

Justification/Reason for Appeal

638 Berendo Project

(DIR-2023-4545-TOC-SPR-VHCA-1A; ENV-2023-4546-CE)

I. REASON FOR THE APPEAL

The Categorical Exemption prepared for the 638 Berendo Project (DIR-2023-4545-TOC-SPR-VHCA-1A; ENV-2023-4546-CE) (“Project”) fails to comply with the California Environmental Quality Act (“CEQA”). Furthermore, the approval of the Site Plan Review entitlements (DIR-2023-4545-TOC-SPR-VHCA-1A) was in error because (1) the City of Los Angeles (“City”) must fully comply with CEQA prior to any approvals in furtherance of the Project and (2) the findings are not supported by substantial evidence. Therefore, the City of Los Angeles (“City”) must set aside the Site Plan Review entitlements and prepare and circulate an environmental impact report (“EIR”) prior to considering approvals for the Project.

II. SPECIFICALLY THE POINTS AT ISSUE

For the specific reasons set forth in the attached comment letter dated November 8, 2024, the Project does not qualify for a categorical exemption pursuant to Section 15332 of the CEQA Guidelines (“Infill Exemption”). Furthermore, proper CEQA review must be complete *before* the City approves the Project’s entitlements. (*Orinda Ass’n. v. Bd. of Supervisors* (1986) 182 Cal.App.3d 1145, 1171 [“No agency may approve a project subject to CEQA until the entire CEQA process is completed and the overall project is lawfully approved.”].) As such, the approval of the Project’s Site Plan Review entitlements was in error. Additionally, by failing to properly conduct environmental review under CEQA, the City lacks substantial evidence to support its findings for the Site Plan Review entitlements.

III. HOW YOU ARE AGGRIEVED BY THE DECISION

Members of appellant Supporters Alliance for Environmental Responsibility (“SAFER”) live and/or work 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.

IV. WHY YOU BELIEVE THE DECISION-MAKER ERRED OR ABUSED THEIR DISCRETION

The City Planning Commission sustained the Planning Director’s August 16, 2024 decision, approved the Site Plan Review and approved a Categorical Exemption for the project pursuant to Section 15332 of the CEQA Guidelines, despite a lack of substantial evidence in the record that the Project met the requirements for the Infill Exemption. Rather than exempt the Project from CEQA, the City should have prepared an initial study followed by an EIR or negative declaration in accordance with CEQA prior to consideration of approvals for the Project. The City is not permitted to approve the Project’s entitlements until proper CEQA review has been completed.



T 510.836.4200
F 510.836.4205

1939 Harrison Street, Ste. 150
Oakland, CA 94612

www.lozeaudrury.com
Hayley@lozeaudrury.com

VIA EMAIL

November 8, 2024

Monique Lawshe, President
And Honorable Commissioners
Los Angeles City Planning Commission
200 North Spring Street, Suite 525
Los Angeles, CA 90012
cpc@lacity.org

David Woon, Planning Assistant
Expedited Processing Division
Los Angeles City Planning Department
200 North Spring Street, Room 763
Los Angeles, CA 90012
david.woon@lacity.org

**Re: Appeal Comment for the California Environmental Quality Act Class 32
Categorical Exemption for the 638 South Berendo Street Project (Case Nos.: DIR-
2023-4545-TOC-SPR-VHCA-1A; ENV-2023-4546-CE)**

Dear Honorable Members of the Los Angeles City Planning Commission and Mr. Woon:

This comment is submitted on behalf of Supporters Alliance for Environmental Responsibility (“SAFER”) and its members living or working in the City of Los Angeles (“City”), in support of SAFER’s appeal of the Planning Director’s August 16, 2024 determination that the California Environmental Quality Act (“CEQA”) Class 32 Categorical Exemption (“Infill Exemption” or “Exemption”) applies to the 638 South Berendo Street Project (DIR-2023-4545-TOC-SPR-VHCA-1A; ENV-2023-4546-CE) (“Project”). The Project proposes the construction and use of a new eight-story residential building with 163 dwelling units, one ground-level of parking, and one subterranean level of parking, located at 638 South Berendo Street, Los Angeles, CA 90005.

After reviewing the Director’s Determination (“Determination”) and the City’s Class 32 Categorical Exemption Report (“Report”) prepared for the Project, we conclude that the Project does not qualify for CEQA’s Infill Exemption because it will have significant adverse impacts on air quality, indoor air quality, noise, and historical resources. The City therefore cannot rely on the Exemption because (1) the Exemption does not apply on its face, (2) the Unusual Circumstances Exception to the Exemption applies, and (3) the Historical Resources Exception to the Exemption applies.

SAFER’s review of the Project has been assisted by expert environmental engineers Patrick Sutton, P.E., and Yilin Tian of Baseline Environmental Consulting (“Baseline”); indoor air quality expert Francis Offermann, P.E., C.I.H.; and expert architectural historian Michael Corbett. Baseline’s comment and CV are attached as Exhibit A and are incorporated herein by

reference in their entirety. Mr. Offermann's comment and CV are attached as Exhibit B and are incorporated herein by reference in their entirety. Mr. Corbett's comment and CV are attached as Exhibit C and are incorporated herein by reference in their entirety.

For the reasons discussed below, the Project does not qualify for CEQA's Infill Exemption. Instead, the Project requires CEQA review to examine its effects on historical resources, and an initial study to determine the appropriate level of CEQA review for the air quality, indoor air quality, and noise impacts before approval, whether an EIR or a mitigated negative declaration ("MND"). SAFER thus respectfully requests that the Planning Commission grant SAFER's appeal and find that the CEQA Infill Exemption does not apply to the Project.

I. PROJECT DESCRIPTION

The Project involves the demolition of an existing surface parking lot and the construction, use, and maintenance of a 99.75-foot-tall, eight-story residential building with a total combined floor area of 86,700 square feet. It will have 163 studio apartment dwelling units, 18 of which will be reserved for Extremely Low Income Households. The Project would also contain at least 12,225 total square feet of open space, including private balconies, two recreation rooms, a second-floor courtyard, and an eighth-floor terrace. Additionally, the Project will have two parking levels, one ground-floor and one subterranean, that together would provide 39 parking spaces and 118 bicycle parking spaces.

The Project site will occupy 36,066 square feet (1.99 acres) of buildable lot area. Its Assessor Parcel Numbers are 5502-026-021 and 5502-026-022. The site is located at 638-646 South Berendo Street and 3273-3289 West Wilshire Boulevard, in the City of Los Angeles. The site is bounded by South Berendo Street to the west, West Wilshire Boulevard to the south, a medical clinic and multi-story commercial-office building to the east, and a five-story residential building and surface parking lot to the north. Located in the urbanized mixed-use neighborhood of Wilshire Center-Koreatown, the site is surrounded by residential, commercial, community, and public facility uses. The site is also within the Wilshire Community Plan Area and is zoned R5P-2, C4-2, and C2-2, with a corresponding General Plan Land Use Designation of Regional Center Commercial.

The site is currently developed with a 15,119-square-foot surface parking lot in the northern portion, and a 33,057-square-foot historic commercial building, the Roseberry Building ("Building"), in the southern portion. While the parking lot would be demolished, the Building would be retained, but the Project would alter the Building's utilitarian rear façade. The Project would also remove two existing non-protected street trees and plant 41 trees on-site.

II. LEGAL STANDARD

CEQA mandates that "the long-term protection of the environment . . . shall be the guiding criterion in public decisions" throughout California. (Pub. Res. Code § 21001(d) ["PRC"].) A "project" is "the whole of an action" directly undertaken, supported, or authorized

by a public agency “which may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.” (PRC § 21065; 14 Cal. Code Regs. § 15378(a) [“CCR”].) CEQA requires environmental factors to be considered at the “earliest possible stage . . . before [the project] gains irreversible momentum,” (*Bozung v. Loc. Agency Formation Com.* (1975) 13 Cal. 3d 263, 284), “at a point in the planning process where genuine flexibility remains.” (*Sundstrom v. Mendocino County* (1988) 202 Cal.App.3d 296, 307.)

To achieve its objectives of environmental protection, CEQA has a three-tiered structure. (14 CCR § 15002(k); *Committee to Save the Hollywoodland Specific Plan v. City of Los Angeles* (2008) 161 Cal.App.4th 1168, 1185-86 [“Hollywoodland”].) First, if a project falls into an exempt category, or if it can be seen with certainty that the activity in question will not have a significant effect on the environment, no further evaluation is required under CEQA. (14 CCR § 15002(k)(1).) Second, if the project is not exempt, and there is a possibility the project will have a significant environmental effect, then the agency must perform an initial threshold study. (14 CCR § 15002(k)(2).) Third, if the initial study indicates that there is no substantial evidence that the project may have a significant environmental effect (*id.*), then a mitigated negative declaration (“MND”) is required, but if the initial study shows that the project may have a significant environmental effect, then an environmental impact report (“EIR”) is required. (14 CCR § 15002(k)(3).) Here, because the City exempted the Project from CEQA entirely, the first step of the CEQA process applies.

CEQA identifies certain classes of projects as exempt from CEQA’s provisions. These are called categorical exemptions. (14 CCR §§ 15300, 15354.) “Exemptions to CEQA are narrowly construed and ‘[e]xemption categories are not to be expanded beyond the reasonable scope of their statutory language.’ [Citations].” (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 125.) The determination as to the appropriate scope of a categorical exemption is a question of law subject to independent, or de novo, review. (*San Lorenzo Valley Community Advocates for Responsible Education v. San Lorenzo Valley Unified School Dist.*, (2006) 139 Cal. App. 4th 1356, 1375 [“[Q]uestions of interpretation or application of the requirements of CEQA are matters of law. [Citations.] Thus, for example, interpreting the scope of a CEQA exemption presents ‘a question of law, subject to de novo review by this court.’”].) Here, the City has recommended that the Project is categorically exempt from CEQA’s requirements pursuant to the Class 32 Exemption, or “Infill Exemption.” (14 CCR § 15332.)

Under CEQA’s Infill Exemption, a project is exempt from CEQA’s requirements if the project meets the following five conditions:

- (a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.
- (b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses.
- (c) The project site has no value, as habitat for endangered, rare, or threatened species.

- (d) ***Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.***
- (e) The site can be adequately served by all required utilities and public services.

(14 CCR § 15332 [emph. added].) Importantly, mitigated categorical exemptions are not allowed. (*Salmon Protection & Watershed Network v. County of Marin* (2004) 125 Cal.App.4th 1098, 1102 [“SPAWN”]; *Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster* (1997) 52 Cal.App.4th 1165, 1200 [“Azusa”].) Agencies may not rely on mitigation measures as a basis for concluding that a project is categorically exempt, or as a basis for determining that one of the significant effects exceptions does not apply.

III. DISCUSSION

A. CEQA’s Infill Exemption does not apply on its face to the Project and thus a full CEQA analysis is required.

The City relies on the CEQA Infill Exemption for the Project. However, the Exemption does not apply on its face if the project will have any significant effects related to traffic, noise, air quality, or water quality. (14 CCR § 15332(d).) Here, the Exemption does not apply to the Project on its face because the Project will have significant adverse impacts on air quality, indoor air quality, and noise. Therefore, the City must prepare an initial study to determine the proper level of CEQA review for these impacts before approval, whether an EIR or an MND.

1. The Project will have significant adverse effects related to air quality health risks, precluding reliance on the Infill Exemption.

Expert environmental engineers Patrick Sutton, P.E., and Yilin Tian from Baseline Environmental Consulting (“Baseline”) have reviewed the Project’s air quality analysis, finding that the Project will create significant air quality health risks that the Project’s Categorical Exemption Report (“Report”) failed to identify. Baseline’s expert comments constitute substantial evidence of the Project’s adverse air quality impacts. The CEQA Infill Exemption does not apply if a project results in significant air quality effects. (14 CCR § 15332(d).) Thus, the Exemption is not allowed.

Baseline concluded that the Project will pose significant health risks from the cancer-causing diesel particulate matter (“DPM”) emitted during the Project’s construction. (Ex. A at 1.) The California Air Resources Board (“CARB”) has identified DPM as a toxic air contaminant (“TAC”), due to its carcinogenic nature. (*Id.*) According to the Report’s air quality analysis, the exhaust from the off-road diesel equipment used during Project construction would generate DPM emissions. (*Id.* at 1, 4.) The Project site is within 80 to 160 feet of nearby residential apartments, where sensitive receptors, such as infants and children, would be exposed to these emissions. (*Id.* at 2, 4.) However, the Report failed to provide a quantitative assessment of the health risks the receptors would face from exposure to the DPM emissions. (*Id.* at 2.) Instead, the Report merely provided a qualitative analysis, concluding without substantial evidence that the

Project would not expose sensitive receptors to significant DPM concentrations. (*Id.* at 2-3.)

Baseline thus performed a quantitative health risk assessment (“HRA”) to measure the cancer risk for the closest sensitive receptors to be exposed to the DPM emissions from Project construction. (*Id.* at 4.) For the HRA, Baseline used the U.S. Environmental Protection Agency’s AERMOD air dispersion model to assess the annual average DPM concentrations around the Project site. (*Id.* at 4.) Additionally, Baseline used the Report’s own calculations of the exhaust DPM emitted from the off-road diesel construction equipment the Project will use. (*Id.*) In particular, the HRA evaluated the incremental increase in cancer risk from exposure to the Project’s DPM emissions for the maximally exposed individual resident (“MEIR”), or infants located in the apartment building only 80 feet north of the Project site and exposed to DPM starting from the third trimester of pregnancy until age two during the Project’s 27-month construction period. (*Id.* at 5.) This exposure scenario represents the most sensitive individual who could be exposed to adverse air quality conditions at the Project site. (*Id.* at 5.)

From its HRA, Baseline found that emissions of less than one pound of DPM per day would result in substantial pollutant concentrations in nearby sensitive receptors. (*Id.* at 3.) During the Project’s 27-month construction period, the estimated cancer risk from exposure to the Project’s unmitigated DPM emissions will be about 49 per million for the MEIR. (*Id.* at 5.) This far exceeds the cancer risk threshold of 10 per million for the South Coast Air Quality Management District (“SCAQMD”). (*Id.*) Therefore, Baseline concluded that “project construction would expose sensitive receptors to substantial pollutant concentrations and the air quality impact would be significant.” (*Id.*)

2. The Project will pose significant health risks from indoor air quality impacts, precluding reliance on the Infill Exemption.

Certified industrial hygienist, Francis Offermann, P.E., C.I.H., has reviewed the Project, the Director’s Determination, and other documents regarding the Project’s indoor air emissions. These documents provide no analysis of the Project’s indoor air quality impacts. Mr. Offermann concludes that the Project will expose its future residents to significant health impacts related to indoor air quality, particularly emissions of the carcinogenic chemical formaldehyde. Mr. Offermann is a leading expert on indoor air quality and has published extensively on the topic.

Mr. Offermann explains that many composite wood products used in building materials commonly found in residences contain formaldehyde-based glues which release formaldehyde gas over a very long period of time. He states, “The primary source of formaldehyde indoors is composite wood products manufactured with urea-formaldehyde resins, such as plywood, medium density fiberboard, and particle board. These materials are commonly used in residential, office, and retail building construction for flooring, cabinetry, baseboards, window shades, interior doors, and window and door trims.” (Ex. B at 2-3.)

Formaldehyde is a known human carcinogen, classified by the State as a TAC. The SCAQMD has established a CEQA significance threshold for airborne cancer risk of 10 per

million. Mr. Offermann found that future Project occupants may be exposed to a cancer risk from formaldehyde emissions of about 120 per million for residents, even assuming that all materials comply with the CARB's formaldehyde airborne toxics control measure. (*Id.* at 4-5.) This exceeds the SCAQMD's CEQA significance threshold for airborne cancer risk. (*Id.* at 2.)

Mr. Offermann concludes that the Project will have significant environmental impacts that must be analyzed in an EIR or MND and mitigation measures must be imposed to reduce the raised cancer risk. (*Id.* at 12-13.) Mr. Offermann prescribes a methodology for estimating the Project's formaldehyde emissions for a more project-specific health risk assessment. (*Id.* at 6-10.) He also identifies feasible several mitigation measures to decrease the significant health risks, like installing air ventilation systems and requiring the use of composite wood materials only for all interior finish systems that are made with CARB-approved no-added formaldehyde ("NAF") resins or ultra-low emitting formaldehyde ("ULEF") resins. (*Id.* at 12-14.)

When a project exceeds a duly adopted CEQA significance threshold, as here, this alone establishes substantial evidence that the project will have a significant adverse environmental impact. Indeed, in many instances, such air quality thresholds are the only criteria reviewed and treated as dispositive in evaluating the significance of a project's air quality impacts. (*See, e.g. Schenck v. County of Sonoma* (2011) 198 Cal.App.4th 949, 960 [County applies Air District's "published CEQA quantitative criteria" and "threshold level of cumulative significance"]; *see also Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 110-11 ["A 'threshold of significance' for a given environmental effect is simply that level at which the lead agency finds the effects of the project to be significant"].) The California Supreme Court has shown the importance an air district significance threshold has in providing substantial evidence of a significant adverse impact. (*Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 327 [estimated emissions in excess of air district's significance thresholds "constitute substantial evidence supporting a fair argument for a significant adverse impact"].) Since expert evidence shows the Project will exceed the SCAQMD's CEQA significance threshold, there is substantial evidence that an "unstudied, potentially significant environmental effect[]" exists. (*See Friends of Coll. of San Mateo Gardens v. San Mateo Cty. Cmty. Coll. Dist.* (2016) 1 Cal.5th 937, 958.)

The City's failure to address the Project's formaldehyde emissions is contrary to the California Supreme Court's decision in *California Building Industry Ass'n v. Bay Area Air Quality Mgmt. Dist.* (2015) 62 Cal.4th 369, 386 ("CBIA"). The Court held in CBIA that CEQA does not generally require lead agencies to analyze the impacts of adjacent environmental conditions on a project. (*Id.* at 800-01.) However, to the extent that a project may exacerbate existing environmental conditions at or near a project site, those effects would still have to be considered pursuant to CEQA. (*Id.* at 801 ["CEQA calls upon an agency to evaluate existing conditions in order to assess whether a project could exacerbate hazards that are already present"].) In so holding, the Court expressly held that CEQA's statutory language requires lead agencies to disclose and analyze "impacts on a project's users or residents that arise from the project's effects on the environment." (*Id.* at 800.)

The carcinogenic formaldehyde emissions Mr. Offermann has identified are not an existing environmental condition. Those emissions will be from the Project. Residential tenants will be the Project's users. Currently, there is presumably little to no formaldehyde emissions at the site. Once built, the Project will start emitting formaldehyde at levels posing significant direct and cumulative health risks to the Project's users. The California Supreme Court in *CBIA* expressly found that this air emission and health impact from the Project on the environment and a "project's users and residents" must be addressed under CEQA.

The California Supreme Court's reasoning is well-grounded in CEQA's statutory language. CEQA expressly includes a project's effects on human beings as an effect on the environment that must be addressed in an environmental review. "Section 21083(b)(3)'s express language, for example, requires a finding of a 'significant effect on the environment' (§ 21083(b)) whenever the 'environmental effects of a project will cause substantial adverse effects *on human beings*, either directly or indirectly.'" (*CBIA*, 62 Cal.4th at 800 [emphasis in original].) Likewise, "the Legislature has made clear—in declarations accompanying CEQA's enactment—that public health and safety are of great importance in the statutory scheme." (*Id.*, citing *e.g.*, §§ 21000, subds. (b), (c), (d), (g), 21001, subds. (b), (d).) It goes without saying that the Project's future residents are humans, and their health and safety must be subjected to CEQA's safeguards.

The City has a duty to investigate issues relating to a project's potential environmental impacts. (*See County Sanitation Dist. No. 2 v. County of Kern*, (2005) 127 Cal.App.4th 1544, 1597–98. ["[U]nder CEQA, the lead agency bears a burden to investigate potential environmental impacts."].) The Project will have significant effects on indoor air quality and health risks by emitting formaldehyde that will expose future residents to cancer risks exceeding SCAQMD's significance threshold for cancer risk of 10 per million. In light of this impact and the City's lack of any evidence to the contrary, the Project does not qualify for the Infill Exemption and must undergo CEQA review before approval.

3. The Project will have significant adverse impacts on noise levels, precluding reliance on the Infill Exemption.

Baseline also reviewed the Project's noise and vibration analyses, concluding that the Project will generate significant noise impacts related to construction. Baseline's expert comments constitute substantial evidence of the Project's significant noise impacts, thereby disqualifying the Project from the Infill Exemption.

Baseline modeled the Project's construction noise levels at adjacent noise-sensitive receptors along the western side of the language school and the medical building next to the Project site, where the potential noise impacts would be the greatest. (Ex. A at 5.) After conducting this modeling and reviewing the construction noise level contour map from the Report's noise analysis, Baseline found that the Project's construction activities will generate noise levels ranging from 65 to 80 dBA along the western side of the neighboring buildings. (*Id.* at 6.) According to the Report, the existing ambient noise level along the western side of the neighboring buildings is about 61.3 dBA. (*Id.*) Hence, the modeled construction noise levels at

noise-sensitive receptors on the western side of the adjacent buildings would be at least 5 dBA higher than the existing ambient noise level. (*Id.*)

According to the City’s 2006 *L.A. CEQA Thresholds Guide*, a project has significant impacts on noise levels from construction if the construction activities, lasting more than ten days in a three-month period, would exceed existing ambient exterior noise levels by at least 5 dBA (hourly Leq) at a noise-sensitive receptor. (*Id.* at 7.) Here, for about 27 months of construction, the modeled construction noise levels along the western side of the language school and medical building would be at least 5 dBA higher than the existing ambient noise level at these sensitive receptors. (*Id.*; Categorical Exemption Report at 2-84.) Thus, “the project’s construction noise impact would be significant . . . [T]herefore, the project does not qualify for a Class 32 CE. As a result, Baseline recommends that the City of Los Angeles prepare a full CEQA analysis . . .” (Ex. A at 7.)

