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Van Nuys, CA 91406
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September 24, 2020

Los Angeles Department of City Planning
200 N. Spring Street, Los Angeles, CA 90012

Responses #3 to Appeal on the 3440 Wilshire Project (Project)

Introduction

The City of Los Angeles (City) prepared a Mitigated Negative Declaration (MND) – ENV-2016-3693-MND – and Related Case No. VTT-74602, for a new mixed-use development pursuant to the California Environmental Quality Act of 1970 (Pub. Res. Code § 21000 *et seq.*) (CEQA), CEQA Guidelines¹ and the City's environmental review procedures.

The Project is located at 3440-3470 West Wilshire Boulevard, 659-699 South Mariposa Avenue, 3281-3287 West 7th Street, and 666-678 South Irolo Street, Los Angeles, California 90010 (Project Site)

The Project consists of (i) 640 apartment units (441 studio units and 199 2-bedroom units); (ii) 10,738 square feet of commercial floor area (5,538 square feet of retail area and 5,200 square feet of restaurant area [3,700 square feet with 138 indoor and outdoor patio seats of high-turnover restaurant and 1,500 square feet with 68 indoor and outdoor patio seats of fast-food restaurant]); and, (iii) 1,921 vehicle parking spaces (the Project).

Recent history:

- The MND was released by the City for public review on February 6, 2020, for a 30-day review period ending on March 9, 2020.
- A Deputy Advisory Agency Hearing was conducted on March 11, 2020.
- A Letter of Determination (LOD) was issued on March 25, 2020. The appeal period ended on April 6, 2020.
- A City Planning Commission Hearing was conducted on May 14, 2020.
- An LOD was issued on June 30, 2020.

Previous Responses

Two previous Responses to Appeals document were submitted to the City:

- **Response #1**, submitted to the City on April 21, 2020:

1 Reference to CEQA Guidelines in the Response to Comments shall mean 14 C.C.R. § 15000 *et seq.*

- Supporter’s Alliance for Environmental Responsibility (SAFER) on April 2, 2020
- Katelyn Scanlan on April 6, 2020
- **Response #2**, submitted to the City on May 12, 2020:
 - SAFER dated May 1, 2020.

Current Appeals

- This **Response #3** responds to:
 - Letter on behalf of “five hundred concerned constituents” on July 10, 2020.
 - The previous SAFER appeal letter originally dated May 1, 2020 was resubmitted. Note that this letter was fully responded to in Response #2 dated May 12, 2020. Therefore, no additional response is necessary.

In addition, six previous Responses to Comments document were submitted to the City:

- Response #1 (March 9, 2020); Response #2 (March 18, 2020); Response #3 (April 21, 2020); Response #4 (May 13, 2020); Response #5 (May 13, 2020); and Response #6 (May 14, 2020).

Responses to the appeal are provided below. The individual comments within the Appeal will be provided and identified as **“X-#”**. The individual responses within the Appeal will be identified as **Response to “X-#”**.

Conclusion

In summary, based on our technical review, the Appeal does not raise any new CEQA issues and do not require any change to any conclusion identified in the MND. The Appeal does not provide substantial evidence or a fair argument that further review under CEQA is required, or that the Project may have a significant environmental impact. As analyzed in the MND, the whole of the record supports the conclusion that the Project would result in impacts below a level of significance.

Seth Wulkan

Project Manager

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documents; and personally corresponding with public and private sector clients. Mr. Wulkan regularly participates in team strategy meetings from the beginning of the environmental review process through the final project hearings. Mr. Wulkan graduated with college honors from UCLA and completed a Certificate Program in Sustainability at UCLA Extension.

Appeal “On behalf of over five hundred concerned constituents”

July 10, 2020

Appeal-1

On the behalf of over five hundred concerned constituents, I am appealing this decision due to numerous procedural violations which occurred at the 14 May 2020 CPC meeting, which serves as the basis for this 30 June 2020 LOD. These violations pertain to the Ralph M. Brown Act, the Americans with Disabilities Act (ADA), and the Civil Rights Act per Executive Order 13166, Title VI. Due to these substantial violations, any determinations or decisions which arose from the 14 May 2020 CPC meeting should be voided and a new meeting which properly follows all required procedures should take place.

Violations are detailed as such:

Response to Appeal-1

This comment provides an introduction. The comment does not state a specific concern or question regarding the adequacy of the MND in identifying and analyzing the environmental impacts of the Project, nor does the comment identify any physical environmental impacts caused by the Project. This comment is noted for the administrative record and will be forwarded to the decision-makers for review and consideration.

Appeal-2

1. Brown Act Violations

The meeting was not truly publicly accessible as required. Access was restricted to those who could access the internet and understand English; no Spanish translation was provided despite it being requested in writing with proper notice given prior to the 14 May meeting. Additionally, blocked phone numbers were not permitted to speak, further limiting accessibility. This means if an individual didn't have a reliable internet connection to listen in but had a phone number that happened to be blocked, they could not participate as a member of the public.

According to the Planning Department's Virtual Hearing Instructions - Non-Commission Public Hearings and Board Meetings "All decision-makers, board members, and hearing officers will be participating from separate locations using remote meeting technology while safer-at-home orders are in place. They will only be visible to each other. Members of the public will be able to listen to the meeting audio and offer public comment via phone when called upon for each agenda item."

In closing visual access between 'decision-makers, board members, ...hearing officers' and the members of the public, this meeting was conducted in violation of both the letter and spirit of the Brown Act and does not satisfy the requirements set by the Governor's Executive Order N-25-20 (3/4/2020) for state and local governing bodies to "make reasonable efforts to adhere as closely as reasonably possible to the provision of the Bagley-Keene Act and the Brown Act, and other applicable local laws regulating the conduct of public meetings, in order to maximize transparency and provide public access to their meetings."

Response to Appeal-2

The comment does not state a specific concern or question regarding the adequacy of the MND in identifying and analyzing the environmental impacts of the Project, nor does the comment identify any physical environmental impacts caused by the Project. This comment is noted for the administrative record and will be forwarded to the decision-makers for review and consideration.

However, as demonstrated in the applicant representative's letter to the City dated September 24, 2020, the appeal fails to show that the City committed any violation of the Brown Act.

Appeal-3

2. Discrimination based on Title IV of the Civil Rights Act and ADA

The requirements set forth for accessing this "public" 14 May CPC meeting blatantly exclude and discriminate against Koreatown constituents that lack the necessary technical skills, do not have access to a computer or reliable internet service but could otherwise attend a meeting in person. This is a reasonable, valid, and applicable concern given that "1 in 4 families with school-age children in LA County lack the technology resources" which make it possible for constituents to access the relevant Planning Department information posted online. Furthermore, the report found only half of the K-12 households in the bottom 20% of the income distribution are equipped" with computers and broadband internet access and that non-white students are less likely to have the necessary tech resources "regardless of income."²

With 40-50% of families residing in the Wilshire Center-Koreatown district lacking access to basic internet and technology, an average household size of three people, 91% of residents being people of color, and a median household income of just over \$30K per year, reliable internet access and the technology required should not and cannot be reasonably assumed and therefore should have been taken into account in order for the Planning Department to truthfully claim they were able to provide all residents with "meaningful access" to "public" hearings.³

Access to the 14 May meeting was further constrained in a way that denied full participation and clearly violated the Americans with Disabilities Act; the Planning Department's Virtual Commission Meeting Instructions state "(to) access the live meeting video by clicking on the link at the top of the meeting agenda and entering the Meeting ID."⁴ However, no such information or Meeting ID was provided on the agenda, nor were the slides "made available on the live video" as far as can be seen. This lack of visual access goes against the Governor's mandated right for the public to "observe... the public meeting," which "includes(ing), but not limited to, the requirement that such rights of access and public comment be made available in a manner consistent with the Americans with Disabilities Act." As ample visual access was provided to other decision makers by the department but was limited in its accessibility and scope to the public, it is clear the meeting was conducted in violation of the Brown Act, Executive Order N-25-20, and ADA.

In addition to a lack of 'meaningful access' to the meeting via the necessary technology, per Executive Order 13166, access to translation services should have been made available as over

² USC's Annenberg Research Network on International Communication (Halperin, Wyatt, & Le, 2020) released April 16 th , 2020

³ Partnership for Los Angeles Schools, 2020

⁴ <https://planning.lacity.org/about/virtual-commission-instructions>

5% of the population served by the Planning Department have limited English proficiency. A 2019 report from USC's Price School of Public Policy states about 40% of households in the census tracts surrounding the Project site have limited English proficiency. Ms. Jennifer Wong and myself provided a written request for oral Spanish translation received and acknowledged by Iris Wan on 8 May 2020; however, no such services were provided nor were basic items such as the agenda or meeting notifications sent to stakeholders and members of the public translated. The only translation provided by the Department was a single truncated sentence which formed the title of the webpage when one accesses the (English language-only) 14 May CPC agenda online, stating that constituents may request translation services but no guidelines on such a request are given and ignore the sizable Korean-speaking population in the vicinity.

Last but certainly not least was clear confusion and disorganization caused by the lack of the public to properly visually observe the meeting and meaningfully participate due to lax and seemingly discriminatory enforcement of speaking rules and timing. Public comment rules as it pertains to timing and scope (how/when/if individuals may respond) were not followed nor consistently applied to all participating members. Furthermore, clear prejudicial preference was shown to the Applicants, who were given virtually unlimited time to speak and were allowed to respond to public and Planning Commission comments and questions on multiple occasions, in stark contrast to Appellants being told how much time they were to speak and not being permitted to respond to additional comments or interact directly with the CPC. This was especially egregious due to a representative from Herb Wesson's office (CD-10) claiming (at the very end of public comment) that they were in contact with and were working with the appellants and members of the public, which was blatantly false. (Wesson's office never responded to our repeated requests for contact and in fact had confused our project with an entirely different Jamison Properties proposal down the street at 739 Normandie Avenue.) We as appellants and members of the public had no way to call attention to this blatant lie, which seems to have soothed the CPC into acquiescing to the Applicant's pressure to approve the Project.

Response to Appeal-3

The comment does not state a specific concern or question regarding the adequacy of the MND in identifying and analyzing the environmental impacts of the Project, nor does the comment identify any physical environmental impacts caused by the Project. This comment is noted for the administrative record and will be forwarded to the decision-makers for review and consideration.

However, as demonstrated in the applicant representative's letter to the City dated September 24, 2020, the appeal fails to show that the City committed any violation of the Civil Rights Act and ADA.

Appeal-4

An official letter was also sent by the Wilshire Center-Koreatown Neighborhood Council on behalf of its constituents voicing serious ethical and safety concerns regarding Jamison Properties and the slated 3440 Wilshire Project in particular. This letter in turn amplifies concerns raised by Attorney Gideon Kracov, dated 11 March 2020 to Iris Wan on behalf of Service Employees International Union - United Service Workers West (USWW) and its 20,000 members who live and work in Los Angeles. If you cannot locate the copies sent to your department, we will try and provide copies if requested.

For these reasons stated above, in the cited letters, and our previous appeal, we hereby submit this appeal for your careful consideration.

Response to Appeal-4

This comment provides a conclusion. The comment references concerns from Kracov. These concerns were fully responded to in Response to Comment #2 dated March 18, 2020.

The comment does not state a specific concern or question regarding the adequacy of the MND in identifying and analyzing the environmental impacts of the Project, nor does the comment identify any physical environmental impacts caused by the Project. This comment is noted for the administrative record and will be forwarded to the decision-makers for review and consideration.

September 24, 2020

BY EMAIL

Ms. Iris Wan
Los Angeles City Planning
200 N. Spring Street, Room 621
Los Angeles, CA 90012

Re: 3440 Wilshire Project (VTT-74602-1A, CUP-2016-3692-VZC-MCUP-SPR)

Dear Ms. Wan:

On behalf of our client, Central Plaza, LLC (the “**Applicant**”), we submit this letter in response to an appeal, dated July 10, 2020, alleging various procedural violations relating to the City Planning Commission’s duly-notice public hearing held on May 14, 2020. As explained more fully below, the appeal fails to show that the City committed any violations of the Brown Act, the Americans with Disabilities Act, or Title VI of the Civil Rights Act. The appeal is without merit, and we respectfully request that it be denied.

1. Response to Alleged Brown Act and ADA Violations

In response to the coronavirus pandemic, on March 12, 2020, California Governor Gavin Newsom issued Executive Order N-25-20, which allows local and state legislative bodies to hold meetings via teleconference and to make meetings accessible electronically. This order was modified by Executive Order N-29-20, adopted on March 17, 2020 (as amended, the “**Executive Order**”). The Executive Order suspends otherwise-applicable provisions of state and local open meeting laws, including portions of the Brown Act, while statewide social distancing measures are in place. A copy of the Executive Order is enclosed with this letter.

Paragraph 3 of the Executive Order expressly waives Brown Act provisions regarding in-person attendance at public meetings and authorizes local legislative bodies to make public meetings accessible telephonically. The order includes accessibility requirements to be followed by local legislative bodies for public meetings held telephonically:

- i. Implement a procedure for receiving and swiftly resolving requests for reasonable modification or accommodation from individuals with disabilities, consistent with the Americans with Disabilities Act and resolving any doubt whatsoever in favor of accessibility; and

Ms. Iris Wan
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- ii. Advertise that procedure each time notice is given of the means by which members of the public may observe the meeting and offer public comment, pursuant to the Executive Order's notice requirements.

The City Planning Commission agenda for the public meeting on May 14, 2020, complied with all accessibility provisions set forth in the Executive Order. The Executive Order authorizes public meetings to be broadcast electronically, but does not require visual access. Rather, Paragraph 3 of the Executive Order allows public meetings to be held solely via teleconferencing.

Members of the public were able to listen to and participate in the City Planning Commission meeting telephonically by following the directions on the first page of the posted agenda. No internet connection was required to access the meeting or provide public comment. Additionally, the agenda includes information for individuals with disabilities to request reasonable modification or accommodation.

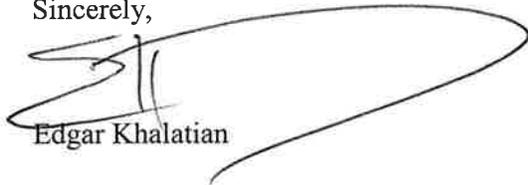
2. Response to Alleged Discrimination based on Civil Rights Act

The City Planning Commission meeting held on May 14, 2020, was conducted telephonically and did not require access to a computer or the internet. There was no attempt to exclude persons lacking access to technology, as any person with access to a telephone could participate in the meeting. The public participation procedures apply equally to all members of the public, and do not discriminate on the basis of race, color or national origin.

Finally, Spanish translation was available for the meeting. The second page of the agenda includes information (en Español) about how to access a Spanish translation of the meeting.

Please contact me if you have any questions or wish to discuss.

Sincerely,



Edgar Khalatian

Enclosure

EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA

EXECUTIVE ORDER N-29-20

WHEREAS on March 4, 2020, I proclaimed a State of Emergency to exist in California as a result of the threat of COVID-19; and

WHEREAS despite sustained efforts, the virus continues to spread and is impacting nearly all sectors of California; and

WHEREAS the threat of COVID-19 has resulted in serious and ongoing economic harms, in particular to some of the most vulnerable Californians; and

WHEREAS time bound eligibility redeterminations are required for Medi-Cal, CalFresh, CalWORKs, Cash Assistance Program for Immigrants, California Food Assistance Program, and In Home Supportive Services beneficiaries to continue their benefits, in accordance with processes established by the Department of Social Services, the Department of Health Care Services, and the Federal Government; and

WHEREAS social distancing recommendations or Orders as well as a statewide imperative for critical employees to focus on health needs may prevent Medi-Cal, CalFresh, CalWORKs, Cash Assistance Program for Immigrants, California Food Assistance Program, and In Home Supportive Services beneficiaries from obtaining in-person eligibility redeterminations; and

WHEREAS under the provisions of Government Code section 8571, I find that strict compliance with various statutes and regulations specified in this order would prevent, hinder, or delay appropriate actions to prevent and mitigate the effects of the COVID-19 pandemic.

NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes of the State of California, and in particular, Government Code sections 8567 and 8571, do hereby issue the following order to become effective immediately:

IT IS HEREBY ORDERED THAT:

1. As to individuals currently eligible for benefits under Medi-Cal, CalFresh, CalWORKs, the Cash Assistance Program for Immigrants, the California Food Assistance Program, or In Home Supportive Services benefits, and to the extent necessary to allow such individuals to maintain eligibility for such benefits, any state law, including but not limited to California Code of Regulations, Title 22, section 50189(a) and Welfare and Institutions Code sections 18940 and 11265, that would require redetermination of such benefits is suspended for a period of 90 days from the date of this Order. This Order shall be construed to be consistent with applicable federal laws, including but not limited to Code of Federal Regulations, Title 42, section 435.912, subdivision (e), as interpreted by the Centers for Medicare and Medicaid Services (in guidance issued on January 30, 2018) to permit the extension of

otherwise-applicable Medicaid time limits in emergency situations.

2. Through June 17, 2020, any month or partial month in which California Work Opportunity and Responsibility to Kids (CalWORKs) aid or services are received pursuant to Welfare and Institutions Code Section 11200 et seq. shall not be counted for purposes of the 48-month time limit set forth in Welfare and Institutions Code Section 11454. Any waiver of this time limit shall not be applied if it will exceed the federal time limits set forth in Code of Federal Regulations, Title 45, section 264.1.
3. Paragraph 11 of Executive Order N-25-20 (March 12, 2020) is withdrawn and superseded by the following text:

Notwithstanding any other provision of state or local law (including, but not limited to, the Bagley-Keene Act or the Brown Act), and subject to the notice and accessibility requirements set forth below, a local legislative body or state body is authorized to hold public meetings via teleconferencing and to make public meetings accessible telephonically or otherwise electronically to all members of the public seeking to observe and to address the local legislative body or state body. All requirements in both the Bagley-Keene Act and the Brown Act expressly or impliedly requiring the physical presence of members, the clerk or other personnel of the body, or of the public as a condition of participation in or quorum for a public meeting are hereby waived.

In particular, any otherwise-applicable requirements that

- (i) state and local bodies notice each teleconference location from which a member will be participating in a public meeting;
- (ii) each teleconference location be accessible to the public;
- (iii) members of the public may address the body at each teleconference conference location;
- (iv) state and local bodies post agendas at all teleconference locations;
- (v) at least one member of the state body be physically present at the location specified in the notice of the meeting; and
- (vi) during teleconference meetings, a least a quorum of the members of the local body participate from locations within the boundaries of the territory over which the local body exercises jurisdiction

are hereby suspended.

A local legislative body or state body that holds a meeting via teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically, consistent with the notice and accessibility requirements set forth below, shall have satisfied any requirement that the body allow

members of the public to attend the meeting and offer public comment. Such a body need not make available any physical location from which members of the public may observe the meeting and offer public comment.

Accessibility Requirements: If a local legislative body or state body holds a meeting via teleconferencing and allows members of the public to observe and address the meeting telephonically or otherwise electronically, the body shall also:

- (i) Implement a procedure for receiving and swiftly resolving requests for reasonable modification or accommodation from individuals with disabilities, consistent with the Americans with Disabilities Act and resolving any doubt whatsoever in favor of accessibility; and
- (ii) Advertise that procedure each time notice is given of the means by which members of the public may observe the meeting and offer public comment, pursuant to subparagraph (ii) of the Notice Requirements below.

Notice Requirements: Except to the extent this Order expressly provides otherwise, each local legislative body and state body shall:

- (i) Give advance notice of the time of, and post the agenda for, each public meeting according to the timeframes otherwise prescribed by the Bagley-Keene Act or the Brown Act, and using the means otherwise prescribed by the Bagley-Keene Act or the Brown Act, as applicable; and
- (ii) In each instance in which notice of the time of the meeting is otherwise given or the agenda for the meeting is otherwise posted, also give notice of the means by which members of the public may observe the meeting and offer public comment. As to any instance in which there is a change in such means of public observation and comment, or any instance prior to the issuance of this Order in which the time of the meeting has been noticed or the agenda for the meeting has been posted without also including notice of such means, a body may satisfy this requirement by advertising such means using "the most rapid means of communication available at the time" within the meaning of Government Code, section 54954, subdivision (e); this shall include, but need not be limited to, posting such means on the body's Internet website.

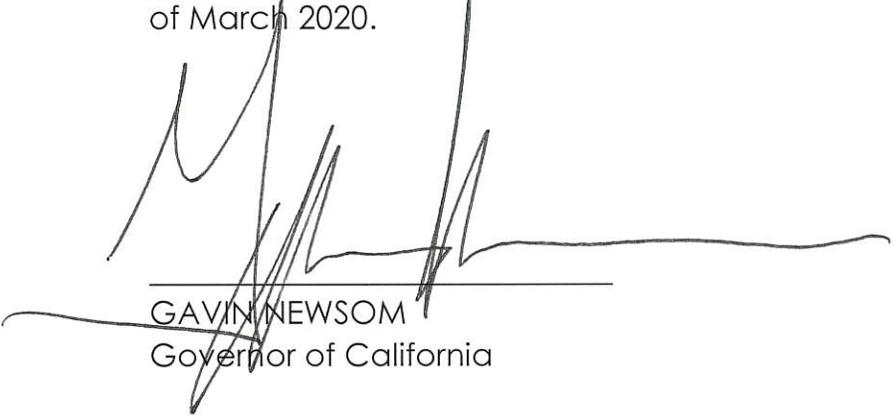
All of the foregoing provisions concerning the conduct of public meetings shall apply only during the period in which state or local public health officials have imposed or recommended social distancing measures.

