that Newhall Ranch's 31 percent emissions savings over business as usual satisfies the report's significance criterion of consistency with the Scoping Plan's 29 percent statewide savings by 2020 ... The EIR simply assumes that the level of effort required in one context, a 29 percent reduction from business as usual statewide, will suffice in the other, a specific land use development."¹⁵

As stated above, the Scoping Plan in no way related the statewide level of reduction to the percentage of reduction that would or should be required from individual projects, and nothing in the Newhall EIR or in the Hollywood Ivar Gardens IS/MND, indicates that the required percent reduction from business as usual is the same for an individual project as for the entire state population and economy. The lead agencies for the *Newhall Case* and the Hollywood Ivar Gardens Project improperly used the statewide percent goal as its sole criterion of significance for GHG emissions. The *Newhall Case* makes clear that the Project may in fact have to do far better. As such, the City must identify an acceptable method of compliance with CEQA and AB 32 for the Project's GHG emissions, and must determine a Newhall-compliant alternative threshold for the Project-specific GHG emissions.

Failure to Demonstrate Consistency with Executive Order B-30-15

The IS/MND's reliance on a statewide reduction goal for 2020 to determine Project significance is also fundamentally flawed because it is inconsistent with, and fails to take into account, the revised, more ambitious GHG reduction goals set by Governor Brown by Executive Order B-30-15. Governor Brown issued an executive order to establish an even more ambitious GHG reduction target. Executive Order B-30-15¹⁶ requires emissions reductions above those mandated by AB 32 to reduce GHG emissions 40 percent below their 1990 levels by 2030. 1990 statewide GHG emissions are estimated to be approximately 431 million MTCO₂e (MMTCO₂e).¹⁷ Therefore, by 2030 California will be required to reduce statewide emissions by 172 MMTCO₂e (431 x 40%), which results in a statewide limit on GHG emissions of 259 MMTCO₂e. 2020 BAU levels are estimated to be approximately 509 MMTCO₂e.¹⁸ Therefore, in order to successfully reach the 2030 statewide goal of 259 MMTCO₂e, California would have to reduce its emissions by 49 percent below the BAU levels.

This 49 percent reduction target, once adjusted for use at the project-level, should be considered as a threshold of significance against which to measure Project impacts. Because the Project site is unlikely to be redeveloped again prior to 2030, the 2030 goals are applicable to any evaluation of the Project's impacts. A DEIR should be prepared to demonstrate the Project's compliance with these more aggressive measures specified in Executive Order B-30-15. Specifically, the Project should demonstrate, at a minimum, a reduction of 49 percent below BAU levels. It should be noted, however, that this

¹⁵ <http://www.courts.ca.gov/opinions/documents/S217763.PDF>, p. 20

¹⁶ <http://gov.ca.gov/news.php?id=18938>

¹⁷ <http://www.arb.ca.gov/cc/inventory/data/bau.htm>

¹⁸ http://energyinnovation.org/wp-content/uploads/2015/04/CA_CapReport_Mar2015.pdf

reduction percentage is applicable to statewide emissions, not project-specific emissions. Therefore, this percent reduction may be higher when scaled down to the project-level.

Incorrectly Estimates Percent Reduction between BAU and As Proposed Scenarios

Finally, even if we were to assume that the use of a BAU comparison method to determine Project significance is correct, the 46 percent reduction provided within the IS/MND was incorrectly derived. A correct BAU analysis compares the emissions that would be generated by the Project in the absence of any GHG reduction measures (BAU scenario) to the emissions that would be generated by the Project when GHG reduction measures are included (As Proposed scenario), and then compares this percent reduction to an applicable threshold. However, this 46 percent reduction also accounts for the emissions generated by the existing land uses currently operating on-site, and is derived by subtracting the existing emissions from the As Proposed emissions to determine a percent reduction from BAU, which is entirely incorrect. Furthermore, the calculations used to estimate the Project's BAU and As Proposed GHG emissions are incorrect and do not reflect what is specified by CARB. As a result, the Project's GHG impacts are inadequately evaluated, and the analysis provided in the IS/MND should not be relied upon to determine the Project's GHG impact.

AB 32 requires California to reduce its statewide GHG emissions to 1990 levels by 2020 under a BAU scenario.¹⁹ In order to demonstrate compliance with AB 32 and the associated Scoping Plan using this method, the IS/MND should have established a BAU scenario that they compared to the Project's As Proposed emissions. The IS/MND's BAU analysis, however, also accounts for the emissions generated by the existing land uses currently operating on-site, and then compares this 46 percent reduction to the statewide reduction goal for 2020. Accounting for existing on-site emissions, however, is entirely incorrect, and should not be included when assessing the percent reduction in GHG emissions between the BAU and As Proposed scenarios. When the Project's existing on-site emissions are not included within the analysis, we find that the Project would achieve a 13 percent reduction in GHG emissions between BAU and As Proposed scenarios (see table below) (p. III-51).

¹⁹ <http://www.arb.ca.gov/cc/ab32/ab32.htm>

Project Operational Greenhouse Gas Emissions

Emissions Source	Estimated Project Generated CO ₂ e Emissions (Metric Tons per Year)		
	Base Project Without GHG Reduction Features	Proposed Project	Percent Reduction
Mobile (Motor Vehicles)	2,228.76	1,988.29	11%
Energy - Electricity	1,012.65	847.52	16%
Energy - Natural Gas	188.23	156.69	17%
Area	0.01	0.01	0%
Water	65.88	53.77	18%
Waste	69.40	34.70	50%
Construction Emissions ^a	21.33	21.33	--
Project Total	3,586.26	3,102.31	13%^b
<i>Less Existing Project Site</i>	<i>--^b</i>	<i>1,180.97</i>	<i>--</i>
Project NET TOTAL	3,586.26	1,921.34	46%^b
^a The total construction GHG emissions were amortized over 30 years and added to the operation of the Project. ^b The existing uses were not deducted from the Project Without GHG Reduction Measures to demonstrate the benefit of developing on an infill lot with an active commercial land use. Calculation data and results provided in Appendix D, Greenhouse Gas Emissions Calculations Worksheets.			

Assuming that comparing a project's emission reductions to the statewide reduction goal set forth by CARB and AB 32 is correct, the Project's GHG reduction of 13 percent would not meet the 15 percent reduction required by AB 32 to reduce statewide emissions to 1990 levels by 2020. As a result, when using IS/MND's methods correctly, we find that the Project would have a significant GHG impact, as it would not meet the required statewide reduction target for 2020, contrary to the significance determination made within the IS/MND.

Not only does the IS/MND incorrectly account for existing emissions within its analysis, but it also incorrectly models both the BAU and the As Proposed scenarios' emissions. According to the modeling output files, found in Appendix D of the IS/MND, the operational year for the "As Proposed" scenario was 2018, not 2020 (pp. 19). By modeling the "As Proposed" emissions under a 2018 operational year, the Project's GHG emissions cannot be directly compared to the GHG reduction target for 2020, as specified in CARB's Scoping Plan. CARB calculated the GHG reduction target by comparing the forecast of 2020 emissions in a BAU scenario (i.e. 509 MMTCO₂e) to the 2020 emissions limit (i.e. the 1990 emissions limit of 431 MMTCO₂e).²⁰ Therefore, in order to be consistent with the methods used by CARB to determine the reduction target, the "As Proposed" scenario should be modeled under a 2020 operational year.

Furthermore, the GHG emissions from the BAU scenario were also incorrectly modeled. According to the modeling output files, found in Appendix D of the IS/MND, the operational year for the "BAU" scenario was also 2018, not 2020 (pp. 19). By modeling the "BAU" emissions under a 2018 operational year, the Project's GHG emissions cannot be directly compared to the GHG reduction target for 2020, as specified in CARB's Scoping Plan. As a result, the emissions estimated within the IS/MND and the resultant estimated emissions reductions should not be relied upon to demonstrate compliance with AB 32 and CARB's Scoping Plan at a project level.

²⁰ http://www.arb.ca.gov/cc/scopingplan/2013_update/first_update_climate_change_scoping_plan.pdf, p. 92.