B. The Project does not qualify for CEQA’s Infill Exemption due to the Unusual Circumstances Exception.

The Unusual Circumstances Exception prohibits categorical exemptions where there is a “reasonable possibility” that a project will significantly impact the environment “due to unusual circumstances.” (14 CCR § 15300.2(c).) To determine whether this Exception applies, agencies use a two-part test. They first ask whether a project presents unusual circumstances. If it does, they then ask whether there is a reasonable possibility that a significant environmental effect will result from those unusual circumstances. (*Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1098 [“*Berkeley Hillside*”].) The California Supreme Court has held that “a party may establish an unusual circumstance with evidence that the project *will* have a significant environmental effect.” (*Id.* at 1105 [emph. added].) That evidence, if convincing, necessarily also establishes a reasonable possibility that the project will significantly affect the environment due to those unusual circumstances. (*Id.*)

As discussed above, we have submitted substantial evidence that the Project will have significant adverse environmental effects on air quality, indoor air quality, and noise levels. The fact that these impacts will occur constitutes an unusual circumstance, thereby precluding the City’s reliance on the Exemption.

C. The Project does not qualify for CEQA’s Infill Exemption due to the Historical Resources Exception.

CEQA and its Guidelines, codified in the California Code of Regulations, expressly prohibit reliance on any categorical exemptions where a project “*may* cause a substantial adverse change in the significance of a historical resource.” (PRC § 21084.1(e); 14 CCR § 15300.2(f) [emph. added].) The California Supreme Court held early on that the fair argument standard applies when CEQA uses the phrase “may have a significant environmental impact.” (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 7m5; *Friends of “B” St. v. City of Hayward* (1980) 106 Cal.App.3d 988, 1001.) Thus, in reviewing an agency’s decision to rely on a

categorical exemption, “the fair argument standard applies to the question whether the proposed project ‘may cause a substantial adverse change in the significance of a historical resource’ . . . and thereby have a significant effect on the environment.” (*Berkeley Hillside, supra*, 60 Cal.4th at 1117, quoting *Valley Advocates v. City of Fresno* (2008) 160 Cal.App.4th 1039, 1072).

Under the “fair argument standard,” an agency must prepare an EIR if substantial evidence shows that a project may have a significant environmental impact, even if there is substantial evidence to support a contrary conclusion. (*Architectural Heritage Assn. v. Cnty. of Monterey* (2004) 122 Cal.App.4th 1095, 1110 [“If such evidence is found, it cannot be overcome by substantial evidence to the contrary”]; 14 CCR § 15064(f).) The “fair argument” standard thereby sets an extremely “low threshold” for requiring an EIR. (*No Oil, Inc., supra*, 13 Cal.3d at 84.) Indeed, “if there is a disagreement among experts over the significance of an effect, the agency is to treat the effect as significant.” (*Sierra Club v. Cnty. of Sonoma* (1992) 6 Cal.App.4th 1307, 1317.)

1. There is a fair argument that the Project will have substantial adverse effects on a historical resource, thus precluding reliance on the Infill Exemption.

Expert architectural historian Michael Corbett has reviewed the Project’s 2024 historical resources analysis (“2024 Report”), the Historic Resources Group’s 2022 *Historic Resources Impacts Assessment Report* (“2022 Report”) prepared for an earlier version of the Project at the same site, and other relevant documents. He concluded that the 2024 Report’s analysis failed to recognize the Roseberry Building (“Building”) as a historic resource and that the Project will adversely impact the Building’s significance. Mr. Corbett’s expert comments constitute substantial evidence of the Project’s adverse impacts on a historic resource, thereby creating a fair argument that the Project will substantially affect a historic resource. The CEQA Infill Exemption does not apply if a project results in significant effects on a historic resource. (14 CCR § 15300.2(f).) Thus, the Exemption is not allowed.

i. There is a fair argument that the Roseberry Building is a historic resource.

Whereas the 2024 Report claims that the Roseberry Building is not a historic resource, Mr. Corbett found that the 2022 Report clearly established the Building as a historic resource. (Ex. C at 1-3.) The 2022 Report states that the Building is eligible for listing in the National Register of Historic Places and the California Register of Historical Resources and as a City of Los Angeles Historic-Cultural Monument, so “the Roseberry Building is therefore considered a historical resource.” (*Id.* at 3-4; Historic Resources Group 2022 at 61.) In particular, the 2022 Report found that the Building is historically significant for its association with the surge in commercial development along Wilshire Boulevard in the 1920s and 1930s. (Ex. C at 4.) Furthermore, the 2022 Report found that the Building is significant “as a rare and exceptional example of Churrigueresque style commercial architecture designed by master architects Morgan, Walls & Clements.” (*Id.*) For the current Project, the Historic Resources Group reaffirmed its conclusions from its 2022 evaluation in a memo. In addressing the Project’s effects on historic resources, including the Building, the memo states that “all other aspects of the

evaluation . . . remain valid.” (*Id.* at 5; Historic Resources Group 2023 at 2.) Thus, Mr. Corbett concluded that the Building is a historic resource for the purposes of CEQA. (Ex. C at 5.)

ii. There is a fair argument that some of the Roseberry Building’s elements increase its historical significance.

Mr. Corbett concluded that, for purposes of environmental review of the Project, the list of Character Defining Features for the Building should be amended to include the spaces inside the northern part of the Building that are lit by industrial steel sash windows. (*Id.* at 12.) He found that to label these windows as Character Defining Features but not the spaces behind them is “to divorce the windows from their function and to disregard the windows as highly significant elements of the building type.” (*Id.*) He also noted that, depending on its date of construction, an existing exterior stairway on the north side of the Building could constitute an additional Character Defining Feature, due to its distinct decorative iron details. (*Id.* at 2-3, 12-14.)

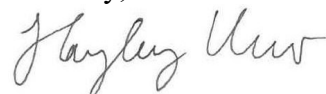
iii. There is a fair argument that the Project will adversely affect the Roseberry Building’s significance as a historical resource.

In the 2024 Report, the City proposes modifying the north side of the Building by blocking the industrial steel sash windows and removing the exterior stairway. (*Id.* at 13.) However, Mr. Corbett found that if the windows were blocked and the spaces behind them were altered, as the 2024 Report proposes, then the interior spaces would lose an essential quality because the spaces behind the windows are distinct features of the Building and are integral to its function and historical significance, thereby constituting an adverse effect on the Building. (*Id.* at 12, 14.) Likewise, pending additional review, removal of the exterior stairway with its unique decorative iron details would adversely affect the Building’s historical significance. (*Id.* at 13-14.) Therefore, due to its substantial impacts on the Building, “the Project would not be eligible for a categorical exemption.” (*Id.* at 15.)

IV. CONCLUSION

The City cannot rely on a CEQA Infill Exemption because the Project does not meet the terms of the Exemption, and the Unusual Circumstances and Historical Resources Exceptions to the Exemption applies. Instead, in accordance with CEQA, the City must prepare an Initial Study followed by either an MND or EIR to examine the Project’s effects on historical resources, air quality, indoor air quality, and noise impacts before approval. Therefore, SAFER respectfully requests that the Planning Commission grant SAFER’s appeal.

Sincerely,



Hayley Uno
LOZEAU DRURY LLP

EXHIBIT A



November 4, 2024 24229-
00

Hayley Uno
Lozeau Drury LLP
1939 Harrison St., Suite 150
Oakland, CA 94612

Subject: Review of Air Quality and Noise Impacts Analyzed for the 638 Berendo Project in the City of Los Angeles

Dear Ms. Uno:

Baseline Environmental Consulting (Baseline) has reviewed the Air Quality and Noise environmental analyses included in the Class 32 Categorical Exemption (CE) for the proposed 638 Berendo Project (project) at 638-646 South Berendo Street in the City of Los Angeles, California (site). The proposed project involves the demolition of an existing surface parking lot and the construction, use, and maintenance of a new eight-story residential building with 163 dwelling units. According to the City, the project is exempt from CEQA pursuant to State CEQA Guidelines, Section 15332 (Class 32), and there is no substantial evidence demonstrating that an exception to a CE pursuant to CEQA Guidelines, Section 15300.2, applies. Based on our review, we have identified flaws in the analysis used to support the significance determinations for the CE, as described in detail below.

Air Quality Health Risks to Sensitive Receptors

Project construction would generate diesel particulate matter (DPM) emissions from the exhaust of off-road diesel equipment that could pose a health risk to nearby sensitive receptors. The California Air Resources Board has identified DPM as a toxic air contaminant (TAC) based on its potential to cause cancer and other adverse health effects.¹ Adverse health effects associated with particulate matter can vary based on factors such as particle size, source, and chemical composition. DPM is typically composed of carbon particles and a variety of organic compounds including more than 40 known cancer-causing organic substances. Additionally, over 90 percent of DPM is less than 1 micron in diameter and can deposit in the deepest regions of the lungs where the lungs are most susceptible to injury.

¹ California Air Resources Board, 1998. Initial Statement of Reasons for Rulemaking; Proposed Identification of Diesel Exhaust as a Toxic Air Contaminant, June.

Ms. Hayley Uno
November 4, 2024
Page 2

The project site is within 80 to 160 feet of nearby residential apartments, where sensitive receptors could be exposed to DPM emissions generated during project construction (**Figure 1**). However, the CE did not provide a quantitative assessment of the health risks to nearby sensitive receptors exposed to DPM emissions generated during project construction. Instead, the CE provided a qualitative analysis that conclude the project would not expose sensitive receptors to substantial DPM concentrations. As discussed below, this conclusion is not supported by substantial evidence.

Figure 1. Sensitive Receptors near the Project Site



Ms. Hayley Uno
November 4, 2024
Page 3

Unsubstantiated Analysis of Construction Health Risks

Page 2-84 of the CE includes several misleading and unsubstantiated statements in an attempt to justify the exclusion of a quantified health risk assessment for DPM emissions during project construction. The first false statement included in the CE air quality analysis is as follows:

The construction emissions modeling conservatively assumed that all equipment present on the Project Site would be operating simultaneously throughout most of the day, while in all likelihood this would rarely be the case.

This is a false statement, because the CalEEMod report included in Appendix E of the CE did not assume all construction equipment would be operating simultaneously for 8 hours per day. For example, the model assumed that a rubber-tired dozer would only operate for 1 hour per day during demolition. Furthermore, the emission calculations used in the model include the use of a “load factor”, which adjusts the emission rate for each type of equipment based on the rated horsepower to account for periods of equipment idling, partial load conditions, and transient operations throughout an average workday. For example, the load factor used in the model for the rubber-tired dozer during demolition was 0.4, which means the dozer would only operate at 40 percent of its maximum rated-horsepower per workday. This is equivalent to assuming the dozer will only operate at full engine power for about 24 minutes per workday during demolition.² The CE seems to suggest that the model calculations are overly conservative, but this is not true based on the actual hours of operation and load factors used in the model.

The second false statement included in the CE air quality analysis is as follows:

Average daily emissions of diesel PM would be less than one pound per day throughout the course of Project construction. Therefore, the magnitude of daily diesel PM emissions, would not be sufficient to result in substantial pollutant concentrations at off-site locations nearby.

This is a false statement because there is no supporting evidence provided to explain why emitting less than 1 pound per days of DPM would not result in substantial pollutant concentrations at nearby sensitive receptors. Furthermore, the health risk assessment prepared by Baseline (see below) demonstrates that emitting less than 1 pound of DPM per day would result in substantial pollutant concentrations at nearby sensitive receptors.

The third false statement included in the CE air quality analysis is as follows:

... according to SCAQMD methodology, health risks from carcinogenic air toxics are usually described in terms of individual cancer risk. “Individual Cancer Risk” is the likelihood that a person exposed to concentrations of TACs over a 30-year period will contract cancer based on

² 0.4 x 60 minutes/workday = 24 minutes

Ms. Hayley Uno
November 4, 2024
Page 4

the use of standard risk-assessment methodology. The entire duration of construction activities associated with implementation of the Project is anticipated to be approximately 27 months, and the magnitude of daily diesel PM emissions will vary over this time period.

This statement is completely contrary to, and unsupported by, the Office of Environmental Health Hazard Assessment's (OEHHA) guidance for preparing health risk assessments.³ According to OEHHA, the uncertainty in assessing very short-term exposures to TACs only applies to construction activities lasting less than two months. As stated above, the duration of project construction is expected to last approximately 27 months, which is substantially longer than the two-month limitation for short-term exposures recommended by OEHHA.

Furthermore, OEHHA also states that there is **valid scientific concern** regarding the health effects on children exposed to airborne carcinogens such as DPM from short-term construction activities lasting more than two months. This is because infants and children are generally more susceptible to health effects from exposure to carcinogens than adults. In addition, when accounting for the higher breathing rate per body mass and higher fraction of time at home for a child versus an adult, the estimated cancer risk for a child can be up to 48 times higher than an adult exposed to the same concentration of DPM. Therefore, the short-term nature of construction activities described in the CE is not substantial evidence for dismissing construction-related health risks, especially regarding the health risks posed to nearby children.

Construction Health Risk Analysis

Baseline has prepared a health risk assessment to estimate the incremental increase in cancer risk at nearby sensitive receptors exposed to DPM emissions during project construction. The annual average concentrations of DPM during construction were estimated in the vicinity of the project using the U.S. Environmental Protection Agency's AERMOD air dispersion model. For this analysis, emissions of exhaust coarse particulate matter (PM₁₀) were used as a surrogate for DPM. Exhaust DPM emissions from off-road diesel construction equipment were obtained from Appendix E of the CE. The input parameters and assumptions used for estimating emission rates of DPM from off-road diesel construction equipment are provided in **Attachment A**.

The exhaust from off-road equipment was represented in the AERMOD model as an area source encompassing the project site with a unit emission rate of 1 gram per second, which was later scaled by the actual average emission rate. A variable emissions scenario was used based on the assumption that daily emissions from project construction would occur over a typical 8-hour workday from 9:00 AM to 5:00 PM Monday through Friday. In other words, there would be no emissions from the project site during the weekends or between the hours of 5:00 PM and 9:00 AM.

³ Office of Environmental Health Hazard Assessment (OEHHA). 2015. Air Toxics Hot Spots Program Guidance Manual for Preparation of Health Risk Assessments. February.

A uniform grid of receptors spaced 10 meters apart with receptor heights at ground-level receptors was encompassed around the project site as a means of developing isopleths (i.e., concentration contours) that illustrate the air dispersion pattern of emissions from the construction site. The AERMOD model input parameters included five years of meteorological data from Station CELA (Central L.A.) located about 4 miles east of the project site.

Based on the annual average concentrations of DPM estimated using the air dispersion model, potential health risks were evaluated for the maximally exposed individual resident (MEIR) located in the apartment building approximately 80 feet north of the project site (**Figure 1**). The incremental increase in cancer risk from on-site DPM emissions was assessed for an infant exposed to DPM starting from the third trimester of pregnancy until the age of 2 during 27 months of construction. This exposure scenario represents the most sensitive individual who could be exposed to adverse air quality conditions in the vicinity of the project site. The input parameters and results of the health risk assessment are included in **Attachment A**.

Table 1 summarizes the estimated health risks at the MEIR due to unmitigated DPM emissions from project construction. The estimated cancer risk at the MEIR from exposure to DPM emissions during project construction emissions is approximately 49 in a million, which exceeds the South Coast Air Quality Management District's cancer-risk threshold of 10 in a million. Therefore, project construction would expose sensitive receptors to substantial pollutant concentrations and the air quality impact would be significant.

Table 1. Health Risks at MEIR During Project Construction

Construction Scenario	Cancer Risk (per million)
Unmitigated Emissions	49
Threshold of Significance	10
Threshold Exceedance?	Yes

Source: See Attachment A

Construction Noise Impacts

The CE failed to properly evaluate construction noise levels at adjacent noise-sensitive receptors: the language school to the northeast of the project site and a medical building to the east of the project site. As shown in **Figure 2** (see green dots), the noise levels modeled in the CE at the adjacent language school and medical building were 41.0 dBA and 42.4 dBA, respectively. However, these noise levels were modeled on the far side of the buildings away from the project site, where the potential noise impacts would be the lowest. The CE should have evaluated the construction noise levels along the western side of the adjacent buildings closest to the project site, where the potential noise impact would be greatest.

Figure 2. Construction Noise Levels at Adjacent Noise Sensitive Receptors



- Modeled Noise Levels Reported in CE
- Modeled Noise Levels NOT reported in the CE

Source: 638 Berendo Project Categorical Exemption, Page 2-43

Based on review of the construction noise level contour map included in Appendix D-1 of the CE, the noise levels along the western side of the adjacent language school and medical building would range from approximately 65 and 80 dBA (**Figure 2**, see orange dots). According to Table 6-5 on page 2-43 of the CE, the existing ambient noise level along Berendo Street near the western side of the language school and medical building is approximately 61.3 dBA. The modeled construction-generated noise levels along the western side of the medical building and possibly the language school are more than 5 dBA higher than the existing ambient noise level.

Ms. Hayley Uno
November 4, 2024
Page 7

In accordance with the City's 2006 *L.A. CEQA Thresholds Guide*,⁴ a project would normally have a significant impact on noise levels from construction if construction activities lasting more than 10 days in a three-month period would exceed existing ambient exterior noise levels by 5 dBA (hourly Leq⁵) or more at a noise-sensitive receptor. Because the modeled construction-generated noise levels along the western side of the language school and medical building are more than 5 dBA higher than the existing ambient noise level for these sensitive receptors, the project's construction noise impact would be significant.

Conclusions

Based on our review of the CE, construction of the project would result in significant impacts related to air quality and noise; therefore, the project does not qualify for a Class 32 CE. As a result, Baseline recommends that the City of Los Angeles prepare a full CEQA analysis to evaluate and mitigate the air quality and noise impacts described above.

Sincerely,



Patrick Sutton
Principal Environmental Engineer



Yilin Yian
Environmental Engineer

⁴ City of Los Angeles, 2006. *L.A. CEQA Thresholds Guide*.

⁵ The average A-weighted noise level during the measurement period.

ATTACHMENT A

Health Risk Assessment

Summary of AERMOD Model Parameters, Assumptions, and Results for DPM Emissions from Construction

AERMOD Model Parameters and Assumptions				
Source Type	Units	Value	Notes	
Area Source: Off Road Equipment Exhaust (DPM)				
Average Daily DPM Emission	lb/day	0.206	Exhaust PM10 emissions from offroad equipment obtained from CalEEMod. This average daily DPM emission rate was calculated based on the total off-road PM10 exhaust emissions and construction duration of 567 workdays (27 months).	
Average Hours/Workday	hours/day	8.00	Assumed 8 hours per workday, five days per week.	
DPM Emission Rate during Workday	gram/second	0.00325	The DPM emission rate is used to convert the unit emission results from AERMOD into the project emission results.	
Release Height	meters	5.0	SMAQMD, 2015	
Initial Vertical Dimension	meters	1.4	USEPA, 2022	
AERMOD Model Results				
Sensitive Receptor	Pollutant	Annual Average Concentration (unit emission rate, µg/m³)	Annual Average Concentration (actual emission rate, µg/m³)	Notes
MEIR	DPM	51.58	0.1675	Nearest residential receptor

Notes:

DPM = diesel particulate matter

PM10 = particulate matter with aerodynamic resistance diameters equal to or less than 10 microns

$\mu\text{g}/\text{m}^3$ = micrograms per cubic meter

Sacramento Metropolitan Air Quality Management District (SMAQMD), 2015. Guide to Air Quality Assessment in Sacramento County. June.

U.S. Environmental Protection Agency (USEPA), 2022. User's Guide for the AMS/EPA Regulatory Model (AERMOD).

