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November 29, 2023

Los Angeles City Council  
c/o Office of the City Clerk  
City Hall, Room 395  
Los Angeles, California 90012

Attention: PLUM Committee Dear Honorable Members:

**APPEAL SUMMARY AND STAFF RESPONSE. 4260 North Arch Drive and 11201 West  
Ventura Boulevard; CF 23-1084-S1**

**Project Background**

The project involves the construction, use, and maintenance of a new multifamily residential building with 129 dwelling units, including 17 set aside for Very Low Income Households. The proposed building will have approximately 117,000 square feet of floor area and will reach a maximum height of 75 feet with stepbacks at the upper floors at the rear of the building. The proposed project will provide 145 parking spaces, 43 of which will be compact spaces. Parking is provided within a partially subterranean garage accessible through a driveway along Arch Drive. The project will provide a mix of 20 studio units, 73 one-bedroom units, and 36 two-bedroom units. A total of 13,800 square feet of open space will be provided, including an interior courtyard with a pool deck, private balconies, and indoor community amenity areas (recreation room, fitness room, co-working spaces). The proposed project will provide a publicly accessible path between Arch Drive and the Los Angeles River path.

On September 5, 2023, the City Planning Commission (CPC) approved a Density Bonus, pursuant to LAMC Section 12.22 A.25(g), for the construction of the proposed project with two (2) On-Menu Incentives, two (2) Off-Menu Incentives, and two (2) Waiver of Development Standards. The CPC also approved a Project Permit Compliance Review for a project within the Ventura/Cahuenga Boulevard Corridor Specific Plan and a Site Plan Review for a project with 50 or more dwelling units.

On September 14, 2023, the Supporters Alliance for Environmental Responsibility (SAFER) filed an appeal of the Site Plan Review (Case No. CPC-2021-10345-DB-SPP-SPR-WDI-HCA) and CEQA Categorical Exemption – Class 32 for the project (Case No. ENV-2021-10346-CE). Included with the Appeal Application is the Appellant's Justification/Reason for Appeal which

refers to appeal points drafted by their representative, Lozeau Drury LLP. On November 14, 2023, SAFER provided an additional letter drafted by Lozeau Drury LLP, dated July 24, 2023, with additional appeal points. The latter was previously submitted by SAFER prior to the July 27, 2023 City Planning Commission meeting alleging that the Project will have significant air quality and noise impacts. The Applicant's Representative (Jonathan Riker, Venable LLP) responded to the allegations in a letter dated July 27, 2023 explaining that SAFER's claims have no merit. These letters were made available for review to the CPC and at the July 27, 2023 meeting the CPC determined that there was no substantial evidence of any insufficiencies in the CEQA Categorical Exemption – Class 32 and that all of the project's potential environmental impacts have been appropriately analyzed.

For the subject appeal, Staff have compiled the appeals points from the Appellant's Justification/Reason for Appeal and the letter drafted by Lozeau Drury LLP, dated July 24, 2023. Staff has responded to the appeal points below.

### **Staff Recommendation**

Staff recommends that the PLUM Committee recommend for Council Action to deny the submitted CEQA appeal and sustain the City Planning Commission's determination, based on the whole of the administrative record, that the project is exempt from CEQA pursuant to State CEQA Guidelines, Section 15332, Article 19 (Class 32), and that there is no substantial evidence demonstrating that the project would result in significant air quality, noise, and biological impacts and that the project is inconsistent with the City's Green New Deal Policy. The following statements have been compiled and summarized from the submitted appeal and responded to below.

### **Appeal Summary**

On September 14, 2023, the Appellant (Supporters Alliance for Environmental Responsibility (SAFER)) filed with their Appeal Application an Appeal Justification memorandum outlining the reasons for the appeal. The Appellant refers to an attached comment letter provided by their representative, Lozeau Drury LLP, dated August 25, 2023. The letter includes expert comments from Certified Industrial Hygienist, Francis Offermann, PE, CIH, environmental engineers Patrick Sutton and Yilin Tian of Baseline Environmental Consulting, and expert wildlife biologist Dr. Shawn Smallwood and his associate Ms. Noriko Smallwood. The Appellant also refers to an additional letter draft by Lozeau Drury LLP and dated July 24, 2023. The Appellant alleges that the City incorrectly applied CEQA's Class 32 (In-Fill Development) Categorical Exemption to the project and thus a full CEQA analysis is required. Based on the provided comment letter there are three specific points at issue: 1) The Project will have Significant Indoor Air Quality Impacts; 2) The Project will have Significant Biological Impacts; 3) The Project will have Significant Noise Impacts; and The City fails to provide substantial evidence that the Project is consistent with the City's Green New Deal.

