



DEPARTMENT OF CITY PLANNING

APPEAL RECOMMENDATION REPORT

Date: November 14, 2019
Time: After 8:30 A.M.
Place: Los Angeles City Hall
200 N. Spring Street, City Council
Chamber, Room 340
Los Angeles, CA 90012

Case No.: VTT-74564-1A
CEQA No.: ENV-2016-3480-EIR
Related Case: CPC-2016-3479-GPA-VZC-HD-
SPR
Council No.: 14 – Huizar
Plan Area: Central City North

Public Hearing Completed: April 17, 2019
Appeal Status: Appealed
Expiration Date: November 14, 2019
Appeal Status: Pursuant to LAMC Section 17.03, the Tract Map is appealable to City Council

Certified NC: Downtown Los Angeles
General Plan: *Existing:* Heavy Industrial
Proposed: Commercial Industrial

Zone: *Existing:* M3-1-RIO
Proposed: CM-2-RIO

Applicant: Bay Capital Fund, LLC
Representative: Jim Ries,
Craig Lawson & Co., LLC

Appellant: Supporters Alliance for
Environmental Responsibility
Southwest Regional Council of
Carpenters
Richard Drury
Nicholas Whipps

Representatives

PROJECT LOCATION: 2110 and 2130 East Bay Street, 2141 East Sacramento Street

PROPOSED PROJECT: The project is for the Deputy Advisory Agency approval of Vesting Tentative Tract Map for the merger and resubdivision of an 1.78 site to create one master ground lot comprising the entire site, and pursuant to LAMC Section 17.03 A an adjustment in density of less than 20% in the CM zone lot area requirements (one unit per 800 square feet of lot area) to permit a density equal to one unit per 712 square feet of lot area (11%).

REQUESTED ACTIONS:

- 1) An appeal of the entire decision of the Advisory Agency in approving the following actions:
 - a. Pursuant to Sections 21082.1(c) and 21081.6 of the Public Resources Code, the Advisory Agency has reviewed and considered the information contained in the Environmental Impact Report prepared for this project, which includes the Draft EIR, No. ENV-2016-3480-EIR (SCH. No. 2017031007), the Final EIR, dated April, 2019 and Errata dated October, 2019 (2110 Bay Street EIR), as well as the whole of the administrative record, and

Certified the following:

The 2110 Bay Street EIR has been completed in compliance with the California Environmental Quality Act (CEQA);
The 2110 Bay Street EIR was presented to the City Planning Commission as a decision-making body of the lead agency and the decisionmaking body reviewed and considered the information contained in the 2110 Bay Street EIR prior to approving the project; and
The 2110 Bay Street EIR reflects the independent judgment and analysis of the lead agency.

ADOPTED the following:

The related and prepared 2110 Bay Street Environmental Findings;
The Statement of Overriding Considerations; and
The Mitigation Monitoring Program prepared for the 2110 Bay Street EIR.

- b. Deputy Advisory Agency approval of Vesting Tentative Tract Map for the merger and resubdivision of an approximately 1.78 site to create one master ground lot comprising the entire site, and pursuant to LAMC Section 17.03 A an adjustment in density of less than 20% in the CM zone lot area requirements (one unit per 800 square feet of lot area) to permit a density equal to one unit per 712 square feet of lot area (11%).

RECOMMENDED ACTIONS:

FIND the City Planning Commission has reviewed and considered the information contained in the Environmental Impact Report prepared for this project, which includes the Draft EIR, No. ENV-2016-3480-EIR (SCH No. 2017031007) dated, November, 2018, the Final EIR, dated April, 2019 and Errata, dated October, 2019 (2110 Bay Street Mixed-Use Project EIR), as well as the whole of the administrative record, and

CERTIFY that:

- a. The 2110 Bay Street Mixed-Use Project EIR has been completed in compliance with the California Environmental Quality Act (CEQA);
- b. The 2110 Bay Street Mixed-Use Project EIR was presented to the City Planning Commission as a decision-making body of the lead agency and the decisionmaking body reviewed and considered the information contained in the 2110 Bay Street EIR prior to approving the project; and
- c. The 2110 Bay Street Mixed-Use Project EIR reflects the independent judgment and analysis of the lead agency.

ADOPT the following:

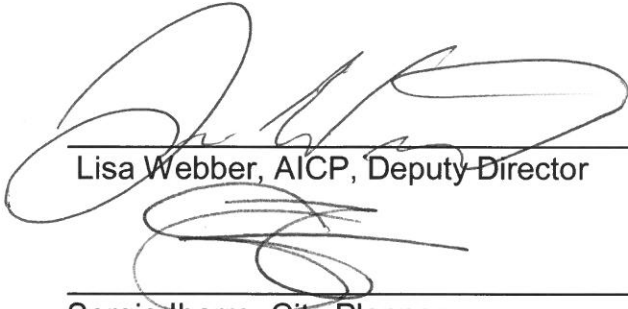
- a. The related and prepared 2110 Bay Street Mixed-Use Project Environmental Findings;
- b. The Statement of Overriding Considerations;
- c. The Mitigation Monitoring Program prepared for the 2110 Bay Street Mixed-Use Project EIR.

Advise the applicant that, pursuant to California State Public Resources Code Section 21081.6, the City shall monitor or require evidence that mitigation conditions are implemented and maintained throughout the life of the project and the City may require any necessary fees to cover the cost of such monitoring; and

Advise the applicant that pursuant to State Fish and Game Code Section 711.4, a Fish and Game Fee and/or Certificate of Fee Exemption may be required to be submitted to the County Clerk prior to or concurrent with the Environmental Notice of Determination ("NOD") filing.

Deny, the appeal for VTT-74564, upholding the Advisory Agency action approving the map.

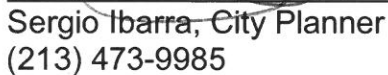
Approve the Vesting Tentative Tract Map for the merger and resubdivision of an approximately 1.78 site to create one master ground lot comprising the entire site, and pursuant to LAMC Section 17.03 A an adjustment in density of less than 20% in the CM zone lot area requirements (one unit per 800 square feet of lot area) to permit a density equal to one unit per 712 square feet of lot area (11%).



Lisa Webber, AICP, Deputy Director



Debbie Lawrence, AICP, Senior City Planner



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ADVICE TO PUBLIC: *The exact time this report will be considered during the meeting is uncertain since there may be several other items on the agenda. Written communications may be mailed to the *Commission Secretariat, 200 North Spring Street, Room 272, Los Angeles, CA 90012* (Phone No. 213-978-1300). While all written communications are given to the Commission for consideration, the initial packets are sent out the week prior to the Commission's meeting date. If you challenge these agenda items in court, you may be limited to raising only those issues you or someone else raised at the public hearing agendaized herein, or in written correspondence on these matters delivered to this agency at or prior to the public hearing. As a covered entity under Title II of the Americans with Disabilities Act, the City of Los Angeles does not discriminate on the basis of disability, and upon request, will provide reasonable accommodation to ensure equal access to this programs, services and activities. Sign language interpreters, assistive listening devices, or other auxiliary aids and/or other services may be provided upon request. To ensure availability of services, please make your request not later than three working days (72 hours) prior to the meeting by calling the Commission Secretariat at (213) 978-1300.

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Environmental Impact Report link:

https://planning.lacity.org/eir/2110_Bay_Street/deir/DEIR%202110%20Bay%20Street%20Mixed%20Use%20Project.html

Project Summary

The project is for the Deputy Advisory Agency approval of a Vesting Tentative Tract Map for the merger and resubdivision of an approximately 1.78 site to create one master ground lot comprising the entire site, and pursuant to LAMC Section 17.03 A an adjustment in density of less than 20% in the CM zone lot area requirements (one unit per 800 square feet of lot area) to permit a density equal to one unit per 712 square feet of lot area (11%).

The subdivision is in conjunction with a new mixed-use project consisting of a new residential and commercial development containing 110 live-work units, ten percent of the total units restricted affordable units, 113,350 square feet of creative office, 50,848 square feet of new commercial space (that may include retail and/or restaurant floor area), and 8,114 square feet of covered ancillary space. The Project would consist of three buildings built on top of three levels of subterranean parking containing 479 parking spaces. A 6-story office building would be located on the eastern half of the site while the remaining western half contains an approximately 30-foot tall existing warehouse shed that will be adaptively reused and incorporated as part of the two-level retail component fronting Bay Street. An 11-story structure fronting Sacramento Street would contain the Live-Work Units. The maximum building height would be 139 feet and the proposed 287,137 square feet of floor area generates an FAR of 3.9:1. A 4,000 square-foot manufacturing building and surface parking lot would be demolished to accommodate the proposed development.

Background

The project site is located at 2110 Bay Street, 2130 Bay Street, and 2141 Sacramento Street in the Arts District neighborhood of the City of Los Angeles. The project site is located in the Central City North Community Plan Area adjacent to the Los Angeles River, approximately 0.13 miles from the Santa Monica (US-10) Freeway. The project site has a Heavy Industrial land use designation and is zoned M3-1-RIO. The project site is not within a hillside area, or a liquefaction zone. The project site is not within a Methane Zone. The project site is located in the East Los Angeles State Enterprise Zone, the Central Industrial Redevelopment Project Area, and a Transit Priority Area pursuant to Public Resources Code Section 21099(d). The property is located in the southeasterly portion of the Central City North Community Plan area, east of Santa Fe Avenue between Bay Street and Sacramento Street. The project is near the Arts District neighborhood which was originally planned and zoned for industrial uses. However, the neighborhood has been evolving into a unique district that includes industrial uses, live-work units, commercial and retail uses, and mixed-use developments. Through the historic granting of Zoning Administrator's Determinations on adjacent properties, many of the formerly industrial buildings within proximity of the subject site have been converted into commercial and live-work uses.

The Subject Property, as pictured below, is a relatively flat, rectangular-shaped 1.78 acre site, comprised of three parcels that, when combined, are approximately 1.78 net acres in size (approximately 75,736 square feet) located just outside the boundaries, or half a mile south of the Artists-in-Residence District neighborhood of the Central City North Community Plan area. The site is bounded to the north by Bay Street, to the east by adjacent development, with the Los Angeles River approximately 0.12 miles east, to the south by Sacramento Street, and the west by an unnamed alley, with Santa Fe Avenue farther to the west. The subject property's westerly boundary is an approximately 300-foot frontage along an unnamed alley, its northern boundary in an approximately 237-foot frontage along Bay Street, its eastern boundary is an approximately 300-foot property line shared with adjacent development, and its southern boundary is an approximately 278-foot frontage along Sacramento Street. The subject property is legally described as Lots 1, 3, 4 and a portion of lot 2, Tract No. 14463, in the City of Los Angeles, County of Los Angeles, State of California, as per map recorded in book 318 pages 34-35 of maps in the County Recorder of Los Angeles.

Land Use Designation and Zoning

The Project Site is located a half mile south of the southern boundary of the Artists-in-Residence District (more commonly referred to as the “Arts District”), which is bounded by First Street to the north, the Los Angeles River to the east, Sixth Street to the south, and Alameda Street to the west. The Project is located within the boundaries of the South Industrial Subarea as defined by the Central City North Community Plan. However, as stated in the Central City North Community Plan, Artists-in-Residence occupy a large area between the Santa Ana Freeway and the Santa Monica Freeway and between Alameda Street and the Los Angeles River, which includes the project site. On March 5, 2008, the City Council approved updating and expanding the geographical boundaries of the Arts District farther south in the Central City North Community Plan to include the areas south of 6th Street including Violet Street and the areas between Mill Street and Wilson Street to the west and the Los Angeles River to the east. This area located just outside the designated Artist-in-Residence District, is primarily made up of former warehouse structures that are transitioning into artists’ studios and workshops, live-work spaces, and neighborhood-serving retail and commercial uses. The Artist in Residence District expansion was in response to the significant growth in mixed-use and commercial development south of 6th Street in recent years. Metro Red or Purple Line Stations are also being studied for this area at Santa Fe Avenue and 3rd Street and/or south of the new 6th Street Bridge pursuant to a motion made by the Metro Board on January 19, 2017. The Community Plan encourages the continued and expanded development of a thriving artists-in-residence community in the plan and proposed redevelopment areas. Additionally, the DTLA2040 Draft Plan envisions the area encompassing the Artists-in-Residence District as the Hybrid Industrial District, places that preserve productive activity and prioritize space for employment, including light industrial, new industry, commercial, and vertically integrated businesses, with careful introduction of live-work uses.

The existing land use designation for the Project Site in the Community Plan is Heavy Industrial. The Project Site is currently zoned M3-1-RIO (Heavy Industrial Zone, Height District 1, Los Angeles River Improvement Overlay District). Uses that are allowed in an M3 Zone include all of the uses allowed in the M1, M2, and MR2 zones and, as such, generally include those uses allowed in the C1, C1.5, and C2 zones (see LAMC Section 12.20[A][1]). Permitted uses include, among others: restaurants, business and professional offices, medical clinics and laboratories, grocery stores, retail and service stores, pharmacies, drugstores, manufacturing and industrial activities, research and development, storage, and parking. Buildings containing dwelling units or guest rooms are prohibited in the M3 Zone. The M3-1 Zone corresponds to Height District 1. Pursuant to LAMC Section 12.21.1(A)(1), Height District 1 allows a maximum floor area ratio (FAR) of 1.5:1 and does not limit the height of structures in M designated zones.

The Project includes a request for a General Plan Amendment to the Commercial Industrial and a Zone Change to the (T)(Q)CM-2-RIO Zone over the entire site.

**APPEAL ANALYSIS
2110 Bay Street Project**

On May 3 and May 6, 2019, two appeals were filed challenging the Advisory Agency's decision to approve a Vesting Tentative Tract Map for merger and resubdivision of an approximately 1.78 site to create one master ground lot comprising the entire site, and pursuant to LAMC Section 17.03 A an adjustment in density of less than 20% in the CM zone lot area requirements (one unit per 800 square feet of lot area) to permit a density equal to one unit per 712 square feet of lot area (11%) for a project to include a maximum of 110 Live/Work units.

The Appellants' statements have been summarized below, with the broad points addressed (see attached Exhibits for the Appellants' entire Appeal Applications).

Appeal No. 1 – Supporters Alliance for Environmental Responsibility

Appellant Statement:

REASON FOR THE APPEAL: The Environmental Impact Report ("EIR") prepared for the 2110 Bay Street Project (CEQA No. ENV-2016-3480-EIR) ("Project") fails to comply with the California Environmental Quality Act (CEQA).

Staff Response:

This comment serves as an introduction to the appeal and claims the Project EIR fails to comply with CEQA. As described in detail in the below responses, the appellant failed to provide any evidence of any such inadequacy.

Appellant Statement:

SPECIFICALLY THE POINTS IN ISSUE: The EIR fails to adequately analyze environmental impacts of the Project, fails to adequately describe the environmental setting of the Project, and fails to propose all feasible mitigation measures and alternatives to reduce Project impacts. Specifically, the EIR found potentially significant impacts in the following categories: noise, public services, transportation and traffic. It also found potentially significant impacts for one of the mandatory findings of significance required by CEQA. Appellant also believes the Project will have significant air quality impacts, indoor air quality impacts, as well as traffic impacts and other impacts. The CEQA document fails to tie environmental impacts to human health impacts in violation of CEQA. These potentially significant impacts must be analyzed in a revised EIR.

HOW YOU ARE AGGREIVED [sic] BY THE DECISION: Members of appellants Supporters Alliance for Environmental Responsibility ("SAFER") live in the vicinity of the proposed Project. They breathe the air, suffer traffic congestion, and will suffer other environmental impacts of the Project unless it is properly mitigated. Members of SAFER, will be directly affected by soil contamination, improperly controlled construction equipment, and other risks during Project construction.

WHY YOU BELIEVE THE DECISION-MAKER ERRED OR ABUSED THEIR DISCRETION: The Advisory Agency approved the EIR, the Mitigation Monitoring Program, Statement of Overriding Considerations and the Vesting Tentative Tract No. VTT 74564 for the Project despite the fact that the EIR fails to comply with CEQA.

Staff Response:

The comment alleges that the Project's EIR fails to comply with CEQA yet fails to provide any substantial evidence of any such failure to comply. The comment also lists various environmental topic areas for which the EIR allegedly identified potentially significant impacts, but this list contains errors (no potential impacts regarding public services were identified in connection with the Project') and also omits multiple environmental topic areas for which the Draft EIR performed comprehensive analysis (including greenhouse gas impacts) and determined that no significant impacts would occur. As the comment does not include any details that are specific to the Project or to the EIR, and does not provide any substantial evidence regarding the claimed deficiencies of the EIR, it fails to raise any relevant issues under CEQA.

The comment states appellant "believes" the Project will have significant air quality impacts, indoor air quality impacts, as well as traffic impacts and other impacts. Again, appellant failed to provide any evidence of any significant impacts. The Draft and Final EIR prepared for the Project analyzed air quality impacts and determined that construction and operation of the Project would not contribute substantially to an existing violation of air quality standards for regional pollutants.

The comment correctly notes that the Project will result in one significant and unavoidable impact – traffic (intersections). That impact is addressed in the recommended statement of overriding considerations as there is not available feasible mitigation to reduce that impact to less than significant.

Appellant asserts that the EIR "fails to tie environmental impacts to health impacts in violation of CEQA." Again, appellant fails to provide any substantial evidence. The Draft and Final EIR prepared for the Project analyze the Project's anticipated environmental effects, including potential effects pertaining to public health (see, e.g., Section IV.A, Air Quality; Section IV.E, Hazards, and Section IV.H, Noise) and determined that those impacts would be less than significant (with or without mitigation).

Appeal No. 2 – Southwest Regional Council of Carpenters**Appellant Statement:****Justification/Reason for Appeal*****I. If the City Certifies the EIR and Adopts the Advisory Agency's Determination, It Will Violate CEQA.******A. The EIR fails to properly analyze the spot zone created by the Project.***

In order to be constructed, the Project Applicant requested a General Plan Amendment to alter the Central City North Community Plan's land use designation for the Project site from Heavy Industrial to Commercial Industrial. (DEIR, p. II-14.) The Applicant also requested a vesting zone and height district change from M3-1-RIO (Heavy Industrial Zone) to CM-2-RIO (Commercial Manufacturing Zone, Height District 2). (Ibid.) The zone change and General Plan Amendment ("GPA") requests would alter applicable zoning and General Plan designations solely for the Project site in order to permit construction of a mixed-use residential development. (Id at p. II-14.) This would create an island of commercially zoned land with residential, office, and retail uses amid a large industrially zoned area. (See DEIR, p. III-4.)

The City of Los Angeles California Environmental Quality Act Thresholds Guide ("LA CEQA Thresholds Guide") defines spot zoning as occurring "when the zoning or land use designation for only a portion of a block changes, or a single zone or land use designation becomes surrounded by more or less intensive land uses." (LA CEQA Thresholds Guide, p. H.2-2.) According to the LA CEQA Thresholds Guide, such spot zones require further study. (LACEQA Thresholds Guide, p. H.2-2.) The LA CEQA Thresholds Guide also requires that an Environmental Impact Report ("EIR") analyze the "extent to which existing ... land uses would be disrupted, divided, or isolated, and the duration of the disruptions." (Id at p. H.2-3.)

*The Project, if approved, would alter the land use designation for a portion of a block, and would create a single commercial land use designation amid industrially zoned land and thus create a spot zone as defined by the LA CEQA Thresholds Guide. Yet, the City did not engage in any analysis of how the Project may or may not result in a spot zone, nor what the impacts of such a spot zone might be. (See DEIR, § IV.G.) The Southwest Regional Council of Carpenters ("Southwest Carpenters") raised this issue in their Draft Environmental Impact Report Comment Letter ("DEIR Comment Letter"). (DEIR Comment Letter, p. 4.) But the City's responses to comments and revisions to the DEIR fail to address how the Project may create a spot zone and may result in an inconsistency or incompatibility with surrounding zoning. (Final Environmental Impact Report ["FEIR"], pp. III-1 -III-3, II-32- II-34.) Though the City identified uses surrounding the Project site in response to Southwest Carpenters' concerns, it failed to discuss and analyze the surrounding zoning in compliance with the LA CEQA Thresholds Guide. (Ibid) Furthermore, the City's assertions that a General Plan Amendment and zone change resolve any inconsistency, without more, fails to rise to the level of sufficient analysis of a spot zone under the LA CEQA Thresholds Guide. (See *ibid*; Arts District Community Council Los Angeles, et al. v. City of Los Angeles (Apr. 29, 2019), Los Angeles Superior Court Case No. BSI 72014 ["ADCCLA"], p. 42.)*

In Arts District Community Council Los Angeles, et al. v. City of Los Angeles, the City approved a zone change from M3-1-RIO to C2 and provided a General Plan Amendment to permit the conversion of industrial land to a commercial land use designation. (ADCCLA, supra, at 1.) In ADCCLA, the City failed to analyze a spot zone as required by the LA CEQA Thresholds Guide in its initial study, Mitigated Negative Declaration, and Sustainable Communities Environmental Assessment. (Id at p. 42.) The court found that the City's failure to do so violated CEQA. (Ibid)

ADCCLA is instructive, here. The ADCCLA Project is located less than one mile from the Project site. The proposed Project, requested entitlements, and City determinations, here, closely mirror the project, entitlements, and City's actions in ADCCLA. The Project, here, requested a zone change from M3-1-RIO, the same land use designation the ADCCLA project site initially possessed. (DEIR, p. I-2, II-14; ADCCLA, supra, at 1.) Here, the City converted the land use to C2 in order to construct a mixed-use project on previously industrially-zoned land, just as it did in ADCCLA. (Ibid) In addition, just as in ADCCLA, the City in this proceeding created a spot zone by changing the zoning and General Plan solely for the Project site, which resulted in an island of commercially zoned land amid a large swath of industrial land. (DEIR, pp. III-4, II-14.) Likewise, in this case, the City failed to analyze the spot zone in any of its environmental review documents. (See generally DEIR, FEIR, § III.) Just as in ADCCLA, the City's actions in this matter are impermissible under CEQA and the LA CEQA Thresholds Guide, and adoption of the FEIR without a spot zone analysis would constitute a failure to proceed in a manner required by law.

Staff Response:

The comment alleges that the Project's EIR fails to properly analyze the alleged spot zone created by the Project. The Appeal does not address the legal standard for the spot zone claim, which provides that the City's rezoning would be upheld unless it is arbitrary, capricious, or entirely lacking in evidentiary support. (*Foothill Communities Coalition v. County of Orange* (2014) 222 Cal.App.4th 1302, 1309.) The Courts recognize that "the essence of spot zoning is irrational discrimination," and that spot zoning usually "involves a small parcel of land." (*Id.* at 1311.) The "larger the property" and if the property "is not an island but is connected on some sides to a like zone," the harder it is to sustain an allegation of spot zoning. (*Id.*)

The Project Site is approximately 1.78 acres and the nearby area contains a mix of industrial, residential, and commercial uses, including former industrial sites that have been redeveloped or replaced with arts-focused live-work projects within 0.5 mile, as noted in the related projects listed in Section III, Environmental Setting, Table III-2, of the Draft EIR and shown in Figure III-2 of the Draft EIR.

Thus, given the Project Site's size and surrounding uses that are similar to the Project's mix of uses, amending the Project Site's zone would not create a "small island" subject to more or less restrictive uses than those currently surrounding the site. As a result, there would be no "spot zoning."

In addition, the Courts uphold spot zoning "where rational reason in the public benefit exists for such a classification." (*Foothill Communities, supra*, 222 Cal.App.4th at 1311.) The Project has numerous public benefits, such as much-needed housing, open space, commercial and office uses. With the comment's failure to show any "irrational discrimination," the spot zone argument should be rejected.

The appeal point relies upon and refers to trial court statement of decision in *Arts District Community Council Los Angeles, et al. v. City of Los Angeles et al.* (Case No. BS172014). It is important to note that the statement of decision is not legal precedent or in any way binding on the City. That case has been dismissed with prejudice. Neither a writ nor a judgment was entered in that case. Thus, the decision has no legal value whatsoever.

Appellant Statement:

B. The FEIR's consistency findings fail to analyze relevant policies regarding the preservation of industrially-zoned land.

*When conducting an environmental impact analysis, an agency's determinations must be supported by evidence in the record. (Code Civ. Proc. § 1094.5 [providing that agency findings must be supported by record evidence]; Pub. Resources Code § 21168 [applying the Section 1094.5 standard to CEQA actions].) An agency cannot simply draw conclusions without analysis. (See *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 511-512, 515 ["Topanga"].) It "must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order." (Ibid.)*

The DEIR concludes that "the Project would be consistent with the applicable policies of the Framework Element ... and, therefore, a less-than-significant impact would occur." (DEIR IV.G-23.) This is not supported by the evidence or by reasonable analysis. The City failed to analyze relevant, applicable land use plans and requirements. Framework Element Policy 7.2.8 provides that the City must "[r]etain ... current manufacturing and industrial land use designations." Policy 7.2.9 mandates that the City must "[l]imit the redesignation of existing industrial land to other land uses." Framework Element Policy 3.14.6 provides that industrial lands should only be converted when "it can be demonstrated that the reduction of industrial lands will not adversely impact the City's ability to accommodate sufficient industrial uses to provide jobs for the City's residents or incur adverse fiscal impacts." In addition, Chapter 3 of the Framework Element provides "[w]here such [industrial] lands are to be converted, their appropriate use shall be the subject of future planning studies." The City failed to address or clearly analyze these policies in the FEIR. (See FEIR, §§ II, III.)

The City also failed to analyze the Project's inconsistency with the applicable Community Plan, which explains that the City faces "[i]ntrusion of commercial and residential uses into previously industrial areas." (Central City North Community Plan I-7; see DEIR, p. III [explaining that Project is within the Central City North Community Plan].) Community Plan Objective 3-1 directs the City to preserve industrially zoned land. (Id. at III-8.) Objective 3-3 directs the City to "retain industrial plan designations ... and to increase it (sic) whenever possible." (Ibid.) The City's analysis does not meaningfully address objectives 3-1 or 3-3, but only states in passing that the Project is inconsistent with Objectives 3-1.1 and 3-3.1. (DEIR, pp. IV.G-8 - IV.G-11, IV.G-40, IV.G-45.)

*This is impermissible under CEQA. In ADCCLA, supra, the project applicant obtained a zone change and GPA to alter the project land use designation from Heavy Manufacturing (M3) to Commercial (C2). (ADCCLA, supra, 1.) The court found that the City violated CEQA because it did not analyze or discuss the exact Framework Element and Central City North Community Plan policies listed, above. (Id. at 31-35.) The City cannot completely fail to analyze the applicable policies in the Framework Element and the Central City North Community Plan, and still find that the Project is consistent with applicable land use plans. If the City retains this analysis and approves the Advisory Agency's determination, its action will constitute an unlawful abuse of discretion. (See *McAllister v. California Coastal Com.* (2008) 169 Cal.App.4th 912, 921; Code Civ. Proc. § 1094.5; Pub. Resources Code § 21168.)*

Staff Response:

The comment alleges that the Project's EIR consistency findings fail to analyze relevant policies regarding the preservation of industrially-zoned land. The Project's consistency with applicable goals, objectives, and policies in the Framework Element is analyzed in Table IV.G-3 of the Draft EIR. In addition, the Project's consistency with certain economic development goals, objectives, and policies is discussed below for informational purposes. As these economic development goals, objectives, and policies were not adopted for the purpose of avoiding or mitigating an environmental effect, any potential inconsistency therewith would not be considered to be a significant environmental impact. (CEQA Guidelines Section 15064(e).). The policies are economic development policies that was not specifically adopted for the purpose of avoiding or mitigating an environmental effect. Therefore, the following is for informational purposes only. The Project Site represents only approximately 0.15 percent of the industrially-zoned land in the Central City North Community Plan area. Therefore, adequate land would remain for emerging industrial sector. In addition, the Project's creative office space could be designed to accommodate the emerging media and entertainment industry in the area, as evidenced by Warner Music's recent relocation to 7th Street and Santa Fe. Further, the Project site is currently vacant with a corresponding 0.05:1 FAR, and the Project would result in an increase of 662 jobs onsite and would generate substantial ongoing revenues to the City in the form of sales and property taxes. Manufacturing employment has declined dramatically on a regional basis, being replaced by service and creative jobs.

In or about 2007, the City Planning Department and Community Redevelopment Agency formulated an Industrial Land Use Policy (ILUP) that was intended to preserve certain industrially-zoned land in the City for industrial use. The City Planning Commission approved the ILUP, but it was never formally presented to the City Council for consideration or adoption. Since the ILUP was not adopted, the City is considering zone changes and General Plan Amendments from industrial designations on a case-by-case basis, as it has historically done.

However, the ILUP identified the specific Project Site as an "Employment Protection Districts" - area where industrial zoning should be maintained, and where adopted General Plan, Community Plan and Redevelopment Plan industrial land use designations should continue to be implemented. Residential uses in these Districts are not appropriate. However as indicated in the *Land Use* Chapter of the Framework Element, some existing industrially zoned lands may be inappropriate for new industries and should be converted for other land uses. Where such lands are to be converted, their appropriate use shall be the subject of future planning studies. This is satisfied in several ways. First, the entire project approval process, including the CEQA process, the entitlement process, and the various points therein for public comment form a planning study themselves. The CEQA process included an Environmental Impact Report, which assessed the surrounding land uses, as well as an analysis of the proposed land use in relation to the General Plan and the LA CEQA Guidelines threshold for land use compatibility. The entitlement process further analyzed in detail the Goals and Policies of the General Plan, and demonstrated that the project met the overall intent of the General Plan. As demonstrated therein, the land use pattern, both in the immediate neighborhood of the subject property and in the larger Arts District, has evolved from its historic industrial and manufacturing uses to compatible and complimentary residential, creative office, and related retail/cultural/entertainment uses, alongside traditional industrial uses, reflecting larger employment and economic trends. The Project Site is approximately 1.78 acres and the nearby area contains a mix of industrial, residential, and commercial uses, including former industrial sites that have been redeveloped or replaced with arts-focused live-work projects within 0.5 mile, as noted in the related projects listed in Section III, Environmental Setting, Table III-2, of the Draft EIR and shown in Figure III-2 of the Draft EIR. In addition, the ILUP Map for Analysis Area 5 shows that the Project Site survey of land use is "Commercial / Service / Office", and the ILUP forms a planning study itself. Thus, the surrounding area reflects a Project Site that had already converted from industrial uses. Finally, the ILUP stated that if unique circumstances existed to approve a change of use or zone in an 'Employment Protection District' the findings for such determination must be clearly articulated and the project should be required to incorporate community benefits. These findings are clearly articulated in the Recommendation Report to the City Planning Commission for the General Plan Amendment pursuant to Section 555 of the City Charter and Section 11.5.6 of the Municipal Code, vesting zone change and height district change pursuant to Section 12.32 of the Municipal Code, and Site Plan Review pursuant to LAMC 16.05.

The ILUP Map for Analysis Area 5 shows that the Project Site survey of land use is "Commercial / Service / Office". Thus, the Site is clearly not industrial use. The Project Site is approximately 1.78 acres and the nearby area contains a mix of industrial, residential, and commercial uses, including former industrial sites that have been redeveloped or replaced with arts-focused live-work projects within 0.5 mile, as noted in the related projects listed in Section III, Environmental Setting, Table III-2, of the Draft EIR and shown in Figure III-2 of the Draft EIR. Thus, the surrounding area, and the ILUP map reflected a Project Site that had already converted from industrial uses. This supports the requested GPA and does not hinder the preservation of industrial land, which occurs elsewhere. The ILUP is an additional study that meets the Framework Element Chapter 3 definition of an industrial conversion study.

Appellant Statement:

C. The FEIR fails to analyze the cumulative displaced industrial development impacts from the Project and related Projects.

An environmental review document must consider cumulative impacts. (Pub. Resources Code, § 21155.2(b)(1).) Cumulative impacts are the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and foreseeable future projects. (Cal. Code Regs., tit. 14, § 15355(b).) An agency must "examine reasonable, feasible options for mitigating or avoiding the project's contribution to any significant cumulative effects." (Ibid.) In this process, it "must use its best efforts to find out and disclose all that it reasonably can." (San Franciscans for Reasonable Growth v. City & County of San Francisco (1984) 151 Cal.App.3d 61, 74 ["San Franciscans"].)

In ADCCLA, supra, the court found that the City "failed to comply with CEQA because the MND and SCEA do not discuss the cumulative displaced industrial development impacts from this and other projects." (ADCCLA, supra, at 34.) In the cumulative impacts land use analysis in this EIR, the City failed to analyze how the Project, in conjunction with other projects in the vicinity, would result in the displacement of industrial land uses, though the DEIR indicates that several other related projects would result in the provision of "residential and commercial uses in formerly industrially-zoned lots." (See DEIR, pp. IV.G-61 - IV.G-63.) Likewise, as raised in the DEIR Comment Letter, the City fails to examine the impacts that the Project and related projects that alter existing industrial land use designations in the downtown Los Angeles Area will generally have on industrial land uses. (DEIR, p. 5.) The EIR does nothing to analyze or address these impacts. (See, e.g., FEIR, §III.) This does not evidence that the City used its "best efforts to find out and disclose all that it reasonably can," and, if upheld, will constitute reversible error. (See San Franciscans, supra, 151 Cal.App.3d at 74.)

Staff Response:

The comment alleges that the Project's EIR fails to analyze the cumulative displaced industrial development impacts from the Project and related projects. Appellant submits no evidence of such an impact. Moreover, the Draft EIR did analyze the related projects in the area, which represents a trend that has been occurring for at least 10 years. The land use pattern, both in the immediate neighborhood of the Project Site and in the larger Arts District, has evolved alongside its historic industrial and manufacturing uses with compatible and complimentary residential, creative office, and related retail/cultural/entertainment uses. The Project Site is approximately 1.78 acres and the nearby area contains a mix of industrial, residential, and commercial uses, including former industrial sites that have been redeveloped or replaced with arts-focused live-work projects within 0.5 mile, as noted in the related projects listed in Section III, Environmental Setting, Table III-2, of the Draft EIR and shown in Figure III-2 of the Draft EIR. This evolution reflects larger employment and economic trends in the City. Therefore, the Project will not have any material effect on future conversions of industrial land to office, residential, or commercial uses in the Arts District. Additionally, it is unlikely that the Project Site could in fact attract any viable industrial use particularly given its vacant status.