Summary of Health Risk Assessment at the Maximally Exposed Individual Resident

Health Risk Assessment Parameters and Results				
Inhalation Cancer Risk Assessment for DPM	Units	3rd trimester	0 2 Year Infant	Notes
DPM Concentration (C)	$\mu\text{g}/\text{m}^3$	0.167	0.167	AERMOD Annual Average
Daily Breathing Rate (DBR)	L/kg-day	361	1090	OEHHA, 2015
Inhalation absorption factor (A)	unitless	1.0	1.0	OEHHA, 2015
Exposure Frequency (EF)	unitless	0.96	0.96	350 days/365 days in a year (OEHHA, 2015)
Dose Conversion Factor (CF_D)	$\text{mg}\cdot\text{m}^3/\mu\text{g}\cdot\text{L}$	0.000001	0.000001	Conversion of μg to mg and L to m^3
Dose (D)	$\text{mg}/\text{kg}/\text{day}$	0.000058	0.000175	$C \cdot \text{DBR} \cdot A \cdot \text{EF} \cdot \text{CF}_D$ (OEHHA, 2015)
Cancer Potency Factor (CPF)	$(\text{mg}/\text{kg}/\text{day})^{-1}$	1.1	1.1	OEHHA, 2015
Age Sensitivity Factor (ASF)	unitless	10	10	OEHHA, 2015
Annual Exposure Duration (ED)	years	0.25	2.0	Based on total construction period of 27 months
Averaging Time (AT)	years	70	70	70 years for residents (OEHHA, 2015)
Fraction of time at home (FAH)	unitless	0.85	0.85	OEHHA, 2015
Cancer Risk Conversion Factor (CF)	m^3/L	1000000	1000000	Chances per million (OEHHA, 2015)
Cancer Risk	per million	1.94	46.77	$D \cdot \text{CPF} \cdot \text{ASF} \cdot \text{ED} / \text{AT} \cdot \text{FAH} \cdot \text{CF}$ (OEHHA, 2015)
Total Cancer Risk		48.7		At closest sensitive receptor (80 feet)

Notes:

DPM = diesel particulate matter

REL = reference exposure level

$\mu\text{g}/\text{m}^3$ = micrograms per cubic meter

L/kg-day = liters per kilogram-day

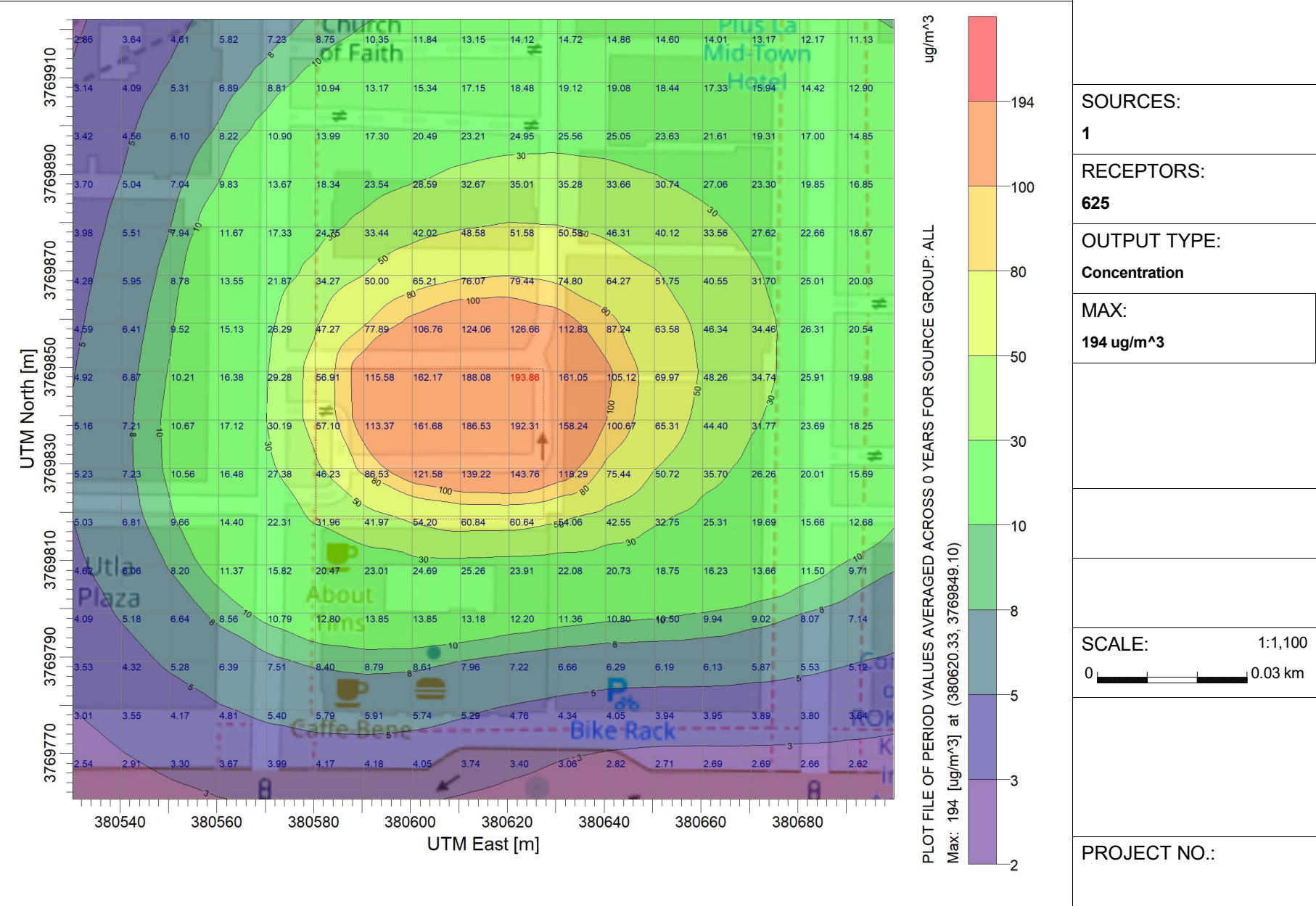
m^3/L = cubic meters per liter

$(\text{mg}/\text{kg}/\text{day})^{-1}$ = 1/milligrams per kilograms per day

Office of Environmental Health Hazard Assessment (OEHHA), 2015. Air Toxics Hot Spots Program Guidance Manual for Preparation of Health Risk Assessments. February.

PROJECT TITLE:
C:\Users\patrick\Desktop\Berendo\Berendo.isc

COMMENTS:
Based on unit emission rate.



ATTACHMENT B

Staff Resumes

Patrick Sutton, P.E.

Principal Environmental Engineer



Areas of Expertise

Air Quality, GHGs, Noise, Hazardous Materials, Geology, and Hydrology

Education

M.S., Civil and Environmental Engineering, University of California – Davis

B.S., Environmental Science, Dickinson College

Registration

Professional Engineer No. 13609 (RI)

Years of Experience

20 Years

Patrick Sutton is an environmental engineer who specializes in the assessment of hazardous materials released into the environment. Mr. Sutton prepares technical reports in support of environmental review, such as Phase I/II Environmental Site Investigations, Air Quality Reports, and Health Risk Assessments. He has prepared numerous CEQA/NEPA evaluations for air quality, GHGs, noise, energy, geology, hazardous materials, and water quality related to residential, commercial, and industrial projects, as well as large infrastructure developments. His proficiency in a wide range of modeling software (AERMOD, CalEEMod, RCEM, CT-EMFAC) as well as relational databases, GIS, and graphics design allows him to thoroughly and efficiently assess and mitigate environmental concerns.

For mixed-use development projects, Mr. Sutton has prepared health risk assessments for sensitive receptors exposed to toxic air contaminants based on air dispersion modeling. For large transportation improvement projects, Mr. Sutton has prepared air quality and hazardous materials technical reports in accordance with Caltrans requirements. The air quality assessments include the evaluation of criteria air pollutants, mobile source air toxics, and GHG emissions to support environmental review of the project under CEQA/NEPA and to determine conformity with the State Implementation Plan. The hazardous materials investigations include sampling and statistically analysis of aerially-deposited lead adjacent to highway corridors. Mr. Sutton is also an active member of ASTM International and is the author of the Standard Practice for Low-Flow Purging and Sampling Used for Groundwater Monitoring.

Project Experience

Oakland Downtown Specific Plan EIR. Prepared a program- and project-level Air Quality and GHG Emissions analysis. Developed a mitigation measure with performance standards to ensure GHG emissions from future projects comply with the Citywide 2030 GHG reduction target.

I 680 Express Lanes from SR 84 to Alcosta Boulevard Project. Prepared Initial Site Assessment and Preliminary Site Investigation to evaluate contaminants of potential concern in soil and groundwater. Prepared Air Quality Report to determine the project's conformity to federal air quality regulations and to support environmental review of the project under CEQA and NEPA.

Altamont Corridor Expressway (ACE/Forward) Project EIR/EIS. Prepared a program- and project-level Hazardous Materials analysis for over 120 miles of railroad corridor from San Jose to Merced. Hazardous materials concerns, such as release sites, petroleum pipelines, agricultural pesticides, and nearby school sites were evaluated in GIS.

Stonegate Residential Subdivision EIR. Prepared a project-level Hydrology and Water Quality analysis for a residential development located within the 100-year floodplain. The proposed project included modifications to existing levees and flood channels.

BART Silicon Valley Extension Project. Prepared Initial Site Assessment and Hazardous Materials EIS/EIR section for extending 6 miles of proposed BART service through the Cities of San Jose and Santa Clara.

Yilin Tian, Ph.D.

Environmental Engineer



Areas of Expertise

Air Quality, GHG, Noise, Energy, and Environmental Compliance

Education

Ph.D./M.S., Environmental Science and Engineering, Clarkson University

B.S., Environmental Science, Beijing University of Technology

Registrations/Certifications

40-hour HAZWOPER training

Engineer-In-Training, No. 167986

Years of Experience

12 Years

Yilin Tian is an environmental engineer who specializes in the analysis of air quality and human exposure to toxic air contaminants. For environmental review under NEPA and CEQA, Yilin assists in the analysis of air quality, greenhouse gas (GHG), noise and vibration, and energy impacts. She is also familiar with federal, state, and local environmental regulations and guidelines related to NEPA/CEQA review. Yilin has worked on variety of land uses development projects, including large mixed-use infill, wetland restoration, levee improvement, and highway expansion projects. She is experienced with preparing health risk assessments for sensitive receptors exposed to toxic air contaminants during construction and operation. Yilin is proficient with air pollution models (e.g., CalEEMod and AERMOD), noise models (e.g., FHWA TNM, FHWA RCNM, and SoundPLAN), geospatial data analysis, and database management.

Besides NEPA/CEQA studies, Yilin has worked with the Bay Area Air Management District (BAAQMD) to improve existing emissions estimation techniques and update emission inventories related to wood-burning devices and ammonia emissions in the Bay Area. Her strong background in statistics and air pollutants emissions allows her to process and analyze data properly and efficiently.

Yilin has assisted the City of Berkeley and the San Francisco Public Utilities Commission (SFPUC) with environmental compliance and mitigation monitoring, including reviewing submittals and performing environmental field inspections. Beyond that, Yilin has experience with Phase I Environmental Site Assessments, air monitoring, noise monitoring, and the state's Underground Storage Tank Cleanup Fund application.

Project Experience

Potrero Yard Modernization Project EIR – Prepared Supplemental Air Quality, HRA, and Noise and Vibration analysis for the refined project design of the Potrero Yard Modernization Project.

Belvedere Seismic Upgrade Project EIR – Prepared Air Quality, GHG Emissions, and Noise and Vibration analysis for the installation of sheet piling along specific roadway segments in an area of existing levees in Belvedere.

Saratoga Housing Element Update EIR – Prepared noise and vibration analysis for the Saratoga General Plan Housing Element Update.

I- 0/Ashby Avenue Interchange Improvement Project. Prepared Air Quality Report to determine the project's conformity to federal air quality regulations and to support environmental review of the project under CEQA and NEPA.

Residential Wood Combustion for San Francisco Bay Area. Updated the methodology and datasets used by the BAAQMD to quantify residential wood combustion emissions within the San Francisco Bay Area Air Basin.

Environmental Compliance Monitoring for the City of Berkeley – Reviewed noise reduction plans submitted by the developers against the requirements of the MMRP and standard conditions of approval.

EXHIBIT B



INDOOR ENVIRONMENTAL ENGINEERING



1448 Pine Street, Suite 103 San Francisco, California 94109

Telephone: (415) 567-7700

E-mail: offermann@IEE-SF.com

<http://www.iee-sf.com>

Date: September 18, 2024

To: Hayley Uno
Lozeau | Drury LLP
1939 Harrison Street, Suite 150
Oakland, California 94612

From: Francis J. Offermann PE CIH

Subject: Indoor Air Quality: 638 S. Berendo Street Project, Los Angeles, CA.
(IEE File Reference: P-4827)

Pages: 19

Indoor Air Quality Impacts

Indoor air quality (IAQ) directly impacts the comfort and health of building occupants, and the achievement of acceptable IAQ in newly constructed and renovated buildings is a well-recognized design objective. For example, IAQ is addressed by major high-performance building rating systems and building codes (California Building Standards Commission, 2014; USGBC, 2014). Indoor air quality in homes is particularly important because occupants, on average, spend approximately ninety percent of their time indoors with the majority of this time spent at home (EPA, 2011). Some segments of the population that are most susceptible to the effects of poor IAQ, such as the very young and the elderly, occupy their homes almost continuously. Additionally, an increasing number of adults are working from home at least some of the time during the workweek. Indoor air quality also is a serious concern for workers in hotels, offices and other business establishments.

The concentrations of many air pollutants often are elevated in homes and other buildings relative to outdoor air because many of the materials and products used indoors contain and release a variety of pollutants to air (Hodgson et al., 2002; Offermann and Hodgson,

2011). With respect to indoor air contaminants for which inhalation is the primary route of exposure, the critical design and construction parameters are the provision of adequate ventilation and the reduction of indoor sources of the contaminants.

Indoor Formaldehyde Concentrations Impact. In the California New Home Study (CNHS) of 108 new homes in California (Offermann, 2009), 25 air contaminants were measured, and formaldehyde was identified as the indoor air contaminant with the highest cancer risk as determined by the California Proposition 65 Safe Harbor Levels (OEHHA, 2017a), No Significant Risk Levels (NSRL) for carcinogens. The NSRL is the daily intake level calculated to result in one excess case of cancer in an exposed population of 100,000 (i.e., ten in one million cancer risk) and for formaldehyde is 40 µg/day. The NSRL concentration of formaldehyde that represents a daily dose of 40 µg is 2 µg/m³, assuming a continuous 24-hour exposure, a total daily inhaled air volume of 20 m³, and 100% absorption by the respiratory system. All of the CNHS homes exceeded this NSRL concentration of 2 µg/m³. The median indoor formaldehyde concentration was 36 µg/m³, and ranged from 4.8 to 136 µg/m³, which corresponds to a median exceedance of the 2 µg/m³ NSRL concentration of 18 and a range of 2.3 to 68.

Therefore, the cancer risk of a resident living in a California home with the median indoor formaldehyde concentration of 36 µg/m³, is 180 per million as a result of formaldehyde alone. The CEQA significance threshold for airborne cancer risk is 10 per million, as established by the San Diego County Air Pollution Control District (SDAPCD, 2021).

Besides being a human carcinogen, formaldehyde is also a potent eye and respiratory irritant. In the CNHS, many homes exceeded the non-cancer reference exposure levels (RELs) prescribed by California Office of Environmental Health Hazard Assessment (OEHHA, 2017b). The percentage of homes exceeding the RELs ranged from 98% for the Chronic REL of 9 µg/m³ to 28% for the Acute REL of 55 µg/m³.

The primary source of formaldehyde indoors is composite wood products manufactured with urea-formaldehyde resins, such as plywood, medium density fiberboard, and

particleboard. These materials are commonly used in building construction for flooring, cabinetry, baseboards, window shades, interior doors, and window and door trims.

In January 2009, the California Air Resources Board (CARB) adopted an airborne toxics control measure (ATCM) to reduce formaldehyde emissions from composite wood products, including hardwood plywood, particleboard, medium density fiberboard, and also furniture and other finished products made with these wood products (California Air Resources Board 2009). While this formaldehyde ATCM has resulted in reduced emissions from composite wood products sold in California, they do not preclude that homes built with composite wood products meeting the CARB ATCM will have indoor formaldehyde concentrations below cancer and non-cancer exposure guidelines.

A follow up study to the California New Home Study (CNHS) was conducted in 2016-2018 (Singer et. al., 2019), and found that the median indoor formaldehyde in new homes built after 2009 with CARB Phase 2 Formaldehyde ATCM materials had lower indoor formaldehyde concentrations, with a median indoor concentrations of $22.4 \mu\text{g}/\text{m}^3$ (18.2 ppb) as compared to a median of $36 \mu\text{g}/\text{m}^3$ found in the 2007 CNHS. Unlike in the CNHS study where formaldehyde concentrations were measured with pumped DNPH samplers, the formaldehyde concentrations in the HENGH study were measured with passive samplers, which were estimated to under-measure the true indoor formaldehyde concentrations by approximately 7.5%. Applying this correction to the HENGH indoor formaldehyde concentrations results in a median indoor concentration of $24.1 \mu\text{g}/\text{m}^3$, which is 33% lower than the $36 \mu\text{g}/\text{m}^3$ found in the 2007 CNHS.

Thus, while new homes built after the 2009 CARB formaldehyde ATCM have a 33% lower median indoor formaldehyde concentration and cancer risk, the median lifetime cancer risk is still 120 per million for homes built with CARB compliant composite wood products. This median lifetime cancer risk is more than 12 times the OEHHA 10 in a million cancer risk threshold (OEHHA, 2017a).

With respect to the 638 S. Berendo Street Project, Los Angeles, CA, the buildings consist of residential spaces.

The residential occupants will potentially have continuous exposure (e.g. 24 hours per day, 52 weeks per year). These exposures are anticipated to result in significant cancer risks resulting from exposures to formaldehyde released by the building materials and furnishing commonly found in residential construction.

Because these residences will be constructed with CARB Phase 2 Formaldehyde ATCM materials, and be ventilated with the minimum code required amount of outdoor air, the indoor residential formaldehyde concentrations are likely similar to those concentrations observed in residences built with CARB Phase 2 Formaldehyde ATCM materials, which is a median of 24.1 $\mu\text{g}/\text{m}^3$ (Singer et. al., 2020)

Assuming that the residential occupants inhale 20 m^3 of air per day, the average 70-year lifetime formaldehyde daily dose is 482 $\mu\text{g}/\text{day}$ for continuous exposure in the residences. This exposure represents a cancer risk of 120 per million, which is more than 12 times the CEQA cancer risk of 10 per million. For occupants that do not have continuous exposure, the cancer risk will be proportionally less but still substantially over the CEQA cancer risk of 10 per million (e.g. for 12/hour/day occupancy, more than 6 times the CEQA cancer risk of 10 per million).

In addition, we note that the average outdoor air concentration of formaldehyde in California is 3 ppb, or 3.7 $\mu\text{g}/\text{m}^3$, (California Air Resources Board, 2004), and thus represents an average pre-existing background airborne cancer risk of 1.85 per million. Thus, the indoor air formaldehyde exposures describe above exacerbate this pre-existing risk resulting from outdoor air formaldehyde exposures.

Additionally, the SCAQMD's Multiple Air Toxics Exposure Study ("MATES V") identifies an existing cancer risk at the Project site of 621 per million due to the site's elevated ambient air contaminant concentrations, which are due to the area's high levels of vehicle traffic. These impacts would further exacerbate the pre-existing cancer risk to the building occupants, which result from exposure to formaldehyde in both indoor and outdoor air.

Appendix A, Indoor Formaldehyde Concentrations and the CARB Formaldehyde ATCM, provides analyses that show utilization of CARB Phase 2 Formaldehyde ATCM materials will not ensure acceptable cancer risks with respect to formaldehyde emissions from composite wood products.

Even composite wood products manufactured with CARB certified ultra low emitting formaldehyde (ULEF) resins do not insure that the indoor air will have concentrations of formaldehyde that meet the OEHHA cancer risks that substantially exceed 10 per million. The permissible emission rates for ULEF composite wood products are only 11-15% lower than the CARB Phase 2 emission rates. Only use of composite wood products made with no-added formaldehyde resins (NAF), such as resins made from soy, polyvinyl acetate, or methylene diisocyanate can insure that the OEHHA cancer risk of 10 per million is met.

The following describes a method that should be used, prior to construction in the environmental review under CEQA, for determining whether the indoor concentrations resulting from the formaldehyde emissions of specific building materials/furnishings selected exceed cancer and non-cancer guidelines. Such a design analyses can be used to identify those materials/furnishings prior to the completion of the City's CEQA review and project approval, that have formaldehyde emission rates that contribute to indoor concentrations that exceed cancer and non-cancer guidelines, so that alternative lower emitting materials/furnishings may be selected and/or higher minimum outdoor air ventilation rates can be increased to achieve acceptable indoor concentrations and incorporated as mitigation measures for this project.

Pre-Construction Building Material/Furnishing Formaldehyde Emissions Assessment

This formaldehyde emissions assessment should be used in the environmental review under CEQA to assess the indoor formaldehyde concentrations from the proposed loading of building materials/furnishings, the area-specific formaldehyde emission rate data for building materials/furnishings, and the design minimum outdoor air ventilation rates. This assessment allows the applicant (and the City) to determine, before the conclusion of the

environmental review process and the building materials/furnishings are specified, purchased, and installed, if the total chemical emissions will exceed cancer and non-cancer guidelines, and if so, allow for changes in the selection of specific material/furnishings and/or the design minimum outdoor air ventilations rates such that cancer and non-cancer guidelines are not exceeded.

1.) Define Indoor Air Quality Zones. Divide the building into separate indoor air quality zones, (IAQ Zones). IAQ Zones are defined as areas of well-mixed air. Thus, each ventilation system with recirculating air is considered a single zone, and each room or group of rooms where air is not recirculated (e.g. 100% outdoor air) is considered a separate zone. For IAQ Zones with the same construction material/furnishings and design minimum outdoor air ventilation rates. (e.g. hotel rooms, apartments, condominiums, etc.) the formaldehyde emission rates need only be assessed for a single IAQ Zone of that type.

2.) Calculate Material/Furnishing Loading. For each IAQ Zone, determine the building material and furnishing loadings (e.g., m² of material/m² floor area, units of furnishings/m² floor area) from an inventory of all potential indoor formaldehyde sources, including flooring, ceiling tiles, furnishings, finishes, insulation, sealants, adhesives, and any products constructed with composite wood products containing urea-formaldehyde resins (e.g., plywood, medium density fiberboard, particleboard).

3.) Calculate the Formaldehyde Emission Rate. For each building material, calculate the formaldehyde emission rate (µg/h) from the product of the area-specific formaldehyde emission rate (µg/m²-h) and the area (m²) of material in the IAQ Zone, and from each furnishing (e.g. chairs, desks, etc.) from the unit-specific formaldehyde emission rate (µg/unit-h) and the number of units in the IAQ Zone.