All state and local bodies are urged to use sound discretion and to make reasonable efforts to adhere as closely as reasonably possible to the provisions of the Bagley-Keene Act and the Brown Act, and other applicable local laws regulating the conduct of public meetings, in order to maximize transparency and provide the public access to their meetings.

IT IS FURTHER ORDERED that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 17th day of March 2020.



GAVIN NEWSOM
Governor of California

ATTEST:

ALEX PADILLA
Secretary of State



15350 Sherman Way, Suite 315
Van Nuys, CA 91406
Phone 310-469-6700

May 12, 2020

Los Angeles Department of City Planning
200 N. Spring Street, Los Angeles, CA 90012

Responses to SAFER Appeal on the 3440 Wilshire Project (Project)

Introduction

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A Letter of Determination (LOD) was issued on March 25, 2020. The appeal period ended on April 6, 2020.

A previous Responses to Appeals document was submitted to the City on April 21, 2020. It provided responses to appeals from Lozeau Drury on behalf of Supporters Alliance for Environmental Responsibility and Katelyn Scanlan.

List of Appeal

- Supporter's Alliance for Environmental Responsibility (SAFER) on May 1, 2020.

1 Reference to CEQA Guidelines in the Response to Comments shall mean 14 C.C.R. § 15000 *et seq.*

Responses to the appeal are provided below. The individual comments within the Appeal will be provided and identified as "X-#". The individual responses within the Appeal will be identified as **Response to "X-#".**

Conclusion

In summary, based on our technical review, the Appeal does not raise any new CEQA issues and do not require any change to any conclusion identified in the MND. The Appeal does not provide substantial evidence or a fair argument that further review under CEQA is required, or that the Project may have a significant environmental impact. As analyzed in the MND, the whole of the record supports the conclusion that the Project would result in impacts below a level of significance.

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Appeal SAFER

Supporter's Alliance for Environmental Responsibility (SAFER)
4399 Santa Anita Avenue, Suite 2005, El Monte, CA 91731
May 1, 2020

SAFER-1

I am writing on behalf of Supporters Alliance for Environmental Responsibility and its members living in and around the City of Los Angeles ("SAFER"). These comments support SAFER's appeal of the Initial Study/Mitigated Negative Declaration ("IS/MND") for the 3440 Wilshire Project, a mixed use development proposed for a 7.3-acre lot area located at 3432-3470 Wilshire Boulevard in Los Angeles, and the related project approvals (the "Project"). After reviewing the IS/MND, we conclude that it fails to analyze all environmental impacts and to implement all necessary mitigation measures. SAFER respectfully requests that the City Planning Commission grant SAFER's appeal and send the Project back to staff to prepare an EIR in order to incorporate our concerns discussed below.

This comment has been prepared with the assistance of Certified Industrial Hygienist, Francis "Bud" Offermann, PE, CIH. Mr. Offerman's comment and curriculum vitae are attached as Exhibit A hereto and is incorporated herein by reference in its entirety. This comment was also prepared with assistance from Ecologist Shawn Smallwood, Ph.D. Dr. Smallwood's comments and curriculum vitae are attached as Exhibit B hereto and is incorporated herein by reference in its entirety. Finally, this comment has been prepared with the assistance of the environmental consulting firm Soil/Water/Air Protection Enterprise ("SWAPE"). SWAPE's comment the consultants' curriculum vitae are attached as Exhibit C hereto and are incorporated herein by reference in their entirety.

I. PROJECT DESCRIPTION

The Project proposes to develop a mixed-use project on a 7.3-acre site consisting: 1) 640 apartment units; 2) 10,738 square feet ("sq. ft.") of commercial floor area; and 2) 1,921 vehicle parking spaces. The Project site is currently developed with four commercial office buildings with ground floor retail uses that front West Wilshire Boulevard and South Irolo Street (the "Existing Office Buildings"), a three-story parking garage, a five-story parking structure, two vehicle driveways, and internal private roadways. The Project involves demolishing the existing three-story parking structure, constructing two commercial kiosks, and constructing a 23-story mixed-use building and a 28-story mixed-use building on top of a podium that is four stories above grade and two stories subterranean. The commercial space will consist of 5,538 sq. ft. of retail area and 5,200 sq. ft. of restaurant area. The restaurant area will consist of 3,700 sq. ft. with 138 indoor and outdoor patio seats of high-turnover restaurant and 1,500 sq. ft. with 68 indoor and outdoor patio seats of fast-food restaurant.

Response to SAFER-1

This comment provides an introduction and the project description. The comment does not state a specific concern or question regarding the adequacy of the MND in identifying and analyzing the environmental impacts of the Project, nor does the comment identify any physical

environmental impacts caused by the Project. This comment is noted for the administrative record and will be forwarded to the decision-makers for review and consideration.

SAFER-2

II. LEGAL STANDARD

As the California Supreme Court has held, “[i]f no EIR has been prepared for a nonexempt project, but substantial evidence in the record supports a fair argument that the project may result in significant adverse impacts, the proper remedy is to order preparation of an EIR.” *Communities for a Better Env’t v. South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 319-320 (CBE v. SCAQMD) (citing *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 88; *Brentwood Assn. for No Drilling, Inc. v. City of Los Angeles* (1982) 134 Cal.App.3d 491, 504–505). “Significant environmental effect” is defined very broadly as “a substantial or potentially substantial adverse change in the environment.” Pub. Res. Code (“PRC”) § 21068; see also 14 CCR § 15382. An effect on the environment need not be “momentous” to meet the CEQA test for significance; it is enough that the impacts are “not trivial.” *No Oil, Inc.*, 13 Cal.3d at 83. “The ‘foremost principle’ in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.” *Communities for a Better Env’t v. Cal. Res. Agency* (2002) 103 Cal.App.4th 98, 109 (CBE v. CRA).

The EIR is the very heart of CEQA. *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1214 (Bakersfield Citizens); *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 927. The EIR is an “environmental ‘alarm bell’ whose purpose is to alert the public and its responsible officials to environmental changes before they have reached the ecological points of no return.” *Bakersfield Citizens*, 124 Cal.App.4th at 1220. The EIR also functions as a “document of accountability,” intended to “demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action.” *Laurel Heights Improvements Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 392. The EIR process “protects not only the environment but also informed self government.” *Pocket Protectors*, 124 Cal.App.4th at 927.

An EIR is required if “there is substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment.” PRC § 21080(d); see also *Pocket Protectors*, 124 Cal.App.4th at 927. In very limited circumstances, an agency may avoid preparing an EIR by issuing a negative declaration, a written statement briefly indicating that a project will have no significant impact thus requiring no EIR (14 CCR § 15371), only if there is not even a “fair argument” that the project will have a significant environmental effect. PRC, §§ 21100, 21064. Since “[t]he adoption of a negative declaration . . . has a terminal effect on the environmental review process,” by allowing the agency “to dispense with the duty [to prepare an EIR],” negative declarations are allowed only in cases where “the proposed project will not affect the environment at all.” *Citizens of Lake Murray v. San Diego* (1989) 129 Cal.App.3d 436, 440.

Where an initial study shows that the project may have a significant effect on the environment, a mitigated negative declaration may be appropriate. However, a mitigated negative declaration is proper only if the project revisions would avoid or mitigate the potentially significant effects identified in the initial study “to a point where clearly no significant effect on the environment

would occur, and...there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.” PRC §§ 21064.5 and 21080(c)(2); *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 331. In that context, “may” means a reasonable possibility of a significant effect on the environment. PRC §§ 21082.2(a), 21100, 21151(a); *Pocket Protectors*, 124 Cal.App.4th at 927; *League for Protection of Oakland's etc. Historic Res. v. City of Oakland* (1997) 52 Cal.App.4th 896, 904–05.

Under the “fair argument” standard, an EIR is required if any substantial evidence in the record indicates that a project may have an adverse environmental effect—even if contrary evidence exists to support the agency’s decision. 14 CCR § 15064(f)(1); *Pocket Protectors*, 124 Cal.App.4th at 931; *Stanislaus Audubon Society v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-51; *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602. The “fair argument” standard creates a “low threshold” favoring environmental review through an EIR rather than through issuance of negative declarations or notices of exemption from CEQA. *Pocket Protectors*, 124 Cal.App.4th at 928.

The “fair argument” standard is virtually the opposite of the typical deferential standard accorded to agencies. As a leading CEQA treatise explains:

This ‘fair argument’ standard is very different from the standard normally followed by public agencies in making administrative determinations. Ordinarily, public agencies weigh the evidence in the record before them and reach a decision based on a preponderance of the evidence. [Citations]. The fair argument standard, by contrast, prevents the lead agency from weighing competing evidence to determine who has a better argument concerning the likelihood or extent of a potential environmental impact. The lead agency’s decision is thus largely legal rather than factual; it does not resolve conflicts in the evidence but determines only whether substantial evidence exists in the record to support the prescribed fair argument.

Kostka & Zishcke, Practice Under CEQA, §6.29, pp. 273-274. The Courts have explained that “it is a question of law, not fact, whether a fair argument exists, and the courts owe no deference to the lead agency’s determination. Review is *de novo*, with a *preference for resolving doubts in favor of environmental review*.” *Pocket Protectors*, 124 Cal.App.4th at 928 (emphasis in original).

CEQA requires that an environmental document include a description of the project’s environmental setting or “baseline.” CEQA Guidelines § 15063(d)(2). The CEQA “baseline” is the set of environmental conditions against which to compare a project’s anticipated impacts. *CBE v. SCAQMD*, 48 Cal.4th at 321. CEQA Guidelines section 15125(a) states, in pertinent part, that a lead agency’s environmental review under CEQA:

...must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time [environmental analysis] is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a Lead Agency determines whether an impact is significant.

See *Save Our Peninsula Committee v. County of Monterey* (2001) 87 Cal.App.4th 99, 124–25 (“*Save Our Peninsula*”).) As the court of appeal has explained, “the impacts of the project must be

measured against the ‘real conditions on the ground,’” and not against hypothetical permitted levels. Id. at 121–23.

Response to SAFER-2

This comment provides the commenter’s interpretation regarding the legal framework for a MND and EIR. The comment does not state a specific concern or question regarding the adequacy of the MND in identifying and analyzing the environmental impacts of the Project, nor does the comment identify any physical environmental impacts caused by the Project. This comment is noted for the administrative record and will be forwarded to the decision-makers for review and consideration.

SAFER-3

III. DISCUSSION

A. There is Substantial Evidence of a Fair Argument that the Project Will Have a Significant Health Risk Impact from its Indoor Air Quality Impacts.

Certified Industrial Hygienist, Francis “Bud” Offermann, PE, CIH, has conducted a review of the proposed Project and relevant documents regarding the Project’s indoor air emissions. Indoor Environmental Engineering Comments (April 10, 2020) (Exhibit A). Mr. Offermann concludes that it is likely that the Project will expose residents of the Project to significant impacts related to indoor air quality, and in particular, emissions of the cancer-causing chemical formaldehyde. Mr. Offermann is a leading expert on indoor air quality and has published extensively on the topic. See attached CV.

Mr. Offermann explains that many composite wood products used in modern apartment home construction contain formaldehyde-based glues which off-gas formaldehyde over a very long time period. He states, “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.” Offermann, pp. 2-3.

Formaldehyde is a known human carcinogen. Mr. Offermann states that there is a fair argument that future residents of the Project will be exposed to a cancer risk from formaldehyde of approximately 112 per million, assuming all materials are compliant with the California Air Resources Board’s formaldehyde airborne toxics control measure. Id., p. 3. This more than 11 times the SCAQMD’s CEQA significance threshold for airborne cancer risk of 10 per million. In addition, Mr. Offermann concludes that people working the commercial spaces of the Project will be exposed to an increased cancer risk from formaldehyde of 16.4 per million, which also exceeds the threshold of significance. Id. at 5. Mr. Offermann concludes that these significant environmental impacts should be analyzed in an EIR and mitigation measures should be imposed to reduce the risk of formaldehyde exposure. Id., p. 45.

Mr. Offermann also notes that the high cancer risk that may be posed by the Project’s indoor air emissions likely will be exacerbated by the additional cancer risk that exists as a result of the Project’s location near roadways with moderate to high traffic (i.e. Wilshire Boulevard, S.

Mariposa Boulevard, Sm. Normandy Ave., and W. 7th Street) and the high levels of PM 2.5 already present in the ambient air. Offermann, pp. 10-11. No analysis has been conducted of the significant cumulative health impacts that will result to future residents of the Project.

Mr. Offermann concludes that these significant environmental impacts should be analyzed in an EIR and mitigation measures should be imposed to reduce the risk of formaldehyde exposure. *Id.* Mr. Offermann identifies mitigation measures that are available to reduce these significant health risks, including the installation of air filters and a requirement that the applicant 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 or ultra-low emitting formaldehyde (ULEF) resins in the buildings' interiors. *Id.* at 12-13.

The City has a duty to investigate issues relating to a project's potential environmental impacts, especially those issues raised by an expert's comments. See *Cty. Sanitation Dist. No. 2 v. Cty. of Kern*, (2005) 127 Cal.App.4th 1544, 1597-98 ("under CEQA, the lead agency bears a burden to investigate potential environmental impacts"). In addition to assessing the Project's potential health impacts to residents, Mr. Offermann identifies the investigatory path that the City should be following in developing an EIR to more precisely evaluate the Projects' future formaldehyde emissions and establishing mitigation measures that reduce the cancer risk below the SCAQMD level. *Id.*, pp. 5-10. Such an analysis would be similar in form to the air quality modeling and traffic modeling typically conducted as part of a CEQA review.

The 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"). At issue in CBIA was whether the Air District could enact CEQA guidelines that advised lead agencies that they must analyze the impacts of adjacent environmental conditions on a project. The Supreme Court held that CEQA does not generally require lead agencies to consider the environment's effects on a project. CBIA, 62 Cal.4th at 800-801. However, to the extent a project may exacerbate existing adverse environmental conditions at or near a project site, those 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 required 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 (emphasis added).

The carcinogenic formaldehyde emissions identified by Mr. Offermann are not an existing environmental condition. Those emissions to the air will be from the Project. Residents and workers will be users of the Project. Currently, there is presumably little if any formaldehyde emissions at the site. Once the project is built, emissions will begin at levels that pose significant health risks. Rather than excusing the City from addressing the impacts of carcinogens emitted into the indoor air from the project, the Supreme Court in CBIA expressly finds that this type of effect by the project on the environment and a "project's users and residents" must be addressed in the CEQA process.

The 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, subs. (b), (c), (d), (g), 21001, subs. (b), (d). It goes without saying that the hundreds of future residents of the Project are human beings and the health and safety of those workers is as important to CEQA’s safeguards as nearby residents currently living near the project site.

Because Mr. Offermann’s expert review is substantial evidence of a fair argument of a significant environmental impact to future users of the project, an EIR must be prepared to disclose and mitigate those impacts.

Response to SAFER-3

Existing regulations and guidance establish the necessary actions to address indoor air quality issues from building material usage.

There are no requirements or guidance from SCAQMD or relevant agencies to evaluate such risk and 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 be compliant 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. These codes include:

- **Title 24²**: The Building Energy Efficiency Standards (Energy Standards) already address the “energy and water efficiency requirements (and indoor air quality requirements) for newly constructed buildings, and alterations to existing buildings”. The Standards are applicable to Mechanical Systems whose one of the primary functions is “indoor air quality for occupant comfort and health”. These Standards addresses ventilation, indoor air quality, and air filtration requirements (including the use of high efficiency filters), the checks and balances and need to be performed, and the acceptance test requirements. One of the General Envelope Requirements is that manufacturers must certify that insulating materials comply with the California Quality Standards for Insulating Materials to assure that “insulation sold or installed in the state performs according to the stated R-value and meets minimum quality, health, and safety standards.”
- **CALGreen³**: The California Green Building Standards Code (CALGreen Code), applicable to new commercial and industrial buildings, is designed to promote “environmentally responsible, cost-effective, healthier places to live and work”. “CALGreen includes both required measures and voluntary measures, a number of which help assure healthful indoor air quality, such as those addressing chemical emissions from composite wood products, carpets, resilient flooring materials, paints, adhesives, sealants, and insulation, and also ventilation.”

More specifically, Section 4.5, Environmental Quality, of the CALGreen Code provides mandatory residential measures to reduce the quantity of air contaminants that are odorous, irritating and/or

² 2019 Building Energy Efficiency Standards: <https://www.energy.ca.gov/programs-andtopics/programs/building-energy-efficiency-standards/2019-building-energy-efficiency>. Accessed: May 4, 2020.

³ California Green Building Standard Code: <https://ww3.arb.ca.gov/research/indoor/greenbuildings.htm>. Accessed: November 14, 2019.

harmful to the comfort and wellbeing of a building's installers, occupants and neighbors. It includes VOC limits for paints, coatings, adhesives, adhesive bonding primers, sealants, sealant primers, and caulk. Section 4.504.3, Carpet Systems, of the CALGreen Code 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 ARBS's Air Toxics Control Measure for Composite Wood (e.g., particle board). These measures have been established through the CALGreen Code and are designed to reduce the quantity of air contaminants to acceptable levels.

- **CARB ATCM (Airborne Toxic Control Measure to Reduce Formaldehyde Emissions from Composite Wood Products)⁴:** 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 Composite Wood Products (CWP) Regulation's emission standards are set at low levels intended to protect public health.⁵ The CWP Regulation, adopted in 2007, established two phases of emissions standards: an initial Phase I, and later, a more stringent Phase 2 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 2 products are legal for sale in California. Thus, all new wood products installed in the Project would comply with the more stringent Phase 2 requirements. Impacts with respect to formaldehyde would be less than significant.

The commenter maintains that the Project would have a significant impact on indoor air quality due to formaldehyde. However, the commenter provides no credible evidence that the Project will be constructed with building materials with significant amounts of formaldehyde.

We are not aware of 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 is a concern. As further highlighted below, the existing rules and regulations are robust

⁴ CARB Airborne Toxic Control Measure: https://ww3.arb.ca.gov/regact/2007/compwood07/frofinal.pdf?_ga=2.6233904.2078388042.1564574457-610727980.1563828547. Accessed: May 4, 2020.

⁵ California Air Resources Board, Frequently Asked Questions for Consumers, Reducing Formaldehyde Emissions from Composite Wood Products, https://ww3.arb.ca.gov/toxics/compwood/consumer_faq.pdf?_ga=2.32900281.682464648.1573169874-1026610208.1565143819. Accessed May 2020.

and adequate to ensure that issues related to formaldehyde from building materials will not be an issue for indoor air quality at the Project. Thus, the City is not required to further analyze indoor air quality at the Project, as there is no information to suggest that there would be a potentially significant impact. The comment has presented no evidence the compliance with existing regulations is insufficient or inadequate. And contrary to the comment, the City has not failed to investigate potential impacts from formaldehyde exposure.

SAFER-4

B. The IS/MND Failed to Adequately Analyze and Mitigate the Potential Adverse Impacts of the Project on Wildlife.

The comment of Dr. Shawn Smallwood is attached as Exhibit B. Dr. Smallwood has identified several issues with the IS/MND for the Project. His concerns are summarized below.

1. There is substantial evidence that Project may have a significant impact on bird species from window collisions.

According to wildlife expert Dr. Shawn Smallwood, the Project will have a significant impact on birds as a result of window collisions. The City has not analyzed or mitigated these potential impacts to special-species birds. Analyzing the potential impact on wildlife of window collisions is especially important because “[w]indow collisions are often characterized as either the second or third largest source of human-caused bird mortality.” Smallwood, p. 6.

The wildlife database eBirds lists 44 special-status species of birds have been document right around the Project site. Smallwood, p. 2. Of these 44 species, Dr. Smallwood determined that 15 have been known to collide with windows. Id. “Many of these species are undoubtedly already experiencing annual mortality caused by window collisions in Los Angeles, but the proposed new project would substantially add window-collision hazards to birds flying over Los Angeles. A fair argument can be made for the need to prepare an EIR to assess project impacts from bird-window collisions, and to formulate appropriate mitigation.” Id.

Dr. Smallwood reviewed a number of studies in order to calculate the number of bird collisions that would occur annually as a result of the Project. Smallwood, p. 7-8. According to his calculations, each m² of glass would result in 0.077 bird deaths per year. Id. at 8. Dr. Smallwood then looked at the building design for the Project and estimated that the Project would include approximately at least 24,000 m² of glass windows. Id. Based on the estimated 24,000 m² of glass windows and the 0.077 bird deaths per m² of glass windows, Dr. Smallwood estimates that the project could result in 1,848 bird deaths per year. Id. Over 50 years, this will amount to 92,400 bird deaths. Id. Most of these deaths would be of birds protected under Fish & Game Code section 3513. Id.