Moreover, the conversion of industrial land is an economic issue that is not within the scope of CEQA review unless it results in adverse impacts on the physical environment. The Project Site is vacant and would not displace existing industrial uses. While the related projects may displace the existing warehouse or industrial

uses, it is unclear whether these uses will go out of business or relocate. It would be speculative to assume that they will relocate to other sites in the area. If they were to relocate, it is unclear whether these businesses would move into existing buildings or seek to develop new facilities. The latter would require discretionary approval and CEQA review. As such, cumulative impacts related to displacement of industrial uses would be less than significant.

Further, the Central City North Community Plan's description of the Artists-in-Residence Subarea District, whose southern boundary is a half a mile north of the Project Site at Sixth Street, defines an area "primarily made up of old warehouses now converted to artists lofts and studios." The description of the Artists-in-Residence District also notes that the Community Plan "encourages the continued and expanded development of a thriving artists-in-residence community." In addition, the Project supports the General Plan by contributing to the available housing stock within the City and towards the housing crisis in the City, as well as the Mayor's initiative to build 100,000 new housing units by 2020. Also, in support of Framework Element Policy 3.3 (promote equitable land use decisions that result in fewer vehicle trips by providing greater proximity and access to jobs...), the proposed General Plan Amendment would locate housing near jobs-rich Downtown while also allowing for jobs-producing uses.

Appellant Statement:

D. The FEIR fails to identify significant environmental impacts.

An "EIR must include a detailed statement concerning the environmental effects, alternatives and other relevant factors concerning the project." (Pesticide Action Network North America v. Department of Pesticide Regulation (2017) 15 Cal.App.5th 478, 494, citing Committee for a Progressive Gilroy v. State Water Resources Control Bd (1987) 192 Cal.App.3d 847, 856-857.) The EIR however, does not adequately identify significant impacts to land use, cumulative air quality impacts, greenhouse gas emissions, or fire and emergency services. (See DEIR Comment Letter, pp. 3-9.) Despite DEIR comments raising concerns regarding the failure to identify significant impacts in these areas, the City failed to correct the DEIR's faulty analysis in the FEIR. (See FEIR, §III.) This is impermissible under CEQA.

Staff Response:

The comment alleges that the Project's EIR fails to identify significant environmental impacts. The comment also lists various environmental topic areas for which the EIR allegedly identified potentially significant impacts, but this list contains errors (no potential impacts regarding land use, air quality, greenhouse gas emissions or fire and emergency services were identified in connection with the Project') and also omits multiple environmental topic areas for which the Draft EIR performed comprehensive analysis (including greenhouse gas emissions modeling and consistency analyses) and determined that no significant impacts would occur.

In addition, the Project provided three alternatives (besides the No Project Alternative) to address the significant and unavoidable impact that cannot be feasibly mitigated with respect to traffic (intersection impact at Soto Street and Whittier Boulevard).

As the comment does not include any details that are specific to the Project or to the EIR, and does not provide any substantial evidence regarding the claimed deficiencies of the EIR, it fails to raise any relevant issues under CEQA.

Appellant Statement:

E. The Statement of Overriding Considerations is not supported by substantial evidence and adoption of a Statement of Overriding Considerations will constitute an abuse of discretion.

In the EIR and Notice of Determination, the City found that the Project will result in unavoidable and un-

mitigatable significant traffic impacts, but nonetheless decided to approve the Project. (See April 26, 2019 Determination Letter for 2110 Bay Street, Los Angeles, California ["Determination Letter"], p. 96.)¹

*CEQA provides that an agency may adopt a project with unavoidable adverse environmental impacts, "[i]f the specific economic, legal, social, technological, or other benefits ... of a proposal project outweigh the unavoidable adverse environmental effects." (Pub. Resources Code, § 21002; Cal. Code Regs., tit. 14, § 15093(a).) Under CEQA, if an "agency approves a project which will result in the occurrence of significant effects [that] are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record." (Cal. Code Regs., tit. 14, § 15093(b).) The agency must provide specific overriding legal, economic, social, technological, or other considerations that outweigh the environmental impacts of a project. (Pub. Resources Code, § 21081; CEQA Guidelines, § 15093.) A "statement of overriding considerations shall be supported by substantial evidence in the record." (Cal. Code Regs., tit. 14, § 15093(b); see *Sierra Club v. County of Contra Costa* (1992) Cal. App. 4th 1212, 1223 ["*Sierra Club*"] [disapproved on other grounds in *Voices of the Wetlands v. State Water Resources Control Bd* (2011) 52 Cal.4th 499] .)*

*In *Sierra Club*, supra, Cal. App. 4th 1212, the agency adopted a statement of overriding considerations that listed twelve project benefits that the agency claimed overcame the project's environmental impacts. The court found that three of the twelve asserted benefits were not supported by substantial evidence, and, thus determined that the statement of overriding considerations was defective. (Id. at 1224.) Likewise, here, the City's asserted benefits are not supported by substantial evidence. For example, the City states that the Project results in the "[l]ocation of a high-density mixed-use development on an under-utilized site." (Letter of Determination, p. 100.) But the record does not support a conclusion that the site is "underutilized," and the City does not define this term or discuss the relevance of this term in reference to the applicable industrial use land designations of the Project site. The Project Site is currently home to a large manufacturing building and other items and structures related to industrial uses. (DEIR, p. II-5.) The City of Los Angeles is in desperate need of industrial and manufacturing land, and thus, sites with buildings and amenities that support manufacturing are heavily utilized and in high demand. (See Los Angeles Department of City Planning and Community Redevelopment Agency, Los Angeles' Industrial Land, Sustaining a Dynamic City Economy (Dec. 2007) <http://planning.lacity.org/Code_Studies/LanduseProj/Industrial_Files/Attachment%20B.pdf> [as of Dec. 13, 2018] ["Competition for industrially zoned land in Los Angeles is extremely high; industrial land in the City has the lowest vacancy rate in the nation, remaining consistently below two percent."]) This does not support a conclusion that, in order to appropriately utilize the Project site, it must be constructed into a mixed-use development. As the record does not contain substantial evidence that supports these asserted benefits, under *Sierra Club*'s holding and California Code of Regulations, title 14, section 15093(b), the City's Statement of Overriding Considerations is defective and unlawful.*

Staff Response:

The comment alleges that the Statement of Overriding Considerations is not supported by substantial evidence yet fails to provide any substantial evidence of any such failure. As demonstrated above, the Project will not have any material effect on future conversions of industrial land to office, residential, or commercial uses in the Arts District. The comment alleges there is no evidence that the Project site is underutilized. The Site is currently underutilized as it has been vacant since 2014 with a 0.05:1 FAR, and the Project would result in an increase of 662 jobs onsite and would generate substantial ongoing revenues to the City in the form of sales and property taxes. Manufacturing employment has declined dramatically on a regional basis, being replaced by service and creative jobs. The Project is merely a continuation and recognition of this evolution.

Appellant Statement:

¹ Southwest Carpenters contends that the Project will have several other significant impacts and raises these impacts by reference to their DEIR Comment Letter, attached hereto. (See generally DEIR Comment Letter.)

F. The FEIR fails to adequately respond to comments. Southwest Carpenters and others submitted comments to the City regarding the Draft Environmental Impact Report.

CEQA mandates: "[t]he lead agency shall evaluate comments on environmental issues received from persons who reviewed the draft EIR and shall prepare a written response." (Cal. Code Regs., tit. 14, § 15088.)

The FEIR, however, failed to provide responses that specifically addressed or mitigated the concerns raised by Southwest Carpenters and others. For example, Southwest Carpenters raised the fact that the DEIR failed to examine several relevant and essential Framework Element Policies regarding the preservation of Industrial Land Uses, including Framework Element Policies 7.2.8, 7.2.9, and 3.14.6. (See DEIR Comment Letter.) The City, however, fails to address this deficiency in the FEIR or update its analysis to include and discuss these essential policies. (See FEIR, pp. III-I -III-3, II-26- II-27.) Likewise, the City failed to meaningfully respond to or alter the FEIR in response to Southwest Carpenters' concern that the DEIR failed to analyze the spot zone created by the Project per the Los Angeles CEQA Thresholds Guide. (FEIR, pp. III-I - III-3, II-32- II-34.)

In addition, the City failed to respond to clarifying questions posed by Southwest Carpenters. For example, in the DEIR Comment Letter, Southwest Carpenters asked, "Did the City solely analyze cumulative impacts from projects within 500 feet of the Project site?" (DEIR Comment Letter, p. 7.) The City never responded to this inquiry. (FEIR, p. II-35 - II-37.)

The City's failure to adequately respond to comments violates CEQA.

Staff Response:

The comment alleges that the Project's Final EIR did not provide an adequate response to spot zoning, industrial land use policies, and preservation of industrial land uses comments. The comment fails to demonstrate the responses in the Final EIR are inadequate under CEQA Guidelines section 15088; rather the commenter merely disagrees with the responses. Disagreement does not demonstrate response inadequacy. Additionally, as to the issues raised by the appeal, an Errata to the EIR was prepared which specifically responded to the appeal issues including demonstrating that the Project would not constitute spot zoning; that the economic development goals, objectives, and policies were not adopted for the purpose of avoiding or mitigating an environmental effect, any potential inconsistency therewith would not be considered to be a significant environmental impact, yet provided a discussion of these policies; demonstrating the Project will not have any material effect on future conversions of industrial land to office, residential, or commercial uses in the Arts District and that it is unlikely that the Project Site could in fact attract any viable industrial use as the Project is merely a continuation and recognition of this now firmly established pattern.

The City did respond to the inquiry of cumulative impacts. Final EIR Response to Comment Carpenters-8 provides the response. The Draft EIR comports with CEQA case law and CEQA Guidelines for compilation and analysis of cumulative impacts from related projects. The cumulative analysis is appropriate. Individual projects that generate emissions not in excess of SCAQMD's significance thresholds would not contribute considerably to any potential cumulative impact as these are taken into account in the regional significance thresholds (as opposed to the localized significant thresholds). SCAQMD neither recommends quantified analyses of the emissions generated by a set of cumulative development projects nor provides thresholds of significance to be used to assess the impacts associated with these emissions, again, as they are accounted for in the regional thresholds.

Appellant Statement:

G. The Mitigation Monitoring Program is incomplete.

Because the City failed to properly identify significant impacts, the City also failed to create a complete

mitigation monitoring program to appropriately minimize such impacts. CEQA provides a "substantive mandate that public agencies refrain from approving projects for which there are ... mitigation measures" that can lessen the environmental impact of proposed projects. (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 134 ["Mountain Lion"], citing Pub. Resources Code § 21081.) In order to ensure that a Project's impacts to the environment are effectively lessened, such measures must be included as mitigation, and mitigation must be fully enforceable. (Cal. Code Regs., tit. 14, § 15126.4(a)(1) ["An EIR shall describe feasible measures which could minimize significant adverse impacts ..."]; *id.* at § 15126.4(a)(2) [mitigation "must be fully enforceable through permit conditions, agreements, or other legally-binding instruments"].) Without a proper analysis and identification of significant environmental impacts, the City cannot provide proper mitigation. The City's mitigation monitoring program, therefore, does not meet CEQA's mandate to lessen environmental impacts.

Staff Response:

The comment alleges that the MMP is incomplete yet fails to provide any substantial evidence of any such failure. As the comment does not include any details that are specific to the Project or to the EIR, and does not provide any substantial evidence regarding the claimed deficiencies of the EIR, it fails to raise any relevant issues under CEQA.

Appellant Statement:

II. The Project is Inconsistent with the Framework Element and the Community Plan, so Approval of the Vesting Tentative Tract Map Will Violate Los Angeles Municipal Code Section 17.00 et seq. and the Subdivision Map Act.

The Subdivision Map Act ("SMA") provides that subdivisions must be consistent with land use requirements, including "local ordinances dealing with subdivisions." (Gov. Code, § 66474.60.) The SMA provides that "[i]n cities having a population larger than 2,800,000, the advisory agency ... shall deny approval of a tentative map ... if it makes any of the following findings ... [t]hat the proposed map is not consistent with applicable general and specific plans" or "the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans." (*Id.* at §§ 66474.61 (a), (b).) Los Angeles Municipal Code ("L.A.M.C.") section 17.05(C) provides that subdivisions shall comply with relevant zoning and "shall substantially conform to all other elements of the General Plan."

The evidence does not support a finding that the Project complies with the Framework Element or Central City North Community Plan. As discussed *supra*, Framework Element policies 7.2.8 and 7.2.9 require that the City preserve industrial land. Policy 3.14.6 provides that industrial lands should only be converted when "it can be demonstrated that the reduction of industrial lands will not adversely impact the City's ability to accommodate sufficient industrial uses to provide jobs for the City's residents or incur adverse fiscal impacts." Chapter 3 of the Framework Element requires that "[w]here such [industrial] lands are to be converted, their appropriate use shall be the subject of future planning studies." Likewise, Community Plan Objective 3-1 directs the City to preserve industrially zoned land. (*Id.* at III-8.) Objective 3-3 directs the City to "retain industrial plan designations ... and to increase it (sic) whenever possible." (*Ibid.*) The City's analysis does not meaningfully address objectives 3-1 or 3-3, but only states in passing that the Project is inconsistent with Objectives 3.1-1 and 3-3.1. (DEIR, pp. IV.G-8-IV.G-11, IV.G-40, IV.G-45.)

Despite these requirements, the record contains no evidence that the conversion of the Project site from an industrial land use designation supports the preservation of industrial land, or that the City made the findings or completed the planning studies required by the Framework Element before approving the zone change and General Plan Amendment for the Project. Nor does the record demonstrate that the Project complies with Community Plan Objectives 3-1 or 3-3. (DEIR Comment Letter, pp. 2-5; FEIR, pp. III-1 - III-3, II-26 - II-27.) In *ADCCLA*, the Court found that such failures to analyze Framework Element policies or Community Plan Objectives regarding the preservation of industrially-zoned land where a project obtained a zone change and GPA to alter the industrial land use designation "preclude subdivision approval under both the SMA and LAMC." (*ADCCLA*, *supra*, p. 43.)

If the Advisory Agency's determination is upheld, the City will violate the SMA and LAMC. section 17.05(C), because the Project fails to conform to the Central City North Community Plan and Framework Element.

Staff Response:

The comment alleges that the Project's EIR consistency findings fail to analyze relevant policies regarding the preservation of industrially-zoned land. The Project's consistency with applicable goals, objectives, and policies in the Framework Element is analyzed in Table IV.G-3 of the Draft EIR. Regarding economic development goals, objectives, and policies of the General Plan, they were not adopted for the purpose of avoiding or mitigating an environmental effect, any potential inconsistency therewith would not be considered to be a significant environmental impact. (CEQA Guidelines Section 15064(e).). The policies are economic development policies that were not specifically adopted for the purpose of avoiding or mitigating an environmental effect. The Project Site represents only approximately 0.15 percent of the industrially-zoned land in the Central City North Community Plan area. Therefore, adequate land would remain for the emerging and existing industrial sector. In addition, the Project's creative office space could be designed to accommodate the emerging media and entertainment industry in the area, as evidenced by Warner Music's recent relocation to 7th Street and Santa Fe. Further, the Site is currently vacant (since 2014) with an 0.05:1 FAR, and the Project would result in an increase of 662 jobs onsite and would generate substantial ongoing revenues to the City in the form of sales and property taxes. Manufacturing employment has declined dramatically on a regional basis, being replaced by service and creative jobs.

Appellant Statement:

Aggrieved by Decision

Members of Southwest Carpenters live and work in the City of Los Angeles and are concerned about the environmental impacts of this Project. Without an adequate environmental review document, Southwest Carpenters and its members are aggrieved because the Project's environmental impacts have not been fully disclosed. Similarly, Southwest Carpenters has a keen interest in seeing adequate mitigation provided to properly address environmental impacts through preparation of an EIR. Southwest Carpenters is also interested in orderly planning within the City and adherence to state planning laws, and is, thus, further aggrieved by the City's failure to adhere to its General Plan.

Staff Response:

As demonstrated above, the City prepared an adequate environmental review document and all impacts were fully disclosed. No additional mitigation is necessary.

Appellant Statement:

Decisionmaker Error

The Hearing Officer erred in approving the EIR for the Project when the EIR fails the informational purposes of CEQA, and the EIR does not adopt all feasible mitigation measures. The Hearing Officer's decision to certify an EIR that has not been properly prepared as required under CEQA, CEQA Guidelines, and case law constitutes an abuse of discretion. The City's failure to ensure Project consistency with its General Plan constitutes additional error that must be corrected prior to the City's approval of the Project, and the Hearing Officer's action to approve the Vesting Tentative Tract Map was in violation of the SMA.

Staff Response:

This comment states that the Advisory Agency should not have approved the EIR. As demonstrated above, the City prepared an adequate environmental review document and all impacts were fully disclosed. No additional mitigation is necessary. The EIR demonstrates consistency with applicable General Plan policies.

Conclusion

As discussed above, upon careful consideration of the appellants' points, the appellants have failed to adequately disclose how the City erred or abused its agency discretion. In addition, no new substantial evidence was presented that the City has erred in its actions relative to the EIR and the associated entitlements. The appellants have raised no new information to dispute the Findings of the EIR or the Advisory Agency's actions on this matter.

ORIGINAL



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: VT Map No: 74564

Project Address: 2110 and 2130 East Bay Street, 2141 East Sacramento Street

Final Date to Appeal: 05/06/2019

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): Supporters Alliance for Environmental Responsibility

Company: _____

Mailing Address: 4399 Santa Anita Ave., Suite 205

City: El Monte State: CA Zip: 91731

Telephone: (510) 836-4200 E-mail: richard@lozeaudrury.com

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

☒ Self ☐ Other: _____

- Is the appeal being filed to support the original applicant's position? ☐ Yes ☒ No

3. REPRESENTATIVE/AGENT INFORMATION

Representative/Agent name (if applicable): Richard Drury

Company: Lozeau Drury LLP

Mailing Address: 1939 Harrison Street, Suite 150

City: Oakland State: CA Zip: 94612

Telephone: (510) 836-4200 E-mail: richard@lozeaudrury.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

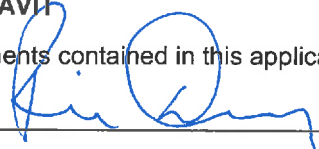
If Yes, list the condition number(s) here: All Conditions

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: 05/03/2019

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: <u>\$89.00</u>	Reviewed & Accepted by (DSC Planner): <u>Anna Van</u>	Date: <u>05/06/2019</u>
Receipt No: <u>004035988</u>	Deemed Complete by (Project Planner):	Date:
☒ Determination authority notified		☐ Original receipt and BTC receipt (if original applicant)

Justification/Reason for Appeal

2110 Bay Street

Vesting Tentative Tract Map No. 74564 (VTT 74564); ENV-2016-3480-EIR

2110 and 2130 East Bay Street, 2141 East Sacramento Street (Project Site)

REASON FOR THE APPEAL: The Environmental Impact Report ("EIR") prepared for the 2110 Bay Street Project (CEQA No. ENV-2016-3480-EIR) ("Project") fails to comply with the California Environmental Quality Act (CEQA).

SPECIFICALLY THE POINTS IN ISSUE: The EIR fails to adequately analyze environmental impacts of the Project, fails to adequately describe the environmental setting of the Project, and fails to propose all feasible mitigation measures and alternatives to reduce Project impacts.

Specifically, the EIR found potentially significant impacts in the following categories: noise, public services, transportation and traffic. It also found potentially significant impacts for one of the mandatory findings of significance required by CEQA. Appellant also believes the Project will have significant air quality impacts, indoor air quality impacts, as well as traffic impacts and other impacts. The CEQA document fails to tie environmental impacts to human health impacts in violation of CEQA. These potentially significant impacts must be analyzed in a revised EIR.

HOW YOU ARE AGGRIEVED BY THE DECISION: Members of appellants Supporters Alliance for Environmental Responsibility ("SAFER") live in the vicinity of the proposed Project. They breathe the air, suffer traffic congestion, and will suffer other environmental impacts of the Project unless it is properly mitigated. Members of SAFER, will be directly affected by soil contamination, improperly controlled construction equipment, and other risks during Project construction.

WHY YOU BELIEVE THE DECISION-MAKER ERRED OR ABUSED THEIR DISCRETION: The Advisory Agency approved the EIR, the Mitigation Monitoring Program, Statement of Overriding Considerations and the Vesting Tentative Tract No. VTT 74564 for the Project despite the fact that the EIR fails to comply with CEQA.



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: VTT-74564, ENV-2016-3480-EIR

Project Address: 2110 and 2130 East Bay Street, 2141 East Sacramento Street

Final Date to Appeal: May 6, 2019

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): Southwest Regional Council of Carpenters

Company: Southwest Regional Council of Carpenters

Mailing Address: c/o Nicholas Whipps, Wittwer Parkin, LLP, 335 Spreckles Drive, Suite H

City: Aptos State: CA Zip: 95003

Telephone: (831)429-4055 E-mail: nwhipps@wittwerparkin.com

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

☒ Self

☐ Other: _____

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

☐ Yes

☐ No

3. REPRESENTATIVE/AGENT INFORMATION

Representative/Agent name (if applicable): Nicholas Whipps

Company: Wittwer Parkin, LLP

Mailing Address: 335 Spreckles Drive, Suite H

City: Aptos State: CA Zip: 95003

Telephone: (831)429-4055 E-mail: nwhipps@wittwerparkin.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

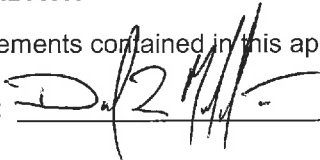
If Yes, list the condition number(s) here: _____

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: 05/08/19

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: \$ <u>89.00</u>	Reviewed & Accepted by (DSC Planner): <u>0103036029</u>	Date: <u>5/6/2019</u>
Receipt No: <u>0103036029</u>	Deemed Complete by (Project Planner):	Date:
☒ Determination authority notified		☐ Original receipt and BTC receipt (if original applicant)

Attachment to Appeal to Planning Commission

Southwest Carpenters adopts and incorporates all objections to the Project that it has previously raised and that have been raised by any other individual or entity during the administrative process for this Project before the City of Los Angeles.

Justification/Reason for Appeal

I. If the City Certifies the EIR and Adopts the Advisory Agency's Determination, It Will Violate CEQA.

A. The EIR fails to properly analyze the spot zone created by the Project.

In order to be constructed, the Project Applicant requested a General Plan Amendment to alter the Central City North Community Plan's land use designation for the Project site from Heavy Industrial to Commercial Industrial. (DEIR, p. II-14.) The Applicant also requested a vesting zone and height district change from M3-1-RIO (Heavy Industrial Zone) to CM-2-RIO (Commercial Manufacturing Zone, Height District 2). (*Ibid.*) The zone change and General Plan Amendment ("GPA") requests would alter applicable zoning and General Plan designations solely for the Project site in order to permit construction of a mixed-use residential development. (*Id.* at p. II-14.) This would create an island of commercially zoned land with residential, office, and retail uses amid a large industrially zoned area. (See DEIR, p. III-4.)

The City of Los Angeles California Environmental Quality Act Thresholds Guide ("LA CEQA Thresholds Guide") defines spot zoning as occurring "when the zoning or land use designation for only a portion of a block changes, or a single zone or land use designation becomes surrounded by more or less intensive land uses." (LA CEQA Thresholds Guide, p. H.2-2.) According to the LA CEQA Thresholds Guide, such spot zones require further study. (LA CEQA Thresholds Guide, p. H.2-2.) The LA CEQA Thresholds Guide also requires that an Environmental Impact Report ("EIR") analyze the "extent to which existing... land uses would be disrupted, divided, or isolated, and the duration of the disruptions." (*Id.* at p. H.2-3.)

The Project, if approved, would alter the land use designation for a portion of a block, and would create a single commercial land use designation amid industrially zoned land and thus create a spot zone as defined by the LA CEQA Thresholds Guide. Yet, the City did not engage in any analysis of how the Project may or may not result in a spot zone, nor what the impacts of such a spot zone might be. (See DEIR, § IV.G.) The Southwest Regional Council of Carpenters ("Southwest Carpenters") raised this issue in their Draft Environmental Impact Report Comment

Letter (“DEIR Comment Letter”). (DEIR Comment Letter, p. 4.) But the City’s responses to comments and revisions to the DEIR fail to address how the Project may create a spot zone and may result in an inconsistency or incompatibility with surrounding zoning. (Final Environmental Impact Report [“FEIR”], pp. III-1 – III-3, II-32 – II-34.) Though the City identified uses surrounding the Project site in response to Southwest Carpenters’ concerns, it failed to discuss and analyze the surrounding zoning in compliance with the LA CEQA Thresholds Guide. (*Ibid.*) Furthermore, the City’s assertions that a General Plan Amendment and zone change resolve any inconsistency, without more, fails to rise to the level of sufficient analysis of a spot zone under the LA CEQA Thresholds Guide. (See *ibid.*; *Arts District Community Council Los Angeles, et al. v. City of Los Angeles* (Apr. 29, 2019), Los Angeles Superior Court Case No. BS172014 [“ADCCLA”], p. 42.)

In *Arts District Community Council Los Angeles, et al. v. City of Los Angeles*, the City approved a zone change from M3-1-RIO to C2 and provided a General Plan Amendment to permit the conversion of industrial land to a commercial land use designation. (*ADCCLA, supra*, at 1.) In *ADCCLA*, the City failed to analyze a spot zone as required by the LA CEQA Thresholds Guide in its initial study, Mitigated Negative Declaration, and Sustainable Communities Environmental Assessment. (*Id.* at p. 42.) The court found that the City’s failure to do so violated CEQA. (*Ibid.*)

ADCCLA is instructive, here. The *ADCCLA* Project is located less than one mile from the Project site. The proposed Project, requested entitlements, and City determinations, here, closely mirror the project, entitlements, and City’s actions in *ADCCLA*. The Project, here, requested a zone change from M3-1-RIO, the same land use designation the *ADCCLA* project site initially possessed. (DEIR, p. I-2, II-14; *ADCCLA, supra*, at 1.) Here, the City converted the land use to C2 in order to construct a mixed-use project on previously industrially-zoned land, just as it did in *ADCCLA*. (*Ibid.*) In addition, just as in *ADCCLA*, the City in this proceeding created a spot zone by changing the zoning and General Plan solely for the Project site, which resulted in an island of commercially zoned land amid a large swath of industrial land. (DEIR, pp. III-4, II-14.) Likewise, in this case, the City failed to analyze the spot zone in any of its environmental review documents. (See generally DEIR, FEIR, § III.) Just as in *ADCCLA*, the City’s actions in this matter are impermissible under CEQA and the LA CEQA Thresholds Guide, and adoption of the FEIR without a spot zone analysis would constitute a failure to proceed in a manner required by law.

B. The FEIR's consistency findings fail to analyze relevant policies regarding the preservation of industrially-zoned land.

When conducting an environmental impact analysis, an agency's determinations must be supported by evidence in the record. (Code Civ. Proc. § 1094.5 [providing that agency findings must be supported by record evidence]; Pub. Resources Code § 21168 [applying the Section 1094.5 standard to CEQA actions].) An agency cannot simply draw conclusions without analysis. (See *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 511–512, 515 [“*Topanga*”].) It “must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order.” (*Ibid.*)

The DEIR concludes that “the Project would be consistent with the applicable policies of the Framework Element... and, therefore, a less-than-significant impact would occur.” (DEIR IV.G-23.) This is not supported by the evidence or by reasonable analysis. The City failed to analyze relevant, applicable land use plans and requirements. Framework Element Policy 7.2.8 provides that the City must “[r]etain... current manufacturing and industrial land use designations.” Policy 7.2.9 mandates that the City must “[l]imit the redesignation of existing industrial land to other land uses.” Framework Element Policy 3.14.6 provides that industrial lands should only be converted when “it can be demonstrated that the reduction of industrial lands will not adversely impact the City's ability to accommodate sufficient industrial uses to provide jobs for the City's residents or incur adverse fiscal impacts.” In addition, Chapter 3 of the Framework Element provides “[w]here such [industrial] lands are to be converted, their appropriate use shall be the subject of future planning studies.” The City failed to address or clearly analyze these policies in the FEIR. (See FEIR, §§ II, III.)

The City also failed to analyze the Project's inconsistency with the applicable Community Plan, which explains that the City faces “[i]ntrusion of commercial and residential uses into previously industrial areas.” (Central City North Community Plan I-7; see DEIR, p. II-1 [explaining that Project is within the Central City North Community Plan].) Community Plan Objective 3-1 directs the City to preserve industrially zoned land. (*Id.* at III-8.) Objective 3-3 directs the City to “retain industrial plan designations ... and to increase it (sic) whenever possible.” (*Ibid.*) The City's analysis does not meaningfully address objectives 3-1 or 3-3, but only states in passing that the Project is inconsistent with Objectives 3-1.1 and 3-3.1. (DEIR, pp. IV.G-8 – IV.G-11, IV.G-40, IV.G-45.)

This is impermissible under CEQA. In *ADCCLA, supra*, the project applicant obtained a zone change and GPA to alter the project land use designation from Heavy Manufacturing (M3) to Commercial (C2). (*ADCCLA, supra*, 1.) The court found that the City violated CEQA

because it did not analyze or discuss the exact Framework Element and Central City North Community Plan policies listed, above. (*Id.* at 31-35.) The City cannot completely fail to analyze the applicable policies in the Framework Element and the Central City North Community Plan, and still find that the Project is consistent with applicable land use plans. If the City retains this analysis and approves the Advisory Agency's determination, its action will constitute an unlawful abuse of discretion. (See *McAllister v. California Coastal Com.* (2008) 169 Cal.App.4th 912, 921; Code Civ. Proc. § 1094.5; Pub. Resources Code § 21168.)

C. The FEIR fails to analyze the cumulative displaced industrial development impacts from the Project and related Projects.

An environmental review document must consider cumulative impacts. (Pub. Resources Code, § 21155.2(b)(1).) Cumulative impacts are the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and foreseeable future projects. (Cal. Code Regs., tit. 14, § 15355(b).) An agency must "examine reasonable, feasible options for mitigating or avoiding the project's contribution to any significant cumulative effects." (*Ibid.*) In this process, it "must use its best efforts to find out and disclose all that it reasonably can." (*San Franciscans for Reasonable Growth v. City & County of San Francisco* (1984) 151 Cal.App.3d 61, 74 [*"San Franciscans"*].)

In *ADCCLA, supra*, the court found that the City "failed to comply with CEQA because the MND and SCEA do not discuss the cumulative displaced industrial development impacts from this and other projects." (*ADCCLA, supra*, at 34.) In the cumulative impacts land use analysis in this EIR, the City failed to analyze how the Project, in conjunction with other projects in the vicinity, would result in the displacement of industrial land uses, though the DEIR indicates that several other related projects would result in the provision of "residential and commercial uses in formerly industrially-zoned lots." (See DEIR, pp. IV.G-61 – IV.G-63.) Likewise, as raised in the DEIR Comment Letter, the City fails to examine the impacts that the Project and related projects that alter existing industrial land use designations in the downtown Los Angeles Area will generally have on industrial land uses. (DEIR, p. 5.) The EIR does nothing to analyze or address these impacts. (See, e.g., FEIR, § III.) This does not evidence that the City used its "best efforts to find out and disclose all that it reasonably can," and, if upheld, will constitute reversible error. (See *San Franciscans, supra*, 151 Cal.App.3d at 74.)

D. The FEIR fails to identify significant environmental impacts.

An "EIR must include a detailed statement concerning the environmental effects, alternatives and other relevant factors concerning the project." (*Pesticide Action Network North*

America v. Department of Pesticide Regulation (2017) 15 Cal.App.5th 478, 494, citing *Committee for a Progressive Gilroy v. State Water Resources Control Bd.* (1987) 192 Cal.App.3d 847, 856–857.) The EIR, however, does not adequately identify significant impacts to land use, cumulative air quality impacts, greenhouse gas emissions, or fire and emergency services. (See DEIR Comment Letter, pp. 3-9.) Despite DEIR comments raising concerns regarding the failure to identify significant impacts in these areas, the City failed to correct the DEIR’s faulty analysis in the FEIR. (See FEIR, § III.) This is impermissible under CEQA.

E. The Statement of Overriding Considerations is not supported by substantial evidence and adoption of a Statement of Overriding Considerations will constitute an abuse of discretion.

In the EIR and Notice of Determination, the City found that the Project will result in unavoidable and un-mitigatable significant traffic impacts, but nonetheless decided to approve the Project. (See April 26, 2019 Determination Letter for 2110 Bay Street, Los Angeles, California [“Determination Letter”], p. 96.)¹

CEQA provides that an agency may adopt a project with unavoidable adverse environmental impacts, “[i]f the specific economic, legal, social, technological, or other benefits... of a proposal project outweigh the unavoidable adverse environmental effects.” (Pub. Resources Code, § 21002; Cal. Code Regs., tit. 14, § 15093(a).) Under CEQA, if an “agency approves a project which will result in the occurrence of significant effects [that] are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or other information in the record.” (Cal. Code Regs., tit. 14, § 15093(b).) The agency must provide specific overriding legal, economic, social, technological, or other considerations that outweigh the environmental impacts of a project. (Pub. Resources Code, § 21081; CEQA Guidelines, § 15093.) A “statement of overriding considerations shall be supported by substantial evidence in the record.” (Cal. Code Regs., tit. 14, § 15093(b); see *Sierra Club v. County of Contra Costa* (1992) Cal. App. 4th 1212, 1223 [“*Sierra Club*”] [disapproved on other grounds in *Voices of the Wetlands v. State Water Resources Control Bd.* (2011) 52 Cal.4th 499].)