Based on CARB's definition, the forecast of 2020 GHG emissions in a BAU scenario is an estimate of the emissions expected to occur in the year 2020 if none of the foreseeable measures included in the *First Update to the Climate Change Scoping Plan* (CARB) May 2014 (Scoping Plan) were implemented (see Page 92, 6th paragraph of *First Update to the Climate Change Scoping Plan – May 2014*).²¹ CARB also defines BAU to mean "the normal course of business or activities for an entity or a project before the imposition of greenhouse gas emissions reduction requirements or incentives."²² The California Air Pollution Control Officers Association (CAPCOA) acknowledges that the BAU scenario is the estimate of emissions that would occur in the absence of measures to reduce emissions. CAPCOA goes on to further state that BAU is the projection of GHG emissions at a future date based on current technologies and regulatory requirements in absence of other reductions.²³ Therefore, the BAU scenario should reflect emissions that would be generated by the Project in the absence of AB 32, which is effectively a 2005 year emissions profile, since AB 32 was adopted in 2006. Use of 2005 year emission factors, carbon intensity, and Title 24 energy usage for each land use type, from a greenhouse gas standpoint, is appropriate since these factors would reflect what would happen in 2020 if the measures specified in the Scoping Plan were not implemented. By applying the reduction percentages directly to the 2018 emissions estimates, as is conducted in the IS/MND, the BAU scenario is inaccurately represented.

Updated Greenhouse Gas Analysis Demonstrates Significant Impact

As previously discussed, the use of a BAU comparison method to determine the Project's GHG impacts is entirely flawed. Rather, the IS/MND should have utilized a screening threshold, such as the one provided by the SCAQMD of 3,000 metric tons of carbon dioxide equivalents per year (MTCO₂e/year). When we utilized this threshold, rather than the incorrect BAU method used in the IS/MND, we find that the Project's GHG emissions would result in a significant impact. As such, additional feasible mitigation should be applied to the Project in an effort to mitigate the Project's GHG emissions to the maximum extent possible.

When the emissions estimated in the IS/MND's model are compared to this threshold, we find that the Project's GHG emissions, alone, would exceed the SCAQMD 3,000 MTCO₂e/year threshold. The IS/MND's annual emissions demonstrate that construction of the Project would generate 21 MTCO₂e per year (when amortized over 30 years) and operation of the Project would generate 3,081 MTCO₂e per year (Table IV-9, p. III-53). When the Project's amortized construction emissions and operational emissions are combined, we find that the Project's GHG emissions would exceed the SCAQMD's screening threshold of 3,000 MTCO₂e per year (see table below).²⁴

²¹ http://www.arb.ca.gov/cc/scopingplan/2013_update/first_update_climate_change_scoping_plan.pdf

²² <http://www.arb.ca.gov/cc/capandtrade/meetings/121409/pdr.pdf>, Section 95802 (a)(18), p. 7.

²³ <http://www.capcoa.org/wp-content/uploads/downloads/2010/05/CAPCOA-ModelPolicies-6-12-09-915am.pdf>, p. 15.

²⁴ http://www.aguacaliente.org/downloads/Draft%20EIS/e5_6_GHG_110314.pdf, p. 5.6-14

IS/MND's GHG Emissions	
Phase	MT CO ₂ e/year
Construction	21
Operational	3,081
Total	3,102
SCAQMD Screening Level	3,000
<i>Threshold Exceeded?</i>	<i>Yes</i>

Our analysis demonstrates that construction and operation of the proposed Project would result in a significant GHG impact. Therefore, per SCAQMD guidance, in order to reduce the Project's GHG emissions to a less than significant level, all available, feasible mitigation should be applied to the Project in an effort to mitigate the Project's GHG emissions to the maximum extent possible. Until all feasible mitigation is implemented by the lead agency and the Project's GHG emissions are effectively reduced to the maximum extent possible, the Project's GHG impacts cannot be deemed less than significant.

Hazards and Hazardous Waste

Environmental Sampling is Necessary

The MND identifies prior uses at the Project site, including a dry cleaner and a gas station that may indicate unhealthful conditions to construction workers, hotel guests, and hotel workers. Chemicals commonly associated with dry cleaners include tetrachloroethylene (PCE), a likely human carcinogen.²⁵ Chemical contamination associated with gas stations includes benzene, a known human carcinogen.²⁶ Hotel guests and hotel workers at the Project site may be exposed to these contaminants through a process known as vapor intrusion whereby these compounds, in soil or groundwater, move through vapor and concentrate in indoor air of buildings above. Construction workers may be exposed by touching contaminated soil or breathing vapors during excavation, grading and trenching.

The MND includes a summary of the 1986 Los Angeles Regional Water Quality Control Board closure of a gas station at the Project site. The MND states that the Phase I ESA, completed in support of the Project (Appendix E), concluded (p. III-55): "the Project Site presumably met the commercial/industrial standard at the time the case was closed. Therefore, the Phase I ESA did not find a recognized environmental condition (REC) in connection with the property in relation to the presence of a Texaco previously occupying the Project Site."

A DEIR needs to be prepared to include environmental sampling results, including those for soil vapor, for PCE and benzene, two carcinogenic chemicals typically associated with former land uses. The DEIR also needs to include an evaluation of any soil contamination that may pose a risk to construction

²⁵ <http://www.atsdr.cdc.gov/toxfaqs/tf.asp?id=264&tid=48>

²⁶ <http://www.atsdr.cdc.gov/toxfaqs/tf.asp?id=38&tid=14>

workers. To conduct such an evaluation, the DEIR should compare soil sampling results to construction screening levels established by the San Francisco Bay Regional Water Quality Control Board.²⁷

Investigation for a Gas Station is Insufficient to Determine Impacts from Dry Cleaners

The MND attempts to dismiss potential residual impacts from the former dry cleaners by referencing the investigations conducted for the former gas station as sufficient to indicate whether a release from the dry cleaning operations occurred. Investigation techniques are quite different for the two types of facilities. Gas station investigations are focused on releases of petroleum compounds at locations where underground storage tanks are located. In contrast, dry cleaner investigations focus on sampling for the compound PCE in locations where it may have leaked through cracks in the concrete flooring or was dumped outside.

The MND states (p. III-55): “there have been various subsurface investigations conducted on the Project Site and it received case closure from the RWQCB, as mentioned above. Thus, the Project Site presumably met the standard at the time, indicating the solvents used for the Hollywood Laundry did not contaminate the groundwater and soil or were remediated.”

This is not based in fact. The MND admits: “the Phase I ESA was unable to obtain information regarding the sampling activities conducted on the Project Site to determine if the Project Site was monitored/sampled for contamination during former groundwater/vapor monitoring activities. As a result, the most recent levels of contamination from the Texaco and the Hollywood Laundry at the Project Site are unknown.”

The MND simply assumes that a gas station investigation would have yielded sampling results for PCE in soil and groundwater “indicating the solvents used for the Hollywood Laundry did not contaminate the groundwater and soil or were remediated.” This is an assumption that is inappropriate given the site history as a dry cleaner and the use and potential release of PCE, a likely human carcinogen to the subsurface. It is also inappropriate because the site has only been investigated for gas station closure and sampling results were not available for the Phase I consultant to review.

Mitigation is inadequate

Knowing that the facility may be contaminated by a former gas station and a dry cleaner, the MND defers any investigation and potential cleanup until after certification and under Los Angeles Fire Department authority. This is inappropriate because: (1) conditions at the site, which may include soil, soil vapor and groundwater contamination with carcinogens benzene and tetrachloroethylene, are not disclosed; and (2) The Los Angeles Fire Department is not capable of providing oversight of conditions where groundwater contamination exists and requires the assessment of human health risks.

(1) Conditions are not disclosed

No sampling of soil, soil vapor and groundwater was conducted for the Project. A DEIR needs to be prepared for the Project that includes the results of environmental sampling. This is important not only to allow for review of soil, soil gas and groundwater data but also to identify any impacts that may be related to the cleanup of contamination. Such impacts may include the

²⁷http://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/ESL/ESL%20Workbook_ESLs_Interim%20Final_22Feb16_Rev3_PDF.pdf, p. 7

need for offsite disposal and transport of contaminated soil, the treatment of contaminated soil vapor, and dewatering and treatment of contaminated groundwater.

(2) Fire Department is inappropriate agency for oversight

Mitigation Measure HAZ-1 tasks the Los Angeles Fire Department with certification that soil and groundwater contamination has been cleaned-up. The Los Angeles Fire Department is not an appropriate agency for this sign-off. A DEIR should be prepared to identify the California Department of Toxics Substances Control as the appropriate agency for oversight of the assessment and cleanup of site contamination.