These bird deaths constitute a significant impact that must be analyzed. Id. The City must prepare an EIR to disclose, analyze, and mitigate the full scope of the Project’s impact resulting from window collisions.

Response to SAFER-4

The commenter claims that the Project would result in collision fatalities of birds and that the MND was not prepared with the benefit of survey visits by wildlife biologists. To support this claim, the commenter provides several sources regarding bird collisions and fatalities; however, none of these sources contain specific information regarding the Project or its vicinity.

CEQA requires an analysis of impacts on any species identified as candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service. As discussed in the MND, the Project Site is entirely developed and has been operating as an urban use for decades. MacArthur Park, located approximately 1.2 miles to the east, is the nearest park, and wetland habitat, that would contain habitat that could attract local birds to the area. Thus, the likelihood of encountering special-status avian species in the vicinity of the Project Site is considered low.

The commenter does not identify the property that is claimed to be immediately adjacent to the Project Site where these special-status species were seen. Nor does the commenter identify a radius for the eBird record search that was conducted. The comment provides a database of 44 species “around the Project site.” However, the database uses user-shared posts of bird sightings classified as nearby, adjacent, regional. Of the 44 species listed, only 2 were adjacent, the Red-tailed Hawk (*Buteo jamaicensis*) and Merlin (*Falco columbarius*) birds. Both of these have a Conservation Status of “Least Concern” and are classified as birds of prey and were spotted outside the Project Site. In fact, the comment provides no evidence of species found on the Project Site.

Furthermore, a search of the eBird databases indicates that there are no special-status bird species in the Project vicinity that would be likely to experience window collisions. The nearest identifiable hotspot is at MacArthur Park, 1.2 miles to the east.⁶

Based on the eBird database search, very few if any migrant passerine species are known to use the Project area as a migration corridor, and none of these species are considered candidate, sensitive, or special status species. Thus, the commenter does not provide credible evidence to support the assertion that the special-status avian species are dying from window collisions in downtown Los Angeles or even in southern California. Moreover, an isolated death of a sensitive species would not be sufficient to “have a substantial adverse effect . . . on any species identified as a candidate, sensitive, or special-status species . . .” which is the significance threshold for biological resources under Appendix G.

U.S. Fish and Wildlife Service data further shows that less than one percent of bird window collisions occur at high-rises such as the Project.⁷ Impacts related to the potential fatal collisions of special-status birds with Project exteriors would be less than significant, and no mitigation measures would be required.

Regarding the summarized fatality numbers provided by the commenter, while these numbers were taken from multiple sources across the United States, only one of those sources was focused in California and it was focused on a building within a large urbanized park and not a dense urban area. Furthermore, the majority of the sources provided had monitoring that was

⁶ <https://ebird.org/hotspots>, May 8, 2020.

⁷ <https://www.fws.gov/birds/bird-enthusiasts/threats-to-birds/collisions/buildings-and-glass.php>, accessed May 8, 2020.

conducted in rural or suburban landscapes and, thus, are not representative of an urban environment such as downtown Los Angeles, where there is less likelihood for special-status avian species to be present. Furthermore, the U.S. Fish and Wildlife Service (USFWS) provides the following regarding the effects of tall buildings versus other buildings:

Annual bird mortality resulting from window collisions in the U.S. is estimated to be between 365-988 million birds (Loss et al. 2014).⁸ While most people consider bird/glass collisions an urban phenomenon involving tall, mirrored-glass skyscrapers, the reality is that 56% of collision mortality occurs at low-rise (i.e., one to three story) buildings, 44% at urban and rural residences, and <1% at high-rises (Loss et al. 2004).⁹

Therefore, the analysis provided by the commenter does not support the commenter's claim that there is ample evidence that the Project would result in many collision fatalities of birds or special-status avian species.

SAFER-5

2. There is no evidence to support the IS/MND's conclusion that the Project will not have a significant impact on biological species.

No wildlife surveys were conducted by biologist in preparation of the IS/MND. As a result, the IS/MND fails to inform the public and decisionmakers about avian use of the area. Dr. Smallwood explains that “[s]urveys are needed to learn how many of each bird species fly through the area and at what times of day (and night).” Smallwood, p. 2. Conducting these types of surveys could then inform an analysis of collision risk and mitigation measures to reduce that risk. Id. Mitigation measures may include things like interior light management and design modifications to facades facing the prevailing approach directions of migrating birds. Id. Without conducting surveys, there is no substantial evidence to support the IS/MND's conclusion that the Project will not have a significant impact on biological resources.

Response to SAFER-5

The commenter is incorrect in asserting that there is no support for the determination that the Project will not have a significant impact on biological species. The MND determination was based on the following information.

The Project vicinity is highly urbanized and developed with a parking structure. The likelihood of encountering such special-status bird species in the highly urbanized Project area is low, as very few if any migrant passerine species are known to use the Project area as a migration corridor, and none of these species are considered candidate, sensitive, or special status species.

There are no City or County significant ecological areas on or around the Project Site.¹⁰ There are no California Natural Community Conservation Plans (CNCCP) in the area. The only CNCCP in LA County is in the City of Rancho Palos Verdes, which is more than 30 miles from the Project

⁸ Loss, S. R., T. Will, S. S. Loss, and P. P. Marra. 2014. Bird–building collisions in the United States: Estimates of annual mortality and species vulnerability. *The Condor: Ornithological Applications* 116:8-23. DOI: 10.1650/CONDOR-13-090.1

⁹ U.S. Fish and Wildlife Service, Division of Migratory Bird Management. January 2016. Reducing Bird Collisions with Buildings and Building Glass: Best Practices. Page 2: <https://www.fws.gov/migratorybirds/pdf/management/reducingbirdcollisionswithbuildings.pdf>

¹⁰ Navigate LA, Significant Ecological Areas layer: <http://navigatela.lacity.org/navigatela/>, accessed May 8, 2020.

Site.¹¹ There are no Habitat Conservation Plans near the Site.¹² The Project Site and vicinity are not known to be wildlife or migratory corridors or within a special-status species critical habitat.

Migratory nongame native bird species are protected by international treaty under the Federal Migratory Bird Treaty Act (MBTA) of 1918 (50 CFR Section 10.13). Sections 3503, 3503.5 and 3513 of the California Fish and Game Code prohibit take of all birds and their active nests including raptors and other migratory nongame birds (as listed under the Federal MBTA). The Project would comply with the regulations of the CDFW¹³ and USFWS.¹⁴ The Project would comply with all regulations.

SAFER-6

3. The City fails to mitigate the Project's adverse impact on bird species from window collisions.

In order to mitigate the impact of the window collisions on bird species, Dr. Smallwood has suggested several mitigation measures. As a starting point, before construction, “[a]ny new project should be informed by preconstruction surveys of daytime and nocturnal flight activity.” Smallwood, p. 13. Dr. Smallwood explains:

[Pre-construction] surveys can reveal the one or more façades facing the prevailing approach direction of birds, and these revelations can help prioritize where certain types of mitigation can be targeted. It is critical to formulate effective measures prior to construction, because post-construction options will be limited, likely more expensive, and probably less effective. Id.

Dr. Smallwood also notes the importance of post-construction fatality monitoring, which he says “should be an essential feature of any new building project.” Smallwood, p. 12. These surveys should be combined with threshold fatality rates that would trigger additional mitigation. Id. at 15. The City should identify candidate impact-reduction measures that can be implemented in case the original measure(s) proves ineffective or inadequate, including compensatory mitigation.

In addition, for mitigation measures involving the siting and design of the Project, Dr. Smallwood suggests: (1) deciding on the location of structures; (2) deciding on the façade and orientation of structures; (3) selecting types and sizes of windows; (4) minimizing transparency through two parallel façades; (5) minimizing views of interior plants; (6) landscaping so as to increase distance between windows and vegetation; (7) monitoring for fatalities to identify seasonal and spatial patterns; and (8) adjusted light management, window markings, and other measures as needed based on survey results. Smallwood, p. 14. Dr. Smallwood also suggests that the City also look to the guidelines developed by the American Bird Conservancy and the City of San Francisco to minimize injuries and fatalities to bird species. Id.

¹¹ California Natural Community Conservation Plans, April 2019, <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=68626&inline>, accessed May 8, 2020.

¹² USFWS, Habitat Conservation Plans: <https://ecos.fws.gov/ecp0/conservationPlan/region/summary?region=8&type=HCP>, accessed May 8, 2020.

¹³ <http://www.leginfo.ca.gov/html/fgctableofcontents.html>

¹⁴ <https://www.fws.gov/birds/policies-and-regulations/laws-legislations/migratory-bird-treaty-act.php>, accessed May 8, 2020.

Finally, Dr. Smallwood recommends compensatory mitigation including contributions to wildlife rehabilitation facilities to cover the costs of injured animals that may be delivered to these facilities for care from this Project or other projects. Smallwood, p. 15. These and other feasible mitigation measures must be considered in an EIR.

Response to SAFER-6

The commenter provides a list of solutions to prevent window collisions. However, as stated above, the commenter provides no credible evidence support to his assertion that the Project could cause collision fatalities of birds. Therefore, no further response is warranted.

SAFER-7

4. The IS/MND fails to adequately analyze the Project's impact on wildlife movement.

The IS/MND improperly dismisses the Project's potential to impact wildlife movement based on the urbanized location of the Project, which, the IS/MND claims, does not support a wildlife corridor. These conclusions rely on a false CEQA standard. A project will have a significant biological impact if it would "[i]nterfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites." CEQA Guidelines, App. G. As Dr. Smallwood explains:

[W]hether a site supports a wildlife movement corridor is not the standard at issue with Initial Study question 4d; rather, it is whether the project would interfere with wildlife movement. City of Los Angeles apparently neglected to consider that birds fly. Birds fly to forage, defend territories, disperse, and migrate. Birds, including special-status species of birds, inhabit the airspaces of Los Angeles, some as residents of Los Angeles and others as dispersers or migrants. Inserting two high-rises into the airspaces used by birds would interfere with wildlife movement while also killing many birds. Collision mortality would be worsened by constructing two high-rises as planned – high-rises composed of glass façades. Smallwood, p. 2.

Because of its reliance on a false CEQA standard for determining impacts on wildlife movement, the IS/MND contains no evidence to support the conclusion that the Project will not have a significant impact on wildlife movement. In contrast, Dr. Smallwood's comments constitute substantial evidence that the Project will have a significant impact on wildlife movement. As a result, an EIR must be prepared to analyze the Project's impacts on wildlife movement.

Response to SAFER-7

The MND provides the required analysis and evaluation of the Project Site's potential to serve as a wildlife corridor. As stated above, the commenter provides no credible evidence support to his assertion that the Project could cause collision fatalities of birds.

The Project Site contains a parking structure surrounded by urban uses. Furthermore, no water bodies that could serve as habitat for fish exist on the Project Site in the vicinity. There are 30 trees in the public right-of-way (sidewalk or called a street tree), of which one is a protected

species and will not be removed. Of the 29 non-protected street trees, 19 trees would be removed. There are 29 trees on the Project Site, none of which are protected species. Of these, 24 would be removed. The Project would provide 160 trees onsite, which is a net increase of trees, and would comply with the MBTA, which regulates vegetation removal during the nesting season to ensure that potential impacts to migratory birds would not occur.

SAFER-8

5. The IS/MND fails to analyze the Project's cumulative biological impacts.

The IS/MND does not include an analysis of the Project's potential cumulative biological impacts on the grounds that no wildlife habitat occurs in the City of Los Angeles. Smallwood, p. 14. As a result, the IS/MND provides no analysis of the Project's cumulative contribution to window collisions. Id. Dr. Smallwood explains that "[t]his missing analysis is a critical shortfall, because bird abundance across North American has declined 29% over the last 48 years (Rosenberg et al. 2019). The proposed project alone is predicted to kill 1,848 bird deaths per year (95% CI: 960-2,640), which would add to many thousands more killed by windows in Los Angeles." Id. The City violates CEQA by not conducting an analysis of the Project's cumulative impact to biological resources as a result of window collisions.

Response to SAFER-8

The comment claiming that the MND does not include cumulative biological impacts because no wildlife habitat occurs in the City is false. The MND makes no such claim. Cumulative biological impacts are discussed on page B-264 of the MND. The area around the Project Site is highly urbanized and fully developed. As such, the Related Projects would be infill developments, which replace existing buildings.

The commenter claims that the City will have a cumulative impact on birds caused by window collisions. For the reasons set forth above, the commenter does not provide substantial evidence that there would be bird-related fatalities related to window collisions at the Project Site or at the sites of related projects. Moreover, some of the related projects in the Project vicinity may high rise buildings, which as noted experience only a small percentage of bird collisions. Therefore, cumulative impacts would be less than significant and the Project's contribution would not be considerable. Thus, no further analysis is warranted.

SAFER-9

C. The IS/MND's Traffic Analysis is Not Supported by Substantial Evidence and Greatly Underestimates Project-Generated Traffic.

A significant transportation impact would occur if roadways and intersections that would carry project-generated traffic would exceed adopted City of Los Angeles Department of Transportation thresholds of significance. IS/MND, B-215. The IS/MND's conclusion that the Project will not result in significant transportation impacts is not supported by substantial evidence. As described below, and in the expert comments of traffic engineer Dan Smith (attached hereto as Exhibit B), the IS/MND greatly underestimates the vehicle trips generated by the Project. Mr. Smith concludes that there is "overwhelming evidence that there is fair argument that demonstrates that

the Project's impacts are not fully disclosed and mitigated in the IS/MND. Consequently, the Project cannot be approved under a mitigated negative declaration and a full EIR must be prepared." Smith, p. 5.

1. The IS/MND underestimates traffic generated from the retail component of the Project.

The Project includes 5,538 square feet of commercial retail space. The IS/MND estimates the gross number of trips generated from this retail space based on Trip Generation, 10th Edition's average rates for Land Use Category 820, which is the land use category for "Shopping Center." Smith, p. 2. But Traffic Engineer Dan Smith explains in his expert comments, that this land use is inapplicable to the Project because 5,538 square feet of retail space is not a shopping center. Id. To generate the average trip rates used for the Shopping Center land use category requires approximately 400,000 square feet of floor area. Id. Mr. Smith determined that a convenience market would be a much more accurate land use category to use. Id. Using the Trip Generation, 10th Edition, shopping centers generate daily vehicle trips at an average rate of 37.75 trips per thousand square feet of floor area, where as convenience markets generate 762.28 trips per thousand square feet. Id. This amounts to 20 times more traffic generated from the retail space than was disclosed in the IS/MND. The same flaw is reflected in the IS/MND's peak hour trip analysis.

Making matters worse, the IS/MND then discounts 90 percent of the gross trip generation of this small retail space. Id. This 90 percent reduction is based on 15 percent for trips internal to the Project, 25 percent as transit trips, and 50 percent as trips attached to passerby traffic. Id. As Mr. Smith explains, these reductions do not hold up to scrutiny. "[T]he notion that the convenience retail would attract 50 percent of its patronage from existing passerby vehicle traffic is absurd." Id. Mr. Smith explains that these types of passerby attraction rates are normally attained by convenience markets on busy urban or suburban streets and where the retail store has its own surface parking lot. Id. Here, in contrast, the retail space is contained within a larger building, where the passerby is forced to enter and leave a large parking garage. Id. Moreover, the retail space is not visible from either Wilshire Boulevard or Irolo. It is only visible from S. Mariposa Avenue and/or W. 7th Street. Id. The IS/MND discloses that S. Mariposa carries only 680 vehicles past the Project site in the A.M. peak hour and 672 in the P.M. peak hour, while W. 7th Street carries only 349 vehicles past the Project site in the A.M. peak hour and 542 in the P.M. peak hour. IS/MND Appendix K-1, Figure 1. Mr. Smith concludes that "These totals are insufficient to support the claimed passerby attraction discount, particularly where the on-street parking spaces are usually occupied and passers-by would be forced to enter and leave a parking garage." Id. "The notion that 25 percent of the people visiting a convenience market would make purposeful transit trips to reach that market is similarly implausible. This is likely to be true only of a handful of employees of the market." Id.

Response to SAFER-9

Note that the Appeal does not include Dan Smith's traffic comments, which the comment says is attached as Exhibit B. Rather, Exhibit B is the Smallwood's biological and bird impact comments. The Appeal does not contain an exhibit containing Smith's traffic comments.

The 5,538 square feet of retail space was analyzed using ITE's Trip Generation 10th Edition's average rates for Land Use Category 820, Shopping Center. The comment makes the statement

that this land use category “requires approximately 400,000 square feet of floor area”. This is a misinterpretation of ITE trip generation data. The majority of surveyed retail land use sites in ITE Trip Generation 10th Edition for Land Use Category 820 are smaller than 400,000 square feet of floor area and many are less than 50,000 square feet. This land use category is applicable for the proposed retail space given that it is not known at this time what the exact retail tenant(s) would be in that space.

The trip generation calculation for the retail space does not discount 90 percent of the gross trip generation. It is true that adjustments of 15% for internal capture, 25% for transit, and 50% for pass-by were taken, but these reductions are multiplicative, not additive. The retail trip generation begins with 209 daily trips and ends with a net of 67 trips after adjustments, for a reduction of approximately 68%. The actual percentage of trips discounted is far less than 90%. A 50% pass-by credit is reasonable given the description of the retail, and based on Attachment I of LADOT's Traffic Study Policies and Procedures, December 2016. Traditional pass-by trips are vehicle trips attracted from an adjacent suburban arterial. The comment points out that the retail space will be contained within a larger building, where motorists will be forced to enter and leave a large parking garage. In the case of ground-level retail use located in a dense urban center such as the Wilshire Boulevard corridor where parking is difficult, many trips to the ground-level retail use would be made by walking or biking from other nearby land uses, not by vehicle, and the pass-by adjustment was used as a surrogate for these trips.

The transit adjustment taken in the transportation impact analysis is consistent with guidance in the LADOT Transportation Impact Study Guidelines in force at the time of the analysis. The LADOT guidance provides for a 25% credit for projects adjacent to a rail transit station, and the Project is located adjacent to the Metro Purple Line Wilshire/Normandie Station.

SAFER-10

2. The IS/MND underestimates traffic generated from the fast-casual restaurant component of the Project.

Like the retail space, the IS/MND assumes again that 90 percent of the fast-casual restaurant's gross trip generation will not add to traffic except at Project driveways. Just as with the retail space, the IS/MND reduces traffic by 90 percent, with 50 percent attracted from passerby traffic, 25 percent from transit, and 15 percent internal. Smith, p. 3. Mr. Smith concludes that “[a]ll of the discussion above with respect to the discounting of trips to a convenience market is similarly applicable to the fast-causal restaurant.” Id.

Response to SAFER-10

See **Response to SAFER-9**, which explains the trip generation reduction percentages. The fast-casual restaurant took adjustments of 15% for internal capture, 25% for transit, and 50% for pass-by were taken, but these reductions are multiplicative, not additive. The restaurant trip generation begins with 630 daily trips and ends with a net of 201 trips after adjustments, for a reduction of approximately 68%.

Note that the Appeal does not include Dan Smith's traffic comments, which the comment says is attached as Exhibit B. Rather, Exhibit B is the Smallwood's biological and bird impact comments. The Appeal does not contain an exhibit containing Smith's traffic comments.

SAFER-11

3. The IS/MND underestimates traffic generated from the high-turnover sit-down restaurant component of the Project.

The Project also includes a high-turnover sit-down restaurant. For this component of the Project, the IS/MND discounts 60 percent of the trip generation, made up of 25 percent transit, 20 percent passer-by attraction, and 15 percent internal. Id. But Mr. Smith points out that "[e]xcept for negligible numbers of restaurant employees, few if any people would take transit in a purposeful trip to reach or depart from a restaurant of this type. Certainly, patrons of the restaurant will include persons who arrived and will depart the area via transit but these comprise part if not most of the attracted passer-by category." Id. The need for drivers to park inside a parking garage and the fact that the restaurant will only be visible from the lightly trafficked S. Mariposa and W. 7th street further minimizes the patrons that will be attracted from street traffic. Id.

Response to SAFER-11

See **Response to SAFER-9**, which explains the trip generation reduction percentages.

The high-turnover restaurant took adjustments of 15% for internal capture, 25% for transit, and 20% for pass-by were taken, but these reductions are multiplicative, not additive. The restaurant trip generation begins with 516 daily trips and ends with a net of 264 trips after adjustments, for a reduction of approximately 49%.

The comment does not provide substantial evidence for the claim that the restaurant minimizes the amount of traffic generated because it would only be visible from the lightly trafficked streets. The trip generation adjustments are supported by LADOT, which concurred with the analysis.

SAFER-12

4. The IS/MND underestimates traffic generated from the residential component of the Project.

For the residential portion of the Project, the IS/MND analysis assumes a 15 percent internalization deduction. It does not, however apply a 25 percent transit deduction to the peak hour trip generation because, the IS/MND says, the basin trip generation rate was derived from surveys of similar local area residential high rises, where the transit utilization was already reflected in the observed vehicle trip generation rate. Mr. Smith raises the question of "whether or not those surveyed buildings had comparable trip internalization that would have already been reflected in the observed vehicle trip rates." Smith, p. 4. The IS/MND must be revised to make this clarification.