In *Sierra Club*, *supra*, Cal. App. 4th 1212, the agency adopted a statement of overriding considerations that listed twelve project benefits that the agency claimed overcame the project’s

¹ Southwest Carpenters contends that the Project will have several other significant impacts and raises these impacts by reference to their DEIR Comment Letter, attached hereto. (See generally DEIR Comment Letter.)

environmental impacts. The court found that three of the twelve asserted benefits were not supported by substantial evidence, and, thus determined that the statement of overriding considerations was defective. (*Id.* at 1224.) Likewise, here, the City's asserted benefits are not supported by substantial evidence. For example, the City states that the Project results in the "[l]ocation of a high-density mixed-use development on an under-utilized site." (Letter of Determination, p. 100.) But the record does not support a conclusion that the site is "under-utilized," and the City does not define this term or discuss the relevance of this term in reference to the applicable industrial use land designations of the Project site. The Project Site is currently home to a large manufacturing building and other items and structures related to industrial uses. (DEIR, p. II-5.) The City of Los Angeles is in desperate need of industrial and manufacturing land, and thus, sites with buildings and amenities that support manufacturing are heavily utilized and in high demand. (See Los Angeles Department of City Planning and Community Redevelopment Agency, *Los Angeles' Industrial Land, Sustaining a Dynamic City Economy* (Dec. 2007)

<http://planning.lacity.org/Code_Studies/LanduseProj/Industrial_Files/Attachment%20B.pdf> [as of Dec. 13, 2018] ["Competition for industrially zoned land in Los Angeles is extremely high; industrial land in the City has the lowest vacancy rate in the nation, remaining consistently below two percent."] This does not support a conclusion that, in order to appropriately utilize the Project site, it must be constructed into a mixed-use development. As the record does not contain substantial evidence that supports these asserted benefits, under *Sierra Club's* holding and California Code of Regulations, title 14, section 15093(b), the City's Statement of Overriding Considerations is defective and unlawful.

F. The FEIR fails to adequately respond to comments.

Southwest Carpenters and others submitted comments to the City regarding the Draft Environmental Impact Report. CEQA mandates: "[t]he lead agency shall evaluate comments on environmental issues received from persons who reviewed the draft EIR and shall prepare a written response." (Cal. Code Regs., tit. 14, § 15088.)

The FEIR, however, failed to provide responses that specifically addressed or mitigated the concerns raised by Southwest Carpenters and others. For example, Southwest Carpenters raised the fact that the DEIR failed to examine several relevant and essential Framework Element Policies regarding the preservation of Industrial Land Uses, including Framework Element Policies 7.2.8, 7.2.9, and 3.14.6. (See DEIR Comment Letter.) The City, however, fails to address this deficiency in the FEIR or update its analysis to include and discuss these essential policies. (See FEIR, pp. III-1 – III-3, II-26 – II-27.) Likewise, the City failed to meaningfully respond to or alter the FEIR in response to Southwest Carpenters' concern that the DEIR failed

to analyze the spot zone created by the Project per the Los Angeles CEQA Thresholds Guide. (FEIR, pp. III-1 - III-3, II-32 – II-34.)

In addition, the City failed to respond to clarifying questions posed by Southwest Carpenters. For example, in the DEIR Comment Letter, Southwest Carpenters asked, “Did the City solely analyze cumulative impacts from projects within 500 feet of the Project site?” (DEIR Comment Letter, p. 7.) The City never responded to this inquiry. (FEIR, p. II-35 – II-37.)

The City’s failure to adequately respond to comments violates CEQA.

G. The Mitigation Monitoring Program is incomplete.

Because the City failed to properly identify significant impacts, the City also failed to create a complete mitigation monitoring program to appropriately minimize such impacts. CEQA provides a “*substantive mandate* that public agencies refrain from approving projects for which there are... mitigation measures” that can lessen the environmental impact of proposed projects. (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 134 [“*Mountain Lion*”], citing Pub. Resources Code § 21081.) In order to ensure that a Project’s impacts to the environment are effectively lessened, such measures must be included as mitigation, and mitigation must be fully enforceable. (Cal. Code Regs., tit. 14, § 15126.4(a)(1) [“An EIR shall describe feasible measures which could minimize significant adverse impacts...”]; *id.* at § 15126.4(a)(2) [mitigation “must be fully enforceable through permit conditions, agreements, or other legally-binding instruments”].) Without a proper analysis and identification of significant environmental impacts, the City cannot provide proper mitigation. The City’s mitigation monitoring program, therefore, does not meet CEQA’s mandate to lessen environmental impacts.

II. The Project is Inconsistent with the Framework Element and the Community Plan, so Approval of the Vesting Tentative Tract Map Will Violate Los Angeles Municipal Code Section 17.00 *et seq.* and the Subdivision Map Act.

The Subdivision Map Act (“SMA”) provides that subdivisions must be consistent with land use requirements, including “local ordinances dealing with subdivisions.” (Gov. Code, § 66474.60.) The SMA provides that “[i]n cities having a population larger than 2,800,000, the advisory agency... shall deny approval of a tentative map... if it makes any of the following findings... [t]hat the proposed map is not consistent with applicable general and specific plans” or “the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans.” (*Id.* at §§ 66474.61 (a), (b).) Los Angeles Municipal Code

(“L.A.M.C.”) section 17.05(C) provides that subdivisions shall comply with relevant zoning and “shall substantially conform to all other elements of the General Plan.”

The evidence does not support a finding that the Project complies with the Framework Element or Central City North Community Plan. As discussed *supra*, Framework Element policies 7.2.8 and 7.2.9 require that the City preserve industrial land. Policy 3.14.6 provides that industrial lands should only be converted when “it can be demonstrated that the reduction of industrial lands will not adversely impact the City’s ability to accommodate sufficient industrial uses to provide jobs for the City’s residents or incur adverse fiscal impacts.” Chapter 3 of the Framework Element requires that “[w]here such [industrial] lands are to be converted, their appropriate use shall be the subject of future planning studies.” Likewise, Community Plan Objective 3-1 directs the City to preserve industrially zoned land. (*Id.* at III-8.) Objective 3-3 directs the City to “retain industrial plan designations... and to increase it (sic) whenever possible.” (*Ibid.*) The City’s analysis does not meaningfully address objectives 3-1 or 3-3, but only states in passing that the Project is inconsistent with Objectives 3.1-1 and 3-3.1. (DEIR, pp. IV.G-8 – IV.G-11, IV.G-40, IV.G-45.)

Despite these requirements, the record contains no evidence that the conversion of the Project site from an industrial land use designation supports the preservation of industrial land, or that the City made the findings or completed the planning studies required by the Framework Element before approving the zone change and General Plan Amendment for the Project. Nor does the record demonstrate that the Project complies with Community Plan Objectives 3-1 or 3-3. (DEIR Comment Letter, pp. 2-5; FEIR, pp. III-1 – III-3, II-26 – II-27.) In *ADCCLA*, the Court found that such failures to analyze Framework Element policies or Community Plan Objectives regarding the preservation of industrially-zoned land where a project obtained a zone change and GPA to alter the industrial land use designation “preclude subdivision approval under both the SMA and LAMC.” (*ADCCLA, supra*, p. 43.)

If the Advisory Agency’s determination is upheld, the City will violate the SMA and LAMC. section 17.05(C), because the Project fails to conform to the Central City North Community Plan and Framework Element.

Aggrieved by Decision

Members of Southwest Carpenters live and work in the City of Los Angeles and are concerned about the environmental impacts of this Project. Without an adequate environmental review document, Southwest Carpenters and its members are aggrieved because the Project’s environmental impacts have not been fully disclosed. Similarly, Southwest Carpenters has a

keen interest in seeing adequate mitigation provided to properly address environmental impacts through preparation of an EIR. Southwest Carpenters is also interested in orderly planning within the City and adherence to state planning laws, and is, thus, further aggrieved by the City's failure to adhere to its General Plan.

Decisionmaker Error

The Hearing Officer erred in approving the EIR for the Project when the EIR fails the informational purposes of CEQA, and the EIR does not adopt all feasible mitigation measures. The Hearing Officer's decision to certify an EIR that has not been properly prepared as required under CEQA, CEQA Guidelines, and case law constitutes an abuse of discretion. The City's failure to ensure Project consistency with its General Plan constitutes additional error that must be corrected prior to the City's approval of the Project, and the Hearing Officer's action to approve the Vesting Tentative Tract Map was in violation of the SMA.

Very truly yours,
WITTWER PARKIN LLP

A handwritten signature in blue ink, appearing to read 'N. Whipps', is written over the printed name.

Nicholas Whipps

Enclosures

December 26, 2018

VIA E-MAIL

Mr. Sergio Ibarra
Department of City Planning
City of Los Angeles
221 N. Figueroa Street, Suite 1350
Los Angeles, California 90012
Sergio.Ibarra@lacity.org

**Re: 2110 Bay Street Mixed-Use Project Draft Environmental Impact Report
(ENV-2016-3480-EIR)**

Dear Mr. Ibarra:

Wittwer Parkin, LLP represents the Southwest Regional Council of Carpenters ("Southwest Carpenters"). Southwest Carpenters represents 50,000 union carpenters in six states, including in Southern California. Southwest Carpenters has a strong interest in addressing environmental impacts of development projects, including the proposed mixed-use project at 2110 Bay Street in Los Angeles, California ("Project"). We submit the following comments on the Draft Environmental Impact Report ("DEIR") on the Southwest Carpenters' behalf.

The proposed Project site is located at 2100 Bay Street, 2130 Bay Street, and 2141 Sacramento Street in the Arts District of the City of Los Angeles ("City"). (DEIR, p. I-1.) It is within the Central City North Community Plan ("General Plan"). (*Ibid.*) The site is zoned M3-1-RIO – Manufacturing, Height District 1, River Improvement Overlay and is designated Heavy Manufacturing in the Central City North Community Plan. (*Id.* at p. I-2.) The location is currently used as a 4,000-square foot manufacturing building, surface parking lot, and an industrial shed. (*Id.* at p. I-5.) As proposed, the Project would include an 11-story building with 110 live/work units, a seven-story building containing office spaces and restaurant space, and a single-story building with retail spaces. (*Id.* at pp. I-5, I-6.)

In order to be constructed, the Project Applicant requested a General Plan Amendment to alter the Central City North Community Plan's land use designation for the Project site from Heavy Industrial to Commercial Industrial. (*Id.* at p. II-14.) The Applicant also requested a vesting zone and height district change from M3-1-RIO (Heavy Industrial Zone) to CM-2-RIO (Commercial Manufacturing Zone, Height District 2). (*Ibid.*)

As further explained below, the DEIR is deficient and must be revised and recirculated.

WITTWER PARKIN LLP / 147 S. RIVER ST., STE. 221 / SANTA CRUZ, CA / 95060 / 831.429.4055

WWW.WITTWERPARKIN.COM / LAWOFFICE@WITTWERPARKIN.COM

I. The Project Objectives Conflict with the Los Angeles General Plan Framework Element Policies and Existing Land Use Designations.

As a preliminary matter, the goals identified for the Project are inconsistent with Los Angeles General Plan Framework (“Framework Element”) policies, existing zoning, and General Plan designations for the Project site. For example, Project Objective Two is to “provide needed housing,” (DEIR, p. IV-4), yet housing is not permitted at the Project site under existing zoning or the Central City North Community Plan (see land use discussion, *infra*). In addition, as further discussed herein, constructing housing at the Project site will result in the loss of land reserved for industrial uses, which conflicts with Framework Element Policies that prioritize the preservation of industrial land. (*Ibid.*)

Listing the provision of housing as a Project objective gives the false impression that complying with this objective would not create environmental impacts that must be mitigated. As further discussed below, this creates a problematic set of criteria for the City’s alternatives analysis. Please remedy this.

II. The DEIR’s Land Use Analysis is Incomplete and Incorrect.

A. The Project is inconsistent with applicable Framework Element Policies.

The DEIR concludes that “the Project would be consistent with the applicable policies of the Framework Element... and, therefore, a less-than-significant impact would occur.” (DEIR IV.G-23.) If the City retains this analysis in its final EIR, its action will constitute an unlawful abuse of discretion. (See *McAllister v. California Coastal Com.* (2008) 169 Cal.App.4th 912, 921; Cal. Code Civ. Proc. § 1094.5; Cal. Pub. Resources Code § 21168 [applying the 1094.5 standard to California Environmental Quality Act (“CEQA”) actions].) “Abuse of discretion is established if... the order or decision is not supported by the findings, or the findings are not supported by the evidence.” (Code Civ. Proc. § 1094.5(b).)

The City’s conclusion that the Project is consistent with applicable policies of the Los Angeles General Plan Framework Element (“Framework Element”) is not supported by the evidence. The site is currently designated for Heavy Manufacturing in the General Plan and applicable zoning. (DEIR, p. I-2.) Framework Element Policy 7.2.8 provides that the City must “[r]etain the current manufacturing and industrial land use designations.” Yet, the Project, if approved, would permanently remove land currently designated for industrial uses and convert this land to commercial and residential zoning. Project approval is also completely inconsistent with Policy 7.2.9’s mandate to “[l]imit the redesignation of existing industrial land to other land uses,” as it would redesignate industrial land as commercial and residential land. (See DEIR, p. II-14 [changing the zoning from M3-1-RIO, a Heavy Industrial designation, to CM-2-RIO, a

Commercial Manufacturing designation].) In addition, Framework Element Policy 13.4.6 only permits conversion of industrial land to non-industrial uses, “[w]here it can be demonstrated that the reduction of industrial lands will not adversely impact the City’s ability to accommodate sufficient industrial uses to provide jobs for the City’s residents or incur adverse fiscal impacts.” Though Project approval will result in the permanent loss of industrial lands (see generally DEIR, pp. I-5, I-6), the DEIR contains no evidence that this will not adversely impact the City’s ability to accommodate sufficient industrial uses or incur adverse financial impacts (see generally DEIR Section IV.G).

B. The DEIR fails to analyze inconsistencies between the Project and Framework Element policies.

The City cherry-picks its discussion of Framework Element and General Plan policies, thus failing to provide an adequate disclosure of baseline conditions. As indicated, above, the City fails to disclose or address those policies that mandate preservation of existing industrial land uses. Further, the City fails to address one of the primary CEQA issues concerning conversion of this industrial land to mixed-use residential and commercial. Project changes in General Plan and zoning designations will greatly intensify the use of this land in a manner not previously allowed, thus opening the door to greatly increased environmental impacts. This is a significant impact that requires mitigation.

The CEQA Guidelines provide: “[t]he EIR shall discuss any inconsistencies between the proposed project and applicable general plans and regional plans.” (Cal. Code Regs., tit. 14, § 15125(d).) The Los Angeles CEQA Thresholds Guide (“L.A. CEQA Thresholds Guide”) directs agencies to “identify project elements that conflict with [City] plans or policies and whether the conflict(s) would result in the project being inconsistent with the land use designation and/or environmental... policies of the City.” (L.A. CEQA Thresholds Guide, p. H.1-3.) Yet, the DEIR fails to analyze how the Project is inconsistent with applicable Framework Element policies.

As discussed above, the DEIR does not list or analyze the Project’s failure to comply with Framework Element Policies 7.2.8, 7.2.9, or 13.4.6. (See generally DEIR, pp. IV.G-28 - IV.G-34; *id.* at IV.G-32 [analyzing only objective 7.2 and policy 7.2.2].) These policies reflect the City’s goal of limiting conversion of existing industrial land to other land uses to avoid creating “a fragmented pattern of development [that] reduces the integrity and viability of existing industrial areas,” (*ibid.*), and supports its objective of “actively ensure that the City has sufficient quantities of land suitable to accommodate... industrial firms” (Los Angeles Department of City Planning and Community Redevelopment Agency, *Los Angeles’ Industrial Land, Sustaining a Dynamic City Economy* (Dec. 2007)

<http://planning.lacity.org/Code_Studies/LanduseProj/Industrial_Files/Attachment%20B.pdf>

[as of Dec. 13, 2018] [*Los Angeles' Industrial Land*"], p. 3; see Framework Element § 7.2 *et seq.*) Project approval will result in the loss of industrial land, and, as discussed above, Framework Policies 7.2.8, 7.2.9, and 13.4.6 are all applicable in this context.

Please update the land use analysis to address Framework Element Policies 7.2.8, 7.2.9, and 13.4.6, and the preservation of industrial land.

C. The Project would disrupt existing industrial land uses around the Project site.

The L.A. CEQA Thresholds Guide requires that a DEIR analyze the “extent to which existing... land uses would be disrupted, divided, or isolated, and the duration of the disruptions.” (L.A. CEQA Thresholds Guide, p. H.2-3.) Land use impacts may be significant where they “disrupt an established community.” (*Ibid.*) Appendix G to the CEQA Guidelines also provides that a project will have a significant impact where it “physically divide[s] an established community.” (DEIR, p. IV.G-13.)

The DEIR concludes that Project impacts to land use would be less than significant. (DEIR, p. IV.G-61.) But the Project will disrupt industrial land uses in the vicinity of the Project. The Project Applicant’s zone change request would alter applicable zoning and General Plan designations solely for the Project site in order to permit construction of a mixed-use residential development. (*Id.* at p. II-14.) The Project is surrounded by “warehouse/manufacturing buildings” on all sides. (DEIR, pp. III-3, IV.G-13.) This is clearly illustrated in Figure III-1, which depicts the Project amid a sea of manufacturing and industrial buildings. (DEIR, p. III-4.) Project approval would create a spot of unique zoning solely for the Project site and would place residential, office, and retail uses amid manufacturing and warehouses. (*Ibid.*) According to the City’s CEQA Thresholds Guide, spot zoning is a primary factor used in determining whether a project will have significant environmental impacts. (L.A. CEQA Thresholds Guide, pp. H.2-1 – H.2-2.) Yet, the City provides no discussion of the impacts of this proposed spot zoning in its DEIR.

Please analyze, pursuant to the L.A. CEQA Thresholds Guide and Appendix G of the CEQA Guidelines outlined above, how the altered land use designations for the Project site and residential, office, and retail uses would impact existing land use designations surrounding the Project. In this analysis, please explain how the Project, if implemented, would or would not degrade, divide, and impede surrounding heavy manufacturing and industrial uses. Further, please fully disclose how changing the land use designation of the Project site will serve to increase the environmental impacts from the allowed uses on this site.

D. The DEIR's conclusion that the Project would not have significant cumulative land use impacts is inconsistent with evidence in the record.

The DEIR concludes that cumulative impacts related to land use would be less than significant. (DEIR, p. IV-G.63.) This conclusion is refuted by the evidence - the DEIR itself demonstrates how new projects in the immediate vicinity of the Project are undermining the industrial zoning in this region. The M3-1-RIO and General Plan Designation of Heavy Manufacturing, which provide for heavy industrial uses at the Project site and its surrounding area do not permit residential, retail, or commercial uses. (*Id.* at pp. II-2, III-2; Exhibit A [LA Zoning Designations], p. 4.) Yet, in the immediate vicinity of the Project, there are three additional projects that would include retail, restaurant, and office uses. (DEIR, p. IV-G.62.) None of these projects will be used for heavy manufacturing or in industrial capacities. (*Ibid.*) The City admits that this is an increased trend of providing "housing and amenities" in this area, and highlights its approval of "residential and commercial uses in former industrial-zoned lots." (*Id.* at p. IV-G.62.) Though the City presents this trend as laudable, it completely alters existing land uses, and, as such, implicates a significant impact that requires mitigation. (See L.A CEQA Thresholds Guide, p. H.2-3.) Should the City wish to alter the land uses permitted in this area, it should follow the proper legislative channels and adopt a new zoning ordinance for this area, rather than changing land use designations in a piecemeal fashion.

III. The DEIR Does Not Adequately Examine Cumulative Air Quality Impacts.

The Project is located in the South Coast Air Basin ("Basin"). (DEIR, p. IV.A-1.) The United States Environmental Protection Agency has determined that the Los Angeles County section of the Basin does not meet the National Ambient Air Quality Standards ("NAAQS") for multiple major pollutants: fine particulate matter ("PM_{2.5}"), lead ("Pb"), and ozone ("O₃") – created when volatile organic compounds ("VOC") and nitrogen oxides ("NO_x") react with ultraviolet sunlight. (DEIR, pp. IV.A-5, IV.A-6.) The California Air Resources Board ("CARB") has determined that the Los Angeles County area of the Basin possesses nonattainment levels of O₃, PM_{2.5}, and inhalable particulate matter ("PM₁₀"). (*Id.* at p. IV.A-7.) Each of these substances are extremely harmful to human health. (*Id.* at pp. IV.A-3, IV.A-4.)

Project construction and operation would result in increased air pollution. The existing project site does not generate any "existing vehicle trips or other activity," (DEIR, p. IV-A.17), and, as proposed, the Project would create 110 live/work units, a large office building, and retail spaces (*id.* at p. I-5). This would generate a significant increase in vehicle trips of residents, members of the workforce, and consumers to and from the Project site. In addition, construction efforts would result in increased pollution emissions. (*Id.* at p. IV-A.33 [stating the Project could result in up to 2,394 net vehicle trips on a peak weekday], see generally *id.* at p. I-5.)

CEQA requires an agency drafting an EIR to conduct “[a] reasonable analysis of the cumulative impacts of the relevant projects.” (Cal. Code Regs., tit. 14, § 15130(b)(5).) An agency must “examine reasonable, feasible options for mitigating or avoiding the project’s contribution to any significant cumulative effects” in an EIR, (*ibid.*), and “must use its best efforts to find out and disclose all that it reasonably can” (*San Franciscans for Reasonable Growth v. City & County of San Francisco* (1984) 151 Cal.App.3d 61, 74 [“*San Franciscans*”]).

The DEIR does not “use its best efforts to find out and disclose all it reasonably can.” (*San Franciscans, supra*, 151 Cal.App.3d at 74.) The DEIR only examines a small number of surrounding projects, but it does not analyze actual projected cumulative air quality impacts from the projects it identifies. The DEIR Executive Summary discloses a total of 60 potential related projects within a 1.5-mile radius of the Project site. (*Id.* at p. III-6.) However, as the City recognizes, cumulative air quality is a basin-wide issue, not merely confined to projects in the direct vicinity of the Project site. To add to this error, the Air Quality analysis only specifically lists projects within 500 feet of the Project itself. (DEIR, p. IV.A-42.) It concludes that these projects would likely be within SCAQMD’s thresholds and, would “implement feasible mitigation measures when significant impacts are identified.” (*Id.* at IV.A - 42-IV.A.43.) This statement is conclusory and confusing. Did the City solely analyze cumulative impacts from projects within 500 feet of the Project site?

The City must, at a minimum, provide information on all 60 potential related projects it identifies in its DEIR. Many of the larger nearby projects will presumably have significant and unavoidable air quality impacts, to which the Project will cumulatively contribute. It is also unclear from the DEIR whether the City analyzed the actual impacts of surrounding projects or provided estimates of project emissions from construction or operation of such projects. (See *id.* at p. IV.A-42 - IV.A-44.) Many of the surrounding projects will include significant construction, and will result in office, retail, and residential uses, which will, in turn, result in increased vehicle trips, and thus increase emissions of air pollutants, but the DEIR does not discuss or analyze these specifics. (*Id.* at pp. III-8 – III-13.) In the FEIR or a recirculated DEIR, please provide specific pollutant projections for, at minimum, each of the 60 concurrent projects listed in the DEIR and explain the projected cumulative impact of these projects.

The DEIR segregates the cumulative air quality impacts of construction from the impacts from operation. (DEIR, pp. III-8 – III-13.) This makes it difficult to understand the overarching emissions of pollutants from this and other projects. Please provide information that discusses these projects’ total air quality impacts – rather than providing separate analyses of construction and operations related impacts.

The DEIR does not analyze potential cumulative impacts in the context of Los Angeles County's existing nonattainment status for multiple air pollutants. (*Id.* at pp. III-8 – III-13.) The DEIR's analysis does not acknowledge that the Los Angeles County portion of the Basin has severe air pollution, is in nonattainment levels for several harmful pollutants, and that the addition of several projects could create a large cumulative impact on already harmful air quality. (See *id.* at pp. IV.A-42 - IV.A-44.) The City must adequately disclose how the Project would cumulatively impact the Basin's existing poor air quality in conjunction with other proposed projects.

The DEIR improperly conflates individual SCAQMD thresholds with cumulative thresholds. (DEIR, pp. IV.A-42 – IV.A-43.) It states that because the Project does not meet individual thresholds, it does not have a cumulative impact. (*Ibid.*) Specifically, in this discussion, the City states “[a]ccording to the SCAQMD, if an individual project results in air emissions of criteria pollutants that exceed the SCAQMD's recommended daily thresholds for project-specific impacts, then the project would also result in a cumulatively considerable net increase of these criteria pollutants.” (DEIR, at p. IV.A-43.) The City does not provide a reference to support this assertion. In the FEIR or recirculated DEIR, please provide a citation to the specific SCQAMD documents and policies to which the City references in the above quote.

The City's analysis is impermissible under CEQA. In the CEQA context, “cumulatively considerable” means “the incremental effects of an individual project are considerable when viewed in connection with the... effects of other current projects, and the effects of probably future projects....” (Cal. Code Regs., tit. 14, § 15065(a)(3).) Therefore, a project may have individual incremental effects that do not trigger a significant impact until the cumulative impacts analysis is employed.

Please clarify this information, as requested above. Because the City has failed to adequately discuss cumulative air quality impacts, the City must provide further analysis of impacts and feasible mitigation measures that will address such impacts in a recirculated DEIR.

IV. The DEIR's Greenhouse Gas Emissions Analysis is Convolutd, Based on Inapplicable Plans, and Draws Incorrect Conclusions.

The City has erroneously found that the Project's greenhouse gas emissions would be less than significant, because it incorrectly relies on statewide and regional plans which were not designed to be applied at the project-level. (See *Center for Biological Diversity v. Dep't of Fish & Wildlife* (2015) 62 Cal.4th 204; DEIR IV.D-8 – IV.D.27, IV.D-75.) In addition, the City provides no analytical connection between these plans. (See *ibid.*) Even if these plans were designed to apply to individual projects, the City's analysis of the Project's consistency with

these plans is convoluted and uninformative, and thus undermines the DEIR's function as a transparent, educational document. (See DEIR IV.D-35 – IV.D-36, IV.D-38 – IV.D-75.) Further, the City's failure to evaluate the Project using a quantitative significance threshold cannot be seen as a good-faith effort at disclosing the greenhouse gas impacts of a project of this size. (Cal. Code Regs., tit. 14, § 15064.4(a).)

Finally, because the City has erroneously found that Project emissions would be less than significant, the City has failed to provide appropriate and feasible mitigation for the greenhouse gas impacts of the Project. (DEIR IV.D-75, see generally DEIR IV.D.) "An EIR shall describe feasible measures which could minimize significant adverse impacts, including where relevant, inefficient and unnecessary consumption of energy." (Cal. Code Regs., tit. 14, § 15126.4(a)(1).) "Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally-binding instruments." (Cal. Code Regs., tit. 14, § 15126.4(a)(2).)

V. The DEIR's Conclusion that the Increased Number of Projects in Downtown Los Angeles Would Not Have a Significant Cumulative Impact on Fire and Emergency Services is Not Supported by the Evidence or Clear Analysis.

When conducting an environmental impact analysis, an agency's determinations must be supported by evidence in the record. (Cal. Code Civ. Proc. § 1094.5 [providing that agency findings must be supported by record evidence]; Cal. Pub. Resources Code § 21168 [applying the Section 1094.5 standard to CEQA actions].) An agency cannot simply draw conclusions without analysis. (See *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 511–512, 515.) It "must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order." (*Ibid.*)

The DEIR's determination that "cumulative impacts to fire and EMS would be less than significant" is not supported by the evidence. (See DEIR, p. IV.J.1-20.) Downtown Los Angeles is in a period of extreme growth. According to the DEIR, there are currently 57 proposed projects in the vicinity of the Project that would be served by the Los Angeles Fire Department. (*Id.* at p. IV.J.1-18.) The Downtown Los Angeles 2040 Plan forecasts that "125,000 people, 70,000 housing units, and 55,000 jobs would be added to the Downtown area by 2040." (*Ibid.*) All of these increased uses will require fire protection and EMS services. Yet, at this time, the "LAFD has no known or proposed plans to expand fire facilities or construct new facilities in the Community Plan Area." (*Id.* at p. IV.J.1-19.) This does not support a finding that cumulative impacts to emergency services would be less than significant.

The DEIR fails to bridge the analytic gap between its conclusion and the raw evidence. It does not analyze how this significant increase in use and residential population in downtown Los

Angeles would cumulatively impact existing fire and EMS services or explain why this would not result in significant impacts or lead to the construction or expansion of additional facilities. (See *id.* at pp. IV.J.1-18 - IV.J.1-19.) It discusses how these increased uses might be mitigated – e.g. that proposed projects would foreseeably need to comply with LAFD requirements, have sprinklers, etc. – but this has no bearing on the significance of the impacts or the increased cumulative demand on these services. (*Id.* at pp. IV.J.1-18 - IV.J.1-19.) Failing to identify these as mitigation measures is confusing, undermines the informational purpose of CEQA, and leads to an incorrect finding of less than significant impacts.

Please update this analysis to address these concerns and to provide appropriate, enforceable mitigation measures to offset the cumulative impacts to public services. (See Cal. Code Regs., tit. 14, § 15126.4(a)(1) [requiring mitigation measures]; 14 Cal. Code Regs., tit. 14, § 15126.4(a)(2) [“Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally-binding instruments”].)

VI. The DEIR’s Alternatives Analysis is Incomplete.

The CEQA alternatives analysis has been described by the California Supreme Court as the “core of an EIR.” (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.) CEQA provides a “*substantive mandate* that public agencies refrain from approving projects for which there are feasible alternatives or mitigation measures” that can lessen the environmental impact of proposed projects. (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 134, citing Pub. Resources Code § 21081 [emphasis added].) It “compels government... to mitigate... adverse effects through... the selection of feasible alternatives.” (*Sierra Club v. State Board of Forestry* (1994) 7 Cal.4th 1215, 1233, see also Pub. Resources Code § 21002.) A lead agency’s ability to comply with this mandate is predicated on a clear analysis of correct findings of a project’s impacts and a feasible set of project objectives. “Without meaningful analysis of alternatives in the EIR, neither the courts nor the public can fulfill their proper roles in the CEQA process.” (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 404 [“*Laurel Heights*”]; *Preservation Action Council v. City of San Jose* (2006) 141 Cal.App.4th 1336, 1350.)

An EIR’s review of Project alternatives must analyze alternatives “which are capable of avoiding or substantially lessening any significant effects of the project.” (Cal. Code Regs., tit. 14, § 15126.6(b).) Its very purpose is to identify ways to reduce or avoid significant environmental impacts. (*Laurel Heights, supra*, 47 Cal.3d at 403.) In order to achieve this purpose, the EIR must correctly identify project impacts. Yet, the Project alternatives analysis, as drafted, does not adequately assess whether alternatives would avoid or substantially lessen significant Project effects, because the DEIR incorrectly identifies a number of impacts –

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including impacts to land use, emergency services, and air quality – as less than significant. The DEIR's alternatives analysis, therefore, does not sufficiently examine whether the alternatives listed would mitigate or avoid such impacts. (See DEIR, pp. IV.1 – IV.80.)

The DEIR's alternatives discussion also misses the mark because Project objectives are inconsistent with zoning, General Plan, and the Framework Element requirements for the Project site. An EIR's statement of project objectives is central to the selection and evaluation of alternatives. (Cal. Code Regs. § 15124(b) ["A clearly written statement of objectives will help the lead agency develop a reasonable range of alternatives to evaluate in the EIR"]; see *Bay Area Citizens v. Association of Bay Area Gov'ts* (2016) 248 CA4th 966, 1013.) Thus, if project objectives are incompatible with existing land uses, all proposed alternatives will also be incompatible, and the alternatives analysis will be improperly skewed to prioritize projects which will have significant land use impacts. As discussed, above, numerous listed objectives for this Project are incompatible with Los Angeles land use policy and regulations for the Project site. Please revise the Project objectives to ensure compliance with zoning, General Plan, and Framework Element requirements, and update the alternatives analysis to include alternatives that serve to lessen or avoid these significant and inadequately mitigated impacts.

VII. Conclusion

Southwest Carpenters thanks the City for considering these comments. Pursuant to Section 21092.2 of the Public Resources Code and Section 65092 of the Government Code, Southwest Carpenters requests notification of all CEQA actions and notices of any public hearings concerning this Project, including any action taken pursuant to California Planning and Zoning Laws. In addition, pursuant to Public Resources Code section 21167(f), please provide a copy of each Notice of Determination issued by the City or any other public entity in connection with this Project and please add Southwest Carpenters to the list of interested parties in connection with this Project and direct all notices to my attention. Please send all notices by email, or if email is unavailable, by U.S. Mail to:

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Very truly yours,
WITTWER PARKIN LLP



Nicholas Whipps

Arts District Community Council Los Angeles v. City of Los Angeles, et al.,
BS172014

Decision on (1) motion to augment/exclude
granted in part; (2) petition for writ of
mandate: granted

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ORIGINAL FILED
Superior Court of California
County of Los Angeles
APR 29 2019
Sherri R. Grant/Excluded
By: Jennifer De Luna, Deputy
Executive Officer/Clerk

Petitioners Arts District Community Council Los Angeles and Yuval Bar-Zemer seeks a writ of mandate directing Respondent City of Los Angeles ("City") to set aside (1) the City's approval and certification of the environmental documents for the development project located adjacent to the Arts District neighborhood at 1525 E. Industrial Street, 1549 E. Industrial Street, and 656-660 S. Alameda Street ("Project") and (2) the Project's vesting tentative tract map and land use entitlements. The City and Real Party-in-Interest Camden USA, Inc. ("Camden") oppose.

The court has read and considered the moving papers, opposition, reply, and supplemental brief, heard oral argument on February 28 and April 9, 2019, reviewed the joint opposition's supplemental authority, and renders the following decision.

A. Statement of the Case

Petitioners commenced this proceeding on January 16, 2018. The verified Petition alleges in pertinent part as follows.