NOTE: As a result of the high-performance building rating systems and building codes (California Building Standards Commission, 2014; USGBC, 2014), most manufacturers of building materials furnishings sold in the United States conduct chemical emission rate tests using the California Department of Health “Standard Method for the Testing and Evaluation of Volatile Organic Chemical Emissions for Indoor Sources Using Environmental Chambers,” (CDPH, 2017), or other equivalent chemical emission rate

testing methods. Most manufacturers of building furnishings sold in the United States conduct chemical emission rate tests using ANSI/BIFMA M7.1 Standard Test Method for Determining VOC Emissions (BIFMA, 2018), or other equivalent chemical emission rate testing methods.

CDPH, BIFMA, and other chemical emission rate testing programs, typically certify that a material or furnishing does not create indoor chemical concentrations in excess of the maximum concentrations permitted by their certification. For instance, the CDPH emission rate testing requires that the measured emission rates when input into an office, school, or residential model do not exceed one-half of the OEHHA Chronic Exposure Guidelines (OEHHA, 2017b) for the 35 specific VOCs, including formaldehyde, listed in Table 4-1 of the CDPH test method (CDPH, 2017). These certifications themselves do not provide the actual area-specific formaldehyde emission rate (i.e., $\mu\text{g}/\text{m}^2\text{-h}$) of the product, but rather provide data that the formaldehyde emission rates do not exceed the maximum rate allowed for the certification. Thus, for example, the data for a certification of a specific type of flooring may be used to calculate that the area-specific emission rate of formaldehyde is less than $31 \mu\text{g}/\text{m}^2\text{-h}$, but not the actual measured specific emission rate, which may be 3, 18, or $30 \mu\text{g}/\text{m}^2\text{-h}$. These area-specific emission rates determined from the product certifications of CDPH, BIFA, and other certification programs can be used as an initial estimate of the formaldehyde emission rate.

If the actual area-specific emission rates of a building material or furnishing is needed (i.e. the initial emission rates estimates from the product certifications are higher than desired), then that data can be acquired by requesting from the manufacturer the complete chemical emission rate test report. For instance if the complete CDPH emission test report is requested for a CDHP certified product, that report will provide the actual area-specific emission rates for not only the 35 specific VOCs, including formaldehyde, listed in Table 4-1 of the CDPH test method (CDPH, 2017), but also all of the cancer and reproductive/developmental chemicals listed in the California Proposition 65 Safe Harbor Levels (OEHHA, 2017a), all of the toxic air contaminants (TACs) in the California Air Resources Board Toxic Air Contamination List (CARB, 2011), and the 10 chemicals with the greatest emission rates.

Alternatively, a sample of the building material or furnishing can be submitted to a chemical emission rate testing laboratory, such as Berkeley Analytical Laboratory (<https://berkeleyanalytical.com>), to measure the formaldehyde emission rate.

4.) Calculate the Total Formaldehyde Emission Rate. For each IAQ Zone, calculate the total formaldehyde emission rate (i.e. µg/h) from the individual formaldehyde emission rates from each of the building material/furnishings as determined in Step 3.

5.) Calculate the Indoor Formaldehyde Concentration. For each IAQ Zone, calculate the indoor formaldehyde concentration (µg/m³) from Equation 1 by dividing the total formaldehyde emission rates (i.e. µg/h) as determined in Step 4, by the design minimum outdoor air ventilation rate (m³/h) for the IAQ Zone.

$$C_{in} = \frac{E_{total}}{Q_{oa}} \quad (\text{Equation 1})$$

where:

C_{in} = indoor formaldehyde concentration (µg/m³)

E_{total} = total formaldehyde emission rate (µg/h) into the IAQ Zone.

Q_{oa} = design minimum outdoor air ventilation rate to the IAQ Zone (m³/h)

The above Equation 1 is based upon mass balance theory, and is referenced in Section 3.10.2 “Calculation of Estimated Building Concentrations” of the California Department of Health “Standard Method for the Testing and Evaluation of Volatile Organic Chemical Emissions for Indoor Sources Using Environmental Chambers”, (CDPH, 2017).

6.) Calculate the Indoor Exposure Cancer and Non-Cancer Health Risks. For each IAQ Zone, calculate the cancer and non-cancer health risks from the indoor formaldehyde concentrations determined in Step 5 and as described in the OEHHA Air Toxics Hot Spots Program Risk Assessment Guidelines; Guidance Manual for Preparation of Health Risk Assessments (OEHHA, 2015).

7.) Mitigate Indoor Formaldehyde Exposures of exceeding the CEQA Cancer and/or Non-Cancer Health Risks. In each IAQ Zone, provide mitigation for any formaldehyde exposure

risk as determined in Step 6, that exceeds the CEQA cancer risk of 10 per million or the CEQA non-cancer Hazard Quotient of 1.0.

Provide the source and/or ventilation mitigation required in all IAQ Zones to reduce the health risks of the chemical exposures below the CEQA cancer and non-cancer health risks.

Source mitigation for formaldehyde may include:

- 1.) reducing the amount materials and/or furnishings that emit formaldehyde
- 2.) substituting a different material with a lower area-specific emission rate of formaldehyde

Ventilation mitigation for formaldehyde emitted from building materials and/or furnishings may include:

- 1.) increasing the design minimum outdoor air ventilation rate to the IAQ Zone.

NOTE: Mitigating the formaldehyde emissions through use of less material/furnishings, or use of lower emitting materials/furnishings, is the preferred mitigation option, as mitigation with increased outdoor air ventilation increases initial and operating costs associated with the heating/cooling systems.

Further, we are not asking that the builder “speculate” on what and how much composite materials be used, but rather at the design stage to select composite wood materials based on the formaldehyde emission rates that manufacturers routinely conduct using the California Department of Health “Standard Method for the Testing and Evaluation of Volatile Organic Chemical Emissions for Indoor Sources Using Environmental Chambers,” (CDPH, 2017), and use the procedure described earlier above (i.e. Pre-Construction Building Material/Furnishing Formaldehyde Emissions Assessment) to insure that the materials selected achieve acceptable cancer risks from material off gassing of formaldehyde.

Outdoor Air Ventilation Impact. Another important finding of the CNHS, was that the outdoor air ventilation rates in the homes were very low. Outdoor air ventilation is a very

important factor influencing the indoor concentrations of air contaminants, as it is the primary removal mechanism of all indoor air generated contaminants. Lower outdoor air exchange rates cause indoor generated air contaminants to accumulate to higher indoor air concentrations. Many homeowners rarely open their windows or doors for ventilation as a result of their concerns for security/safety, noise, dust, and odor concerns (Price, 2007). In the CNHS field study, 32% of the homes did not use their windows during the 24-hour Test Day, and 15% of the homes did not use their windows during the entire preceding week. Most of the homes with no window usage were homes in the winter field session. Thus, a substantial percentage of homeowners never open their windows, especially in the winter season. The median 24-hour measurement was 0.26 air changes per hour (ach), with a range of 0.09 ach to 5.3 ach. A total of 67% of the homes had outdoor air exchange rates below the minimum California Building Code (2001) requirement of 0.35 ach. Thus, the relatively tight envelope construction, combined with the fact that many people never open their windows for ventilation, results in homes with low outdoor air exchange rates and higher indoor air contaminant concentrations.

The 638 S. Berendo Street Project, Los Angeles, CA is close to roads with moderate to high traffic (e.g., Wilshire Boulevard, West 6th Street, South New Hampshire Boulevard etc.). Thus, the Project is located in a sound impacted area.

According to Categorical Exemption – Class 32, 638 Berendo Project, Los Angeles, CA (CAJA Environmental Services.,2024) there has only been short-term ambient noise measurements (i.e. three 15-minute, one 1-hour, and one 24-hour measurements of the ambient noise level) conducted in March, 2019, which ranged from 59.5-72.0 dBA Leq. In addition, the Draft Environmental Impact Report includes in Table IV.H-14, modeled existing ambient traffic noise levels with the Project that range from 61.8-74.8 dBA CNEL.

However, in order to design the building for this Project such that interior noise levels are acceptable, an acoustic study with actual on-site measurements of the existing ambient noise levels and modeled future ambient noise levels needs to be conducted. The acoustic study of the existing ambient noise levels should be conducted over a minimum of a one-week period and report the dBA CNEL or Ldn. This study will allow for the selection of a building

envelope and windows with a sufficient STC such that the indoor noise levels are acceptable. A mechanical supply of outdoor air ventilation to allow for a habitable interior environment with closed windows and doors will also be required. Such a ventilation system would allow windows and doors to be kept closed at the occupant's discretion to control exterior noise within building interiors.

PM_{2.5} Outdoor Concentrations Impact. An additional impact of the nearby motor vehicle traffic associated with this project, are the outdoor concentrations of PM_{2.5}. According to the Categorical Exemption – Class 32, 638 Berendo Project, Los Angeles, CA (CAJA Environmental Services, 2024), the Project is located in the South Coast Air Basin, which is a State and Federal non-attainment area for PM_{2.5}.

Additionally, the SCAQMD's MATES V study cites an existing cancer risk of 621 per million at the Project site due to the site's high concentration of ambient air contaminants resulting from the area's high levels of motor vehicle traffic.

An air quality analyses should be conducted to determine the concentrations of PM_{2.5} in the outdoor and indoor air that people inhale each day. This air quality analyses needs to consider the cumulative impacts of the project related emissions, existing and projected future emissions from local PM_{2.5} sources (e.g. stationary sources, motor vehicles, and airport traffic) upon the outdoor air concentrations at the Project site. If the outdoor concentrations are determined to exceed the California and National annual average PM_{2.5} exceedence concentration of 12 µg/m³, or the National 24-hour average exceedence concentration of 35 µg/m³, then the buildings need to have a mechanical supply of outdoor air that has air filtration with sufficient removal efficiency, such that the indoor concentrations of outdoor PM_{2.5} particles is less than the California and National PM_{2.5} annual and 24-hour standards.

It is my experience that based on the projected high traffic noise levels, the annual average concentration of PM_{2.5} will exceed the California and National PM_{2.5} annual and 24-hour standards and warrant installation of high efficiency air filters (i.e. at least MERV 13, or

possibly MERV 14 or 15 depending on the results of the Project ambient PM_{2.5} concentrations) in all mechanically supplied outdoor air ventilation systems.

Indoor Air Quality Impact Mitigation Measures

The following are recommended mitigation measures to minimize the impacts upon indoor quality:

Indoor Formaldehyde Concentrations Mitigation. Use only composite wood materials (e.g. hardwood plywood, medium density fiberboard, particleboard) for all interior finish systems that are made with CARB approved no-added formaldehyde (NAF) resins (CARB, 2009). CARB Phase 2 certified composite wood products, or ultra-low emitting formaldehyde (ULEF) resins, do not insure indoor formaldehyde concentrations that are below the CEQA cancer risk of 10 per million. Only composite wood products manufactured with CARB approved no-added formaldehyde (NAF) resins, such as resins made from soy, polyvinyl acetate, or methylene diisocyanate can insure that the OEHHA cancer risk of 10 per million is met.

Alternatively, conduct the previously described Pre-Construction Building Material/Furnishing Chemical Emissions Assessment, to determine that the combination of formaldehyde emissions from building materials and furnishings do not create indoor formaldehyde concentrations that exceed the CEQA cancer and non-cancer health risks.

It is important to note that we are not asking that the builder “speculate” on what and how much composite materials be used, but rather at the design stage to select composite wood materials based on the formaldehyde emission rates that manufacturers routinely conduct using the California Department of Health “Standard Method for the Testing and Evaluation of Volatile Organic Chemical Emissions for Indoor Sources Using Environmental Chambers”, (CDPH, 2017), and use the procedure described above (i.e. Pre-Construction Building Material/Furnishing Formaldehyde Emissions Assessment) to insure that the materials selected achieve acceptable cancer risks from material off gassing of formaldehyde.

Outdoor Air Ventilation Mitigation. Provide each habitable room with a continuous mechanical supply of outdoor air that meets or exceeds the California 2016 Building Energy Efficiency Standards (California Energy Commission, 2015) requirements of the greater of 15 cfm/occupant or 0.15 cfm/ft² of floor area. Following installation of the system conduct testing and balancing to insure that required amount of outdoor air is entering each habitable room and provide a written report documenting the outdoor airflow rates. Do not use exhaust only mechanical outdoor air systems, use only balanced outdoor air supply and exhaust systems or outdoor air supply only systems. Provide a manual for the occupants or maintenance personnel, that describes the purpose of the mechanical outdoor air system and the operation and maintenance requirements of the system.

PM_{2.5} Outdoor Air Concentration Mitigation. Install air filtration with sufficient PM_{2.5} removal efficiency (e.g. MERV 13 or higher) to filter the outdoor air entering the mechanical outdoor air supply systems, such that the indoor concentrations of outdoor PM_{2.5} particles are less than the California and National PM_{2.5} annual and 24-hour standards. Install the air filters in the system such that they are accessible for replacement by the occupants or maintenance personnel. Include in the mechanical outdoor air ventilation system manual instructions on how to replace the air filters and the estimated frequency of replacement.

References

BIFA. 2018. BIFMA Product Safety and Performance Standards and Guidelines.
www.bifma.org/page/standardsoverview

CAJA Environmental Services. 2024. Categorical Exemption – Class 32, 638 Berendo Project, Los Angeles, CA.

California Air Resources Board. 2004. Formaldehyde in the Home.
[https://ww3.arb.ca.gov/research/indoor/formaldehyde108-04.pdf](https://ww3.arb.ca.gov/research/indoor/formaldehyde/formaldehyde108-04.pdf)

California Air Resources Board. 2009. Airborne Toxic Control Measure to Reduce Formaldehyde Emissions from Composite Wood Products. California Environmental Protection Agency, Sacramento, CA.

<https://www.arb.ca.gov/regact/2007/compwood07/fro-final.pdf>

California Air Resources Board. 2011. Toxic Air Contaminant Identification List. California Environmental Protection Agency, Sacramento, CA.

<https://www.arb.ca.gov/toxics/id/taclist.htm>

California Building Code. 2001. California Code of Regulations, Title 24, Part 2 Volume 1, Appendix Chapter 12, Interior Environment, Division 1, Ventilation, Section 1207: 2001 California Building Code, California Building Standards Commission. Sacramento, CA.

California Building Standards Commission (2014). 2013 California Green Building Standards Code. California Code of Regulations, Title 24, Part 11. California Building Standards Commission, Sacramento, CA <http://www.bsc.ca.gov/Home/CALGreen.aspx>.

California Energy Commission, PIER Program. CEC-500-2007-033. Final Report, ARB Contract 03-326. Available at: www.arb.ca.gov/research/apr/past/03-326.pdf.

California Energy Commission, 2015. 2016 Building Energy Efficiency Standards for Residential and Nonresidential Buildings, California Code of Regulations, Title 24, Part 6. <http://www.energy.ca.gov/2015publications/CEC-400-2015-037/CEC-400-2015-037-CMF.pdf>

CDPH. 2017. Standard Method for the Testing and Evaluation of Volatile Organic Chemical Emissions for Indoor Sources Using Environmental Chambers, Version 1.1. California Department of Public Health, Richmond, CA. <https://www.cdph.ca.gov/Programs/CCDPPH/DEODC/EHLB/IAQ/Pages/VOC.aspx>. Environmental Impact Report. SCH No. 2018011001.

EPA. 2011. Exposure Factors Handbook: 2011 Edition, Chapter 16 – Activity Factors. Report EPA/600/R-09/052F, September 2011. U.S. Environmental Protection Agency, Washington, D.C.

OEHHA (Office of Environmental Health Hazard Assessment). 2015. Air Toxics Hot Spots Program Risk Assessment Guidelines; Guidance Manual for Preparation of Health Risk Assessments.

OEHHA (Office of Environmental Health Hazard Assessment). 2017a. Proposition 65 Safe Harbor Levels. No Significant Risk Levels for Carcinogens and Maximum Allowable Dose Levels for Chemicals Causing Reproductive Toxicity. Available at: <http://www.oehha.ca.gov/prop65/pdf/safeharbor081513.pdf>

OEHHA - Office of Environmental Health Hazard Assessment. 2017b. All OEHHA Acute, 8-hour and Chronic Reference Exposure Levels. Available at: <http://oehha.ca.gov/air/allrels.html>

Offermann, F. J. 2009. Ventilation and Indoor Air Quality in New Homes. California Air Resources Board and California Energy Commission, PIER Energy-Related Environmental Research Program. Collaborative Report. CEC-500-2009-085. <https://www.arb.ca.gov/research/apr/past/04-310.pdf>

Offermann, F. J. and A. T. Hodgson. 2011. Emission Rates of Volatile Organic Compounds in New Homes. Proceedings Indoor Air 2011 (12th International Conference on Indoor Air Quality and Climate 2011), June 5-10, 2011, Austin, TX.

Singer, B.C, Chan, W.R, Kim, Y., Offermann, F.J., and Walker I.S. 2020. Indoor Air Quality in California Homes with Code-Required Mechanical Ventilation. Indoor Air, Vol 30, Issue 5, 885-899.

South Coast Air Quality Management District (SCAQMD). 2015. California Environmental Quality Act Air Quality Handbook. South Coast Air Quality Management District,

Diamond Bar, CA, <http://www.aqmd.gov/home/rules-compliance/ceqa/air-quality-analysis-handbook>

USGBC. 2014. LEED BD+C Homes v4. U.S. Green Building Council, Washington, D.C.
<http://www.usgbc.org/credits/homes/v4>

APPENDIX A

INDOOR FORMALDEHYDE CONCENTRATIONS AND THE CARB FORMALDEHYDE ATCM

With respect to formaldehyde emissions from composite wood products, the CARB ATCM regulations of formaldehyde emissions from composite wood products, do not assure healthful indoor air quality. The following is the stated purpose of the CARB ATCM regulation - *The purpose of this airborne toxic control measure is to “reduce formaldehyde emissions from composite wood products, and finished goods that contain composite wood products, that are sold, offered for sale, supplied, used, or manufactured for sale in California”*. In other words, the CARB ATCM regulations do not “assure healthful indoor air quality”, but rather “reduce formaldehyde emissions from composite wood products”.

Just how much protection do the CARB ATCM regulations provide building occupants from the formaldehyde emissions generated by composite wood products? Definitely some, but certainly the regulations do not “*assure healthful indoor air quality*” when CARB Phase 2 products are utilized. As shown in the Chan 2019 study of new California homes, the median indoor formaldehyde concentration was of $22.4 \mu\text{g}/\text{m}^3$ (18.2 ppb), which corresponds to a cancer risk of 112 per million for occupants with continuous exposure, which is more than 11 times the CEQA cancer risk of 10 per million.

Another way of looking at how much protection the CARB ATCM regulations provide building occupants from the formaldehyde emissions generated by composite wood products is to calculate the maximum number of square feet of composite wood product that can be in a residence without exceeding the CEQA cancer risk of 10 per million for occupants with continuous occupancy.

For this calculation I utilized the floor area ($2,272 \text{ ft}^2$), the ceiling height (8.5 ft), and the number of bedrooms (4) as defined in Appendix B (New Single-Family Residence Scenario) of the Standard Method for the Testing and Evaluation of Volatile Organic Chemical Emissions for Indoor Sources Using Environmental Chambers, Version 1.1, 2017, California Department of Public Health,

For the outdoor air ventilation rate I used the 2019 Title 24 code required mechanical ventilation rate (ASHRAE 62.2) of 106 cfm (180 m³/h) calculated for this model residence. For the composite wood formaldehyde emission rates I used the CARB ATCM Phase 2 rates.

The calculated maximum number of square feet of composite wood product that can be in a residence, without exceeding the CEQA cancer risk of 10 per million for occupants with continuous occupancy are as follows for the different types of regulated composite wood products.

Medium Density Fiberboard (MDF) – 15 ft² (0.7% of the floor area), or
Particle Board – 30 ft² (1.3% of the floor area), or
Hardwood Plywood – 54 ft² (2.4% of the floor area), or
Thin MDF – 46 ft² (2.0 % of the floor area).

For offices and hotels the calculated maximum amount of composite wood product (% of floor area) that can be used without exceeding the CEQA cancer risk of 10 per million for occupants, assuming 8 hours/day occupancy, and the California Mechanical Code minimum outdoor air ventilation rates are as follows for the different types of regulated composite wood products.

Medium Density Fiberboard (MDF) – 3.6 % (offices) and 4.6% (hotel rooms), or
Particle Board – 7.2 % (offices) and 9.4% (hotel rooms), or
Hardwood Plywood – 13 % (offices) and 17% (hotel rooms), or
Thin MDF – 11 % (offices) and 14 % (hotel rooms)

Clearly the CARB ATCM does not regulate the formaldehyde emissions from composite wood products such that the potentially large areas of these products, such as for flooring, baseboards, interior doors, window and door trims, and kitchen and bathroom cabinetry, could be used without causing indoor formaldehyde concentrations that result in CEQA

cancer risks that substantially exceed 10 per million for occupants with continuous occupancy.

Even composite wood products manufactured with CARB certified ultra low emitting formaldehyde (ULEF) resins do not insure that the indoor air will have concentrations of formaldehyde that meet the OEHHA cancer risks that substantially exceed 10 per million. The permissible emission rates for ULEF composite wood products are only 11-15% lower than the CARB Phase 2 emission rates. Only use of composite wood products made with no-added formaldehyde resins (NAF), such as resins made from soy, polyvinyl acetate, or methylene diisocyanate can insure that the OEHHA cancer risk of 10 per million is met.

If CARB Phase 2 compliant or ULEF composite wood products are utilized in construction, then the resulting indoor formaldehyde concentrations should be determined in the design phase using the specific amounts of each type of composite wood product, the specific formaldehyde emission rates, and the volume and outdoor air ventilation rates of the indoor spaces, and all feasible mitigation measures employed to reduce this impact (e.g. use less formaldehyde containing composite wood products and/or incorporate mechanical systems capable of higher outdoor air ventilation rates). See the procedure described earlier (i.e. Pre-Construction Building Material/Furnishing Formaldehyde Emissions Assessment) to insure that the materials selected achieve acceptable cancer risks from material off gassing of formaldehyde.