Mr. Smith's comments constitute substantial evidence that the Project's traffic impact have been significantly underestimated. The IS/MND must be revised to address these inaccuracies.

Response to SAFER-12

Despite the claim, the comment does not constitute substantial evidence because it does not characterize the source of the information correctly. The trip generation table provides the details in note [f]: “The local high-rise residential data for the peak hours was collected in locations with access to transit; therefore, a transit credit was not applied during the peak hours. As local data was not available for daily, the general urban/suburban daily rate was used, making it appropriate to apply a transit credit.”

One of the sites included in LADOT’s high-rise residential data included a golf shop on the ground floor whereas the others were single-use residential projects. A golf shop would not generate the type of internalization that restaurants or other retail uses might; interestingly, however, the empirical trip rates if only the single-use residential projects had been used would have been lower.

SAFER-13

5. The IS/MND fails to account for trips by transportation network company services.

Mr. Smith explains that the rise of transportation network companies (“TNCs”) (also known as ride hailing services) like Uber and Lyft, has substantially changed the nature of transportation in urban areas. Smith, p. 4. Recent research has shown that TNCs are problematic because: “a) a large part of the transportation demand they serve is drawn from trips that would otherwise be carried out by walking, bicycling or transit, b) a large share of the trips they serve are induced trips – trips that would not be made at all were the service not available or trips to distant destinations that would have been satisfied locally by walking absent the service and c) each passenger service trip actually involves 2 vehicle trips – the trip from where the vehicle is circulating or waiting to the point of call and the trip from the point of call to the actual destination.” Id. Despite the major impact of TNCs on transportation in Los Angeles and elsewhere, the IS/MND makes no effort to estimate the transportation impacts of TNC services related to the Project. Without counting any trips generated by TNCs, the IS/MND underestimates the Project’s transportation impact.

Response to SAFER-13

To date, research data into mode shares for transportation network company (TNC) use is limited and LADOT has not established a methodology for considering their use. The overall effects of these types of services have yet to be fully identified or quantified and likely to change over time (as people get more comfortable using TNC) and thus would be speculative at this time. Anecdotal evidence suggests that TNCs are used more for occasional discretionary trips (such as to restaurants) rather than for daily trips (such as most trips generated by residential or office uses) due to their higher cost. Available research does indicate that TNC trips replace both transit/bike/walk trips and private vehicle trips. However, to provide a conservative analysis, Fehr & Peers (traffic consultant) determined that even if the Project’s restaurant and retail trips were increased by 10% and the residential trips increased by 5%, respectively, to account for TNC activity, the Project would still not have any intersection level of service impacts.

Because the impacts of ride-hailing services is speculative at best, the MND was not required to analyze the potential impacts of these services. (Anderson First Coalition v City of Anderson (2005) 130 Cal.App.4th 1173, 1178; Alliance of Small Emitters/Metals Indus. v. S, Coast Air Quality Mgmt. Dist. (1997) 60 Cal.App.4th 55, 66; CEQA Guidelines § 15145.)

SAFER-14

D. The IS/MND Fails to Establish a Baseline for Hazardous Substances.

SWAPE, an environmental consulting firm, reviewed the IS/MND. SWAPE's comment letter is attached as Exhibit C and their findings are summarized in the following sections.

SWAPE notes that the Phase I Environmental Site Assessment ("Phase I Assessment") prepared for the Project site in 2014 identified an 8,000 gallon oil underground storage tank ("UST"), and three USTs associated with a gas station formerly located at the site. SWAPE, p. 1. According to the Phase I, the 8,000-gallon UST was removed in 1988.

However, SWAPE points out that there is no record of removal of the three gas station USTs cite in the Phase I. SWAPE, pp. 1-2. Instead, there is only a vague statement that:

An Application for Permit; Abandonment by Removal Fire Department-City of Los Angeles, was also reviewed as part of our previous assessment, which discussed the removal of one waste oil UST and two gasoline USTs, dated June 8, 1988.

While the application for removal is cited in the Phase I, there is no documentation of the actual removal of the three USTs. References to the gas station USTs in the Phase I use uncertain language. For example:

It is suspected that these USTs were related to the gas & oil station noted on the 1961 Sanborn Map.

It should also be noted that based on our regulatory review, the Subject [Project site] was identified as a registered storage tank site featuring a "inactive" regulatory status for two previous onsite "regulated unleaded" USTs. These gasoline USTs are suspected to be associated with the removal of the aforementioned gasoline USTs noted in the permit.

Without documentation of removal of the USTs, the Phase I fails to confirm the presence or absence of the USTs at the Project site. Id. SWAPE concludes that a Phase II is necessary to identify the presence or absence of the USTs and to conduct soil and soil vapor sampling. Without this information, the IS/MND fails to establish a baseline set of environmental conditions against which environmental impact can be evaluated.

It is well-established that CEQA requires analysis of toxic soil contamination that may be disturbed by a Project, and that the effects of this disturbance on human health and the environment must be analyzed. CEQA requires a finding that a project has a "significant effect on the environment" if "the environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly." (PRC §21083(b)(3).) As the Court of Appeal has stated, "[a] new project located in an area that will expose its occupants to preexisting dangerous pollutants can be said to have substantial adverse effect on human beings." (Cal. Building

Industry Assn. v. Bay Area Air Quality Mgm't Dist. (2013) 218 Cal.App.4th 1171 (CBIA v. BAAQMD).) The existence of toxic soil contamination at a project site is a significant impact requiring review and mitigation in an EIR. (McQueen v. Bd. of Dirs. (1988) 202 Cal.App.3d 1136, 1149; Assoc. For A Cleaner Env't v. Yosemite Comm. College Dist. (2004) 116 Cal.App.4th 629 (ACE v. Yosemite).) This mitigation may not be deferred until a future time after Project approval. (Sundstrom v. County of Mendocino (1988) 202 Cal. App. 3d 296, 306; Citizens for Responsible Equitable Env't'l Dev. v. City of Chula Vista (2011) 197 Cal.App.4th 327, 330-31 (CREED).)

The City must thoroughly investigate the site and prepare an EIR to adequately analyze and mitigate the potential impact of USTs at the Project site.

Response to SAFER-14

As noted in the MND and supported by the Phase I Environmental Site Assessment (ESA), prepared by IVI and included in Appendix H of the MND, there is no evidence that the Project Site has toxic soil contamination. Based on a site reconnaissance, there was no evidence of significant soil staining, stained pavement, or stressed vegetation observed on-site.

The Phase I ESA, thoroughly investigated the Project Site regarding the potential historic USTs. To put the commenters claim regarding USTs in context, the full discussion is provided here, from page 31-32 of the Phase I ESA:

“No USTs were identified on the Subject property and no common indicators of USTs such as vent pipes, fill ports, manways, pavement cuts, fuel gauges or dispensers were observed. In addition, according to Jonathan Kim, there are no USTs on-site. However, the Subject was identified on the California list of registered UST facilities. Specifically, the Subject was identified as a registered storage tank site featuring a “inactive” regulatory status for two previous on-site “regulated unleaded” USTs. These gasoline USTs are suspected to be associated with the removal of two gasoline USTs in 1988, discussed below.

As part of our previous assessment conducted on the Subject, IVI reviewed a Tank Closure Report, Central Plaza, 3450 Wilshire Boulevard, dated May 26, 1988, prepared by McLaren Environmental Engineering. This report indicated that in 1988, an 8,000-gallon fuel oil UST was removed from the Subject. This UST was reportedly installed in 1951 and was used as a backup fuel supply for the on-site boilers. The report indicated that petroleum impacted soils were encountered and excavated during tank removal activities. Soil samples collected after the excavation reportedly did not reveal any remaining contamination requiring further actions. The McLaren report recommended no additional actions be undertaken. Based on the above, IVI has no significant environmental concerns regarding this historical 8,000-gallon fuel oil UST.

An Application for Permit; Abandonment By Removal Fire Department-City of Los Angeles, was also reviewed, which discussed the removal of one waste oil UST and two gasoline USTs, dated June 8, 1988. It is suspected that these USTs were related to the gas & oil station noted on the 1961 Sanborn described in Section 5.3 [of this Phase I].”

The Phase I, considered the potential for historic USTs, and included the following conclusion:

“Based on the foregoing, no further action is recommended at this time regarding the Subject’s historical on-site USTs.”

In addition, the Phase I conducted a “Tier I” (non-intrusive) Vapor Encroachment Screening (VES) on the Project Site with respect to chemicals of concern that may migrate as vapors into the subsurface of the Site as a result of contaminated soil and groundwater on or near the property. As stated on page 40 of the Phase I, based upon hydrogeology, groundwater flow direction and the furthest known extents of the contamination, none of these properties are suspected of having petroleum or chemical contaminant plumes that would be identified as a VEC and as such, a VEC can be ruled out.

SAFER-15

E. The IS/MND Relied on Unsubstantiated Input Parameters to Estimate Project Emissions and Thus Failed to Adequately Analyze the Project’s Air Quality Impacts.

The IS/MND for the Project relies on emissions calculated from the California Emissions Estimator Model Version CalEEMod.2016.3.2 (“CalEEMod”). This model relies on recommended default values for on-site specific information related to a number of factors. The model is used to generate a project’s construction and operational emissions. SWAPE reviewed the Project’s CalEEMod output files and found that the values input into the model were unsubstantiated or inconsistent with information provided in the IS/MND. This results in an underestimation of the Project’s emissions. As a result, the Project may have a significant air quality impacts and an EIR is required to properly analyze these potential impacts.

1. The IS/MND uses an incorrect construction schedule.

According to the IS/MND, the Project’s building construction period for Tower 1 and 2 would each be 19 months, with Tower 1 construction starting in June 2022, and Tower 2 construction starting in June 2024. IS/MND, p. A-15, Table A-8. When combined with 2 months of site prep and 3 months of grading, this amounts to a total of 43-months of active construction. However, the CalEEMod output files show that the model included a construction schedule that lasted 48 months, rather than 43 months, and failed to include the five-month break between construction of Tower 1 and Tower 2. SWAPE, p. 4. According to the “User Entered Comments & Non-Default Data” table, the justification for this was “consultant assumptions.” IS/MND, App. C, pp. 1, 31, 66. This does not justify the inconsistency between the model and the information provided in the IS/MND. SWAPE, p. 5.

SWAPE explains that “[b]y spreading out construction emissions over a 48-month period, rather than the 43-month period indicated by the IS/MND, maximum daily emissions associated with construction are artificially reduced.” Id. Because the construction schedule used in the CalEEMod model is incorrect, the model underestimates the Project’s construction-related emissions.

Response to SAFER-15

Construction schedule, including start, end, and duration dates are estimates only. As discussed on Page B-40 of the MND, the air quality modeling recognizes the potential phasing of the two

towers, but conservatively assumes that both towers would be built concurrently to maximize protection of public health. This means that emissions from each phase of constructing each tower are assumed to occur at the same time. The analysis conservatively assumes construction of the entire Project Site at once and compares total emissions against the SCAQMD's significance thresholds (assumes activities across the subset of the property to be redeveloped with the Project, (2.3 acres). As such, the MND overstates construction-related emissions, the opposite of what the comment claims.

SAFER-16

2. The IS/MND underestimated the number of hauling trips during site preparation and grading.

The CalEEMod output files indicate that several of the hauling, vendor, and worker trips were manually altered from their default values. SWAPE, p. 5. According to the "User Entered Comments & Non-Default Data" table, the justification for this was "Developer information." IS/MND, App. C, pp. 2, 32, 67. No information is provided to justify these changes. The Traffic Study provides an estimate of peak daily trips for each construction phase, but does not provide the total number of hauling, vendor, and worker trips for each phase, which is what was changed in the model.

In addition, the Traffic Study estimates a maximum daily number of hauling trips of one. As a result, the CalEEMod model should have included at least one hauling trip for construction. Yet the CalEEMod output files demonstrate that the model failed to include any hauling trips for construction. SWAPE, p. 6. The model is therefore inconsistent with the model. Id.

The number of worker, hauling, and vendor trips and the associated vehicle miles traveled ("VMT") are used by CalEEMod to determine the exhaust emissions associated with the vehicle use and fugitive dust emissions. SWAPE, p. 6. "[B]y failing to include the correct number of hauling, vendor, and worker trips, the model underestimates the Project's construction-related emissions and should not be relied upon to determine Project significance." Id.

Response to SAFER-16

As noted, the CalEEMod model includes default assumptions when project-specific information is not available. For example, the model assumes that the number of construction workers is 1.25 times the number of pieces of equipment for all phases (except Building Construction and Architectural Coatings). In this case, more specific input assumptions were available that justified refining the model's default assumptions.

While the air quality analysis assumed that hauling of soil does not occur during the building construction phase, the one daily haul trip can be assumed to be part of the 20 vendor trips that are made to serve the daily construction activities of building the Project. During the construction phase, soil hauling is generally not a necessary activity; instead, vendor trips delivering material are more common. Both soil hauling and vendor trips involve heavy-duty diesel-powered trucks, so the vendor assumptions would cover any occasional soil haul trip. The CalEEMod air quality model user guide (page 33) also recognizes this, stating that: "[I]f the trucks are driven on-

road, the user can account for the on-road emissions by entering this information as Additional Vendor Trips on the Trips and VMT screen."

SAFER-17

3. The IS/MND made unsubstantiated changes to acres of grading in the CalEEMod model.

The amount of grading included in the CalEEMod model was manually reduced for different phases from 33 to 2.33 acres and from 30 to zero acres. SWAPE, p. 7. According to the "User Entered Comments & Non-Default Data" table, the justification for this was "Developer information." But nothing in the IS/MND provides evidence to justify these reductions. The number of acres to be graded in the CalEEMod model is used to calculate fugitive dust emissions associated with dozers, graders, scrapers, and haul trucks. Id. By under reporting the acres of grading required as part of construction, the model underestimates construction-related emissions.

Response to SAFER-17

The assumption about the amount of grading was based on the portion of the Project Site that would be graded (during the single grading phase), as well as the amount of grading that can be traversed in an eight-hour workday. The assumption about 0 acres of grading in the site preparation phase is based on the assumption that there is de minimis grading associated with preparing the site for excavation once the existing above-ground parking garage is demolished and hauled away, leaving a relatively flat site.

SAFER-18

4. The IS/MND relied on unsubstantiated construction mitigation measures.

The CalEEMod output files show that the model included the following construction-related mitigation measures: "Replace Ground Cover," "Water Exposed Area," and "Clean Paved Roads." SWAPE, p. 7 (citing Appendix C, pp. 8-9, 39, 73-74). The model also included a 46% reduction in particulate matter emissions as a result of cleaning paved roads. Id. (citing Appendix C, pp. 2, 32, 67). The "User Entered Comments & Non-Default Data" provided the following justification: "Assumes SCAQMD Rule 403 control efficiencies." Id.

The IS/MND explains:

[I]t is mandatory for all construction projects in the Basin to comply with SCAQMD Rule 403 for Fugitive Dust. Rule 403 control requirements include measures to prevent the generation of visible dust plumes. Measures include, but are not limited to, applying water and/or soil binders to uncovered areas, reestablishing ground cover as quickly as possible, utilizing a wheel washing system or other control measures to remove bulk material from tires and vehicle undercarriages before vehicles exit the Project Site, and maintaining effective cover over exposed areas. Compliance with Rule 403 would reduce regional PM_{2.5} and PM₁₀ emissions associated with construction activities by approximately 61 percent. IS/MND, p. B-41(emphasis added).

Accordingly, the Project has the option to either apply water and/or soil binders but has not committed to either or both. Moreover, Rule 403 fails to justify the 46% reduction in particulate matter as a result of “clean paved roads.” Without evidence that this equates to a mitigation measure that is mandatory and enforceable, the reduction is not supported by substantial evidence and should not be included in the model.

Response to SAFER-18

The assumptions about control of fugitive dust during the construction process are not assumed to be mitigation measures, as the SCAQMD will enforce these best practices measures through its Rule 403 regulatory authority. The three fugitive dust strategies assumed during the grading phase are consistent with the control measures in Rule 403 and address different source categories.

First, watering exposed areas deals with the active grading and piles of soil that are being disturbed in real time; hence, the SCAQMD assumes a substantial benefit of 61 percent control efficiency.

Second, the replacing of ground cover reduces fugitives from disturbed areas that have already been disturbed, are not active, but still have the potential for fugitive emissions from wind; hence, the efficiency is only five percent.

Finally, the efficacy of wheel washers is a key measure for controlling trackout emissions that can create plumes of dust far beyond a construction site; hence, the higher efficacy rate of 46 percent.

See below for SCAQMD efficacy assumptions for these best practices measures. It should be noted that the air quality analysis did not assume credit for any other Rule 403 measures that could be applied to a construction site like this.



TABLE XI-A
MITIGATION MEASURE EXAMPLES:
FUGITIVE DUST FROM CONSTRUCTION & DEMOLITION



Source Activity	Mitigation Measure ¹	PM10 Control Efficiency	Comments	Estimated Cost ²
Active demolition and debris removal	Apply water every 4 hours to the area within 100 feet of a structure being demolished, to reduce vehicle trackout .	36%		ND
Trackout	Use a gravel apron, 25 feet long by road width, to reduce mud/dirt trackout from unpaved truck exit routes.	46%		\$1,360/year (gravel apron dimensions: 50' x 30' x 3" thick)
Post-demolition stabilization	Apply dust suppressants (e.g., polymer emulsion) to disturbed areas upon completion of demolition.	84%	For actively disturbed areas.	\$5,340/acre-year (Useful life of 1 year)
Demolition Activities	Apply water to disturbed soils after demolition is completed or at the end of each day of cleanup.	10%	14-hour watering interval.	\$68-\$81/acre-day
Demolition Activities	Prohibit demolition activities when wind speeds exceed 25 mph.	98%	Estimated for high wind days in absence of soil disturbance activities. Demolition of 1,000 ft ² structure on 1.2 acres.	\$1.36 per 8 hour day idled
Construction Activities	Apply water every 3 hours to disturbed areas within a construction site.	61%	3.2-hour watering interval.	ND
Scraper loading and unloading	Require minimum soil moisture of 12% for earthmoving by use of a moveable sprinkler system or a water truck. Moisture content can be verified by lab sample or moisture probe.	69%	AP-42 emission factor equation for materials handling due to increasing soil moisture from 1.4% to 12%.	\$138/acre (sprinkler system to maintain minimum soil moisture of 12%)
Construction traffic	Limit on-site vehicle speeds (on unpaved roads) to 15 mph by radar enforcement.	57%	Assume linear relationship between PM10 emissions and uncontrolled vehicle speed of 35 mph.	\$22/inspection \$180/sign

¹Unless otherwise noted, information presented in this table is from the following reference: *WRAP Fugitive Dust Handbook*, September 7, 2006 (http://www.wrapair.org/forums/dej/fd/content/FDHandbook_Rev_06.pdf). ND = No Data.

²2003 dollars.



TABLE XI-A
MITIGATION MEASURE EXAMPLES:
FUGITIVE DUST FROM CONSTRUCTION & DEMOLITION

Source Component	Mitigation Measure ¹	PM10 Control Efficiency	References & Assumptions	Estimated Cost ²
Grading	Replace ground cover in disturbed areas as quickly as possible.	5% ³	EPA, "Control of Fugitive Dust Sources" EPA-450/3-88-008, September 1988	ND
Grading	All trucks hauling dirt, sand, soil, or other loose materials are to be tarped with a fabric cover and maintain a freeboard height of 12 inches.	91%	Arizona Department of Transportation Construction Analysis Services, "Final Field Study Report - PM10 Control Management Study for ADOT Construction Projects, June 1994	ND

¹Unless otherwise noted, information presented in this table is from the following reference: *WRAP Fugitive Dust Handbook*, September 7, 2006 (http://www.wrapair.org/forums/dej/fd/content/FDHandbook_Rev_06.pdf). ND = No Data.

² 2003 dollars.

³ Higher than 5% control efficiency may be used. However, please provide the supporting analysis and data in the environmental documentation.

SAFER-19

5. The IS/MND relied on an unsubstantiated number of daily trips.

The IS/MND includes a 25% “transit credit” for both retail and multifamily housing trip generation. IS/MND, App. K-1, pp. 24, Table 4. According to the Traffic Study, this reduction credit was based on the 2016 Los Angeles Department of Transportation’s (“LADOT”) “Traffic Study Policies and Procedures.” Id. Reliance on this document is misplaced. As SWAPE points out, this document was replaced by the City in 2019 with the LADOT’s “Transportation Assessment Guidelines (“TAG”). SWAPE, p. 3. The TAG now provides that “LADOT, at its discretion, may allow up to a 25% transit/walk trip generation reduction” applied “on a case by case basis.” Id. SWAPE reviewed the Traffic Study and found no verification of or permission to rely on the 25% reduction by LADOT. Id. Without this information, the IS/MND errs in relying on the 25% transit reduction credit, and the Project’s traffic counts may be underestimated.

Response to SAFER-19

The traffic study was conducted according to LADOT’s guidelines and methodologies in place at the time of the analysis in 2018, and confirmed in the August 2018 Memorandum of Understanding (MOU). LADOT concurred with the analysis and assumptions in its October 25, 2018 letter. An addendum to the traffic study was prepared in August 2019 to account for a reduction in the residential units and commercial space. LADOT again concurred with the addendum in its October 22, 2019 letter.