Petitioners challenge the City's December 12, 2017 action in which it approved (1) an environmental review in the form of an Initial Study/Mitigated Negative Declaration ("MND"), Sustainable Communities Environmental Assessment ("SCEA"), Errata, and associated mitigation monitoring; (2) a Vesting Tentative Tract Map ("VTTM" or "tract map"), (3) a General Plan Amendment (sometimes "GPA"), (4) a Vesting Zone Change and Height District Change, and other land use entitlements for the Project. The approvals authorize the Project's zone and General Plan land use designation to be changed from M3-1-RIO and Heavy Industrial to [T]J[Q]C2-2D-RIO ("C2") and Regional Commercial, and allow construction of the 85-foot tall, 336,304 square foot mixed-use Project with 344 live/work units, including 29,544 square feet of commercial space.

The Petition alleges four causes of action. The first cause of action alleges that the City violated the California Environmental Quality Act ("CEQA") because the Project's MND and SCEA are inadequate and substantial evidence supports a fair argument that the Project may have a significant environmental impact, thereby requiring an Environmental Impact Report ("EIR"). The Project also is inconsistent with the General Plan, the Framework Element of the General Plan, and the Central City North Community Plan ("Community Plan"). The MND and SCEA (1) fail to identify or analyze the fact that the Project creates a "spot zone" under the City's CEQA Guidelines, (2) fail to maintain stable and accurate project descriptions due to entitlement requests modified during the administrative process, and (3) rely on an out-of-date related project list, causing the environmental review's cumulative impact analysis to be inadequate.

The second cause of action alleges that the Project approval violates the Subdivision Map Act (sometimes "SMA") and the City's subdivision regulations because (1) the Project is inconsistent with the City's General Plan, the Framework Element, and the Community Plan, (2) the Project was improperly modified during the administrative process in violation of Los Angeles Municipal Code ("LAMC") provisions, and (3) the adopted findings are inadequate to support the

SMA approval.

The third and fourth causes of action allege that the Project's approval violates provisions of the City Charter and LAMC and that the adopted findings under these laws are incomplete, inaccurate, and unsupported by substantial evidence.

B. Standard of Review

1. CEQA

A party may seek to set aside an agency decision for failure to comply with CEQA by petitioning for either a writ of administrative mandamus (CCP §1094.5) or of traditional mandamus. CCP §1085. A petition for administrative mandamus is appropriate when the party seeks review of a "determination, finding, or decision of a public agency, made as a result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken and discretion in the determination of facts is vested in a public agency, on the grounds of noncompliance with [CEQA]." Public Resources Code¹ §21168. This is generally referred to as an "adjudicatory" or "quasi-judicial" decision. Western States Petroleum Assn. v. Superior Court, ("Western States") (1995) 9 Cal.4th 559, 566-67. A petition for traditional mandamus is appropriate in all other actions "to attack, review, set aside, void or annul a determination, finding, or decision of a public agency on the grounds of noncompliance with [CEQA]." Where an agency is exercising a quasi-legislative function, it is properly viewed as a petition for traditional mandamus. Id. at 567; §21168.5.

The Petition, which presents claims concerning quasi-adjudicative Project approvals -- MND, SCEA, VTTM, density bonus, master conditional use permit ("CUP"), reduction of residential open space, and Site Plan Review -- but also quasi-legislative determinations of a zoning change to C2 and GPA to Regional Commercial, is a hybrid of administrative mandamus and traditional mandamus. Whether section 21168 for administrative mandamus or section 21168.5 for traditional mandamus applies to a particular CEQA case is essentially an academic issue as the two statutes embody the same standard of review. Laurel Heights Improvement Assn. v. Regents of the University of California, ("Laurel Heights") (1988) 47 Cal.3d 376, 392, n.5. The standard is abuse of discretion, which is shown if the agency has not proceeded in the manner required by law or its decision is not supported by substantial evidence. §§ 21168, 21168.5.

The Petition challenges in part the failure of the MND and SCEA as informational documents because they failed to consider *inter alia* certain industrial objectives and policies of the General Plan's Framework Element and of the Community Plan. Public entities abuse their discretion if their actions or decisions do not substantially comply with the requirements of CEQA. Sicra Club v. West Side Irrigation District, (2005) 128 Cal.App.4th 690, 698. Abuse of discretion is established if the agency has not proceeded in a manner required by law. Western States, *supra*, 9 Cal.4th at 568; Pub. Res. Code §21168.5.

The Petition also challenges in part the substantive factual conclusions in the MND and SCEA. This challenge is governed by the substantial evidence standard of review, which has been described as "highly deferential." Cal Native Plant Society v. City of Santa Cruz, (2009) 177 Cal.App.4th 957, 984-85. "Substantial evidence" is defined as "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a

¹ All further statutory references are to the Public Resources Code unless otherwise stated.

conclusion, even though other conclusions might also be reached. Guidelines² §15384(a). The court is not limited by the agency's findings; the court must "consider the evidence as a whole...the court 'must scrutinize the record and determine whether substantial evidence' supports the agency's decision. Laurel Heights, supra, 47 Cal.3d at 393. Argument, speculation, and unsubstantiated opinion or narrative will not suffice. Guidelines §15384(a), (b). The standard evidence standard of review requires deference to the agency's factual and environmental conclusions based on conflicting evidence, but not to issues of law. Laurel Heights, supra, 47 Cal.3d at 393, 409. Whether substantial evidence exists is a question of law. See California School Employees Association v. DMV, (1988) 203 Cal.App.3d 634, 644.

When a petitioner challenges an administrative decision as unsupported by substantial evidence in light of the record as a whole, the petitioner has the burden to demonstrate that the administrative record does not contain sufficient evidence to support the agency's decision. State Water Resources Control Board Cases, (2006) 136 Cal.App.4th 674, 749. A recitation of only the part of the evidence that supports the petitioner's position is not the "demonstration" contemplated by this rule. According, if a petitioner contends that some issue of fact is not sustained, he or she is required to set forth in his brief all the material evidence on the point and note merely his own evidence. Unless this is done, the error is deemed to be waived. Id. (quoting Foreman & Clark Corp. v. Fallon, (1971) 3 Cal.3d 875, 881).

2. VTTM, Site Plan Review, and GPA

The City's approval of the VTTM under the Subdivision Map Act is a quasi-judicial decision that is reviewed for abuse of discretion. Youngblood v. Board of Supervisors, (1978) 22 Cal.3d 644, 651, n.2. The abuse of discretion standard also applies to the Site Plan Review approval. See Saad v. City of Berkeley, (1994) 24 Cal.App.4th 1206, 1212. The court must "determine whether the [City's] findings are (1) legally sufficient and (2) supported by substantial evidence. McMillan v. American General Financial Corp. (1976) 60 Cal.App.3d 175, 182. The court "must resolve any reasonable doubts in favor of the agency findings and decision" and "may not substitute [its] own judgment for that of the agency." Ibid.

Every city and county must adopt "a comprehensive, long-term general plan for the physical development" of the city or county. Westsidiers Opposed to Overdevelopment v. City of Los Angeles, ("Westsidiers") (2018) 27 Cal.App.5th 1079, 1085. A general plan provides a "charter for future development", and sets forth the local agency's fundamental policy decisions about development. Ibid. (citation omitted). The general plan consists of a statement of development policies, setting forth objectives, principles, standards, and plan proposals. Ibid. (citation omitted). The City's adoption of the GPA is a legislative act reviewed by traditional mandamus. Id. at 1086. Judicial review of a legislative act "is limited to determining whether the public agency's action was arbitrary, capricious, entirely without evidentiary support, or procedurally unfair." Id. at 1085; see also San Francisco Tomorrow v. City and County of San Francisco, ("San Francisco Tomorrow") (2014) 229 Cal.App.4th 1239, 509.

²As an aid to carrying out the statute, the State Resources Agency has issued regulations called "Guidelines for the California Environmental Quality Act" ("Guidelines"), contained in Code of Regulations, Title 14, Division 6, Chapter 3, beginning at section 15000.

3. City Charter and LAMC Compliance

A charter city may not act in conflict with its charter, and any act that violates the charter is void. Westsidiers, supra, 27 Cal.App.5th at 1086. The court interprets a municipal law *de novo*, whether it is charter or ordinance. Domar Electric, Inc. v. City of Los Angeles, (1994) 9 Cal.4th 161, 171. The City's interpretation of its own City Charter and LAMC is entitled to deference. See City of Monterey v. Carmshimba, ("Carmshimba") (2013) 215 Cal.App.4th 1068, 1091.

Additional rules of statutory construction apply to the interpretation of charters. Westsidiers, supra, 27 Cal.App.5th at 1086. A charter city is presumed to have "all powers over municipal affairs, otherwise lawfully exercised, subject only to the clear and explicit limitations and restrictions contained in the charter. ...All rules of statutory construction as applied to charter provisions [citations] are subordinate to this controlling principle. ... Thus in construing the city's charter a restriction on the exercise of municipal power may not be implied." Id. at 1086-87. A city's "interpretation of its own charter is 'entitled to great weight and respect unless shown to be clearly erroneous' and 'must be upheld if it has a reasonable basis.'" Id. at 1087 (citation omitted).

4. General Plan and Community Plan Consistency

The City's plan "consistency determination is entitled to deference as an extension of [its] 'unique competence to interpret [its] policies when applying them in its adjudicatory capacity.'" Orange Citizens for Parks & Recreation v. Superior Court, ("Orange Citizens") (2016) 2 Cal.5th 141, 155 (citing San Franciscans Upholding the Downtown Plan v. City & County of San Francisco, (2002) 102 Cal.App.4th 656, 678. "Reviewing courts must defer to a procedurally proper consistency finding unless no reasonable person could have reached the same conclusion." Orange Citizens, supra, 2 Cal.5th at 155. The court may neither substitute its "view for that of the city council, nor reweigh conflicting evidence presented to that body." Sequoyah Hills Homeowners Assn. v. City of Oakland, (1993) 23 Cal.App.4th 704, 717-18.

Because policies in a general plan reflect a range of competing interests, a city must be allowed to weigh and balance the plan's policies and exercise broad discretion in construing those policies, given the plan's purposes. Pfeiffer v. City of Sunnyvale City Council, (2011) 200 Cal.App.4th 1552, 1563. "An action, program, or project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment." Orange Citizens, supra, 2 Cal.5th at 153. A project need not be in "perfect conformity" with every general plan policy. "In other words, it is nearly, if not absolutely, impossible for a project to be in perfect conformity with each and every policy set forth in the applicable plan. ... It is enough that the proposed project will be compatible with the objectives, policies, general land uses and programs specified in the applicable plan." Covina Residents for Responsible Development v. City of Covina, ("Covina Residents") (2018) 21 Cal.App.5th 712, 732.

The City's interpretation of its General Plan is entitled to deference. Although the court's review is highly deferential, "deference is not abdication." California Native Plant Society v. City of Rancho Cordova, (2009) 172 Cal.App.4th 603, 642 (citation omitted). The City's determination may be invalidated if Petitioners prove that the Project clearly contradicts and frustrates a General Plan policy that is fundamental, mandatory, and specific. San Francisco Tomorrow, supra, 229 Cal.App.4th at 517. Petitioners must prove that, notwithstanding the evidence supporting the

City's consistency determination, the Project "directly conflict[s] with "specific and mandatory" policies such that no reasonable person could conclude they were consistent. *Id.* at 518.

The amount of deference also is situational. In Yamaha Corp. of America v. State Bd. of Equalization, ("Yamaha") (1998) 19 Cal.4th 1, 10-11, the California Supreme Court noted that there are two categories of administrative rules: (a) quasi-legislative in which the agency has been delegated the Legislature's lawmaking power and (b) rules that interpret a statute. *Id.* at 11. In the first case, the agency's regulation will be upheld so long as within the scope of authority conferred and reasonably necessary to effectuate the purpose of the statute. *Ibid.* Less deference is required in the latter case where the agency is interpreting a statute. The courts take ultimate responsibility for construction of the statute, according weight and respect to the agency's interpretation. *Id.* at 12.

The amount of weight accorded to the agency's interpretation is situational. There are two broad factors for a court's assessment of how much weight to give the agency's interpretation: (1) the possible interpretative advantage of the agency over the courts, (2) the likelihood that the agency's interpretation is correct as based on the thoroughness of its consideration, the validity of its reasoning, its consistency with earlier pronouncements. *Id.* at 12. Where the legal text is obscure, complex or intertwined with issues of fact and the agency has expertise and technical knowledge, a court is more likely to defer to the agency's opinion. *Ibid.* Other opinions are entitled to less deference, although pertinent factors include careful consideration by senior agency officials, the long-standing nature of the agency interpretation, indications that the agency's interpretation was contemporary with enactment of the statute, and compliance with the Administrative Procedure Act's requirements of notice and comment in adopting the interpretive rule. *Id.* at 13.

C. CEQA

The purpose of CEQA (§21000 *et seq.*) is to maintain a quality environment for the people of California both now and in the future. §21000(a). "[T]he overriding purpose of CEQA is to ensure that agencies regulating activities that may affect the quality of the environment give primary consideration to preventing environmental damage." Save Our Peninsula Committee v. Monterey County Board of Supervisors, (2001) 87 Cal.App.4th 99, 117. CEQA must be interpreted "so as to afford the fullest, broadest protection to the environment within reasonable scope of the statutory language." Friends of Mammoth v. Board of Supervisors, (1972) 8 Cal.3d 247, 259. Public agencies must regulate both public and private projects so that "major consideration is given to preventing environmental damage, while providing a decent home and satisfying living environment for every Californian." §21000(g). The Legislature chose to accomplish its environmental goals through public environmental review processes designed to assist agencies in identifying and disclosing both environmental effects and feasible alternatives and mitigations. §21002.

The EIR is the "heart" of CEQA, providing agencies with in-depth review of projects with potentially significant environmental effects. Laurel Heights, 6 Cal.4th at 1123. An EIR describes the project and its environmental setting, identifies the potential environmental impacts of the project, and identifies and analyzes mitigation measures and alternatives that may reduce significant environmental impacts. *Id.* An EIR serves to "demonstrate to an apprehensive citizenry that the agency has in fact analyzed and considered the ecological implications of its

actions.” No Oil, Inc. v. City of Los Angeles, (1974) 13 Cal.3d 68, 86. Using the EIR’s objective analysis, agencies “mitigate or avoid the significant effects on the environment... whenever it is feasible to do so.” §21002.1.

Generally, an EIR is required on any project that may have a significant impact on the environment. §§ 21080(d), 21100(a), 21151(a); Pala Band of Mission Indians v. County of San Diego, (“Pala Band”) (1998) 68 Cal.App.4th 556, 570-71. If there is no substantial evidence of any significant environmental effect, the agency may adopt a negative declaration. §21080(c)(2); Guidelines §15070(b). Alternatively, if there is no substantial evidence of any net significant environmental effect in light of revisions in the project that would mitigate any potentially significant effects, the agency may adopt a MND. Citizens for Responsible and Open Government v. City of Grand Terrace, (“Citizens”) (2008) 160 Cal.App.4th 1323, 1331. An MND is a negative declaration in which (1) the proposed conditions avoid the effects or mitigate the effects to a point where clearly no significant environmental effect would occur and (2) there is no substantial evidence in light of the whole record before the agency that the project, as revised, may have a significant effect on the environment. §21064.5; Citizens, *supra*, 160 Cal.App.4th at 1331-32.

An EIR is required whenever there is substantial evidence supporting a fair argument that a proposed project may have a significant effect on the environment. Citizens, *supra*, 160 Cal.App.4th at 1331. The petitioner bears the burden to present a fair argument based on substantial evidence that the mitigation measures are inadequate to avoid the potentially significant effects. *Ibid*. The “fair argument” standard is a low threshold. “Substantial evidence,” 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.” Guidelines §15384(a). Argument, speculation, and unsubstantiated opinion or narrative will not suffice. Guidelines §15384(a), (b).

The substantial evidence standard requires deference to the agency’s factual and environmental conclusions based on conflicting evidence, but not to issues of law. Laurel Heights Improvement Assn. v. Regents of University of California, (“Laurel Heights”) (1988) 47 Cal.3d 376, 393, 409. Whether substantial evidence exists is a question of law. *See* California School Employees Association v. DMV, (1988) 203 Cal.App.3d 634, 644. The courts owe no deference to the lead agency’s determination in determining whether a fair argument exists. Citizens, *supra*, 160 Cal.App.4th at 1331-32. Review is *de novo* with a preference for resolving doubts in favor of environmental review. If substantial evidence supports a fair argument that an EIR is required, the court must set aside the agency’s decision to adopt the MND as an abuse of discretion for failing to proceed in a manner required by law. *Id.* at 1332.

A SCEA is reviewed under the substantial evidence standard, not a fair argument test. §21155.2(b)(7). As such, it is reviewed like an EIR. *See* RPI Opp. at 9.

D. Motion to Augment/Exclude

Petitioners move to augment the administrative record with 15 documents, and also move to exclude three documents from the record.

1. Applicable Law

The contents of the administrative record in a CEQA case are governed by section 21167.6(e). San Francisco Tomorrow v. City and County of San Francisco, (2014) 228

Cal.App.4th 1239, 1258. Section 21167.6(e) states that the administrative record shall include, *inter alia*, (1) all project application materials (§21167.6(e)(1)), (2) all staff reports and related documents prepared by the respondent public agency with respect to its compliance with the substantive and procedural requirements of this division and with respect to the action on the project (§21167.6(e)(2)), (3) all staff reports and related documents prepared by the respondent public agency and written testimony or documents submitted by any person relevant to any findings or statement of overriding considerations adopted by the respondent agency pursuant to CEQA (§21167.6(e)(3)), (4) all written comments received in response to, or in connection with, environmental documents prepared for the project, including responses to the notice of preparation (§21167.6(e)(6)), (5) all written evidence or correspondence submitted to, or transferred from, the respondent public agency with respect to compliance with this division or with respect to the project (§21167.6(e)(7)), and (6) any other written materials relevant to the respondent public agency's compliance with CEQA or to its decision on the merits of the project (§21167.6(e)(10)). Section 21167.6(e) "contemplates that the administrative record will include pretty much everything that ever came near a proposed development or to the agency's compliance with CEQA in responding to that development." County of Orange v. Superior Court, ("County of Orange ") (2003) 113 Cal.App.4th 1, 8.

The trial court makes the determination of the completeness of the administrative record. Madera Oversight Coalition, Inc. v. County of Madera, (2011) 199 Cal.App.4th 48, 63, *disapproved on other grounds by* Neighbors for Smart Rail v. Exposition Metro Line Construction Authority, (2013) 57 Cal.4th 439. Specifically, the trial court resolves disputes between the parties about what should be included in, or excluded from, the administrative record. *Ibid.*

In CEQA cases, the general rule is that a hearing on the petition for writ of mandamus is conducted solely on the record of the proceeding before the administrative agency. Toyota of Visalia v. New Motor Vehicle Bd., (1987) 188 Cal.App.3d 872, 881; *see* World Business Academy v. California State Lands Commission, (2018) 24 Cal.App.5th 476, 494. The court can only admit additional evidence in limited circumstances. Specifically, extra-record evidence may be considered only if it is shown that (1) the evidence could not with reasonable diligence have been presented at the administrative hearing, or (2) was improperly excluded at that hearing. CCP §1094.5(e); Fairfield v. Superior Court of Solano County, (1975) 14 Cal. 3d 768, 771-72; *see* Western States, *supra*, 9 Cal.4th at 578. In addition, extra-record evidence is admissible only if it is relevant. *Id.* at 570.

The Code of Civil Procedure does not expressly provide for a motion to augment or correct the administrative record, but they are routinely made and heard. *See, e.g.*, Pomona Valley Hospital Medical Center v. Superior Court, (1997) 55 Cal.App.4th 93, 101.

2. Statement of Facts

The City prepared the administrative record. Given Decl. ¶4. The City provided Petitioners with a draft index of the administrative record on April 26, 2018 and a preliminary copy of the record on May 12, 2018. *Ibid.*

Petitioners' counsel commented on the draft index in a telephone call with the City's outside counsel and in an email to all parties' counsel later that day. Given Decl. ¶5. In both communications, Petitioners' counsel objected to the inclusion of three exhibits that are now in

the certified administrative record because they were not part of the proceedings. Given Decl. ¶7. These exhibits are: (1) “History of Los Angeles Municipal Code 12.22.A-18” (AR 29753-78), (2) “Memo from Peter Kim and Robert Janovici, to multiple recipients, Re: Application of Lot Area (Density) Requirements for Developments Combining Residential and Commercial Uses” (AR 29779), and (3) “Zoning Code Manual – Manual and Commentary” (AR 29784-30131). Given Decl. ¶12. These exhibits were included in a computer file labeled “City docs to add to ar 4-24-18.” Ibid. The date of April 24, 2018 is more than four months after the City Council’s final action approving the Project. Ibid.

Petitioners’ counsel also expressed concern about Project-related documents excluded from the draft administrative record. Given Decl. ¶7. Based on his experience in litigating another CEQA matter against the City, Bar-Zemer et al. v. City of Los Angeles, (“Bar-Zemer”) (LASC BS161448), counsel knew that the missing documents included an MND for an earlier version of Camden’s Project. Ibid. He also suspected that email and other written communications were missing. Ibid. Petitioners’ counsel informed all counsel that he possessed some of these documents due to his involvement in the Bar-Zemer case. Ibid.

On June 13, 2018, the City certified the administrative record. Given Decl. ¶8. On June 21, 2018, Petitioners’ counsel emailed to the City’s counsel a request that the entire record from Bar-Zemer be added to the record and that the three aforementioned exhibits be excluded. Ibid. On June 22, 2018, Petitioners’ counsel emailed a “Dropbox” link to all counsel with a digital copy of the entire Bar-Zemer record. Given Decl. ¶9.

With the exception of Exhibit L, the documents Petitioners seek to add to the administrative record were part of the certified record in Bar-Zemer. Given Decl. ¶13. Exhibit L is an email dated June 9, 2017 from City Planner Jennifer Caira to Petitioners’ counsel’s responding to his inquiry regarding the SCEA that counsel only learned about from his client. Ibid. In previous letters to the City, Petitioners’ counsel requested that he receive all notices. Yet, he did not receive the notice of the SCEA. Ibid.

Petitioners’ purpose in seeking to add the requested documents to the administrative record is primarily to assist the court in understanding the relationship between the Project and the 2014 Live/Work Initiative and the Hybrid Industrial (“HI”) Zone Ordinance which evolved out of the policy initiative. Given Decl. ¶15.

3. Analysis

Petitioners seek to augment the administrative record with documents that are associated with previous versions of the Project and the City’s Live/Work Policy Initiative (sometimes “L/W Policy Initiative”) and HI Ordinance. Aug. Mot. at 5. Petitioners explain that they contend that the Project continues the policy behind the HI Ordinance even though titled differently, and the City is precluded from Project approval without undergoing the appropriate policy-level review required by the court in Bar Zemer. Aug. Reply at 4, 5.

The joint opposition argues that these documents are an attempt to reargue Bar-Zemer. Aug. Opp. at 6. The City does not deny that a previous version of the Project included a GPA and zone change consistent with the HI Ordinance, but the City approved the Project through a different process. Aug. Opp. at 6, n.1. The Live/Work Policy Initiative was never adopted and the HI Ordinance was adopted and then rescinded. Neither were operative for the Project. Aug. Opp. at 6. Even as broadly interpreted, section 21167.6(e) still requires documents in the administrative

record to be relevant to the agency's compliance with CEQA or its decision to approve the project at hand. Aug. Opp. at 8. None of the proffered documents were relied on by the City to approve the Project and therefore are not relevant. *Id.*

The court mostly agrees with Petitioners. Section 21167.6(e) is an expansive, but non-exhaustive, list of items that must be included in the administrative record. *Citizens for Ceres v. Superior Court* (2013) 217 Cal.App.4th 889, 909-10. Previous versions of a project must be included in the administrative record. *Mejia v. City of Los Angeles*, ("Mejia") (2005) 130 Cal.App.4th 322, 334. Because the administrative record should properly include "pretty much everything that ever came near a proposed development or to the agency's compliance with CEQA in responding to that development" (*County of Orange, supra*, 113 Cal.App.4th at 8), the record should include those documents "pertaining to" prior versions of the Project. See *Mejia, supra*, 130 Cal.App.4th at 335.

Although this case law does not mandate the inclusion of documents associated with the City's Live/Work Policy Initiative and the HI Ordinance, Petitioners have shown that these legislative efforts were closely intertwined with the Project's approval process. Such documents, where reasonably germane, should be included in the administrative record. The MND for the LW Policy Initiative encompassed an earlier version of the Project. Mot. to Aug. Ex. C. Documents in the certified administrative record mention the legislative efforts and their interconnection with the Project. Exclusion of these documents from the record simply because they primarily relate to the City's LW Policy Initiative and HI Ordinance, as opposed to the Project, would improperly narrow the focus of the court's review in assessing Petitioners' contentions about the Project.

a. Exhibit A

Exhibit A is a four-page letter from Real Party Camden to the City's Department of City Planning ("Planning") which comments on the L/W Policy Initiative and defends the City's concurrent processing of it and an earlier version of the Project.

Petitioners seek inclusion of Exhibit A under those portions of section 21167.6(e) which require the record to include "[a]ll written comments received in response to, or in connection with, environmental documents prepared for the project, including responses to the notice of preparation" (§21167.6(e)(6)) and "[a]ll written evidence or correspondence submitted to, or transferred from, the respondent public agency with respect to compliance with this division or with respect to the project". §21167.6(e)(7).

This is written correspondence submitted to the City with respect to a prior version of the Project. The relevance of this document is mostly background. Petitioners' request is granted.

b. Exhibits B, C, and M

Exhibit B is a Planning document entitled "Arts District Draft Live/Work Interim Zone Quick Guide" and features a map of the "Arts District Proposed Live/Work Zone Study Area." The document explains that the City's proposed Live/Work Interim Zone is a "new zoning tool that is being developed ... for new projects in the Arts District that have Live/Work Units in new construction." Exhibit C is a material excerpted from an MND prepared by Planning for the Live/Work Interim Zone and two companion development projects, including a 2014 version of the Project. Exhibit M is an excerpt of an undated Planning document described as a "PowerPoint Presentation note for Interim A-I-R Interactive Community Workshop."

Petitioners seek inclusion of these exhibits under section 21167.6(e) provisions which require the record to include “[a]ll staff reports and related documents prepared by the respondent public agency with respect to its compliance with the substantive and procedural requirements of this division and with respect to the action on the project” ((§21167.6(e)(2))) and “[a]ny other written materials relevant to the respondent public agency’s compliance with this division or to its decision on the merits of the project”. §21167.6(e)(10).

Exhibit C is integral to a prior version of the Project. Exhibits B and M are indirectly relevant to the Project approval because they provide context on the HI Ordinance and L/W Policy Initiative. Petitioners’ requests are granted.

c. Exhibit D, E, and L

Exhibit D is an email from a City Planner to Kamran Aryai explaining that Planning “stopped working on the Arts District Policy initiative and interim zone” and the relationship between that initiative and the HI Zone. Exhibit E is an email from Planning to “Arts District Stakeholders” explaining that the “City Planning Commission will not be considering the Arts District Policy Initiative *and projects* on December 18th.” (emphasis added). Exhibit L is an email from Planning to Petitioners’ counsel explaining that the SCEA “was published on May 18th [2017]” for the Project and providing an online link to the assessment. The email notes the assessment “relies on the same technical studies as the previous MND.”

Petitioners seek inclusion of these exhibits under section 21167.6(e)(7), which requires the record to include “[a]ll written evidence or correspondence submitted to, or transferred from, the respondent public agency with respect to compliance with this division or with respect to the project”.

As noted *ante*, there is a close connection between the L/W Policy Initiative, the HI Ordinance, and the Project which makes inclusion of this correspondence appropriate. Exhibits D and E concern the prior version of the Project and Exhibit L relates directly to the Project. Petitioners’ requests are granted.

d. Exhibits F and G

Exhibit F is a Planning staff recommendation report for the HI Ordinance. The staff analysis explains that the “proposed ordinance evolved out of a prior initiative to develop tailored guidance for live/work housing in new construction within the Arts District in Downtown Los Angeles.” Exhibit G is a document entitled “PLUM Presentation – 9/22” and are Planning’s notes from a PLUM Committee presentation for the HI Ordinance.

Petitioners seek inclusion of Exhibits F and G under section 21167.6(e) provisions which require the record to include “[a]ll staff reports and related documents prepared by the respondent public agency with respect to its compliance with the substantive and procedural requirements of this division and with respect to the action on the project” ((§21167.6(e)(2))) and “[a]ll staff reports and related documents prepared by the respondent public agency and written testimony or documents submitted by any person relevant to any findings or statement of overriding considerations adopted by the respondent agency pursuant to this division”. §21167.6(e)(3).

The staff report and the PLUM Committee presentation for the HI Ordinance’s compliance with CEQA was relevant to the earlier Project’s compliance with CEQA. Petitioners note that the HI Ordinance was struck down in Bar-Zemer and they contend that the City’s ongoing HI Zone

policy must undergo environmental review before the Project can be approved. Reply at 5. Documents concerning the Live/Work Policy Initiative and HI Ordinance are relevant to this issue. Petitioners' requests are granted.

e. Exhibit H, I, J, and K

Exhibit H is a PLUM Committee action report recommending approval by the City Council of an amended version of the HI Ordinance. Exhibit I is a certified transcript of the City Council meeting wherein a Councilmember expressed concern about the impact of the HI Ordinance on manufacturing. The transcript reflects that the City Council adopted an amended motion for Planning to report on the Councilmember's concerns. Exhibit J is a PLUM Committee action report again recommending City Council approval of the HI Ordinance. Exhibit K is a City Council report reflecting that the City adopted the HI Ordinance with a categorical exemption from environmental review.

Petitioners seek inclusion of these exhibits under section 21167.6(e)(4), which requires the record to include "[a]ny transcript or minutes of the proceedings at which the decisionmaking body of the respondent public agency heard testimony on, or considered any environmental document on, the project, and any transcript or minutes of proceedings before any advisory body to the respondent public agency that were presented to the decisionmaking body prior to action on the environmental documents or on the project."

These documents reflect the legislative process of the HI Ordinance which is relevant for the same reason as Exhibit F. Petitioners' requests are granted.

f. Exhibit N

Exhibit N is an index of the certified administrative record in Bar-Zemer. Petitioners seek inclusion of the exhibit under section 21167.6(e)(10), which requires the record to include "[a]ny other written materials relevant to the respondent public agency's compliance with this division or to its decision on the merits of the project".

This exhibit is an index prepared for a separate legal action and appears to be nothing more than a catch-all. There is no showing of relevance for the entire record of Bar-Zemer and it is not cited in Petitioners' moving or reply merits briefs. Petitioners' request is denied.³

g. Exclusion

Petitioners argue that the City improperly included three documents in the administrative record: (1) "History of Los Angeles Municipal Code 12.22.A-18" (AR 29753-78), (2) "Memo from Peter Kim and Robert Janovici, to multiple recipients, Re: Application of Lot Area (Density) Requirements for Developments Combining Residential and Commercial Uses" (AR 29779), and (3) "Zoning Code Manual – Manual and Commentary" (AR 29784-30131). Mot. at 9. According to Petitioners, these documents should not be in the administrative record because they were not a part of the proceedings before the City. Given Decl. ¶7.

Petitioners' argument is unpersuasive. As the joint opposition points out (Aug. Opp. at 10), these documents qualify under section 21167.6(e)(10) as "written material relevant to the

³ There is no reason to consider Petitioners' alternative argument that Exhibits A-M be judicially noticed, and Exhibit N is not subject to judicial notice. See Mot. at 9-10.

respondent public agency's compliance with this division or to its decision on the merits of the project". The documents support the City's conclusion that the Project complies with LAMC section 12.22.A(18). In fact, some of these documents qualify as legislative history for LAMC section 12.22.A(18) and could be judicially noticed.

Petitioners essentially admit that the documents are relevant and reply only that their inclusion resulted in unnecessary cost. Aug. Reply at 9. Despite the 347-page length of the Zoning Code Manual, there is no reason to exclude relevant material from the administrative record based on an unsupported argument of unnecessary cost.

4. Conclusion

The motion to augment is granted in large part. The administrative record is augmented with Exhibits A-M, but not N. The motion to exclude three documents from the record is denied.

E. Requests for Judicial Notice

Petitioners request judicial notice of (1) a staff report for a GPA adopted on December 16, 2008 expanding the Arts District (Ex. A), (2) the Community Plan (Ex. B), (3) a detail map from created by Petitioners' counsel on the City's website, ZIMAS.lacity.org (Ex. C), (4) a city ordinance (Ex. D), (5) a map exhibit from a Los Angeles City Council file (Ex. E), (6) an opposition brief filed in Bar-Zemer (Ex. F), (7) the General Plan's Framework Element, (Ex. G), (8) portions of the City's CEQA Thresholds Guide (Ex. H), (9) two Planning memoranda concerning General Plan Amendment initiations (Ex. I), (10) a spreadsheet of data compiled from AR12800-01 (Ex. J), and (11) City Charter and LAMC sections (Ex. K).

Although Petitioners did not serve copies of these exhibits with their opening brief, this error was corrected after the joint opposition was filed and well before the hearing. Therefore, the error was not prejudicial. However, the joint opposition points out that Exhibits C and J were created by Petitioners' counsel. Opp. at 4. As such, they are argument that cannot be judicially noticed, even if accurate.

The joint opposition does not object to Exhibits B, D, G, I, and K, but does object to Exhibits A, E, F, and H as subject to dispute and irrelevant. Opp. at 5. A disputed interpretation is not a reason to deny judicial notice. Petitioners demonstrate that the exhibits are relevant to their argument that the Project is incompatible with surrounding uses and inconsistent with land use policies not altered by the General Plan Amendment. Reply at 9. The request is granted for A, B, D, E, F, G, H, I and K. Evid. Code §452(b), (c), (d). The request is denied as to C and J, which can be used for argument only.

