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June 15, 2022

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

Attention: PLUM Committee

Dear Honorable Members:

**3RD AND FAIRFAX MIXED USE PROJECT CALIFORNIA ENVIRONMENTAL QUALITY ACT
(CEQA) APPEALS; CF 22-0603**

On February 8, 2022, the Director of Planning issued a letter of determination approving a Site Plan Review, and a Waiver of Dedication and Improvements (WDI), for the 3rd and Fairfax Mixed-Use Project. The Project would involve the construction and operation of a new mixed-use development within the eastern portion of the existing Town & Country Shopping Center that is currently developed with retail and commercial uses. The proposed development activities would be limited to the eastern portion of the Center (Development Site) and would include the demolition of 151,048 square feet of existing retail uses and the construction of a mid-rise, eight story mixed-use structure with two levels of subterranean parking, for a maximum height of 100 feet. The Project would include up to 331 multi-family dwelling units and 83,994 square feet of newly developed commercial space for a total new floor area of 426,994 square feet on the Development Site. The western portion of the Project Site would remain and is not proposed to be demolished, altered, or developed as part of the Project. Including the existing 63,688 square feet of commercial and retail uses to remain on the western portion of the site, the Project Site would total 147,682 square feet of commercial retail space, and a combined total of 490,682 square feet of commercial and residential development for a Floor Area Ratio (FAR) of 1.5 to 1. The Director also certified the Environmental Impact Report (EIR) prepared for the Project and adopted the related and prepared environmental findings and the Mitigation Monitoring Program (MMP).

Following the February 8, 2022 Letter of Determination, two timely appeals were filed on the Site Plan Review approval: Luna & Glushon, on behalf of the Park La Brea Impacted Residents Group (PLBIRG), and Lozeau Drury, LLP, on behalf of the Supporter's Alliance for Environmental Responsibility (SAFER). Pursuant to Los Angeles Municipal Code (LAMC) Section 12.37 I(3), only the Applicant may appeal the Director's WDI determination. The Applicant did not appeal the WDI determination, and therefore, the Director's decision relative to the WDI was final. On May 5, 2022, the Central Area Planning Commission denied the two appeals, and sustained the

Director's decision in certifying the EIR and approving the Site Plan Review. The Site Plan Review was not further appealable.

Public Resources Code (PRC) Section 21151(c) and LAMC Section 11.5.13 provide that if a non-elected decision-making body of a local lead agency certifies an EIR, the CEQA clearance may be appealed to the agency's elected decision-making body. Two timely CEQA appeals have been filed: Lozeau Drury, LLP, on behalf of SAFER (Appellant 1, filed May 10), and Luna & Glushon, on behalf of the PLBIRG (Appellant 2, filed May 18).

It is important to note that the matter before PLUM is solely a CEQA appeal, and therefore narrow in scope. The Project's WDI approval, and Site Plan Review approval and appeals, have been administratively exhausted at the Director and Area Plan Planning Commission levels, respectively. These entitlements are not before PLUM for its consideration, and any appeal points relative to these finalized land use approvals are not germane.

The following responds to the CEQA issues raised by each Appellant. The format is divided much like a comment letter into appeal issues for easier reference. Based on the responses below, Planning staff respectfully recommends that the City Council certify the EIR and deny both CEQA appeals associated with Case No. ENV-2018-2771-EIR-1A.

Appellant 1 (Supporter's Alliance for Environmental Responsibility - SAFER)

Indoor air quality impacts from formaldehyde emissions

The Appellant asserts that significant indoor air quality impacts would occur due to formaldehyde emissions from composite wood products. There are no requirements or guidance from the South Coast Air Quality Management District (SCAQMD) or relevant agencies to evaluate such risk from indoor air quality. Notwithstanding, to address these appeal points, staff has included an expert technical memorandum prepared by Eyestone Environmental dated June 13, 2022, which is included as an attachment herein (Indoor Air Quality Technical Memo). As described in detail in the Indoor Air Quality Technical Memo and summarized below, the Appellant's assertions on formaldehyde emissions lack merit, do not provide evidence that a significant impact would occur, and do not require recirculation of the Draft EIR.

The Appellant primarily relies upon a prior research paper, entitled *Ventilation and Indoor Air Quality in New California Homes with Gas Appliances and Mechanical Ventilation* (Chan et al, 2019), in order to argue that the Project would result in significant environmental impacts related to formaldehyde and cancer risk. However, key aspects of this study are dissimilar and not directly comparable to the Project. For example, the Appellant states the research paper studied new homes built in 2012 or later. According to the research paper itself, the study characterized 70 detached single-family homes built between 2011 and 2017. This would not be an appropriate comparison as the Project consists of mid-rise residential buildings with a different combination of steel, concrete, and wood construction. Single-family residential construction typically would use more wood or formaldehyde containing products in comparison to mid-rise construction. Therefore, it is misleading and inaccurate to directly apply results from this research paper to the Project. Additionally, the cited research paper itself expressly acknowledges that California regulations have been effective in reducing formaldehyde concentrations in homes and states "[c]omparisons of indoor formaldehyde... levels with those from a prior study of new homes in California (conducted in 2007-08) suggest that contaminant levels are lower in recently built (after 2008) homes. California's regulation to limit formaldehyde emissions from composite wood products appears to have substantially lowered its emission rate and concentration in new homes." Moreover, nearly half of the 2011-2017 timeframe used in the study cited by the Appellant

predates the more stringent CARB regulations adopted in 2014 which would be applicable to the Project, thus further lowering formaldehyde emissions below those shown therein.

