

Communication from Public

Name: James M. Lloyd
Date Submitted: 04/21/2025 03:53 PM
Council File No: 25-0209
Comments for Public Posting: See attached public comment.



Apr 21, 2025

**City of Los Angeles
City Council
200 North Spring Street
Los Angeles, CA 90012**

**Re: Proposed Housing Development Project at 6266 – 6290 Sunset Boulevard;
CPC-2021-10588-DB-MCUP-SPR-VHCA**

To: submitted electronically via Council file system

Cc: Stephanie Escobar, City Planning Associate, stephanie.escobar@lacity.org; City Clerk's Office, clerk.cps@lacity.org; City Attorney's Office, cityatty.help@lacity.org

Dear Los Angeles City Council,

The California Housing Defense Fund (“CalHDF”) submits this letter to remind the Council of its obligation to abide by all relevant state laws when evaluating the proposed 170-unit housing development project at 6266 – 6290 Sunset Boulevard, which includes 26 units for very low-income households and eight units for low-income households. These laws include the Housing Accountability Act (“HAA”) and the Density Bonus Law (“DBL”).

The HAA provides the project legal protections. It requires approval of zoning and general plan compliant housing development projects unless findings can be made regarding specific, objective, written health and safety hazards. (Gov. Code, § 65589.5, subds. (d), (j).) The HAA also bars cities from imposing conditions on the approval of such projects that would render the project infeasible or reduce the project’s density unless, again, such written findings are made. (*Id.* at subd. (d).) As a development with at least two-thirds of its area devoted to residential uses, the project falls within the HAA’s ambit, and it complies with local zoning code and the City’s general plan. Increased density, concessions, and waivers that a project is entitled to under the DBL (Gov. Code, § 65915) do not render the project noncompliant with the zoning code or general plan, for purposes of the HAA. (Gov. Code, § 65589.5, subd. (j)(3).) The HAA’s protections therefore apply, and the City may not reject the project except based on health and safety standards, as outlined above.

Given that the project approval has been appealed on the basis of the environmental review, the City should be aware that AB 1633 amended the HAA so that its definition of a project

**360 Grand Ave #323, Oakland 94610
www.calhdf.org**

disapproval now includes a failure to certify a sustainable communities environmental assessment (“SCEA”) (Gov. Code, § 65589.5, subd. (h)(6)(J).) In other words, if the Council remands this to the City Planning Commission for further environmental study, or otherwise fails to certify the SCEA, this action may constitute a disapproval of the project pursuant to the HAA.

CalHDF also writes to emphasize that the DBL offers the proposed development certain protections. The City must respect these protections. In addition to granting the increase in residential units allowed by the DBL, the City must not deny the project the proposed waivers and concessions with respect to the averaging of floor area, density, open space, and parking over the project site; vehicular access from a less restrictive zone to a more restrictive zone; floor area ratio; non-residential floor area; side yards; and building to building separation, unless it makes written findings as required by Government Code, section 65915, subdivision (e)(1) that the waivers would have a specific, adverse impact upon health or safety, and for which there is no feasible method to satisfactorily mitigate or avoid the specific adverse impact, or as required by Government Code, section 65915, subdivision (d)(1) that the concessions would not result in identifiable and actual cost reductions, that the concessions would have a specific, adverse impact on public health or safety, or that the concessions are contrary to state or federal law. The City, if it makes any such findings, bears the burden of proof. (Gov. Code, § 65915, subd. (d)(4).) Of note, the DBL specifically allows for a reduction in required accessory parking in addition to the allowable waivers and concessions. (*Id.* at subd. (p).) Additionally, the California Court of Appeal has ruled that when an applicant has requested one or more waivers and/or concessions pursuant to the DBL, the City “may not apply any development standard that would physically preclude construction of that project as designed, even if the building includes ‘amenities’ beyond the bare minimum of building components.” (*Bankers Hill 150 v. City of San Diego* (2022) 74 Cal.App.5th 755, 775.)

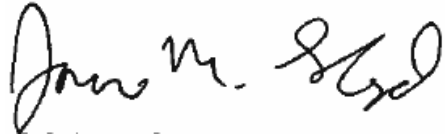
As you are well aware, California remains in the throes of a statewide crisis-level housing shortage. New housing such as this is a public benefit: by providing affordable housing, it will mitigate the state’s homelessness crisis; it will bring new customers to local businesses; it will grow the City’s tax base; and it will reduce displacement of existing residents by reducing competition for existing housing. It will also help cut down on transportation-related greenhouse gas emissions by providing housing in denser, more urban areas, as opposed to farther-flung regions in the state (and out of state). While no one project will solve the statewide housing crisis, the proposed development is a step in the right direction. CalHDF urges the City to approve it, consistent with its obligations under state law.

CalHDF is a 501(c)3 non-profit corporation whose mission includes advocating for increased access to housing for Californians at all income levels, including low-income households. You may learn more about CalHDF at www.calhdf.org.

Sincerely,

A handwritten signature in blue ink, appearing to be 'Dylan Casey', with a long horizontal stroke extending to the right.

Dylan Casey
CalHDF Executive Director

A handwritten signature in black ink, appearing to be 'James M. Lloyd', with a long horizontal stroke extending to the right.

James M. Lloyd
CalHDF Director of Planning and Investigations

Communication from Public

Name: Dale Goldsmith

Date Submitted: 04/22/2025 11:14 AM

Council File No: 25-0209

Comments for Public Posting: On behalf of the applicant, we are submitting responses to the appellant's April 25, 2025 letter.



DALE J. GOLDSMITH
T: 310.254.9054
E: Dale@AGD-Landuse.com

April 22, 2025

BY ONLINE SUBMISSION and EMAIL

The Honorable Planning and Land Use Committee
Los Angeles City Council
200 N. Spring Street
Los Angeles, CA 90012

LACouncilComment.com
Clerk.plumcommittee@lacity.org

Re: **April 22, 2025 PLUM Hearing, Item 3, CF No. 25-0209**
6260-6290 W Sunset Blvd, 1460-1480 N Vine St. & 6251-6165 Leland Way

Honorable Planning and Land Use Committee:

We represent SRG Development, L.P (Applicant), the owner and developer of the above-referenced property (Site). Our client is seeking to develop the Site with a mixed-use transit priority project (TPP) with 170 apartment units, including 26 Very Low Income units and 8 Low Income units, and 16,860 square feet of ground-floor commercial space (Project). On December 12, 2024, the City Planning Commission (CPC) unanimously adopted the Sustainable Communities Environmental Assessment (SCEA) in compliance with CEQA and approved the Project. Supporters Alliance for Environmental Responsibility (SAFER) appealed the CPC's action.