The City and Camden request judicial notice of (1) the HI Ordinance and its rescission ordinance (Exs. A, C), (2) a draft ordinance for an Interim Arts District Live/Work Zone (Ex. B), (3) the Community Plan (Ex. D), (4) portions of the Framework Element (Ex. E), (5) City Charter sections 553, 555, and 561 (Ex. F), (6) LAMC sections 12.21.A(2), 12.22.A(18), 12.36, and 17.15 (Exs. G-I, M), (7) Planning's List of Uses Permitted in Various Zones Citywide (Ex. J), (8) portions of the City's CEQA Thresholds Guide (Ex. K), and (9) a 2006 City Planning Commission Determination Report (Ex. L). The unopposed requests are granted. Evid. Code §452(b), (c).

In reply, Petitioners request judicial notice of a Zoning Administrator's Interpretation (Ex. A). This request should have been made with the moving papers and is improperly made in reply. Regency Outdoor Advertising v. Carolina Lances, Inc., (1995) 31 Cal.App.4th 1323, 1333. The

request is denied.

F. Statement of Facts

1. Project Site

The Project is located on 2.59-acres at 1525 Industrial Street at the intersection of Industrial Street and South Alameda Street ("Project Site" or "Site"). AR 175, 190, 483. The Hollywood Freeway runs north-south east of the Project Site, and the Santa Monica Freeway runs east-west south of the Site. AR 190, 483. The Project Site is within the South Industrial Area of downtown Los Angeles, and it is governed by the Community Plan. AR 175, 190. The Site is in the Community Plan's South Industrial subarea and nearby, but not in, the Arts District. Pet. RJN Ex. B, p. 3; Ex. E. The Site was zoned M3-I-RIO ("M3") with a land use designation of Heavy Manufacturing. AR 192.⁴ A mix of commercial (including retail, office, and restaurant uses), residential (including live/work units at 1850 and 1855 Industrial Street) and industrial uses surround the Site. AR 193, 481, 486-87, 9327, 9329-30. The Site is near regional transit, including two MTA Rapid Bus Lines, five MTA Local Bus Lines, and a Greyhound Bus Terminal. AR 192.

The Community Plan states: "Industrial uses dominate" the South Industrial subarea. Pet. RJN Ex. B, I-3. "Intrusion of commercial and residential uses into previously industrial areas" is a significant planning and land use issue. *Id.*, pp. I-5, I-7. Community Plan Objective 3-3 is to "retain industrial plan designations to maintain the industrial employment base for community residents and to increase it whenever possible." *Id.*, p. III-9. Policy 3-3.1's program to meet this objective calls for "retain[ing] the existing industrial designations, including large industrially planned parcels." *Ibid.*

In response to a 2013 inquiry about the Project Site, Senior City Planner Kevin Keller explained that "M zones do not permit residential uses," and "outside the boundary [of the Arts District], the Community Plan would not permit housing." AR 8508; *see also* LAMC §12.20.A(1).⁵

2. The L/W Policy Initiative and the HI Ordinance

In September 2013, Camden filed an application for a five-story mixed-use development with 240 residential units, including 11 live/work units, with a total floor area of 253,834 square feet. AR 3433-34.

In early 2014, Planning proposed the Live-Work Policy Initiative, a policy initiative specifically tailored for the Arts District with a new "LW" (live/work) zone corresponding to a General Plan land use designation of Hybrid Industrial. AR 8491, 8493-94. Camden provided comments to Planning on the Live/Work Policy Initiative. Mot. to Aug. Ex. A, p.3; AR 27901, 27904.

The L/W Policy Initiative's purpose was to allow live/work units in new construction for

⁴ Parcels west of Alameda are primarily zoned PF-2D and M2-2D and designated light industrial. AR193.

⁵ "Joint Living and Work Quarters" (live/work units) may be permitted subject to required findings within the Arts District *in existing buildings* in industrial and commercial zones, through adaptive reuse, or in historic buildings. LAMC §§ 12.24.X(1), X(12), X(13).

the first time in the City, on a limited test basis in a “Artists-in-Residence Study Area.” AR 8491; Mot. to Aug. Ex. B. The proposed study area included the Arts District and the Project Site. *See* Mot. to Aug. Ex. B, p.2.

In October 2014, the City released a joint MND for the L/W Policy Initiative and two companion projects, one of which was Camden’s Project. Mot. to Aug. Ex. C, p.1. The City drafted, but never adopted, an Interim Arts District Live/Work Zone. Opp. RJN Ex. B.

The L/W Policy Initiative evolved into the citywide Hybrid Industrial Live-Work Zone Ordinance (“HI Ordinance”). Mot. to Aug. Exs. D-F. Camden “worked very closely with [Planning] on the HI Ordinance” and its Project “was ...the test case...” AR 2826. The HI Ordinance was intended to authorize live/work units in new construction in land use categories designated as a Hybrid Industrial Live/Work Zone. AR 7849-50, 7853; Mot. to Aug. Ex. F, pp. A-1, A-3, F-1. The HI Ordinance added a new zone to the list of 35 existing zones: a Hybrid Industrial Live/Work Zone (“HI Zone”) to enable and regulate live/work uses in areas of land use designation of Hybrid Industrial. *See* AR 7849; Opp. RJN Ex. A. The HI Zone was not suited for all industrial areas; it was geared for unique hybrid industrial areas that “have seen a transition.” AR 7867. Unlike the L/W Policy Initiative, which had boundaries in the Arts District neighborhood, the HI Ordinance applied throughout the City. *Id.*; Opp. RJN Ex. B. The HI Ordinance did not actually rezone any specific land; rezoning an area to the HI Zone required an amendment to the City’s zoning map to designate the land within the HI Zone. *See* AR 7866.

The City Council’s Planning and Land Use Management (“PLUM”) Committee recommended an amended version of the HI Ordinance to the City Council. Mot. to Aug. Exs. G, H. The City Council requested a report from Planning to address concerns raised about the HI Ordinance’s potential to reduce the City’s stock of industrial land, displace manufacturing uses, harm the expansion of existing industrial uses, and adversely impact affordable housing. Mot. to Aug. Ex. I, pp. 2-4, 14-15. The PLUM Committee considered Planning’s report and on February 9, 2016 again recommended approval of the HI Ordinance. Mot. to Aug. Ex. J. The City Council adopted the HI Ordinance on February 10, 2016, finding that its action was exempt from review under CEQA. Mot. to Aug. Ex. K; AR 7852.

On March 16, 2016, Petitioners and others filed Bar-Zemer, a mandamus petition challenging the environmental exemption for the City Council’s adoption of the HI Ordinance. AR 7854. On April 11, 2017, the Bar-Zemer trial court granted the writ, ordering the City to set aside adoption of the HI Ordinance because it was not exempt from CEQA. AR 7886-88. On December 11, 2017, the City rescinded the HI Ordinance. Pet. RJN Ex. D; Opp. RJN Ex. C.

3. Project Revisions

The Project was revised several times in the planning and environmental review process. *See* AR 14192. One of the revisions was intended to comply with the HI Ordinance. Like the L/W Policy Initiative, approval of the Project under the HI Ordinance would have required a GPA to Hybrid Industrial and a corresponding zone change. RJN Ex. A. Hybrid Industrial land use designation would have allowed construction of the proposed 344 live/work units, as well as the other proposed uses. *Ibid.*; *see* LAMC §§ 12.13-A.2, 12.13-A.27, 12.13.5-A.1, 12.14-A.1 (allowing joint live/work units in commercial zones). For this purpose, the revised Project entitlements included a GPA to change the Community Plan land use designation from Heavy Manufacturing to Hybrid Industrial and a zone change from M3-1 to LW-1-RIO (Arts District

Live/Work Zone). AR 9115-17.

In April 2016, a month after the HI Ordinance was challenged in Bar-Zemer, Camden's representative emailed Councilmember Huizar's Planning Director to explain that Camden had received "new direction from Planning." AR 27106. Planning recommended that Camden change its GPA and zone change request to Commercial so that it would "not get caught up in the pending litigation." AR 2840, 14192.⁶ Camden would file "a new application and withdraw[] the existing case," but the "[P]roject is the same site and substantially the same as in the current case." AR 13256.

By early May 2016, Camden re-submitted the Project with a GPA request from Heavy Manufacturing to Community Commercial and zone change from M3 to C2. AR 3675. The revised Project was for a mixed residential and commercial use, with a primary seven story building, 344 live/work units, 24,044 square feet of office space, 5500 square feet of restaurant space, and a total area of 336,304 square feet. AR 3674-80.

The GPA Initiation Form dated May 4, 2016 was not signed by the Director of Planning, but rather by Shana Bonstin. AR 26114, 26178, 26184.

4. The Administrative Proceedings

a. The MND and VTTM

In 2008, the Legislature enacted SB 375, which provides for CEQA streamlining for Transit Priority Projects in the form of CEQA exemptions, SCEAs, and limited EIRs. The City did not begin processing SCEAs until late-2017. While the City as lead agency could have prepared a SCEA for the Project, it chose not to do so; the Project initially proceeded with an MND. AR 481. The MND was circulated for public review on June 16, 2016, and then revised and republished on July 21, 2016. AR 2157.

On December 14, 2016, the Deputy Advisory Agency held the Project's first public hearing for the VTTM's merger and subdivision of lots. AR 2121, 2157. The staff report misstated that the Project site is "within the designated Artist-in-Residence (AIR) District of the [Community Plan]." AR 2123. A City Planner repeated this misstatement at the hearing: "Residential use in new buildings are not typical permitted (*sic.*) in industrial zones. However, the project site is within the designated Artists-In-Residence District of the [Community Plan] and permits adoptive use of obsolete, industrial buildings to live/work apartment units." AR 2815-16. *Compare* Pet. RJN Ex. E. Camden's representative admitted the Project "was kind of, the ... test case" for the HI Ordinance. AR 2826.

Petitioners argued at the public hearing that the Project is a residential project in an industrial zone which is not permitted by the City's zoning, the Subdivision Map Act does not permit approval of a map inconsistent with a city's regulations, the Project is inconsistent with community and general plans to preserve industrial uses, and any approval would create a spot zone. AR 2828-35.

On January 5, 2017, the Deputy Advisory Agency adopted the MND and a mitigation

⁶ Camden's representative explained: "Due to the pending litigation, Planning will not process projects under the HI Ordinance. While the Project will include all of the unique features of that ordinance, including 100 percent live/work units . . . it will be rezoned to C2 instead of HI." AR 27159.

monitoring program, and approved the VTTM. AR 2170. A letter of correction was issued on January 10, 2017 with three additional conditions. AR 69-70.

On January 17, 2017, Petitioners appealed this determination to the City Planning Commission ("CPC"). AR 2157, 2202-03.

b. The SCEA

The SCEA was published and circulated for public review from May 18 through June 19, 2017, while Petitioners' tract map appeal hearing was pending. AR 5962. The SCEA reflected entitlement revisions but was based on "the same substantive environmental analysis" as the MND, with additional discussion demonstrating that the Project qualifies for CEQA streamlining under SB 375. AR 471, 481. Petitioners submitted comments on the SCEA. AR 6002, 6048-121.

c. The ZA Hearing

Following tract map approval, on July 24, 2017 Camden revised its requested entitlements for the Project, asking that the GPA change the Site's land use designation to "Regional Center Commercial", not Community Commercial as set forth in the MND. AR 2119. Camden also changed its requested reduction in open space and reduced setbacks. *Id.* The City published a concurrent "Errata" to the MND. AR 2119-20.

A Zoning Administrator ("ZA") hearing was held on July 7, 2017 to evaluate Camden's requested GPA change from Community Commercial to Regional Commercial and reduced open space and reduced setbacks for the Project. AR 2582, 2852. Petitioners renewed their objections and raised concerns about the City's process and revised entitlements. AR 2582-83. The ZA forwarded the requested changes to the CPC for decision. AR 2583.

d. The CPC Appeal and Initial Recommendation

The CPC heard the VTTM appeal on August 10, 2017. AR 2586. Petitioners submitted letters attacking Planning's recommendation reports on the tract map appeal and Project. AR 9282-306.

After a hearing, the CPC unanimously denied Petitioners' tract map appeal, approved the MND, and affirmed the Deputy Advisory Agency's tract map approval. AR 2644-45. On a 5-4 vote, the CPC also recommended or approved the remaining entitlements and the SCEA's adoption. AR 2586-87. The CPC adopted findings that the MND is sufficient, recommended that the City Council adopt the SCEA, and approved and recommended the GPA, a zone change, a density bonus incentive, a development standards waiver, a master CUP, and a Site Plan Review, all with findings and conditions of approval. AR 2587, 2642-43.

e. The City Council Appeals

Petitioners appealed to the City Council the VTTM approval (AR 8206-07), the GPA, zone change, and related approvals, including the MND and SCEA. AR 8391-92. Camden appealed the CPC's adoption of the MND solely to ensure that the SCEA would be before the City Council, which was the only entity that could approve it. AR 8613-15.

On September 20, 2017, the CPC officially transmitted its recommendation for the proposed SCEA, GPA, and zone change to the Mayor and City Council for consideration, recommending adoption of all and approval of the Project. AR 2707-11.

On September 28, 2017, the Mayor concurred with the CPC's action and transmitted it to the City Council for consideration. AR 2707-11.

f. The PLUM Committee Hearing and Recommendations

Prior to the PLUM Committee hearing, Planning submitted modified findings for the City Council's consideration. AR 8621-81.

In a letter dated November 20, 2017, Camden presented proposed revised findings to the PLUM Committee. AR 8883-93.

On November 21, 2017, the PLUM Committee held a public hearing on the three appeals and Project entitlements. AR 2994-95. Petitioners submitted a summary of and supplement to previous submissions. AR 8859-82. Camden's representative submitted two letters shortly before the hearing. AR 25203-04.

Following presentations by Planning, Petitioners, and Camden, the PLUM Committee heard public comment and discussed the Project. The PLUM Committee recommended denial of Petitioners' appeal and approval of the Project entitlements, including the SCEA. AR 2712-14. The PLUM Committee recommended the adoption of both Planning's proposed modified findings and Camden's proposed revised findings. AR 9309, 3023-24, 3027 (PLUM Committee Testimony); 2712-14 (PLUM Recommendations).

g. The City Council Approval

On December 5, 2017, Planning submitted revised findings and revised conditions of approval for the City Council to consider at its December 12, 2017 public hearing. AR 2735-96.

In a letter to the City Council dated December 11, 2017, Petitioners complained about the late submission by Planning and Camden of their respective modified and revised findings. AR 8975-77.

The City Council's Project agenda for December 12, 2017 included a recommendation that the City Council adopt the CPC findings, and did not mention the PLUM Committee's revised findings. AR 3037. The City Council adopted the agenda item on "consent." AR3082-84. The City Clerk's detailed journal confirms adoption of the CPC findings. AR3091-93. The "Official Action" of the City Council states that the PLUM Committee Report was adopted. AR 62. The PLUM Committee Report recommended adoption of the CPC findings. AR 2712.

After a public hearing on December 12, 2017, the City Council approved the Project, the SCEA, and the requested entitlements, denied Petitioners' appeal, and adopted findings. AR 31-32 (GPA); 33-37 (Zone Change); 62, 63-174 (Findings).

5. The Approved Project

The approved Project includes a GPA from Heavy Industrial to Regional Commercial and a rezone from M3 to C2. AR 1. The City did not rely on the HI Ordinance in approving the Project.

As ultimately approved, the Project involves the demolition of an existing industrial building, loading dock, and freight truck/trailer storage area on the Project Site and the construction of an approximately 336,304 square-foot mixed-use facility on a 2.59 acre Site with 344 live/work units (299,302 square feet of floor area), 7,458 square feet of leasing/amenity area, 24,044 square feet of creative office uses, and 5,500 square feet of restaurant space. AR 175, 478, 7994. All of the live/work units are classified by the Los Angeles Building Code ("LABC") as R2

occupancy in accordance with LABC section 419, which allows for arts and crafts or production in the work space and up to five employees. AR 175.

The Project's discretionary approvals include: (1) a GPA to the Community Plan to change the Site's land use designation from Heavy Industrial to Community Commercial; (2) a Vesting Zone Change/Height District Change from M3 (Heavy Manufacturing) to C2 (Commercial); (3) a ZA adjustment for reduced setbacks; (4) a Master CUP for the sale of alcohol for onsite consumption in the proposed restaurants; (5) a Director's Decision for a seven percent reduction in required residential open space; (6) a VTTM to create airspace and ground lots; and (7) approval of Site Plan Review findings. AR 175.

G. Analysis

1. Relevance of the L/W Policy Initiative and the HI Ordinance

Petitioners argue that the Project continues the City's L/W Policy Initiative and the now rescinded HI Ordinance for which no environmental review was undertaken. Throughout the administrative process, Camden representatives, Planning, and other City staff referred to the Project as a hybrid industrial development and ensured that it was consistent with HI Ordinance standards. AR 9339-40, 12421, 12434. At the tract map hearing, Camden's representative stated that Camden "worked very closely with the Planning Department on the HI Ordinance", using Camden's Project as the "test case." AR 2826. Further, the MND noted that the Project was "designed to comply with the provisions of the newly adopted HI Zone Ordinance . . ." AR 301. Pet. Op. Br. at 6.

Petitioners note that Camden only changed its entitlements application to a Commercial land use designation and C2 zone because Planning recommended this course in light of the then pending Bar-Zemer challenge to the HI Ordinance. AR 2840. At the December 14, 2016 tract map hearing, Camden's lawyer stated: "[A]lthough the project is -- seeking a zone change to commercial due to some pending litigation on the HI Ordinance, the project will include all of the unique features and public benefits that the Council wanted to see and embodied in the HI Ordinance." AR 2821. Camden's representative stated at the August 10, 2017 CPC hearing that the Project "isn't a conventional project. It started out as such, but it has transformed . . . into a hybrid live-work project." AR 2869. Pet. Op. Br. at 6.

Petitioners argue that the City has consistently interpreted its zoning code so that live/work units are not permitted in new construction. AR 8508 (City Planner: "the M zones do not permit residential uses."); AR 8493 (Planning document: "Housing is only allowed [in M3, the most intensive industrial zone,] in existing buildings and only as live/work units."); AR 8444 (residential use, except live/work in existing buildings, is prohibited in Arts District). Petitioners contend that this limitation on live/work units only to the conversion of existing structures is the reason why the City embarked on the L/W Policy Initiative in the first place; it would have allowed live/work units in new construction for the first time. AR 8491-94; Mot. to Aug., Ex. M, pp. 1-5. The HI Ordinance evolved out of the L/W Policy Initiative, and also was intended to authorize live/work units in new construction for land use categories designated as a Hybrid Industrial Live/Work Zone. AR 7849-50, 7853; Mot. Aug., Ex. F, pp. A-1, A-3. The City admitted in the Bar-Zemer case: "[T]he HI Zone authorizes live/work uses for new construction. The City's operable live/work use regulations restrict live/work uses to existing buildings, not newly constructed buildings." Pet. RJN Ex. F, p. 3. Pet. Op. Br. at 6-7.

Petitioners' argument raises the question: Who in the City has proper authority to interpret the LAMC with respect to live/work units in new construction? Camden⁷ (RPI Opp. at 7, n.3) cites Environmental Council v. Board of Supervisors, (1982) 135 Cal.App.3d 428, but that case holds only that a CEQA decision-maker does not have to adopt the findings proposed by staff. *Id.* at 437-38. The case has no bearing on which city employees may interpret a city's code.

In City of Monterey v. Carrnshimba, ("Carrnshimba") (2013) 215 Cal.App.4th 1068, 1091, the court gave deference to a deputy city manager's city code interpretation where he was charged with responsibility for interpreting the code. Similarly to the Carrnshimba deputy city manager, the ZA has proper interpretive authority to interpret the City's zoning code. The ZA has all "powers and duties with respect to zoning and land use as prescribed by ordinance." City Charter §561 (Opp. RJN, Ex. F). The ZA has discretionary authority to determine other uses, in addition to those specifically listed, which may be permitted in each of the various zones, when such other uses are similar, and no more objectionable to public welfare, to those listed. LAMC §12.21 A.2. Hence, the ZA has authority to interpret the City's zoning code.

Camden was granted a zone change to Commercial (C2) for the Project Site, and the ZA has interpreted the C2 zone as expressly allowing live/work units in the C2 zone by issuing Planning's List of Uses Permitted in Various Zones Citywide, Use List No. 2, October 21, 2016 ("Use List"). See City and Camden Opp. RJN ("Opp. RJN"), Ex. J, p.203 (Joint Living/Work Quarters for Artists and Artisans (restrictions)). The ZA's Use List determination for live/work units in the C2 zone is supported by the following logic: Live/work units are expressly allowed in the C1 zone. LAMC §12.13-A.2(27) (joint living and working quarters). All uses in the C1 zone are allowed in the C1.5 zone. LAMC §12.13.5-A.1. All uses in the C1.5 zone are allowed in the C2 zone. LAMC §12.14-A.1(a). Therefore, the City permits live/work units in the C2 zone. RPI Opp. at 13. The ZA's interpretation of the City's zoning code is entitled to deference, Carrnshimba, *supra*, 215 Cal.App.4th at 1091.

Petitioners are incorrect in arguing that live/work units are only permitted in the Commercial land use designation where there is a conversion of an existing building, and not for new construction.⁸ Petitioners rely on a City Planner (AR 8505), the need for the L/W Policy Initiative in the first place, and the City's legal admission in the Bar-Zemer case that the City's regulations restrict live/work uses to existing buildings, not newly constructed buildings. Pet. RJN Ex. F, p. 3. The cited statement and party admission were limited to the land use designation of Heavy Manufacturing and zone of M3, the most intensive industrial zone. AR 8444. These comments do not apply to the Commercial land use designation, which is the reason why Camden sought a GPA to change the Project Site's land use designation to Commercial. Live/work units

⁷ For convenience, the court will refer to an opposition argument as made by Camden or the City even though they joined in each other's arguments.

⁸ Petitioners cite LAMC section 12.24.X, which is inapplicable. LAMC section 12.24.X(1) addresses the uses which the ZA may allow in various zones. LAMC section 12.24.X(12) addresses inapplicable zones: A1, A2, RA, RE, RS, R1, RU, RZ, RW1, R2, RD, RW2, R3, R4, and R5. LAMC section 12.24.X(13) addresses joint living and work quarters for artists and artisans in existing buildings in the CR, CM, MR1, MR2, M1, M2 and M3 zones, and joint living and work quarters *with reduced parking* in the C1, C1.5, C2, C4 and C5 zones, neither of which apply here. See RPI Opp. at 13, n.8.

are an allowed use in C1 and C2 zones, both as conversions and new construction. Neither LAMC sections 12.13 and 12.14, nor the Use List make any distinction or prohibition against newly constructed live/work uses in the C2 zone. *See* RPI Opp. at 13-14.⁹

Even though a Commercial designation and C2 zone permit new construction of live/work uses, the issue remains whether the City is violating the Bar-Zemer decision and continuing the L/W Policy Initiative by approving the GPA change to Commercial and allowing the Project's new construction of 344 live/work units at a Project Site located in a former Heavy Manufacturing land use designation and M3 zone.

Petitioners argue that the Bar-Zemer court's decision permits the City to amend its zoning code to allow live/work units in new construction only after performing sufficient environmental review. Pet. RJN Ex. F, p. 3. AR 7852-84. The singular feature of the L/W Policy Initiative and HI Ordinance was that they would have allowed the construction of new buildings with live/work units. However titled, the Project continues the HI Zone policy without undertaking environmental review of that policy. Reply at 7. A project-by-project analysis for projects in the former HI Zone is not a permissible alternative to program-level review of the policy. Petitioners note that the Project is not the only example of residential development that is planned for the South Industrial subarea of the Community Plan. *See* AR 2819 (Sun Cal mixed-use project seeking GPA), AR 2828 (Petitioner arguing that multiple projects seek GPA), AR 9074-77 (670 Mesquite mixed-use project seeking GPA), 12944 (map of Arts District projects). Pet. Op. Br. at 7, n.7. An environmental review of the policy change never occurred, and the Project approval violates CEQA because it continues the City's L/W Policy Initiative to permit live/work units in new construction without environmental review. Pet. Op. Br. at 7.

Camden responds that, while the Project previously sought a zone change under the HI Ordinance and the Bar-Zemer court invalidated the HI Ordinance before the Project could be approved, those facts are irrelevant to the Project's approved GPA to a land use designation of Commercial and zone change to C2. Neither fact has any bearing on the adequacy of the Project's environmental review. The HI Ordinance and its HI Zone are not in operation and neither is relevant. *See Chaparral Greens v. City of Chula Vista* (1996) 50 Cal.App.4th 1134, 1145, n. 7 (mere draft plan is inapplicable to the project). RPI Opp. at 12-13.

The Bar-Zemer court addressed the HI Ordinance and its "Hybrid Industrial Live/Work Zone established to enable and regulate live/work uses in areas of the City with a General Plan land use designation of Hybrid Industrial." AR 7849. At the time of decision, the Community Plan and one other of the City's 35 community plans included a Hybrid Industrial land designation or an identified a HI Zone. AR 7851. The court concluded that the City's adoption of the HI Ordinance was a project within the meaning of CEQA. AR 7862.

A City staff member stated at the Bar-Zemer hearing that the HI Zone "would not be suited for all industrial areas, but instead is only geared for unique hybrid industrial areas that have seen a transition." AR 7867. Despite this statement, the court concluded that the HI Zone could be

⁹ In the past, the City has approved projects for live/work units in Commercial land use designations. *See* Opp. RJN Ex. L (November 15, 2006 approval of project for new construction of 52 live/work units at 3033 Wilshire Boulevard designated Regional Center Commercial and under Wilshire Community Plan).

used in a number of areas in the City, and the City's finding that there was no possibility that the HI Zone could have a significant effect on the environment was not supported by substantial evidence. AR 7869. The court reasoned that it would not be too speculative for the City to evaluate the reasonable environmental effects of the HI Ordinance (AR 7871-73), and the fact that any developer of a future project must undergo environmental analysis did not control this determination. AR 7873. Therefore, the common sense categorical exemption to CEQA did not apply to the HI Ordinance. AR 7864-69. The court noted several potential impacts would have to be assessed, including displacement of industrial uses elsewhere. AR 7877-78.

Camden does not dispute that the Bar-Zemer decision is final. As such, the City is bound by the Bar-Zemer's court's ruling: the HI Ordinance and its HI Zone are not exempt from CEQA, and future project-by-project environmental review of HI Zone projects is not a substitute for some level of environmental review of the ordinance. AR7873-74. Pet. Op. Br. at 7, n.8.

Therefore, Camden is incorrect in asserting that the L/W Policy Initiative, HI Ordinance, and HI Zone are not relevant to this case. If the City simply has continued the same policy in a different form by approving Camden's GPA for a land use designation to Commercial and zone change to C2 without appropriate environmental analysis, that would be improper piecemealing under CEQA. On the other hand, there is nothing wrong with City using the existing tools in its zoning toolbox to approve a single project where full EIR environmental analysis is not required, even if other similar projects are planned. The L/W Policy Initiative, HI Ordinance, and HI Zone are relevant to an evaluation of the specific entitlements accorded to Camden's Project.

2. The Decision to Use a SCEA

The Project underwent two environmental reviews – an MND and a SCEA – to consider the environmental impacts of the requested entitlements. The MND was prepared first. The SCEA is based on the MND's environmental impact analysis and contains the additional analysis required for a SCEA under section 21155.2. The MND and the SCEA analyze the same Project, and the City Council certified both. AR 62. Both the MND and the SCEA were subject to public review and comment in compliance with CEQA. §21155.2(b)(3) (30-day comment period for SCEA); Guidelines §15073(a) (20-day comment period for MND). The public and the decision-makers therefore were aware of both CEQA documents and had more than one opportunity to review and comment on the Project and its impacts.

Petitioners contend that the City made its decision to perform an environmental review through a SCEA only after being provided with substantial evidence supporting a fair argument that an EIR should be prepared. According to Petitioners, nothing in SB 375 -- which created SCEAs and limited EIRs -- alters the fundamental principle that CEQA shall be "interpreted in such a manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." Guidelines §15003(f) (quoting Friends of Mammoth v. Board of Supervisors, (1972) 8 Cal.3d 247, 259). Petitioners argue that the City's decision to use a SCEA for environmental review was procedurally improper and falls short of the City's duty to make a "good faith effort at full disclosure" of the Project's environmental impacts. The City's decision to use a SCEA in the face of substantial evidence of potentially significant environmental impacts evinces "the sort of *post hoc* rationalization of agency actions that has been repeatedly condemned in decisions construing CEQA." Sundstrom v. County of Mendocino, (1988) 202 Cal.App.3d 296, 307. Reply at 12-13.

As Camden argues (RPI Opp. at 12), CEQA does not prevent an agency from certifying multiple CEQA documents for the same project or preparing a CEQA document while also finding a CEQA exemption. See Rominger v. County of Colusa, (“Rominger”) (2014) 229 Cal.App.4th 690, 700 (county not prohibited from both approving MND and arguing CEQA exemption); Del Cerro Mobile Estates v. City of Placentia, (“Del Cerro”) (2011) 197 Cal.App.4th 173 (certification of EIR did not prohibit city from arguing CEQA exemption); Santa Barbara County Flower and Nursery Growers Assoc., Inc. v. County of Santa Barbara, (“Santa Barbara”) (2004) 121 Cal.App.4th 864 (county did not waive exemption argument by preparing EIR).

Petitioners reply that Camden’s citations all concern an environmental document coupled with an argument of CEQA exemption: (a) in Rominger, an MND was challenged and the city argued that the project was not subject to CEQA or alternatively was exempt. 229 Cal.App.4th at 697-699, 700-01; and (b) in the other two cases, the agencies prepared arguably inadequate EIRs, but statutory exemptions applied. Del Cerro, *supra*, 197 Cal.App.3d at 177-78, 183-84; Santa Barbara, *supra*, 121 Cal.App.4th at 869-70, 873-74. Petitioners point out that in none of the three cases was a second environmental document (SCEA) prepared after certification of an MND. Reply at 12.

Petitioners are correct that Camden’s case authority is distinguishable, but Petitioners fail to rebut Camden’s basic principle that CEQA does not prevent an agency from certifying multiple CEQA documents for the same project. The mere fact that a SCEA carries a different standard of judicial review than an EIR is not a reason to discard the City’s use of a SCEA for the Project.

Nor was the City’s decision to use the SCEA a *post hoc* rationalization. CEQA permits several tools for environmental evaluation, including a negative declaration, MND, and SCEA. The Project MND and SCEA contain essentially the same environmental analysis, with the SCEA adding the analysis required under section 21155.2. The legislative intent behind SB 375 was to encourage certain urban projects that will increase urban density as opposed to the urban sprawl that results in adverse impacts to greenhouse gas emissions.

The City was entitled to use a SCEA for the Project even after preparing an MND to which Petitioners objected. Petitioners do not dispute that the Project meets the criteria for the use of a SCEA for environmental analysis. They only contend that they presented the City with substantial evidence supporting the greater effort of an EIR. The case law condemning a *post hoc* rationalization of the environmental analysis for an already approved project does not apply to this case; there is no evidence that the City predetermined to approve the Project when it pursued the SCEA. Petitioners’ argument would require an agency performing sequential environmental reviews to halt when an objection is raised to the first review and evaluate that first review’s sufficiency before pursuing the alternate review. Petitioners’ position also would punish the agency for switching environmental reviews. There is no reason to do so without evidence of a pre-determined project approval.

Given that the City’s use of a SCEA was proper, Petitioners argue that the substantial evidence standard of review, which applies to an EIR’s sufficiency, should not apply to judicial review of a SCEA. Petitioners argue that SCEAs are similar to MNDs, while limited EIRs are similar to ordinary EIRs. For example, EIRs must consider and analyze a range of project alternatives. §21002; Citizens of Goleta Valley v. Bd. of Supervisors, (1990) 52 Cal.3d 553, 566. Limited EIRs must do so as well. §§ 21155.2(c)(2), 21159.28(b). MNDs and SCEAs need not consider project alternatives. §§ 21080(c), 21155.2(b). An EIR-reviewed project with significant

and unavoidable environment effects may still be approved by adopting a statement of overriding considerations. §21081(b). An agency cannot adopt a statement of overriding considerations with an MND or SCEA. If a project supported by an MND or SCEA cannot mitigate its significant impacts, the project must be changed or an EIR or limited EIR must be prepared. §§ 21064.5, 21155.2(b)(2). Reply at 11-12.¹⁰

These comparisons are of no moment. As Camden points out, CEQA requires an SCEA to be reviewed under the substantial evidence standard, not a fair argument test. §21155.2(b)(7). As such, a SCEA is reviewed like an EIR. RPI Opp. at 9. The whole purpose of permitting a SCEA is to encourage urban projects in transit areas, thereby encouraging development that aids in avoiding urban sprawl, reduces traffic, and thereby reduces greenhouse gases. Part of this encouragement includes the substantial evidence standard of judicial review.

3. Land Use Consistency

Petitioner argues that the Project is inconsistent with the Community Plan, which is part of the General Plan's Land Use Element, and the General Plan Framework Element. As such, an EIR is required for environmental analysis. Pet. Op. Br. at 7-10. In their respective oppositions, the City defends the Project's General Plan and Community Plan consistency (City Opp. at 10-15) and Camden defends the SCEA's evaluation of land use impacts under CEQA. RPI Opp. at 14-16.

A general plan is an integrated, internally consistent, and compatible statement of policies. Orange Citizens, *supra*, 2 Cal.5th at 153. "An action, program, or project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan and not obstruct their attainment." *Id.* at 153. A project need only be in harmony with the applicable land use plan to be consistent with it. Sequoyah Hills Homeowners Assn. v. City of Oakland, ("Sequoyah Hills") (1993) 23 Cal.App.4th 704, 717-18. A project is not required to be in perfect conformity with every general plan policy; it would be nearly impossible to do so. Covina Residents, *supra*, 21 Cal.App.5th at 732. The court must give deference, but not abdicate, to a city's general plan consistency determination. Orange Citizens, *supra*, 2 Cal.5th at 155.

