

**BLUM | COLLINS** LLP

Date: 09/06/2016  
Submitted in PLUM Committee  
Council File No: 16-0876 & 16-0876-52  
Item No. 748  
Deputy: Comm from Public

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September 6, 2016

PLUM Committee  
City of Los Angeles  
c/o Etta Armstrong, Assistant to Sharon Dickinson  
etta.armstrong@lacity.org

*Via Email*

Re: *California Environmental Quality Act Comments on Paramount Pictures  
Master Plan FEIR, City Case No. ENV-2011-2460-EIR; State  
Clearinghouse No. 2011101035*

Dear Ms. Armstrong and Ms. Dickinson and the Planning and Land Use Management  
Committee of the City of Los Angeles:

Please accept these further comments pursuant to the California Environmental Quality  
Act ("CEQA") on behalf of the SoCal Environmental Justice Alliance on the Final  
Environmental Impact Report ("FEIR") for the Paramount Pictures Master Plan project  
("the Project") which you are considering today. They should be considered by the  
Committee and should become a part of the Administrative Record.

We only found out this morning that the matter would be heard today, and so we rushed  
to put together these comments. As recently as August 30, I asked Sharon Dickinson  
when the matter would be considered by the PLUM Committee and she said that she  
didn't know. Apparently, the next day it was scheduled for September 6, 2016, and no  
one notified us.

We ask that the matter be continued so that we have more time to review and comment  
on the EIR, particularly the air quality component.

*Air Quality*

We have reviewed the Air Quality section of the DEIR further and had the following to  
say. First, the DEIR says the assumptions for its conclusions regarding construction and  
operational emissions are in the Appendices, specifically Appendix E.1. We have  
reviewed those Appendices and find them not to clearly elucidate what those assumptions  
are, and at any rate the assumptions should be in the DEIR itself. *See Vineyard Area  
Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal. 4th 412.

With respect to the DEIR at D.IV.B.1-4, under *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal. App. 4th 1184, you should include the health impacts of the different air pollutants causing significant impacts. We don't think you have adequately addressed the significant impacts from ozone as you have not acknowledged an increased mortality risk and the fact that children who live in high ozone communities and participate in multiple sports have been observed to have a higher asthma risk.

At D.IV.B.1-7 you state that Diesel Particulate Matter ("DPM") "may be a health hazard." This is an understatement. It is a known carcinogen and cause of acute health effects.

At D.IV.B.1-8 you indicate that federal nonattainment is categorized under seven levels but you do not expressly acknowledge that we are at the worst level, extreme nonattainment, for ozone, which means that it will take more than 17 years for the region to reach attainment. Since the Project is a causative factor in our not achieving attainment, this is a significant omission.

At D.IV.B.1-49 you indicate that the Project plans to use backup diesel powered emergency generators, but you do not model their impacts. We think you should have conducted a Health Risk Assessment as to the operation of the Project based on an assumed level of use for the generators.

You nowhere, to our knowledge, indicate how long the Project will be under construction, but at D.IV.B.1-50 you indicate that the Project's concurrent construction and operational emissions in 2033 will exceed regional thresholds for VOC and NO<sub>x</sub>.<sup>1</sup> The DEIR should disclose how long construction will be going on and it was entirely proper to do a Health Risk Assessment under these circumstances.

At D.IV.B.1-52 you indicate that because the Project will not involve any substantial stationary source emissions, the proper benchmark is CO emissions. We disagree with this conclusion as vehicles including diesel trucks can have significant NO<sub>x</sub> and PM emissions. We're not sure you assessed whether the Project would lead to an exceedance of an air quality standard with respect to NO<sub>x</sub>, as you there only address localized emissions.

We also disagree with your conclusion that the Project is consistent with the Air Quality Management Plan, as the 188,433 jobs projected in the 2008 RTP should be further broken down by sub-sub-regions. And you should have assessed the more recent 2012 AQMP against the 2012-2035 RTP/SCS.

Finally, and perhaps most importantly, we reviewed your Appendix E.1 and it does not fully disclose the basis for your assumptions and to the extent it does it appears flawed.

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<sup>1</sup> The Appendices, or at least Appendix E.1, do not disclose that construction will be going on for this long, as it appears construction will occur for a maximum of seven years.

Etta Armstrong, Sharon Dickinson and  
Los Angeles City PLUM Committee  
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Specifically, the Appendix appears to group out a series of sub-projects into groups A-D, and even though it acknowledges that those sub-projects will be constructed concurrently, it does not assess the air quality impacts for those sub-projects concurrently. Rather, it picks out the maximum daily emissions for a given year for each sub-group in order to identify when emissions would be significant. We think this substantially understates the emissions that will occur.

Thank you for your consideration of these comments.