### **Appeal Point #1: The Project will have Significant Indoor Air Quality Impacts**

The Appellant refers to comments from Certified Industrial Hygienist, Francis Offermann, PE, CIH and environmental engineers Patrick Sutton and Yilin Tian of Baseline Environmental Consulting alleging that the project will have significant indoor air quality impacts as a result of formaldehyde emissions. The Appellant claims that Project-related formaldehyde emissions will result in increased cancer risk to residents and commercial employees.

In addition, the Appellant alleges that the City failed to perform an adequate analysis concerning the cancer risks associated with long-term exposure to toxic air contaminants (TACs), particularly diesel particulate matter (DPM). In the letter dated July 24, 2023, the Appellant refers to a review letter drafted by Baseline Environmental Consulting stating that the Project did not “provide a quantitative evaluation of the health risks nearby sensitive receptors exposed to DPM emissions generated during project construction”. Baseline Environmental Consulting conducted their own Health Risk Assessment (HRA) for the Project and their assessment found that Project construction would exceed SCAQMD’s threshold of diesel particulate matter (DPM) emissions and expose sensitive receptors to substantial pollutant concentrations. In their assessment, Baseline Environmental Consulting found that the cancer risk (per million) due to DPM emissions during project construction would exceed SCAQMD’s threshold of significance by approximately 6.5 times. The Appellant also claims that the Applicant did not provide an explanation as to why it excluded an assessment related to construction health risks.

The Appellant also claims that the City failed to adequately review and analyze the impacts of motor vehicle traffic and exposure to particulate matter (PM 2.5). In addition, the Appellant claims that the City failed to analyze cumulative impacts associated with the Project’s emissions. Mr. Offermann predicts the annual average PM2.5 concentrations will exceed both state and federal standards, therefore the Appellant contends that the Applicant has failed to provide substantial evidence to support the conclusion that the Project’s air quality impacts will be less than significant.

### **Staff Response**

According to California Building Industry Ass’n v. Bay Area Air Quality Mgmt. Dist. (2015), CEQA does not require the evaluation of the impact of the existing environment on future project residents, unless the Project exacerbates the impact. Based on the air quality analysis conducted by MD Acoustics, LCC for the Project’s Class 32 Categorical Exemption (Focused Air Quality, Greenhouse Gas, and Energy Impact Evaluation, dated October 11, 2022), there is no evidence that there is an existing formaldehyde issue at the project site or that the project would exacerbate any such existing issue. The Appellant refers to Mr. Offerman’s and Baseline Environmental Consulting’s expert comments and CVs as evidence supporting their claim that the Project will expose residents and commercial employees to significant impacts related to indoor air quality and formaldehyde emissions, however they were not filed with the Appellant’s appeal application. Planning Staff confirmed with the Appellant that Mr. Offerman’s expert comments and CV (referred to as “Exhibit A”) were not available for review at the time this letter was drafted. Therefore, Mr. Offermann’s and Baseline Environmental Consulting’s evaluation is not supported by substantial evidence and does not explain how the project’s formaldehyde emissions will result in significant cancer risks to residents and employees.

Similarly, the Appellant fails to provide any substantial data or evidence supporting their allegation that the City failed to perform an adequate analysis concerning the cancer risks associated with long-term exposure to TACs and DPMs. ~~Regarding the Appellant’s claim that the City failed to perform an adequate analysis concerning the cancer risks associated with long-term exposure to TACs, particularly DPMs, the Appellant fails to provide any substantial data or evidence supporting their allegation.~~ While the Appellant refers to Baseline Environmental Consulting’s expert comments, CV, and input parameters and base assumptions for the HRA they conducted, this information was not filed with the Appellant’s appeal application. Planning Staff confirmed

with the Appellant that Baseline Environmental Consulting's expert comments, CV, and HRA (referred to as "Exhibit B") were not available for review at the time this letter was drafted. The Appellant's allegation is unsubstantiated and therefore there is no evidence which supports their claim that the Project would result in significant cancer risks due to TAC emissions and that Project construction would exceed SCAQMD's threshold of diesel particulate matter emissions.