LADOT released new guidelines in July 2019. During this transition, projects that already have a signed MOU with LADOT and have filed an application with DCP may continue analyzing transportation impacts under the former guidelines, as long as the project will be adopted and through any appeal period prior to the State deadline of July 1, 2020. On April 17, 2020, LADOT issued a memo updating its VMT direction in response to the coronavirus pandemic. Due to delays in project hearing and decision dates, LADOT offers an extension to the July 1, 2020 deadline for applicants processing LOS-based analyses if it can be demonstrated that their projects were delay from receiving their final entitlements because of the pandemic.

The air quality analysis is consistent with the traffic study’s assumption about net vehicle trips during the operation of the mixed-use Project.

SAFER-20

F. The IS/MND Failed to Adequately Evaluate Health Risks from Diesel Particulate Matter Emissions

1. The IS/MND lacks substantial evidence to support its finding that the Project’s emissions will not cause a significant health impact.

The IS/MND concludes that the health risk impact from diesel particulate matter related to Project construction and operation will be less than significant. In making this finding, the IS/MND does

not conduct a quantified a health risk assessment (“HRA”) for Project construction or operation. SWAPE, p. 8. The IS/MND attempts to justify this by stating:

Because there is such a short-term exposure period, construction TAC emissions would result in a less-than significant impact. Therefore, construction of the Project would not expose sensitive receptors to substantial diesel PM concentrations, and this impact would be less than significant. IS/MND, p. B-46.

The IS/MND explains the omission of an operational HRA as follows:

[T]he SCAQMD recommends that health risk assessments be conducted for substantial sources of diesel particulate emissions (e.g., truck stops and warehouse distribution facilities) and has provided guidance for analyzing mobile source diesel emissions.[48] The Project would not generate a substantial number of truck trips since it would not be a truck stop or distribution center. Based on the limited activity of TAC sources, the Project would not warrant the need for a health risk assessment associated with on-site activities. Therefore, Project impacts would be less than significant. IS/MND p. B-48.

The IS/MND’s failure to conduct an operational HRA is inconsistent with the approach recommended by the California Office of Environmental Health Hazard Assessment (OEHHA). SWAPE, p. 10. OEHHA recommends a health risk assessment of a project’s operational emissions for projects that will be in place for more than 6 months. Id. Projects lasting more than 6 months should be evaluated for the duration of the project, and an exposure duration of 30 years be used to estimate individual cancer risk for the maximally exposed individual resident. Id. The Project would last at least 30 years and certainly much longer than six months. These recommendations reflect the most recent health risk assessment policy.

Rather than preparing an HRA, the IS/MND relies on a Localized Significance Threshold (“LST”) methodology to support its finding that the Project will not have a significant health risk impact. Reliance on the LST methodology is incorrect. As the SCAQMD guidance on the LST explains, the LST methodology only evaluates impact from criteria pollutants (NO_x, CO, PM₁₀, and PM_{2.5}). SWAPE, p. 9. Toxic air contaminants (“TACs”) such as diesel particulate matter (“DPM”) are not criteria pollutants. Id. By relying on the LST analysis, the IS/MND failed to analyze TAC exposure as a result Project construction and operation. Without this information, the City lacks substantial evidence to support the IS/MND’s conclusion that the Project will not have a significant health risk impact.

Response to SAFER-20

The City’s decision to not prepare an operational HRA is consistent with the direction from SCAQMD. SCAQMD recommends that health risk assessments (HRAs) be conducted for substantial individual sources of DPM (e.g., truck stops and warehouse distribution facilities that generate more than 100 trucks per day or more than 40 trucks with operating transport refrigeration units). Operation of the Project would not generate or attract heavy-duty diesel fueled vehicle trips (i.e. no warehouse, distribution or truck stop uses are proposed), which would require the preparation of an operational health risk assessment.

Further, contrary to the commenter's statement, the MND determined that the Project's construction and operational emissions would be below the localized significant thresholds and that the Project's activities (and the Project's associated land uses) are not considered land uses that generate substantial Toxic Air Contaminants (TACs) emissions. The commenter correctly notes that the MND analyzed the Project's maximum localized (on-site) emissions for construction and operation activities.

LSTs represent the maximum emissions from a project that are not expected to cause or contribute to an exceedance of the most stringent applicable federal or state ambient air quality standard and are based on the most recent background ambient air quality monitoring data for the Project area.

As shown in the MND, the Project would not produce emissions that exceed the SCAQMD's recommended localized standards of significance for NO₂, CO, PM₁₀ and/or PM_{2.5}. Thus, the MND correctly concluded that construction impacts to the localized air quality would be less than significant.

Contrary to the commenter's statement, the MND did analyze the Project's construction and operation TAC emissions and determined that the Project would not result in significant impacts to nearby sensitive receptors. The primary TAC that would be generated by construction activities is DPM, which would be released from the exhaust stacks of construction equipment. The construction emissions modeling conservatively assumed that all equipment present on the Project Site would be operating simultaneously and continuously throughout most of the day, while, in all likelihood, this would rarely be the case. Average daily emissions of DPM would be less than one pound per day throughout the course of Project construction. Therefore, the magnitude of daily DPM emissions would not be sufficient to result in substantial pollutant concentrations at off-site sensitive receptors.

Further, in accordance with 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 lifetime would contract cancer based on the use of standard risk-assessment methodology. As the Project's construction activities would occur over a 48-month period and DPM emissions would vary over the construction period, the MND determined that no residual emissions and/or corresponding individual cancer risk are anticipated after construction.

The primary operation TACs would include DPM from delivery trucks and to a lesser extent, facility operations (e.g., natural gas fired boilers). SCAQMD recommends that HRAs be conducted for substantial individual sources of DPM (e.g., truck stops and warehouse distribution facilities that generate more than 100 trucks per day or more than 40 trucks with operating transport refrigeration units) and has provided guidance for analyzing mobile source diesel emissions.¹⁵ Based on this guidance, the Project would not include these types of land uses and is not considered to be a substantial source of DPM warranting a refined HRA since daily truck trips to the Project Site would not exceed 100 trucks per day or more than 40 trucks with operating transport refrigeration units. In addition, the CARB-mandated ATCM limits diesel-fueled

¹⁵ SCAQMD, Health Risk Assessment Guidance for Analyzing Cancer Risks from Mobile Source Diesel Idling Emissions for CEQA Air Quality Analysis, 2002.

commercial vehicles (delivery trucks) to idle for no more than 5 minutes at any given time, which would further limit diesel particulate emissions. Thus, compliance with CARB and SCAQMD guidelines, the MND correctly concluded that the Project operational emissions would not result in the exposure of off-site sensitive receptors to TACs.

Thus, the MND analysis correctly concludes that the Project would not contain substantial TAC sources and is consistent with the CARB and SCAQMD guidelines. The Project would not result in the exposure of off-site sensitive receptors to carcinogenic or toxic air contaminants that exceed the maximum incremental cancer risk of 10 in one million or an acute or chronic hazard index of 1.0, and potential TAC impacts would be less than significant.

The Project would not qualify as a high priority project. The MND's analysis of potential health risks TACs during the operation phase is consistent with SCAQMD's guidance on this topic.

The commenter statement that the omission of an HRA conflicts with the guidance included in the OEHHA guidelines misrepresents SCAQMD's guidance regarding the 2015 OEHHA Manual. The 2015 OEHHA Manual is not a set of regulations but instead was prepared for utilization by local air districts in the formulation of their rules related to the preparation of HRAs. In turn, the SCAQMD guidance referenced in this comment applies only to HRAs subject to SCAQMD's AB 2588 and Rule 1402. These SCAQMD rules apply only to large stationary sources subject to the Air Toxics "Hot Spots" Program that routinely release air toxics into the air (e.g., industrial facilities) and not short-term construction activities.

As Project construction activities would vary throughout the site and would be short-term, stationary source rules would not be appropriate for assessing toxic air contaminants. In fact, the 2015 OEHHA Guidance Manual specifically notes the considerable uncertainty in assessing cancer risks from a project that will only last a small fraction of a lifetime.

The commenter claims that since the Project would generate operational trips for the lifetime of the Project, an operational HRA should be included. As discussed above the Project would not include any stationary sources of air pollutant emissions as defined by applicable regulations. Further, no risk threshold has been officially adopted by the SCAQMD for this type of project. As the Project would not contain substantial TAC sources and is consistent with the CARB and SCAQMD guidelines, the Project would not result in the exposure of off-site sensitive receptors to carcinogenic or toxic air contaminants that exceed the maximum incremental cancer risk of 10 in one million risk threshold. Contrary to the commenter, an HRA was not required, and the OEHHA guidance does not apply for this Project. Moreover, the City of Los Angeles, as lead agency, has not adopted the Guidance Manual as part of its CEQA methodology. Therefore, use of the *L.A. City CEQA Thresholds Guide* for determining impacts related to potential construction TAC impacts was appropriate.

SAFER-21

2. SWAPE conducted a screening-level health risk assessment that indicates a significant health risk impact.

SWAPE prepared a screening-level HRA to evaluate potential impacts from Project construction and operation. SWAPE used AERSCREEN, the leading screening-level air quality dispersion

model. SWAPE, p. 11. SWAPE used a sensitive receptor distance of 100 meters¹⁶ and analyzed impacts to individuals at different stages of life based on OEHHA and SCAQMD guidance utilizing age sensitivity factors. SWAPE, pp. 11-14.

SWAPE found that the excess cancer risk for adults, children, and infants at a sensitive receptor located approximately 100 meters away over the course of Project construction and operation are approximately 12, 99, and 43 in one million, respectively. SWAPE, p. 14. Moreover, the excess lifetime cancer risk over the course of a Project operation is approximately 160 in one million. Id.) The risks to adults, children, infants, and lifetime residents appreciably exceed the SCAQMD's threshold of 10 in one million.¹⁷ SWAPE's analysis constitutes substantial evidence that the Project may have a significant health impact as a result of diesel particulate emissions. The City must prepare an EIR with a more refined HRA that is representative of site conditions in order to evaluate the Project's health risk impact and to include suitable mitigation measures.

Response to SAFER-21

The Department of City Planning relies on methodology established by the SCAQMD for preparation of CEQA air quality analyses. The SCAQMD shares responsibility with the California Air Resources Board (CARB) to ensure that all state and federal ambient air quality standards are achieved and maintained throughout all of Los Angeles County and the urban portions of Orange, Riverside, and San Bernardino counties. The SCAQMD has jurisdiction over an area of approximately 10,743 square miles. Although the SCAQMD is responsible for regional air quality planning efforts, it does not have the authority to directly regulate the air quality issues associated with new development projects within the Air Basin, such as the Project. Instead, the SCAQMD published the *CEQA Air Quality Handbook* in November 1993 to assist lead agencies, as well as consultants, project proponents, and other interested parties, in evaluating potential air quality impacts of projects proposed in the Air Basin. The *CEQA Air Quality Handbook* provides standards, methodologies, and procedures for conducting air quality analyses, in EIRs and was used extensively in the preparation of the air quality analysis for the Project.

The SCAQMD CEQA Handbook does not recommend analysis of TACs from short-term construction activities. 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 TACs over a 70-year lifetime will contract cancer based on the use of standard risk assessment methodology. Given that the greatest potential for diesel particulate emissions would only occur for approximately four and a half months during excavation/grading activities and other construction activities during the overall construction schedule of approximately 48 months would result in reduced use of heavy-duty diesel construction equipment in comparison to excavation/grading activities, the Project would not result in a long-term (i.e., 70-year) source of TAC emissions. No residual TAC emissions and corresponding individual cancer risk are

¹⁶ The closest sensitive receptor is located 18 meters from the Project site. However, 100 meters was used in the HRA based on AERSCREEN output files which demonstrate that the maximally exposed receptor is located 100 meters from the Project site. SWAPE, p. 12.

¹⁷ While OEHHA and SCAQMD recommend using age sensitivity factors in conducting an HRA, even without using age sensitivity factors, the SWAPE determined that the excess cancer risks would exceed the threshold of significance. SWAPE, p. 14. The excess cancer risk posed to adults and children would be 12 and 33 in one million, while the excess lifetime cancer risk over the course of a Project operation would be 49 in one million. Id.

anticipated after construction. Because there is such a short-term exposure period, further evaluation of construction TAC emissions was not warranted. This supporting information was used consistent with the *L.A. City CEQA Thresholds Guide* directions for making a determination of significance on a case-by-case basis. As such, the Draft MND correctly concluded that Project-related TAC impacts during construction were less than significant.

Further, diesel-based cancer risk from any construction activity would be based on short-term emissions of inhalable particulates (PM_{2.5}) from construction emissions and haul trucks. Projected PM_{2.5} emissions are not expected to exceed SCAQMD emissions thresholds for construction activities.

This comment also misrepresents SCAQMD's guidance regarding the Office of Environmental Health Hazards Assessment (OEHHA) guidelines. The 2015 OEHHA Manual is not a set of regulations but instead was prepared for utilization by local air districts in the formulation of their rules related to the preparation of HRAs. In turn, the SCAQMD guidance referenced in this comment applies only to HRAs subject to SCAQMD's AB 2588 and Rule 1402. These SCAQMD rules apply only to large stationary sources subject to the Air Toxics "Hot Spots" Program that routinely release air toxics into the air (e.g., industrial facilities) and not short-term construction activities. As Project construction activities would vary throughout the site and would be short-term, stationary source rules would not be appropriate for assessing toxic air contaminants. In fact, the 2015 OEHHA Guidance Manual specifically notes the considerable uncertainty in assessing cancer risks from project that will only last a small fraction of a lifetime.

Currently, SCAQMD has not adopted any rules for the preparation of HRAs to assess health risks associated with "short-term" construction activities. SCAQMD recommends, as pertinent to the Project, that health risk assessments be considered for substantial sources of diesel particulate emissions (e.g., truck stops and warehouse distribution facilities) and has provided guidance for analyzing mobile source diesel emissions. Yet, since the Project is not the type that would emit substantial diesel particle matter (DPM), no HRA is required under the applicable SCAQMD guidance.

Further, the Project does not qualify as a "facility" subject to Assembly Bill 2588. The OEHHA adopted a new version of the Air Toxics Hot Spots Program Guidance Manual for the Preparation of Risk Assessments (Guidance Manual) in March of 2015.¹⁸ The Guidance Manual was developed by OEHHA, in conjunction with 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 stationary sources to report the types and quantities of certain substances routinely released into the air. The goals of the Air Toxics "Hot Spots" Act are to collect emission data, to identify facilities having localized impacts, to ascertain health risks, to notify nearby residents of significant air risks, and to reduce those significant risks to acceptable levels.

The new Guidance Manual provides recommendations related to cancer risk evaluation of certain short-term projects. As discussed in Section 8.2.10 of the Guidance Manual, "The 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

¹⁸ See OEHHA, Notice of Adoption of Air Toxics Hot Spots Program Guidance Manual for the Preparation of Health Risk Assessments 2015, www.oehha.ca.gov/air/hot_spots/hotspots2015.html.

remediation.” Short-term projects that would require a permitting decision by SCAQMD typically would be limited to site remediation (e.g., stationary soil vapor extractors) and would not be applicable to the Project. The new Guidance Manual does not provide specific recommendations for evaluation of short-term use of mobile sources (e.g., heavy-duty diesel construction equipment).

The Project would not include any stationary sources of air pollutant emissions as defined by applicable regulations. No risk threshold has been officially adopted for this type of project. As the Project would not contain substantial TAC sources and is consistent with the CARB and SCAQMD guidelines, the Project would not result in the exposure of off-site sensitive receptors to carcinogenic or toxic air contaminants that exceed the maximum incremental cancer risk of 10 in one million risk threshold.

The Project would not qualify as a high priority project. An HRA was not required, and the OEHHA guidance does not apply.

Moreover, the City of Los Angeles, as lead agency, has not adopted the Guidance Manual as part of its CEQA methodology. The City has indicated that until such rules are adopted, or it issues formal guidance for their use in environmental assessments, local agencies should continue to rely upon the previously adopted OEHHA guidelines, which do not address short-term exposure to toxic air contaminants.

SAFER-22

G. Contrary to the IS/MND’s Conclusion, the Project Will Have a Significant GHG Impact.

1. The IS/MND’s GHG analysis violates CEQA.

The IS/MND concludes that the Project’s GHG impact would be less than significant as a result of consistency with CARB’s Climate Change Scoping Plan., SCAG’s 2016-2040 TRP/SCS, the City’s LA Green Plan, and the City’s Sustainable City pLAN. IS/MND, p. B-111. Specifically, the IS/MND states,

[G]iven the Project’s consistency with State, SCAG, and City GHG emission reduction goals and objectives, the Project is consistent with applicable plans, policies, and regulations adopted for the purpose of reducing the emissions of GHGs. *In the absence of adopted standards and established significance thresholds*, and given this consistency, it is concluded that the Project’s incremental contribution to greenhouse gas emissions and their effects on climate change would not be cumulatively considerable. IS/MND, p. B-139 (emphasis added).

The IS/MND’s justifications and conclusion that the Project’s GHG impacts are less-than-significant violate CEQA for several reasons.

First, none of these regulatory plans meet the criteria for an officially adopted GHG reduction program, commonly referred to as a Climate Action Plan (“CAP”), for use as a threshold of significance for GHG emissions. SWAPE, pp. 15-16. As CEQA Guideline section 15064.4(b)(3) makes clear, a qualified CAP “must be adopted by the relevant public agency through a public

review process,” and, as explained by CEQA Guideline section 15183.5(b)(1), the CAP should include:

(1) Inventory: Quantify GHG emissions, both existing and projected over a specified time period, resulting from activities (e.g., projects) within a defined geographic area (e.g., lead agency jurisdiction);

(2) Establish GHG Reduction Goal: Establish a level, based on substantial evidence, below which the contribution to GHG emissions from activities covered by the plan would not be cumulatively considerable;

(3) Analyze Project Types: Identify and analyze the GHG emissions resulting from specific actions or categories of actions anticipated within the geographic area;

(4) Craft Performance Based Mitigation Measures: Specify measures or a group of measures, including performance standards, that substantial evidence demonstrates, if implemented on a project-by-project basis, would collectively achieve the specified emissions level;

(5) Monitoring: Establish a mechanism to monitor the CAP progress toward achieving said level and to require amendment if the plan is not achieving specified levels; and

Here, the IS/MND fails to demonstrate that CARB’s Climate Change Scoping Plan., SCAG’s 2016-2040 TRP/SCS, the City’s LA Green Plan, or the City’s Sustainable City pLAn include the above-listed requirements to be considered a qualified CAP for the City. As such, the IS/MND leaves an analytical gap and fails to demonstrate that compliance with said plans can be used for project-level significance determination. *Id.*

Second, reliance on these plans is misplaced because the plans are either not directly applicable to the Project, are outdated, or the Project is not consistent with the plan at all. For example, consistency with the LA Green Plan is misplaced because the LA Green Plan does not include project-level measures. Instead, the mitigation measures in the plan are primarily city-level actions. SWAPE, p. 16. Similarly, reliance on the Sustainable City pLAn cannot be relied on because it is out of date and has been superseded by the LA Green New Deal. SWAPE, p. 18. In addition, while the IS/MND claims that the Project is consistent with CARB’s Scoping Plan or SCAG’s 2016-2040 RTP/SCS, SWAPE found dozens of inconsistencies between the Project and the plans. SWAPE, pp. 19-32. These inconsistencies must be analyzed and remedies in an EIR.

Moreover, consistency with relevant policies cannot be used to determine a Project’s significance, as projects must incorporate emission reductions measures beyond those that comprise basic requirements. The California Supreme Court has made clear that just because “a project is designed to meet high building efficiency and conservation standards ... does not establish that its [GHG] emissions from transportation activities lack significant impacts.” (*Center for Biological Diversity v. Cal. Dept. of Fish and Wildlife (“Newhall Ranch”)* (2015) 62 Cal.4th 204, 229.) As such, newer developments must be more GHG-efficient. (See *Newhall Ranch*, 62 Cal.4th at 226.)

Response to SAFER-22

The City has determined to use a qualitative approach to evaluating the significance of the Project's GHG emission impacts, by assessing the Project's consistency with applicable GHG reduction strategies and local actions approved or adopted by CARB, SCAG, and the City. This approach is one that CEQA grants the lead agency the discretion to adopt.

The State CEQA Guidelines amendments that went into effect on March 18, 2010, Section 15064(h)(3) and 15064.4(b)(3), encourage lead agencies to make use of programmatic mitigation plans and programs from which to tier when they perform individual project analyses.¹⁹ CEQA grants lead agencies the discretion to determine whether to use a quantitative or a qualitative methodology to determine the significance of a project's GHG emissions.²⁰

This discretion has been recognized most recently in the amendments to State CEQA Guidelines Section 15064.4 and in OPR's CEQA and Climate Change Advisory Discussion Draft, which states, "a lead agency may take either a quantitative or qualitative approach to the environmental analysis."²¹

Although the City does not have a programmatic mitigation plan to tier from, such as a Greenhouse Gas Emissions Reduction Plan, the City has adopted a number of plans to reduce GHG emissions, included the Sustainable PLAN/L.A.'s Green New Deal, and Green Building Code, which encourage and require applicable projects to implement energy efficiency measures. In addition, the California Climate Action Team (CAT) Report provides recommendations for specific emission reduction strategies for reducing GHG emissions and reaching the targets established in AB 32 and Executive Order S-3-05.