We are writing on behalf of our client to respond to SAFER's last-minute comment letter dated April 21, 2025 (SAFER Comment Letter). As set forth below and in the attached expert response memos from Eyestone Environmental (Response Memos), the arguments in the SAFER Comment Letter are without merit. Therefore, we respectfully request that you recommend that the City Council deny the appeal and uphold the CPC's unanimous approval of the Project.

A. Discussion

1. The Project Meets All SCEA Eligibility Requirements. SAFER claims the Project does not meet the requirements for a SCEA because it is inconsistent with the density and building intensity for the Project area. Specifically, SAFER claims the Project is inconsistent with the General Plan and zoning designation restricting a portion of the site to 2:1 FAR, as the Project's FAR will be 3.88:1. The Site is zoned C4-2D-SN, [Q]C4-2D-SN, and R4-2D. The C4-2D-SN zone limits the Project's density to one dwelling unit per 200 square feet of lot area with a maximum FAR of 2:1 (per the "D" Limitation), the [Q]C4-2D-SN zone limits the Project's density to one dwelling unit per 200 feet of lot area with a maximum FAR of 2.3:1 (per the "D" Limitation),



and the R4-2D limits the density to one dwelling unit per 400 square feet of lot area with a maximum FAR of 2:1 (per the “D” Limitation). Therefore, with 32,628 square feet of lot area in the [Q]C4-2D-SN zone, 22,889 square feet of lot area in the C4-2D-SN zone, and 13,632 square feet of lot area in the R4-2D zone, the Site has a total base density of 347 dwelling units. The Project proposes 170 dwelling units, which is within the permitted density.

Pursuant to State Density Bonus law and LAMC Section 12.22-A.25, by providing affordable housing, the Project was eligible for and sought (and was granted) an Off-Menu incentive to allow a FAR increase from 2:3 to 3.88:1 to allow 284,909 square feet in floor area. The granting of a density bonus incentive allowed the City to find the Project consistent with the LAMC and the General Plan. (Letter of Determination at F-19; see *Wollmer v. City of Berkeley* (2011) 193 Cal.App.4th 1329, 1348–1349 [city properly concluded zoning standards waived under State Density Bonus Law were “not ‘applicable’ to the project”].)

SAFER claims *Wollmer* is inapplicable because it did not involve tiering off a prior EIR, but that is an irrelevant distinction. *Wollmer* stands for the proposition that a density bonus incentive renders the development standard inapplicable to the Project, thus, there can be no inconsistency with that development standard – it simply does not apply. Moreover, there is no conflict between the Public Resource Code (PRC) Section 21155 et seq. (SCEA) and the State Density Bonus Law.

SAFER further claims the increased density was not analyzed in the certified Final Program Environmental Impact Reports (PEIRs) for the Connect SoCal Sustainable Communities Strategies (SCS) for 2020 and 2024, but fails to cite anything in support of this claim. An SCS is “a forecasted development pattern for the region,” “not a site-specific zoning ordinance.” (Gov. Code Section 65080(b)(2)(B); *Sacramentans for Fair Planning v. City of Sacramento* (2019) 37 Cal.App.5th 698, 723 [“*San Franciscans for Fair Planning*”].) In *Sacramentans for Fair Planning*, the court held that given the regional purpose of a SCS and the metropolitan planning organization’s (MPO’s) lack of authority as a regional agency to regulate local land use, an SCS need not contain specific density or building intensity standards to be used for CEQA streamlining. The court ultimately confirmed that the project in that case, which was proposed with a height nine stories (and 110 feet) taller and a floor area ratio 6.0 larger than allowed by the local general plan and zoning designations, qualified for SCS-based CEQA streamlining pursuant to SB 375 because it was consistent with the applicable SCS.

Here, the 2020–2045 RTP/SCS incorporates center-focused placemaking as a land use tool to create dynamic, connected built environments that support multimodal mobility, reduced reliance on single-occupancy vehicles, and reduced GHG emissions. To facilitate focused placemaking, the 2020–2045 RTP/SCS identifies Priority Growth Areas (PGA) across the Southern California Association of Governments (SCAG) region. PGAs are locations where many of the 2020–2045 RTP/SCS strategies can be fully realized. These PGAs include Job Centers, Transit Priority Areas (TPA), High Quality Transit Areas (HQTA), Neighborhood Mobility Areas



(NMA), and Livable Corridors. PGAs do not limit any particular development project from being built in any particular location or prescribe densities or intensities. However, they are intended to guide general growth patterns. The Project Site's location relative to each of the PGAs is shown in Figure 9 through Figure 15 of the SCEA. As shown in Figures 11 through 15, the Project Site is located within a Job Center, TPA, HQTA, NMA, and a Livable Corridor. Thus, neither the SCS nor the PEIRs needed to identify a Project Site-specific density; rather, the Project is consistent with the forecasted density for the region and several PGAs, as demonstrated in SCEA Section 4.2.1.

Further, SAFER's argument is predicated on the false assumption that the SCEA tiered off the SCS PEIRs. It did not, nor was it required to do so. SCEAs are governed by PRC Section 21155.2, whereas tiering is addressed in PRC Section 21094. The two sections contain different requirements and findings. To qualify for a SCEA, a project must be consistent with the general use designation, density, building intensity, and applicable policies specified for the project area in an SCS. It must also incorporate all feasible mitigation measures, performance standards, or criteria set forth in prior applicable environmental impact reports, not just the PEIR for the SCE. However, there is no requirement that the prior environmental impact reports specifically address the project or specify its density.

2. The Project will Implement all Applicable Feasible Mitigation Measures from Prior EIRs. SAFER claims the Project does not qualify for a SCEA because it fails to implement all feasible mitigation measures and performance standards in prior applicable environmental impact reports, yet fails to identify any specific missing mitigation measures. SCEA Chapter 4, Mitigation Measures from Prior EIRs, contains a discussion of the Project's consistency with the applicable mitigation measures contained in SCAG's 2020–2045 RTP/SCS Program Environmental Impact Report (PEIR). Thus, the Project meets the requirements of a SCEA by including a discussion of consistency with the RTP/SCS goals, policies, and mitigation measures.