Mitigation Measure HAZ-1 states:

Prior to the issuance of any use of land, grading, or building permit, the applicant shall obtain a sign-off from the Fire Department indicating that all on-site hazardous materials, including contamination of the soil and groundwater, have been suitably remediated, or that the proposed project will not impede proposed or on-going remediation measures.

The Los Angeles Fire Department is designated by the State of California as a Certified Unified Program Agency (CUPA). As such, the Fire Department is authorized to apply statewide standards to each facility within its jurisdiction that treats on site or generates hazardous waste, operates underground storage tanks or stores hazardous materials.²⁸ The Fire Department refers sites with groundwater contamination to the Los Angeles Regional Water Quality Control District.²⁹

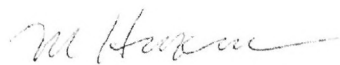
As stated at their website, the Los Angeles Fire Department uses its CUPA authority for UST investigation and cleanup where contaminants are found in soil only. The Fire Department is totally inappropriate to provide oversight where human health may be potentially at risk from soil, soil vapor and groundwater contamination from sources other than USTs, i.e., a dry cleaner.

The California Department of Toxics Substances Control is the appropriate agency to engage for oversight of the environmental assessment of the Project site. The California Department of Toxics Substances Control, in conjunction of the California Office of Health Hazard Assessment, is able to evaluate the sampling of soil and groundwater and to assess health risks, activities which must be completed prior to preparation of a DEIR.

²⁸ <http://www.lafd.org/fire-prevention/cupa/overview>

²⁹ <http://www.lafd.org/fire-prevention/cupa/underground-storage-tank>

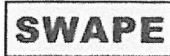
Sincerely,

A handwritten signature in cursive script, appearing to read "M Hagemann".

Matt Hagemann, P.G., C.Hg.

A handwritten signature in cursive script, appearing to read "JJ".

Jessie Jaeger



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B.A. Degree, Geology, Humboldt State University, Arcata, CA, 1982.

Professional Certifications:

California Professional Geologist

California Certified Hydrogeologist

Qualified SWPPP Developer and Practitioner

Professional Experience:

Matt has 25 years of experience in environmental policy, assessment and remediation. He spent nine years with the U.S. EPA in the RCRA and Superfund programs and served as EPA's Senior Science Policy Advisor in the Western Regional Office where he identified emerging threats to groundwater from perchlorate and MTBE. While with EPA, Matt also served as a Senior Hydrogeologist in the oversight of the assessment of seven major military facilities undergoing base closure. He led numerous enforcement actions under provisions of the Resource Conservation and Recovery Act (RCRA) while also working with permit holders to improve hydrogeologic characterization and water quality monitoring.

Matt has worked closely with U.S. EPA legal counsel and the technical staff of several states in the application and enforcement of RCRA, Safe Drinking Water Act and Clean Water Act regulations. Matt has trained the technical staff in the States of California, Hawaii, Nevada, Arizona and the Territory of Guam in the conduct of investigations, groundwater fundamentals, and sampling techniques.

Positions Matt has held include:

- Founding Partner, Soil/Water/Air Protection Enterprise (SWAPE) (2003 – present);
- Geology Instructor, Golden West College, 2010 – 2104;
- Senior Environmental Analyst, Komex H2O Science, Inc. (2000 -- 2003);

- Executive Director, Orange Coast Watch (2001 – 2004);
- Senior Science Policy Advisor and Hydrogeologist, U.S. Environmental Protection Agency (1989–1998);
- Hydrogeologist, National Park Service, Water Resources Division (1998 – 2000);
- Adjunct Faculty Member, San Francisco State University, Department of Geosciences (1993 – 1998);
- Instructor, College of Marin, Department of Science (1990 – 1995);
- Geologist, U.S. Forest Service (1986 – 1998); and
- Geologist, Dames & Moore (1984 – 1986).

Senior Regulatory and Litigation Support Analyst:

With SWAPE, Matt’s responsibilities have included:

- Lead analyst and testifying expert in the review of over 100 environmental impact reports since 2003 under CEQA that identify significant issues with regard to hazardous waste, water resources, water quality, air quality, Valley Fever, greenhouse gas emissions, and geologic hazards. Make recommendations for additional mitigation measures to lead agencies at the local and county level to include additional characterization of health risks and implementation of protective measures to reduce worker exposure to hazards from toxins and Valley Fever.
- Stormwater analysis, sampling and best management practice evaluation at industrial facilities.
- Manager of a project to provide technical assistance to a community adjacent to a former Naval shipyard under a grant from the U.S. EPA.
- Technical assistance and litigation support for vapor intrusion concerns.
- Lead analyst and testifying expert in the review of environmental issues in license applications for large solar power plants before the California Energy Commission.
- Manager of a project to evaluate numerous formerly used military sites in the western U.S.
- Manager of a comprehensive evaluation of potential sources of perchlorate contamination in Southern California drinking water wells.
- Manager and designated expert for litigation support under provisions of Proposition 65 in the review of releases of gasoline to sources drinking water at major refineries and hundreds of gas stations throughout California.
- Expert witness on two cases involving MTBE litigation.
- Expert witness and litigation support on the impact of air toxins and hazards at a school.
- Expert witness in litigation at a former plywood plant.

With Komex H2O Science Inc., Matt’s duties included the following:

- Senior author of a report on the extent of perchlorate contamination that was used in testimony by the former U.S. EPA Administrator and General Counsel.
- Senior researcher in the development of a comprehensive, electronically interactive chronology of MTBE use, research, and regulation.
- Senior researcher in the development of a comprehensive, electronically interactive chronology of perchlorate use, research, and regulation.
- Senior researcher in a study that estimates nationwide costs for MTBE remediation and drinking water treatment, results of which were published in newspapers nationwide and in testimony against provisions of an energy bill that would limit liability for oil companies.
- Research to support litigation to restore drinking water supplies that have been contaminated by MTBE in California and New York.

- Expert witness testimony in a case of oil production-related contamination in Mississippi.
- Lead author for a multi-volume remedial investigation report for an operating school in Los Angeles that met strict regulatory requirements and rigorous deadlines.

- Development of strategic approaches for cleanup of contaminated sites in consultation with clients and regulators.

Executive Director:

As Executive Director with Orange Coast Watch, Matt led efforts to restore water quality at Orange County beaches from multiple sources of contamination including urban runoff and the discharge of wastewater. In reporting to a Board of Directors that included representatives from leading Orange County universities and businesses, Matt prepared issue papers in the areas of treatment and disinfection of wastewater and control of the discharge of grease to sewer systems. Matt actively participated in the development of countywide water quality permits for the control of urban runoff and permits for the discharge of wastewater. Matt worked with other nonprofits to protect and restore water quality, including Surfrider, Natural Resources Defense Council and Orange County CoastKeeper as well as with business institutions including the Orange County Business Council.

Hydrogeology:

As a Senior Hydrogeologist with the U.S. Environmental Protection Agency, Matt led investigations to characterize and cleanup closing military bases, including Mare Island Naval Shipyard, Hunters Point Naval Shipyard, Treasure Island Naval Station, Alameda Naval Station, Moffett Field, Mather Army Airfield, and Sacramento Army Depot. Specific activities were as follows:

- Led efforts to model groundwater flow and contaminant transport, ensured adequacy of monitoring networks, and assessed cleanup alternatives for contaminated sediment, soil, and groundwater.
- Initiated a regional program for evaluation of groundwater sampling practices and laboratory analysis at military bases.
- Identified emerging issues, wrote technical guidance, and assisted in policy and regulation development through work on four national U.S. EPA workgroups, including the Superfund Groundwater Technical Forum and the Federal Facilities Forum.

At the request of the State of Hawaii, Matt developed a methodology to determine the vulnerability of groundwater to contamination on the islands of Maui and Oahu. He used analytical models and a GIS to show zones of vulnerability, and the results were adopted and published by the State of Hawaii and County of Maui.

As a hydrogeologist with the EPA Groundwater Protection Section, Matt worked with provisions of the Safe Drinking Water Act and NEPA to prevent drinking water contamination. Specific activities included the following:

- Received an EPA Bronze Medal for his contribution to the development of national guidance for the protection of drinking water.
- Managed the Sole Source Aquifer Program and protected the drinking water of two communities through designation under the Safe Drinking Water Act. He prepared geologic reports, conducted public hearings, and responded to public comments from residents who were very concerned about the impact of designation.