On a statewide level, the Climate Change Scoping Plan provides measures to achieve AB 32 targets. On a regional level, the SCAG 2016-2040 RTP/SCS contains measures to achieve VMT reductions required under SB 375. Thus, if the Project complies with these plans, policies, regulations, and requirements, the Project would result in a less than significant impact because it would be consistent with the overarching state, regional, and local plans for GHG reduction.

The City has established goals and actions to reduce the emission of GHGs from both public and private activities within its jurisdiction in its Green New Deal (Sustainable City pLAN 2019), which is approved by the City and applicable to the Project. While the City does not have a programmatic mitigation plan that the Project can tier from, such as a Greenhouse Gas Emissions Reduction Plan as recommended in the relevant amendments to the State CEQA Guidelines,¹³⁹ the City has adopted the Green New Deal (Sustainable City pLAN 2019) and LA Green Building Code, which encourage or require applicable projects such as the Project to implement energy efficiency measures and the City has determined to assess the significance of the Project's net GHG emissions with respect to these plans.

Furthermore, the City has determined to assess the significance of the Project's net GHG emissions by assessing the Project's consistency with applicable State and regional plans and

¹⁹ California Natural Resources Agency, State CEQA Guidelines, 2009 SB 97 Rulemaking, Adopted Text of the State CEQA Guidelines Amendments, (Adopted December 30, 2009, Effective March 18, 2010), p. 6 and 31, http://files.resources.ca.gov/ceqa/docs/Adopted_and_Transmitted_Text_of_SB97_CEQA_Guidelines_Amendments.pdf. Accessed May 4, 2020.

²⁰ State CEQA Guidelines Section 15064.4(a).

²¹ Governor's Office of Planning and Research, CEQA and Climate Change Advisory Discussion Draft, June 2019, p. 8, <http://opr.ca.gov/ceqa/technical-advisories.html>. Accessed May 4, 2020.

regulations intended to reduce GHG emissions to meet the statewide targets set forth in AB 32 and SB 32, including CARB’s 2017 Climate Change Scoping Plan and SCAG’s 2016 RTP/SCS, both of which are the currently approved versions of these plans. If a project is designed in accordance with these policies and regulations, it would result in a less than significant impact, because it would not conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of GHGs.

SAFER-23

2. The Project will have a significant GHG impact.

Since the IS/MND improperly relies entirely on consistency with CARB’s Climate Change Scoping Plan., SCAG’s 2016-2040 TRP/SCS, the City’s LA Green Plan, and the City’s Sustainable City pLAn to determine GHG impact significance, the IS/MND fails to compare the Project’s GHG emissions to the correct SCAQMD thresholds.

SCAQMD has interim thresholds that the City should have compared the Project’s GHG emissions to. SWAPE, p. 32. When compared to the thresholds, even when relying on the IS/MND’s incorrect and unsubstantiated CalEEMod model, the Project would result in a significant GHG impact. The IS/MND’s CalEEMod output files demonstrate that the Project’s mitigated emissions include approximately 8,699 MT CO2e/year (amortized construction and operational emissions). This far exceeds the SCAQMD 3,000 MT CO2e/year mixed-use development threshold. SWAPE, p. 36. These exceedances are even greater when SWAPE updated the CalEEMod model to correct the above-identified deficiencies. Id. at 37. SWAPE’s updated model shows the Project will emit 9,502.4 MT CO2e/year. Id.

SWAPE Annual Greenhouse Gas Emissions	
Project Phase	Proposed Project (MT CO₂e/year)
Construction (amortized over 30 years)	255.6
Area	11.1
Energy	4,530.7
Mobile	3,968.9
Waste	190.1
Water	546.0
Total	9,502.4
Threshold	3,000
Exceed?	Yes

Response to SAFER-23

In 2008, SCAQMD released draft guidance regarding interim CEQA GHG significance thresholds.²² Within its October 2008 document, the SCAQMD proposed the use of a percent emission reduction target to determine significance for residential/commercial projects that emit greater than 3,000 MTCO₂e per year. Under this proposal, residential/commercial projects that emit fewer than 3,000 MTCO₂e per year would be assumed to have a less than significant impact on climate change.

On December 5, 2008, the SCAQMD Governing Board adopted the staff proposal for an interim GHG significance threshold of 10,000 MTCO₂e per year for stationary source/industrial projects where the SCAQMD is the lead agency. However, in the twelve years since, the SCAQMD chose not to adopt a GHG significance threshold for land use development projects (e.g., residential/commercial projects); therefore, the residential/commercial thresholds have no formal standing as a means of judging the significance of development projects for CEQA purposes.

Further, this SCAQMD interim GHG significance threshold is not applicable to the Project as the Project is a residential/commercial project and the City of Los Angeles is the Lead Agency.

In addition, CARB and the City of Los Angeles have yet to adopt project-level significance thresholds for GHG emissions that would be applicable to the Project. Thus, the commenter's suggestion that the Project rely on a draft interim threshold of significance that was adopted by a SCAQMD Working Group over a decade ago and was never approved or sanctioned for CEQA analyses is irrelevant. The SCAQMD has suspended development of any GHG thresholds.

Pursuant to CEQA Guidelines Section 15064.4(c), "A lead agency may use a model or methodology to estimate greenhouse gas emissions resulting from a project. The lead agency has discretion to select the model or methodology it considers most appropriate to enable decision makers to intelligently take into account the project's incremental contribution to climate change. The lead agency must support its selection of a model or methodology with substantial evidence." The City, as the Lead Agency, is not required to rely on the SCAQMD's 2008 draft standards that were never adopted by the SCAQMD as threshold of significance. Further, as the SCAQMD or any other applicable agencies have yet to adopt any applicable GHG numerical thresholds, the MND analyzed the Project's GHG impacts by assessing the Project's identified significance threshold (i.e. consistency with applicable statewide, regional, and local GHG reduction plans and strategies).

SAFER-24

Because the project threshold is exceeded, a service population analysis is warranted. Id. SWAPE found that, dividing the Project's GHG emission by its service population of 1,88-people means that the Project would emit approximately 4.63 MT CO₂e/SP/year, which exceeds the SCAQMD 2035 efficiency target of 3.0 of MT CO₂e/SP/year. Id. at 36-37. SWAPE's updated CalEEMod model reveals an even greater service population efficiency of 5.05 MT CO₂e/SP/year.

²² SCAQMD, Draft Guidance Document—Interim CEQA Greenhouse Gas (GHG) Significance Threshold, October 2008, Attachment E.

SWAPE Service Population Efficiency Analysis	
Project Phase	Proposed Project (MT CO₂e/yr)
Total	9502.37
Service Population	1880.00
Service Population Efficiency	5.05
Threshold	3.00
<i>Exceed?</i>	<i>Yes</i>

SWAPE’s comments constitute substantial evidence that the Project may have a significant greenhouse gas impact. This impact must be fully analyzed and mitigated in an EIR. SWAPE’s comments include a number of mitigation measures available to reduce the Project’s GHG emissions, and these should all be considered by the City.

Response to SAFER-24

Pursuant to CEQA Guidelines Section 15064.4(b)(2) and 15064.4(b)(3), as there is no “bright line” threshold of significance for GHG emissions, the Project’s GHG level of significance relies on whether the Project complies with applicable plans, policies, regulations and requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of GHG emissions.

The commenter’s reference to the per capita objective is inappropriate for a project-level EIR. Specifically, this goal per service population per year is “...not for specific individual projects because they include all emissions sectors in the State.” This includes emissions from wastewater treatment plants, public utilities, and emission source categories that are not applicable to the emission profile or control of development projects. Instead, that target is intended for “the plan level” (city, county, subregion, or regional level, as appropriate). As such, the commenter’s assertion that the Project’s GHG emissions are significant because they exceed 4.8 MTCO₂e per service population per year is not appropriate. The MND is consistent with the Scoping Plan, which does not establish a project-level threshold of significance or target.

Further, the MND’s analysis of the Project’s GHG emissions complies with the Supreme Court’s guidance provided in the Center for Biological Diversity v. California Department of Fish and Wildlife (Case No. 217763) (also known as the “Newhall Ranch Case”). In the Newhall Ranch Case, the California Supreme Court reviewed the methodology used to analyze GHG emissions in an EIR prepared for a project that proposed 20,885 dwelling units with 58,000 residents on 12,000 acres of undeveloped land in a rural area near the City of Santa Clarita. The Draft EIR relied on a Business As Usual (BAU) approach to determine whether the project would impede the state’s compliance with statutory emissions reduction mandate established by the AB 32 Scoping Plan. The Court did not invalidate the BAU approach used in that EIR but did hold that “the Scoping Plan nowhere related that statewide level of reduction effort to the percentage of reduction that would or should be required from individual projects and nothing DFW or Newhall

have cited in the administrative record indicates that the required percentage of reduction from BAU is the same for an individual project as for the entire state population and economy.²³

The California Supreme Court suggested regulatory consistency as a pathway to compliance, by stating that a lead agency might assess consistency with AB 32's goal in whole or in part by looking to compliance with regulatory programs designed to reduce GHG emissions from particular activities. The Court recognized that to the extent a project's design features comply with or exceed the regulations outlined in the Climate Change Scoping Plan, and adopted by CARB or other state agencies, a lead agency could appropriately rely on their use as showing compliance with performance-based standards adopted to fulfill a statewide plan for reduction or mitigation of GHG emissions. This approach is consistent with CEQA Guidelines Section 15064, which provides that a determination that an impact is not cumulatively considerable may rest on compliance with previously adopted plans or regulations, including plans or regulations for the reduction of GHG emissions. The Court also suggested that "[a] lead agency may rely on existing numerical thresholds of significance for greenhouse gas emissions," (i.e., a bright line threshold approach), if supported by substantial evidence.²⁴

The Office of Planning and Research (OPR) encourages lead agencies to make use of programmatic mitigation plans and programs from which to tier when they perform individual project analyses. On a statewide level, the California Air Resources Board (CARB) 2017 Climate Change Scoping Plan (Scoping Plan) provides measures to achieve AB 32 targets. On a regional level, the Southern California Association of Governments (SCAG) 2016-2040 Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS) contains measures to achieve VMT reductions required under Senate Bill (SB) 375. Additionally, the City has adopted a number of plans to help reduce GHG emissions, including the LA Green Plan, City of LA Sustainable City pLAn (Sustainable City pLAn), and Green Building Code, which encourage and require applicable projects to implement energy efficiency measures.

Contrary to the commenter's statement, pursuant to Section 15064(h)(3), and in absence of an adopted numeric threshold, the analysis provided on Page B-119, of the MND, demonstrates consistency with applicable plans, policies, regulations and requirements, adopted through the public review process,²⁵ which results in the reduction or mitigation of the Project's GHG emissions. The Project's consistency analysis demonstrates the Project's compliance with or exceedance of performance-based standards as well as consistency with applicable plans and policies adopted for the purpose of reducing GHG emissions. Further, in compliance with CEQA Guidelines Section 15064.4 and as discussed in the MND, the Project's GHG impacts are evaluated by assessing the Project's consistency with applicable statewide, regional and local GHG reduction plans including the Scoping Plan, 2016-2040 RTP/SCS, LA Green Plan, and the Sustainable City pLAn. Additionally, in contrast to the commenter's assertion, Table B.8-5 of the MND demonstrates that compliance with regulations and requirements that implement plans for the reduction or mitigation of GHG emissions do in fact reduce the Project's incremental contribution of GHG emissions.

SAFER-25

²³ Center for Biological Diversity v. California of Fish and Wildlife (2015) 62 Cal.4th 204, 225-226.

²⁴ Center for Biological Diversity v. California of Fish and Wildlife (2015) 62 Cal.4th 204, 225-226.

²⁵ Both the Climate Change Scoping Plan and 2016-2040 RTP/SCS were adopted through the public review process.

H. The Project Lacks Sufficient Affordable Housing in Conflict with Ballot Measure JJJ.

Only 5% (32 units) of the Project's 640 units will be set aside for affordable housing. IS/MND, p. B-174. All 32 of the affordable housing units will be considered Moderate Income housing, using the State's level of affordability and Los Angeles Housing Community Investment Department's schedule of rents. Not a single unit being made available for Low Income, Very Low Income, or Extremely Low-Income tenants. This lack of affordable housing units violates t Measure JJJ.

Measure JJJ, as codified at Los Angeles Municipal Code ("LAMC") section 11.5.11, was approved by Los Angeles voters on November 8, 2016 and became effective on December 13, 2016. The residential affordability requirements of Measure JJJ apply to projects with ten or more residential units which seek: (1) a discretionary General Plan Amendment; (2) any zone change or height-district change that results in increased allowable residential floor area, density, or height; or (3) a residential use where such use was not allowed previously. (LAMC § 11.5.11(a).)

Pursuant to Measure JJJ, "Rental Projects" which satisfy at least one of the above provisions must provide the following:

(i) No less than the affordability percentage corresponding to the level of density increase as provided in California Government Code Section 65915(f), inclusive of any Replacement Units; or

(ii) If the General Plan amendment, zone change or height district change results in a residential density increase greater than 35%, then the Project shall provide no less than 5% of the total units at rents affordable to Extremely Low Income households, and either 6% of the total units at rents affordable to Very Low Income households or 15% of the total units at rents affordable to Lower Income households, inclusive of any Replacement Units; or

(iii) If the General Plan amendment, zone change or height district change allows a residential use where not previously allowed, then the Project shall provide no less than 5% of the total units at rents affordable to Extremely Low Income households, and either 11% of the total units at rents affordable to Very Low Income households or 20% of the total units at rents affordable to Lower Income households, inclusive of any Replacement Units. (LAMC § 11.5.11(a)(1).)

Measure JJJ also contains alternative compliance options under which a project can satisfy Measure JJJ's affordability provisions without providing affordable units on-site. These alternative compliance options are (1) construction of affordable units off-site, (2) acquiring property containing "At-Risk Affordable Units," or (3) payment of an in-lieu fee. (LAMC § 11.5.11(b).)

The Project site's General Plan land use designation is currently Regional Center Commercial. The lots that make up the Project site are zoned PB-2, and P-2, which are for parking buildings and surface or underground parking. Residential units are not permitted in PB- 2 or P-2 zones. The Project proposes to rezone the entire Project site to C4, which is a commercial zone that may include R4 uses, which include multiple dwelling residential uses.

Since the Project will have ten or more residential units and is seeking a zone change that results in increased allowable residential floor area, Measure JJJ applies. LAMC § 11.5.11(a). Specifically, the zone change will allow a residential use where not previously allowed. As a result, “the Project shall provide no less than 5% of the total units at rents affordable to Extremely Low Income households, and either 11% of the total units at rents affordable to Very Low Income households or 20% of the total units at rents affordable to Lower Income households, inclusive of any Replacement Units.” LAMC § 11.5.11(a)(1). The Project does not meet the requirements of Measure JJJ because it will only provide 5% of total units at rents affordable to Moderate Income households. The Project must be revised to comply with the affordable housing requirements of Measure JJJ.

Response to SAFER-25

The comment does not raise any questions about the MND, including questioning the methodology. Measure JJJ was voted on during the November 8, 2016 general election. The Department of City Planning clarified that projects with a vesting zone change or vesting tentative map (of which this Project has both) that were deemed complete as of December 13, 2016 would not be subject to Measure JJJ. The Project was deemed complete by the City on October 28, 2016.

A discussion of affordable units is not a CEQA environmental issue.

Although the Project is not required to provide any affordable housing, it includes 5% (32 units) of its total units as affordable (considered Moderate Income, using the State’s level of affordability and Los Angeles Housing Community Investment Department’s schedule of rents for Moderate Income units)

SAFER-26

IV. CONCLUSION

In light of the above comments, the City must prepare an EIR for the Project and the draft EIR should be circulated for public review and comment in accordance with CEQA. Thank you for considering these comments.

Response to SAFER-26

This comment provides a conclusion. Each of the comments in the letter is responded above.

The comment does not state a specific concern or question regarding the adequacy of the MND in identifying and analyzing the environmental impacts of the Project, nor does the comment identify any physical environmental impacts caused by the Project. This comment is noted for the administrative record and will be forwarded to the decision-makers for review and consideration.



15350 Sherman Way, Suite 315
Van Nuys, CA 91406
Phone 310-469-6700

March 18, 2020

Los Angeles Department of City Planning
200 N. Spring Street, Los Angeles, CA 90012

Responses to Comments #2 on the 3440 Wilshire Project (Project)

Introduction

The City of Los Angeles (City) prepared a Mitigated Negative Declaration (MND) – ENV-2016-3693-MND – and Related Case No. VTT-74602 for a new mixed-use development pursuant to the California Environmental Quality Act of 1970 (Pub. Res. Code § 21000 *et seq.*) (CEQA), CEQA Guidelines¹ and the City’s environmental review procedures.

The Project is located at 3440-3470 West Wilshire Boulevard, 659-699 South Mariposa Avenue, 3281-3287 West 7th Street, and 666-678 South Irolo Street, Los Angeles, California 90010 (Project Site)

The Project consists of (i) 640 apartment units (441 studio units and 199 2-bedroom units); (ii) 10,738 square feet of commercial floor area (5,538 square feet of retail area and 5,200 square feet of restaurant area [3,700 square feet with 138 indoor and outdoor patio seats of high-turnover restaurant and 1,500 square feet with 68 indoor and outdoor patio seats of fast-food restaurant]); and, (iii) 1,921 vehicle parking spaces (the Project).

The MND was released by the City for public review on February 6, 2020 for a 30-day review period ending on March 9, 2020.

A previous Responses to Comments document was submitted to the City on March 9, 2020. It provided responses to comment letters from Emily Keough, Anastasiia Ponomarova and Mark Haynie, and Lozeau Drury on behalf of Supporters Alliance for Environmental Responsibility.

List of Comments

The City received the following written comment letters related to the Project:

- California Department of Transportation (Caltrans), March 2, 2020
- State Clearinghouse and Planning Unit, March 4, 2020
- Los Angeles Unified School District (LAUSD), March 9, 2020
- Gideon Kracov, March 11, 2020

1 Reference to CEQA Guidelines in the Response to Comments shall mean 14 C.C.R. § 15000 *et seq.*

Responses to the comments are provided below. The individual comments within the Comment Letters will be provided and identified as **Comment “X”**. The individual responses within the Comment Letters will be identified as **Response to Comment “X”**.

Conclusion

In summary, based on our technical review, the Comment Letters do not raise any new CEQA issues and do not require any change to any conclusion identified in the MND. The Comment Letters do not provide substantial evidence or a fair argument that further review under CEQA is required, or that the Project may have a significant environmental impact. As analyzed in the MND, the whole of the record supports the conclusion that the Project would result in impacts below a level of significance.

Seth Wulkan

Project Manager

CAJA Environmental Services, LLC

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310-469-6704 (direct)

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CAJA is an environmental consulting firm that specializes in environmental planning, research, and documentation for public and private sector clients. For over 33 years, CAJA and its predecessor company Christopher A. Joseph & Associates have offered a broad range of environmental consulting services with a particular emphasis on CEQA and NEPA documentation.

Seth Wulkan has over 13 years of experience and is responsible for all aspects of preparation of environmental review documents. He began his career with CAJA in 2007. Mr. Wulkan is proficient in drafting all sections of environmental review documents; incorporating technical reports into documents; and personally corresponding with public and private sector clients. Mr. Wulkan regularly participates in team strategy meetings from the beginning of the environmental review process through the final project hearings. Mr. Wulkan graduated with college honors from UCLA and completed a Certificate Program in Sustainability at UCLA Extension.

Comment Letter Caltrans

California Department of Transportation (Caltrans)
100 S. Main Street, MS 16, Los Angeles, CA 90012
March 2, 2020

Comment Caltrans-1

Thank you for including the California Department of Transportation (Caltrans) in the review process for the above referenced MND. The mixed-use 3440 Wilshire Project involves the development of up to 640 residential units, 10,738 square feet of commercial floor area, 1,921 vehicle parking spaces, and 1,840 bicycle parking spaces. The City of Los Angeles is considered the Lead Agency under the California Environmental Quality Act (CEQA).

The project is located approximately 1.65 miles north of Interstate 10 (I-10) and approximately 1.3 miles south of the United States 101 (US-101) Freeway.

Response to Comment Caltrans-1

This comment provides an introduction and project description. The comment does not state a specific concern or question regarding the adequacy of the MND in identifying and analyzing the environmental impacts of the Project, nor does the comment identify any physical environmental impacts caused by the Project. This comment is noted for the administrative record and will be forwarded to the decision-makers for review and consideration.