Sincerely,

/s/ Craig M. Collins

Craig M. Collins  
Blum Collins LLP

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July 25, 2016

Sharon Dickinson, Legislative Assistant  
Planning and Land Use Management Committee  
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## *Discussion of “the Interim Projects”*

Throughout the DEIR you analyze impacts from the “Interim Projects,” which you assert do not require project approval under CEQA. Yet you are assessing those impacts here. As you also know, CEQA requires the preparation of an EIR “whenever it can be *fairly argued* on the basis of substantial evidence that the project *may* have significant environmental impact.” *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68, 75 (emphasis added); *see also Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal. 4th 1112, 1123. The DEIR fails in providing an adequate project definition because it does not define whether the Interim Projects are a part of the DEIR, the Interim Projects should have been included, and not separately from the rest of the assessments in the DEIR. This is also improper segmentation.

## *Aesthetics & Visual Impacts*

At I-34 the DEIR asserts that digital displays “shall not generate light intensity levels of greater than 2 foot-candles as measured at the property line of the nearest residentially-zoned property outside the boundaries of the Project Site.” Have you considered impacts to multifamily units in commercial zones? Are there any of these that would be impacted and what is your standard for them?

You assert there would be no significant impact to the community from removal of the RKO Globe based on your retaining 60% of the potential RKO Studios Historic District. How are you defining this? By square footage? Retention of the Globe is obviously significant to several members of the community.

You have not adequately addressed the scale of the building at Plymouth and Melrose relative to the rest of the community surrounding it.

#### Air Quality

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Regarding your conclusion that the Project would have regionally significant impacts from NO<sub>x</sub> and VOC from construction and NO<sub>x</sub>, VOC and CO from operation, did your DEIR (as opposed to the Appendices) address the health impacts of these pollutants?

As to your conclusion that the Project would be consistent with the Air Quality Management Plan (“AQMP”), at I-41, we disagree. You assert “Project development would not have a significant long-term impact on the region’s ability to meet State and federal air quality standards,” but this is directly contrary to your findings of significance regarding regional emissions of NO<sub>x</sub>, VOC, and CO. This also relates to Land Use Consistency; you find in the Land Use analysis there is such consistency; we disagree.

Regarding cumulative air quality impacts, we disagree that SCAQMD’s guidance provides substantial evidence for not assessing impacts where the Project impact is less than significant. This approach is contrary to the very definition of what a cumulative impact is. Public Resources Code § 20183(b)(2) defines cumulative impacts to mean “that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.” In other words, inherent in a cumulative impacts

analysis is whether an impact is significant when *combined* with the effects of other past, present, and future projects. This is borne out by the Guidelines. Guidelines § 15130(a)(1) provides “As defined in Section 15355, a cumulative impact consists of an impact which is created *as a result of the combination* of the project evaluated in the EIR together with other projects causing related impacts.” (emphasis supplied). Guidelines § 15064(h)(1) provides:

When assessing whether a cumulative effect requires an EIR, the lead agency shall consider whether the cumulative impact is significant and whether the effects of the project are cumulatively considerable. An EIR must be prepared *if the cumulative impact may be significant and the project's incremental effect, though individually limited, is cumulatively considerable. “Cumulatively considerable” means that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.*

Guidelines § 15064(h)(1) (emphasis supplied).

Guidelines § 15065(a)(3) requires a mandatory finding of significance when “The project has possible environmental effects that are individually limited but cumulatively considerable,” and provides the same definition of “cumulatively considerable.”

Finally, Guidelines § 15355 defines cumulative impacts and states:

*“Cumulative impacts” refer to two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts.*

(a) The individual effects may be changes resulting from a single project or a number of separate projects.

(b) 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. *Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.*

Guidelines § 15355 (emphasis supplied). *See also* Gordon & Herson, “Demystifying CEQA’s Cumulative Impact Analysis Requirements: Guidance for Defensible EIR Evaluation,” *Cal. Env’t’l L. Reporter*, 379, 381 (Sept. 2011) (Vol. 2011, Issue 9) (“Critically, a proposed project’s incremental effects may be ‘cumulatively considerable’ even when its individual effects are limited. (citations). *In other words, CEQA does not excuse an EIR from evaluating cumulative impacts simply because the project-specific analysis determined its impacts would be ‘less than significant.’*” In short, your cumulative impacts analysis is wholly without a basis in substantial evidence and represents a failure to proceed by law.

Also, as to cumulative impacts, you assert that “Regional emissions resulting from operation of the proposed Project are expected to exceed the SCAQMD thresholds for VOC and NO<sub>x</sub>,” and these pollutants would be cumulatively considerable, but you do not address regional CO.