¹⁰ Camden argues that, even if the MND fair argument test applies, Petitioners fail to provide substantial evidence supporting their fair argument. Camden asserts that Petitioners' evidence consisted of lawyer letters, which is not substantial evidence. Pala Band of Mission Indians v. County of San Diego, ("Pala Band") (1998) 68 Cal.App.4th 556, 580. RPI Opp. at 14, n.10.

Petitioners reply that Pala Band does not hold that "lawyer letters" cannot constitute substantial evidence. In Pala Band, the court found a lawyer's four-page letter insubstantial because it "consist[ed] almost exclusively of mere argument and unsubstantiated opinion" and provided no evidence to support its contentions. 68 Cal.App.4th at 580. In contrast, Petitioners' evidence is voluminous and substantial, including seven letters, three administrative appeals, and hundreds of exhibit pages in addition to citations to administrative record documents. Petitioners contend that their opening brief adequately describes the evidence supporting a fair argument that an EIR is required. Reply at 11-12 (citing Pet. Op. Br. at 8-11).

Given that the City was entitled to evaluate the Project under both the MND and SCEA, the court need not decide whether Petitioners have presented substantial evidence supporting a fair argument that an EIR is required.

The City's determination may be invalidated if Petitioners prove that the Project clearly contradicts and frustrates a General Plan policy that is fundamental, mandatory, and specific. See San Francisco Tomorrow, *supra*, 229 Cal.App.4th at 517. Petitioners must prove that, notwithstanding the evidence supporting the City's consistency determination, the Project "directly conflict[s] with "specific and mandatory" policies such that no reasonable person could conclude they were consistent. *Id.* at 518.

a. The Goals, Policies, and Objectives for Industrial Use of the General Plan Framework Element and the Community Plan

The City's General Plan Framework Element establishes the City's long-range comprehensive growth strategy and provides guidance on citywide policies, objectives, and goals. AR 72. In part, the Framework Element informs and supports the Community Plan goal to preserve industrial land. Pet. RJN, Ex. G (Framework Element Chapter 3, subpart 3). "It is the intent of the General Plan Framework Element to preserve industrial lands for the retention and expansion of existing and attraction of new industrial uses that provide job opportunities for the City's residents." *Id.* "[S]ome existing industrially zoned lands may be inappropriate for new industries and should be converted for other land uses. Where such lands are to be converted, their appropriate use shall be the subject of future planning studies." *Id.*"

Framework Element's Goal 7B is to sustain a robust commercial and industrial base, and Objective 7.2 is to establish a balance of land uses that provide for commercial and industrial development meeting the needs of local residents, sustaining economic growth, and assuring maximum feasible environmental quality. Pet. RJN Ex. G. The Framework Element Policies in support of this goal and objective include: (a) "Retain the current manufacturing and industrial land use designations, consistent with other Framework Element policies, to provide adequate quantities of land for emerging industrial sectors" (Policy 7.2.8), and (b) "Limit the redesignation of existing industrial land to other land uses except in cases where such redesignation serves to mitigate existing land use conflicts...." (Policy 7.2.9). Pet. RJN Ex. G.

The Community Plan states that there is an issue of "[i]ntrusion of commercial and residential uses into previously industrial areas." Pet. RJN Ex. B, p. I-7. Goal 3 is to have "sufficient land for a variety of industrial uses with maximum employment opportunities ... which have minimal adverse impact on adjacent uses. *Id.*, p. III-8. Objective 3-1 calls for preservation of industrially designated and zoned land. *Id.*, p. III-8. Objective 3-3 calls for retaining industrial plan designations to maintain the industrial employment base for community residents and increase it whenever possible. *Id.*, p. III-9. Policy 3-3.1 is a program of "retaining the existing industrial designations, including large industrially planned parcels." *Id.*, p. III-9.

b. The City Council's GPA and Zone Change Findings

(i) The City Council Adopted Only the CPC Findings

Prior to the PLUM Committee hearing, Planning submitted modified findings for the City Council's consideration. AR 8621-81. In a letter dated November 20, 2017, the day before the

¹¹ The most recent industrial land use planning study was completed in December 2007. AR 2230. A January 2008 memorandum by Planning's Director "underscores that the City's adopted policy is to retain industrial land for job producing uses." AR 7772.

PLUM Committee meeting, Camden presented proposed revised findings to the PLUM Committee. AR 8883-93.

On December 5, 2017, Planning submitted revised findings and revised conditions of approval for the City Council to consider at its December 12, 2017 public hearing. AR 2735-96. On December 11, 2017, the day before the City Council hearing, Petitioners submitted a letter complaining about Planning's and Camden's late submission of modified findings and revised findings, respectively. AR 8975-77.

The City Council's agenda for its December 12, 2017 meeting included a recommendation that the City Council adopt the CPC findings; it did not say anything about the PLUM Committee's recommended modified or revised findings. AR 3037. The City Council adopted the agenda item on "consent." AR3082-84. The City Clerk's detailed journal confirmed adoption of the CPC findings. AR3091-93. The "Official Action" of the City Council stated that the PLUM Committee Report was adopted. AR 62. The PLUM Committee Report merely recommended adoption of the CPC findings. AR 2712.¹²

After the December 12, 2017 public hearing, the City Council approved the Project, the SCEA and the requested entitlements, denied Petitioners' appeal, and adopted findings. AR 31-32 (GPA); 33-37 (Zone Change); 62, 63-174 (Findings).

The City's and Camden's joint supplemental brief points out that Planning's and Camden's revised and modified findings and modified conditions of approval all were transmitted by the PLUM Committee to the City Council, and they argue that this action would have served no purpose if these documents were not part of the PLUM Committee Report that the City Council adopted. The supplemental brief further argues that, while the PLUM Committee Report only refers to modified conditions of approval and not to the modified findings, this fact is of no import. The conditions of approval shape a project and live beyond the decision to create enforceable obligations. The findings are only the basis for the City Council's action, and while important, did not need to be separately called out. Supp. Br. at 4.

This argument is untenable. The fact that the PLUM Committee transmitted the revised and modified findings to the City Council, recommending that they be adopted, does not mean that the City Council adopted them. Petitioners expressly objected to these proposed findings in their December 11, 2017 letter. The City Council certainly could have sustained that objection by deciding not to approve the modified and revised findings. More important, the court need not look for explanations why the City Council did not adopt these modified and revised findings; it is sufficient that the event did not happen.

As for the general significance of the findings, the joint supplemental brief is correct that findings are the basis for the City Council's action. The salient fact is that the modified and revised findings were not adopted, and they cannot be relied upon to support the City Council's approval. Petitioners argue (Reply at 2) that the City Council could not adopt the revised findings without

¹² The supplemental joint brief describes the City Clerk's failure to include the PLUM Committee's adoption of the modified CPC findings in the PLUM Committee Report as a clerical error that cannot be relied upon by Petitioners absent prejudice. Govt. Code §65010(b). Supp. Br. at 3, n.2. This is not the kind of error that requires prejudice. This error simply means that the Report did not have the modified findings in it. Consequently, if the City Council wanted to adopt the modified findings, it had to do so expressly and not by adopting the PLUM Committee Report.

violating due process and the Brown Act, but opposing counsel pointed out at the February 28, 2019 oral argument that the Petition does not raise these claims. However, Petitioners' broader point is surely correct; the revised and modified findings are not evidence of the underlying facts and the record must contain substantial evidence to support the GPA and zone change without reference to them.

Thus, the City Council did not adopt the modified or revised GPA and zone change findings recommended by the PLUM Committee. The City Council adopted the CPC's findings with respect to every approval except the VTTM, for which the ZA's findings were adopted without modification. AR 63-68 (SMA findings), 2546-80 (CPC findings).

(ii) The Findings

The City Council found that the Project substantially conforms with the purpose, intent, and provisions of the General Plan Framework Element and the Community Plan. AR 72-82 (Findings). According to the findings, the Project Site "is located within the Arts District" of the Community Plan area. AR 73. The surrounding neighborhood had a significant economic identity from the industrial uses that have historically populated the area. As that economy has evolved, heavy manufacturing uses are transitioning to more creative uses. The [P]roject would be in keeping with this economic identity and evolution as it replaces a vacant cold storage facility with a project that will activate the areas through the introduction of 344 live/work units." AR 73.

According to the findings, the Project will comply with Framework Element Goal 3F (mixed-use centers that provide jobs, entertainment, culture, and serve the region), Objective 3.10 (encourage development of new regional centers), and Policies 3.10.3 (promote high-activity areas), 3.10.4 (develop streetscape improvements), 3.10.5 (development of small parks), and 3.10.6 (lighting of regional centers for nighttime access and use). AR 74. "As indicated in the Economic Development Chapter of the Framework Element, 'some existing industrially zoned lands may be inappropriate for new industries and should be converted for other land uses.' The proposed [GPA] will enable such a conversion." AR 75.

The City Council found that the Community Plan covers an area around the Arts District consisting of a mix of buildings and uses with varied scale with industrial and storage uses, live/work uses, pockets of pedestrian-oriented commercial development. The transition of allowable uses in the Arts District and adjacent areas started in 1981, with each new development or adaptive reuse project with a live/work component requiring discretionary review. AR 77. As a result, the area has seen an increase in the conversion of obsolete industrial buildings to live/work units and studios, as well as some new residential construction on land designated for Commercial uses, primarily in the north end of the Arts District adjacent to the Little Tokyo/Arts District metro line station. Within the Project Site's immediate neighborhood, there are adaptive reuse buildings with live/work units and ground floor commercial space. AR 77. The Project would conform to Community Plan Objective 1-1 (development of new housing), Objective 1-2 (new housing which reduces vehicular trips), Policy 1-2(encourage multiple residential development in commercial zones), and other housing Objectives and Policies. AR 77.¹³

¹³ If *arguendo* they should be considered, Camden's proposed Revised Findings note that some existing industrially zoned lands may be inappropriate for new industries and should be converted to other uses pursuant to Framework Element Policy 3.14.6. AR 8884. The Project Site

c. Consistency Analysis

Live/work conversions are permitted only within the Arts District of the Community Plan area. AR 8508.¹⁴ The Project Site is not in the Arts District.¹⁵ See Pet. RJN, Ex. F; Opp. RJN, Ex. D, p. 48. Much of the Community Plan's South Industrial area, where the Project is located, was excluded from the 2008 Arts District expansion. AR 9293. The South Industrial area is "dominated by industrial uses." AR 190, 2205. Reply at 3.

The Project places residential live/work uses in the Community Plan's South Industrial subarea. AR 8508; Pet. RJN Exs. B, C. Pet. Op. Br. at 8. In response to an early 2013 inquiry whether the City's industrial policy or the Community Plan would allow mixed-use residential development at the Project Site, a senior City Planner explained that a "discretionary procedure" may be available to permit "some level of housing in conjunction with non-residential uses" if the site were within the Arts District. "[O]utside the [Arts District] boundary, the Community Plan would not permit housing." AR 8508-09. Camden proposed an early Project version with a GPA to change the Community Plan land use designation from Heavy Manufacturing to Commercial Industrial and to extend the boundary of the 'Artists-in-Residence District.'" AR 3432. Then, in 2014 the City introduced its L/W Policy Initiative, which evolved into the HI Ordinance. A Council District 3 staff briefing memo for the November 21, 2017 PLUM Committee meeting states that the Project is "the first residential project in the vicinity" and would "begin the gradual (or rapid) transformation of the area." AR10083-84. Reply at 4.¹⁶

is an under-utilized site containing an obsolete and vacant cold storage building that is too small to support a viable modern cold storage business. AR 8884. The unusual flag shape of the site and narrow north-south dimension makes the Project Site unsuitable for other industrial uses in that this unusual shape does not allow for a "cross dock" -- an area that can be accessed on both sides by trucks to facilitate the efficient transfer of goods between trucks -- which is a key feature of modern industrial, distribution and warehouse uses. AR 8886-87, 9326.

The Revised Findings conclude that it is not feasible to assemble parcels into a unified site that will support viable industrial development because the Project Site is surrounded by public rights of way and a recently developed brewpub. *Id.* The Project, therefore, would be consistent with Framework Element Goal 7B, Objective 7.2 and Policies 7.2.3, and 7.2.9 because it will promote job creation, economic growth, strengthen the commercial sector, and contribute to a better balance of land uses that meet the needs of residence while redeveloping an underutilized Site that is not well suited for industrial development. AR 8886. The Project also meets Framework Policy 3.14.6, which provides for the re-designation of marginal industrial lands for alternative uses by amending the community plan based on specified criteria. AR 8886.

¹⁴ The live/work conversions that have occurred in Arts District all retained their industrial zoning. AR 2903, 2524 (showing live/work projects with industrial zoning). As such, they are consistent with the Community Plan.

¹⁵ The L/W Policy Initiative would have expanded the study area to include the Project but was not adopted. Mot. to Aug. Ex. B, pp. 1-2; Ex. D.

¹⁶ Petitioners argue that the City's statements reveal its longstanding interpretation of the Framework Element and the Community Plan to restrict residential uses at the Project site, and that the City's vacillating interpretation of them to make the Project consistent is not entitled to

This Community Plan limitation comes from the City's exclusion of residential uses in industrial zones. AR 301 ("Residential uses are not permitted in industrial zones"). It also stems from the Framework Element and Community Plan goals, policies, and objectives that call for preservation of industrially zoned and designated land due to its scarcity and importance to the City. Framework Element Policy 7.2.8 calls for the retention of "current manufacturing and industrial land use designations." AR 2207-08. Policy 7.2.9 seeks to "limit the redesignation of existing industrial land to other land uses." AR 2208. The Community Plan's goals and policies echo the Framework Element. AR 8406-07. The Community Plan identifies "the intrusion of commercial and residential uses" into industrial areas as a major issue. AR 2207. Reply at 4.

While the MND and SCEA discuss the Framework Element and Community Plan policies, they focus almost exclusively on residential and commercial policies, not industrial policies. Planning's tract map report, the SCEA land use analysis, and the City Council's findings all wrongly state that the Project Site is in the Arts District. AR 1199-201, 1203, 2123, 2569. The MND and SCEA then focus on residential and commercial policies for the Arts District, which are generally inapplicable to land use issues in the industrially dominated South Industrial subarea. See AR 303-04, 665-66. The MND and SCEA only mention without elaboration Community Plan Goal 3 and Objective 3-1, both of which call for preservation of industrially designated and zoned land. See *id.* The MND and SCEA completely fail to discuss Framework Element's Goal 7B (sustaining a robust commercial and industrial base), Objective 7.2 (establishing a balance of land uses that provide for commercial and industrial development meeting the needs of local residents, sustaining economic growth, and assuring maximum feasible environmental quality), Policy 7.2.8 ("Retain the current manufacturing and industrial land use designations, consistent with other framework Element policies, to provide adequate quantities of land for emerging industrial sectors"), and Policy 7.2.9 ("Limit the redesignation of existing industrial land to other land uses except in cases where such redesignation serves to mitigate existing land use conflicts..."). Pet. RJN Ex. G.

The MND and SCEA further fail to discuss the Community Plan's (a) Industrial Issue of "[i]ntrusion of commercial and residential uses into previously industrial areas" (Pet. RJN Ex. B, p. I-7), (b) Goal 3 for "sufficient land for a variety of industrial uses with maximum employment opportunities ... which have minimal adverse impact on adjacent uses (*id.*, p. III-8), (c) Objective 3-1 for preservation of industrially designated and zoned land (*id.*, p. III-8), (d) Objective 3-3 for retaining industrial plan designations to maintain the industrial employment base for community residents and increase it whenever possible (*id.*, p. III-9), and Policy 3-3.1's Program for retaining "the existing industrial designations, including large industrially planned parcels." (*Id.*, p. III-9).

deference. *Yamaha, supra*, 19 Cal.4th at 13. Reply at 5, 7. The City and Camden respond that the City's decision-makers are not bound by statements of staff. See *Environmental Council v. Bd. of Supervisors*, (1982) 135 Cal.App.3d 428, 437-38. City Opp. at 12; RPI Opp. at 7, n.3.

The court need not decide whether the City has "vacillated" in its interpretation of the Framework Element and Community Plan. The oppositions point to no decision-maker interpretation of the Framework Element or Community Plan that differs from the views of staff. The City Council simply found that the Project, with a GPA and zone change, is consistent with the Framework Element and Community Plan. This is the application of facts to a plan, not plan interpretation.

Most importantly, a specific and mandatory Framework Element policy requires study before industrially designated and zoned land may be converted: "Where such lands are to be converted, their appropriate use shall be the subject of future planning studies." Framework Element (ch. 3, first unnumbered paragraph). The most recent study of industrial land conversion was completed in December 2007. AR 2230.

Planning staff was aware there "may be land use impacts from locating a primarily residential project in an industrial area." AR 17786.¹⁷ The MND and SCEA also admit Project approval is tantamount to enlarging the Arts District to include the Project Site. AR 304, 667. Yet, the SCEA argues that the GPA and zone change "ensure that a project will not result in a significant impact with respect to land use consistency." AR 1198. The mandatory Framework Element study for conversion of industrial land that might support this conclusion has not been performed. See Reply at 4.

Petitioners correctly criticize the SCEA as wrongly assuming that the issuance of a GPA and zone change immunizes the Project from inconsistency with the General Plan's land use policies. Pet. Op. Br. at 9. Land use consistency analysis requires a discussion of pertinent Framework Element and Community Plan industrial objectives, goals, and policies, which has not happened. The City's failure to consider these industrial policies in adopting the GPA means that its findings of consistency are not supported by substantial evidence.

(i) The City's Position

The City correctly argues it is not limited to consideration of the objectives and policies of the Project Site's industrial land use designation and zoning, and it may balance the competing policies in the applicable plans, giving greater weight to some policies over others. *Pfeiffer, supra*, 200 Cal.App.4th at 1562-63 (project was consistent with general plan even though it did not conform precisely to the land use designation). City Opp. at 11.¹⁸

The Project incorporates first floor commercial uses (AR 492, 501), and includes new multiple residential housing near transit. AR 484, 491, 533. The City determined that the Project was consistent with plan policies, objectives, and goals for residential and commercial use, including Community Plan Policy 2-2.3 ("Require that the first floor street frontage of structures, including mixed use projects and parking structures located in pedestrian oriented districts,

¹⁷ Staff recommended approval of the GPA and zone change because the Project substantially conforms with the Community Plan and its pending update. AR 2525. However, the pending update designates the Project Site as Hybrid Industrial, not Commercial. AR 9321-23. That land use designation never occurred.

¹⁸ The General Plan acknowledges that the City's decision-makers have discretion in weighing competing policies:

"[N]ot all plan policies can be achieved in any given action, and in relation to any decision, some goals may be more compelling than others. On a decision-by-decision basis, taking into consideration factual circumstances, it is up to the decision makers to decide how to best implement the adopted policies of the general plan in any way which best serves the public health, safety and general welfare." Opp. RJN Ex. E (Chapter 10 Implementation Programs)." City Opp. at 11.

incorporate commercial uses”); Objective 1-2 (“To locate new housing in a manner which reduces vehicular trips and makes it accessible to services and facilities”); and Policy 1-2.1 (“Encourage multiple residential development in commercial zones”. The City contends that it exercised its right to balance General Plan policies and found (AR 71) that the Project “will further the objectives and policies of the general plan and not obstruct their attainment.” Orange Citizens, supra, 2 Cal.5th at 153. City Opp. at 10-11.

The City also correctly points out that it engaged in legislative action in adopting the GPA to change the Project Site’s land use designation to Regional Commercial and the zoning to C2. AR 1. Nothing in the Framework Element or Community Plan prevents the City from amending its General Plan to ensure Project consistency. See Mountain Defense League v. Board of Supervisors (“Mountain Defense”) (1977) 65 Cal.App.3d 723, 732 (unnecessary to amend general plan first, and then approve project consistent with amended general plan); South of Market Community Action Network v. City and County of San Francisco, (“South of Market”) (Feb. 22, 2019) __ Cal.App.5th __, Ex. A, p.33.¹⁹ The City argues that Petitioners’ argument that the City cannot consider the Project -- including the proposed GPA and zoning change -- in determining consistency is meritless. See Westsidars, supra, 27 Cal.App.5th at 1085 (appropriate to consider proposed uses in determining if GPA meets Charter requirements). City Opp. at 11.

According to the City, Petitioners merely disagree with the City’s exercise of its discretion in weighing the differing Framework Element and Community Plan goals, policies, and objectives. City Opp. at 10. Petitioners pick out select industrial policies in the General Plan Framework Element and Community Plan, a map created by Petitioners’ counsel, staff reports, memoranda, and emails from City staff as their evidence of fundamental, mandatory, and specific policies confining residential uses to conversion of existing structures within the Arts District and prohibiting the conversion of industrial-designated land to other uses.²⁰ City Opp. at 11-12.

With respect to the Community Plan, Petitioners admit that the City considered Community Plan Goal 3 and Objective 3-1 and complain that the City failed to consider “other industrial objectives and policies that support Goal 3 or Objective 3-1.” Yet, none of the industrial policies and objectives at issue are fundamental, mandatory, and specific. City Opp. at 12. Neither Objective 3-3 (“To retain industrial plan designations to maintain the industrial employment base for community residents and to increase it whenever possible”) nor Policy 3-3.1 (“The numerous large rail yards and other industrially planned parcels located in predominantly industrial areas should be protected from development by other uses which do not support the industrial base of the City and the community”) contains mandatory and specific language. Compare Endangered Habitats League, Inc. v. County of Orange, (“Endangered Habitats”) (2005) 131 Cal.App.4th 777, 782-83. City Opp. at 13.

With respect to the Framework Element, Petitioners admit that the SCEA analyzed Project

¹⁹ This case was filed by the City and Camden on March 29, 2019 as Exhibit A, and the court will refer to Exhibit A’s page numbers.

²⁰ The City argues that Petitioners fail to cite these “other industrial objectives and policies” and have waived the argument. MST Farms v. C.G. 1464, (1988) 204 Cal.App.3d 304, 306 (court need not consider argument “not supported by citation to authorities or the record”). City Opp. at 13. While Petitioners did not cite the specific Community Plan and Framework Element industrial policies, the presentation was adequate.

consistency with the Framework Element. Petitioners dismiss this analysis because it conflicts with their arguments regarding live/work uses in new construction, the Project's similarity to nearby live/work uses, and the viability of the site for modern cold storage use. But the SCEA's Project consistency analysis is substantial evidence supporting the City's consistency findings. Covina Residents, *supra*, 21 Cal.App.5th at 733; *see also Covina Residents*, *supra*, 21 Cal.App.5th at 733 (MND's consistency analysis may be substantial evidence supporting a city's consistency findings). Petitioners' disagreement with this evidence is no reason to overturn the City's findings. Sequoiah Hills, *supra*, 23 Cal.App.4th at 717-18. City Opp. at 13-14.

The City further argues that the industrial policies in the Framework Element do not contain specific and mandatory language. Petitioners cite the broad, general goals and policies of the Framework Element: Goal 7B ("a City with land appropriately and sufficiently designated to sustain a robust commercial and industrial base"), Policy 7.2.8 ("Retain the current manufacturing and industrial land use designations, consistent with other Framework Element policies, to provide adequate quantities of land for emerging industrial sectors"); Policy 7.2.9 ("Limit the redesignation of existing industrial land to other land uses except in cases where such redesignation serves to mitigate existing land use conflicts, and where it meets the criteria spelled out in Policy 3.14.6 of Chapter 3: Land Use"). City Opp. at 14.

The City notes that the Framework Element explains that it provides guidance rather than mandates future planning decisions, "is a strategy for long-term growth that sets a citywide context to guide the subsequent amendments of the City's community plans, zoning ordinances, and other pertinent programs", and "does not supersede the more detailed community and specific plans." Opp. RJN Ex. E, p. 111 (Executive Summary). City Opp. at 14. Objective 3.14 is to "[p]rovide land and supporting services for the retention of existing and attraction of new industries" and its supporting policies (Policy 3.14.1-3.14.9) both use non-mandatory language such as "accommodate" "provide", "promote", "limit", or consider". Pet. RJN Ex. G. Petitioners cite the Definition of Industrial in the Framework Element -- "It is the intent of the General Plan Framework Element to preserve industrial lands..." -- but this statement too does not contain any specific and mandatory language. *Compare Endangered Habitats*, *supra*, 131 Cal.App.4th at 783 (project methodology used to determine traffic service level was inconsistent with general plan's unambiguous policy). City Opp. at 14.

The City and Camden conclude that Petitioners fail to show that no reasonable person could reach a conclusion that the Project and its entitlements are consistent with the Framework Element and Community Plan. San Franciscans Upholding the Downtown Plan v. City and County of San Francisco, (2002) 102 Cal.App.4th 656, 677. RPI Opp. at 14-15. The City had a discretionary right to balance plan policies, and Petitioners fail to prove that the Project is clearly inconsistent with and frustrates a fundamental, mandatory, and specific policy. *See San Francisco Tomorrow*, *supra*, 229 Cal.App.4th at 517. *Ibid*.

(ii) The City Did Not Properly Weigh and Balance the Policies

The MND and SCEA briefly consider General Plan policies, but most of those considered are transit-served residential and commercial policies. AR 303, 666. The MND and SCEA also list Community Plan industrial land use Goal 3 and Objective 3-1, but fail to discuss how the Project is or is not consistent with these and other industrial policies concerning intrusion of residential and commercial uses into industrial areas (Pet. RJN Ex. B, p. I-7) and preservation of

industrially zoned land (Objective 3-1, 3-3, and Policy 3-3.1).

A mere recitation that a project does not obstruct the attainment of general plan objectives and policies is insufficient unless it is supported by substantial evidence. City of Carmel-by-the-Sea v. Board of Supervisors, (1977) 71 Cal.App.3d 84, 92. See Reply at 5. The nature of the policy and the nature of the inconsistency are critical factors in deciding general plan consistency. Families Unafraid to Uphold Rural El Dorado County v. El Dorado County Board. of Supervisors, (1998) (“Families”) 62 Cal.App.4th 1332, 1340. Compare Sequoiah, *supra*, 23 Cal.App.4th at 1341 (amorphous policies that “encourage” development “sensitive to natural land forms” and “the natural and built environment” were not sufficiently mandatory and specific so that any inconsistency would overcome evidence of consistency with 14 other policies) and Families, *supra*, 62 Cal.App.4th at 1340 (land policy that low density residential designation shall be restricted to development contiguous to large or small town was fundamental as directly related to all other elements in the general plan, mandatory, and anything but amorphous).

The City is correct that the Framework Element provides guidance rather than mandates future planning decisions, and that it does not supersede the more detailed Community Plan. Opp. RJN Ex. E, P. 111. The City also is correct that the industrial policies in the Framework Element, even if fundamental, do not contain specific and mandatory language. The terms “accommodate” “provide”, “promote”, “limit”, and “consider” are not mandatory in nature. Pet. RJN Ex. G.

On the other hand, the MND and SCEA do not even discuss the industrial goals, objectives, and policies of the Framework Element and Community Plan. The preservation of industrial lands is a fundamental goal of the Framework Element. Contrary to the City’s argument, this fundamental goal must at least be addressed for the Project, which is acknowledged to be “the first residential project in the vicinity” that would “begin the gradual (or rapid) transformation of the area.” AR10083-84. Yet, there is no evidence that the City weighed any industrial goals and policies in approving a new residential live/work construction in a previously industrial area. In fact, the Framework Element mandates a study before industrial land may be converted to another use, and the most recent 2007 study urges retention of industrial zoning and designations. The City was required to address this study requirement and the Framework Element’s intent to preserve industrial land uses, which are fundamental, mandatory, and specific.

At the April 9 oral argument, the City’s counsel admitted that the Framework Element uses mandatory language “shall”, but argued that the language is located in the definitions section of the Framework Element which is intended only for guidance. This argument is untenable in light of the numerous fundamental industrial goals and objectives of both the General Plan and Community Plan. See Families, *supra*, 62 Cal.App.4th at 1340. The City’s counsel also argued that the MND and SCEA fulfill the requirement of a study. As Petitioners’ counsel responded, a study of the Project Site is a “one off” that is insufficient to address the conversion of industrial land in the Community Plan area.

The City’s Project analysis fails to properly weigh and balance General Plan and Community Plan policies. Without a “path to allow the construction of new buildings with Live/Work units”, new residential construction is not permitted at the Project Site. AR 8508-09 (Keller email); Mot. to Aug. Ex. B, p. 1; Ex. F, pp. A-8 to A-9. The City attempted to remedy this problem through the GPA and zone change, but the findings merely state that the Project is consistent with several residential and commercial objectives and policies without discussing industrial goals, objectives, and policies. The City’s failure to consider relevant industrial land

plan policies blocks attainment of those policies. Orange Citizens, *supra*, 2 Cal.5th at 153; San Francisco Tomorrow, *supra*, 229 Cal.App.4th 1239, 517.) Reply at 6. For this reason, the City Council's GPA findings are inadequate.²¹

No reasonable person could conclude that the Project's residential development at the Project Site is consistent with the Framework Element and the Community Plan. Therefore, the City's determination of plan consistency is not supported by substantial evidence and must be set aside. Reply at 7.

4. CEQA

a. Land Use Impacts

Petitioners argue that neither the MND nor SCEA analyze the Framework Element and Community Plan, and the Project is inconsistent with both under CEQA. Pet. Op. Br. at 8-9.

The SCEA concludes that the Project will not result in an adverse impact to residential neighborhoods, commercial districts, or other land uses. AR 662-71 (SCEA Land Use Analysis). See RPI Opp. at 14. Under CEQA, the SCEA need only have substantial evidence of land use consistency. §21155.2(b)(7).

Camden argues that a project's inconsistency with a plan is only significant under CEQA if it would result in significant impacts to the physical environment. Guidelines §15064(d). Petitioners allege plan inconsistencies, but cite no substantial evidence connecting those inconsistencies to any physical impacts on the environment. RPI Opp. at 16.

Petitioners rely (Reply at 10) on the California Supreme Court's decision in Muzzy Ranch Co. v. Solano County Airport Land Use Commission, (2007) 41 Cal.4th 372, 383, which held that displaced development from a ban in one area of a jurisdiction may have the consequence, notwithstanding zoning and land use planning, of displacement development to other areas of the jurisdiction. *Id.* at 383. Nothing in the notion of displaced development categorically places it

²¹ The City Council's findings for the GPA and zone change – which are not evidence -- do not seriously discuss the industrial issues. AR 2546-85.

The "General Plan Land Use Designation" finding does not mention any industrial goals, objectives, or policies. AR 2546. The "General Plan Text" finding analyzes General Plan text, starting with the Framework Element. AR 2546-48. The discussion focuses on "regional centers," and does not list or consider goals or policies regarding retention of industrial land except to cite Objective 7.2, requiring a balance between commercial and industrial development, and the Framework element's statement that "some industrially zoned lands may be inappropriate for new industries and should be converted to other land uses." AR 2547. The discussion does not support a conclusion that the Project Site is appropriate for conversion. AR 2547-48. The finding refers to other live/work residential uses in the vicinity, but it does not disclose that these comparison properties are conversions that all their industrial designations and zoning. AR 2547. Reply at 6.

The City Council's Community Plan analysis focuses on housing and commercial development. AR 2548-50. The analysis mentions only one industrial Objective (3-2), which is unique to the Arts District. AR 2549. Reply at 6.

Finally, the City Council's findings compare the Project to conversion projects with live/work units (AR 2547), but they fail to note that the conversion projects all retained their industrial designations and zoning. AR 2828, 2861-62, 5256, 9296.

outside CEQA. *Id.*

At the April 9 oral argument, Camden's counsel acknowledged Muzzy Ranch, and argued that Petitioners fail to cite any evidence of displaced development as a physical impact, or any traffic or other physical impact. This is correct. Petitioners cite no evidence that the Project's inconsistency with the Framework Element or the Community Plan will result in displaced development. Muzzy Ranch addressed displaced development in the context of a project restricting residential housing for a large area near an Air Force base. 41 Cal.4th at 378. It would be reasonable to conclude that displaced development could occur as an environmental impact from the LW Policy Initiative or HW Ordinance, but such a conclusion is not as likely from a single project. There is no evidence of a displaced industrial development impact from the Project alone.

Although Petitioners point to no evidence of a Project physical land use impact, the City nonetheless failed to comply with CEQA because the MND and SCEA do not discuss the cumulative displaced industrial development impacts from this and other projects.²² Given the history of the LW Policy Initiative, the HI Ordinance, the Project, and planned similar projects, it seems obvious that there may well be such impacts. The failure of the MND and SCEA to address this issue is not a good faith effort at full disclosure and is a failure to proceed in the manner required by law. See South of Market, Ex. A, p. 35.

Camden argues that the GPA resolves any inconsistency with the General Plan. Camden notes that a SCEA must require a project to incorporate any applicable mitigation measures, performance standards, or criteria set forth in prior environmental impact reports. §21155.1(b)(5). Pursuant to the 2016-2040 Regional Transportation Plan/Sustainable Communities Strategy ("RTP/SCS"), if the City identifies a project inconsistency with the General Plan, the City must then determine "if the environmental, social, economic, and engineering benefits of the project warrant a variance from the adopted zoning or an amendment to the general plan." AR 558 (emphasis added). According to Camden, the Project meets this mitigation measure requirement through the approved GPA and zone change, which serve to avoid a land use incompatibility. AR

²² In addition to direct and site-specific environmental impacts, an MND or SCEA must consider cumulative impacts. §21155.2(b)(1); see Laupheimer v. State of California, ("Laupheimer") (1988) 200 Cal.App.3d 440, 462. A "cumulative impact" consists of two or more individual effects which, when considered in combination, are considerable or compound/increase other environmental impacts. Guidelines §15355. The environmental review should not discuss impacts not resulting at least in part from the project being evaluated. Guidelines §15130(a)(1). The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Guidelines §15355(b).

The cumulative impacts analysis should reflect the severity and likelihood of occurrence of cumulative impacts, but it need not be in as great detail as for the project alone. Guidelines §15130(b). Understating information "concerning the severity and significance of cumulative impacts impedes meaningful public discussion and skews the decisionmaker's perspective concerning the environmental consequences of the project, the necessity for mitigation measures, and the appropriateness of project approval." Citizens to Preserve the Ojai v. County of Ventura, (1985) 176 Cal.App.3d 421, 431.