Furthermore, it is unknown at this time precisely what interior finishing materials would be used for the Project. Interior finishes would be subject to the specifications of future individual tenants and cannot reliably be determined until after the Project is approved and in the far more detailed building permit design phase. CEQA does not require such speculation. Further, there is nothing unique or unusual about the Project compared to any other mixed-use multi-family building built in California, whether discretionary or by-right, in relation to building finishes or indoor materials. The Project's building materials would be compliant with all applicable regulations, including the LAMC, L.A. Green Building Code, and other applicable regulations from the California Air Resources Board (CARB) which provide specifications for acceptable formaldehyde concentrations in composite wood products. In particular, the Project would be subject to CARB's Composite Wood Product (CWP) regulations. According to CARB, from a public health standpoint, the CWP Regulation's emission standards are specifically set at low levels intended to protect public health. The CWP Regulation, adopted in 2007, established two phases of emissions standards: an initial Phase I, and later, a more stringent Phase II that requires all finished goods, such as flooring, destined for sale or use in California to be made using complying composite wood products. As of January 2014, only Phase II products are legal for sale in California. Thus, all new wood products installed in the Project would comply with the more stringent Phase II requirements. Impacts with respect to formaldehyde would be less than significant.

Lastly, the Appellant provides a quantitative discussion intended to demonstrate that the Project would exceed cancer risk thresholds and result in a significant impact. This analysis, however, is based on inaccurate and unreasonable assumptions that result in a drastic overstatement of the Project's indoor air quality emissions. These faulty assumptions include: 1) that the construction materials would not be code-compliant with the California Composite Wood Products Regulation or US EPA Toxic Substances Control Act Title IV Regulation; (2) that the formaldehyde daily emissions from construction materials would be constant over 45 years, when in fact these emission levels decline over time; (3) assumptions that overstate the average daily cubic yards of air inhaled by residents and employees; and (4) assumptions that overstate both the daily and long-term duration that residents and employees would spend on-site. As described in detail the Indoor Air Quality Technical Memo, the underlying assumptions used by the Appellant are unsound, are not based on a realistic life exposure potential, and do not constitute substantial evidence of an impact attributed to the Project.

In summary, based on the above and the attached technical memorandum, the Project would not result in significant formaldehyde-based indoor air quality emissions. Contrary to the Appellant's statements, the air quality analysis in the Draft EIR is comprehensive and is supported by substantial evidence. Recirculation of the Draft EIR is not required. As such, the appeal points should be denied.

Construction noise impacts

Regarding construction noise, the Appellant claims that the Draft EIR should use a different threshold of significance specific to schools; that the Draft EIR fails to account for potential impacts at the upper stories of nearby sensitive receptors; and that the analysis fails to provide an accurate and conservative estimate of construction equipment locations. In support of these arguments, the Appellant has presented a quantitative noise analysis that intends to demonstrate that the Project would result in significant and unavoidable construction noise impacts. To address these appeal points, staff has attached an expert technical memo (Noise Technical Memo, Veneklasen

Associates, dated July 13, 2022), prepared by the noise consultant responsible for the Draft EIR's noise modeling. Detailed responses to the noise-related appeal points are provided therein and are summarized below. As demonstrated below and in the attached technical memo, the Appellant's claims do not have merit. The EIR adequately analyzed potential impacts related to construction noise, and its conclusions are based on substantial evidence.

The Appellant disputes the threshold of significance used in the Draft EIR to analyze potential construction noise impacts to the adjacent Hancock Park Elementary School, arguing that standards established by the Collaborative for High Performance Schools (CHPS) must be used instead. Contrary to these claims, as Lead Agency under CEQA, the City has discretion to choose the applicable threshold of significance, so long as that threshold is supported by substantial evidence. As described on page IV.F-22 of the Draft EIR, in order to answer the Appendix G threshold question as to whether the Project would result in a substantial temporary increase above ambient noise levels, the EIR uses a criterion of a 5 dBA increase above ambient conditions. This criterion is based on the City's L.A. CEQA Thresholds Guide. While the Appellant states that schools are a unique receptor that must use a different threshold of significance, schools are in fact explicitly identified as one of the noise-sensitive uses appropriate to this same threshold used in the Draft EIR (LA CEQA Thresholds Guide Page I.1-3). Put another way, schools are expressly one of the types of noise-sensitive uses that are contemplated under the City's threshold. The Draft EIR thresholds are based on substantial evidence and the City is not required to use a different threshold that is suggested by the Appellant. Furthermore, as detailed in the Noise Technical Memo, the thresholds suggested by the Appellant are intended for use by LAUSD when constructing new school facilities, not for private development projects near existing schools. The Project is not an LAUSD project nor a school construction project and is not required to use the threshold sought by the Appellant. In addition, contrary to the Appellant's assertions and as detailed in the attached technical memo, existing ambient noise measurements at the school were done consistent with LAMC requirements and established methodologies and are based on substantial evidence, and appropriately establish the existing conditions used for the noise analysis.

The Appellant further asserts that by assuming that construction equipment operates at an average location within the Project Site, the Draft EIR fails to disclose the highest noise levels generated by loud equipment operating at the edges of the Site closest to noise-sensitive receptors. Contrary to this claim, the impact analysis in the Draft EIR is based on well-founded methods of noise impact analysis and is based on a highly conservative set of assumptions. Specifically, the methodology and calculations in the Draft EIR are in accordance with the methodology established by the Federal Transit Administration (FTA) Noise and Vibration Impact Assessment Manual and Federal Highway Administration (FHWA) Construction Noise Handbook where applicable. For the Project, demolition and construction activities will occur over the entire Project Site. As such, the actual locations of the equipment used during demolition will be over the entire site, so the average distance between noise source and receiver is properly set as the center of the entire site for noise modeling purposes. The FTA document explains why it is acceptable to use typical distances from noise sources to receptors to model construction noise for complex construction projects with mobile equipment that moves around the construction site during phases of development as the actual locations of each piece of equipment and corresponding distances to receptors will vary over a given time period. Thus, only using the nearest distances as suggested by the Appellant would misrepresent hourly noise levels on adjacent properties by overestimation and does not reflect the reality of construction activities. The Draft EIR also provides a conservative set of underlying assumptions in its construction noise that overstate Project-generated noise. In particular, the construction noise calculations in the Draft EIR assumed that the entire fleet of construction equipment involved in each phase would operate simultaneously (Draft EIR pages IV.F-28-29). That is a highly conservative assumption

because during construction, in reality not all of the equipment would be used simultaneously during a single phase.