Alternatively, and perhaps a simpler approach, is to use only composite wood products (e.g. hardwood plywood, medium density fiberboard, particleboard) for all interior finish systems that are made with CARB approved no-added formaldehyde (NAF) resins.

EXHIBIT C

MICHAEL R. CORBETT

Architectural Historian ♦ 2161 Shattuck Avenue #203 ♦ Berkeley, California 94704 ♦ (510) 548-4123

5 November 2024

Richard Drury
Lozeau Drury LLP
1939 Harrison Street, Suite 150
Oakland, California 94612

RE: Review of Categorical Exemption Determination for 638 Berendo Street
Project (Case No. ENV-2023-4546-CE)

Dear Mr. Drury,

As you have requested, I am writing to comment on the Categorical Exemption Determination made in July 2024 by the City of Los Angeles Department of City Planning for a proposed project at 638 South Berendo Street. The information and conclusions in this letter are based on a site visit and a review of sources listed on the attached page of references. The site visit on 11 October 2024 included viewing the exterior of the Roseberry Building, a historic resource which stands on a portion of the project site, and its environs. I also saw a portion of the interior of the Roseberry Building and the central courtyard of the building; a café on the ground floor, which occupies a portion of the central courtyard, is open to the public. Other ground floor commercial spaces and spaces on the second floor were not accessible.

In addition to reviewing the numerous documents prepared as part of the planning and environmental review process for this project – the most thorough and relevant of which for my purposes being the 2022 Historic Resources Group's *Historical Resources Impacts Assessment Report* – I conducted additional research which discovered relevant information that modifies the findings in the Historic Resources Group's report.

In this review I have focused on two issues. First (A) is the failure in the current round of documents for the 2024 version of the 638 Berendo Project to recognize the Roseberry Building as a historic resource – a fact that had been established in documents prepared for the 2022 version of the project. To correct this omission

requires no new research or analysis; the record is clear and is easily corrected. Second (B) is the additional information discovered in preparation of this letter, which modifies the way that the significance of the building is defined and, as a consequence, adds key features to the character defining features. This in turn changes the basis on which the impact of the project on the historic resource must be viewed.

QUALIFICATIONS

I am making these comments as an architectural historian with long-term experience in addressing the environmental and regulatory frameworks for historic resources in California. As shown in more detail on my attached resume, I meet the professional qualifications in history and architectural history established by the Secretary of the Interior.

I have been assisted in this effort by Mary Hardy. Mary has an M.Arch from the University of California, Berkeley, and an M.S. in Historic Preservation from Columbia University. She meets the professional qualifications of the Secretary of the Interior in architecture and history and has long-term experience both in designing according to the Secretary of the Interior's Standards and in assessing compliance with the standards as part of the CEQA process.

PROPOSED PROJECT

The 638 Berendo Project occupies a rectangular site at the northeast corner of Wilshire Boulevard and South Berendo Street. The project site is in two parts. At the south end of the site, with frontages on both Wilshire Boulevard and South Berendo Street, is an existing two- and three-story building at 3273-3289 Wilshire Boulevard, the Roseberry Building. Behind the Roseberry Building with a frontage only on Berendo Street, is a surface parking lot.

The project would build an eight-story residential structure on the parking lot; the Roseberry Building would remain as it is except for a few changes to the exterior on the north side of the building. The south side of the new structure at 638 South Berendo Street and north side of the Roseberry Building would be separated by a narrow space a few feet wide (the width of this space is unknown). An existing exterior stairway on the north side of the Roseberry

Building would be removed and there would be alterations to some windows, doors, and “existing non-historic stairs” (a second set of stairs) at the ground level.

A. RECOGNITION AS A HISTORIC RESOURCE

CONTRADICTION FINDINGS ABOUT THE ROSEBERRY BUILDING

Documents prepared in 2024 for the current 638 Berendo Project stated that the Roseberry Building is not a historic resource. However, a report prepared for an earlier version of the 638 Berendo Project in 2022 found that the Roseberry Building is a historic resource.

2022 Findings

In 2022, a report for the Los Angeles Department of City Planning prepared by CAJA Environmental Services titled *638 Berendo Project* found that “the Roseberry Building [is] eligible for listing in the National Register, the California Register, and as a local Historic-Cultural Monument. The Roseberry Building is therefore considered an historical resource.” (CAJA Environmental Services 2022, p. 2-121)

These findings were based on two technical reports:

First was the Intensive Historic Resources Survey of the Wilshire Center and Koreatown Recovery Redevelopment Area, Los Angeles, California prepared by PCR Services Corporation in 2009. Volume two of that survey report included a DPR 523 form on the Roseberry Building which gave it a rating of 3S, meaning it was considered eligible for the National Register of Historic Places (NRHP).

This DPR form presented limited additional information consisting only of a photograph, data from public records, and data from observation of the building from the street. An online version of the form indicated that it was four pages in length, but only two pages were available.

Second, because the information on the DPR that was part of the intensive survey had addressed the history and significance of the Roseberry Building in a limited way, a focused study of the building, *Historical Resources Impacts Assessment Report*, was undertaken by the Historic Resources Group.

This study undertook additional research according to standard guidelines on the history of the Roseberry Building and its historic contexts. The study found that “the Roseberry Building at 3273-3289 Wilshire Boulevard and 646 South Berendo Street is significant under Criterion A/1/1 for its important association with the surge in commercial development along Wilshire Boulevard in the 1920s and 1930s, when the street was the primary east-west artery through the rapidly expanding city; and under Criterion C/3/3 as a rare and exceptional example of Churrigueresque style commercial architecture designed by master architects Morgan, Walls & Clements. The property retains integrity of *location, design, materials, workmanship, feeling, and association* and thus continues to convey its historic significance. Therefore the Roseberry Building is eligible for listing in the National Register of Historic Places, the California Register of Historical Resources, and as a City of Los Angeles Historic-Cultural Monument; and should be considered an historical resource as defined by the California Environmental Quality Act (CEQA).” (Historic Resources Group 2022, p.61)

In addition to this evaluation, the study identified character defining features presented in sixteen bullet points. (Historic Resources Group 2022, p.67) These points will be addressed further below.

2024 Findings

For the current version of the 638 Berendo Project in 2024, the City Planning Department stated that the Roseberry Building is not a historic resource: “The Project site has not been identified as a historic resource by local or state agencies, and the project site has not been determined to be eligible for listing in the National Register or [sic] Historic Places, California Register of Historical Resources, the Los Angeles [sic] Historic-Cultural Monuments Register, and/or any local register, and was not found to be a potential historic resource based on

the City's HistoricPlacesLA website or SurveyLA, the citywide survey of Los Angeles. Based on this, the project will not result in a substantial adverse change to the significance of a historic resource and this exception does not apply." (Notice of Exemption 2024, p.4-5.) This is clearly incorrect.

For the revised project, Historic Resources Group reaffirmed its 2022 evaluation in a memo. Addressing only the impacts of the revised project on historic resources including the Roseberry Building, the memo stated: "all other aspects of the evaluation... remain valid." (Historic Resources Group 2023, p.2)

SUMMARY

As shown in the documents prepared for an earlier version of this project in 2022, the Roseberry Building is a historic resource for the purposes of CEQA. Any statements to the contrary are incorrect.

B. BASELINE AND NEW INFORMATION

ROSEBERRY BUILDING

The site of the Roseberry Building was purchased in 1923 as an investment for a partnership of Abram Post (1876-1929) and Louis Heaton Roseberry (1880-1956). (*Los Angeles Times* 1923) Post was a real estate investor who died in 1929. Roseberry was a prominent lawyer and senior official of the Security Trust and Savings Bank, a California State Senator, and an investor in real estate.

The building was built at a cost of \$150,000 in 1926. (*Los Angeles Evening Express* 1926) When it was completed, the *Los Angeles Times* described it as possessing "architectural beauty and commercial efficiency": "The spacious windows, the high ceilings, and the smartly designed mezzanining in each shop, lend an exceptionally attractive adaptability to modistes, milliners, decorators, art galleries and those offering the better class of merchandise. On the second floor are imposing studios and stately rooms that are most desirable." (*Los Angeles Times* 1926)

The building is a two- and three-story brick, reinforced concrete, and wood structure originally designed with two facades facing major streets (Wilshire and Berendo) and a third façade on the north side facing a twenty-foot-wide alley that ran through the block between Berendo Street and New Hampshire Avenue until about 1969. The two more public facades were given a decorative stucco exterior and the building was topped with red-tiled roofs. On the alley façade a series of industrial sash windows provided desirable north light to the interiors of shops and studios in the building.

The Roseberry Building is in the Spanish Colonial Revival Style with concentrations of Churrigueresque detail around windows and doors. The design of the building is attributed to the prominent architecture firm of Morgan, Walls, and Clements. (Historic Resources Group 2022, p.37-38) The building is embellished by unusually fine and extensive decorations in two materials: cast-stone Churrigueresque decorative detail around windows and doors and decorative iron work including window grilles, balconies, and stairways on the two principal facades on Wilshire Boulevard and Berendo Street, on the walls of the courtyard, and on the rear/north façade that originally faced an alley.

The architects designed the rich variety of materials and their colors in a skillful and unified composition in which each individual feature contributes to the whole: the light adobe color of the plain stucco walls, the darker brown color of the Churrigueresque ornament, the orange tile bulkheads (probably not original but probably echoing an earlier color and texture that complimented the whole), the green (apparently painted) wrought iron, and the red tile roof.

In defining the Spanish Colonial Revival style of the Roseberry Building, the Historic Resources Group cited a 1926 book by Richard Requa, *Architectural Details: Spain and the Mediterranean*: “It stressed the appropriateness of Mediterranean form for a climate such as Southern California and called out the elements of the style. In addition to expanses of unbroken white or pastel-colored walls and low-sloped red tile roofs, Requa noted the importance of enclosed outdoor spaces and the need for details such as wrought iron for balconies and for *rejas*, or window grilles.” (Historic Resources Group 2022, p.36)

It is not known how long Post and Roseberry owned the building. As indicated in the table of building permits in the Historic Resources Group report, they still owned it on 7 June 1929 just ten weeks before Post died on 22 August 1929.

When the Roseberry Building was built, there was a house on the lot across the alley at the rear, as shown on the Sanborn map of 1950 and in an aerial photograph in the Historic Resources Group report. (Sanborn Insurance Company 1950, vol.7, p.732; Historic Resources Group 2022, Appendix C p.95)

REVIEW OF THE HISTORIC RESOURCES GROUP REPORT

Decorative Ironwork

The report of the Historic Resources Group presents generally thorough historic contexts as a basis for the evaluations of the Roseberry Building. However, my additional research adds new information about the decorative ironwork on the building and its designer.

The Historic Resources Group report noted the wrought iron grilles and balconies as contributing elements of the artistic design of the Roseberry Building in numerous places in the report. (Historic Resources Group 2022, p.19, 20, 59, 64, 65, and 67) The wrought iron grilles and balconies are listed as Character Defining Features. (Historic Resources Group 2022, p.67)

The report also noted the presence of two ornamental iron stairs in the courtyard: “Two metal staircases with decorative balustrades and angled brackets run along the north wall.” (Historic Resources Group 2022, p.20) These stairs are also listed as Character Defining Features: “Extant exterior character defining features of the Roseberry Building include:... Two metal staircases with decorative balustrades and angled brackets on the north wall of the courtyard.” (Historic Resources Group 2022, p.66-67)

The report treats another stairway differently: “A steel egress stair with concrete treads runs across the west portion of the north façade.” (Historic Resources Group 2022, p.20) In discussing “Potential Impacts to Historical Resources on the

Project Site,” the report explains: “Because of the proximity of the proposed new building to the existing, the exterior metal staircase on the north façade of the Roseberry Building will be removed... The exterior staircase is not a character-defining feature of the Roseberry Building; although its exact date of construction cannot be determined from the available permits, it is of comparatively recent construction, although designed to match the historic metal work on the building. Its removal will therefore not impact the historic integrity of the Roseberry Building.” (Historic Resources Group 2022, p.77)

However, after personal inspection of the building, its decorative ironwork, and its staircases, it seems possible that the exterior stairs on the north side of the building date from the time it was first built or within a few years after that. It is true that the structure of the stair on the north side of the building is different from those in the courtyard. However, the decorative details on the north side staircase match details of the decorative ironwork in the window grilles, balconies, and courtyard stairs. For example, on the north side stairs, the balusters, the brackets, and the trim under the stringer all match features of the Berendo Street balconies. These details would have been expensive to duplicate.

Appendix A of the Historic Resources Group report shows that Building Permit No. 15234 of 7 June 1929, three years after the initial permit for construction of the building, for work described as: “Install new stair from first to second floor [illegible] work under permit #19192-’26 [the original building permit no. was 19192];” this was for A.A. Post & L.H. Roseberry, owner and Morgan, Walls, & Clements, architect. (Historic Resources Group 2022, Appendix A, n.p.) It seems likely that this was for the stairway in question – it was the same architect, the same owner, the same period, the same materials, and the same design details.

Based on what is currently known, the date of the staircase is uncertain. Information to resolve this might come from a more detailed inspection of the stairway or from historic photographs.

J. C. Kubic Studios

The ornamental iron work on the three exterior sides of the Roseberry Building and in its courtyard was designed by J. C. Kubic Studios. J. C. Kubic (1893-?) was a native of Poland who studied at the Art & Metal College of Austria and traveled to see notable works of ornamental iron in Germany, France, and Spain. He came to the United States in 1913, worked in New York and Chicago and came to be recognized as a “master craftsman.” (Leo 1929) In the 1920s he designed ornamental iron work for many buildings in Los Angeles including, by 1927, the Union National Bank by Morgan, Walls, & Clements and seventeen other banks. By 1931 he had also designed ornamental iron work for the Wilshire Central Building, the Westwood Security First National Bank, the Flying Club of California, and Alexander Hamilton High School. According to a newspaper article in 1929, “the J. C. Kubic Studio has been a large factor in the ornamental iron industry and has contributed to the beautification of many of Southern California’s finest buildings.” (Stall 1929) (Alexander Hamilton High School, designed by John C. Austin and Frederick C. Ashley, has been identified as a historic resource. Sapphos Environmental 2014, p. B-3-19 and B-3-20)

Kubic advertised that his wrought iron work was “Created, Designed, and Executed by J. C. Kubic.” (*Morning Free Press* 1927) His manufacturing plant was in Bell, south of downtown Los Angeles. He had a studio, probably a showroom and sales office, in the Roseberry Building. (*Los Angeles Evening Express* 1930)

Building Type

The Historic Resources Group described the Roseberry Building as “a rare and exceptionally fine example of Churrigueresque style commercial architecture in the Wilshire District” and found it eligible for the National Register of Historic Places for that reason. (Historic Resources Group 2022, p.63)

The building is also a notable example of a distinctive building type – apart from its style – associated with Wilshire Boulevard in the 1920s-1940s. This type is a two- or three-story building facing Wilshire Boulevard with shops on the ground floor along the street and other types of related businesses upstairs and in the rear in studios and offices. These buildings catered to high-end clientele, mostly

women (the Historic Los Angeles website referred to the clientele as “matrons with means” <https://losangeleshistory.blogspot.com/2015/04/wilshire-after-its-houses-please-see.html>) selling clothing, accessories, home furnishings, jewelry, flowers, and art. The Historic Resources Group report includes a detailed table of these types of tenants in the Roseberry Building. (Historic Resources Group 2022, p.38-50)

The character and quality of products for sale was best shown in indirect or diffused light, ideally north light, which did not produce glare, shadows, heat, or ultraviolet rays that damaged materials and colors. This was true for items in the shops and for items that might be made, assembled, or altered in workshop or studio spaces that displayed or tailored clothes; upholstered furniture; made or repaired jewelry; designed, costumes, buildings, or interiors; created paintings or sculptures; took photographs; or any number of products and services that benefitted from indirect light. Such light is typically provided through north-facing windows. The large industrial-style steel sash windows on the north side of the Roseberry Building and in its courtyard were designed for this purpose.

Buildings of this type are defined by their plan and location – on a busy street near wealthy residential areas, and near other businesses that cater to the same clientele. The style of these buildings is a secondary consideration. On Wilshire Boulevard there are examples of this building type in the Spanish Colonial-Churrigueresque, Colonial, French, Art Deco, and Streamlined Moderne styles.

The Historic Los Angeles website on “Wilshire After Its Houses” shows twenty-one examples of the type in between Lafayette Park and the area around Western Avenue built between 1925 and 1939. Of these only seven remained in October 2024 and one of them has been radically altered.

In this context, the Roseberry Building is significant under Criterion C as an example of its building type – a high-end shop and studio building. Support for this evaluation under Criterion C is presented in the Historic Resources Group context on Commercial Development and its application to the Roseberry Building:

“The building was specifically designed to provide the type of high-end retail and studio space that characterized commercial establishments on Wilshire Boulevard during this period. Its tenants during the 1920s and 1930s included artists, architects, fashion designers, interior decorators, jewelers, beauty salons, and purveyors of fine home goods, reflecting the exclusivity of the property itself and the affluence of the surrounding neighborhood.

The Roseberry Building is one of the most prominent and distinctive examples of the high-end commercial development that characterized Wilshire Boulevard in the 1920s and 1930s and made it the city’s primary east-west artery, one of the most important trends in the development of Los Angeles in the early 20th century. The Roseberry Building therefore meets the established eligibility standards for listing in the National Register of Historic Places, the California Register of Historical Resources, and as a City of Los Angeles Historic-Cultural Monument under Criterion A/1/1.

The property’s period of significance under Criterion A/1/1 is 1926, the year the Roseberry Building was constructed, to 1942, when the United States entered World War II and commercial development on Wilshire Boulevard was curtailed.” (Historic Resources Group 2022, p.62)

Characterization of the North Side

The north side of the Roseberry Building is described repeatedly in the Historic Resources Group report as “utilitarian” in character. For example, “The north façade is utilitarian in character and is unadorned save for a cast stone escutcheon in the gable at the west end. Fenestration consists of vertical stacks of industrial-style steel sash windows with hopper units. A steel stair with concrete treads runs along the west portion of the north façade.” (Historic Resources Group 2022, p.20)

To say that the north façade is utilitarian should not be interpreted to mean that its design is insignificant. The Historic Resources Group report appropriately included features of the north side among Character Defining Features of the

building: “Industrial-style steel sash windows on the north façade and courtyard,” and “Rear (north) entrance consisting of a pair of paneled, metal-clad doors.” (Historic Resources Group 2022, p.67) (The second feature, the pair of metal-clad doors, may have been altered since this was written and was not evident to me at the time of my site visit).

As presented above in the section on “Building Type,” the industrial style steel sash windows are essential features of a building designed for high-end shops and studios, particularly as they are on the north side of the building where they admit the most desirable light.

The Project will alter the windows and doors on the north side as follows: “all windows on the north façade will be blocked to create a fire-rated separation; the windows themselves will be retained in place, and the openings blocked on the interior with CMU infill.” (Historic Resources Group 2022, p.77)

Character Defining Features

For purposes of environmental review of the 638 Berendo Project, the list of character defining features should be amended to include the spaces inside the north part of the building that are lit by the industrial steel sash windows. To consider the windows Character Defining Features but not the spaces behind them is to divorce the windows from their function and to disregard the windows as highly significant elements of the building type. If the windows were blocked up as proposed, the interior spaces behind them would lose an essential quality that made them desirable to high end tenants.

Pending resolution of the date of construction of the stairs, it is unclear whether or not the stairs are a Character Defining Feature.

IMPACTS OF THE PROJECT

The Historic Resources Group states in its summary of findings that “The Project will make minor alterations to the rear of the Roseberry Building... the Project

will not impair the historical significance of any historical resources in the Project vicinity. The Project would not result in a substantial adverse change in the significance of any historical resource, and therefore would not have a significant effect on the environment as defined by CEQA.” (Historic Resources Group 2022, p.5)

Elsewhere the report states: “The required alterations to the Roseberry Building will be limited in scope, will be restricted to the utilitarian rear façade, and will not alter or remove any of the building’s character-defining Spanish Revival and Churrigueresque features. Therefore, the Project will not materially impair the Roseberry Building such that it can no longer convey its significance.” (Historic Resources Group 2022, p.77)

However, in blocking the industrial steel sash windows on the north side of the building, the interior Character Defining Features will be destroyed and the Project will result in an adverse change.

Similarly, if pending additional review, the stairway is also a Character Defining Feature, its removal would also result in an adverse change.

FINDING OF CATEGORICAL EXEMPTION

Under CEQA, a project may receive a Categorical Exemption from further review if it does not impair a historic resource. A historic resource is impaired if it does not comply with the Secretary of the Interior’s Standards for Rehabilitation (SOIS). The 638 Berendo Project does not comply with the SOIS as follows:

Standard 1: A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces and spatial relationships.

Comment: Blocking up the openings behind the industrial steel sash windows on the north façade will make the spaces inside far less desirable for the types of tenants for which the building was designed and which are part of the significance of the

building under Criterion A. The spaces behind the windows on the north side are distinctive features of the building and integral to its function and historic significance.

Standard 2: The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces and spatial relationships that characterize a property will be avoided.

Comment: The impact of the Project here is similar to that under Standard 1. In this case, the alteration of spaces which should be avoided will impair the historic character of the property.

Standard 5: Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.