Furthermore, the Project is not obligated to conduct a HRA under the guidance of SCAQMD and the Office of Environmental Health Hazard Assessment (OEHHA) to evaluate health risks associated DPM emissions generated during project construction. SCAQMD requires operational HRAs for activities that may generate high levels of DPM including truck idling and movement (e.g. truck stops, warehouse/distribution centers, transit centers), ship hoteling at ports, and train idling. The Project does not propose or anticipate any of these activities during project operations. Based on the guidance of the (OEHHA) a construction HRA is not required as the anticipated construction time for the Project (approximately 24 months) represents a relatively small portion of a 30-year exposure duration recommended for a construction HRA. The Appellants cites from OEHHA a technical perspective on how construction activities could be evaluated if construction activities would last more than two months in terms of exposure assumptions, however it is inaccurate to extrapolate from this perspective that constructions activities lasting longer than 24 months shall require an assessment. On the contrary, it is up to the local air districts to determine whether construction HRAs are to be required. Therefore, the Project is not required to conduct a HRA and the Appellant does not provide any substantial evidence that the Project would result in significant health risks as a result of TAC and DPM emissions

As demonstrated in the Focused Air Quality, Greenhouse Gas, and Energy Impact Evaluation report conducted by MD Acoustics, LLC dated October 11, 2022 (see Appendices) and the Justification for Project Exemption Case No. ENV-2021-10346-CE, the Project's Class 32 Categorical Exemption properly assessed potential air quality impacts pursuant to SCAQMD guidance. The Project's air quality analysis concluded that the project's emissions will not exceed any regional or localized SCAQMD thresholds and therefore will not result in health impacts associated with VOC, NOX, CO, SOX, and particulate matter (PM 10 and PM 2.5), which are inclusive of fugitive dust and exhaust diesel particulate matter. This is contrary to the Appellant's allegation that the City failed to review and analyze impacts of motor vehicle traffic and exposure to particulate matter, PM2.5. The Project proposes the development of a 129-unit multifamily residential building and a partial subterranean garage. The Project does not propose any land uses that are associated with substantial TAC emissions such as warehouse distribution or large gas dispensing facility. Therefore, the Project is not anticipated to contribute to significant health impacts associated with the emission of formaldehyde or TACs.

The Appellant also fails to provide any substantial evidence that proves that the Project will result in significant cumulative impacts and that the "Cumulative Impacts" exception for categorical exemptions applies. An agency's determination that a project falls within a categorical exemption includes an implied finding that none of the exceptions identified in the CEQA Guidelines apply. Instead, the burden of proof shifts to the challenging party to produce evidence showing that one of the exceptions applies to take the project out of the exempt category. (*Berkley Hillside Preservation v. city of Berkley* (2015) 60 Cal. 4th 1086; *San Francisco Beautiful v. City and County of San Francisco* (2014) 226 Cal.App.4th 1012, 1022-23.). The Appellant relies on speculation and assumptions regarding the project's construction and operation and provides no credible evidence that concludes that the air quality analysis conducted for the Class 32 Categorical Exemption is inaccurate. As demonstrated in the Focused Air Quality, Greenhouse Gas, and

Energy Impact Evaluation report and the Justification for Project Exemption Case No. ENV-2021-10346-CE, the proposed Project meets all criteria to qualify as an infill site under the Class 32 CEQA Exemption, California Environmental Quality Act & CEQA Guidelines Section 15332. Therefore, the “Cumulative Impacts” exception to the Class 32 Categorical Exemption does not apply.

The Class 32 Categorical Exemption substantially finds that construction and operation impacts associated with the Project will have a less than significant impact on the air quality and the preparation of an Environmental Impact Report is not warranted.

### **Appeal Point #2: The Project will have Significant Noise Impacts**

The Appellant cites from a review letter drafted by Baseline Environmental Consulting claiming that the City inadequately relied on the Federal Highway Administration’s (FHWA) guidance on the assessment of Project-related noise impacts. Baseline Environmental Consulting alleges that the FHWA Roadway Construction Noise Model (RCNM) methodology used for in the Cat32 Exemption Noise Impact Assessment conducted by MD Acoustics, LLC does not discuss noise reductions that could be achieved with the use of mufflers and assumes the noise emission reference levels for construction equipment already accounts for the use of mufflers as a noise reduction measure. Therefore, the Appellant believes that additional measures may need to be required for the Project to ensure construction equipment do not exceed the City’s noise threshold of 75 dBA at 50 feet.