SAFER maintains that the SCEA should have adopted verbatim every mitigation measure from the PEIRs. SCAG, which prepared and certified the PEIRs, does not require implementation of all these mitigation measures, but rather gives the City, as lead agency, the discretion to require these measures as applicable. Chapter 4 of the SCEA discusses whether the mitigation measures apply to the Project, the applicable regulations that supersede the mitigation measures, and, where there is a potential project impact, identifies mitigation that would apply. While the SCEA's mitigation measures may not be the exact mitigation measures identified in the SCAG PEIR, the SCEA incorporates elements of these measures where applicable and feasible and otherwise requires Project-specific measures to reduce potential impacts to less than significant.

Per CEQA Guidelines Section 15126.4(a)(3), mitigation measures are not required for less-than-significant impacts. PRC Section 21155.2 does not alter this fundamental CEQA principle. As such, "all feasible mitigation measures" must be read in conjunction with Guidelines Section 15126.4(a)(3). (*Don't Cell Our Parks v. City of San Diego* (2018) 21 Cal.App.5th 338 ["words



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must be construed in context, and provisions relating to the same subject matter must be harmonized to the extent possible”].) Thus, a TPP reviewed in a SCEA need only adopt mitigation measures from PEIRs for impacts determined to be significant. SAFER provides no authority that PRC Section 21155.2 should be applied contrary to Guidelines Section 15126.4, subd. (a)(3). Therefore, the SCEA did not require mitigation measures from the PEIRs that are not needed to avoid a significant impact.¹

3. Substantial Evidence Supports the SCEA’s Findings that the Project Will Not Result in any Significant Environmental Impacts. SAFER asserts that the Project will result in significant health risk impacts from diesel particulate matter during construction and from formaldehyde in building materials during operation. To support this argument, SAFER attached a memo from Baseline Environmental Consultants (BEC) dated February 5, 2025, and a memo from Indoor Environmental Engineering (IEE) dated January 5, 2025. Although these memos were complete several weeks ago, SAFER did not submit them until the day before the PLUM Committee hearing in a transparent effort to sandbag the City and the Applicant. Regardless, Eyestone Environmental has been able to review both memos. As set forth in the attached expert Response Memos, neither the BEC memo nor the IEE memo is substantial or credible evidence that the Project will result in a significant impact. On the contrary, the SCEA is supported by ample substantial evidence, including the expert analyses attached as appendices to the SCEA.

B. Conclusion

As demonstrated above and in the accompanying expert Response Memos from Eyestone Environmental, none of the comments contained in the SAFER Comment Letter raise meritorious issues, new topics not previously addressed, or demonstrate that the Project will result in new or substantially increased environmental impacts. We respectfully ask the PLUM Committee to recommend denial of the SAFER Appeal.

Very truly yours,

Dale J. Goldsmith

cc: Heather Bleemers, Department of City Planning
Stephanie Escobar, Department of City Planning

¹ Moreover, applicable case law prohibits the imposition of mitigation measures unless they have a nexus to and are proportional to a project’s significant impacts. (*Nollan v. California Coastal Comm.* (1987) 483 U.S. 825; *Dolan v. City of Tigard* (1994) 512 U.S. 374.) Absent a nexus to a significant impact, mitigation is legally infeasible.



MEMORANDUM

TO: City of Los Angeles, Department of City Planning

FROM: Mark Hagmann, P.E., Eystone Environmental

SUBJECT: Response to Baseline Environmental Consulting's Memorandum from February 5, 2025, Sunset and Vine Project (CF 25-0209)

DATE: April 22, 2025

Introduction

Baseline Environmental Consulting (BEC) provided a memorandum regarding air quality health risk impacts for the Sunset and Vine Project (Project) on February 5, 2025. As demonstrated by the discussion provided below, the relevant environmental topics raised have already been addressed in the Sustainable Communities Environmental Assessment (SCEA) and no new significant information (as defined by CEQA Guidelines Section 15088.5) that would require recirculation of the SCEA or preparation of an environmental impact report (EIR) has been identified. Specifically, there are no significant environmental impacts from the Project.

Unsubstantiated Analysis of Construction Health Risks to Sensitive Receptors

BEC maintains that the SCEA failed to disclose and analyze health risks from construction emissions and lacks a quantified health risk analysis. The SCEA correctly identified that proposed construction activities would be limited in duration and considered a short-term source of TAC emissions. SCAQMD's CEQA Air Quality Handbook does not recommend analysis of TACs from short-term construction activities associated with land use development projects. The rationale for not requiring a health risk assessment for construction activities is the limited duration of exposure. According to SCAQMD methodology, health effects from carcinogenic air toxics are usually described in terms of individual cancer risk. Specifically, "Individual Cancer Risk" is the likelihood that a person continuously exposed to concentrations of toxic air contaminants (TACs) over a 70-year lifetime will contract cancer based on standard risk assessment methodology.

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Because the construction schedule for the Project estimates that the overall construction schedule would be limited to approximately 2.5 years, construction of the Project would not result in a substantial, long-term (i.e., 70-year) source of TAC emissions. No residual emissions and corresponding individual cancer risk are anticipated after construction as the Project does not include any substantial operational sources of TAC emissions (e.g., warehouse distribution facility). Because there is such a short-term exposure period (2.5 years out of a 70-year lifetime), further evaluation of construction TAC emissions within the SCEA was not warranted. This is consistent with *L.A. City CEQA Thresholds Guide*, which provides that the significance of impacts should be determined on a case-by-case basis. As such, the SCEA correctly concluded that Project-related TAC emission impacts during construction would be less than significant and consequently would not result in a potential health risk impact.