We also think your mitigation is inadequate. A lead agency must impose all reasonably feasible mitigations to reduce its impacts to less than significant levels. Mitigation Measure (“MM”) B.1-1 provides that diesel-powered equipment that would be used an aggregate 40 or more hours “during any portion of construction activities,” which is not defined, will meet CARB Tier 3 standards “where commercially available,” also not defined. Surely such equipment is commercially available, and the escape hatch for an aggregate of 40 or more hours during any portion of construction activities is unduly lenient. In addition, other projects of which we are aware require Tier 4 equipment, and we do not see why a major studio constructing a project in an urban and residential area should have to do less.

MM B.1-3 is required already by CARB.

#### Greenhouse Gas Emissions

Your metric for assessing GHG impacts has been rejected by the Supreme Court in *Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 62 Cal. 4th 204, 225, 227, and we question the validity of your “Business As Usual” (“BAU”) numbers. The Supreme Court looked askance at assuming that the BAU Project would have none of the features required by existing law. You should have assessed the impacts of the Interim Projects as a part of the Project. At I-48 you assert that the Project, which will involve 9,830 new daily trips to the site, will cause “a net decrease in GHG emissions that represents a substantial reduction from BAU.” We do not see how this is possible.

#### Paleontological Resources

You acknowledge that deeper excavations “have the potential to encounter significant remains of fossil vertebrates,” but claim that MM C-10 will reduce impacts to less than significant. However, MM C-10 does not provide for retention of a paleontologist until *after* significant remains are discovered. The Applicant should have a qualified paleontologist train construction staff prior to ground disturbance and there should be a paleontological monitor present for any ground disturbance at lower depths. Also the DEIR provides that if there is a find the paleontologist will provide a report that provides, “if necessary,” for the preservation, conservation or relocation of the resource. Assuming it is truly a paleontological resource, there should be no question regarding its preservation.

#### Geology and Soils; Hazards and Hazardous Materials

You indicate there is a potential abandoned oil well in the northeast corner of the Project Site, but that implementation of MM E-2 would reduce impacts to less than significant. You also indicate that portions of the Site are within a City Methane Buffer Zone but with implementation of MM D-4 you will reduce impacts to less than significant. MM D-4 says that design and construction of the Project will comply with the City's Methane Seepage Regulations, including requirements for site testing. Site testing should have already been done and you should have indicated what the results were from that testing, as well as what the regulations require.

Regarding MM E-1, you provide that construction contracts shall require that if potential contamination is found, work will be halted and contamination evaluated. How do you propose to know if contamination is encountered? An environmental professional should be onsite to test the soils in the areas mapped in Figure IV.E-1. You also do not refer to underground storage tanks ("USTs") in this mitigation measure so you have not mitigated impacts relating to USTs to less than significant levels.

MM E-2 provides that before issuance of a *building* permit (not a grading permit), the Applicant will comply with the regulations of the California State Division of Oil, Gas and Geothermal Resources for (1) site plan review and (2) investigation and/or re-abandonment of the well. Please clarify why re-abandonment is not being required.

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#### Traffic

Sharon Dickinson and the City Council  
July 25, 2016  
Page 6

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Thank you for your consideration.

Sincerely,

Craig M. Collins  
Blum Collins LLP

Attachment: A, B

## **A Framework for Assessing Health Risks of Environmental Exposures to Children**

National Center for Environmental Assessment  
Office of Research and Development  
U.S. Environmental Protection Agency  
Washington, DC

## DISCLAIMER

This document has been reviewed in accordance with U.S. Environmental Protection Agency policy and approved for publication. Mention of trade names or commercial products does not constitute endorsement or recommendation for use.

**Preferred Citation:**

U.S. Environmental Protection Agency (EPA). (2006) A framework for assessing health risks of environmental exposures to children. National Center for Environmental Assessment, Washington, DC; EPA/600/R-05/093F. Available from the National Technical Information Service, Springfield, VA, and online at <http://www.epa.gov/ncea>.

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July 13, 2016

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City of Los Angeles  
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adam.villani@lacity.org

*Via Email & Hand Delivery*

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Blum Collins LLP

Attachment: A, B

Attachment A

EPA/600/R-05/093F  
September 2006

# **A Framework for Assessing Health Risks of Environmental Exposures to Children**

National Center for Environmental Assessment  
Office of Research and Development  
U.S. Environmental Protection Agency  
Washington, DC

## DISCLAIMER

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### **Preferred Citation:**

U.S. Environmental Protection Agency (EPA). (2006) A framework for assessing health risks of environmental exposures to children. National Center for Environmental Assessment, Washington, DC; EPA/600/R-05/093F. Available from the National Technical Information Service, Springfield, VA, and online at <http://www.epa.gov/ncea>.