Baseline Environmental Consulting also claims that the nearest sensitive receptor (a multi-family residential building located 10 feet northeast from the project construction site) will experience construction-related noise levels that exceed the City’s noise threshold even with the use of mufflers on heavy equipment. Baseline Environmental Consulting calculated that the sensitive receptor would experience noise levels that are 2-9 dBA greater than the 75 dBA threshold. Therefore, the Appellant urges that the City provide supporting evidence demonstrating how the Project will result in less than significant construction noise impacts and an analysis evaluating the effectiveness of implementing additional control measure to reduce noise levels.

The Appellant also refers Mr. Offermann’s comments in which he predicts that the projected traffic noise levels will exceed both state and federal standards, and thereby necessitates the installation of technology to reduce noise impacts to less than significant levels. In addition, the Appellant claims the City failed to analyze the cumulative impacts associated with noise.

### **Staff’s Response**

Regarding the Appellant’s claim that the FHWA RCNM methodology accounts for the use of mufflers in calculating noise emissions reference levels, this is inaccurate and misunderstood. The FHWA RCNM methodology used in the Cat32 Exemption Noise Impact Assessment includes impacts from typical types of equipment measured between 1970 to 2006. Construction equipment measured within this time period may provide minimal noise muffling compared to modern equipment utilized today. The FHWA RCNM methodology used in the Project’s Noise Impact Assessment does not account for newer equipment that runs significantly quieter than older models in which adequate mufflers are included in their default settings. While the specified construction equipment that will be utilized for this Project is not known at this time, the Noise Impact Assessment conducted for this Project assumes the use of 15 dB mufflers for all heavy

equipment and as such projected noise level calculations are not expected to exceed any significance thresholds at any of the identified sensitive receptors. The FHWA RCNM methodology used for this Project provides a conservative analysis of construction noise levels in which all equipment items would operate at the same time during each construction phase. On rare occasions, multiple equipment items may run simultaneously however this is not the case during most of Project construction. Therefore, the Appellant's assumption that the FHWA RCNM methodology accounts for the use of mufflers on construction equipment is false and the Project will not result in a significant construction noise impact.

The Appellant's allegation that the nearest sensitive receptor will experience noise levels that exceed the noise threshold established by LAMC Section 112.05(A) is false. The calculations of potential noise levels that can be experienced at the sensitive receptors identified in the Cat32 Exemption Noise Impact Assessment were taken at the center of the project construction site to reflect the fact that construction equipment would move around the Project site and that the maximum levels reflected would only occur during an extremely limited part of the construction process. This is contrary to Baseline Environmental Consulting's understanding that the noise level calculations shall be based on the distance between the nearest sensitive receptor and the edge of the Project construction site, which is reported to be 10 feet. As stated in their review letter, the calculations shown for the potential noise impact from project construction equipment (Table 1) is based on a 10-foot distance to the nearest sensitive receptor and the use of mufflers on all heavy equipment. It is unclear whether these calculations account for construction equipment moving throughout the Project site and if all equipment items are simultaneously and continuously operated during construction. As previously discussed, the FHWA RCNM methodology used for the Project provides a conservative analysis of construction noise levels. As such, construction noise impacts were appropriately analyzed and will not result in less than in less than significant impacts.

The Appellant falsely claims that the Project will need to install noise buffering technology to address Mr. Offermann's prediction that projected noise levels will exceed state and federal standards without any substantial evidence or data. Based on a traffic study report conducted by Overland Traffic Consultants, Inc in 2022, the Project will contribute approximately 593 daily trips which is significantly lower than the 26,300 trips accounted for by Ventura Boulevard. The Project would need to result in a doubling of traffic in order to increase the existing noise level by 3 dB or more for an audible difference. Therefore, the Project will not exceed any state or federal noise standards with regards to traffic.

In addition, the Appellant fails to provide any substantial evidence supporting its claim that the Project will result in a significant cumulative noise impact and that the "Cumulative Impacts" exception for categorical exemptions applies. An agency's determination that a project falls within a categorical exemption includes an implied finding that none of the exceptions identified in the CEQA Guidelines apply. Instead, the burden of proof shifts to the challenging party to produce evidence showing that one of the exceptions applies to take the project out of the exempt category. (*Berkley Hillside Preservation v. city of Berkley* (2015) 60 Cal. 4th 1086; *San Francisco Beautiful v. City and County of San Francisco* (2014) 226 Cal.App.4th 1012, 1022-23.). The Appellant relies on speculation and assumptions regarding the project's construction noise impacts and provides no credible evidence that concludes that the Noise Impact Assessment conducted for the Class 32 Categorical Exemption is inaccurate. Therefore, the "Cumulative Impacts" exception to the Class 32 Categorical Exemption does not apply.