BEC maintains that OEHHA provides guidance regarding when it is recommended to conduct a health risk assessment (HRA) for construction activities and when children-specific exposure factors (age sensitive factors [ASFs]) should be used in HRAs. It is important to understand the purpose of the OEHHA guidance cited in this comment, as it does not apply to the Project. OEHHA adopted the Air Toxics Hot Spots Program Guidance Manual for the Preparation of Risk Assessments (OEHHA Guidance Manual), which was developed by OEHHA in conjunction with the California Air Resources Board (CARB), for use in implementing the Air Toxics “Hot Spots” Program (Health and Safety Code Section 44360 et. seq.). The Air Toxics “Hot Spots” Program requires certain stationary sources to report the types and quantities of certain substances routinely released into the air. The goals of the Air Toxics “Hot Spots” Program are to collect emission data, identify facilities having localized impacts, ascertain health risks, notify nearby residents of significant risks, and reduce those significant risks to acceptable levels. CARB acknowledges that the OEHHA Guidance Manual does not include guidance for projects prepared under the auspices of CEQA and that it would be “handled by individual [Air Pollution Control] Districts.”¹ As noted by CARB:

The Air Toxics “Hot Spots” Information and Assessment Act (AB 2588, 1987, Connelly) was enacted in September 1987. Under this, stationary sources are

¹ CARB, Risk Management Guidance for Stationary Sources of Air Toxics, July 23, 2015, www.arb.ca.gov/toxics/rma/rmgssat.pdf, p. 19.

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required to report the types and quantities of certain substances their facilities routinely release into the air. Emissions of interest are those that result from the routine operation of a facility or that are predictable, including but not limited to continuous and intermittent releases and process upsets or leaks...

The Act requires that toxic air emissions from stationary sources (facilities) be quantified and compiled into an inventory according to criteria and guidelines developed by the ARB, that each facility be prioritized to determine whether a risk assessment must be conducted, that the risk assessments be conducted according to methods developed by OEHHA....²

Two broad classes of facilities are subject to the AB 2588 Program: Core facilities and facilities identified within discrete industry-wide source categories. Core facilities subject to AB 2588 compliance are sources whose criteria pollutant emissions (particulate matter, oxides of sulfur, oxides of nitrogen, and volatile organic compounds) are 25 tons per year or more as well as those facilities whose criteria pollutant emissions are 10 tons per year or more but less than 25 tons per year. Industry-wide source facilities are classified as smaller operations with relatively similar emission profiles (e.g., auto body shops, gas stations, and dry cleaners using perchloroethylene). The emissions generated from the construction and subsequent occupancy of a mixed-use development project are neither classified as core facilities nor subject to industry-wide source evaluation.

The intent in developing the OEHHA Guidance Manual was to provide HRA procedures for use in the Air Toxics Hot Spots Program or for the permitting of new or modified stationary sources. As noted above, the Project is not a new or modified stationary source that requires air quality permits to construct or operate. Air districts are to determine which facilities must prepare an HRA based on a prioritization process. The OEHHA Guidance Manual provides recommendations related to cancer risk evaluation of short-term projects regarding certain stationary sources. As discussed in Section 8.2.10 of the OEHHA Guidance Manual, “[t]he local air pollution control districts sometimes use the risk assessment guidelines for the Hot Spots program in permitting decisions for short-term projects such as construction or waste site remediation.” Short-term projects that would require a permitting decision by SCAQMD

² CARB, Overview of the Air Toxics “Hot Spots” Information and Assessment Act, ww2.arb.ca.gov/overview-air-toxics-hot-spots-information-and-assessment-act.

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typically would be limited to site remediation (e.g., stationary soil vapor extractors) and would not apply to the Project. The OEHHA Guidance Manual does not provide specific recommendations for evaluating short-term use of mobile sources (e.g., heavy-duty diesel construction equipment).

OEHHA's Guidance Manual provides ASFs to account for the potential increased sensitivity of early-in-life exposure to carcinogens. For risk assessments conducted under the auspices of AB 2588, a weighting factor is applied to all carcinogens regardless of purported mechanism of action. In public comments presented to the SCAQMD Governing Board (Meeting Date: June 5, 2015, Agenda No. 28) relating to toxic air contaminant exposures under Rules 1401 (New Source Review of Toxic Air Contaminants), use of the OEHHA guidelines and their applicability for projects subject to CEQA, as they relate to the incorporation of early-life exposure adjustments, SCAQMD responded that:

The Proposed Amended Rules are separate from the CEQA significance thresholds. The Response to Comments Staff Report PAR 1401, 1401.1, 1402, and 212 A - 8 June 2015 SCAQMD staff is currently evaluating how to implement the Revised OEHHA Guidelines under CEQA. The SCAQMD staff will evaluate a variety of options on how to evaluate health risks under the Revised OEHHA Guidelines under CEQA. The SCAQMD staff will conduct public workshops to gather input before bringing recommendations to the Governing Board.

SCAQMD, as a commenting agency, has not conducted public workshops nor developed policy relating to the applicability of applying the OEHHA Guidance Manual for projects prepared by other public/lead agencies subject to CEQA.

To emphasize variability in methodology for conducting HRAs, regulatory agencies throughout the State of California including the Department of Toxic Substances Control (DTSC), which is charged with protecting individuals and the environment from the effects of toxic substances and responsible for assessing, investigating and evaluating sensitive receptor populations to ensure that properties are free of contamination or that health protective remediation levels are achieved, have adopted the U.S. Environmental Protection Agency's (USEPA's) policy in the application of early-life exposure adjustments.

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Specifically, USEPA guidance relating to the use of early life exposure adjustments (*Supplemental Guidance for Assessing Susceptibility from Early-Life Exposure to Carcinogens*, EPA/630/R-003F) is considered when carcinogens act “through the mutagenic mode of action.” As reported:

The Agency considered both the advantages and disadvantages of extending the recommended, age dependent adjustment factors for carcinogenic potency to carcinogenic agents for which the mode of action remains unknown. EPA recommends these factors only for carcinogens acting through a mutagenic mode of action based on a combination of analysis of available data and long-standing science policy positions that set out the Agency’s overall approach to carcinogen risk assessment, e.g., the use of a linear, no threshold extrapolation procedure in the absence of data in order to be health protective. In general, the Agency prefers to rely on analyses of data rather than on general defaults. When data are available for a susceptible lifestage, they should be used directly to evaluate risks for that chemical and that lifestage on a case-by-case basis. In the case of nonmutagenic carcinogens, when the mode of action is unknown, the data were judged by EPA to be too limited and the modes of action too diverse to use this as a category for which a general default adjustment factor approach can be applied. In this situation per the Agency’s Guidelines for Carcinogen Risk Assessment, a linear low-dose extrapolation methodology is recommended. It is the Agency’s long-standing science policy position that use of the linear low-dose extrapolation approach (without further adjustment) provides adequate public health conservatism in the absence of chemical-specific data indicating differential early-life susceptibility or when the mode of action is not mutagenicity.