Comment: Pending confirmation of the status of the stairway, the removal of the stairway with its distinctive decorative iron details from the north side of the building would remove a distinguished Character Defining Feature of the building.

SUMMARY AND CONCLUSIONS

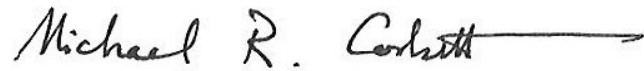
In summary, this review results in findings in two areas as follows:

First, the Roseberry Building is clearly a historic resource, based on a thorough evaluation by the Historic Resources Group in 2022 and reaffirmed in 2023.

Second, the industrial steel sash windows on the north façade of the Roseberry Building and the interior spaces behind the windows are significant elements of the building that contribute to its historic significance and that are Character Defining Features. Similarly, pending confirmation of the status of the stairway, its removal would remove a Character Defining Feature. The loss of the windows, the alteration of the character of the spaces behind the windows, and possibly also the loss of the stairway would result in adverse changes to a historic resource. If there were an

adverse change to a historic resource, the Project would not be eligible for a categorical exemption.

Sincerely,

A handwritten signature in black ink that reads "Michael R. Corbett" followed by a long horizontal flourish line.

Michael R. Corbett

Attachments: References
Resume

REFERENCES

Boswell, H. James. N.d. American Blue Book (Boswell) California Attorneys. "Louis Heaton Roseberry." Transcribed text in Find-a-Grave website: <https://www.findagrave.com/memorial/85501039/louis-heaton-roseberry>

CAJA Environmental Services, LLC. 2022. *638 Berendo Project*. Prepared for Department of City Planning, City of Los Angeles. September 2022.

Department of City Planning, City of Los Angeles. 2024. *Director's Determination for Case No.: DIR-2023-4545-TOC-SPR-VHC [638 Berendo Project] ENV-2023-4546-CE*. 16 August 2024.

Department of City Planning, City of Los Angeles. 2024. *Notice of Exemption: 638 Berendo Project; ENV-2023-4546-CE*. July 2024.

Evening Vanguard. 1931. "Contract Awarded for School Lighting." 14 August 1931.

Fratinaro, Marlise, (PCR Services Corporation). 2008. 3273 Wilshire Blvd, DPR 523 Form. Prepared for *Intensive Historic Resources Survey of the Wilshire Center and Koreatown Recovery Redevelopment Area, Los Angeles, California*. 4 September 2008. https://planning.lacity.gov/odocument/38c03a87-0408-4a05-f0ee30c29a50/Wilshire_Center_Koreatown_Recovery_Redevelopment_Area_DPR_Forms_June_2009.pdf

Historic Los Angeles. *Wilshire After Its Houses*. 2015. <https://wilshireboulevardhouses.blogspot.com/2014/02/wilshire-after-its-houses-please-see.html>

Historic Resources Group. 2022. *Historical Resources Impacts Assessment Report*. July 2022.

Historic Resources Group. 2023. Memo to Office of Historic Resources Re: 638 S. Berendo Street. 25 May 2023.

Leo, Ernest. 1929. "J.C. Kubic, Master Craftsman." *Los Angeles Evening Express*, 16 March 1929.

Los Angeles Evening Express. 1926. "Wilshire Blvd Activity Noted." 28 August 1926.

Los Angeles Evening Express. 1930. "Ornamental Iron." 26 March 1930.

Los Angeles Evening Express. 1930. "Flying Club's Home Ready for Members." 5 July 1930.

Los Angeles Times. 1923. "Wilshire and Sixth Realty Sold." 22 April 1923.

Los Angeles Times. 1925. "Builders Busily Engaged." 26 April 1925.

Los Angeles Times. 1926. "The Roseberry Building." 28 November 1926.

Los Angeles Times. 1931. "McClure to Speak at Breakfast Club." 26 May 1931.

Los Angeles Times. 1933. "Wilshire Area Leases Spurt." 23 July 1933.

Los Angeles Times. 1936. "Wilshire Area Building Sold." 19 January 1936.

Morning Free Press. 1927. "Wrought Iron Work Created, Designed and Executed by J. C. Kubic," advertisement. 25 November 1927.

PCR Services Corporation, Historic Resources Division (Margarita J. Wuellner, Jon L. Wilson, Marlise Fratinardo, Amanda Kainer, and Jessica N Ritz). 2009. *Intensive Historic Resources Survey of the Wilshire Center and Koreatown Recovery Redevelopment Area, Los Angeles, California*. Prepared for Community Redevelopment Agency, City of Los Angeles. June 2009.

https://planning.lacity.gov/odocument/e01e70eb-6e3d-4dc8-a5f8-d0e639191b22/Wilshire_Center_Koreatown_Recovery_Redevelopment_Area_Report_2009.pdf

Sanborn Insurance Company. 1950. *Insurance Maps of Los Angeles*, vol.7, p.732. 1921; revised to November 1950. https://fims-historicalinfo-com.ezproxy.sfpl.org/FIMSSD.aspx?m=00656_07_1950

Santa Barbara News-Press. 1956. "L. H. Roseberry, 76, Lawyer and Banker, Dies at Home Here." 25 July 1956.

Sapphos Environmental, Inc. 2024. *Los Angeles Unified School District: Historic Context Statement, 1870-1969*. Prepared for the Los Angeles Unified School District, Office of Environmental Health and Safety.

Stall, John. 1929. "Kubic Studios' Activity Told." *Los Angeles Evening Express*. 7 September 1929.

MICHAEL R. CORBETT

Architectural Historian

2161 Shattuck Ave. #203 ♦ Berkeley, CA 94704 ♦ tel (510) 548-4123 ♦ mcorbett@lmi.net

Michael R. Corbett is an architectural historian with over forty years experience in architectural history and historic preservation. Based in the San Francisco Bay Area for most of that time, Corbett has worked throughout California, the western United States, Texas, and abroad. From 1988 to 1990, he worked for the New York City Landmarks Preservation Commission. He meets the Secretary of the Interior's professional qualifications for a historian and an architectural historian (SOIS qualified).

Corbett's work principally involves research and writing about buildings and places for city landmark nominations, National Register of Historic Places applications, planning, preservation, and environmental purposes including HABS and HAER documentation. In addition, he has contributed to numerous environmental documents prepared for NEPA and CEQA purposes over many years for transportation projects, power plants, water related projects and others. He has worked with the Section 106 process on many projects. He has worked on the development of onsite interpretive materials at a range of scales from plaques to visitors centers.

Corbett's clients have included all branches of the military, the National Park Service, Caltrans, the University of California, the ports of Oakland and San Francisco, and the cities of Fremont, Berkeley, San Rafael, Woodside, Oakland, and San Francisco. Private clients have included PG&E, the Roman Catholic Church, the Maybeck Foundation, San Francisco Architectural Heritage, the Fine Arts Museums of San Francisco, Stanford University, numerous architectural, planning, and cultural resource firms, and many private companies and individuals.

PROFESSIONAL EXPERIENCE

Architectural historian, consultant, Berkeley, 1985 to 1988, 1990 to present.

Senior Architectural historian (variable part-time), AECOM, Oakland-San Francisco, 2017 to 2019.

Architectural historian, Cultural Resources Group, Dames & Moore/URS, San Francisco, 1990 to 2003.

Landmarks preservationist, Research Department, New York City Landmarks Preservation Commission, 1988 to 1990.

Teaching Assistant/Associate, Department of Architecture, Univ. of California at Berkeley, 1985 to 1986.

Architectural historian, The Foundation for San Francisco's Architectural Heritage, 1981 to 1984.

Archivist, College of Environmental Design Documents Collection, Univ. of California at Berkeley, 1979 to 1981.

Architectural historian, Charles Hall Page & Associates/Page, Anderson, Turnbull, Planning and Architecture, San Francisco, 1974 to 1981.

EDUCATION

History of Architecture, University of California at Berkeley, Advanced to Candidacy 1987.

A.B. with honors, Anthropology, Certificate with distinction in American Civilization, Princeton University, 1973.

SELECTED PROJECTS

Rodoni House, El Cerrito. 2016-2019. For this 1899 house and grounds associated with the Little Italy section of El Cerrito, Section 106 steps including evaluation, draft MOA, HALS documentation (with Denise Bradley for Komouros-Towey Architects). For LCA Architects and property owner.

Ethel Moore Memorial, Oakland. 2016-2017. Evaluation of the first public health building in Oakland, designed by Charles W. Dickey and completed in 1922. Named for a pioneering and influential activist in social welfare and public health who died while planning this building. For Oakland Unified School District.

Newell Plantation House, Wharton County, Texas. 2007-2015. Documentation for evaluation of 1840s cotton plantation including headquarters house, agricultural landscape, and sites of slave quarters, in preparation for restoration of headquarters house. With Mary Hardy.

Corbett Heights Historic Context Statement, San Francisco. 2012. Historic Context Statement for West Eureka Valley neighborhood, a large and complex area with a patchwork of street grids, over 1,100 parcels, and buildings from every decade since the 1860s. For Corbett Heights Neighbors and the Historic Preservation Fund Committee.

Jackling House, Woodside. 2001-2010. Multi-phase study of 1926 estate of “copper king” Daniel Jackling, with Spanish Colonial Revival Style house designed by George Washington Smith, including evaluation, HABS, and salvage plan. For Steve Jobs and Town of Woodside.

North Beach, San Francisco. 2010. Historic context statement for large post-1906 area dominated by flats and cottages, with social and ethnic history including beatniks, Chinese, LGBT, and Italians. For Northeast San Francisco Conservancy.

Lachryma Montis, Sonoma State Park, Sonoma. 2007. Analysis of pre-fab 1851 wood frame house with adobe infill and subsequent buildings built for General Mariano Vallejo, as part of cultural landscape study by Denise Bradley. For California Department of Parks and Recreation.

Hearst Memorial Gymnasium. 2005. Historic Structure Report for major 1927 women’s facility and extension of campus plan designed by Bernard Maybeck and Julia Morgan. With Molly Lambert and SMWM for University of California.

Agnews State Hospital, Santa Clara. 1995-1998. Multi-phase study of architecturally and medically innovative 1907 mental health hospital designed by State Architect including determination of eligibility and HABS documentation. With Dames & Moore for multiple clients including Office of Historic Preservation.

City Hall Site, San Francisco. 1994. HABS documentation of exposed City Hall foundations for building designed by Augustus Laver, built 1871-1897, damaged in the earthquake and fire of 1906, and demolished in 1909. With Mary Hardy, Stephen Tobriner, Mesa Technical, and Basin Research for City of San Francisco.

Los Caminos del Rio Project, Rio Grande Valley, Texas. 1992. Survey of potential National Historic Landmark sites and international context including 18th-century Spanish settlements, the capitol of the Republic of the Rio Grande in Laredo, and a 1912 irrigation system consisting of pumphouses, pumping machinery, and canals; co-author of NHL nomination for Roma, Texas Historic District, a mid-19th-century trading town of stone and brick buildings at the head of navigation of the Rio Grande River. With Dames & Moore for Texas Historical Commission.

St. Francis de Sales Roman Catholic Cathedral, Oakland, California. 1991. Multi-phase project including evaluation and HABS documentation of 1889 Gothic Revival church building damaged in 1989 earthquake designed by Charles J.I. Devlin. For the Diocese of Oakland.

Tarrant County, Texas, Architectural Survey. 1981-1991. Multi-year survey of Fort Worth, small cities, and rural areas with team in revolving roles. With Page, Anderson & Turnbull for Tarrant County Historical Commission.

Abattoir of the New York Butchers Dressed Meat Company, New York. 1989. Documentation of 1903 six-story industrial slaughterhouse, the largest Kosher slaughterhouse in U.S.A., designed by Horgan & Slattery. For New York City Landmarks Preservation Commission.

Syms Operating Theater, Roosevelt Hospital, New York. 1988. Landmark nomination report on pioneer 1890 modern operating theater designed by architect W. Wheeler Smith with surgeon Charles McBurney. For New York City Landmarks Preservation Commission.

Amarillo Historic Building Survey, Texas. 1980. Historic building survey of City of Amarillo including downtown, residential, and industrial districts. With Charles Hall Page & Associates for City of Amarillo.

Phoenix Historic Building Survey, Arizona. 1979. Historic building survey of five districts including downtown and South Phoenix. With Charles Hall Page & Associates for City of Phoenix.

Sacramento Old City Survey, California. 1975. Historic building survey of residential neighborhoods within original city boundaries. With Charles Hall Page & Associates and John Beach for City of Sacramento.

SELECTED PUBLICATIONS

Bliss & Faville: *The Architectural Profession, Regional Ambitions, and the Development of San Francisco in the Early Twentieth Century*. Draft 80% prepared for 640 Foundation, San Francisco, December 2021.

The Claus Spreckels Building, San Francisco. San Francisco: Adolph Rosekrans, 2013.

Port City: The History and Transformation of the Port of San Francisco, 1848-2010. San Francisco: San Francisco Architectural Heritage, 2010.

“A History of the de Young and its Buildings” in *The de Young in the 21st Century: A Museum by Herzog & de Meuron*. San Francisco: Fine Arts Museums of San Francisco and London: Thames & Hudson, 2005.

“Architecture: Continuity and Change in California Courthouse Design, 1850-2000” in *Courthouses of California: An Illustrated History*. San Francisco: California Historical Society and Berkeley: Heyday Books, 2001.

Building California: Technology and the Landscape. San Francisco: California Historical Society and William Stout Publishers, 1998.

“Las Vegas, Nevada” in *The Dictionary of Art*, London: Grove’s Dictionaries, 1996.

“Rearranging the Environment: The Making of a California Landscape, 1870s to 1990s” in *Facing Eden: 100 Years of Landscape Art in the Bay Area*, Steven A. Nash, editor. Berkeley: University of California Press, 1995.

“Meat Packing” in *The Encyclopedia of New York City*. New-York Historical Society and Yale University Press, 1995.

“Architecture” in *San Francisco*. Paris: Guides Gallimard, 1993. English edition, New York: Knopf, 1994.

Splendid Survivors: San Francisco’s Downtown Architectural Heritage. Prepared by Charles Hall Page & Associates. San Francisco: California Living Books, 1979.

“History of the Skyscraper” (Review) in *Journal of the Society of Architectural Historians*, Vol. 37:3 (October 1978), 224-225.



LOS ANGELES CITY PLANNING COMMISSION

200 North Spring Street, Room 272, Los Angeles, California, 90012-4801, (213) 978-1300

www.planning.lacity.org

LETTER OF DETERMINATION

MAILING DATE: **DEC 11 2024**

Case No.: DIR-2023-4545-TOC-SPR-VHCA-1A
CEQA: ENV-2023-4546-CE
Plan Area: Wilshire

Council District: 10 – Hutt

Project Site: 638 South Berendo Street (3273, 3275, 3277, 3279, 3281, 3283, 3285, 3287, 3289 West Wilshire Boulevard, 638, 642, and 646 South Berendo Street)

Applicant: Scott Dobbins, 3275 Wilshire LP
Representative: Jim Ries, Craig Lawson & Co. LLC

Appellant: Supporters Alliance for Environmental Responsibility (SAFER)
Representative: Hayley Uno, Lozeau Drury LLP

At its meeting of **November 14, 2024**, the Los Angeles City Planning Commission took the actions below in conjunction with the following Project:

Construction, use, and maintenance of a new, eight-story, 86,700 square-foot residential building with 163 dwelling units of which 18 dwelling units (11 percent of the proposed density) will be set aside for Extremely Low Income Households. The Project will rise to a maximum height of 99 feet and 9 inches with a Floor Area Ratio (FAR) of 3.39:1. The building will be constructed with seven residential levels above one ground floor level of residential lobby and parking and one subterranean level of parking. The Project will provide a total of 39 automobile parking spaces and 118 bicycle parking spaces (107 long-term spaces and 11 short-term spaces).

1. **Determined**, based on the whole of the administrative record, that the Project is exempt from the California Environmental Quality Act (CEQA) pursuant to CEQA Guidelines, Article 19, Section 15332 (Class 32), and there is no substantial evidence demonstrating that an exception to a categorical exemption pursuant to CEQA Guidelines, Section 15300.2 applies;
2. **Denied** the appeal and **sustained** the Planning Director's determination dated August 16, 2024;
3. **Approved** with Conditions, pursuant to Section 12.22 A.31 of the Los Angeles Municipal Code (LAMC), a Tier 4 Transit Oriented Communities (TOC) housing development project consistent with the Transit Oriented Communities Affordable Housing Incentive Program with a total of 163 dwelling units, including 18 dwelling units reserved for Extremely Low Income (ELI) Household occupancy for a period of 55 years, along with the following three additional incentives:
 - a. Yard/Setbacks. A front yard setback which aligns with the facade of the northern adjoining building and a 35 percent reduction in the northern rear yard setback;
 - b. Averaging. Permit averaging of Floor Area Ratio, Density, Parking, Open Space and permitting Vehicular Access; and
 - c. Open Space. A reduction in open space by up to 25 percent otherwise required;
4. **Approved** with Conditions, pursuant to LAMC Section 16.05, a Site Plan Review for a development project which creates or results in an increase of 50 or more dwelling units;
5. **Adopted** the attached Modified Conditions of Approval; and
6. **Adopted** the attached Findings.

The vote proceeded as follows:

Moved: Zamora
Second: Lawshe
Ayes: Diaz, Klein, Newhouse, Saitman
Absent: Cabildo, Choe, Mack

Vote: 6 – 0



Cecilia Lamas, Commission Executive Assistant II
Los Angeles City Planning Commission

Fiscal Impact Statement: There is no General Fund impact as administrative costs are recovered through fees.

Effective Date/Appeals: The decision of the Los Angeles City Planning Commission is final effective upon the mailing of this determination letter and not further appealable.

If you seek judicial review of any decision of the City pursuant to California Code of Civil Procedure Section 1094.5, the petition for writ of mandate pursuant to that section must be filed no later than the 90th day following the date on which the City's decision became final pursuant to California Code of Civil Procedure Section 1094.6. There may be other time limits which also affect your ability to seek judicial review.

Attachments: Modified Conditions of Approval, Findings, Appeal Filing Procedures (CEQA)

cc: Heather Bleemers, Senior City Planner
Esther Ahn, City Planner
David Woon, Planning Assistant

CONDITIONS OF APPROVAL

(As Modified by the City Planning Commission at its meeting on November 14, 2024)

Pursuant to LAMC Sections 12.22 A.31 and 16.05 the following conditions are hereby imposed upon the use of the subject property:

1. **Site Development.** Except as modified herein, the project shall be in substantial conformance with the plans and materials submitted by the applicant, stamped Exhibit "A," and attached to the subject case file. Minor deviations may be allowed in order to comply with the provisions of the LAMC or the project conditions. Changes beyond minor deviations required by other City Departments or the LAMC may not be made without prior review by the Department of City Planning, Expedited Processing Section, and written approval by the Director of City Planning. Each change shall be identified and justified in writing.
2. **On-site Restricted Affordable Units.** A total of eighteen (18) units shall be set aside for Extremely Low Income Households, as defined by the Los Angeles Housing Department (LAHD) and California Government Code Section 65915(c)(2).
3. **Changes in On-site Restricted Units.** Deviations that increase the number of restricted affordable units or that change the composition of units or change parking numbers shall be consistent with LAMC Section 12.22 A.31.
4. **Housing Requirements.** Prior to issuance of a building permit, the owner shall execute a covenant to the satisfaction of LAHD to make 11 percent of the total number of dwelling units available to Extremely Low Income Households, for sale or rental as determined to be affordable to such households by LAHD for a period of 55 years. In the event the applicant reduces the proposed density of the project, the number of required set-aside affordable units may be adjusted, consistent with LAMC Section 12.22 A.31, to the satisfaction of LAHD, and in consideration of the project's SB 8 or SB 330 Determination. Enforcement of the terms of said covenant shall be the responsibility of LAHD. The applicant will present a copy of the recorded covenant to the Department of City Planning for inclusion in this file. The project shall comply with the Guidelines for the Affordable Housing Incentives Program adopted by the City Planning Commission and with any monitoring requirements established by the LAHD. Refer to the Density Bonus Legislation Background section of this determination. The project shall comply with any other requirements stated in project's Housing Crisis Act of 2019 (SB 330) Replacement Unit Determination Letter, dated September 14, 2021, including but not limited to replacement unit requirements and requirements regarding relocation, right of return, and right to remain for occupants of protected units.
5. **Rent Stabilization Ordinance (RSO).** Prior to the issuance of a Certificate of Occupancy, the owner shall obtain approval from the Los Angeles Housing Department (LAHD) regarding replacement of affordable units, provision of RSO Units, and qualification for the Exemption from the Rent Stabilization Ordinance with Replacement Affordable Units in compliance with Ordinance No. 184,873. In order for all the new units to be exempt from the Rent Stabilization Ordinance, the applicant will need to either replace all withdrawn RSO units with affordable units on a one-for-one basis or provide at least 20 percent of the total number of newly constructed rental units as affordable, whichever results in the greater number. The executed and recorded covenant and agreement submitted and approved by LAHD shall be provided.
6. **Base Incentives.**
 - a. **Residential Density.** The project shall be limited to a maximum density of 163 residential units, including On-site Restricted Affordable Units.

- b. **Floor Area Ratio.** Development of the subject property shall be limited to a maximum Floor Area Ratio (FAR) of up to 3.39:1.
- c. **Parking.**
 - i. **Automobile Parking.** Pursuant to California Government Code Section 65915(p)(3) and AB 2097, the project shall not be required to provide any minimum vehicle parking. The applicant may choose to provide a greater amount of vehicle parking.
 - ii. **Bicycle Parking.** Bicycle parking shall be provided in compliance with the Municipal Code and to the satisfaction of the Department of Building and Safety. No variance from the bicycle parking requirements has been requested or granted herein.
 - iii. **Unbundling.** Required parking may be sold or rented separately from the units, with the exception of all Restricted Affordable Units which shall include any required parking in the base rent or sales price, as verified by the Los Angeles Housing Department.
 - iv. **Electric Vehicle Parking.** All electric vehicle charging spaces (EV Spaces) and electric vehicle charging stations (EVCS) shall comply with the regulations outlined in Sections 99.04.106 and 99.05.106 of Article 9, Chapter IX of the LAMC.