The Class 32 Categorical Exemption substantially finds that construction and operation impacts associated with the Project will have a less than significant impact on noise quality and the preparation of an Environmental Impact Report is not warranted.

**Appeal Point #3: The Project will have Significant Biological Impacts**

The Appellant alleges that the Project fails to consider the biological significance associated with the Project site's location along the Los Angeles River habitat and that the Project will have a significant impact on a few special-status species which rely on the site as valuable habitat. The Appellant refers to the comments and CV of expert wildlife biologist Dr. Shawn Smallwood, Ph.D. and a survey conducted by Dr. Smallwood's associate, Ms. Noriko Smallwood (referred to as "Exhibit C"). Based on a survey that was conducted on July 29, 2023, Ms. Smallwood detected 21 species of vertebrate wildlife at or near the site, including four species with special status of vertebrate wildlife and an arthropod. These special-status species include the monarch butterfly, Allen's hummingbird, Cooper's hawk, and the California gull. Allen's Hummingbird is listed as a Bird of Conservation Concern (BCC) by the U.S. Fish and Wildlife Services (USFWS). The USFWS explains that the BCC list identifies migratory and non-migratory bird species that represent [the agency's] highest conservation priorities. With the removal of 25 on-site trees for the proposed construction of the Project and the sighting of Cooper's Hawks on the Project site based on Ms. Smallwood's survey, Dr. Smallwood also finds that the Project may interfere with the breeding of Cooper's hawks. However, additional research and surveys would need to be conducted to confirm that breeding of this bird species take place at the site.

**Staff's Response**

While the Appellant cites the comments, CV, and survey conducted by Dr. Shawn Smallwood and Ms. Noriko Smallwood as evidence that the Project will have a significant Biological impact, this information was not filed with the Appellant's appeal application. Planning Staff confirmed with the Appellant that Dr. Smallwood and Ms. Smallwood's expert comments, CV, and survey were not available for review at the time this letter was drafted. Therefore, while the Appellant claims that special-status species were identified at the project site and they would be significantly impacted by the Project's development, the Appellant's allegation is not substantiated with any real data.

As demonstrated in the Justification for Project Exemption Case No. ENV-2021-10346-CE, the Project site has no value as habitat for endangered, rare or threatened species. Therefore, the Project will not result in significant biological impacts.

**Appeal Point #4: The City Fails to Provide Substantial Evidence that the Project is Consistent with the City's Green New Deal Policy**

The Appellant alleges that the City incorrectly concluded that the California Green Building Standards Code of 2019 are consistent with the LA Green New Deal Sustainability City pLAN because the Project is not subject to the Code's voluntary standards, which is independent of the mandatory standards found in the code. Additionally, if the Project is subject to the mandatory standards of the Code, these standards are not consistent with the City's most stringent targets with regards to water, energy, and materials conservation.

**Staff's Response**

In the Focus Air Quality, Greenhouse Gas, and Energy Impact Evaluation conducted by MD Acoustics, LLC, Project consistency with all of the applicable targets within the Green New Deal Sustainable City pLAn were assessed, including Renewable Energy, Local Water, and Clean and Health Buildings, Mobility and Public Transit, Zero Emission Vehicles, and Waste and Resource Recovery. Contrary to the Appellant's claim that City incorrectly concluded that the Project is not subject to the California Green Building Standards Code's voluntary standards, Table 6 (pages 6-8) of the Focus Air Quality, Greenhouse Gas, and Energy Impact Evaluation states that the voluntary standards are mandatory of the 2019 edition of the Code and that the Project will be subject to these mandatory standards. Therefore, the Appellant falsely claims that the Project will not be consistent with the mandatory standards established by the California Green Building Standards Code of 2019 and the Green New Deal Sustainable City pLAn.

### **Conclusion**

Based on the information in the record and after consideration of the appellant's arguments for appeal, Staff determines that the project qualifies for a Class 32 Categorical Exemption. The Appellant presents no substantial evidence demonstrating that the project would result in significant air quality, noise, and biological impacts and that the project is inconsistent with the City's Green New Deal Policy. Therefore, it is recommended that the PLUM Committee deny the appeal and affirm that the project is Categorically Exempt from CEQA.

Sincerely,

VINCENT P. BERTONI, AICP  
Director of Planning

DAVID WOON  
Planning Assistant

HB:SK:DW