The Appellant also tries to make a false equivalency by claiming that noise analysis must be approached in the same way as the vibration analysis, which indeed analyzes equipment usage at the edge of the Project Site. However, with respect to vibration, closer distances are appropriately used between sources and receptors because of the criteria regarding the possibility of structural damage. In contrast, noise modeling criteria only regard annoyance or disturbance over specified hourly or daily durations because peak noise amounts would not result in structural damage and fluctuates considerably over a given period time. Thus, the Draft EIR appropriately used closer distances to model potential vibration impacts, which is also aligned with standard modeling protocols.

Finally, the Appellant presents a quantitative analysis intending to demonstrate that noise impacts would occur at upper levels of receptors and that the EIR's mitigation measures would be ineffective. As described in greater detail in the attached technical memo, this claim is inaccurate and based on faulty assumptions and methodology. In first regard is the measurement metric used. The LA CEQA Thresholds Guide criteria, as well as the CHPS design criteria, utilize the Equivalent Sound Level (Leq) noise metric which is the average sound energy level over a given time interval. The Leq includes contributions from steady-state and transient sound. The LASmin used by the Appellant, on the other hand, reflects the minimum or lowest sound pressure level and is not indicative of the actual background noise level as defined by the Thresholds Guide or as established by the thresholds in the Draft EIR. Additionally, the Appellant's analysis combined demolition and grading phases in the tabulated results. Combining results for these two phases misrepresents construction noise levels at receptors since these phases will occur at different times, not simultaneously, thus further inaccurately stating potential impacts. Additionally, even with these inaccuracies, the significance thresholds employed by the Appellant are invalid, as discussed above, and in fact, the results shown in the Appellant's analysis using the correct distances are below these appropriate CEQA thresholds. The analysis employing distances to receptors indicated by the Appellant for "Nearest" and "Southern half" equipment locations are also invalid as discussed above.

Lastly, regarding impacts to the upper floors of sensitive receptors, the Appellant's analysis infers that building construction noise from the fourth floor of the Project would result in impacts due to the ineffectiveness of sound walls in reducing noise at these heights. However, the Appellant's analysis assumed that the loudest construction equipment used for Building Construction in the Draft EIR would all be located at an elevated level on the construction site (4th floor), when in fact this value was calculated using many equipment pieces that operate on ground level (e.g. backhoe, crane, concrete mixer truck, concrete pump truck, forklift, generator, front end loader, and tractor). The actual equipment that would be located above grade (e.g. welder, saws, light duty tools, etc.) have much lower noise levels and are used more intermittently. Due to differences in noise level alone, ground level equipment is the driving factor in overall noise levels at receptors, not elevated equipment. Even before the Project's building façade is completed at elevation, this heavy machinery that generates the highest noise levels would remain at grade level and would be shielded by the noise barriers proposed as mitigation as well as the existing structures on the site.

Moreover, even if both the CHPS criteria and the LASmin metric for existing background noise were applicable (which it is not) in determining interior noise level acceptability, the Noise Technical Memo determined that maximum construction noise levels from the Project would still be at or below 43 dBA inside either classroom with the proposed sound barriers. This result is summarized in Table IV.F-19 of the Draft EIR. It is important to note that, the calculations provided

in the City's noise study indicate that even with elevated receptors and distanced construction noise sources, the noise barrier will be effective and resulting noise will be below impact thresholds. See specifically results in Table IV.F- 19 of the Draft EIR for NVSR-1 – Inside Classroom 21 (L1).

Lastly, the effectiveness of the Project's noise barriers is enforceable and supported by evidence. Mitigation Measure MM-NOI-1, on page IV.F-43 of the Draft EIR has detailed sound barrier characteristics and includes a performance standard that the barriers shall be capable of achieving a minimal Sound Transmission Class ("STC") rating of 32. The Draft EIR requires these noise barriers to be erected and their effectiveness confirmed prior to the start of construction activities. As such, the appeal point has no merit and should be denied.

Energy impacts

The Appellant asserts that the Project may have a significant impact related to renewable energy requirements. The Appellant specifically cites to language from Appendix F of the CEQA guidelines which states that an EIR "should include the project's energy use for all project phases and components, including transportation related energy, during construction and operation. In addition to building code compliance, other relevant considerations may include, among others, the project's size, location, orientation, equipment use, and any renewable energy features that could be incorporated into the project."

The Appellant asserts that the EIR has failed to comply with this aspect of CEQA by only analyzing consistency with regulatory programs. The Appellant further states that if an EIR does not address whether renewable energy components can be incorporated into the Project, citing solar panels as an example, then the EIR does not comply with CEQA. However, the Appellant's statements are misguided. First, the operative language in the cited paragraphs from Appendix F is that an EIR "should" include the project's energy use for all project phases, and that in addition to building code compliance, relevant considerations "may" include renewable energy features. These are not discrete de novo requirements based on language that an EIR "shall" include such discussion.

The commenter's citation is also incomplete. CEQA Guidelines Section 15126.2(b) continues by stating that "Guidance on information that may be included in such an analysis is presented in Appendix F. This analysis may be included in related analyses of air quality, greenhouse gas emissions, transportation or utilities in the discretion of the lead agency." The Draft EIR included a thorough and robust discussion of applicable aspects of Appendix F of the CEQA Guidelines in Section IV.B, Energy, of the Draft EIR, including the project's energy requirements and its energy use efficiencies by amount and fuel type for each stage of the project's life cycle including construction, operation, maintenance and/or removal; the energy intensiveness of materials; the effects of the project on local and regional energy supplies and on requirements for additional capacity; the effects of the project on peak and base period demands for electricity and other forms of energy; the degree to which the project complies with existing energy standards; the effects of the project on energy resources; and the project's projected transportation energy use requirements and its overall use of efficient transportation alternatives. Related analysis is also contained in the GHG and Transportation Analyses in the Draft EIR, consistent with the provisions of the CEQA Guidelines cited by the Appellant.