- Reviewed a number of Environmental Impact Statements for planned major developments, including large hazardous and solid waste disposal facilities, mine reclamation, and water transfer.

Matt served as a hydrogeologist with the RCRA Hazardous Waste program. Duties were as follows:

- Supervised the hydrogeologic investigation of hazardous waste sites to determine compliance with Subtitle C requirements.
- Reviewed and wrote "part B" permits for the disposal of hazardous waste.
- Conducted RCRA Corrective Action investigations of waste sites and led inspections that formed the basis for significant enforcement actions that were developed in close coordination with U.S. EPA legal counsel.
- Wrote contract specifications and supervised contractor's investigations of waste sites.

With the National Park Service, Matt directed service-wide investigations of contaminant sources to prevent degradation of water quality, including the following tasks:

- Applied pertinent laws and regulations including CERCLA, RCRA, NEPA, NRDA, and the Clean Water Act to control military, mining, and landfill contaminants.
- Conducted watershed-scale investigations of contaminants at parks, including Yellowstone and Olympic National Park.
- Identified high-levels of perchlorate in soil adjacent to a national park in New Mexico and advised park superintendent on appropriate response actions under CERCLA.
- Served as a Park Service representative on the Interagency Perchlorate Steering Committee, a national workgroup.
- Developed a program to conduct environmental compliance audits of all National Parks while serving on a national workgroup.
- Co-authored two papers on the potential for water contamination from the operation of personal watercraft and snowmobiles, these papers serving as the basis for the development of nation-wide policy on the use of these vehicles in National Parks.
- Contributed to the Federal Multi-Agency Source Water Agreement under the Clean Water Action Plan.

Policy:

Served senior management as the Senior Science Policy Advisor with the U.S. Environmental Protection Agency, Region 9. Activities included the following:

- Advised the Regional Administrator and senior management on emerging issues such as the potential for the gasoline additive MTBE and ammonium perchlorate to contaminate drinking water supplies.
- Shaped EPA's national response to these threats by serving on workgroups and by contributing to guidance, including the Office of Research and Development publication, *Oxygenates in Water: Critical Information and Research Needs*.
- Improved the technical training of EPA's scientific and engineering staff.
- Earned an EPA Bronze Medal for representing the region's 300 scientists and engineers in negotiations with the Administrator and senior management to better integrate scientific principles into the policy-making process.
- Established national protocol for the peer review of scientific documents.

Geology:

With the U.S. Forest Service, Matt led investigations to determine hillslope stability of areas proposed for timber harvest in the central Oregon Coast Range. Specific activities were as follows:

- Mapped geology in the field, and used aerial photographic interpretation and mathematical models to determine slope stability.
- Coordinated his research with community members who were concerned with natural resource protection.
- Characterized the geology of an aquifer that serves as the sole source of drinking water for the city of Medford, Oregon.

As a consultant with Dames and Moore, Matt led geologic investigations of two contaminated sites (later listed on the Superfund NPL) in the Portland, Oregon, area and a large hazardous waste site in eastern Oregon. Duties included the following:

- Supervised year-long effort for soil and groundwater sampling.
- Conducted aquifer tests.
- Investigated active faults beneath sites proposed for hazardous waste disposal.

Teaching:

From 1990 to 1998, Matt taught at least one course per semester at the community college and university levels:

- At San Francisco State University, held an adjunct faculty position and taught courses in environmental geology, oceanography (lab and lecture), hydrogeology, and groundwater contamination.
- Served as a committee member for graduate and undergraduate students.
- Taught courses in environmental geology and oceanography at the College of Marin.

Matt taught physical geology (lecture and lab and introductory geology at Golden West College in Huntington Beach, California from 2010 to 2014.

Invited Testimony, Reports, Papers and Presentations:

Hagemann, M.F., 2008. Disclosure of Hazardous Waste Issues under CEQA. Presentation to the Public Environmental Law Conference, Eugene, Oregon.

Hagemann, M.F., 2008. Disclosure of Hazardous Waste Issues under CEQA. Invited presentation to U.S. EPA Region 9, San Francisco, California.

Hagemann, M.F., 2005. Use of Electronic Databases in Environmental Regulation, Policy Making and Public Participation. Brownfields 2005, Denver, Colorado.

Hagemann, M.F., 2004. Perchlorate Contamination of the Colorado River and Impacts to Drinking Water in Nevada and the Southwestern U.S. Presentation to a meeting of the American Groundwater Trust, Las Vegas, NV (served on conference organizing committee).

Hagemann, M.F., 2004. Invited testimony to a California Senate committee hearing on air toxins at schools in Southern California, Los Angeles.

Brown, A., Farrow, J., Gray, A. and **Hagemann, M.**, 2004. An Estimate of Costs to Address MTBE Releases from Underground Storage Tanks and the Resulting Impact to Drinking Water Wells. Presentation to the Ground Water and Environmental Law Conference, National Groundwater Association.

Hagemann, M.F., 2004. Perchlorate Contamination of the Colorado River and Impacts to Drinking Water in Arizona and the Southwestern U.S. Presentation to a meeting of the American Groundwater Trust, Phoenix, AZ (served on conference organizing committee).

Hagemann, M.F., 2003. Perchlorate Contamination of the Colorado River and Impacts to Drinking Water in the Southwestern U.S. Invited presentation to a special committee meeting of the National Academy of Sciences, Irvine, CA.

Hagemann, M.F., 2003. Perchlorate Contamination of the Colorado River. Invited presentation to a tribal EPA meeting, Pechanga, CA.

Hagemann, M.F., 2003. Perchlorate Contamination of the Colorado River. Invited presentation to a meeting of tribal representatives, Parker, AZ.

Hagemann, M.F., 2003. Impact of Perchlorate on the Colorado River and Associated Drinking Water Supplies. Invited presentation to the Inter-Tribal Meeting, Torres Martinez Tribe.

Hagemann, M.F., 2003. The Emergence of Perchlorate as a Widespread Drinking Water Contaminant. Invited presentation to the U.S. EPA Region 9.

Hagemann, M.F., 2003. A Deductive Approach to the Assessment of Perchlorate Contamination. Invited presentation to the California Assembly Natural Resources Committee.

Hagemann, M.F., 2003. Perchlorate: A Cold War Legacy in Drinking Water. Presentation to a meeting of the National Groundwater Association.

Hagemann, M.F., 2002. From Tank to Tap: A Chronology of MTBE in Groundwater. Presentation to a meeting of the National Groundwater Association.

Hagemann, M.F., 2002. A Chronology of MTBE in Groundwater and an Estimate of Costs to Address Impacts to Groundwater. Presentation to the annual meeting of the Society of Environmental Journalists.

Hagemann, M.F., 2002. An Estimate of the Cost to Address MTBE Contamination in Groundwater (and Who Will Pay). Presentation to a meeting of the National Groundwater Association.

Hagemann, M.F., 2002. An Estimate of Costs to Address MTBE Releases from Underground Storage Tanks and the Resulting Impact to Drinking Water Wells. Presentation to a meeting of the U.S. EPA and State Underground Storage Tank Program managers.

Hagemann, M.F., 2001. From Tank to Tap: A Chronology of MTBE in Groundwater. Unpublished report.

Hagemann, M.F., 2001. Estimated Cleanup Cost for MTBE in Groundwater Used as Drinking Water. Unpublished report.

Hagemann, M.F., 2001. Estimated Costs to Address MTBE Releases from Leaking Underground Storage Tanks. Unpublished report.

Hagemann, M.F., and VanMouwerik, M., 1999. Potential Water Quality Concerns Related to Snowmobile Usage. Water Resources Division, National Park Service, Technical Report.

VanMouwerik, M. and **Hagemann, M.F.** 1999, Water Quality Concerns Related to Personal Watercraft Usage. Water Resources Division, National Park Service, Technical Report.

Hagemann, M.F., 1999, Is Dilution the Solution to Pollution in National Parks? The George Wright Society Biannual Meeting, Asheville, North Carolina.

Hagemann, M.F., 1997, The Potential for MTBE to Contaminate Groundwater. U.S. EPA Superfund Groundwater Technical Forum Annual Meeting, Las Vegas, Nevada.