It is acknowledged that this comment identifies that USEPA has identified that diesel exhaust (DE) has “...known mutagenic and/or carcinogenic activity of a number of individual organic compounds that adhere to the particles and are present in the DE gases.”²⁸ However, for diesel particulates, polycyclic aromatic hydrocarbons (PAHs), and their derivatives, which are known to exhibit a mutagenic mode of action, comprise less than one percent of the

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exhaust particulate mass.³ To date, the USEPA reports that whole diesel engine exhaust has not been shown to elicit a mutagenic mode of action.⁴

Based on a review of relevant guidance on the applicability of early life exposure adjustments to identified carcinogens, the use of these factors would not be applicable to the HRA provided in this comment letter as neither the Lead Agency nor SCAQMD have developed recommendations on whether these factors should be used for CEQA analyses of potential diesel particulate matter (DPM) construction or operational impacts.

Neither SCAQMD nor the *L.A. City CEQA Thresholds Guide* requires an HRA, and neither SCAQMD nor the City has adopted guidance requiring HRAs for construction.

Construction Health Risk Analysis

Baseline prepared an HRA to estimate the incremental increase in cancer risk at nearby sensitive receptors exposed to DPM emissions during project construction. In review of the HRA, BEC substantially overestimated potential impacts from DPM emissions from construction of the Project, as many of the assumptions and modeling parameters used in the HRA are incorrect. In addition, verification of the results of the HRA was not feasible since BEC failed to provide the AERMOD output file. Each of the errors and emissions is discussed further below.

- **Output Files Not Provided.** AERMOD modeling input and output files were not provided as part of Exhibit B and are required to support the HRA. As a result, Eystone was not able to review or confirm that the modeling was performed consistent with SCAQMD guidelines.
- **Hours of Operation Not Realistic.** Dispersion modeling assumes that construction would occur from 7AM-9PM (14 hours per day) throughout the entire duration of construction (730 days). This assumption is not supported and not

³ United States Environmental Protection Agency, Health Assessment Document for Diesel Engine Exhaust (EPA/600/8-90/057F, 2002).

⁴ United States Environmental Protection Agency, National Center for Environmental Assessment, 2018; Integrated Risk Information System (IRIS), Diesel Engine Exhaust.

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consistent with SCAQMD LST Guidelines, which show that construction equipment emissions should be modeled from 8AM-4PM (8 hours per day).⁵

- **Wind Rose.** Further review of the meteorological data (wind rose) for the SCAQMD Downtown Los Angeles monitoring station, which was used in BEC's HRA shows that wind direction from the 4PM-9PM period blows directly towards the adjacent residential uses to the east at low wind speeds. By including these late afternoon and nighttime hours in the dispersion modeling, DPM annual concentrations at the adjacent residential uses are substantially overstated, since approximately 50 percent of the total modeled hours per day would not include wind predominately in the direction of the adjacent residential uses.
- **Annual Emission Rates Assume Peak Day Activity.** Emissions input into the modeling are based on a worst-case day for all 730 construction work days, where all equipment operates at full load for eight hours per day. This assumption substantially overestimates potential impacts, as the peak daily activity would occur only on a limited number of days over the construction duration. As an example, the equipment presented for the parking structure phase represents the equipment necessary on a large concrete pour day (see Appendix A-2.3, Summary of Construction Assumptions, of the SCEA). As shown therein, approximately 17 pieces of heavy-duty construction equipment would be required on a small 1.7-acre Project Site. The equipment necessary on a typical average day during the parking structure phase would be substantially reduced.
- **Inconsistent Modeling Assumptions with SCAQMD Guidance.** On-site emissions were represented by an irregular area source. A volume source and not an area source is the type of source recommended by SCAQMD for modeling construction equipment and diesel truck exhaust emissions (SCAQMD LST Guidelines).⁶ Similarly, BEC used a 1.8-meter receptor height within the AERMOD

⁵ Area sources are used to model releases that occur over an area. Examples of area sources include landfills, open tanks, slag dumps and lagoons. Volume sources are used to model releases from a variety of industrial sources, such as building roof monitors, fugitive leaks from an industrial facility, multiple vents, and conveyor belts. CAPCOA, *Guidance Document, Health Risk Assessments for Proposed Land Use Projects*, July 2009.

⁶ Area sources are used to model releases that occur over an area. Examples of area sources include landfills, open tanks, slag dumps and lagoons. Volume sources are used to model releases from a variety of industrial sources, such as building roof monitors, fugitive leaks from an industrial facility, multiple vents, (Footnote continued on next page)

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modeling, which is inconsistent with SCAQMD LST Guidelines (ground level receptor height).

- **Age sensitivity factors (ASFs).** BEC used ASFs, which effectively multiply the cancer risk impact by a factor of 10. As discussed above, use of ASFs is not required, and the City as the Lead Agency has the discretion to select the appropriate thresholds of significance and methodologies based on the supporting evidence for evaluating a project's impacts, including potential impacts related to health risk.

For all of these reasons, BEC's health risk results are misleading, highly inaccurate, and lack credibility. In other words, BEC's conclusions are not supported by credible evidence, much less substantial evidence, and therefore do not support the conclusion that the Project would have a significant health risk impact with respect to DPM emissions. No additional mitigation measures are warranted based on the HRA's cancer risk determination or this comment.

The SCEA's air quality analysis conservatively assumed that the Project would use the CalEEMod default offroad fleet mix (i.e., primarily Tier 3 construction equipment). The Project applicant has confirmed that, while not required as mitigation since the Project would result in less than significant air quality and health risk impacts, all off-road diesel-powered construction equipment greater than 25 hp would meet USEPA Tier 4 Final emissions standards. Use of Tier 4 equipment would further reduce the Project's less than significant air quality impacts and associated exposure to health risk.

Conclusion

BEC does not provide substantial or credible evidence to support the assertions that there are significant health risk impacts from the Project's construction DPM emissions. Pursuant to CEQA Guidelines, Section 15064(f)(5), substantial evidence includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact. Substantial evidence is not argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not



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contribute to, or are not caused by, physical impacts on the environment (PRC Section 21080(d) and (e)). As the claims and assertions presented by BEC are erroneous and supported by speculative and unsubstantiated assumptions, the City is not required to amend or recirculate the SCEA and no further mitigation measures are required.