As stated in the excerpt of the CEQA Guidelines cited by the Appellant, other relevant energy considerations may include, among others, the project's size, location, and orientation. Appendix F, which expressly addresses the CEQA guidelines section cited by the Appellant, further states that consideration should be given to a project's projected transportation energy use requirements and its overall use of efficient transportation alternatives. As set forth in detail throughout Section

I.C, Greenhouse Gas Emissions, and Section IV.B, Energy of the Draft EIR, the Project's complementary mix of uses, location in an area well-served by existing and future public transit, and pedestrian-friendly orientation would result in the efficient use of transportation fuel and transportation alternatives. Specifically, these Project characteristics would result in a 35% reduction in Vehicle Miles Travelled (VMT) and corresponding transportation fuel usage compared to a project without such features (see Table IV.C-8 in chapter IV.C, Greenhouse Gas Emissions, of the Draft EIR). The consistency of the Project with applicable plans and policies is based on a nuanced policy analysis of the Project's unique characteristics, and not solely on ministerial/regulatory building code requirements as suggested by the Appellant.

As described above and contrary to the Appellant's assertions, the Project itself does indeed have several characteristics that are not otherwise mandated by regulation and would serve to reduce usage of transportation-related fuels. The Draft EIR also includes energy-related Project Design Features that are not code-required and would serve to reduce transportation energy, electricity and natural gas. These include PDF-AQ-1 (Where power poles are available, electricity from power poles and/or solar-powered generators rather than temporary diesel or gasoline generators will be used during construction); and PDF-GHG-2 (The Project will provide a pedestrian portal through the parking level on the ground floor to facilitate a safe pedestrian access from S. Ogden Drive to the Center parking lot). In addition, page IV.B-37 of the Energy chapter in the Draft EIR discloses that the building would be designed to be able to accommodate future solar photovoltaic panels and would install on-site electric vehicle chargers, as mandated by code. Although the Project does not propose to install rooftop solar panels, such a feature is not a requirement under CEQA in order for a development project to have less than significant energy impacts. Rather, the EIR's significance conclusion relative to inefficient or wasteful energy usage is based on the whole of the analysis and the full scope of the Project's specific characteristics.

In addition, the Energy Section does indeed include a discussion of various ways in which the Project would be served by renewable energy resources, as well as a discussion of whether certain energy resources can be incorporated into the Project. Draft EIR Pages IV.B.34-35 provides discussion of renewable energy that would serve the Project Site under LADWP's Renewable Portfolio Standard, as well as a discussion of the feasibility of biodiesel, biomass, hydroelectric and small hydroelectric, digester gas, fuel cells, landfill gas, methane, municipal solid waste, ocean thermal, ocean wave, and tidal current technologies, multi-fuel facilities using renewable fuels, or wind-powered energy to be generated on the Project Site.

The Appellant's narrow example that a project must specifically implement solar panels is not a requirement of CEQA to avoid a significant impact. Rather, the determination that the Project would not result in the wasteful or inefficient use of energy resources is appropriately based on a range of Project characteristics and factors from Appendix F of the CEQA Guidelines, and is supported by substantial evidence in the record, including but not limited to Section IV.B, Energy and Section IV.C, Greenhouse Gas Emissions, of the Draft EIR. Therefore, the appeal point should be denied.

Appellant 2 (Park La Brea Impacted Residents Group - PLBIRG)

Oil well impacts

The Appellant maintains that the EIR fails to analyze necessary steps to abandon oil wells.

As stated by the Appellant and as disclosed in the Draft EIR, the Project Site is located within an oil-drilling field, specifically the Salt Lake Oil Field. However, the Appellant provides no credible evidence that the Project will result in a significant impact on the environment due to an

exacerbation of impacts from existing oil wells and associated structures. As summarized below, the Draft EIR adequately analyzes and fully mitigates potential associated impacts related to oil wells and Hazards and Hazardous Materials, and this determination is based on substantial evidence in the record.

As noted in Section V.D, Hazards and Hazardous Materials, of the Draft EIR, the Development Site Phase I Environmental Site Assessment (ESA) identified a former oil and gas well operated by Chevron installed on the northeastern portion of the Site in 1906 as a Recognized Environmental Condition (REC). The Draft EIR further discloses that the oil well was plugged and abandoned in 1930 and the oilfield production equipment was removed in the 1930s. No oil drilling activities currently occur on the Project Site.

Based upon the results of the Phase I ESA, including the disclosed presence of the plugged oil well and associated structures, a Phase II ESA was prepared and was also part of the Draft EIR. The primary objective of the Phase II ESA was to assess the potential presence of soil, groundwater, and soil vapor quality impacts related to issues of environmental concern identified in the Phase I ESA prepared for the Development Site, including the aforementioned oil well. The Phase II concluded that total petroleum hydrocarbons, primarily total petroleum hydrocarbons as diesel (TPH-d), were detected above screening levels for residential and commercial land use in the soil. The impacted areas were primarily encountered in the very shallow soils but extended to a depth of 15 feet in three areas located in the north central part of the Development Site in the vicinity of the abandoned historic oil well. Figure IV.D-2 of the Draft EIR clearly shows the locations within the Development Site of the abandoned oil well, historic tanks and historic sumps, and the boring locations where soil samples were taken to analyze the potential presence of contaminants.

As a result, as set forth in the Draft EIR, Mitigation Measure MM-HAZ-1 requires that Soil Management Plan (SMP) be prepared that shall provide guidance to contractors for appropriate handling, screening, and management of potentially impacted or impacted soils during grading and excavation activities. These procedures include training for construction personnel on the appropriate procedures for identification of suspected impacted soils with TPH concentrations that exceed applicable screening levels; requirements for testing and collection of potentially contaminated soils; segregation of potentially impacted soils; and applicable soil handling and disposal procedures.

Furthermore, the SMP is required to contain procedures to be followed in the event that any undocumented subsurface features of potential environmental concern (e.g., USTs, abandoned oil wells, sumps, hydraulic lifts, clarifiers, buried drums) are encountered during the excavation grading, and/or other earthmoving activities. These procedures shall include safety training, testing protocols, decontamination and decommission. Therefore, the mitigation measure imposed by the Draft EIR fully mitigates for the soil contamination found on-site from the Phase II ESA soil testing, including in the documented vicinity of Well No. 99. The mitigation also provides for requirements should any additional undocumented subsurface features be encountered or if Well No. 99 were to be found in a somewhat different location on-site. As noted by the Appellant and as disclosed in the Draft EIR, the Project's Geotechnical Investigation further stated that due to the voluntary nature of record reporting by oil well drilling companies, wells may be improperly located or not shown on the location map and other undocumented wells could be encountered during construction.