Hagemann, M.F., and Gill, M., 1996, Impediments to Intrinsic Remediation, Moffett Field Naval Air Station, Conference on Intrinsic Remediation of Chlorinated Hydrocarbons, Salt Lake City.

Hagemann, M.F., Fukunaga, G.L., 1996, The Vulnerability of Groundwater to Anthropogenic Contaminants on the Island of Maui, Hawaii. Hawaii Water Works Association Annual Meeting, Maui, October 1996.

Hagemann, M. F., Fukunaga, G. L., 1996, Ranking Groundwater Vulnerability in Central Oahu, Hawaii. Proceedings, Geographic Information Systems in Environmental Resources Management, Air and Waste Management Association Publication VIP-61.

Hagemann, M.F., 1994. Groundwater Characterization and Cleanup at Closing Military Bases in California. Proceedings, California Groundwater Resources Association Meeting.

Hagemann, M.F. and Sabol, M.A., 1993. Role of the U.S. EPA in the High Plains States Groundwater Recharge Demonstration Program. Proceedings, Sixth Biennial Symposium on the Artificial Recharge of Groundwater.

Hagemann, M.F., 1993. U.S. EPA Policy on the Technical Impracticability of the Cleanup of DNAPL-contaminated Groundwater. California Groundwater Resources Association Meeting.

Hagemann, M.F., 1992. Dense Nonaqueous Phase Liquid Contamination of Groundwater: An Ounce of Prevention... Proceedings, Association of Engineering Geologists Annual Meeting, v. 35.

Other Experience:

Selected as subject matter expert for the California Professional Geologist licensing examination, 2009-2011.

JESSIE MARIE JAEGER



Technical Consultation, Data Analysis and
Litigation Support for the Environment

SOIL WATER AIR PROTECTION ENTERPRISE

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EDUCATION

UNIVERSITY OF CALIFORNIA, LOS ANGELES **B.S. CONSERVATION BIOLOGY & ENVIRONMENTAL SCIENCES** *JUNE 2014*

PROJECT EXPERIENCE

SOIL WATER AIR PROTECTION ENTERPRISE

SANTA MONICA, CA

AIR QUALITY SPECIALIST

SENIOR ANALYST: CEQA ANALYSIS & MODELING

- Calculated roadway, stationary source, and cumulative impacts for risk and hazard analyses at proposed land use projects.
- Quantified criteria air pollutant and greenhouse gas emissions released during construction and operational activities of proposed land use projects using CalEEMod and EMFAC2011 emission factors.
- Utilized AERSCREEN, a screening dispersion model, to determine the ambient air concentrations at sensitive receptor locations.
- Organized presentations containing figures and tables comparing results of particulate matter analyses to CEQA thresholds.
- Prepared reports that discuss results of the health risk analyses conducted for several land use redevelopment projects.

SENIOR ANALYST: GREENHOUSE GAS MODELING AND DETERMINATION OF SIGNIFICANCE

- Quantified greenhouse gas (GHG) emissions of a "business as usual" scenario for proposed land use projects using CalEEMod.
- Determined compliance of proposed projects with AB 32 GHG reduction targets, with measures described in CARB's Scoping Plan for each land use sector, and with GHG significance thresholds recommended by various Air Quality Management Districts in California.
- Produced tables and figures that compare the results of the GHG analyses to applicable CEQA thresholds and reduction targets.

PROJECT MANAGER: OFF-GASSING OF FORMALDEHYDE FROM FLOORING PRODUCTS

- Determined the appropriate standard test methods to effectively measure formaldehyde emissions from flooring products.
- Compiled and analyzed laboratory testing data. Produced tables, charts, and graphs to exhibit emission levels.
- Compared finalized testing data to Proposition 65 No Significant Risk Level (NSRL) and to CARB's Phase 2 Standard.
- Prepared a final analytical report and organized supporting data for use as Expert testimony in environmental litigation.
- Participated in meetings with clients to discuss project strategy and identify solutions to achieve short and long term goals.

PROJECT ANALYST: EXPOSURE ASSESSMENT OF CONTAMINANTS EMITTED BY INCINERATOR

- Reviewed and organized sampling data, and determined the maximum levels of arsenic, dioxin, and lead in soil samples.
- Determined cumulative and hourly particulate deposition of incinerator and modeled particle dispersion locations using GIS and AERMOD.
- Conducted risk assessment using guidance set forth by the Office of Environmental Health Hazard Assessment (OEHHA).
- Utilized LeadSpread8 to evaluate exposure, and the potential adverse health effects from exposure, to lead in the environment.
- Compared final results of assessment to the Environmental Protection Agency's (EPA) Regional Screening Levels (RSLs).

ACCOMPLISHMENTS

- | | |
|---|------------------------------|
| • Recipient , Bruins Advantage Scholarship, University of California, Los Angeles | SEPT 2010 – JUNE 2014 |
| • Academic Honoree , Dean's List, University of California, Los Angeles | SEPT 2013 – JUNE 2014 |
| • Academic Wellness Director , UCLA Undergraduate Students Associated Council | SEPT 2013 – JUNE 2014 |
| • Student Groups Support Committee Member , UCLA Undergraduate Students Associated Council | SEPT 2012 – JUNE 2013 |

EXHIBIT 2

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September 7, 2016

VIA EMAIL AND OVERNIGHT MAIL

Mr. Jordann Turner, City Planner
Department of City Planning
City of Los Angeles
200 North Spring Street, Room 750
Los Angeles, CA 90012
Email: jordann.turner@lacity.org

**Re: Hollywood Ivar Gardens Project (ENV-2015-2895-MND;
CPC 2015-2893-VZC-HD-CUB-SPR)**

Dear Mr. Turner:

We write on behalf of the Coalition for Responsible Equitable Economic Development ("CREED LA"), Luther Medina, John Ferruccio, Jorge L. Aceves, John P. Bustos, Gery Kennon, Chris S. Macias and Robert E. Murphy Jr., to respond to the Department of City Planning Recommendation Report ("Staff Report") for the September 8, 2016 City Planning Commission hearing for the Hollywood Ivar Gardens Project (ENV-2015-2895-MND; CPC 2015-2893-VXC-HD-CUB-SPR) ("Project") proposed by R.D. Olson Development ("Applicant"). On July 6, 2016, we submitted comments on the Initial Study and Mitigated Negative Declaration ("MND") prepared by the City of Los Angeles ("City") for the Project. The Staff Report contains responses to our comments. However, the Staff Report fails to resolve the issues we raised, as detailed below, and our comments still stand.¹

In short, the MND still fails to comply with the requirements of the California Environmental Quality Act² ("CEQA") because it fails to identify the Project's potentially significant impacts to air quality and public health, and from

¹ We incorporate our July 6, 2016 comments herein by reference.

² Pub. Resources Code §§ 21000 et seq.; 14 Cal. Code Regs. §§ 15000 et seq. ("CEQA Guidelines").

September 7, 2016

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greenhouse gas emissions and hazardous materials, and fails to propose measures that can reduce those impacts to a less than significant level. Therefore, the City may not approve the Vesting Zone Change, Height District Change, Conditional Use Permit, Zoning Administrator's Adjustment or Site Plan Review Findings for the Project until it prepares an environmental impact report ("EIR") that adequately analyzes the Project's potentially significant direct impacts and incorporates all feasible mitigation measures to avoid or minimize these impacts.

We prepared this response to the Staff Report with the assistance of air quality and hazards experts Matt Hagemann and Jessie Jaeger of Soil/Water/Air Protection Enterprise ("SWAPE"). SWAPE's response to the Staff Report is attached hereto as **Attachment A**.

I. THE CITY MUST PREPARE AN EIR BECAUSE SUBSTANTIAL EVIDENCE SUPPORTS A FAIR ARGUMENT THAT THE PROJECT MAY RESULT IN SIGNIFICANT PUBLIC HEALTH AND ENVIRONMENTAL IMPACTS

We previously explained that CEQA contains a strong presumption in favor of requiring a lead agency to prepare an EIR. This presumption is reflected in the "fair argument" standard. Under that standard, a lead agency "shall" prepare an EIR whenever substantial evidence in the whole record before the agency supports a fair argument that a project may have a significant effect on the environment.³ The fair argument standard creates a "low threshold" favoring environmental review through an EIR, rather than through issuance of a negative declaration.⁴ An agency's decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.⁵ Substantial evidence can be provided by technical

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

⁴*Citizens Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 754.