MEMORANDUM

TO: City of Los Angeles, Department of City Planning

FROM: Mark Hagmann, P.E., Eystone Environmental

SUBJECT: Response to Indoor Environmental Engineering's Memorandum from January 5, 2025, Sunset and Vine Project (CF 25-0209)

DATE: April 22, 2025

Introduction

Francis J. Offermann of Indoor Environmental Engineering (IEE) provided a memorandum regarding indoor air quality for the Sunset and Vine Project (Project) on January 5, 2025. As demonstrated by the discussion provided below, the relevant environmental topics raised have already been addressed in the Sustainable Communities Environmental Assessment (SCEA) and no new significant information (as defined by CEQA Guidelines Section 15088.5) that would require recirculation of the SCEA or preparation of an environmental impact report has been identified. Specifically, there are no significant environmental impacts from the Project.

Indoor Formaldehyde Concentrations

Mr. Offermann maintains that the Project would have a significant impact on indoor air quality due to formaldehyde. However, Mr. Offermann provides no credible evidence that the Project will be constructed with building materials with significant amounts of formaldehyde, primarily citing an unsubstantiated, general article prepared by Mr. Offermann himself. Mr. Offermann provides limited corroborating data (e.g., CARB) to support his own research/opinion. In our review of relevant State rules and regulations, Mr. Offermann's data was not cited. Our comprehensive literature search found that Mr. Offerman's claims were contradicted by statements from experts in the field.

Mr. Offermann also cites another research paper, *Ventilation and Indoor Air Quality in New California Homes with Gas Appliances and Mechanical Ventilation* (Chan, W., Kim, Y., Singer, B., and Walker I. 2019. *Ventilation and Indoor Air Quality in New California Homes with Gas Appliances and Mechanical Ventilation*. Lawrence Berkeley National Laboratory,



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Energy Technologies Area, LBNL-2001200, DOI: 10.20357/B7QC7X). The research paper collected data from 70 homes (single-family dwelling units) about ventilation practices and indoor air quality and measured indoor air concentrations of formaldehyde emitted from composite wood products that might contain formaldehyde-based glues. It should be noted that Mr. Offermann is listed as an author on this research paper, which at its best is self-serving and likely presents a conflict of interest. Mr. Offermann should have provided supporting data other than his own authorship.

Mr. Offermann claims the research paper studied new homes built in 2012 or later. However, this claim is not entirely correct. According to the research paper, the study characterized 70 homes built between 2011 and 2017. In order to be part of the study, buildings also had to meet several other conditions. According to the research paper, the building had to be a single-family detached structure, located in California, and built in 2011 or later. (According to the research paper, the "built in 2011 or later" requirement was used as a proxy for single-family detached homes built to comply with the 2008 version of the California Title 24 standards.) This would not be an appropriate comparison as the Project consists of a mid-rise mixed-use building with a different combination of steel, concrete, and wood construction. Single-family residential construction typically would use more wood or formaldehyde containing products in comparison to high-rise construction. Furthermore, the buildings in the research paper consisted of homes built to comply with the 2008 version of the California Title 24 standards, whereas the Project would be built to the most current California Title 24 standards. The 2019 version of the Title 24 standards included new ventilation requirements that improve indoor air quality protecting residents from air pollution originating from outdoor and indoor sources. Therefore, it is misleading to directly apply results from the research paper to the Project.

Mr. Offerman fails to disclose that the research paper discussed indoor air quality and the effect of fan sizing for ventilation with respect to Title 24. This research paper found that the adopted fan sizing method in the 2019 version of the Title 24 standards includes requirements that ensures there is no structural bias towards higher pollutant exposure in homes using unbalanced ventilation systems, unlike the previous 2008 and 2013 Title 24

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standards, which could worsen indoor air quality by 20 percent on average.¹ Further, while the study research paper found many more recently constructed homes (at the time of the field study) had ventilation equipment with more airflow capacity than the minimum requirements of Title 24 for when they were built and would meet the higher air flow requirements of the 2019 version of the Title 24 standards, the 2019 Title 24 requirements ensured the system consistently demonstrated lower indoor air quality exposures across various home types (e.g., homes with more air leakage, homes with more airtightness) than prior standards. Therefore, the research paper expressly acknowledges that California regulations have been effective in reducing formaldehyde concentrations in homes and states that “[c]omparisons of indoor formaldehyde ... levels with those from a prior study of new homes in California (conducted in 2007-08) suggest that contaminant levels are lower in recently built (after 2008) homes. California’s regulation to limit formaldehyde emissions from composite wood products appears to have substantially lowered its emission rate and concentration in new homes.”² The research paper also states that “[indoor air quality] satisfaction was also similar in the newer homes as compared to homes built in years prior. These results indicate the success of standards.”³ Therefore, the research paper does not represent reliable or credible evidence that the Project would pose health risks to residents and workers from indoor air quality. Thus, the calculations provided by Mr. Offermann amount to speculation and do not reflect the actual Project uses and are thus unsupported by substantial evidence.

Potential Residential Exposure

Mr. Offermann overestimates the amount of potential residential exposure to formaldehyde from the Project in several aspects. First, he claims that residential occupants would inhale 20 cubic meters of air per day, yet cites no evidence to substantiate this claim. According to the American Lung Association, the average person inhales approximately 2,000 gallons of

¹ Chan, W., Kim, Y., Singer, B., and Walker I. 2019. Ventilation and Indoor Air Quality in New California Homes with Gas Appliances and Mechanical Ventilation. Lawrence Berkeley National Laboratory, Energy Technologies Area, LBNL-2001200, DOI: 10.20357/B7QC7X.

² *Ibid.*

³ *Ibid.*

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air per day, or roughly 7.57 cubic meters per day.⁴ Second, Mr. Offermann incorrectly applies an entire 70-year average lifetime (24 hours per day from birth to death) to calculate residential formaldehyde exposure, thus vastly overestimating any potential formaldehyde exposure to residents who would occupy the Project. Per the USEPA, lifetime risk values for residents should be based on an exposure duration of 350 days per year for 30 years, not 70. Third, the review assumes that residents would live at the Project for their entire lives. Estimations of how many times a person living in the United States moves in his or her lifetime have ranged from 9 times to 11 times, depending on age, race, and socioeconomic status, among other categories.^{5,6} Thus, it is speculative and very likely incorrect to assume that the initial residents who occupy the Project would remain for the remaining duration of their lives.