In addition to appropriate mitigation, the Draft EIR also discloses the numerous regulatory requirements with which the Project must comply, that would further ensure that significant impacts associated with the abandoned oil well would not occur. Well No. 99, and any

undocumented wells that may be encountered during construction, would be required to be abandoned in accordance with the current requirements of CalGEM (Geologic Energy Management Division of the California Department of Conservation) as a matter of regulatory compliance. Any oil well abandonment conducted on the Development Site would be conducted in consultation with the CalGem, LARWQCB, the City of Los Angeles Department of Building and Safety, and the City of Los Angeles Fire Department, as applicable.

Impacts with respect to existing on-site oil wells would thus be mitigated to less than significant levels. Contrary to the Appellant's assertions, the analysis in the EIR is adequate and supported by substantial evidence, and recirculation of the EIR is not required.

Lastly, the Appellant cites to language from the Initial Study stating that oil well abandonment would be subject to separate discretionary approvals. However, the Draft EIR has provided a comprehensive and adequate analysis addressing potential oil well impacts, as summarized above, and therefore the Project has not improperly deferred or piecemealed any analysis. Any future discretionary approvals that may be associated with oil well re-abandonment and related activities would be tied back into the project description for this Project as set forth, analyzed and mitigated in the EIR, and any subsequent change in project scope or circumstance would be further analyzed, if required under CEQA. As such, the appeal point should be denied.

Vehicle and pedestrian hazard impacts

The Appellant contends that the EIR fails to analyze increases in vehicle and pedestrian activity that will result in a substantial increase in hazards on adjacent sidewalks and roadways. The Appellant presents several pictures of pedestrians jaywalking and cars making illegal left turns out of existing driveways on the Project Site. First, as noted above, the Appellant's statements regarding sidewalk widths and street improvements as they relate to the Project's Waiver of Dedications and Improvements entitlement are not germane and not before PLUM. The matter before PLUM is solely limited to the adequacy of the Project's EIR.

The Appellant asserts that the EIR fails to analyze hazards on adjacent roadways that would result from increases in vehicle and pedestrian activity. In particular, the Appellant argues that such impacts would occur due to a lack of a crosswalk requested by the Appellant that the EIR does not analyze. The Appellant claims that existing illegal vehicle turns and jaywalking, and existing sidewalk conditions on the western portion of the Project Site, would result in a significant environmental impact related to transportation hazards.

While the Appellant submits several pictures showing the existing sidewalk conditions and sidewalk widths along Fairfax Avenue and the western portion of 3rd Street, as noted above, the WDI entitlement has been approved by the Director, was not appealable even to the Central APC nor to City Council and is not before PLUM for its consideration. Furthermore, it is clear throughout the record and the EIR that no new development would occur within this portion of the Project Site that would warrant or require improvements on these frontages. Moreover, the Project would indeed provide many improvements to the pedestrian environment, including improved and/or widened sidewalks along the whole of the frontage of the Development Site. The EIR's analysis of pedestrian improvements and potential impacts related to either emergency access or hazardous geometric design features is summarized below, and is supported in the record with substantial evidence.

The Applicant is suggesting that increased vehicular and pedestrian activity on sidewalks on the western limits of the Project Site, and in areas where some individuals currently jaywalk or make illegal left turns, would constitute an exacerbation of an existing environmental condition and a

significant impact under CEQA. Rather, the relevant Transportation threshold to the Appellant's assertions asks whether a project would substantially increase hazards due to a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment). As analyzed in the Draft EIR, the Project would not result in such impacts and the impact analysis in the EIR did not require new crosswalks to mitigate potential transportation impacts. The Project does not propose any roadway infrastructure improvements that would result in sharp curves or dangerous intersections. The Project would retain the existing visitor access driveway on S. Fairfax Avenue and the existing westerly driveway on W. 3rd Street. The southerly driveway that connects S. Fairfax Avenue to S. Ogden Drive would also be retained. The existing easterly driveway on W. 3rd Street would be eliminated to activate the pedestrian ground floor level fronting the commercial uses on W. 3rd Street. On S. Ogden Drive, the Project would provide one service driveway to access the retail spaces and would provide two new ingress/egress driveways to access the residential and commercial driveways into the parking structure, respectively. The proposed driveway locations and widths are consistent with the City's design regulations set forth in LADOT's Manual of Policies and Procedures - Section 321: Driveway Design. LADOT has reviewed the conceptual site plan and access configuration and found it adequate in their Transportation Assessment Letter approving the Project's transportation study. Furthermore, the Project's design would require final review by the Los Angeles Department of Building and Safety and the Los Angeles Fire Department (LAFD) during the City's standard plan review process to ensure all applicable safety requirements are met. The roadways adjacent to the Project Site are part of the existing urban roadway network and contain no sharp curves or dangerous intersections. In addition, the development of the Project would not result in roadway improvements such that safety hazards would be introduced adjacent to the Project Site.

Relative to pedestrian access, Appendix G of the CEQA Guidelines asks whether a project would conflict with a program, plan or ordinance addressing pedestrian facilities. The Draft EIR analyzed the applicable pedestrian-related plans and programs in detail on Draft EIR pages IV.I 24-40. As described in detail therein, the Project would not conflict with a program, plan, ordinance or policy addressing the circulation system, including pedestrian facilities, and impacts would be less than significant. This analysis is based on the Project's characteristics, including several features that enhance and improve the pedestrian realm, and is based on substantial evidence. Therefore, an adequate analysis of these topics pursuant to CEQA does not require installation of new crosswalks at the locations indicated by the Appellant, which as noted above is not part of the Project. Furthermore, there is an existing continental crosswalk that pedestrians can use to cross 3rd Street on the eastern leg of Ogden Street, located immediately across Ogden Street from the edge of the Project Site. The Appellant's statements suggesting that without a new crosswalk mid-block to the east, approximately 135 feet away from this existing crosswalk, that significant impacts would occur, and pedestrians must undergo a circuitous and dangerous loop to cross the street, is inaccurate and misleading.