7. **Additional Incentives.**

- a. **Yards/Setbacks.** The project shall be permitted a front yard setback which aligns with the façade of the northern adjoining building and a 35 percent reduction in the northern rear yard setback. The front yard shall be limited to 0 feet in lieu of 15 feet otherwise required by 12.12 C and the northern rear yard shall be limited to 13 feet in lieu of 20 feet otherwise required by LAMC Section 12.12 C.
- b. **Averaging.** The project shall average Floor Area Ratio, Density, Parking, Open Space, and permit Vehicular Access to permit a FAR of 3.39:1, a density of 163 residential units, an Open Space area of 12,263 square feet, and vehicular access from a less restrictive zone to a more restrictive zone.
- c. **Open Space.** The project shall be permitted up to a 25 percent reduction in open space, or a minimum of 12,225 square feet in lieu of the required 16,300 square feet otherwise required by LAMC Section 12.21 G.

Site Plan Review Conditions

8. **Landscaping.**

- a. All open areas not used for buildings, driveways, parking areas, recreational facilities, or walks shall be attractively landscaped, including an automatic irrigation system, and maintained in accordance with a landscape plan prepared by a licensed landscape architect or licensed architect.
- b. All planters containing trees shall have a minimum depth of 42 inches, including those located on the rooftop.
- c. **Landscape Plan.** Landscaping shall be substantial conformance with the Landscape Plan stamped "Exhibit A".

9. **Tree Requirement.** As conditioned herein, a final submitted landscape plan shall be reviewed to be in substantial conformance with Exhibit "A." There shall be a minimum of forty-one (41) 24-inch box, or larger, trees on site pursuant to LAMC Section 12.21 G.2. Any required trees pursuant to LAMC Section 12.21 G.2 shown in the public right of way in Exhibit "A" shall be preliminarily reviewed and approved by the Urban Forestry Division prior to building permit issuance. In-lieu fees pursuant to LAMC Section 62.177 shall be paid if placement of required trees in the public right of way is proven to be infeasible due to City determined physical constraints.
10. **Street Trees.** Street trees shall be provided to the satisfaction of the Urban Forestry Division. Street trees may be used to satisfy on-site tree requirements pursuant to LAMC Article Section 12.21.G.3 (Chapter 1, Open Space Requirement for Six or More Residential Units).
11. **Graffiti.** All graffiti on the site shall be removed or painted over to match the color of the surface to which it is applied within 24 hours of its occurrence.
12. **Materials.** A variety of high quality exterior building materials, consistent with the approved Exhibit "A" plans, shall be used. Substitutes of an equal quality shall be permitted to the satisfaction of the Department of City planning.
13. **Lighting.** Outdoor lighting shall be designed and installed with shielding, such that the light source does not illuminate adjacent residential properties or the public right-of-way, nor the above night skies.
14. **Mechanical Equipment.** All mechanical equipment on the roof shall be screened from view. The transformer(s), if located at-grade and facing the public right-of-way, shall be screened with landscaping or a green wall.
15. **Trash Collection.** All trash collection and storage areas shall be located on-site and not visible from the public right-of-way.
16. **Maintenance.** The subject property (including any trash storage areas, associated parking facilities, sidewalks, driveways, yard areas, parkways, and exterior walls along the property lines) shall be maintained in an attractive condition and shall be kept free of trash and debris.
17. **Solar Energy.** The project shall comply with the Los Angeles Municipal Green Building Code, Section 99.05.211.1, to the satisfaction of the Department of Building and Safety.
18. **Parking / Driveway Plan.** Prior to the issuance of any building permit, the applicant shall submit a parking and driveway plan to the Department of Transportation for approval.

Administrative Conditions

19. **Final Plans.** Prior to the issuance of any building permits for the project by the Department of Building & Safety, the applicant shall submit all final construction plans that are awaiting issuance of a building permit by the Department of Building & Safety for final review and approval by the Department of City Planning. All plans that are awaiting issuance of a building permit by the Department of Building & Safety shall be stamped by Department of City Planning staff "Final Plans". A copy of the Final Plans, supplied by the applicant, shall be retained in the subject case file.
20. **Covenant.** Prior to the effectuation of this grant, a covenant acknowledging and agreeing to comply with all the terms and conditions established herein shall be recorded in the County Recorder's Office. The agreement (standard master covenant and agreement form CP-6770)

shall run with the land and shall be binding on any subsequent owners, heirs or assigns. The agreement with the conditions attached must be submitted to the Department of City Planning for approval before being recorded. After recordation, a certified copy bearing the Recorder's number and date shall be provided for inclusion in case file.

21. **Notations on Plans.** Plans submitted to the Department of Building & Safety, for the purpose of processing a building permit application shall include all of the Conditions of Approval herein attached as a cover sheet, and shall include any modifications or notations required herein.
22. **Approval, Verification and Submittals.** Copies of any approvals, guarantees or verification of consultations, review of approval, plans, etc., as may be required by the subject conditions, shall be provided to the Department of City Planning prior to clearance of any building permits, for placement in the subject file.
23. **Code Compliance.** Use, area, height, and yard regulations of the zone classification of the subject property shall be complied with, except where granted conditions differ herein.
24. **Department of Building & Safety.** The granting of this determination by the Director of Planning does not in any way indicate full compliance with applicable provisions of the Los Angeles Municipal Code Chapter IX (Building Code). Any corrections and/or modifications to plans made subsequent to this determination by a Department of Building & Safety Plan Check Engineer that affect any part of the exterior design or appearance of the project as approved by the Director, and which are deemed necessary by the Department of Building & Safety for Building Code compliance, shall require a referral of the revised plans back to the Department of City Planning for additional review and sign-off prior to the issuance of any permit in connection with those plans.
25. **Department of Water and Power.** Satisfactory arrangements shall be made with the Los Angeles Department of Water and Power (LADWP) for compliance with LADWP's Rules Governing Water and Electric Service. Any corrections and/or modifications to plans made subsequent to this determination in order to accommodate changes to the project due to the under-grounding of utility lines, that are outside of substantial compliance or that affect any part of the exterior design or appearance of the project as approved by the Director, shall require a referral of the revised plans back to the Department of City Planning for additional review and sign-off prior to the issuance of any permit in connection with those plans.
26. **Enforcement.** Compliance with and the intent of these conditions shall be to the satisfaction of the Department of City Planning.
27. **Expiration.** In the event that this grant is not utilized within three years of its effective date (the day following the last day that an appeal may be filed), the grant shall be considered null and void. Issuance of a building permit, and the initiation of, and diligent continuation of, construction activity shall constitute utilization for the purposes of this grant.
28. **Expedited Processing Section Fee.** Prior to the clearance of any conditions, the applicant shall show proof that all fees have been paid to the Department of City Planning, Expedited Processing Section.
29. **Indemnification and Reimbursement of Litigation Costs.**

Applicant shall do all of the following:

 - a. Defend, indemnify and hold harmless the City from any and all actions against the City relating to or arising out of, in whole or in part, the City's processing and approval of this entitlement, including but not limited to, an action to attack, challenge, set aside, void, or

otherwise modify or annul the approval of the entitlement, the environmental review of the entitlement, or the approval of subsequent permit decisions, or to claim personal property damage, including from inverse condemnation or any other constitutional claim.

- b. Reimburse the City for any and all costs incurred in defense of an action related to or arising out, in whole or in part, of the City's processing and approval of the entitlement, including but not limited to payment of all court costs and attorney's fees, costs of any judgments or awards against the City (including an award of attorney's fees), damages, and/or settlement costs.
- c. Submit an initial deposit for the City's litigation costs to the City within 10 days' notice of the City tendering defense to the applicant and requesting a deposit. The initial deposit shall be in an amount set by the City Attorney's Office, in its sole discretion, based on the nature and scope of action, but in no event shall the initial deposit be less than \$50,000. The City's failure to notice or collect the deposit does not relieve the applicant from responsibility to reimburse the City pursuant to the requirement in paragraph (b).
- d. Submit supplemental deposits upon notice by the City. Supplemental deposits may be required in an increased amount from the initial deposit if found necessary by the City to protect the City's interests. The City's failure to notice or collect the deposit does not relieve the applicant from responsibility to reimburse the City pursuant to the requirement in paragraph (b).
- e. If the City determines it necessary to protect the City's interest, execute an indemnity and reimbursement agreement with the City under terms consistent with the requirements of this condition.

The City shall notify the applicant within a reasonable period of time of its receipt of any action and the City shall cooperate in the defense. If the City fails to notify the applicant of any claim, action, or proceeding in a reasonable time, or if the City fails to reasonably cooperate in the defense, the applicant shall not thereafter be responsible to defend, indemnify or hold harmless the City.

The City shall have the sole right to choose its counsel, including the City Attorney's office or outside counsel. At its sole discretion, the City may participate at its own expense in the defense of any action, but such participation shall not relieve the applicant of any obligation imposed by this condition. In the event the applicant fails to comply with this condition, in whole or in part, the City may withdraw its defense of the action, void its approval of the entitlement, or take any other action. The City retains the right to make all decisions with respect to its representations in any legal proceeding, including its inherent right to abandon or settle litigation.

For purposes of this condition, the following definitions apply:

"City" shall be defined to include the City, its agents, officers, boards, commissions, committees, employees, and volunteers.

"Action" shall be defined to include suits, proceedings (including those held under alternative dispute resolution procedures), claims, or lawsuits. Actions includes actions, as defined herein, alleging failure to comply with any federal, state or local law.

Nothing in the definitions included in this paragraph are intended to limit the rights of the City or the obligations of the applicant otherwise created by this condition.

FINDINGS

TRANSIT ORIENTED COMMUNITIES AFFORDABLE HOUSING INCENTIVE PROGRAM /AFFORDABLE HOUSING INCENTIVES COMPLIANCE FINDINGS

1. Pursuant to Section 12.22 A.25(g)(2)(i)(c) of the LAMC and Section 65915(e) of the California Government Code, the Commission shall approve a density bonus and requested incentive(s) unless the Commission finds that:

- a. *The incentive do not result in identifiable and actual cost reductions to provide for affordable housing costs, as defined in California Health and Safety Code Section 50052.5 or Section 50053 for rents for the affordable units.*

The record does not contain substantial evidence that would allow the Director to make a finding that the requested incentives are not necessary to provide for affordable housing costs per State Law. The California Health & Safety Code Sections 50052.5 and 50053 define formulas for calculating affordable housing costs for very low, low, and moderate income households. Section 50052.5 addresses owner-occupied housing and Section 50053 addresses rental households. Affordable housing costs are a calculation of residential rent or ownership pricing not to exceed 25 percent gross income based on area median income thresholds dependent on affordability levels.

The list of Additional Incentives in the Transit Oriented Communities Guidelines was pre-evaluated at the time the Transit Oriented Communities Affordable Housing Incentive Program Ordinance was adopted to include types of relief that minimize restrictions on the size of the Project. As such, the Director will always arrive at the conclusion that the Additional Incentives are required to provide for affordable housing costs because the incentives by their nature increase the scale of the Project.

Yard/Setback. The requested Additional Incentive to permit a front yard setback which aligns with the façade of the northern adjoining building and a 35 percent reduction in the northern rear yard setback is expressed in the Menu of Incentives in the Transit Oriented Communities Guidelines, which permit exceptions to zoning requirements that result in building design or construction efficiencies that facilitate affordable housing costs. The proposed eight-story residential building will be developed in the R5P-2 and C2-2 Zones which require a 15-foot front yard setback adjacent to South Berendo Street, a 20-foot rear yard setback adjacent to the northern adjacent alley, and an 11-foot easterly side yard setback. The Project will maintain the existing commercial building (Roseberry Building) located on the southern portion of the Project site, which is located in the C4-2 Zone, therefore the front, side, and rear yard setbacks will remain unchanged for this portion of the Project site (The C2-2 and C4-2 zoning of the Project site allows for no setback requirements for commercial uses and the front yard, and side and rear yard setback requirements in conformance with the R4 Zone for residential uses). The proposed Project will utilize the Tier 4 yard/setback incentive to permit a front yard setback which aligns with the northern adjoining building for a 0-foot front yard setback and to reduce the northern rear yard setback requirement to 13 feet. The Project will maintain an easterly side yard setback of 11 feet in accordance to the zoning of the Project site. With the incentive, the Project will dedicate more floor area to the construction of additional dwelling units thereby allowing for more affordable units to be set aside for Extremely Low Income households. This incentive supports the Applicant's decision to reserve 11 percent, or 18 units, as affordable housing units.

Averaging. The requested Additional Incentive for averaging Floor Area Ratio (FAR),

Density, Parking, and Open Space are expressed in the Menu of Incentives in the TOC Guidelines, which permit exceptions to zoning requirements that result in building design or construction efficiencies that facilitate the creation of affordable housing. For this Project, the LAMC permits a total base density of 190 units. The request to average density across the two lots zoned C4, C2, and R5 will permit a proposed density of 163 dwelling units throughout the Project site. The permitted base FAR for the portions of the lots zoned C4, C2, and R3 is 6:1. The request to average FAR across the Project site will allow the proposed FAR of 3.39 to 1. Per LAMC and the requested Additional Incentive for a 25 percent reduction in open space pursuant to the TOC Program, the required area dedicated to Open Space is 12,255 square feet. The request to average Open Space would allow the applicant to propose a combination of common and private open space areas in the form of private balconies, two recreation rooms, a second-floor courtyard, and an eighth-floor terrace encompassing a total area of 12,263 square feet. With regards to parking, the Project is not required to comply with any minimum automobile parking requirements pursuant to Assembly Bill (AB) 2097 as it is located one-half mile of a Major Transit Stop. Nevertheless, the Project will provide 39 parking spaces within the ground and subterranean-floor levels of the proposed housing development. Therefore, the averaging of parking and permitting of vehicular access from a less restrictive zone to a more restrictive zone is not necessary for this Project. The incentive allows the applicant to utilize more of the total building square footage for residential units, which facilitates the construction of more affordable housing units, while remaining in compliance with all other applicable zoning regulations. The incentive further supports the Applicant's decision to reserve at least 11 percent of the total units proposed for Extremely Low Income Households. Therefore, the Additional Incentive is necessary to provide for affordable housing costs.

Open Space. The requested Additional Incentive for a 25 percent reduction in the required amount of open space is expressed in the Menu of Incentives in the TOC Guidelines, which permit exceptions to zoning requirements that result in building design or construction efficiencies that facilitate the creation of affordable housing. For this Project, the LAMC requires a total open space area of 16,300 square feet. The requested Tier 4 incentive allows the applicant to reduce the open space requirement to 12,255 square feet. The Project proposes a total open space area of 12,263 square feet, which includes common and private open space. The incentive allows the applicant to utilize more of the total building square footage for residential units, which facilitates the construction of more affordable housing units, while remaining in compliance with all other applicable zoning regulations. The incentive further supports the applicant's decision to reserve 11 percent of the total units proposed for Extremely Low Income households. Therefore, the Additional Incentive is necessary to provide for affordable housing costs.

- b. *The Incentive will have a specific adverse impact upon public health and safety, or on any real property that is listed in the California Register of Historical Resources and for which there are no feasible method to satisfactorily mitigate or avoid the specific adverse Impact without rendering the development unaffordable to Very Low, Low and Moderate Income households. Inconsistency with the zoning ordinance or the general plan land use designation shall not constitute a specific, adverse impact upon the public health or safety.*

There is no evidence that the proposed incentives will have a specific adverse impact upon public health and safety or the physical environment, or any real property that is listed in the California Register of Historical Resources. A "specific adverse impact" is defined as "a significant, quantifiable, direct and unavoidable impact, based on objective, identified written public health or safety standards, policies, or conditions as they existed on the date the application was deemed complete" (LAMC Section 12.22 A.25(b)). The Project site is comprised of the Roseberry Building which is identified as an eligible historic

resource in a Community Redevelopment Agency (CRA) survey. However, the structure does not involve a contributing structure in a designated Historic Preservation Overlay Zone or on the City of Los Angeles list of Historical-Cultural Monuments. As concluded in the Historic Resources Impacts Assessment Report prepared by Historic Resources Group in July 2022 and the Addendum to the Historic Resources Impacts Analysis Report dated May 25, 2023, the Project will not result in a substantial adverse change in the significance of an historical resource in the Project vicinity and therefore the Project will not have a significant effect on the environment. In a correspondence dated August 2022, the City's Office of Historic Resources has confirmed that they have reviewed the reports and accept their conclusions.

The proposed Project and potential impacts were analyzed in accordance with the California Environmental Quality Act (CEQA) Guidelines and the State's CEQA Thresholds Guide. These two documents establish guidelines and thresholds of significant impact, and provide the data for determining whether or not the impacts of a proposed Project reach or exceed those thresholds. Analysis of the proposed Project determined that it is Categorically Exempt from environmental review pursuant to Article 19, Class 32 of the CEQA Guidelines.

According to ZIMAS, the Project is not located on a substandard street in a Hillside area or a Very High Fire Hazard Severity Zone. The Project is required to comply with all pertinent regulations including those governing construction, use, and maintenance, and will not create any significant direct impacts on public health and safety. Therefore, there is no substantial evidence that the proposed Project will have a specific adverse impact on public health and safety, or on any Historical Resource.

c. The incentives are contrary to state or federal law.

There is no substantial evidence in the record indicating that the requested incentives are contrary to any state and federal law.

SITE PLAN REVIEW FINDINGS

2. 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.

The proposed Project is consistent with applicable general plan designation, applicable policies, and applicable zoning designations. The Wilshire Community Plan Map designates the property for Regional Center Commercial land uses with the corresponding zones CR, C1.5, C2, C4, P, PB, RAS3, RAS4, R3, R4, R5 zones. The Project site is zoned C2-2, C4-2, and R5P-2, and is thus consistent with the land use designation. The Project will provide 163 dwelling units with 11 percent of the units set aside for Extremely Low Income households.

The proposed project is consistent with the Goals, Objectives, and Policies, of the Wilshire Community Plan and Framework Element as discussed below.

Goal 1 Provide a safe, secure, and high quality residential environment for all economic, age, and ethnic segments of the Wilshire community.

Objective 1-2: Reduce vehicular trips and congestion by developing new housing in close proximity to regional and community commercial centers, subway stations and existing bus route stops.

Objective 1-4: Provide affordable housing and increased accessibility to more population segments, especially students, the handicapped and senior citizens.

The Project will provide a net increase of 163 residential dwelling units of which 11 percent, or 18 units, will be reserved for Extremely Low Income Households. These units will encompass the second- through eighth-floor levels of the Project, with amenities such as recreation rooms, a courtyard, and an outdoor terrace. The Project will also incorporate design features such as landscaping, lighting, windows, and balcony spaces that will create a safe and comfortable environment. Regarding unit composition, the Project is comprised of 163 studio units. As such the Project will provide mixed income housing for prospective residents.

The Project is located in a Tier 4 TOC Incentive Area as it is located less than one-half mile, or 2,640 feet, east from the intersection of West Wilshire Boulevard and South Vermont Avenue which functions as a major public transit stop for numerous Metro and LADOT bus lines and the Metro “B” and “D” Rail Lines. These bus and rail lines connect commuters to essential services and job centers across Los Angeles. The Applicant requests Tier 4 Incentives pursuant to the Transit Oriented Communities Affordable Housing Incentive Program to increase residential density and floor area ratio (FAR), and reduce residential parking, among other Incentives, in exchange for dedicating a portion of the total proposed units for affordable housing. The Project proposes 163 dwelling units with a FAR of 3.39:1, and no automobile parking spaces pursuant to AB 2097. As such, the reduction in parking spaces will reduce the number of vehicle trips to and from the Project site. In addition, the Project will also encourage residents to utilize public and active transit opportunities as it is within close proximity to bus and rail service, and will provide 118 bicycle parking spaces. These features will allow residents to access essential services and job centers without automobile dependency.

Goal 2 Encourage strong and competitive commercial sectors which promote economic vitality and serve the needs of the Wilshire Community through well designed, safe, and accessible areas, while preserving historic and cultural character.

Objective 2-1 Preserve and strengthen viable commercial development and provide additional opportunities for new commercial services with the existing commercial areas.

Objective 2-2 Promote distinctive commercial districts and pedestrian-oriented areas.

The Project is located in the Wilshire Center area bound by 6th Street, Vermont Avenue, 8th Street, and Western Avenue. The Wilshire Community Plan identifies the Wilshire Center area as a mixed-use district, in which the integration of housing and commercial development is encouraged. The intent of mixed use development is to locate housing in close proximity to jobs and services, to reduce vehicular trips, traffic congestion and air pollution, to provide rental housing, and to stimulate vibrancy and activity in pedestrian-oriented areas.

In addition to providing 163 residential dwelling units, the Project will maintain the existing commercial building, known as the Roseberry Building, fronting West Wilshire Boulevard which encompasses 33,057 square feet of commercial tenant space. The Roseberry Building consists of dining and personal health/beauty establishments which attract commercial activity and employment to the Wilshire Center district. The Wilshire Center district is highly-developed with residential, commercial, and community-serving facility uses including multi-family residences, restaurants, markets, hotels, clinics, and community centers. The Project

will preserve the Roseberry Building and enhance the mixed-use character of Wilshire Boulevard corridor with the integration of new housing opportunities into the community. As previously discussed, the Project site is in close proximity to numerous public transit lines that connect residents, visitors, and workers to essential services and job centers. In conjunction with the mixed-use development of the neighborhood, Project users will be able to access numerous goods and services by foot or public transit further promoting commercial and pedestrian activity in the community.