Mr. Offermann's assumption that the daily exposure level of formaldehyde would be constant for a 45-year period significantly overestimates the amount of potential formaldehyde emissions from the Project in several aspects. First, it incorrectly assumes that construction materials would not comply with all applicable regulations. Second, it assumes that formaldehyde emissions from construction materials would remain constant for over 45 years, in fact, they decrease over time. Third, based on the US Bureau of Labor Statistics, the median number of years that wage and salary workers had been with their current employer was 4.1 years in January 2020.⁷ Mr. Offermann cites no evidence that the Project would employ the same workers consistently for 45 years. Thus, Mr. Offermann's assumptions that the employees of the Project would be exposed to a consistent dose of formaldehyde for 40 hours per week over a period of 45 years is unsubstantiated opinion that is not reflective of a real-world scenario. By significantly overstating the exposure duration time, Mr. Offermann's letter does not provide an accurate assessment of risk

⁴ American Lung Association, How Your Lungs Get the Job Done, website: www.lung.org/blog/how-your-lungs-work, accessed October 2021.

⁵ United States Census Bureau, Calculating Migration Expectancy Using ACS Data, www.census.gov/topics/population/migration/guidance/calculating-migration-expectancy.html, accessed October 2021.

⁶ FiveThirtyEight, How Many Times Does The Average Person Move?, <https://fivethirtyeight.com/features/how-many-times-the-average-person-moves/>, accessed October 2021.

⁷ United States Bureau of Labor Statistics, News Release, Employee Tenure in 2020, released September 22, 2020, www.bls.gov/news.release/pdf/tenure.pdf, accessed October 2021.

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exposure and does not provide credible evidence of significant impacts related to indoor air quality.

Mr. Offerman also speculates that the building materials to be used in the Project would be similar to those in a single-family dwelling and that the exposure to formaldehyde would be consistent with a 24-hour per day, 70-year lifetime dose. The interior building materials have not been selected and would change from time to time over the life of the project as a result of demising interior tenant spaces and tenant improvements based on lease tenure and turn-over rates. However, as required by law, the Project would be built with materials that are compliant with current regulations, which establish appropriate levels of formaldehyde in composite wood materials.

IEE Methodology

Mr. Offermann proposes a methodology that he believes should be used for analyzing carcinogenic risks in a mixed-use residential and commercial building. As a fundamental point, the City of Los Angeles as the Lead Agency for CEQA review has the discretion to apply the thresholds of significance and appropriate methodologies used for impact analysis. Here, the City applied the thresholds from the CEQA Guidelines, and used methodologies customary for air quality impacts, and consistent with guidelines and policies of the relevant regulatory agencies. The City's choice of thresholds and methods is supported by substantial evidence in the administrative record. Mr. Offermann cannot supplant the Lead Agency's discretion merely by proposing a new method of impact analysis. In addition, and more technically, interior finishes for the commercial component and all furnishings would be subject to tenant specifications that would not be known until after the Project is approved and constructed. Thus, any analysis regarding such materials would be speculative, and CEQA does not require speculation. Further, as specified above, the building materials would be compliant with the LAMC, L.A. Green Building Code, and other applicable regulations, which provide specifications for acceptable formaldehyde concentrations in composite wood products. The Project would be compliant with these specifications and would not cause any significant environmental impact related to indoor air quality.

There are no requirements or guidance from SCAQMD or relevant agencies to evaluate such risk from indoor air quality. In fact, indoor air quality is not within the jurisdiction of SCAQMD. Mr. Offermann cites the SCAQMD's 10 in one million cancer risk threshold. However, this

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threshold is intended to be used to evaluate the increase in cancer risk above ambient conditions (outdoor air). Therefore, the application of the 10 in one million threshold for indoor air quality is not appropriate.

The project does not represent a unique or special development that needs addressing in CEQA, therefore no special analysis or mitigation is required. The Project will comply with the existing codes and regulations in California, which adequately address potential emissions and risks from building materials to ensure safe practices and healthy indoor air.

The Project would be required to comply with the CARB ATCM (Airborne Toxic Control Measure to Reduce Formaldehyde Emissions from Composite Wood Products): 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. The composite wood products covered by this regulation are hardwood plywood, particleboard, and medium density fiberboard.” The measure applies to manufacturers, distributors, importers, fabricators (that use such materials to make other goods), retailers, third party certifiers who manufacture, offer for sale, or supply these goods in California. The control measure assures that all building materials and furnishings manufactured, distributed, imported and used in new construction in California meet the maximum allowable concentrations that assure healthful indoor air quality.

According to CARB, from a public health standpoint, the CWP Regulation’s emission standards are set at low levels intended to protect public health.⁸ The CWP Regulation, adopted in 2007, established two phases of emissions standards: an initial Phase I, and later, a more stringent Phase II that requires all finished goods, such as flooring, destined for sale or use in California to be made using complying composite wood products. As of January 2014, only Phase II products are legal for sale in California. Thus, all new wood products installed in the Project would comply with the more stringent Phase II requirements. Prior to the CWP Regulation, formaldehyde emissions were often ten to twenty-fold higher

⁸ California Air Resources Board, Frequently Asked Questions for Consumers, Reducing Formaldehyde Emissions from Composite Wood Products, ww3.arb.ca.gov/toxics/compwood/consumer_faq.pdf?_ga=2.32900281.682464648.1573169874-1026610208.1565143819, accessed December 2021.

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than the current allowable levels. The regulation also includes provisions for no-added formaldehyde and ultra-low emitting formaldehyde-based resins, to encourage the use of these lower-emitting resins in composite wood products.⁹ Impacts with respect to formaldehyde would be less than significant.