As noted above and throughout the Draft EIR, no changes would occur to the site plan on this western portion of the site, and it is anticipated that the new construction on the eastern portion of the Project Site would primarily be accessed by the driveways that provide direct access to that new structure. Therefore, the Project would not result in a material change in the number of vehicles using these driveways. Further, the Project would remove one existing driveway on 3rd street, thus improving pedestrian conditions by removing an existing point of interface between pedestrians and vehicles. LADOT has reviewed the Project's site plan as the City's expert transportation agency and not found any safety hazards, nor imposed mitigation.

Notwithstanding the foregoing, the Applicant has volunteered to a Site Plan Review condition of approval (Condition No. 16 in the May 5, 2022 Letter of Determination under Case No. DIR-2018-2770-SPR-WDI-1A) requiring the Applicant to work with LADOT to determine the feasibility of

implementing pedestrian crosswalks across: (a) 3rd Street between Ogden Drive and Gilmore Lane; and (b) Fairfax Avenue between Blackburn Avenue and 4th Street, and that the Applicant shall implement these improvements if found to be feasible by LADOT. Therefore, although not required for purposes of the EIR, the pedestrian crossing concerns raised by the Appellant have been addressed by this voluntary condition of approval and rendered moot.

The Appellant also asserts that the transportation analysis is faulty due to hazardous conflicts between existing driveways and nearby bus stops, and that the EIR fails to account for existing illegal left hand turning movements onto Fairfax Avenue and onto 3rd Street. As described in the Draft EIR, the nearest bus stop is located on the south side of W. 3rd Street adjacent to the Citibank, which is adjacent to the western portion of the Project Site, but not adjacent to the Development Site. This portion of the Project Site would not be redeveloped or altered in any way as part of the Project. The Appellant, however, characterizes this existing condition as perilous and unsafe. The Project would not alter this driveway, nor the existing driveway on Fairfax Avenue, and thus would not exacerbate this existing condition. In any event, Project-related traffic would be expected to primarily access the new and redeveloped uses through the access points to the new parking structure on the western portion of the Project Site off of Ogden Drive, which is a local street, and not via the existing driveways cited as a concern by the commenter. The Project would not exacerbate this existing driveway condition, and there is no evidence that this existing condition is unsafe. As it relates to the existing driveway on 3rd Street in the eastern portion of the Project Site, the Project would remove this driveway and relocate access to Ogden Drive, thus improving the pedestrian condition on 3rd Street and removing any existing purported pedestrian- or bus-related concerns that may occur from this existing driveway. Contrary to the Appellant's assertions, the Project would in fact improve pedestrian conditions on 3rd Street. Transportation safety and hazard impacts would be less than significant. As such, the appeal point should be denied.

Redevelopment of Existing Whole Foods

The Appellant asserts that the EIR has failed to analyze the redevelopment of the existing Whole Foods grocery store that is located on the western portion of the Project Site. However, as clearly described throughout the Draft and Final EIR, entitlement materials, and the whole of the administrative record, there is simply no such proposal to redevelop the western half of the Project Site as part of the Project. The Project would completely exhaust all allowable development capacity for the entirety of the Project Site, inclusive of the eastern side (the "Development Site" as described in the EIR) and the western side. Under the existing zoning, the Project Site is allowed a maximum 1.5:1 FAR. The Project, with the proposed new mixed-use building on the eastern half of the site and the existing commercial square footage to remain on the western half of the site, would fully utilize this maximum 1.5:1 FAR. Any increase in the development capacity of the western portion of the Project Site beyond this maximum is not currently proposed, not part of the EIR, and is not contemplated nor allowable under the Project's approved Site Plan Review entitlement.

Furthermore, a project's land use entitlements do not, and cannot, govern what individual tenant signs a lease for a given retail space. Whether Whole Foods or another grocery store tenant were to move into the retail space within the proposed new mixed-use building, the then-vacated western retail space could be reoccupied by-right by another grocery or retail tenant as permitted under the site's existing zoning. However, the overall amount of square footage of the land uses as analyzed in the EIR would remain unchanged, and the physical development envelope of the existing building would remain unchanged, and thus would remain covered by the environmental scope of the EIR. However, any change in development capacity or an actual redevelopment of the western portion of the Project Site would be subject to separate and additional environmental

and discretionary review, as may be applicable. The Appellant effectively acknowledges this fact by stating that the Project would have to seek entirely new entitlements due to having maxed out the FAR for the entire site. This is correct. However, the Appellant further speculates that there is a plan to seek additional entitlements on the west side of the site, such as a density bonus or Transit Oriented Communities (TOC) entitlement. Contrary to the Appellant's claims, no such entitlements have been filed and none are in the record. If ever filed in the future, such entitlement requests would require their own environmental review, separate from the Project. A redevelopment of the western portion of the Project Site is not proposed and is not part of the EIR or requested entitlements.

The Appellant further asserts that the EIR is failing to account for the new 63,100 square-foot grocery space being a 53% increase over the existing 40,100 square foot grocery space, and that therefore the EIR has understated potential impacts. This statement, however, misunderstands and misrepresents the analysis in the EIR. The EIR has in fact fully analyzed potential impacts across all environmental topics of the proposed 63,100 square feet of new grocery space across all applicable environmental topics throughout the Draft EIR. The 40,100 square feet of existing grocery/retail space on the western portion of the Project Site is presumed to remain operational, regardless of who the tenant may be in the future. No credit is taken for this space being potentially "vacant" in the future, as stated by the Appellant. Existing baseline levels of activity on the western side of the site are presumed to continue, in addition to the environmental effects of all the newly developed floor area on the eastern side of the Project Site. The EIR thus does indeed capture the full scope of impacts that could result from the Project, inclusive of the continuing use of 40,100 square feet of retail the western portion of the Project Site concurrently with the 63,100 square feet of newly developed grocery store space, additional retail space, and the residential units proposed on the eastern portion of the Project Site. Therefore, vehicle trips associated with the entirety of the new grocery space, and all associated air pollutant and GHG emissions are also fully quantified and accounted for by the analysis in the EIR.