⁵*Sierra Club v. County of Sonoma*, (1992) 6 Cal.App.4th, 1307, 1318; *see also Friends of "B" Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002 ["If there was substantial evidence that the proposed project might have a significant environmental impact, evidence to the contrary is not sufficient to support a decision to dispense with preparation of an [environmental impact report] and adopt a negative declaration, because it could be 'fairly argued' that the project might have a significant environmental impact"].

experts or members of the public.⁶ “If a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect.”⁷

Our previous comments showed that there is more than a fair argument supported by substantial evidence that the Project may result in significant impacts on air quality and public health, and from greenhouse gas emissions and hazardous materials. The Staff Report does not change these conclusions. Therefore, the City is required to prepare an EIR to evaluate the Project’s impacts and propose all mitigation measures that are necessary to reduce those impacts to a less-than-significant level.

A. Substantial Evidence Still Supports a Fair Argument that the Project Will Cause a Significant, Unmitigated Cancer Risk from Toxic Air Contaminants Emissions

The MND concludes that the health risk posed to nearby sensitive receptors from exposure to toxic air contaminants (“TACs”), including diesel particulate matter (“DPM”) emissions, from Project construction and operation would be less than significant.⁸ We previously explained that the MND’s conclusion is unsupported because the City failed to quantify the risk and compare it to applicable thresholds of significance. We also provided substantial evidence that the Project would result in potentially significant health risks from DPM emissions.

The Staff Report response to our comments states that:

The requirement to prepare a construction or operational health risk assessment pursuant to OEHHHA Guidelines is not required under CEQA or any required permits or approvals. Based on the relatively low emissions

⁶See, e.g., *Citizens for Responsible and Open Government v. City of Grand Terrace* (2008) 160 Cal.App.4th 1323, 1340 [substantial evidence regarding noise impacts included public comments at hearings that selected air conditioners are very noisy]; see also *Architectural Heritage Ass’n v. County of Monterey*, 122 Cal.App.4th 1095, 1117-1118 [substantial evidence regarding impacts to historic resource included fact-based testimony of qualified speakers at the public hearing]; *Gabric v. City of Rancho Palos Verdes* (1977) 73 Cal.App.3d 183, 199.

⁷ CEQA Guidelines § 15062(f).

⁸ MND, p. III-32.

associated with PM₁₀ and PM_{2.5} during both construction and operation, there is no evidence to suggest that the Proposed Project would generate diesel emissions that are excessive or above acceptable levels that already occur within the environment. Furthermore, as discussed in greater detail below, the screening level analysis presented in Comment 3.3 does not accurately reflect the project's characteristics or exposure pathways to sensitive receptors.⁹

SWAPE reviewed the Staff Report response and found it to be incorrect for several reasons.

First, there is not substantial evidence to support the Staff Report's argument that the Project's "relatively low emissions associated with PM₁₀ and PM_{2.5} during both construction and operation" means that the Project would not result in significant public health impacts. On the contrary, we previously provided substantial evidence supporting a fair argument that the (even relatively low) Project emissions from DPM *will* result in significant cancer risks. This is precisely why the City should prepare a quantitative health risk assessment ("HRA") – to disclose and analyze the Project's health risks from air pollutants, and compare the risks to applicable thresholds of significance.¹⁰

Second, the South Coast Air Quality Management District ("SCAQMD") *does* recommend that HRAs be prepared for development projects subject to CEQA. In fact, the SCAQMD's *Health Risk Assessment Guidance for Analyzing Cancer Risks from Mobile Source Diesel Idling Emissions for CEQA Air Quality Analysis* provides guidance for quantifying cancer risks from DPM from truck idling and movement, among other sources.¹¹ Indeed, SWAPE previously provided evidence that it is the Project's DPM emissions from trucks and off-road heavy equipment that will cause significant health risks. Therefore, the Staff Report is completely unsupported and the MND is inconsistent with SCAQMD CEQA guidance.

Finally, the Staff Report's argument that SWAPE's screening level analysis "does not accurately reflect the project's characteristics or exposure pathways to sensitive receptors" is entirely incorrect. SWAPE prepared a screening level HRA

⁹ Staff Report, Response to Comments, p. 31.

¹⁰ See **Attachment A**, p. 2.

¹¹ *Id.*, p. 3.

consistent with the Office of Environmental Health Hazard Assessment *Risk Assessment Guidelines: Guidance Manual for Preparation of Health Risk Assessments* (“OEHHA Guidelines”). SWAPE also explained that the purpose of conducting the screening level analysis is to determine if a more refined HRA is necessary. Specifically, if screening level HRA results are above applicable thresholds, then a more refined HRA that is tailored to site-specific meteorology and equipment usage schedules must be conducted. Accordingly, SWAPE conducted a screening level analysis, found that the results exceeded applicable thresholds, and advised the City that a more refined HRA must be conducted for the Project.¹² The City simply refuses to abide by the OEHHA Guidelines, and refuses to adequately analyze the Project’s potentially significant cancer risks in an EIR, as required by CEQA.

B. Substantial Evidence Still Supports a Fair Argument that the Project Will Cause a Potentially Significant, Unmitigated Impact from Greenhouse Gas Emissions

SWAPE previously showed that the MND fails to ensure that the Project complies with the greenhouse gas emissions (“GHG”) 2030 reduction goals required by Executive Order B-30-15. SWAPE recommended that, to demonstrate compliance with Executive Order B-30-15, the City should scale down the 49% statewide reduction target to a project level goal. This will provide a threshold against which to measure the Project’s impacts from GHG emissions.

The Staff Report does not demonstrate the Project’s compliance with Executive Order B-30-15. Rather, the Staff Report incorrectly argues that the Project need only comply with 2020 reduction goals.¹³ The interim GHG reduction goals for 2020 were superseded by Executive Order B-30-15, which requires emissions reductions above those mandated by AB 32. Thus, the Staff Report is unsupported. Moreover, as we previously explained, even if comparing a project’s emission reductions to the AB 32 statewide reduction goal was proper (which it is not), the Project’s GHG emissions reduction of 13 percent would not even meet the 15 percent reduction required by AB 32 to reduce statewide emissions to 1990 levels by 2020.

¹²*Id.*, p. 4.

¹³ Staff Report, Response to Comments, p. 36.

SWAPE previously provided an independent analysis of the Project's GHG emissions using the SCAQMD screening threshold of 3,000 metric tons of carbon dioxide equivalents per year (MTCO₂e/year) and found that the Project's GHG emissions would result in a significant impact. Project construction would generate 21 MTCO₂e/year (when amortized over 30 years) and Project operation would generate 3,081 MTCO₂e/year. SWAPE found that, when the Project's amortized construction emissions and operation emissions are combined, the emissions are 3,102 MTCO₂e/year, which exceed the SCAQMD's screening threshold of 3,000 MTCO₂e/year. This remains a significant, unmitigated impact that the City still fails to disclose.

C. Substantial Evidence Supports a Fair Argument that the Project May Result in a Significant, Unmitigated Impact from Hazardous Materials

SWAPE previously explained that the former dry cleaning and gas station uses on the Project site may have caused subsurface contamination that would pose a health risk to construction workers, hotel guests and hotel workers. Specifically, chemical contamination commonly associated with dry cleaners includes tetrachloroethylene ("PCE"), a likely carcinogen, and chemical contamination associated with gas stations includes benzene, a known human carcinogen and volatile organic compound ("VOC"). SWAPE further explained that hotel guests and hotel workers may be exposed to these contaminants through vapor intrusion, and construction workers may be exposed to these contaminants by touching contaminated soil or breathing vapors during excavation, grading and trenching.