Comment Caltrans-2

After reviewing the MND, Caltrans requests more information about how the trip distribution percentage of 7.5% to the US-101 at Normandie Avenue intersection was determined. Caltrans acknowledges that this percentage is based on the overall project trip distribution patterns displayed in Figure 5 of the Transportation Impact Analysis (TIA), which shows that 20% of project will travel north of the project site. We also concur with the following statements in the TIA: "The geographic distribution of trips generated by the proposed project is dependent on characteristics of the street system serving the project site; the level of accessibility of routes to and from the proposed project site; locations of employment and commercial centers to which residents of the project would be drawn; and residential areas from which the retail employees and other commercial visitors would be drawn. A select zone analysis was conducted for the proposed uses using the City of Los Angeles' Travel Demand Model to inform the general distribution pattern for this study." However, Caltrans would like more details about how the 7.5% figure was derived from the 20% figure.

Response to Comment Caltrans-2

It is noted that Caltrans concurs with the overall approach taken in the TIA to developing the distribution pattern for Project trips.

In regards to how the 7.5% trip assignment to the US 101 freeway at Normandie Avenue was determined, as noted in the comment, the trip distribution for the Project trips was developed in

conjunction with the City's Department of Transportation based on a select zone analysis conducted using the City of Los Angeles' travel demand model.

The 3440 Wilshire Project is located in the Koreatown area of Los Angeles, central to metropolitan Los Angeles, with access to activity and employment centers in all directions from the Project site. It is for this reason that the overall distribution of the Project traffic as shown in Figure 5 of the TIA was relatively balanced: 20% to/from the north, 28% to/from the east, 25% to/from the south, and 27% to from the west. The distribution as illustrated on Figure 5 of the Transportation Impact Analysis (Appendix K-1 of the MND) is to streets within the area surrounding the Project site. The 20% to/from the north is destined to a number of different areas, including areas such as Hollywood, West Hollywood, East Hollywood, and Atwater Village south of the Hollywood Hills and areas such as the San Fernando Valley to the northwest and Glendale, Pasadena, etc., to the northeast farther from the Project site. As a result, only a portion of the 20% of trips to/from the north would be expected to utilize the US 101 freeway at Normandie and the 7.5% of Project trips assigned to the US 101 freeway at Normandie Avenue is reasonable.²

Comment Caltrans-3

The following information is included for your consideration.

The mission of Caltrans is to provide a safe, sustainable, integrated and efficient transportation system to enhance California's economy and livability. Furthermore, Caltrans encourages the Lead Agency to integrate transportation and land use in a way that reduces VMT and Greenhouse Gas (GHG) emissions, as well as facilitates a high level of non-motorized travel and transit use. Thus, Caltrans supports the infill nature of this project and the TDM strategies it has incorporated, such as providing 1,840 bicycle parking spaces. Additional TDM strategies that the City of Los Angeles may want to consider integrating into this project include:

- Decrease the amount of single occupancy vehicle parking by replacing those spaces with more carpool and bicycle parking
- Ensure that the provided short term bicycle parking is secure
- Confirm that the parking structure entrances/exits are pedestrian-friendly by setting them back from the sidewalk to increase pedestrian visibility
- Provide bicycle facilities to connect the bicycle facilities on 7th Street and Oxford Avenue
- Create a transit shelter at the Normandie/Wilshire Metro stop located on the west side of Irolo Street
- Increase the visibility of crosswalks and install ADA compliant curb ramps at the Wilshire Boulevard & Mariposa Avenue intersection, as well as the 7th Street and Mariposa Avenue intersection

Response to Comment Caltrans-3

² Fehr & Peers, Memo, March 11, 2020.

As shown in Table A-6 of the MND, the Project is replacing 125 residential parking spaces and 335 commercial parking spaces (333 existing and 2 new) and providing 4 times the number of bicycle spaces as replacement (1,840). In addition, the short-term parking would be secure, per LAMC 12.21 A.16(a)(2).

The comment does not state a specific concern or question regarding the adequacy of the MND in identifying and analyzing the environmental impacts of the Project, nor does the comment identify any physical environmental impacts caused by the Project. This comment is noted for the administrative record and will be forwarded to the decision-makers for review and consideration.

Comment Caltrans-4

Please make every attempt to reduce VMT. For additional TDM options that can reduce VMT, refer to:

- The 2010 Quantifying Greenhouse Gas Mitigation Measures report by the California Air Pollution Control Officers Association (CAPCOA), available at <http://www.capcoa.org/wpcontent/uploads/2010/11/CAPCOA-Quantification-Report-9-14-Final.pdf>, or
- Integrating Demand Management into the Transportation Planning Process: A Desk Reference (Chapter 8) by the Federal Highway Administration (FHWA), available at <https://ops.fhwa.dot.gov/publications/fhwahop12035/index.htm>

Response to Comment Caltrans-4

As shown in Table B.17-4 of the MND, the trip generation estimates incorporate a 25% transit credit.

The comment does not state a specific concern or question regarding the adequacy of the MND in identifying and analyzing the environmental impacts of the Project, nor does the comment identify any physical environmental impacts caused by the Project. This comment is noted for the administrative record and will be forwarded to the decision-makers for review and consideration.

Comment Caltrans-5

As a reminder, any transportation of heavy construction equipment and/or materials which requires use of oversized-transport vehicles on State highways will need a Caltrans transportation permit. If construction traffic is expected to cause delays on State facilities, please submit the Construction Traffic Management Plan detailing these delays for Caltrans' review. We support implementing the following proposed strategy in this plan: "Schedule deliveries and pick-ups of construction materials during nonpeak travel periods to the extent possible." Caltrans recommends that all large size truck trips in general be limited to off-peak commute periods.

Response to Comment Caltrans-5

The Project would comply with any Caltrans permitting requirements, as applicable.

As part of Project Design Feature TRAN-PDF-1, the following is included:

Schedule deliveries and pick-ups of construction materials during non-peak travel periods to the extent possible and coordinate to reduce the potential of trucks waiting to load or unload for protracted periods.

Comment Caltrans-6

Finally, since there are several schools located near the project, such as Angeles College and Los Angeles High School of the Arts, Caltrans recommends that during construction safety precautions for pedestrians and cyclists be implemented. Examples of precautions include using truck routes that avoid going past nearby schools and setting up protective barriers along pedestrian and cyclist routes. These measures are particularly important to implement along identified Los Angeles Unified School District pedestrian routes to nearby schools.

Response to Comment Caltrans-6

The MND acknowledges the proximity to schools (RFK Community Schools) and provides two mitigation measures (TRAN-MM-1 and TRAN-MM-2) that would ensure potential construction impacts such as trucks and other equipment and operational changes to the streets and sidewalks nearby the schools will be mitigated to a less than significant level. The mitigation includes coordination with LAUSD to guarantee safe pedestrian and bus routes are maintained.

Comment Caltrans-7

If you have any questions about these comments, please contact Emily Gibson, the project coordinator, at Emily.Gibson@dot.ca.gov, and refer to GTS# 07-LA-2020-03152.

Response to Comment Caltrans-7

The comment does not state a specific concern or question regarding the adequacy of the MND in identifying and analyzing the environmental impacts of the Project, nor does the comment identify any physical environmental impacts caused by the Project. This comment is noted for the administrative record and will be forwarded to the decision-makers for review and consideration.

Comment Letter SCH

State Clearinghouse and Planning Unit (SCH)
Governor's Office of Planning and Research
1100 10th Street, P.O. Box 3044, Sacramento, CA 95812
March 4, 2020

Comment SCH-1

The State Clearinghouse submitted the above named MND to selected state agencies for review. The review period closed on 3/3/2020, and the comments from the responding agency (ies) is (are) available on the CEQA database for your retrieval and use. If this comment package is not in order, please notify the State Clearinghouse immediately. Please refer to the project's ten-digit State Clearinghouse number in future correspondence so that we may respond promptly.

Please note that Section 21104(c) of the California Public Resources Code states that:

"A responsible or other public agency shall only make substantive comments regarding those activities involved in a project which are within an area of expertise of the agency or which are required to be carried out or approved by the agency. Those comments shall be supported by specific documentation."

Response to Comment SCH-1

This comment acknowledges receipt of the MND by the SCH and that the MND was sent to state agencies for review. The comment states that the review period closed on March 3, 2020. However, the review period closed on March 9, 2020. This latter date is evidenced by SCH in their own Notice of Completion (NOC) document, on their database for the Project.³

This comment is noted for the administrative record and will be forwarded to the decision-makers for review and consideration.

Comment SCH-2

Check the CEQA database for submitted comments for use in preparing your final environmental document: <https://ceqanet.opr.ca.gov/2020029004/2>. Should you need more information or clarification of the comments, we recommend that you contact the commenting agency directly.

Response to Comment SCH-2

A review of the CEQA database for submitted comments show that Caltrans was the only commenting agency. Caltrans' letter is responded to above (Comment Letter Caltrans).

Comment SCH-3

This letter acknowledges that you have complied with the State Clearinghouse review requirements for draft environmental documents, pursuant to the California Environmental Quality

³ <https://ceqanet.opr.ca.gov/2020029004/2/Attachment/5JTGZF>

Act. Please contact the State Clearinghouse at (916) 445-0613 if you have any questions regarding the environmental review process.

Response to Comment SCH-3

This comment acknowledges that the MND is in compliance with the SCH review requirements for draft environmental documents, in accordance with CEQA. This comment is noted for the administrative record and will be forwarded to the decision-makers for review and consideration.

Comment Letter LAUSD

Los Angeles Unified School District (LAUSD)
Office of Environmental Health and Safety
333 South Beaudry Avenue, 21st Floor, Los Angeles, CA 90017
March 9, 2020

Comment LAUSD-1

This letter provides comments submitted on behalf of the Los Angeles Unified School District (District) regarding the proposed mixed-used development project (Project). The Project would be adjacent to the Robert F. Kennedy Community Schools.

LAUSD has reviewed the Initial Study/Mitigated Negative declaration for the Project and based on the extent and location of the Project, LAUSD is concerned about the potential adverse traffic and pedestrian safety impacts of the Project on our students and staff at this campus. The following recommended conditions are designed to help the Project reduce or eliminate potential impacts on the Robert F. Kennedy Community Schools.

Response to Comment LAUSD-1

This comment provides an introduction. The comment does not state a specific concern or question regarding the adequacy of the MND in identifying and analyzing the environmental impacts of the Project, nor does the comment identify any physical environmental impacts caused by the Project. This comment is noted for the administrative record and will be forwarded to the decision-makers for review and consideration.

Comment LAUSD-2

Transportation/Traffic

To ensure that effective conditions are employed to reduce construction and operation related transportation impacts on District sites, we ask that the following language be included in the Construction Traffic Management Plan (TRAN-PDF-1):

- Construction trucks and other vehicles are required to stop when encountering school buses using red-flashing-lights must-stop-indicators per the California Vehicle Code.
- Contractors must install and maintain appropriate traffic controls (signs and signals) to ensure vehicular safety.
- School buses must have unrestricted access to schools.
- During and after construction changed traffic patterns, lane adjustment, traffic light patterns, and altered bus stops may not affect school bus performance and passenger safety.
- Contractors must maintain ongoing communication with LAUSD school administrators, providing sufficient notice to forewarn children and parents when existing vehicle routes to school may be impacted.
- Parents dropping off their children must have access to the passenger loading areas.

Pedestrian Safety

Construction activities that include street closures, the presence of heavy equipment and increased truck trips to haul materials on and off the Project site can lead to safety hazards for people walking in the vicinity of the construction site. To ensure that effective conditions are employed to reduce construction related pedestrian safety impacts on District sites, we ask that the following language be included in the recommended conditions for pedestrian safety impacts:

- Contractors must maintain ongoing communication with LAUSD school administrators, providing sufficient notice to forewarn children and parents when existing pedestrian routes to school may be impacted.
- Contractors must maintain safe and convenient pedestrian routes to Robert F. Kennedy Community Schools. The Safe Routes to School map for Robert F. Kennedy Community Schools is available at: <https://achieve.lausd.net/Page/3990>.
- Contractors must install and maintain appropriate traffic controls (signs and signals) to ensure pedestrian and vehicular safety.
- To the extent feasible, haul routes are to be routed away from the campus, except when school is not in session.
- Funding for crossing guards at the contractor’s expense is required when safety of children may be compromised at impacted school crossings by construction-related activities.
- Barriers and/or fencing must be installed to secure construction equipment and to minimize trespassing, vandalism, short-cut attractions, and attractive nuisances.

Response to Comment LAUSD-2

The MND adequately provides the rationale and project design feature (PDF) and mitigation measures (MMs) for the anticipated traffic/transportation related impacts and the determination of less than significant impacts with the Project.

LAUSD has requested several conditions to be added to the Construction Traffic Management Plan. Each condition is evaluated below:

LAUSD Conditions	Notes
Transportation/Traffic	
Construction trucks and other vehicles are required to stop when encountering school buses using red-flashing-lights must-stop-indicators per the California Vehicle Code.	All vehicles must comply with California Vehicle Code. The Project has no control over this.
Contractors must install and maintain appropriate traffic controls (signs and signals) to ensure vehicular safety.	Mitigation Measure TRAN-MM-2 already provides this: The developer shall install appropriate construction related traffic signs around the Project Site to ensure pedestrian and vehicle safety.
School buses must have unrestricted access to schools.	Mitigation Measure TRAN-MM-1 already provides this: The developer shall obtain school walk and bus routes to the schools from either the administrators or from LAUSD's Transportation Branch (323) 342-1400 and guarantee that

	safe and convenient pedestrian and bus routes to the school are maintained.
During and after construction changed traffic patterns, lane adjustment, traffic light patterns, and altered bus stops may not affect school bus performance and passenger safety.	The MND demonstrated that construction and operation impacts on intersection level of service (LOS would be less than significant.
Contractors must maintain ongoing communication with LAUSD school administrators, providing sufficient notice to forewarn children and parents when existing vehicle routes to school may be impacted.	Mitigation Measure TRAN-MM-1 already provides this: The developer shall maintain ongoing contact with administrators of RFK Community Schools. The administrators shall be contacted when demolition, grading and construction activity begin on the Project Site so that students and their parents will know when such activities are to occur.
Parents dropping off their children must have access to the passenger loading areas.	The Project would not affect passenger loading areas.
Pedestrian Safety	
Contractors must maintain ongoing communication with LAUSD school administrators, providing sufficient notice to forewarn children and parents when existing pedestrian routes to school may be impacted.	Mitigation Measure TRAN-MM-1 already provides this: The developer shall maintain ongoing contact with administrators of RFK Community Schools. The administrators shall be contacted when demolition, grading and construction activity begin on the Project Site so that students and their parents will know when such activities are to occur.
Contractors must maintain safe and convenient pedestrian routes to Robert F. Kennedy Community Schools. The Safe Routes to School map for Robert F. Kennedy Community Schools is available at: https://achieve.lausd.net/Page/399 .	Mitigation Measure TRAN-MM-1 already provides this: The developer shall obtain school walk and bus routes to the schools from either the administrators or from LAUSD's Transportation Branch (323) 342-1400 and guarantee that safe and convenient pedestrian and bus routes to the school are maintained.
Contractors must install and maintain appropriate traffic controls (signs and signals) to ensure pedestrian and vehicular safety.	Mitigation Measure TRAN-MM-2 already provides this: The developer shall install appropriate construction related traffic signs around the Project Site to ensure pedestrian and vehicle safety.
To the extent feasible, haul routes are to be routed away from the campus, except when school is not in session.	The Haul Route will likely utilize Wilshire Boulevard, which is a high capacity roadway and is situated away from the school buildings by athletic fields. Occasional hauling/delivery truck movements into and out of the site may cause momentary disruptions to traffic, but these would not be prolonged in nature. Safety of vehicles including school buses will not be compromised by project construction, due to its containment within the site boundaries and driveway aprons.
Funding for crossing guards at the contractor's expense is required when safety of children may be compromised at impacted school crossings by construction-related activities.	According to RFK's Pedestrian Route map ⁴ , there is a crossing guard at Mariposa/Wilshire, Catalina/Wilshire, and Catalina/8th. Project Design Feature TRAN-PDF-1 already provides additional pedestrian protections: <ul style="list-style-type: none"> • Schedule deliveries and pick-ups of construction materials

4 <https://achieve.lausd.net/site/handlers/filedownload.ashx?moduleinstanceid=26242&dataid=29186&FileName=UCLACommunitySchool.pdf>

	<p>during non-peak travel periods to the extent possible and coordinate to reduce the potential of trucks waiting to load or unload for protracted periods.</p> <ul style="list-style-type: none"> As parking lane and/or sidewalk closures are anticipated along 7th Street, worksite traffic control plan(s), approved by the City of Los Angeles, should be implemented to route vehicular traffic, bicyclists, and pedestrians around any such closures.
<p>Barriers and/or fencing must be installed to secure construction equipment and to minimize trespassing, vandalism, short-cut attractions, and attractive nuisances.</p>	<p>Mitigation Measure TRAN-MM-2 already provides additional pedestrian protections:</p> <ul style="list-style-type: none"> The Applicant shall plan construction and construction staging as to maintain pedestrian access on adjacent sidewalks throughout all construction phases. This requires the applicant to maintain adequate and safe pedestrian protection, including physical separation (including utilization of barriers such as K-Rails or scaffolding) from work space and vehicular traffic, and overhead protection, due to sidewalk closure or blockage, at all times. Temporary pedestrian facilities shall be adjacent to the Project Site and provide safe, accessible routes that replicate as nearly as practical the most desirable characteristics of the existing facility. Covered walkways shall be provided where pedestrians are exposed to potential injury from falling objects. Applicant shall keep sidewalk open during construction until only when it is absolutely required to close or block sidewalk for construction and/or construction staging. Sidewalk shall be reopened as soon as reasonably feasible taking construction and construction staging into account.

Comment LAUSD-3

The District’s charge is to protect the health and safety of students and staff, and the integrity of the learning environment. The comments presented in this letter identify potential environmental impacts related to the Project to ensure the welfare of the students attending Robert F. Kennedy Community Schools and the staff. Therefore, the recommended conditions set forth in this letter should be incorporated into the Project or included as mitigation measures (if applicable) in order to offset environmental impacts on the students and staff at the affected school.

Thank you for your attention to this matter. Please continue to coordinate with the Robert F. Kennedy Community Schools throughout the duration of the construction activities. If you need additional information, please contact me at (213) 241-3417.

Response to Comment LAUSD-3

This comment provides a conclusion to the previous comments. The comment states that the recommendations provided above would offset environmental impacts on the students and staff at the affected school. This comment is expanded upon and responded to above. This comment is noted for the administrative record and will be forwarded to the decision-makers for review and consideration.

Comment Letter Kracov

Gideon Kracov

801 South Grand Avenue, 11th Floor, Los Angeles, California 90017

March 11, 2020⁵

Comment Kracov-1

On behalf of Service Employees International Union - United Service Workers West and its 20,000 members who live and work in the City of Los Angeles (collectively "USWW"), this Office respectfully submits to the City of Los Angeles ("City") Department of City Planning ("DCP") the following comments⁶ regarding the Mitigated Negative Declaration ("MND") for the proposed 712,053 square foot ("SF"), mixed-use development comprised of 23- and 28-story towers with 640 apartment units (five percent or 32 units set aside for moderate-income households) ("Project") on a 7.3-acre site bounded by Wilshire Blvd., Irolo St., Seventh St., and Mariposa Ave. within the Wilshire Community Plan ("Site") proposed by Central Plaza, LLC ("Applicant").

USWW is concerned about the Project's lack of compliance with the Los Angeles Municipal Code ("LAMC" or "Code") and the California Environmental Quality Act ("CEQA"),⁷ and specifically writes with regard to the following:

Response to Comment Kracov-1

This comment provides an introduction and Project description. The comment does not state a specific concern or question regarding the adequacy of the MND in identifying and analyzing the environmental impacts of the Project, nor does the comment identify any physical environmental impacts caused by the Project. This comment is noted for the administrative record and will be forwarded to the decision-makers for review and consideration.

Comment Kracov-2

1. No Explanation How The Project's Long-Delayed Processing Avoids the Requirements of New Housing Laws: The Project's requested subdivision (DCP Case Nos. VTT-74602), land use entitlements (DCP Case No. CPC-2016-3692-VZC-MCUP-SPR) and environmental review (DCP Case No. ENV-2016-3693-MND) (collectively "Project Approvals") were all filed in September 2016⁸-on the eve of the City's vote on Measure JJJ (requiring residential developers to provide affordable units or pay in-lieu fees). While the Project's subdivision request was "accepted for review" in October 2016,⁹ it appears that the land use entitlements (including its requested Vested Zone Change) and environmental review were not "accepted for review" until December 2019.¹⁰ This begs the question of why was the Project delayed for more than three

5 Letter submitted at the Joint Hearing on March 11, 2020.

6 Please note that pages cited herein are either to the page's stated pagination (referenced herein as "p. ##") or the page's location in the referenced PDF document (referenced herein as "PDF p. ##").

4 DCP (2020) Case Summary & Documents, <http://bit.ly/210myRn>

7 Inclusive of State CEQA Guidelines, 14 Cal. Code Regs. § 1500 et seq. ("CEQA Guidelines").

8 DCP (10/4/16) Bi-Weekly Case Report, PDF p. 7, <http://bit.ly/3c0qZcw>.

9 DCP (10/4/16) Bi-Weekly Case Report, PDF p. 7, <http://bit.ly/3c0qZcw>.

10 DCP (2020) Case Summary & Documents, <http://bit.ly/38zcCFG> and <http://bit.ly/3cNlbQv>.

years, which is left unexplained in the MND and March 11, 2020 staff report. This type of inactivity has resulted in DCP unilaterally terminating other project applications,¹¹ which seemingly should have occurred here, resulting in the termination of the Project Approval applications and submission of new applications subject to newly enacted housing laws, such as Measure JJJ's¹² affordable housing requirements and the City's Affordable Housing Linkage Fee.¹³ Please explain how the Project complies with Measure JJJ, the Linkage Fee, etc.