The Appellant further claims that the proposed grocery store space, if occupied by Whole Foods, would constitute a regional-serving destination that could therefore have a significant transportation impact related to Vehicle Miles Traveled. However, as described in the Draft EIR and in the Final EIR Responses to Comments, the Project's transportation analysis was conducted according to established LADOT requirements set forth in the LADOT Transportation Assessment Guidelines (TAG). The TAG sets forth that the retail components of a project are considered local-serving if their net total floor area is less than 50,000 square feet. This is the case for the Project, which would actually result in a net decrease of retail space relative to existing conditions upon its proposed removal of over 150,000 square feet of existing retail square footage. Additionally, when a supermarket is part of a mixed-use project, under LADOT's adopted methodologies, the internal trip-making is acknowledged to further reduce VMT. The transportation analysis in the EIR is based on substantial evidence and is in accordance with LADOT requirements.

In support of the assertion that the Project's new grocery store should be considered regional serving, the Appellant further states that the store would be exceptionally large, would serve an area with a dearth of existing Whole Foods stores, and that deliveries from Whole Foods to the Hollywood Hills would be increased. However, in information provided by the Appellant in support of their prior appeal to the Area Planning Commission, it expressly acknowledged that there is in fact an existing 24,000 square-foot Whole Foods one mile to the north of the Project Site closer to the Hollywood Hills, as well as two other Whole Foods (one existing, one under construction) within 3.7 miles of the Project Site, including a 50,000 square-foot store. The notion that there is widespread lack of this particular grocery store brand in the Project vicinity such that would result in a significant regional VMT impact is not supported by the evidence, and is irrelevant as the

Project's transportation analysis for the proposed grocery store use was conducted appropriately pursuant to the LADOT TAG. Therefore, the appeal point should be denied.

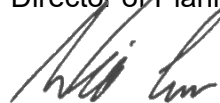
Television City 2050 Related Project

The Appellant asserts that a nearby development project known as the Television City 2050 (TVC 2050) project should have been considered as a related project for the purposes of the EIR's cumulative analyses. This is incorrect and is not required under CEQA. The environmental review for the TVC 2050 project began with the release of its Notice of Preparation (NOP) in July 2021. The Notice of Preparation for the 3rd and Fairfax Mixed-Use Project, however, was issued two and a half years earlier, in February 2019. Under CEQA, the baseline for the existing physical environment, and for identifying reasonably foreseeable related projects for cumulative analyses, is established at the time of the release of the NOP. The baseline is not established by the release of the Final EIR, and as such the Appellant's assertion that the Project must analyze concurrent impacts from the TVC 2050 project because it became public prior to the release of the Final EIR is incorrect and in fact irrelevant. The EIR is not required to analyze potential cumulative impacts that could result from a related project filed over two years after the release of the NOP.

Furthermore, substantial evidence of a significant impact that could result due to development of the TV City Project has not been presented. The Appellant provides generalized statements related to traffic congestion that might be caused by traffic originating from the TVC 2050 project, and further asserts that an increase in traffic on existing, established public roadways in the Project vicinity would result in a cumulative transportation hazard. As described above, transportation impacts are no longer evaluated relative to vehicular congestion as a matter of law per SB 743 and the CEQA Guidelines as updated in 2019, and evidence of a safety hazard due to combined traffic from TVC 2050 and the Project has not been provided. Therefore, the appeal point should be denied.

Sincerely,

VINCENT P. BERTONI, AICP
Director of Planning



William Lamborn
Senior City Planner

VPB:LW:MZ

Enclosures

Indoor Air Quality Technical Memorandum, Eyestone Environmental (June 13, 2022)
Noise Technical Memorandum, Veneklasen Associates (June 13, 2022)



MEMORANDUM

TO: City of Los Angeles, Department of City Planning

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

SUBJECT: Response to Indoor Environmental Engineering's memorandum from January 19, 2022, regarding the 3rd and Fairfax-Mixed-Use Project

DATE: June 13, 2022

Introduction

Francis J. Offermann of Indoor Environmental Engineering (IEE) provided a memorandum regarding indoor air quality for the 3rd and Fairfax-Mixed-Use Project on January 19, 2022. As demonstrated by the discussion provided below, the relevant environmental topics raised have already been addressed in the Draft EIR and no new significant information (as defined by CEQA Guidelines Section 15088.5) that would require recirculation of the Draft EIR has been identified. Specifically, there are no new significant environmental impacts from the Project. In addition, there are no substantial increases in the severity of any of the significant environmental impacts identified in the Draft EIR.

Indoor Formaldehyde Concentrations

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

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



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

Mr. Offermann claims the research paper studied new homes built in 2012 or later. However, this claim is not entirely correct. According to the research paper, the study characterized 70 homes built between 2011 and 2017. In order to be part of the study, buildings also had to meet several other conditions. According to the research paper, the building had to be a single-family detached structure, located in California, and built in 2011 or later. This would not be an appropriate comparison as the Project consists of mid-rise residential buildings with a different combination of steel, concrete, and wood construction. Single-family residential construction typically would use more wood or formaldehyde containing products in comparison to mid-rise construction. Therefore, it is misleading to directly apply results from the research paper to the proposed Project. Additionally, the research paper acknowledges that California regulations have been effective in reducing formaldehyde concentrations in homes and states “[c]omparisons of indoor formaldehyde... levels with those from a prior study of new homes in California (conducted in 2007-08) suggest that contaminant levels are lower in recently built (after 2008) homes. California’s regulation to limit formaldehyde emissions from composite wood products appears to have substantially lowered its emission rate and concentration in new homes.”¹ Therefore, the research paper does not represent reliable or credible evidence that the Project would pose health risks to residents and workers from indoor air quality. Thus, the calculations provided

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

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by Mr. Offermann amount to speculation and do not reflect the actual proposed Project uses and are thus unsupported by substantial evidence.