Rather than analyze the Project's potentially significant impacts from on-site contamination, the MND merely states "there have been various subsurface investigations conducted on the Project Site and it received closure from the Regional Water Quality Control Board" and "the Project Site presumably met the standard at the time, indicating the solvents used for the Hollywood Laundry did not contaminate the groundwater and soil or were remediated."¹⁴ The Phase I Environmental Site Assessment ("Phase I ESA") prepared for the Project states that "the Project site presumably met the commercial/industrial standard" under the 1986 Los Regional Water Quality Control Board closure of the gas station and, therefore, did not "find a recognized environmental condition (REC) in connection

¹⁴ MND, p. III-55.

with the property in relation to the presence of a Texaco previously occupying the Project site.”¹⁵

We previously explained that the MND’s and Phase I ESA’s presumptions and conclusions are unsupported because (1) neither contain any supporting sampling results, and (2) investigations conducted for contamination from a gas station are inapplicable to contamination from dry cleaning operations. The Staff Report fails to substantively respond to, or resolve, these issues.¹⁶ Therefore, we reiterate the need for the City to include environmental sampling results in an EIR, including results for soil vapor, PCE and benzene. The EIR must compare soil sampling results to construction worker screening levels to determine the Project’s potentially significant impacts from contamination. Without sampling results, there is no support for the MND’s and Phase I ESA’s conclusions. In addition, an investigation targeting contamination from dry cleaning operations must be performed and the results included in an EIR. Without a targeted investigation, there is no support for the MND’s and Phase I ESA’s conclusions.

As it stands, substantial evidence supports a fair argument that the Project may result in health impacts to construction workers, hotel guests and hotel workers from on-site contamination. The City must prepare an EIR that quantitatively assesses and mitigates these impacts.

II. CONCLUSION

The Staff Report fails to resolve the issues we raised in our comments on the MND. There is substantial evidence supporting a fair that the Project may result in significant adverse impacts that were not identified in the MND, and that are not adequately analyzed or mitigated. We, once again, urge the City to fulfill its responsibilities under CEQA by withdrawing the MND and preparing a legally adequate EIR to address the Project’s potentially significant impacts. Only by complying with all applicable laws will the City and the public be able to ensure that the Project’s significant environmental impacts are mitigated to less than significant levels.

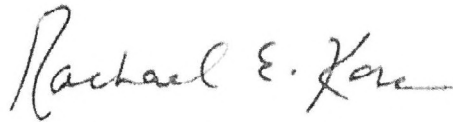
¹⁵*Id.*

¹⁶Attachment A, p. 6.

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Thank you for your attention to these comments.

Sincerely,

A handwritten signature in cursive script that reads "Rachael E. Koss". The signature is written in dark ink and is positioned above the printed name.

Rachael E. Koss

REK:ieh

Attachment

Attachment A



Technical Consultation, Data Analysis and
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September 7, 2016

Rachael E. Koss
Adams Broadwell Joseph & Cardozo
601 Gateway Blvd., Suite 1000
South San Francisco, CA 94080

Subject: Response to Comments on the Hollywood Ivar Gardens Project (ENV-2015-2895-MND)

Dear Ms. Koss:

We have reviewed the Recommendation Report ("Staff Report") for the proposed Hollywood Ivar Gardens Project (ENV-2015-2895-MND) ("Project") located in the City of Los Angeles. The Staff Report addresses comments we made on the Initial Study/Mitigated Negative Declaration ("IS/MND") for the proposed Project in a July 5, 2016 letter. After review of the responses provided in the Staff Report, we maintain that the IS/MND still falls well short in describing and mitigating the Project's Air Quality, Greenhouse Gas, and Hazards and Hazardous Waste impacts. A Draft Environmental Impact Report (DEIR) should be prepared to adequately evaluate and mitigate the Project's environmental and health risk impacts.

Air Quality

In our July 5 letter, we concluded that the Project's IS/MND failed to adequately evaluate the Project's Air Quality impacts because the IS/MND failed to prepare a construction and operational health risk assessment. We still maintain that the Staff Report fails to address our concern regarding the construction and operational health risk posed by the proposed Project.

Diesel Particulate Matter Health Risk Emissions Inadequately Evaluated

Our July 5 letter found that the IS/MND failed to evaluate the health risk posed to nearby sensitive receptors from exposure to diesel particulate matter (DPM) emissions released during Project construction and operation (Response to Comments, p. 30). The Staff Report attempts to address our concerns on this matter, stating:

"The requirement to prepare a construction or operational health risk assessment pursuant to OEHHA Guidelines is not required under CEQA or any required permits or approvals. Based on

the relatively low emissions associated with PM₁₀ and PM_{2.5} during both construction and operation, there is no evidence to suggest that the Proposed Project would generate diesel emissions that are excessive or above acceptable levels that already occur within the environment. Furthermore, as discussed in greater detail below, the screening level analysis presented in Comment 3.3 does not accurately reflect the project's characteristics or exposure pathways to sensitive receptors" (Response to Comments, p. 31).

This justification for failing to prepare a health risk assessment, however, is incorrect for several reasons.

First, the IS/MND relies upon a subjective opinion that has no factual basis, rather than a quantitative assessment, to determine the Project's Air Quality impacts. Simply because Project construction and operation would emit "relatively low" PM₁₀ and PM_{2.5} emissions does not mean that the Project applicant is not required to conduct a health risk assessment, nor does it mean that the Project would not result in a significant health risk impact. A health risk assessment is required to determine whether or not a Project would expose sensitive receptors to substantial air pollutants. In order to answer this checklist item, the IS/MND should have conducted some sort of quantitative analysis and should have compared the results of this analysis to applicable thresholds. The South Coast Air Quality Management District (SCAQMD) provides a specific numerical threshold of 10 in one million for determining a project's health risk impact.¹ Therefore, the IS/MND should have conducted an assessment that compares the Project's construction and operational health risks to this threshold in order to determine the Project's health risk impact. By failing to prepare a health risk assessment, the IS/MND fails to provide a comprehensive analysis of the sensitive receptor impacts that may occur as a result of exposure to substantial air pollutants.

Second, contrary to what is stated in the Staff Report, the SCAQMD does recommend that health risk assessments be prepared for development projects subject to review under CEQA. According to the SCAQMD,

"In August 2002, the SCAQMD's Mobile Source Committee approved the 'Health Risk Assessment Guidance for Analyzing Cancer Risks from Mobile Source Diesel Emissions.' This document provided guidance for analyzing cancer risks from diesel particulate matter from mobile sources at facilities such as truck stops and warehouse distribution centers. Subsequently, SCAQMD staff revised the aforementioned document to expand the analysis to provide technical guidance for analyzing cancer risks from potential diesel particulate emissions impacts from truck idling and movement (such as, but not limited to, truck stops, warehouse and distribution centers, or transit centers), ship hotelling at ports, and train idling. This revised guidance document titled, 'Health Risk Assessment Guidance for Analyzing Cancer Risks from Mobile Source Diesel Idling Emissions for CEQA Air Quality Analysis' was presented to and

¹ <http://www.aqmd.gov/docs/default-source/ceqa/handbook/scaqmd-air-quality-significance-thresholds.pdf?sfvrsn=2>

approved by the SCAQMD's Mobile Source Committee at its March 28, 2003 committee meeting. It is suggested that projects with diesel powered mobile sources use the following guidance document to quantify potential cancer risks from the diesel particulate emissions."²

Since the proposed Project will generate on-road heavy-duty truck trips during construction and operation, and will utilize off-road equipment during construction, the IS/MND should have quantified the health risk that would occur as a result of these activities. By failing to prepare a construction or an operational health risk assessment, the IS/MND is inconsistent with SCAQMD CEQA Guidelines.

Third, the omission of a health risk assessment is not only inconsistent with SCAQMD CEQA Guidelines, but is also inconsistent with analyses conducted for other CEQA projects. For example, the 777 Sunnyvale-Saratoga Road project (Project Number 2015-7399) located within the City of Sunnyvale in Santa Clara County,³ the Sierra Lakes Commerce Center project located in the City of Fontana,⁴ and the 24th and Harrison Streets project located in the City of Oakland⁵ all conducted screening level health risk assessments to determine whether or not the project would result in significant health risk impacts. This method of determining whether or not a project would expose sensitive receptors to substantial air pollutants is widely used by projects subject to review under CEQA, regardless of the size or land use type proposed. Therefore, to demonstrate consistency with analyses conducted for other development projects within California, the IS/MND should have also prepared a health risk assessment.

Finally, the Staff Report's claim that our screening level analysis "does not accurately reflect the project's characteristics or exposure pathways to sensitive receptors" is entirely incorrect (Response to Comments, p. 31). According to the Staff Report,

"The cancer potency factor used by SWAPE was based on 1.1(mg/kg-day)-1 and an averaging time of 25,550 days (70 years). This factor assumes a constant exposure to DPM over a 70-year lifetime and does not account for dose or exposure duration. The construction activities of the project would occur for approximately 8 hours a day and 5 days a week. Thus, it is inaccurate to assume that nearby persons would be exposed to any emissions during the evening hours or on weekends. Persons would only be exposed to emissions at times when the emissions are being generated and when the individuals are within a proximate range of exposure to the emissions. Factors such as leaving one's residence to go to work or school are not considered within SWAPEs analysis" (Response to Comments, p. 32).