558. RPI Opp. at 16.

It is true that a GPA and zone change can ensure that a project will not result in any significant impact with respect to land use consistency. Camden also is correct that the City can amend its General Plan simultaneously with Project approval and rely on the Project's consistency with the amendment. See Mountain Defense, *supra*, 65 Cal.App.3d at 732; South of Market, Ex. A, p.33. But the GPA itself must be supported by substantial evidence. The Community Plan and Framework Element calls for retaining the Project Site's industrial zoning, and the Framework Element mandates study before industrial land conversion occurs. As Petitioners reply, the MND and SCEA barely consider the Framework Element and Community Plan policies, cherry pick those residential and commercial policies which support Project approval, and then ignore almost all industrial policies. Reply at 8.

As discussed *ante*, the finding that the Project is consistent with the General Plan and Community Plan is not supported by substantial evidence. The MND and SCEA also failed to discuss the Project's potential cumulative displaced development impacts when considered with other projects.

b. The List of Projects for Cumulative Impact Analysis

The cumulative impacts analysis may consist of a list of projects producing related impacts, a summary of expected environmental effects with specific reference to information stating where that information is available, a reasonable analysis of the cumulative impacts, and an examination of the reasonable, feasible options for mitigating or avoiding the project's contribution to cumulative impacts. Guidelines §15130(b)(1), (4), (5). In every case, there should at least be a preliminary search for potential cumulative environmental effects and a preliminary assessment of their significance. Laupheimer, *supra*, 200 Cal.App.3d at 462-63. The SCEA includes a list of 73 related projects for the cumulative impact analysis. AR 517-21; Guidelines §§ 15064(h), 15130(b).

The same list of projects was used in the 2016 MND (AR 223-27), and in the 2014 MND for the LW Policy Initiative. Mot. to Aug., Ex. C, pp. II-53-II-58. The SCEA justifies using 2014 data for a 2016 Project because the SCEA is a continuation of the environmental analysis for the same Project. AR 1208-09, 2577. Pet. Op. Br. at 11.

Petitioners argue that the 2014 project was part of the LW Policy Initiative (AR 9115-16), and both Camden and Planning considered the 2016 Project to be an entirely new application. AR 13256. The related project list was compiled long before Planning chose a "new direction" by changing the pending hybrid industrial live/work cases to requests for a GPA and zoning change to Commercial. Pet. Op. Br. at 12. Petitioners submitted evidence of 57 projects in the Project vicinity that were not included in the SCEA's list of 73 related projects. AR 6058-71. Some were in the City's development pipeline or reasonably foreseeable by April 2016 and include similar GPA and zone change entitlements. AR 6117-21, 27113-14 12797-801. The City required an updated traffic analysis for the Project due to "the number of entitlement applications filed in the surrounding area between the proposed project's application in 2013 and now..." (AR 2577), but failed to update the related project list. Petitioners argue that the outdated list grossly understates the information needed to determine the severity and significance of cumulative land use impacts from new General Plan and zoning conflicts. Pet. Op. Br. at 12.

Camden responds that the 2014 Project MND identifies the environmental setting.

Guidelines §15063(d)(2); AR 481. The environmental setting is the baseline for both project-specific and cumulative impact analysis, and the setting is established at the commencement of the environmental analysis. Guidelines §15125(a). The cumulative impacts then are compared against that baseline. The related projects list was established as of the date of the environmental setting for the 2014 MND. The SCEA's continued environmental analysis for the same Project does not reset the environmental baseline. AR 1208-09 (Response to Comment 5.6). The SCEA's related project list is identical to the MND list, which is exactly the way it should be for a continued analysis of the same Project. Petitioners' list of 57 additional projects was provided on June 29, 2017, three years after the commencement of the Project's environmental review. AR 6048. Petitioners have not shown that the 57 additional projects were "probable future projects" when the Project's Initial Study was published in 2014. City of Maywood v. Los Angeles Unified School Dist., (2012) 208 Cal.App.4th 362, 398. RPI Opp. at 17.

Whatever the merits of Camden's temporal argument, Petitioners' list is not a list of related projects for the Project because it is drawn from too broad a geographical area. The list was compiled from a regionally significant project with a much larger geographic cumulative impact area than the Project. AR 6049. Guidelines section 15130(b)(3) requires agencies to "define the geographic scope of the area affected by the cumulative effect and provide a reasonable explanation for the geographic limitation used." Bakersfield Citizens for Local Control v. City of Bakersfield, ("Bakersfield Citizens") (2004) 124 Cal.App.4th 1184, 1216. When faced with a challenge that the cumulative impacts analysis is unduly narrow, the court must determine whether it was reasonable and practical to include the omitted projects and whether their exclusion prevented the severity and significance of the cumulative impacts from being accurately reflected. King County Farm Bureau v. City of Hanford, (1990) 221 Cal.App.3d 692, 723. Petitioners make no argument or showing that the geographic scope of the SCEA's related project list was unduly small. Thus, Petitioners' list is irrelevant.²³

Moreover, the City was not required to consider all possible related projects. The SCEA needed only to conduct a preliminary search for potential cumulative environmental effects and make a preliminary assessment of their significance. Laupheimer, supra, 200 Cal.App.3d at 462-63. As Camden argues (RPI Opp. at 19), Petitioners merely speculate that consideration of the additional 57 projects would have had some impact on the analysis.

With the exception of the failure to consider cumulative displaced industrial development impacts from this and other projects discussed *ante*, there is no defect in the SCEA's list of projects and cumulative impacts analysis.

5. City Charter Section 555

²³ The updated traffic analysis was prepared even though "CEQA does not require that projects continue to update related projects throughout the entitlement process" because of the number of entitlement applications filed for the area around the Project from its 2013 application date and the SCEA's evaluation. See AR 135 (not adopted modified findings). The updated traffic analysis included 20 additional projects (raising the number from 73 to 93), and the analysis did not result in any significant and unmitigable impacts. AR 1354-1387. Los Angeles Department of Transportation ("LADOT") reviewed the updated analysis and agreed with the less than significant traffic impact determination. AR 1354. RPI Opp. at 18.

Apart from the Project's inconsistency with the Framework Element and Community Plan, Petitioners argue that the City's issuance of the GPA did not comply with City Charter section 555.

a. Governing Law

The General Plan may be amended in its entirety, by subject elements or parts of subject elements, or by geographic areas, provided that the part or area involved has significant social, economic or physical identity. City Charter §555(a)

The City Council, CPC, or the Director of Planning may propose amendments to the General Plan. The Director of Planning shall make a report and recommendation on all proposed amendments. Prior to Council action, the proposed amendment shall be referred to the City Planning Commission for its recommendation and then to the Mayor for his or her recommendation. City Charter §555(b).

Planning's chief administrative officer shall be known as the Director of Planning. City Charter §553(a). The Director of Planning or his or her designee shall (1) prepare the proposed General Plan of the City and proposed amendments to the General Plan; (2) prepare all proposed zoning and other land use regulations and requirements, including maps of all proposed districts or zones; (3) make investigations and act on the design and improvement of all proposed subdivisions of land as the advisory agency under the State Subdivision Map Act; and (4) have those additional powers and duties provided by ordinance. City Charter §553(b).

A city's charter is "the supreme law of the city" and operates as an "instrument of limitation" on a city's exercise of authority. Domar Electric, Inc. v. City of Los Angeles, (1994) 9 Cal.4th 161, 170. Actions taken by a city in violation of its charter are void. *Id.* at 171.

b. GPA Initiation

A GPA may be initiated only by the City Council, the CPC, or the Director of Planning. City Charter §555(b); LAMC § 11.5.6. The Director may designate others to prepare the GPA, but neither the City Charter nor LAMC provide for delegation of the initiation of a GPA. *Ibid.*

Petitioners argue that the evidence shows the GPA was not initiated by the Director of Planning (Vincent P. Bertoni), but by Planning's Shana Bonstin. AR26178, 26184. Planning's management team was not consulted. AR 26114. A second GPA initiation form was signed on March 1, 2017, but only after the MND had been published, a staff report prepared, a ZA hearing held, and an advisory agency action taken on the VTTM. AR 5608. Petitioners argue that this second form did not "initiate" a GPA process that already had been underway for ten months. Petitioners conclude that the GPA was not initiated by the City Council, CPC, or Director of Planning, and therefore is void. *See Domar Electric, supra*, 9 Cal.4th at 171.

The City responds that Petitioners failed to exhaust this issue administratively. The doctrine of exhaustion of administrative remedies prohibits "grant[ing] relief based on a legal theory not presented at the administrative proceeding." Dobos v. Voluntary Plan Administrators, Inc., (2008) 166 Cal.App.4th 678, 688). Petitioners previously alleged that Camden improperly initiated the GPA in violation of City Charter section 555(b) by requesting that the City amend the General Plan. Petition ¶¶ 144–46. Petitioners now contend that the City violated that City Charter provision by having a designee of the Planning Director sign the Initiation form. But that specific claim must have been raised "before [the City's] actions are subjected to judicial review." *See*

Evans v. City of San Jose, (2005) 128 Cal.App.4th 1123, 1138.

The City is correct. Petitioners acknowledge that they pled an improper GPA initiation under a different legal theory and seek leave to their pleadings to the evidence at the hearing. See Youngeblood v. Los Angeles, (1958) 160 Cal.App.2d 481, 489-91. Pet. Op. Br. at 14, n.15. Petitioners are confusing a failure to plead in court, which can be cured by amendment, with a failure to exhaust administratively, which cannot.

Petitioners contend that they adequately exhausted this issue by repeatedly citing City Charter section 555(b) during the administrative process. AR 2210 (“[O]nly ‘[t]he Council, the City Planning Commission or the Director of Planning may propose amendments to the General Plan.’”) Reply at 13. This general citation to City Charter section 555(b) does not adequately raise an issue that the wrong City employee initiated the GPA. Petitioners failed to exhaust their administrative remedies.

Even if *arguendo* Petitioners did administratively exhaust, their argument fails on its merits for two reasons. First, assuming City Charter section 555 contains a “clear and explicit” restriction to a signature by the Director of Planning or his or her designee on the GPA initiation form (see Westsidiers, supra, 27 Cal.App.5th at 1086), the first initiation form signed by Planning’s Shana Bonstin (AR 26178) apparently requested a land use designation of Community Commercial, and it was replaced by the second form signed by the Director of Planning requesting Regional Center Commercial. AR 26184. It is the second form that is operative. Petitioners argue that a GPA approval process cannot have been initiated many months after it began the public administrative process, but it can if there is need for a change.

Second, not every violation of the City Charter requires a remedy. Assuming the City violated City Charter section 555 because a Planning employee other than the Director or his or her designee signed the initiation form, Petitioners point to no prejudice. There is no reason to conclude that the Director did not support the GPA, and the Director’s signature on the second initiation form proves as much. There is no remedy, therefore, that could be imposed for the ostensible violation.

c. Geographic Area with Significant Social, Economic or Physical Identity

The City’s General Plan may be amended by geographic area, provided that the area has a significant social, economic or physical identity. City Charter §555(a). AR 2551-52.

Petitioners argue that the City Council’s GPA findings prove the opposite. The Project Site is the geographic area for which the GPA was sought, and it is the area which must have significant social, economic or physical identity. The City Council’s findings explain that the area around the Project Site has a “significant economic identity,” but make no showing that the Project Site itself has any significant social, economic, or physical identity. AR 2552. The findings state that the Project “is in keeping with” the economic identity of the neighborhood, “will contribute to the history of economic activity in this area”, will “strengthen the economic identity of the surrounding area.” *Id.* This is not what City Charter section 555(a) requires.

The City responds that it is “not required to make explicit findings to support the amendment of the General Plan, as the amendment is a legislative act.” Westsidiers, supra, 27 Cal.App.5th at 1090. City Opp. at 19. This is true, as Petitioners admit. They reply that, while the City was not required by law to make GPA findings, it was not precluded from doing so either. Reply at 14.

Apparently, Petitioners' point is that the City must adopt accurate findings if it is going to do so at all. The court need not accept this conclusion to adopt Petitioners' broader point: as required by City Charter section 555(a), the GPA must be supported with substantial evidence that the Project Site is a geographic area with significant social, economic or physical identity.

The City argues that the showing has been made. The City cites to the revised findings and the modified findings. The revised findings acknowledge that the geographic area of GPA must have a significant social, economic, or physical identity. AR 9316–17. The modified and revised findings state that the Project Site has significant social, economic, or physical identity because it is near the Arts District and because it is in a neighborhood that is rapidly transforming to include new residential, commercial and mixed-use development. AR 72, 76, 8889–91. The revised findings also state that the Site is underutilized as the current cold-storage facility is too small and lacks the features needed to support a viable, modern cold-storage use. AR 8889–90. According to the City, the Project would enhance the Site's significant identity and contribute to the economic and social revitalization of the surrounding neighborhood. See *Westsidiers, supra*, 27 Cal.App. 5th at 1088 (City Charter section 555 permits consideration of proposed future uses).

These citations do not aid the City for several reasons. First, the modified and revised findings were never adopted by the City Council and cannot be considered. Second, even if these modifications of the CPC findings could be considered, they are only findings, not evidence. For example, there is insufficient evidence that the Project Site is not suitable for a modern cold storage facility or some other industrial use.²⁴ Third, many of the cited findings merely underscore Petitioners' point that the City wrongly found the area around the Project Site to be significant from a social, economic, or physical viewpoint, and not the Site itself.

The GPA is not supported by substantial evidence that the criteria of City Charter section 555(a) have been met.

²⁴ The non-adopted revised findings state that the Project Site is too small to support a modern cold storage facility. AR 8884. They also claim that the Project Site's flag shape lot and narrow north-south dimension makes the lot infeasible for industrial use. AR 8884. The revised findings further assert that the unusual shape does not allow for a cross dock, which is a dock that can be accessed by trucks on both sides. AR 8884.

At the April 9 oral argument, Camden's counsel argued that the non-adopted revised findings are supported by evidence. Specifically, the record supports a conclusion that the lot is flag-shaped (AR 483) and that the former cold storage business at the Project Site went out of business. AR 1201. The November 21, 2017 letter from Camden's attorney to the City Council also argued that the Site was not viable for cold storage or any other industrial use. AR 8895. The mere facts that the cold storage facility went out of business and that the lot is flag-shaped are insufficient to support the argument that a cold storage business is not viable at the Site and that the lot is infeasible for other industrial use.

The revised findings further claim that the GPA will not create a fragmented pattern of development (AR 8886-87), but they fail to note that the residential portions of surrounding buildings that might support this conclusion actually are industrially zoned. See *Pala Band, supra*, 68 Cal.App.4th at 580. See Reply at 8.

6. Spot Zoning

a. Governing Law

“Spot zoning” is a legal concept and occurs when a parcel of land is rezoned with either greater or fewer restrictions than surrounding parcels. Foothill Communities Coalition v. County of Orange, (“Foothill”) (2014) 222 Cal.App.4th 1302, 1307, 1311–12; Arcadia Development Co. v. City of Morgan Hill, (“Arcadia”) (2011) 197 Cal.App.4th 1526, 1536. “[T]he essence of Spot Zoning is irrational discrimination.” Foothill, *supra*, 222 Cal.App.4th at 1311; South of Market, Ex. A, p.34-35. Because local bodies enjoy broad legislative discretion for zoning, spot zoning is not necessarily invalid. Arcadia, 197 Cal.App.4th at 1314. The creation of a spot zone is invalid only when it is not in the public interest—that is, when it is arbitrary, irrational, and unreasonable. *Id.* at 1309, 1314. A spot zone is in the public interest if “there is a reasonable basis for the belief that the [spot zone] has substantial relation to the public health, safety, morals or general welfare.” Wilkins v. City of San Bernardino, (“Wilkins”) (1946) 29 Cal.2d 332, 339; Arcadia, *supra*, 197 Cal.App.4th at 1536 (spot zone valid if any “rational reason in the public benefit exists for such a classification”). The burden is on the challenger to show that the spot zoning was invalid and thus an abuse of discretion. Foothill, *supra*, 222 Cal.App.4th at 1309. City Opp. at 15-16.

The Los Angeles CEQA Thresholds Guide (“Thresholds Guide”) explains that a spot zone occurs “when the zoning or land use designation for only a portion of a block changes, or a single zone or land use designation becomes surrounded by more or less intensive land uses” and may require further study. AR 7846. The determination of significance is case-by-case, and considers the extent, nature and degree of impacts, disruption to the area, and number, degree, and type of secondary impacts. Pet. RJN Ex. H, pp. H.2-3. Pet. Op. Br. at 10.

The City argues that it need not use the Thresholds Guide screening criteria. The Thresholds Guide expressly states that it “should not be used as a substitute for professional or legal advice ... the reader should refer to the CEQA Statutes and State and City Guidelines, current case law, regulations, and scientific methods.” Opp. RJN Ex. K, p. viii. Neither CEQA nor the Thresholds Guide required the City to use the “screening criteria” for the Project. As the Threshold Guide recognizes, “the appropriate criteria for evaluation are the responsibility of the lead agency.” Opp. RJN. Ex. K p. viii. City Opp. at 15.

Petitioners properly rebut this argument. Reply at 9. Although not required to use the Threshold Guide screening criteria, the MND and SCEA expressly adopted the Thresholds Guide for their “analytical methodology and thresholds of significance.” AR 244 (MND), AR 592 (SCEA). The City offers no other spot zoning criteria alternative. The Threshold Guide applies for spot zone screening.

b. Creation of a Spot Zone

The City disagrees that a spot zone was created. The City contends that merely rezoning the Project Site as C2, with surrounding parcels retaining their M zone designation, did not create a spot zone. Despite the M zoning on many surrounding properties, their uses (commercial, residential, mixed-use) are substantially similar to, and not “more [or less] restrictive” than, the uses proposed for the Project Site. AR 663–64 (“Project vicinity is primarily developed with old warehouses, some of which have been converted to artist’s lofts and studios”), 8889, 9326 (adjacent property developed as a brewpub). According to the City, no island was created. City Opp. at 16.

The City's approval of the Project creates a spot zone within the meaning of the Thresholds Guide. As described by Petitioners, the City created "an island of C2-zoned and Commercially designated land for residential use in a sea of M3-zoned parcels designated heavy industrial." The fact that some conversions to live/work lofts have been permitted in the Arts District and that there is a brewpub next door does not affect this zoning conclusion.

c. Arbitrary or Unreasonable

The City argues that Petitioners fail to show the spot zone to be impermissible. Spot zoning "is valid when long-term changes in the neighborhood have created conditions compatible with the proposed new use." Scrutton v. Sacramento County, (1969) 275 Cal.App.2d 412, 419. The City contends that such is the case here. AR 9315-16, 72, 76 (Project "builds upon the mix of uses already found in the area including the mixed-use Toy Factory Lofts and Biscuit Company Lofts developments located one block to the east along industrial street"), 663-64. City Opp. at 16-17.

In Foothill, Orange County created a new zoning definition for senior residential housing and applied that definition to a proposed senior residential community. 222 Cal.App.4th at 1307-08. The court found that the county had engaged in spot zoning. Id. at 1314. Nonetheless, the spot zone was permissible because the new zoning district and project were in the public interest where state law and the General Plan favored senior housing. Id. at 1315-19. City Opp. at 17.

The City argues that it could rationally conclude that the Project would provide public benefits through the housing, commercial, and retail uses and its proximity to transit. AR 72 (Project "will locate housing near jobs-rich Downtown while also allowing for jobs-producing uses"), 73 (Project's proximity to current and future transit). Petitioners fail to address this component of the spot zoning analysis, and therefore have waived it. Bell v. H.F. Cox, Inc., (2012) 209 Cal.App.4th 62, 79, n. 6. (matters raised for the first time in a reply brief may be deemed waived). City Opp. at 17.

Petitioners provide substantial evidence that spot zoning creates negative impacts in industrial areas because it conflicts with the Community Plan and Framework Element. See AR 2207-08 (tract map appeal). The Framework Element identifies a primary issue of the "intrusion of commercial and residential uses into previously industrial areas", and the Community Plan echoes this concern. Opp. RJN, Ex. D, pp. 52, 67-68 (Policy 3-1.3: "Require that any proposed development... be compatible with adjacent development."); (Objective 3-3: "[] retain industrial plan designations to maintain the industrial employment base... and to increase it whenever possible"). The Framework Element allows the consideration of alternative uses for marginal industrial sites, but not where conversion will "create a fragmented pattern of development and reduce the integrity and viability of existing industrial areas." Pet. RJN Ex. G (Policy 3.14.6.). Reply at 10.

The City has the lowest industrial vacancy rate of any major U.S. city. AR 9012, 9038. Adequate land use compatibility analysis is critical in industrial neighborhoods, where the "[i]ntrusion of commercial and residential uses" is a significant issue. Pet. RJN Ex. B., pp. I-5, I-7. Non-industrial intrusions reduce available industrial land, can harm or displace the expansion of existing industrial uses, and create fragmented land use patterns that substantially reduce the integrity and viability of industrial areas, a critical issue where only six percent of the City's land is zoned for industrial use. AR 2208, 2230, 2232-33, 2243 7750, 7759, 7761 ("Land use conflicts

occur when non-industrial uses are established in a haphazard manner”); Mot. to Aug., Ex. I, pp. 2-4, 14-15; AR 7877-78. Pet. Op. Br. at 10-11. Reply at 10.

Because the loss of industrial land has negative impacts, the Framework Element mandates a planning study before industrial land is converted. The Framework Element, Community Plan, and 2007 Industrial Land Use Policy study show potentially significant impacts are readily foreseeable and must be studied and analyzed before industrial land may be converted. The City failed to follow its General Plan mandate. Reply at 11. The City’s failure to identify or analyze potentially significant spot zone impacts necessarily means that the SCEA’s land use analysis is not supported by substantial evidence and is arbitrary and unreasonable. See Pet. Op. Br. at 11.

d. Spot Zoning Under CEQA

The City’s argument that a spot zone is permissible so long as not arbitrary, irrational, or unreasonable does not control in the CEQA context. In Foothill, the court held that a spot-zoned project was in the public interest and not arbitrary or capricious, but nevertheless remanded for the trial court to determine whether the agency had abused its discretion in approving the project’s EIR. 222 Cal.App.4th at 1318-19, 1322. The fact that a spot zone is permissible does not resolve whether it may have potentially significant environmental impacts. See id. at 1311, 1322. Reply at 10.

The City argues that Petitioners have not shown how the spot zone could have a “substantial or potentially substantial adverse change in the physical conditions existing within the area affected by the project.” California Farm Bureau Federation v. California Wildlife Conservation Bd. (2006) 143 Cal.App.4th 173, 185. A spot zone, if impermissible, may be a land use conflict, but the conflict concerns CEQA only if it creates adverse physical changes in the environment. See ibid. According to the City, Petitioners have pointed to adverse physical change. The land use impact analysis in the SCEA and MND (AR 301-09, 662-71), including the responses to comments (AR 1215), were adequate and no further analysis is required. See Cleveland National Forest Foundation v. San Diego Assn. of Governments, (2017) 3 Cal.5th 497, 516-17. City Opp. at 15.

As with the Framework Element and Community Plan inconsistencies discussed *ante*, Petitioners have not shown any direct Project physical impact from the spot zone. The City nonetheless failed to comply with CEQA because the MND and SCEA as informational documents do not discuss the spot zone issue. The term “spot zone” does not appear in the MND, even though the Thresholds Guide notes “a zone change required to implement the project may indicate a potential incompatibility with adjacent existing land uses.” Opp. RJN Ex. K, p. 237. These mistakes are repeated in the SCEA, which relied on the MND’s Initial Study. AR 481. The SCEA’s brief analysis states that the GPA and zone change “resolve any inconsistency”, but fails to use the City’s spot zone definition and screening criteria. AR 1216; see also AR 7953 (Planning staff’s tract map recommendation). The SCEA responses to comments likewise fail to address the potential consistency/compatibility conflicts due to the spot zone. See AR 1210, 1223. Pet. Op. Br. at 10; Reply at 9.

The Project’s zone change should have triggered further study. As discussed *ante*, displaced industrial development is a legitimate indirect physical impact under CEQA. Muzzy Ranch supra, 41 Cal.4th at 383. While it is unlikely that a single project will have such impacts, there may be cumulative industrial displacement impacts when the Project is considered with other

projects. City staff acknowledged that “there may be land use impacts from locating a primarily residential project in an industrial area.” AR 17786. Reply at 10-11. The MND and SCEA did not consider potentially significant indirect spot zone impacts, including the Thresholds Guide requirement of identifying “other known projects or land use changes proposed in the vicinity of the project that may either combine with the proposed project to create a land use incompatibility with the existing land uses.” Pet. RJN Ex. H, pp. H.2-4. Pet. Op. Br. at 10.²⁵

e. Conclusion

The City’s failure to properly analyze the zoning change as spot zoning was arbitrary and unreasonable. The MND and SCEA as informational documents do not discuss the spot zone issue, which is a failure to proceed in the manner required by law under CEQA.

7. Subdivision Map Act

A primary goal of the Subdivision Map Act (“SMA”) is “to encourage orderly community development and ensure proper consideration of a subdivision’s relation to adjoining areas.” Pratt v. Adams, (1964) 229 Cal.App.2d 602, 605-06. The SMA requires that subdivisions be consistent with applicable land use standards, including “local ordinances dealing with subdivisions.” Govt. Code, §66474.60. The City regulates subdivisions in LAMC Chapter I, article 7 (LAMC §17.00 *et seq.*). Subdivisions in the City must comply with applicable zoning (existing or as changed by project approval), and “shall substantially conform to all other elements of the General Plan.” LAMC §17.05.C. *See* Govt. Code §66474.61(a)-(b). “[M]ere conclusory findings without reference to the record are inadequate.” West Chandler Boulevard Neighborhood Assn. v. City of Los Angeles (2011) 198 Cal.App.4th 1506, 1522. Pet. Op. Br. at 12-13.

As discussed *ante*, the approved GPA for a Regional Center Commercial land use designation and C2 zoning are inconsistent with the Framework Element and the Community Plan and create an impermissible (and unanalyzed) spot zone. The Project’s inconsistencies with the General Plan and creation of a residential spot zone in an industrial area preclude subdivision approval under both the SMA and LAMC. *See* Pet. Op. Br. at 13.

Petitioners further argue that the required SMA findings regarding of the subdivision’s consistency with the General Plan and zoning are conclusory. The findings generally describe the Project, its entitlements, and planned improvements, and then merely recite the necessary conclusions. AR 64-65 (findings (a) and (b)). The findings do not refer to any evidence and provide no meaningful analysis of consistency between the subdivision and the General Plan and zoning. The findings are inadequate because they are conclusory and fail to “bridge the analytic gap between the raw evidence and ultimate decision.” Topanga Assn. for a Scenic Community v. County of Los Angeles, (1974) 11 Cal.3d 506, 515.) Pet. Op. Br. at 13.

The City responds that Petitioners fail to cite the adopted Site Plan Review findings, which do analyze applicable industrial goals and policies. AR 119–21. The City’s findings inform parties

²⁵ As stated *ante*, the City Council’s revised finding that the Project Site is not viable for industrial use was not adopted and is not supported by evidence. AR 2580. Moreover, “[t]he fact that industrial land or buildings may be vacant or under-performing today is not necessarily a determinant measure of their value for the industrial uses of the near or distant future.” AR 2069 (former Deputy Mayor memo on industrial land conversion).

of the bases on which to seek review and show that the City's decision to approve the subdivision map is based on lawful principles. Temescal Water Co. v. Department of Public Works, (1955) 44 Cal.2d 90, 102 ; *see* AR 63-68, 71-82, 119-28. The findings cite the record adequately and there is "no trouble ... discerning 'the analytic route the [City] traveled from evidence to action.'" Great Oaks Water Co. v. Santa Clara Valley Water District, (2009) 170 Cal.App.4th 956, 971. *See* AR 64, 65-67. According to the City, Petitioners baldly claim that these findings are conclusory and unsupported by the record, but they fail to carry their burden by citing the evidence they claim is unresponsive. City Opp. at 17-18. The City argues that the analysis in the MND and SCEA, and the proceedings of the ZA, CPC, and PLUM Committee, are substantial evidence supporting the City's findings. AR 301-09, 662-71, 2812-46 (ZA hearing), 2852-54 (CPC hearing), 2999-3029 (PLUM hearing). City Opp. at 18.

It is true that the Site Plan Review findings analyze consistency with the General Plan's Framework Element and Community Plan. AR 2563-67. However, these findings suffer from the failure to identify and discuss industrial goals and objectives, and follow mandatory industrial policies, discussed *ante*.

8. Site Plan Approval (LAMC Sections 12.11, 12.14, 12.22, 12.36, 16.05, and 17.15)

a. Site Plan Review

"The purposes of site plan review are to promote orderly development, evaluate and mitigate significant environmental impacts, and promote public safety and the general welfare by ensuring that development projects are properly related to their sites, surrounding properties, traffic circulation, sewers, other infrastructure and environmental setting; and to control or mitigate the development of projects which are likely to have a significant adverse effect on the environment as identified in the City's environmental review process, or on surrounding properties by reason of inadequate site planning or improvements." LAMC §16.05.A.

In granting a site plan approval, the Director, or the Area Planning Commission on appeal, shall find:

1. that the project is in substantial conformance with the purposes, intent and provisions of the General Plan, applicable community plan, and any applicable specific plan;
2. that the project consists of an arrangement of buildings and structures (including height, bulk and setbacks), off-street parking facilities, loading areas, lighting, landscaping, trash collection, and other such pertinent improvements, that is or will be compatible with existing and future development on adjacent properties and neighboring properties; and
3. that any residential project provides recreational and service amenities to improve habitability for its residents and minimize impacts on neighboring properties. LAMC §16.05.F.

b. Live/Work Uses in New Construction

As discussed *ante*, live/work units are authorized for new construction in the C2 zone. However, the GPA is inconsistent with the Framework Element and Community Plan because it fails to weigh the industrial policies and potentially causes a residential intrusion into an industrially designated and zoned neighborhood that creates an unanalyzed and unmitigated spot zone. The Site Plan Review findings do not analyze Framework Element and Community Plan industrial goals, objectives, and policies that are inconsistent with the Project. The findings also compare the Project with live/work conversions of existing buildings and not new construction.

AR 2564. The Site Plan Review findings are incomplete and inaccurate. See LAMC §16.05. Pet. Op. Br. at 14-15.

c. Zone Density

LAMC section 21.11.C.4 provides in pertinent part:

“No building or structure...shall be hereafter erected or maintained unless...

3. **Lot Area** – The lot area requirements of the R4 Zone (Section 12.11 C.4.) shall apply to all portions of buildings used for residential purposes.” LAMC §21.14.C.3.

“The following regulations shall apply in the “R4” Multiple Dwelling Zone...

C. Area. No building or structure nor the enlargement of any building or structure shall be hereafter erected or maintained unless the following yards and lot areas are provided and maintained in connection with such building, structure or enlargement...

4. **Lot Area** – Every lot shall have a minimum width of 50 feet and a minimum area of 5,000 square feet. The minimum lot area per dwelling unit shall be 400 square feet.”

LAMC section 12.22.A(18) provides in pertinent part:

“Use...

18. Developments Combining Residential and Commercial Uses. Except where the provisions of Section 12.24.1 of this Code apply, notwithstanding any other provision of this chapter to the contrary, the following uses shall be permitted in the following zones subject to the following limitations:

(a) Any use permitted in the R5 Zone on any lot in the CR, C1, C1.5, C2, C4 or C5 Zones provided that such lot is located within the Central City Community Plan Area or within an area designated on an adopted community plan as "Regional Center" or "Regional Commercial". Any combination of R5 uses and the uses permitted in the underlying commercial zone shall also be permitted on such lot....

(c) **Yards.** Except as provided herein, the yard requirements of the zone in which the lot is located shall apply.”

Petitioners argue that Project approval violates C2 zone density standards. They note that the plain language of the zoning code requires that the “lot area requirements of the R4 Zone” will apply to “all portions of buildings used for residential purposes.” LAMC §12.14.C(3). R4 residential density requires 400 square feet (“sq. ft.”) per dwelling unit. LAMC §12.11.C(4). The MND premised a higher density upon a 22.5% density bonus. AR 175. The revised entitlements substituted a different density bonus and revised the GPA request to Regional Center Commercial. AR 2119. Without a density bonus, the Project reverts to a maximum of 282 dwelling units. AR 175, 305. The approved 344 live/work units exceed this maximum of 282 units. Petitioners contend that LAMC section 12.22.A(18)(a) does not alter the analysis because, by its plain language, it relates only to “uses,” not “yards.” Compare LAMC §12.22.A(18)(a) with LAMC §12.22.A(18)(c). Pet. Op. Br. at 15.

The City implicitly acknowledges that the zoning code requires R4 density to apply in Commercial zones. The City argues that LAMC section 12.22(A)(18) provides an exception to

this requirement. AR 30021 [Zoning Code Manual]; see also AR 3001–02. The City has long interpreted LAMC section 12.22(A)(18)’s reference to “R5 uses” to include density (lot area requirements). AR 29779 (May 2000 Memo re: R5 density in commercial zones). This interpretation was based on the original staff report for the 1982 ordinance authorizing the subdivision of airspace units, which was specifically requested by the Community Redevelopment Agency and Planning and which *inter alia* authorized a decrease from 400 sq. ft. to 200 sq. ft. per dwelling unit in the R5 zone or C zones. AR 29776. See also Opp. RJN Ex. L, pp. 29–30 (2006 determination applying LAMC §12.22(A)(18)). According to the City, this interpretation is reasonable, clarifies and does not rewrite the provision, and is longstanding. City Opp. at 20.

Petitioners disagree, arguing that the May 2000 ZA’s interpretation does not resolve an ambiguity, it creates one, and at the same time admits that the ordinance’s plain meaning does not support the City’s construction. AR 29779. Petitioners argue that the deference owed to a city’s interpretation of its code is limited by the rules of statutory construction. Ruiz v. Sylva, (2002) 102 Cal.App.4th 199, 209. A statute’s plain meaning is controlling, and absent any ambiguity, “no court need, or should, go beyond that pure expression of legislative intent.” Ibid. Reply at 15.