Mr. Offerman's review significantly overestimates the amount of daily formaldehyde exposure from the Project and is based on the following inaccurate exposure assumptions: (1) that the construction materials would not be code-compliant with the California Composite Wood Products Regulation (California CWP Regulation) or USEPA Toxic Substances Control Act Title IV Regulation; (2) that the formaldehyde daily emissions from construction materials would be constant over 45 years; (3) that residents would inhale 20 cubic meters of air per day and live in the Project for an average 70-year lifetime and occupy their units 24 hours per day; and (4) that the employees would work at the Project Site for eight hours per day, five days per week, 50 weeks per year for 45 years (starting at 20 years and retiring at age 65). These assumptions are unreasonable and are not based on real life exposure potential. Further, it is unreasonable to assume that applicable laws and regulations pertaining to building materials would not be followed. Thus, Mr. Offermann substantially overestimates the amount of formaldehyde emissions to which future residents and workers in the Project could be exposed, as well as potential health impacts. Moreover, Mr. Offermann is speculating that composite wood materials would be used in the interior of the building. Indoor building materials will not be known until the building permit stage. As such, any further analysis on the content of indoor building materials would be speculative.

Formaldehyde, which can be found in wood products, generally contains the highest concentration when products are new, and such concentrations gradually decrease with age.¹⁰ Neither the SCAQMD nor the City of Los Angeles provide significance thresholds for indoor air quality. However, the California CWP Regulation is one of the most stringent regulations in effect to limit formaldehyde emissions from composite wood productions. All finished products sold or supplied to California are required to be compliant with the CWP

⁹ *Ibid.*

¹⁰ County of Los Angeles Public Health, Environmental Health, Indoor Air Quality, <http://www.publichealth.lacounty.gov/eh/TEA/ToxicEpi/indoorair.htm>, accessed October 2021.

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Regulation or the USEPA Toxic Substances Control Act Title IV Regulation (whichever is more stringent). To the City's and our knowledge, there are no credible or peer-reviewed studies which assessed long-term indoor concentrations and associated lifetime exposure to formaldehyde in new homes and commercial spaces in California that suggest the existing rules and regulations on formaldehyde in building materials are ineffective. Nor has Mr. Offermann cited any such studies. The existing rules and regulations are robust and adequate to ensure that issues related to formaldehyde from building materials will not be an issue for indoor air quality for the Project.

In addition, the Project would be required to comply with the California Green Building Standards Code, which is Part 11 of the California Code of Regulations, commonly referred to as CALGreen. The Project would be built with materials that are compliant with current regulations, which are intended to set low levels of formaldehyde in composite wood materials. These measures have been established through CALGreen and are designed to reduce the quantity of air contaminants to acceptable levels. Division 4.5, Environmental Quality, of CALGreen provides mandatory residential measures to reduce the quantity of air contaminants that are odorous, irritating and/or harmful to the comfort and wellbeing of a building's installers, occupants, and neighbors. It includes VOC limits for paints, coating, adhesives, adhesive bonding primers, sealants, sealant primers, and caulk. Section 4.504.3, Carpet Systems, of CALGreen establishes product requirements to meet one of the following: (1) Carpet and Rug Institute's Green Label Plus Program; (2) California Department of Public Health, "Standard Method for the Testing and Evaluation of Volatile Organic Chemical Emissions from Indoor Sources Using Environmental Chambers," Version 1.1; (3) NSF/ANSI 140 at the Gold Level; or (4) Scientific Certifications Systems Indoor Advantage Gold. Furthermore, Section 4.504.5, Composite wood products, of the CALGreen Code establishes limits for formaldehyde as specified in Cal Green Table 4.504.5.¹¹

Outdoor Ventilation

Mr. Offerman claims that the Project is located in a "sound impacted area" and that additional noise measurements must be taken to allow for the selection of building materials that ensure

¹¹ California Air Resources Board, Air Toxics Control Measure for Composite Wood as tested in accordance with ASTM E 1333. (See California Code of Regulations, Title 17, Sections 93120 through 93120.12.)

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that indoor noise levels are acceptable. No such measurements are needed, as compliance with the Noise Insulation Standards of the California Building Code will ensure interior noise levels will not exceed an acceptable level of 45 dBA.

With regard to PM_{2.5} ambient concentrations and whether MERV 13 filtration is included as part of the Project, the Project would be required to comply with the City of LA Green Building Code which mandates MERV 13 filtration.¹² As such, the Project would already provide for the mechanical supply of outdoor air ventilation suggested by Mr. Offermann (i.e., MERV 13), and IEE does not provide any credible evidence of indoor air quality impacts from the Project.

Mitigation Measures

Similar to Mr. Offermann's argument that the City should use different methodology for impact analysis, he also recommends mitigation measures based on a faulty assumption that the Project has significant impacts. As demonstrated by the SCEA analysis, and supported by substantial evidence in the record, the Project does not have significant impacts to air quality. Moreover, as required by law, the Project would comply with Section 5.504.4, Finish Pollutant Material Control, of the L.A. Green Building Code, which requires hardwood plywood, particleboard and medium density fiberboard composite wood products used on the interior or exterior of the building shall meet the requirements for formaldehyde as specified in CALGreen Table 5.504.4.5. Further, Section A5.504.4.5.1 of the L.A. Green Building Code requires composite wood products to be approved by the ARB as no-added formaldehyde (NAF) based resins or ultra-low emitting formaldehyde (ULEF) resins. Compliance with these requirements would be verified by the Department of Building and Safety through the plan approval process and as noted in item 23 of the City of Los Angeles Building Code Plan Check Notes—Form GRN-15.¹³

¹² 2020 City of Los Angeles Green Building Code Plan Check Notes, Residential Buildings.

¹³ See City of Los Angeles Building Code Plan Check Notes—Form GRN-15, www.ladbs.org/docs/default-source/forms/green-building-2017/green-building-code-plan-check-notes-non-residential-buildings.pdf, accessed October 2021.

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The mechanical air supply will meet the specifications of the L.A. Green Building Code as required for residential and commercial spaces. Mr. Offerman suggests additional mitigation measures; however, no mitigation measures are warranted as impacts are less than significant.

Conclusion

Mr. Offermann does not provide substantial or credible evidence to support his assertions that there are significant environmental impacts from the Project's indoor air quality regarding formaldehyde or potentially high cancer risk from indoor air quality to warrant additional analysis or require mitigation measures. Pursuant to CEQA Guidelines, Section 15064(f)(5), substantial evidence includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact. Substantial evidence is not argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment (PRC Section 21080(d) and (e)). As the claims and assertions presented by Mr. Offermann are erroneous and supported by speculative and unsubstantiated assumptions, the City is not required to amend or recirculate the SCEA and no further mitigation measures are required.