² <http://www.aqmd.gov/home/regulations/ceqa/air-quality-analysis-handbook/mobile-source-toxics-analysis>

³ 777 Sunnyvale-Saratoga Road Mitigated Negative Declaration (Project Number 2015-7399), Appendix B Health Risk Assessment, *available at*: Office of the Secretary of the Planning Commission, City Hall, 456 West Olive Avenue, Sunnyvale.

⁴ Sierra Lakes Commerce Center Project, Recirculated Draft Environmental Impact Report, Appendix A, *available at*: <https://www.fontana.org/index.aspx?NID=2590>

⁵ 24th and Harrison Streets Project, CEQA Analysis, Attachment G, *available at*: <http://www2.oaklandnet.com/oakca1/groups/ceda/documents/report/oak059792.pdf>

This justification for why our screening level health risk assessment overestimates the Project's health risk impact is incorrect, and it demonstrates the IS/MND's lack of understanding behind the purpose of a screening-level analysis. The Office of Environmental Health Hazard Assessment (OEHHA), the organization responsible for providing recommendations for health risk assessments in California, recognizes that screening-level analyses are more conservative, and tend to err on the side of health protection.⁶ However, the purpose of a screening-level health risk assessment is to determine if a more refined health risk assessment needs to be conducted. If the results of a screening-level health risk assessment are above applicable thresholds, then the Project needs to conduct a more refined health risk assessment that is more representative of site specific concentrations. Screening-level analyses are supposed to represent the most conservative, worst-case scenario, and therefore should be calculated as such.

Consistent with OEHHA guidelines, in order to represent the most conservative, worst-case scenario, the health risk assessment presented in our July 5 letter relies upon the most conservative assumptions, such as continuous exposure to pollutants and increased sensitivity to infants and children. Therefore, the Staff Report's claim that our health risk assessment relies upon incorrect values that overestimate the Project's health risk impacts is incorrect, as our analysis is consistent with health risk procedures set forth by OEHHA.

By failing to prepare a construction or an operational health risk assessment, the IS/MND is inconsistent with SCAQMD CEQA Guidelines, recommendations set forth by OEHHA, and with analyses conducted for other development projects within California. In an effort to demonstrate the potential risk posed by the Project to nearby sensitive receptors, we prepared a simple screening-level health risk assessment. The results of our assessment, which were disclosed in our July 5 letter and are shown in the table below, demonstrate that construction-related and operational DPM emissions may result in a potentially significant health risk impact.

The Maximum Exposed Individual at an Existing Residential Receptor (MEIR)					
Activity	Duration (years)	Concentration ($\mu\text{g}/\text{m}^3$)	Breathing Rate (L/kg-day)	ASF	Cancer Risk
Construction	2.00	0.36	1090	10	1.2E-04
Infant Exposure Duration	2.00			Infant Exposure	1.2E-04
Construction	0.06	0.36	572	3	5.6E-07
Operation	13.94	0.18	572	3	6.3E-05
Child Exposure Duration	14.00			Child Exposure	6.3E-05
Operation	14.00	0.18	233	1	8.6E-06
Adult Exposure Duration	14.00			Adult Exposure	8.6E-06
Lifetime Exposure Duration	30.00			Lifetime Exposure	1.9E-04

⁶ http://oehha.ca.gov/air/hot_spots/2015/2015GuidanceManual.pdf p. 1-5

Specifically, the excess cancer risk to adults, children, and infants at a sensitive receptor located 105 meters away, over the course of Project construction and operation are 8.6, 63, and 120 in one million, respectively. Furthermore, the excess cancer risk over the course of a residential lifetime (30 years) is approximately 190 in one million. Our screening-level analysis demonstrates that the infantile, child, and lifetime cancer risks all exceed the SCAQMD threshold of 10 in one million. As a result, a refined health risk assessment must be prepared to examine air quality impacts generated by Project construction using site-specific meteorology and specific equipment usage schedules. A DEIR must be prepared to adequately evaluate the Project's health risk impact, and should include additional mitigation measures to reduce these impacts to a less-than-significant level.

Greenhouse Gas

Failure to Demonstrate Consistency with Executive Order B-30-15

In our July 5 letter, we found that the IS/MND demonstrated compliance with statewide reduction goals for 2020 to determine Project significance, yet failed to take into account, the revised, more ambitious greenhouse gas (GHG) reduction goals set by Governor Brown by Executive Order B-30-15 (Response to Comments, p. 35-36). In response to this concern, the Staff Report states,

"The Commenter originally misinterprets and disagrees with the methodology used in the GHG emissions analysis in the MND, as discussed in COMMENT 2.19. Here, the Commenter proceeds with erroneous assertions that the targeted GHG reduction goals should be based on 2030 statewide goals instead of 2020 goals. As documented in the Newhall Ranch case, the Supreme Court ruled that applying the statewide GHG reduction goals to a specific development project was inappropriate without substantiating how the statewide goals relate to a project's GHG emissions. The Supreme Court found that while this approach could be used (if the percent reduction applied to a project was substantiated based on the statewide emission goals), the use of a BAU methodology was not recommended. This Commenter's argument is contradictory by disagreeing with a misinterpreted methodology and then provides values that the MND should have incorporated for that methodology. Nevertheless, the MND did not apply the BAU comparison methodology in the greenhouse gas emissions section, and applying a BAU level was not necessary for the MND analysis" (Response to Comments, p. 36).

This justification for failing to comply with Executive Order B-30-15, however, is entirely incorrect. We do not suggest that the IS/MND compare the Project's emissions to statewide reduction goals for 2030, as is erroneously stated in the Staff Report. We explicitly state in our letter that the Project applicant must determine a way of scaling the 49 percent statewide reduction target set forth by Executive Order B-30-15 down to a project level. Our July 5 letter states,

"This 49 percent reduction target, once adjusted for use at the project-level, should be considered as a threshold of significance against which to measure Project impacts. Because the Project site is unlikely to be redeveloped again prior to 2030, the 2030 goals are applicable to any evaluation of the Project's impacts. A DEIR should be prepared to demonstrate the Project's compliance with these more aggressive measures specified in Executive Order B-30-15.

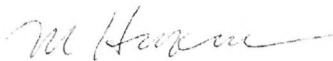
Specifically, the Project should demonstrate, at a minimum, a reduction of 49 percent below BAU levels. It should be noted, however, that this reduction percentage is applicable to statewide emissions, not project-specific emissions. Therefore, this percent reduction may be higher when scaled down to the project-level” (SWAPE, July 5 Letter, p. 8-9).

We explicitly state that this 2030 reduction goal must be scaled down to be comparable at a project-level. Therefore, based on this statement, the IS/MND should have demonstrated compliance with the 2030 reduction goals as scaled down to a project-level using a currently accepted method, such as the methods set forth by the California Supreme Court case *Center for Biological Diversity et al. v. California Department of Fish and Wildlife and the Newhall Land and Farming Company* 2015 Cal. LEXIS 9478 (*Newhall Case*).⁷ By failing to demonstrate consistency with Executive Order B-30-15, the IS/MND is incomplete and should not be relied upon to determine Project significance. A DEIR must be prepared to adequately evaluate the Project’s GHG impacts, and should include additional mitigation measures to reduce these impacts to a less-than-significant level.

Hazards and Hazardous Waste

In our July 5 letter, we concluded that the IS/MND failed to adequately evaluate the Project’s Hazards and Hazardous Waste impacts because of the failure to evaluate potential contamination from carcinogenic chemicals typically associated with releases from former land uses, which include a dry cleaners and a gas station. We maintain that the Staff Report, specifically Responses 2.22 through 2.25, fails to substantively address our concerns regarding the construction and operational health risk posed by potential subsurface contaminants at the Project site. As it stands, the Project may result in potentially significant health impacts from hazardous materials present on the Project site.

Sincerely,



Matt Hagemann, P.G., C.Hg.



Jessie Jaeger

⁷ <http://www.courts.ca.gov/opinions/documents/S217763.PDF>