While Petitioners plain meaning argument has facial appeal, the court cannot ignore the purpose of the ordinance. A court may disregard plain meaning of a statute or regulation where it would be inconsistent with its purpose or lead to absurd results. MacIsaac v. Waste Management & Recycling, Inc., (2005) 134 Cal.App.4th 1076, 1083. As stated, the ordinance was intended *inter alia* to permit an airspace decrease from 400 sq. ft. in the R4 zone to 200 sq. ft. in the R% or C zones in order to facilitate downtown high rise residential development. AR 29776. The ordinance term “use” is unfortunate because it does not convey the intended purpose. Nonetheless, the ordinance’s intent must be effectuated if possible, and the ZA’s longstanding interpretation of “use” to mean density (lot area requirement) clarifies a latent ambiguity in whether the word “use” has its ordinary zoning code meaning. The City’s interpretation of its zoning code is entitled to some deference. Carmshimba, supra, 215 Cal.App.4th at 1091. This interpretation is not unreasonable and does not rewrite the ordinance.

Since the Site is zoned C2 and designated Regional Center Commercial, LAMC section 12.22(A)(18) permits R5 density and the Project density of 344 units is permitted. The Project does not violate C2 zone density requirements.

d. Multiple Approvals

If an applicant files for a project that requires multiple...[a]pprovals,...[the applicant] shall file applications at the same time for all approvals reasonably related and necessary to complete the project. [P]rior to a public hearing, the Director may require an applicant to amend an application for a project requiring multiple approvals to ensure that all relevant approvals are reviewed concurrently.” LAMC 12.36.B.

“If it is known at the time of filing that an additional approval ... is necessary, the application for such additional approval shall be filed prior to or simultaneously with the vesting tentative map”. LAMC §17.15.

Petitioners argue that the City’s Project approval violates its multiple approvals ordinances, which required Camden to apply at the same time for all reasonably related approvals for the Project and its subdivision. LAMC §§ 12.36, 17.15.B(1). According to Petitioners, after two public hearings, one for Camden’s VTTM and the initial approval, amendments were made for

related approvals in violation of the City's multiple approvals and subdivisions ordinances. AR 1804-06, 2121, 2170. Pet. Op. Br. at 15.

Petitioners misunderstand the purpose of LAMC sections 12.36.B and 17.15, which collectively provide that any applications for any necessary approvals, if known, should be filed concurrently with or before the tract map application. The purpose of these provisions is to allow City decisionmakers to consider all project approvals simultaneously. *See* Opp. RJN Exs. H, I. Thus, the ordinances exist for the convenience of the City. It also is common for projects to undergo changes to proposed entitlements throughout the planning process. *See* LAMC §19.01.H-5 (City has discretion to allow "credit for the fees paid upon a reapplication for the same project under a different procedure"). There is nothing in LAMC sections 12.36.B and 17.15 to suggest that a project opponent can rely on an applicant's violation of them to require that a project approval should be set aside. The City's discretion in how it wants to conduct proceedings for its own convenience precludes such a remedy.

In this case, the City exercised its discretion to delay the approval process so that it would consider Project entitlements together. The first GPA initiation form was filed in 2013 (AR 3435) and the VTTM application was filed in 2016. AR 3661-64. In 2017, the second GPA initiation form was filed to change the requested designation from Community Commercial to Regional Commercial. AR 5608. The City delayed hearing the VTTM to ensure consideration of all of the project approvals together. AR 9328, 8717-18; *see* AR 2854 (SCEA must be adopted by the City Council whereas MND may be adopted by the CPC). City Opp. at 20-21. The City proceeded in this manner for a practical reason, and it had the discretion to do so. City Opp. at 21.

There was no violation of the multiple approvals ordinances, and Petitioners would have no remedy even if there was.

H. Conclusion

The petition for writ of mandate is granted for the following reasons: (1) no reasonable person could conclude that the City's finding of plan consistency is supported by substantial evidence; (2) the MND and SCEA fail as CEQA informational documents because they do not discuss adequately the industrial policies of the Framework Element and Community Plan and do not discuss at all the potential cumulative displaced industrial development impacts from this and other projects; (3) the GPA is not supported by substantial evidence that the criteria of City Charter section 555(a) have been met; (4) the City's failure to analyze the zoning change as spot zoning was both arbitrary and unreasonable and a CEQA informational failure to proceed in the manner required by law; (5) the Project's inconsistencies with the General Plan and creation of a residential spot zone in an industrial area preclude subdivision approval under both the SMA and LAMC; and (6) the Site Plan Review's failure to discuss industrial goals and objectives made its findings incomplete and inaccurate.

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Petitioners' counsel is ordered to prepare a writ and proposed judgment, serve them on opposing counsel for approval as to form, wait ten days after service for any objections, meet and confer if there are objections, and then submit the proposed judgment along with a declaration stating the existence/non-existence of any unresolved objections. An OSC re: judgment is set for June 6, 2019 at 9:30 a.m.

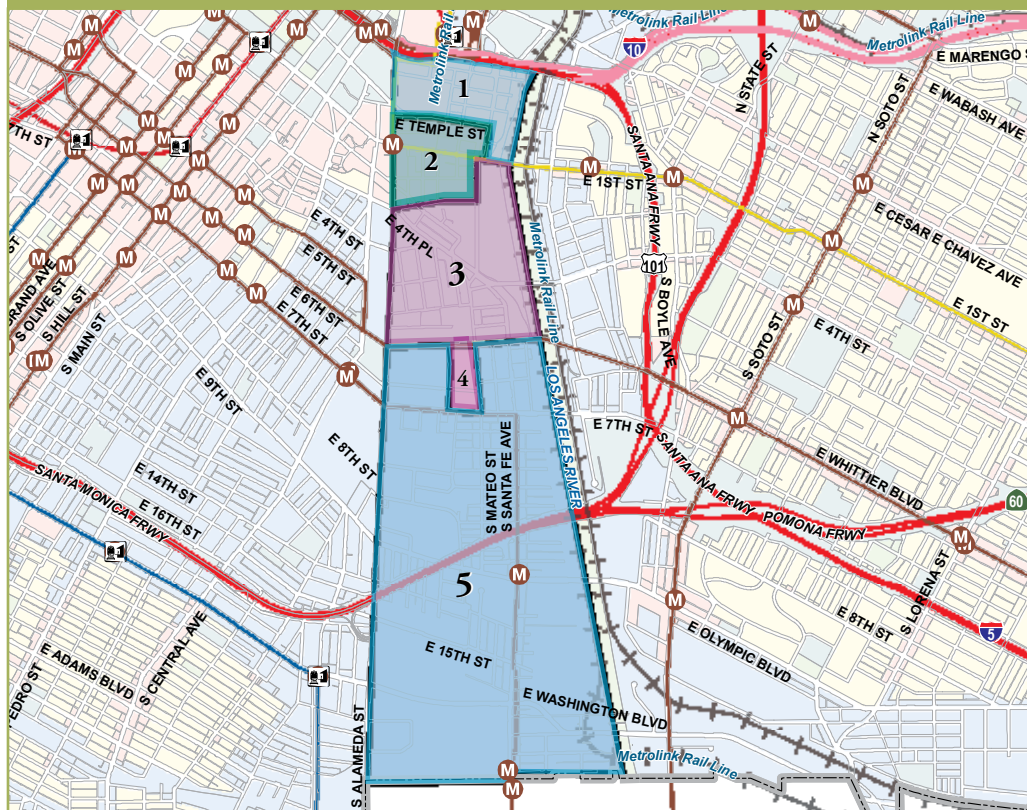
Dated: April 24, 2019

JAMES C. CHALFANT

Superior Court Judge

CENTRAL CITY NORTH - ALAMEDA

INDUSTRIAL AREA DIRECTIONS



SUMMARY STATISTICS

AREA TOTALS

ACRES	848
BUSINESSES	814
JOBS	8,363

ANALYSIS AREA 1 (EMP)

Acres	34
Businesses	30
Jobs	668

ANALYSIS AREA 2 (TD)

Acres	24
Businesses	117
Jobs	939

ANALYSIS AREA 3 (IMU)

Acres	106
Businesses	116
Jobs	1,040

ANALYSIS AREA 4 (IMU)

Acres	28
Businesses	10
Jobs	106

ANALYSIS AREA 5 (EMP)

Acres	656
Businesses	541
Jobs	5,610

■ EMPLOYMENT PROTECTION DISTRICT (EMP):

Areas where industrial zoning should be maintained, i.e., where adopted General Plan, Community Plan and Redevelopment Plan industrial land use designations should continue to be implemented. Residential uses in these Districts are not appropriate.

■ INDUSTRIAL MIXED USE DISTRICT (IMU):

Areas that should remain as predominantly industrial/employment districts, but which may support a limited amount of residential uses.

■ TRANSITION DISTRICT (TD):

Areas where the viability of industrial use has been compromised by significant conversions and where this transition to other uses should be continued. Transition Districts have been identified in areas where "Alternate Policies" (AP) such as specific plans, Transit Oriented Districts (TOD) and other planning efforts are anticipated or in process. Unlike "Industrial Mixed Use Districts," stand-alone housing or mixed use developments containing housing and commercial uses may be appropriate in "Transition Districts."

■ CORRECTION AREA (CA):

Areas where earlier land use decisions resulted in inappropriate land use conflicts. A change in zoning and land use designations to correct existing land use conflicts is deemed appropriate and should be encouraged.

CENTRAL CITY NORTH - ALAMEDA: ANALYSIS AREA 1

EMPLOYMENT PROTECTION DISTRICT

Survey Land Use

Industrial

- Research / Intellectual / Industry
- Light Industry
- Auto
- Storage
- Heavy Industrial and Manufacturing
- Entertainment / Production

Commercial

- Grocery / Liquor / Convenience
- Restaurant / Bar
- Commercial / Service / Office
- Retail
- Adult

Infrastructure

- Parking / Associated Parking
- Railroad
- Bridges / Streets / other ROWs

Misc. / Other

- Institutional
- Residential
- Vacant
- Other / Unknown

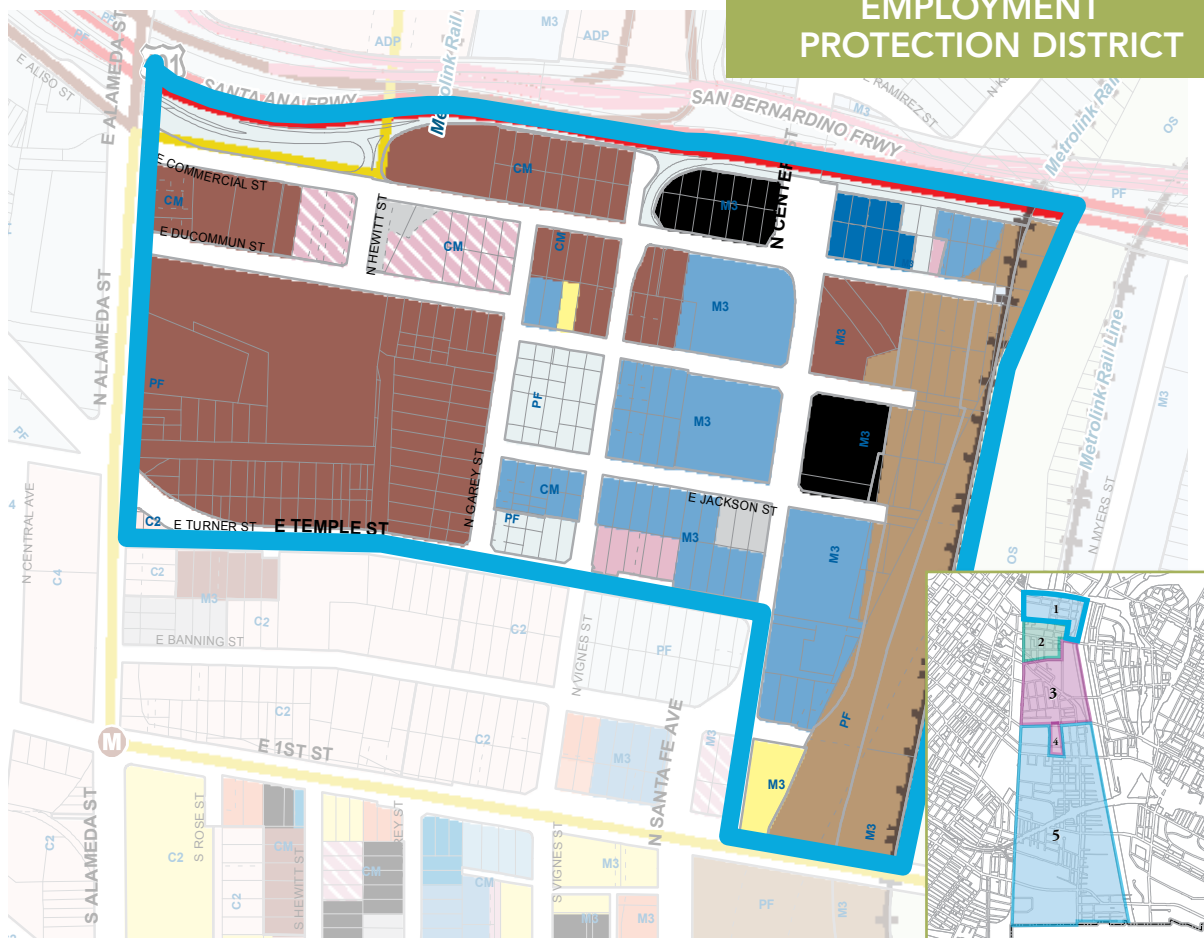
ZONE CATEGORY

Generalized Zoning

- Residential
- Commercial
- Industrial
- OS / PF

Transit Stops and Lines

- Metro Rail Stations
- Transit Stops
- MetroLink Lines
- Metro Blue Line
- Metro Gold Line and Extension
- Metro Red Line
- Metro El Monte Busway
- Metro HarborTransit Way
- Metro Rapid Lines



TOTAL ACRES - 34

TOTAL BUSINESSES - 30

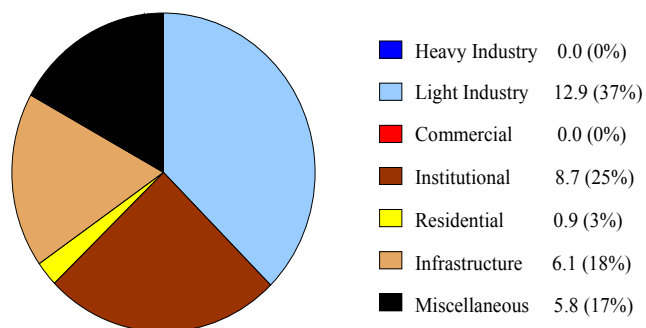
TOTAL JOBS - 668

STAFF DIRECTIONS:

Preserve industrial zoning consistent with Central City North Community Plan; allow industrial and ancillary commercial uses only.

EXISTING LAND USE 2006

(Acres & Percent of Analysis Area)



PLAN OVERLAYS & SPECIAL DISTRICTS

- ☒ Enterprise Zone
- ☐ Empowerment Zone
- ☐ Overlay (TOD, Master Plan, etc.)
- ☐ Specific Plan
- ☐ Redevelopment Project Area
- ☐ Design for Development

CENTRAL CITY NORTH - ALAMEDA: ANALYSIS AREA 2

TRANSITION DISTRICT

Survey Land Use

Industrial

- Research / Intellectual / Industry
- Light Industry
- Auto
- Storage
- Heavy Industrial and Manufacturing
- Entertainment / Production

Commercial

- Grocery / Liquor / Convenience
- Restaurant / Bar
- Commercial / Service / Office
- Retail
- Adult

Infrastructure

- Parking / Associated Parking
- Railroad
- Bridges / Streets / other ROWs

Misc. / Other

- Institutional
- Residential
- Vacant
- Other / Unknown

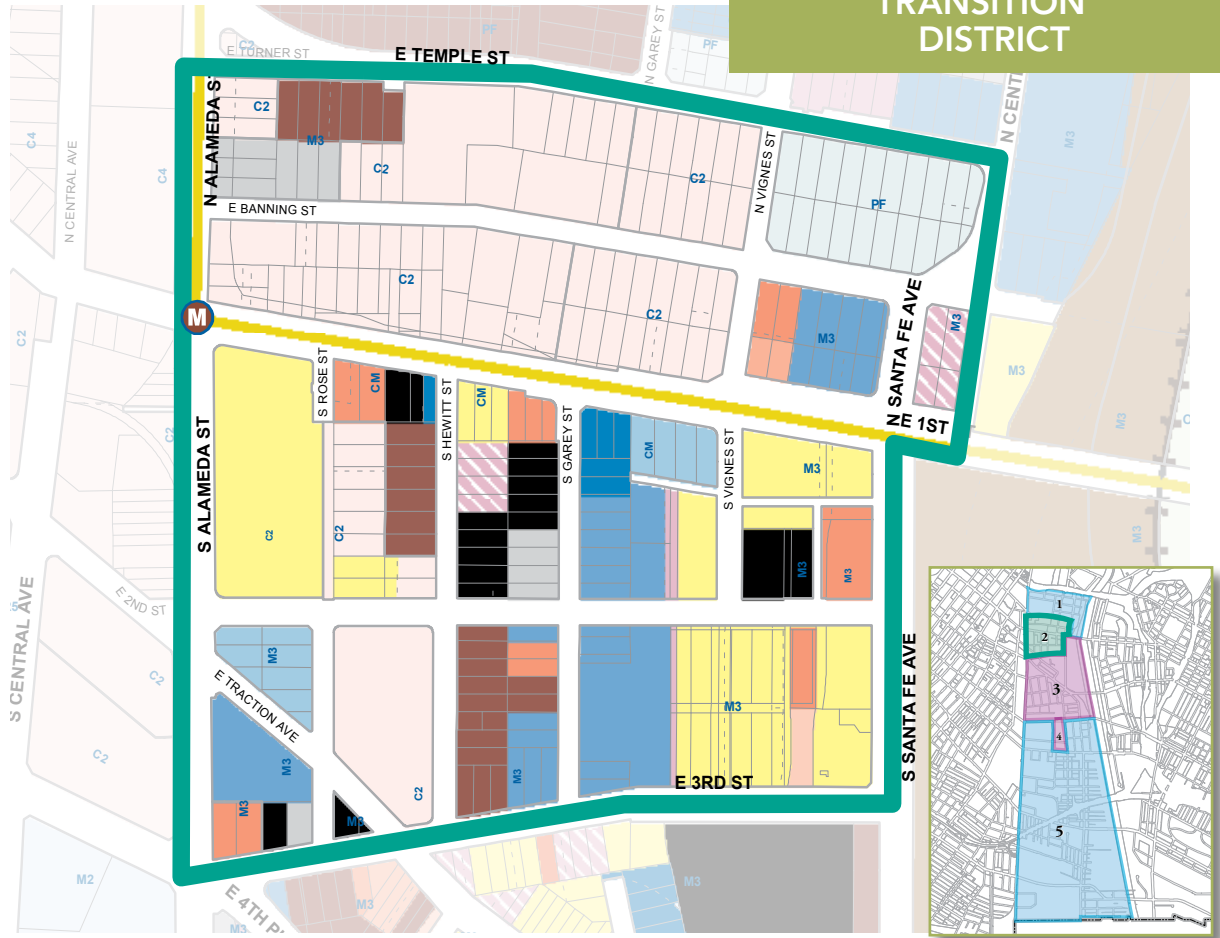
ZONE CATEGORY

Generalized Zoning

- Residential
- Commercial
- Industrial
- OS / PF

Transit Stops and Lines

- Metro Rail Stations
- Transit Stops
- MetroLink Lines
- Metro Blue Line
- Metro Gold Line and Extension
- Metro Red Line
- Metro El Monte Busway
- Metro HarborTransit Way
- Metro Rapid Lines



TOTAL ACRES - 24

TOTAL BUSINESSES - 117

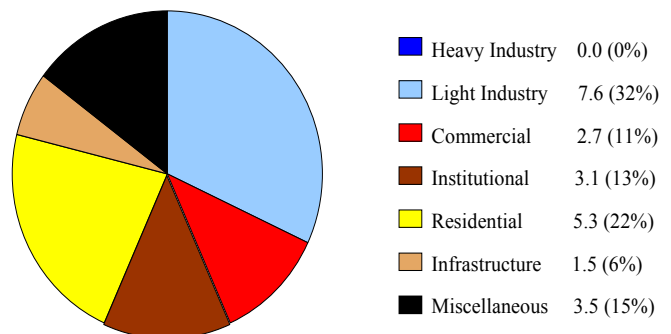
TOTAL JOBS - 939

STAFF DIRECTIONS:

As part of Community Plan update and/or Civic Center Master Plan program, develop a Transit Oriented District (TOD) Plan to establish appropriate zoning and land uses relative to adjacent Little Tokyo community and Artist in Residence District. Support pedestrian linkages to LA River through design and infrastructure improvements as identified in LA River Revitalization Master Plan (LARRMP). In the interim, consider applications that enhance TOD goals on a case by case basis.

EXISTING LAND USE 2006

(Acres & Percent of Analysis Area)



PLAN OVERLAYS & SPECIAL DISTRICTS

- ☒ Enterprise Zone
- ☐ Empowerment Zone
- ☐ Overlay (TOD, Master Plan, etc.)
- ☐ Specific Plan
- ☐ Redevelopment Project Area
- ☐ Design for Development

CENTRAL CITY NORTH - ALAMEDA: ANALYSIS AREA 3

Survey Land Use

Industrial

- Research / Intellectual / Industry
- Light Industry
- Auto
- Storage
- Heavy Industrial and Manufacturing
- Entertainment / Production

Commercial

- Grocery / Liquor / Convenience
- Restaurant / Bar
- Commercial / Service / Office
- Retail
- Adult

Infrastructure

- Parking / Associated Parking
- Railroad
- Bridges / Streets / other ROWs

Misc. / Other

- Institutional
- Residential
- Vacant
- Other / Unknown

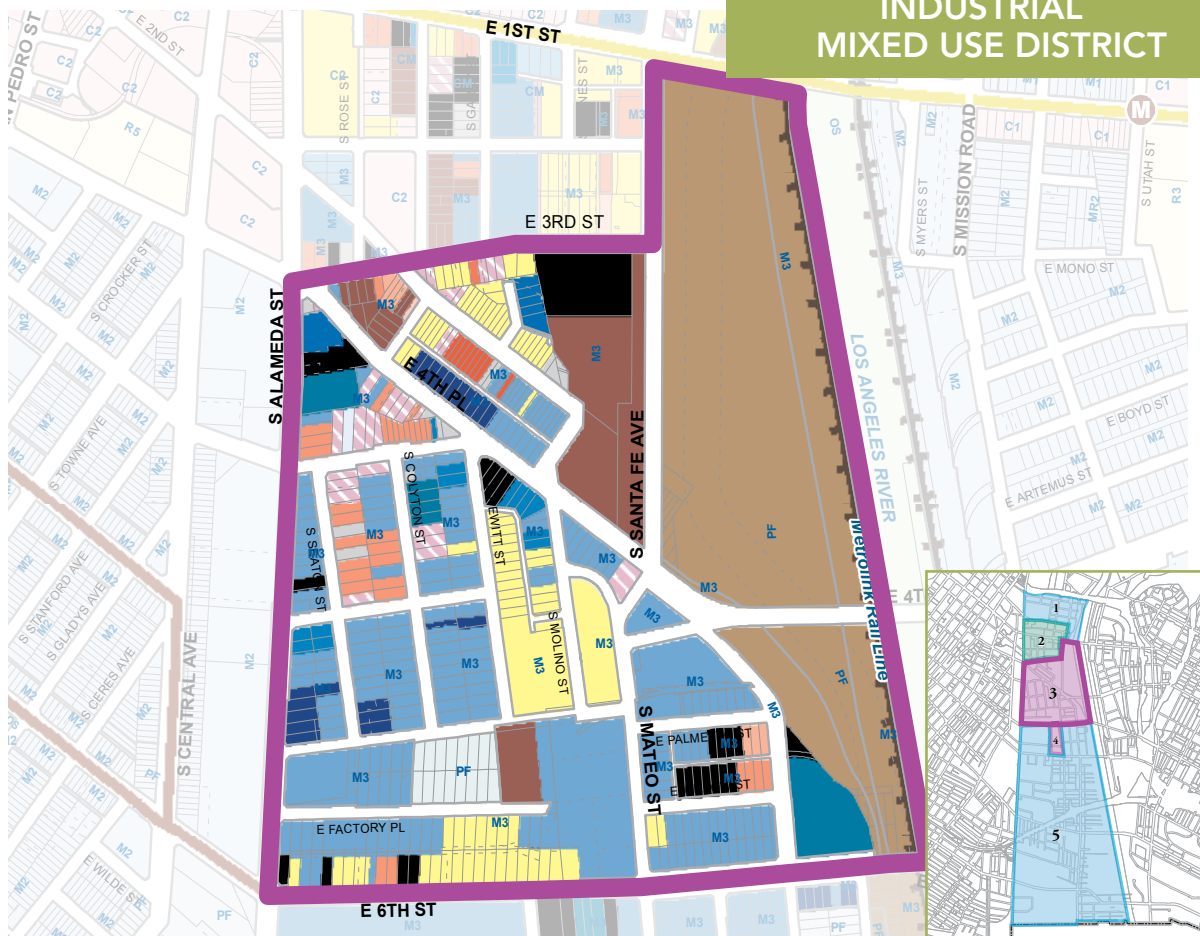
ZONE CATEGORY

Generalized Zoning

- Residential
- Commercial
- Industrial
- OS / PF

Transit Stops and Lines

- Metro Rail Stations
- Transit Stops
- MetroLink Lines
- Metro Blue Line
- Metro Gold Line and Extension
- Metro Red Line
- Metro El Monte Busway
- Metro HarborTransit Way
- Metro Rapid Lines



INDUSTRIAL MIXED USE DISTRICT

TOTAL ACRES - 106

TOTAL BUSINESSES - 116

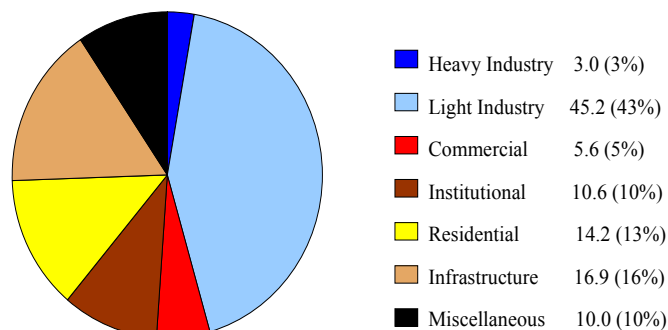
TOTAL JOBS - 1,040

STAFF DIRECTIONS:

Preserve industrial zoning consistent with Central City North Community Plan; allow industrial, neighborhood-serving commercial, and neighborhood-scale professional service/office uses. Maintain and strengthen Artist in Residence District as established in the Community Plan; continue to allow live/work uses and adaptive reuse of existing buildings. Allow new residential construction only when it is consistent with and supports the intent of the Artist in Residence District, with a requirement for affordable artist housing and other community benefits. Support pedestrian linkages to LA River through design and infrastructure improvements as identified in LA River Revitalization Master Plan (LARRMP) prioritizing 1st and 4th Streets.

EXISTING LAND USE 2006

(Acres & Percent of Analysis Area)



PLAN OVERLAYS & SPECIAL DISTRICTS

- ☒ Enterprise Zone
- ☐ Empowerment Zone
- ☐ Overlay (TOD, Master Plan, etc.)
- ☐ Specific Plan
- ☒ Redevelopment Project Area
- ☐ Design for Development

CENTRAL CITY NORTH - ALAMEDA: ANALYSIS AREA 4

INDUSTRIAL MIXED USE DISTRICT

Survey Land Use

Industrial

- Research / Intellectual / Industry
- Light Industry
- Auto
- Storage
- Heavy Industrial and Manufacturing
- Entertainment / Production

Commercial

- Grocery / Liquor / Convenience
- Restaurant / Bar
- Commercial / Service / Office
- Retail
- Adult

Infrastructure

- Parking / Associated Parking
- Railroad
- Bridges / Streets / other ROWs

Misc. / Other

- Institutional
- Residential
- Vacant
- Other / Unknown

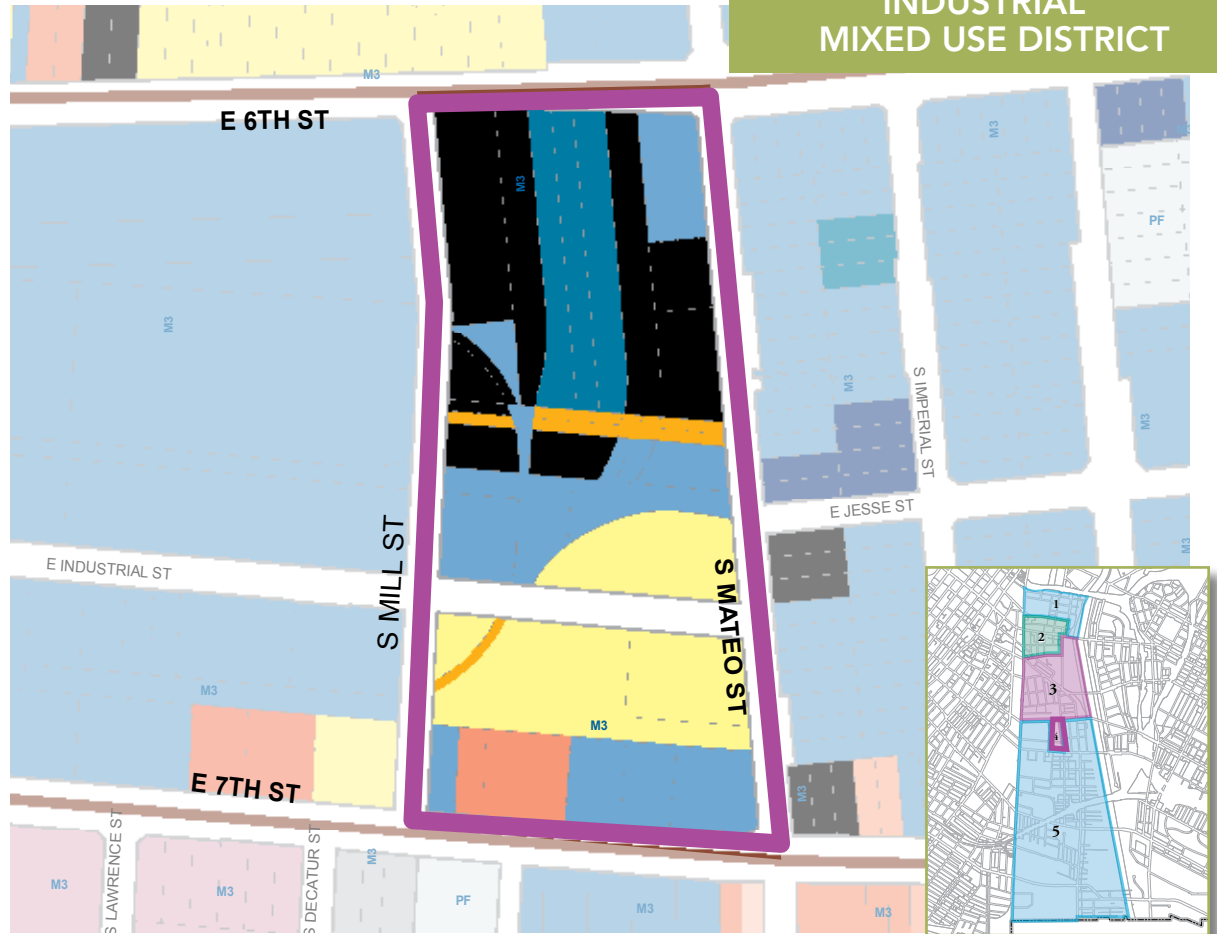
ZONE CATEGORY

Generalized Zoning

- Residential
- Commercial
- Industrial
- OS / PF

Transit Stops and Lines

- Metro Rail Stations
- Transit Stops
- MetroLink Lines
- Metro Blue Line
- Metro Gold Line and Extension
- Metro Red Line
- Metro El Monte Busway
- Metro HarborTransit Way
- Metro Rapid Lines



TOTAL ACRES - 28

TOTAL BUSINESSES - 10

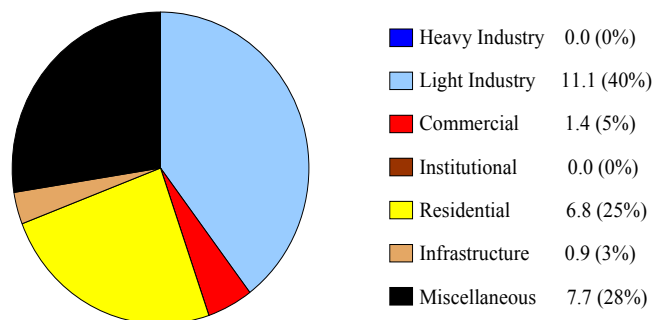
TOTAL JOBS - 106

STAFF DIRECTIONS:

Extend Artist in Residence District into the area bounded by 6th Street to the north, Mateo Street to the east, south to 7th Street and west to Mill Street. Amend Community Plan to reflect expansion of Artist in Residence District. Preserve industrial zoning consistent with Central City North Community Plan; allow industrial, neighborhood-serving commercial, and neighborhood-scale professional service/office uses. Maintain and continue to allow live/work uses and adaptive reuse of existing buildings. Allow new residential construction only when it is consistent with and supports the intent of the Artist in Residence District, with a requirement for affordable artist housing and other community benefits.

EXISTING LAND USE 2006

(Acres & Percent of Analysis Area)



PLAN OVERLAYS & SPECIAL DISTRICTS

- ☒ Enterprise Zone
- ☐ Empowerment Zone
- ☐ Overlay (TOD, Master Plan, etc.)
- ☐ Specific Plan
- ☒ Redevelopment Project Area
- ☐ Design for Development