Response to Comment Kracov-2

The comment does not raise any questions about the MND, including questioning the methodology. The Project was deemed complete by the City on October 28, 2016. Measure JJJ was voted on during the November 8, 2016 general election. The Department of City Planning clarified that projects with a vesting zone change or vesting tentative map (of which this Project has both) that were deemed complete as of December 13, 2016 would not be subject to Measure JJJ.

The Project was not delayed for the time period mentioned by the commenter. Rather, the timeframe included typical Planning review processes and refinements to the Project's design and parameters. Some of these processes include: regular communication between the applicant and Planning staff to resolve design considerations; updating technical reports; and reviewing the environmental documents. Specifically, on October 27, 2016, the City's Planning Commission issued an Advisory Notice Relative to Above-Grade Parking to provide guidance and design recommendations for developments with parking podiums. The Project underwent multiple Project design iterations and coordination with Planning staff to ensure the Advisory Notice guidelines were met. The City's Planning Department issued an updated Advisory Notice Relative to Above-Grade Parking on October 24, 2019, which mandated minor design changes to the Project. Therefore, there was not a period of inactivity similar to the examples provided by the commenter.

Comment Kracov-3

2. MND Fails to Compare Project's GHG Emissions Against SCAQMD Significance Thresholds: Here, the CEQA analysis indicates that the Project's greenhouse gas ("GHG") emissions will be 8,698 metric tons CO₂ equivalent per year ("MTCO₂e/yr") (MND, p. B-117), which exceeds South Coast Air Quality Management District ("SCAQMD")'s proposed Tier 3 brightline threshold of 3,000 MTCO₂e/yr,¹⁴ -- a threshold which has been used by the City numerous times.¹⁵ Based on the Project's purported 1,584 service population (i.e., 1,555 resident

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- 11 See e.g., DCP Termination Letter (10/31/18) ENV-2018-2919 (166 days of inactivity), <http://bit.ly/2TUROmH>; DCP Termination Letter (2/22/17) CPC-2014-2398 (327 days of inactivity), <http://bit.ly/2va1Wzy>.
- 12 Ordinance 184745, codified at LAMC § 11.5.11 et seq (effective December 13, 2016 for projects seeking zone changes, like the case here).
- 13 Ordinance 185342, codified at LAMC § 19.18 et seq.; see also DCP Memo (7/16/18) Affordable Housing Linkage Fee Ordinance and Updated Fee Schedule, p. 1-2 (stating full fee amount for plans submitted on or after June 17, 2019-which is prior to the Project's land use and environmental review being accepted in December 2019), <http://bit.ly/2W5CRyE>.
- 14 SCAQMD (9/28/10) Minutes for the GHG CEQA Significance Working Group# 15, p. 2, <http://bit.ly/36tcZBb>; see also SCAQMD (12/5/08) Interim CEQA GHG Significance Threshold for Stationary Sources, Rules and Plans, p. 5, 6, <http://bit.ly/2QSFvDM>; SCAQMD (Oct. 2008) Draft Guidance Document - Interim CEQA Greenhouse Gas (GHG) Significance Threshold, <http://bit.ly/2ZSPtLw>.
- 15 See e.g., 333 La Cienega Blvd. project (DCP Case No. ENV-2015-897) IS, PDF pp. 89-90 (applying 3,000 MTCO₂e/yr threshold for mixed-use project), <http://bit.ly/2Q7FPkK>; 3063 W. Pico Blvd. project (DCP Case No. ENV-2016-1604) MND, PDF pp. 86-87 (applying 3,000 MTCO₂e/yr threshold for mixed-use projects), <http://bit.ly/218Hta3>; 7720 Lankershim Blvd. project (DCP Case No. ENV-2016-2384) MND, p. IV-33 - IV-35 (utilizing 3,000 Tier 3 threshold for non-industrial project), <http://bit.ly/21EnyYa>; 5750 Hollywood Blvd. project (DCP Case No. ENV-2014-4288) DEIR, PDF p. 31-32 (utilizing 3,000 Tier 3 threshold for nonindustrial project), <http://bit.ly/3cNDcl7>; Bermuda

and 29 employees) (MND, pp. B-198 - B-199), the Project would achieve an efficiency level of 5.49 MTC02e/yr /sp, which exceeds SCAQMD's proposed Tier 4 efficiency thresholds of 4.8 MTC02e/yr/sp by 2020 and 3.0 MTC02e/yr/sp by 2035, which again are thresholds used by the City numerous times.¹⁶ The Project's GHG emissions are significant when compared to SCAQMD's Tier 3 and 4 thresholds frequently used by the City.

Response to Comment Kracov-3

Pursuant to CEQA Guidelines Section 15064.4(b)(2) and 15064.4(b)(3), as there is no “bright line” threshold of significance for GHG emissions, the Project’s GHG level of significance relies on whether the Project complies with applicable plans, policies, regulations and requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of GHG emissions.

The commenter’s reference to the per capita objective is inappropriate for a project-level EIR. Specifically, this goal per service population per year is “...not for specific individual projects because they include all emissions sectors in the State.” This includes emissions from wastewater treatment plants, public utilities, and emission source categories that are not applicable to the emission profile or control of development projects. Instead, that target is intended for “the plan level” (city, county, subregion, or regional level, as appropriate). As such, the commenter’s assertion that the Project’s GHG emissions are significant because they exceed 4.8 MTCO2e per service population per year is not appropriate. The MND is consistent with the Scoping Plan, which does not establish a project-level threshold of significance or target.

Further, the MND’s analysis of the Project’s GHG emissions complies with the Supreme Court’s guidance provided in the *Center for Biological Diversity v. California Department of Fish and Wildlife* (Case No. 217763) (also known as the “Newhall Ranch Case”). In the Newhall Ranch Case, the California Supreme Court reviewed the methodology used to analyze GHG emissions in an EIR prepared for a project that proposed 20,885 dwelling units with 58,000 residents on 12,000 acres of undeveloped land in a rural area near the City of Santa Clarita. The Draft EIR relied on a Business As Usual (BAU) approach to determine whether the project would impede the state’s compliance with statutory emissions reduction mandate established by the AB 32 Scoping Plan. The Court did not invalidate the BAU approach used in that EIR but did hold that “the Scoping Plan nowhere related that statewide level of reduction effort to the percentage of reduction that would or should be required from individual projects and nothing DFW or Newhall have cited in the administrative record indicates that the required percentage of reduction from BAU is the same for an individual project as for the entire state population and economy.”¹⁷

The California Supreme Court suggested regulatory consistency as a pathway to compliance, by stating that a lead agency might assess consistency with AB 32’s goal in whole or in part by

Apartments (DCP Case No. ENV-2017-628) MND, PDF p. 72-73 (utilizing 3,000 Tier 3 threshold for non-industrial project), <http://bit.ly/3aHXRIk>.

¹⁶ See e.g., 6516 W. Selma Ave. project (DCP Case No. ENV-2016-4313) MND, PDF pp. 102-104 (utilizing Tier 4 analysis and noting “SCAQMD’s draft thresholds have also been utilized for other projects in the City.”), <http://bit.ly/2SXwLRI>; Lizard Hotel project (DCP Case No. ENV-2015-2356) Draft EIR, PDF pp. 23-24 (utilizing SCAQMD’s Tier 4 analysis), <http://bit.ly/2MWiErS>; Glassell Park Residential project (DCP Case No. ENV-2016-4394) MND, PDF pp. 164-165 (applying SCAQMD’s Tier 3 and Tier 4 threshold), <http://bit.ly/2s0b34r>; Target at Sunset and Western project (DCP Case No. ENV-2008-1421) Addendum to Certified EIR, PDF pp. 28-31 (applying Tier 3 and Tier 4 thresholds), <http://bit.ly/2ZWeOEv>; Reef project (DCP Case No. ENV-2008-1773) DEIR, PDF p. 23-25 (applying Tier 3 and Tier 4 thresholds), <http://bit.ly/39FbuS5>.

¹⁷ *Center for Biological Diversity v. California of Fish and Wildlife* (2015) 62 Cal.4th 204, 225-226.

looking to compliance with regulatory programs designed to reduce GHG emissions from particular activities. The Court recognized that to the extent a project's design features comply with or exceed the regulations outlined in the Climate Change Scoping Plan, and adopted by CARB or other state agencies, a lead agency could appropriately rely on their use as showing compliance with performance-based standards adopted to fulfill a statewide plan for reduction or mitigation of GHG emissions. This approach is consistent with CEQA Guidelines Section 15064, which provides that a determination that an impact is not cumulatively considerable may rest on compliance with previously adopted plans or regulations, including plans or regulations for the reduction of GHG emissions. The Court also suggested that "[a] lead agency may rely on existing numerical thresholds of significance for greenhouse gas emissions," (i.e., a bright line threshold approach), if supported by substantial evidence.¹⁸

The Office of Planning and Research (OPR) encourages lead agencies to make use of programmatic mitigation plans and programs from which to tier when they perform individual project analyses. On a statewide level, the California Air Resources Board (CARB) 2017 Climate Change Scoping Plan (Scoping Plan) provides measures to achieve AB 32 targets. On a regional level, the Southern California Association of Governments (SCAG) 2016-2040 Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS) contains measures to achieve VMT reductions required under Senate Bill (SB) 375. Additionally, the City has adopted a number of plans to help reduce GHG emissions, including the LA Green Plan, City of LA Sustainable City pLAn (Sustainable City pLAn), and Green Building Code, which encourage and require applicable projects to implement energy efficiency measures.

Contrary to the commenter's statement, pursuant to Section 15064(h)(3), and in absence of an adopted numeric threshold, the analysis provided on Page B-119, of the MND, demonstrates consistency with applicable plans, policies, regulations and requirements, adopted through the public review process,¹⁹ which results in the reduction or mitigation of the Project's GHG emissions. The Project's consistency analysis demonstrates the Project's compliance with or exceedance of performance-based standards as well as consistency with applicable plans and policies adopted for the purpose of reducing GHG emissions. Further, in compliance with CEQA Guidelines Section 15064.4 and as discussed in the MND, the Project's GHG impacts are evaluated by assessing the Project's consistency with applicable statewide, regional and local GHG reduction plans including the Scoping Plan, 2016-2040 RTP/SCS, LA Green Plan, and the Sustainable City pLAn. Additionally, in contrast to the commenter's assertion, Table B.8-5 of the MND demonstrates that compliance with regulations and requirements that implement plans for the reduction or mitigation of GHG emissions do in fact reduce the Project's incremental contribution of GHG emissions.

Comment Kracov-4

3. MND Lacks Required VMT Transportation Analysis: Here, the MND contains no vehicle miles traveled ("VMT") analysis despite the Project's environmental review not being accepted until December 2019, well after the City's adoption of VMT as the criteria to determine transportation impacts and after LADOT's August 2019 guidance "strongly" recommending

¹⁸ Center for Biological Diversity v. California of Fish and Wildlife (2015) 62 Cal.4th 204, 225-226.

¹⁹ Both the Climate Change Scoping Plan and 2016-2040 RTP/SCS were adopted through the public review process.

projects evaluate VMT as part of the transportation.²⁰ Why is no VMT analysis provided despite it being a requirement now of City practice and of state and regional plans seeking to curb GHG mobile emissions via VMT reductions?

Response to Comment Kracov-4

As noted in footnote 274 of the MND:

Checklist Question XVI.b was revised to address consistency with CEQA Guidelines Section 15064.3, subdivision (b), which relates to use of vehicle miles traveled (VMT) as the methodology for evaluating traffic impacts. While Appendix G was revised to incorporate Section 15064.3, Section 15064.3 does not become applicable statewide until July 1, 2020. Until that time, pursuant to Section 15064.3(c), agencies are not required to use VMT as the basis for evaluation of traffic impacts and also may elect to use Section 15064.3 immediately. The City adopted a VMT methodology on July 30, 2019. During this transition, projects that already have a signed memorandum of understanding (MOU) with LADOT and have filed an application with DCP may continue analyzing transportation impacts with level of service (LOS), as long as the project will be adopted and through any appeal period prior to the State deadline of July 1, 2020. Thus, at this time, traffic analyses within the City of Los Angeles continue to be based on LADOT's adopted methodology under its Transportation Impact Study Guidelines, which requires use of LOS to evaluate traffic impacts of a Project (consistent with Checklist Question XVII.b of the CEQA Guidelines prior to the latest update).

Comment Kracov-5

4. Incomplete Noise Significance Analysis: First, the MND relies on compliance with existing noise regulations as a threshold of significance (MND, pp. B-184 - B-186) but fails to explain why it does not apply any of the noise significance thresholds contained in the City's L.A. CEQA Threshold Guide.²¹

Response to Comment Kracov-5

The City has accepted compliance with the City's noise regulations as the methodology for noise analyses and Planning's Environmental Staff Advisory Committee (ESAC) has provided guidance to staff that this is the methodology.

Regulatory compliance with LAMC Section 112.05 would ultimately limit any noise levels from powered construction equipment to 75 dBA or below, as the Project site is located within 500 feet of residential zones. Standard, industry-wide "best practices" for construction in urban or otherwise noise-sensitive areas would ensure the Project's construction noise stays below the City's 75 dBA threshold of significance. "Best practices" utilized by the Project would include equipping heavy equipment with noise-reducing mufflers and warming-up or staging equipment away from sensitive receptors. Additionally, temporary noise barriers would be erected between the Project Site and nearby residences located along 7th Street and Mariposa Avenue.

20 City (8/9 /19) City of Los Angeles Adoption of Vehicle Miles Traveled as the Transportation Impact Metric Under the California Environmental Quality Act, <http://bit.ly/3811onl>.

16 FTA (May 2006) Transit Noise and Vibration Impact Assessment, p. 12: 12 (Table 12-2), <http://bit.ly/38EACY1>.

Compliance with LAMC Section 112.05 would ensure that the Project's powered equipment noise levels at 50 feet do not exceed the section's maximum 75 dBA limit.

Comment Kracov-6

Second, ambient noise level estimates rely solely on short-term measurements taken during afternoon times (MND, p. B-187; MND, Appx. 1,²² PDF pp. 2, 6, 10, 14), but no measurements were taken during nighttime hours (10:00 pm - 7:00 am) or over a 24-hour period to accurately establish ambient levels, as is the practice in noise measurement for many other City projects.²³

Response to Comment Kracov-6

LAMC Section 41.40(a) would prohibit Project construction activities from occurring between the hours of 9:00 PM and 7:00 AM, Monday through Friday. Subdivision (c), below, would further prohibit such activities from occurring before 8:00 AM or after 6:00 PM on any Saturday, or on any Sunday or national holiday. Therefore, no construction would occur at the hours suggested by the commenter (10:00 PM - 7:00 AM). During operation, LAMC Section 112.01 would control noise from amplified sources.

Nighttime or 24-hour noise measurements are not always feasible, practical, necessary, or even required. It should be noted that the L.A. CEQA Thresholds Guide does not recommend or even suggest the 24-hour measurement of ambient noise levels.

Comment Kracov-7

Third, while the MND claims none of the Project's construction equipment would individually exceed the 75 dBA limit at 50 feet (MND, p. B-188), it fails to describe the actual change in noise levels experienced by sensitive receptors when construction equipment is operating simultaneously with other equipment, or when other noise sources occur during various times of the day-like early-morning or, early-evening times. Nor does the MND describe the actual change in noise levels experienced by sensitive residential receptors caused by outside noise sources (e.g., traffic, parking, people congregating outdoors, etc.) during the evening hours.

Response to Comment Kracov-7

LAMC Section 41.40(a) regulates construction activities with specific times of allowance and disallowance. It does not provide any other restrictions for various times of the day (early morning or early evening). Not all construction equipment would operate simultaneously nor in the same location. Maximum noise levels would occur if equipment was operating under full power conditions (i.e. the equipment engine at maximum speed). However, equipment used on construction sites often operate under less than full power conditions, or part power. In addition, construction equipment is spread out throughout the Site and thus, some equipment would be further from the sensitive receptors. In addition, noise modeling assumes that construction noise is constant, when in fact, construction activities and associated noise levels are periodic and fluctuate based on the construction activities.

²² City (2006) L.A. CEQA Thresholds Guide, pp. 1.1-1- 1.2-10, <http://bit.ly/3aLpdHq>.

²³ DKA Planning (Sep. 2018) Noise Appendices, <http://bit.ly/2wHgTJT>.

Page B-189 of the MND discusses how the LAMC would regulate operational uses, including building mechanical equipment, residential uses (conversations and activities), rooftop activities, and commercial activities. For example, the Project's own massing would block the direct line of sight noise travel from this outdoor commercial area to these sensitive receptors. Residential land uses along 7th Street would be over 450 feet south of the proposed outdoor commercial areas and with no direct line of sight to them. Piccadilly Apartments would be approximately 150 feet south of the nearest proposed outdoor commercial area, but the line of sight to this receptor would be obstructed entirely by existing structures.

Comment Kracov-8

Lastly, the MND does not disclose whether the Project will use impact pile driving equipment to construct the Project's foundation and subterranean levels (MND, p. B-85), which can generate significant noise and vibration impacts.²⁴ In sum, these issues beg the question of whether the Project's noise impacts have been adequately assessed and mitigated.

Response to Comment Kracov-8

No pile driving equipment will be used. The Project will use auger bore drilling rigs as noted in Table B.13-4 of the MND and in Appendix C (Air Quality and GHG Appendices), which delineate off-road (onsite) construction equipment.

Comment Kracov-9

In sum, there remain live questions regarding the Project's compliance with the Code and CEQA, which are left unresolved in the current staff report and MND. Until the matters identified in this letter are addressed and resolved, USWW respectfully requests the City stay any further action on the Project and Project Approvals.

This comment letter is made to exhaust remedies under administrative law principles and Pub. Res. Code § 21177 concerning the Project and Project Approvals, and incorporates by this reference all written and oral comments, in their entirety, submitted on the Project or MND by any commenting party or agency. It is well-established that any party, as USWW here, who participates in the administrative process can assert all factual and legal issues raised by anyone. See *Citizens for Open Government v. City of Lodi* (2006) 144 Cal.App.4th 865, 875. So too, USWW reserve its right to supplement these comments in future hearings on the Project and Project Approvals.

Finally, on behalf of USWW, this Office requests, to the extent not already on the notice list, all notices concerning the Project Approvals and any CEQA/land use actions involving the Project including but not limited to: public hearings, approvals, determinations, appeals, and other actions taken by the City related to the Project. This request is made under state or local law requiring

²⁴ See e.g., Paseo Marina Project (DCP Case No. ENV-2016-3343) Draft EIR Noise Section, PDF p. 12 (collecting 24-hour measurement for some receptors and day and nighttime measurements for another), <http://bit.ly/336oLRr>; Venice Place Project (DCP Case No. ENV-2016-4321) Draft EIR Noise Section, PDF p. 11 (taking both day and night measurements), <http://bit.ly/3cM!yxN>; 713 E. 5th St. Project (DCP Case No. ENV-2017-421) Draft EIR Noise Section, PDF p. 12 (15-minute and 24-hour measurements taken), <http://bit.ly/338rEAZ>; Landmark Apartments Project (DCP Case No. ENV-2013-3747) Draft EIR Noise Section, PDF p. 11 (day and nighttime levels established), <http://bit.ly/337N9Sr>; Hollywood & Gower Project (DCP Case No. ENV-2016-2849) Draft EIR Noise Section, PDF p. 15 (15-minute day and night measurements taken), <http://bit.ly/2vY4Tnb>; Fig & 8th Project (DCP Case No. ENV-2016-1951) Draft EIR Noise Section, PDF pp. 13-14 (day and night time measurements taken), <http://bit.ly/39GoMxD>; Mt. St. Mary's Univ. Chalon Campus Project (DCP Case No. ENV-2016-2319) Draft EIR Appendix G Technical Report, PDF p. 25 (15-min. and 24-hr. measurements taken), <http://bit.ly/2Q2zaYM>.

local agencies to mail such notices to any person who has filed a written request for them. See Pub. Res. Code §§ 21092.2, 21167(f) and Gov. Code § 65092 and LAMC § 197.01.F. Please send notice by electronic and regular mail to: Jordan R. Sisson, Esq., 801 S. Grand Avenue, 11th Fl., Los Angeles, CA 90017, jordan@gideonlaw.net. Enclosed is a self-addressed stamped envelope and a \$10.00 check payable to the City of Los Angeles to cover shipping costs.

Thank you for your consideration of these comments. We ask that this letter and any attachments are placed in the administrative record for the Project.

Response to Comment Kracov-9

The City will add the commenter to the distribution list for future notices. The comment does not state a specific concern or question regarding the adequacy of the MND in identifying and analyzing the environmental impacts of the Project. This comment is noted for the administrative record and will be forwarded to the decision-makers for review and consideration.