The proposed Project is also consistent with the Goals, Objectives, and Policies, of the General Plan's Housing Element as described below.

Objective 1.1 Produce an adequate supply of rental and ownership housing in order to meet current and projected needs;

Policy 1.1.1 Expand opportunities for residential development, particularly in designated centers, Transit Oriented Districts, and along mixed-use boulevards.

The proposed Project will intensify the use of the Project site by contributing to a net increase of 163 dwelling units in the Wilshire Center – Koreatown neighborhood. The Project will be compatible with the surrounding properties as it will integrate new housing opportunities with the mix of commercial, residential, office, and community facility uses established in the vicinity as well as complement the surrounding public transportation infrastructure. Wilshire Boulevard functions as a mixed-use corridor providing residents, workers, and visitors access to major job centers, commercial districts, and essential services across the community. Approximately 600 feet east of the Project site, is the intersection of Wilshire Boulevard and South Vermont Avenue which functions as a stop for numerous Metro and LADOT bus lines as well the Metro "B" and "D" Rail Lines. These bus and subway lines provide regional access to communities across Los Angeles County. As such, the proposed Project will expand housing opportunities within a transit-rich and mixed-use community.

The proposed Project is also consistent with the Goals, Objectives, and Policies, of the General Plan's Mobility Element, also known as Mobility Plan 2035, which provides policies with the goal of developing a balanced transportation network for all users. The Project supports the following policies of the Mobility Element:

Policy 2.3

Pedestrian Infrastructure: Recognize walking as a component of every trip, and ensure high quality pedestrian access in all site planning and public right-of-way modifications to provide a safe and comfortable walking environment.

The Project will incorporate pedestrian-oriented design elements that will enhance the pedestrian experience along the public right-of-way and provide a safe and comfortable walking environment. The proposed residential building will front South Berendo Street and the existing Roseberry Building will front Wilshire Boulevard. The Project will comply with the standard street dimensions pursuant to the Mobility Plan 2035, thereby providing a sidewalk width that is compatible with the local streets and development in the community. Landscaping, including trees and groundcover, will be maintained along the street fronts and alley to create a more attractive and comfortable space for pedestrians. The Project will maintain four street trees along South Berendo Street and Wilshire Boulevard and will feature a canopy over the Project's entrance along South Berendo Street thereby offering pedestrians shade coverage and relief from excessive sunlight and high-heat days. The Project will also

install lighting fixtures that will illuminate the public right-of-way during the night and will be compatible with the surrounding commercial and residential uses. In addition, the residential lobby will utilize storefront glazing along the South Berendo Street frontage, providing a sense of transparency and “eyes on the street” between the private and public realms. Therefore, these components will create a high-quality pedestrian experience for the community.

Policy 5.4 Clean Fuels and Vehicles

Continue to encourage the adoption of low and zero emission fuel sources, new mobility technologies, and supporting infrastructure.

Per California Green Building Code Section 110.10(b)1B, the Project is required to designate 15 percent of the total roof area for solar installation. The Project may be exempt from this requirement if it provides smart thermostats and Energy Star rated dishwashers and refrigerators in every unit. As such, the Project promotes clean and renewable energy infrastructure with the construction of the eight-story residential building.

The Project is also consistent with the goals and provisions of the Wilshire/Koreatown Redevelopment Plan. Residential and commercial uses proposed at the Project site are permitted in the C2-2, C4-2, and R5P-2 Zones with a land use designation of Regional Center Commercial. The Project will comply with all zoning standards including those dictating density, floor area ratio, setbacks, parking, utilities, and open space pursuant to the Los Angeles Municipal Code and the TOC Program, as well as maintain the existing street configuration detailed in the Redevelopment Plan Map. In addition, the Project will comply with the Citywide Design Guidelines. The proposed 163-unit residential building will expand the range of housing types, prices, and rent levels in the area and will maintain the existing commercial use of the Project site with the preservation of the Roseberry Building. The Roseberry Building is identified as an eligible historic resource in a Community Redevelopment Agency (CRA) survey, however it is not designated as a Historic-Cultural Monument and is not listed in the California Register of Historical Resource. With the proposed Project, the Roseberry Building will undergo minor alterations to the northern façade however it will not alter or remove any of the building’s character-defining features. The Office of Historic Resources has reviewed and accepted the Historical Resources Impacts Assessment Report dated July 2022. The Project will contribute to the economic, social, cultural, and physical well-being of the community through the development and revitalization of the Wilshire Center district. As such, the Project will enhance the livability of the Project site and create a more cohesive and sustainable neighborhood.

As detailed above, the Project conforms with the goals and policies of the Wilshire Community Plan, the Wilshire/Koreatown Redevelopment Plan, the General Plan’s Housing Element, and the Mobility Plan 2035.

3. **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.**

The Project site is comprised of two contiguous lots with a total lot area of 36,066 square feet (1.99 acres) and a frontage of approximately 215 feet along South Berendo Street and 130 feet along West Wilshire Boulevard in the Wilshire Center – Koreatown neighborhood. The Project site gradually declines in elevation when traveling north along South Berendo Street. The Project site is currently developed with a two- to three-story commercial building, also known as the Roseberry Building, which is located at the southern portion of the site fronting

West Wilshire Boulevard and South Berendo Street. The northern portion of the Project site is developed with a surface parking lot.

The Project site is zoned R5P-2, C4-2, and C2-2 and is located within the Wilshire Community Plan with a General Plan Land Use Designation of Regional Center Commercial (Lot 1 is zoned R5P-2 and C2-2, Lot 3 is zoned C4-2). Additionally, the site is located within the Los Angeles State Enterprise Zone, a Transit Priority Area, the Wilshire/Koreatown Redevelopment Plan area, a TOC Tier 4 area, an Adaptive Reuse Incentive Area, an Urban Agriculture Incentive Zone, Methane Zone, Fire District No. 1, and is within .001 kilometers from the Puente Hills Blind Thrust zone.

The property site is located in an urbanized neighborhood bound by South Berendo Street to the west, West Wilshire Boulevard to the south, a multi-story commercial-office building and medical clinic to the east, and a five-story residential building and surface parking to the north. West Wilshire Boulevard is highly developed with multi-story commercial, office, residential, public facility buildings, community institutions, and historic structures. Properties to the west, across South Berendo Street are zoned C4-2 and are developed with a multi-story commercial-office building and parking structure. Properties to the south are zoned C4-2 and are developed with the Tallmadge apartment building and Immanuel Presbyterian Church. Properties to the east are zoned C4-2 and C2-2 and are developed with a multi-story commercial-office building and Kheir Wilshire Clinic. Properties to the north are zoned R5P-2 and are developed with surface parking lots and a five-story residential building.

The proposed Project involves the demolition of the existing surface parking lot and the construction, use, and maintenance of a new eight-story residential building with 163 dwelling units. The Roseberry Building, located on the southern portion of the Project site, will remain on-site and will be rehabilitated. The proposed residential building will encompass approximately 86,700 square feet of floor area and will rise to a maximum height of 99 feet and 9 inches. With the addition of the floor area of the Roseberry Building, which encompasses approximately 33,057 square feet, the Project will result in a FAR of 3.39:1. Pursuant to the Transit Oriented Communities (TOC) Affordable Housing Incentive Program, the applicant requests Base Incentives and three Additional Incentives in exchange for reserving 11 percent, or 18 units, for Extremely Low Income Households. The project is comprised of 163 studio units between the second and eighth floors. Regarding parking, the Project is not required to comply with any minimum automobile parking requirements pursuant to Assembly Bill (AB) 2097 as it is located one-half mile of a Major Transit Stop. Nevertheless, the Project will provide 39 parking spaces within the ground and subterranean-floor levels of the proposed housing development. The Project will provide a total of 118 bicycle parking spaces of which 107 long-term spaces will be located in an enclosed bicycle storage room and 11 short-term spaces will be located on the public right-of-way facing South Berendo Street. An existing driveway located adjacent to the northeast corner of the Project site, will provide access to an alley as well the Project's "back of house" uses. A total of 12,263 square feet will be dedicated to open space which includes private balconies, two recreation rooms, a second-floor courtyard, and an eighth-floor terrace.

Height, Bulk, and Setbacks

The Project proposes a maximum height of 99 feet and 9 inches, encompassing eight stories constructed above-grade and one subterranean level. Based on the underlying C2-2, C4-2, and R5P-2 Zones of the Project site, the Project is permitted unlimited height. Properties along West Wilshire Boulevard are developed with multi-story commercial, office, and residential buildings that are similar in height to the proposed residential building. Therefore, the Project's height is consistent with the LAMC and is compatible with the surrounding properties.

Regarding FAR and density, the LAMC permits projects in the C2, C4, and R5 Zones within Height District No. 2, a FAR of 6:1 and a maximum density of 190 dwelling units. The Project proposes a 163-unit residential building with a floor area of 86,700 square feet, a maximum FAR of 3.39:1, and a Tier 4 TOC Incentive to permit the averaging of FAR and density across the two lots that comprise the Project site. (The calculation for density and FAR includes the existing 33,057 square-foot commercial building that will remain on-site for a total floor area of 119,757 square feet). The Project will be comparable to new and existing developments that are constructed in the Wilshire Center – Koreatown community in scale and density, therefore the proposed Project is compatible with the adjacent properties.

In accordance with the TOC Incentive Program, the Project requests an Additional Incentive to reduce the front and rear yard requirements for the portion of the Project site in the R5P-2 Zone in exchange for the provision of affordable housing units. The Applicant requests an Additional Incentive to permit a front yard setback which aligns with the northern adjoining building for a 0-foot front yard setback and to reduce the northern rear yard setback requirement by up to 35 percent for a 13-foot rear yard setback. The Project will maintain a 11-foot eastern side yard setback along West Wilshire Boulevard, consistent with the LAMC. The Project will maintain the existing commercial building (Roseberry Building) located on the southern portion of the project site, which is located in the C4-2 Zone, therefore the front, side, and rear yard setbacks will remain unchanged for this portion of the Project site

The bulk and massing of the proposed residential development would be tempered by multiple design features which relate to the Project's selection of building materials, the programming of open space, landscaping, and the Project's orientation in relation to the surrounding built environment. The Project will feature private balconies along the perimeter of the building as well as an articulated cement exterior, aluminum and glass storefronts and railings, vinyl windows and doors to enhance the building's articulation and provide visual interest on the streetscape. These design features will also help achieve a comfortable balance of light and air ventilation into each dwelling unit. With respect to the abutting Roseberry Building, the Project closely follows the fenestration of the commercial building with storefront glazing at the base and similar horizontal lines and breaks are carried across the Project that reference lines and building heights of the Roseberry Building. On the roof level, mechanical equipment will be appropriately screened from public view to reduce visual and audible impacts to surrounding properties. In addition, adjacent residential properties will not possess any lines of sight to the rooftop equipment. Additional utility and mechanical rooms will be enclosed within the ground floor level and will not be readily accessible to Project users and the public. Landscaping will be utilized in a thoughtful manner particularly within the common open space areas and street-level frontage to create an attractive and comfortable experience for residents and visitors. Street trees, shrubs, and ground cover will provide relief from the heat and sun during the day and will function as a buffer between pedestrians and the roadway. The eighth-floor level will feature lounge seating, a barbeque grill, bar seating, and shrub and tree planters that will provide residents a safe and comfortable space to relax and socialize. The installation of storefront glazing along the lobby and the dwelling units fronting Wilshire Boulevard and South Berendo Street will provide a sense of security and "eyes on the street". In addition, the building's lobby entrance will be covered by a canopy to provide shade and coverage from the sun and rain. The combination of these design features and strategies will help produce a balanced and cohesive look that distinguishes the Project as a residential development.

Parking

Per LAMC, the Project would be required to provide 400 automobile parking spaces. However, the Project is not required to comply with any minimum automobile parking requirements pursuant to Assembly Bill (AB) 2097 as it is located one-half mile of a Major Transit Stop.

Nevertheless, the Project will provide 39 parking spaces within the ground and subterranean-floor levels of the proposed housing development.

The Project's proximity to numerous Metro and LADOT bus lines and the Metro "B" and "D" Rail Lines encourages public transportation as a means of commuting within and across Los Angeles. The Project site is located approximately 600 feet east from the intersection of West Wilshire Boulevard and South Vermont Avenue which functions as a Major Transit Stop for these public transit lines.

The Project will also provide 107 long-term bicycle parking spaces and 11 short-term bicycle parking spaces. The long-term bicycle parking spaces will be located in an enclosed bike storage room with a work space on the ground floor level of the proposed residential building. Short-term bicycle parking will be located along the public right-of-way fronting South Berendo Street.

Lighting

Lighting is required to be provided per LAMC requirements. The Project would provide security lighting on exterior areas to illuminate the building entrances and walkways. The Project is required to provide outdoor lighting with shielding, so that the light source cannot be seen from adjacent residential properties. This condition has also been included in the subject approval. Therefore, the lighting will be compatible with the existing and future developments in the neighborhood.

On-site Landscaping

Per the LAMC, the Project is required to provide 16,300 square feet of open space. The Applicant requests a Tier 4 TOC Incentive to reduce open space by 25 percent. With the TOC Incentive the Project is permitted a minimum of 12,255 square feet of open space. The Project proposes 12,263 square feet of open space distributed among the Project's private balconies, two recreation rooms, second-floor courtyard, and eighth-floor terrace. Of the 12,263 square feet of open space, 6,113 square feet will be dedicated to common open space and 6,150 square feet will be dedicated to private open space.

The Project proposes 1,256 square feet of landscaped area and will plant a total of 41 trees. Landscaping will be maintained among the Project site's street frontage along South Berendo Street and West Wilshire Boulevard and Project's second-floor courtyard and eighth-floor terrace which will feature a variety of trees, shrubs, and ground cover. The Project has been conditioned so that all open areas not used for buildings, driveways, parking areas, recreational facilities or walkways will be attractively landscaped and maintained in accordance with a landscape plan. The planting of any required trees and street trees will be selected and installed per the Bureau of Street Services, Urban Forestry Division's requirements. Therefore, the on-site landscaping will be compatible with the existing the future developments in the neighborhood.

Trash Collection/Load Area

The Project will feature a single enclosed trash collection room that will serve Project users. While the trash room is located on the ground-floor level, residents will be encouraged to dispose of their trash and recycling through chutes located on each floor, which feed into the trash collection area. Trash trucks will temporarily stop and collect trash along the northern alley or South Berendo Street, and therefore would not interrupt daily operations and parking around the surrounding neighborhood. South Berendo Street will also function as a loading space for Project users.

As described above, the Project consists of an arrangement of buildings and structure (including height, bulk, and setbacks), off-street parking facilities, lighting, landscaping, trash collection, and other such pertinent improvements that will be compatible with existing and future development on neighboring properties.

4. **That the residential project provides its residents with appropriate type and placement of recreational facilities and service amenities in order to improve habitability for the residents and minimize impacts on neighboring properties where appropriate.**

The proposed Project will provide 163 residential units. The Project would also provide 12,263 square feet of common and private open space, and would include a variety of amenities to improve habitability for residents and minimize impacts on neighboring properties. The Project has been designed to include indoor and outdoor amenities throughout the residential development such as private balconies, two recreation rooms, a second-floor courtyard, and a eighth-floor terrace. These spaces will provide residents a place to relax, socialize, and participate in recreational activities on-site with features including outdoor furniture, barbeque grills and counters, and more. The placement of these amenities has been thoughtfully arranged in a manner that would reduce potential nuisances from impacting the surrounding properties. Indoor amenities will be enclosed within the residential building and therefore will not impose noise or visual impacts to neighboring properties. Outdoor amenities will be located on the 8th floor will not possess any lines of sight with the adjacent residential buildings. Therefore, the height at which these amenities lie will dampen noise and visual impacts.

The Project site is surrounding by various compatible land uses and transit amenities which encourage walking, biking, and public transit usage. Approximately 600 feet east of the Project site is the intersection of Wilshire Boulevard and South Vermont Avenue which is a Major Transit Stop for numerous Metro and LADOT Dash buses and the Metro “B” and “D” Rail Lines. The Project will also provide residents and visitors a bike storage room with a work space for repairs and bicycle racks to accommodate the Project’s 118 bicycle spaces. Bike racks accommodating 11 short-term parking spaces will be located along the sidewalk fronting South Berendo Street. Access to nearby public transit and bicycle storage provides and encourages residents to utilize sustainable modes of transportation that will reduce traffic impacts. As proposed, the Project will offer a variety of recreational and service amenities in order to improve habitability for the residents while minimizing impacts on neighboring properties.

ADDITIONAL MANDATORY FINDINGS

5. The National Flood Insurance Program rate maps, which are a part of the Flood Hazard Management Specific Plan adopted by the City Council by Ordinance No. 172,081, have been reviewed and it has been determined that this project is located outside of a flood zone.
6. It has been determined based on the whole of the administrative record that the project is exempt from CEQA pursuant to State CEQA Guidelines, Section 15332 (Class 32), and there is no substantial evidence demonstrating that an exception to a categorical exemption pursuant to CEQA Guidelines, Section 15300.2, applies.

The proposed project qualifies for a Class 32 Categorical Exemption because it conforms to the definition of “In-fill Projects”. The project can be characterized as in-fill development within urban areas for the purpose of qualifying for Class 32 Categorical Exemption as a result of meeting five established conditions and if it is not subject to an Exception that would disqualify it. The Categorical Exception document dated September 2022 and attached to the subject

case file provides the full analysis and justification for project conformance with the definition of a Class 32 Categorical Exemption.



LOS ANGELES CITY PLANNING APPEAL FILING PROCEDURES

Entitlement and CEQA appeals may be filed using either the Online Application System (OAS) or in person Drop Off at DSC (Development Services Center).

Online Application System: The OAS (<https://planning.lacity.org/oas>) allows appeals to be submitted entirely electronically online; fee payment is by credit card or e-check.

Drop off at DSC: Appeals of this determination can be submitted in person at the Metro or Van Nuys DSC locations, and payment can be made by credit card or check. City Planning has established drop-off areas at the DSCs with physical boxes where appellants can drop off appeal applications; alternatively, appeal applications can be filed with staff at DSC public counters. Appeal applications must be on the prescribed forms, and accompanied by the required fee and a copy of the determination letter. Appeal applications shall be received by the DSC public counter and paid for on or before the above date or the appeal will not be accepted.

Forms are available online at <http://planning.lacity.org/development-services/forms>. Public offices are located at:

Metro DSC

(213) 482-7077
201 N. Figueroa Street
Los Angeles, CA 90012

Van Nuys DSC

(818) 374-5050
6262 Van Nuys Boulevard
Van Nuys, CA 91401

West Los Angeles DSC

(CURRENTLY CLOSED)
(310) 231-2901
1828 Sawtelle Boulevard
West Los Angeles, CA 90025

City Planning staff may follow up with the appellant via email and/or phone if there are any questions or missing materials in the appeal submission, to ensure that the appeal package is complete and meets the applicable Los Angeles Municipal Code provisions.

An appeal application must be submitted and paid for before 4:30 PM (PST) on the final day to appeal the determination. Should the final day fall on a weekend or legal City holiday, the time for filing an appeal shall be extended to 4:30 PM (PST) on the next succeeding working day. Appeals should be filed early to ensure that DSC staff members have adequate time to review and accept the documents, and to allow appellants time to submit payment.



QR Code to Online
Appeal Filing



QR Code to Forms
for In-Person Filing

Applicant Copy

Office: Downtown

Application Invoice No: 99964



6800199964

City of Los Angeles
Department of City Planning

**City Planning Request**

NOTICE: The staff of the Planning Department will analyze your request and accord the same full and impartial consideration to your application, regardless of whether or not you obtain the services of anyone to represent you.

This filing fee is required by Chapter 1, Article 9, L.A.M.C.

If you have questions about this invoice, please contact the planner assigned to this case. To identify the assigned planner, please the assigned planner, please visit <https://planning.lacity.gov/pdiscaseinfo/> and enter the Case Number.

Payment Info: \$211.56 was paid on 12/16/2024 with receipt number 200185240298

Applicant: Richard Drury ()
Representative:
Project Address: 638 S BERENDO ST, 90010

NOTES:

ENV-2023-4546-CE-1A			
Item	Fee	%	Charged Fee
Appeal by Person Other Than The Applicant	\$172.00	100 %	\$172.00
Case Total			\$172.00
* Fees Subject to Surcharges			\$172.00
Fees Not Subject to Surcharges			\$0.00
Plan & Land Use Fees Total			\$0.00
Expediting Fee			\$0.00
Development Services Center Surcharge (3%)			\$5.16
City Planning Systems Development Surcharge (6%)			\$10.32
Operating Surcharge (7%)			\$12.04
General Plan Maintenance Surcharge (7%)			\$12.04

* Fees Subject to Surcharges	\$172.00
Fees Not Subject to Surcharges	\$0.00
Plan & Land Use Fees Total	\$0.00
Expediting Fee	\$0.00
Development Services Center Surcharge (3%)	\$5.16
City Planning Systems Dev. Surcharge (6%)	\$10.32
Operating Surcharge (7%)	\$12.04
General Plan Maintenance Surcharge (7%)	\$12.04
Grand Total	\$211.56
Total Overpayment Amount	\$0.00
Total Paid (amount must equal sum of all checks)	\$211.56

Council District:

Plan Area:

Processed by JASON CHAN on 12/16/2024

Signature: _____