Potential Residential Exposure

Mr. Offermann overestimates the amount of potential residential exposure to formaldehyde from the Proposed Project in several aspects. First, he claims that residential occupants would inhale 20 cubic meters of air per day, yet cites no evidence to substantiate this claim. According to the American Lung Association, the average person inhales approximately 2,000 gallons of air per day, or roughly 7.57 cubic meters per day.² Second, Mr. Offermann incorrectly applies an entire 70-year average lifetime (24 hours per day from birth to death) to calculate residential formaldehyde exposure, thus vastly overestimating any potential formaldehyde exposure to residents who would occupy the Proposed Project. Third, the review assumes that residents would live at the Proposed Project for their entire lives. This is speculative and likely incorrect. Estimations of how many times a person living in the United States moves in his or her lifetime have ranged from 9 times to 11 times, depending on age, race, and socioeconomic status, among other categories.^{3,4} Thus, it is speculative and likely incorrect to assume that the initial residents who occupy the Proposed Project would remain for the remaining duration of their lives.

Mr. Offermann's assumption that the daily exposure level of formaldehyde would be constant for a 45-year period significantly overestimates the amount of potential formaldehyde emissions from the Proposed Project in several aspects. First, it incorrectly assumes that construction materials would not comply with all applicable regulations. Second, it assumes that formaldehyde emissions from construction materials would remain

² American Lung Association, *How Your Lungs Get the Job Done*, website: <https://www.lung.org/blog/how-your-lungs-work>, accessed October 2021.

³ United States Census Bureau, *Calculating Migration Expectancy Using ACS Data*, website: <https://www.census.gov/topics/population/migration/guidance/calculating-migration-expectancy.html>, accessed October 2021.

⁴ FiveThirtyEight, *How Many Times Does The Average Person Move?*, website: <https://fivethirtyeight.com/features/how-many-times-the-average-person-moves/>, accessed October 2021.



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constant for over 45 years, in fact, they decrease over time. Third, based on the US Bureau of Labor Statistics, the median number of years that wage and salary workers had been with their current employer was 4.1 years in January 2020.⁵ Mr. Offermann cites no evidence that the Proposed Project would employ the same workers consistently for 45 years. Thus, Mr. Offermann's assumptions that the employees of the Proposed Project would be exposed to a consistent dose of formaldehyde for 40 hours per week over a period of 45 years is unsubstantiated opinion that is not reflective of a real-world scenario. By significantly overstating the exposure duration time, Mr. Offermann's letter does not provide an accurate assessment of risk exposure and does not provide credible evidence of significant impacts related to indoor air quality.

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

IEE Methodology

Mr. Offermann proposes a methodology that he believes should be used for analyzing carcinogenic risks in a mixed-use residential and commercial building. As a fundamental point, the City of Los Angeles as the Lead Agency for CEQA review has the discretion to apply the thresholds of significance and appropriate methodologies used for impact analysis. Here, the City applied the thresholds from the CEQA Guidelines, and used methodologies customary for air quality impacts, and consistent with guidelines and policies of the relevant regulatory agencies. The City's choice of thresholds and methods is supported by substantial evidence in the administrative record. Mr. Offermann cannot supplant the Lead Agency's

⁵ *United States Bureau of Labor Statistics, News Release, Employee Tenure in 2020, released September 22, 2020, website: <https://www.bls.gov/news.release/pdf/tenure.pdf>, accessed October 2021.*



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discretion merely be proposing a new method of impact analysis. In addition, and more technically, interior finishes for the commercial component and all furnishings would be subject to tenant specifications that would not be known until after the Proposed Project is approved and constructed. Thus, any analysis regarding such materials would be speculative, and CEQA does not require speculation. Further, as specified above, the building materials would be compliant with the LAMC, L.A. Green Building Code, and other applicable regulations, which provide specifications for acceptable formaldehyde concentrations in composite wood products. The Proposed Project would be compliant with these specifications and would not cause any significant environmental impact related to indoor air quality.

There are no requirements or guidance from SCAQMD or relevant agencies to evaluate such risk from indoor air quality. In fact, indoor air quality is not within the jurisdiction of SCAQMD. Mr. Offermann cites a 10 in one million cancer risk threshold. However, this threshold is intended to be used to evaluate the increase in cancer risk above ambient conditions (outdoor air). Therefore, the application of the 10 in one million threshold for indoor air quality is not appropriate. Moreover, and even though not required to respond to Mr. Offermann's letter, we note that the Draft EIR contains a detailed air quality analysis, and the Final EIR includes a Health Risk Assessment (see Appendix FEIR-7: Health Risk Assessment) that further supplements the record and demonstrates that the Proposed Project does not exceed applicable thresholds, including cancer risk thresholds, as established by the relevant regulatory agencies.

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

The Project would be required to comply with the CARB ATCM (Airborne Toxic Control Measure to Reduce Formaldehyde Emissions from Composite Wood Products): The purpose of this airborne toxic control measure is to "reduce formaldehyde emissions from composite wood products, and finished goods that contain composite wood products, that



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are sold, offered for sale, supplied, used, or manufactured for sale in California. The composite wood products covered by this regulation are hardwood plywood, particleboard, and medium density fiberboard.” The measure applies to manufacturers, distributors, importers, fabricators (that use such materials to make other goods), retailers, third party certifiers who manufacture, offer for sale or supply these goods in California. The control measure assures that all building materials and furnishings manufactured, distributed, imported and used in new construction in California meet the maximum allowable concentrations that assure healthful indoor air quality.

According to CARB, from a public health standpoint, the CWP Regulation’s emission standards are set at low levels intended to protect public health.⁶ The CWP Regulation, adopted in 2007, established two phases of emissions standards: an initial Phase I, and later, a more stringent Phase II that requires all finished goods, such as flooring, destined for sale or use in California to be made using complying composite wood products. As of January 2014, only Phase II products are legal for sale in California. Thus, all new wood products installed in the Project would comply with the more stringent Phase II requirements. Impacts with respect to formaldehyde would be less than significant.

Mr. Offerman’s review significantly overestimates the amount of daily formaldehyde exposure from the Proposed Project and is based on the following inaccurate exposure assumptions: (1) that the construction materials would not be code-compliant with the California Composite Wood Products Regulation (California CWP Regulation) or US EPA Toxic Substances Control Act Title IV Regulation; (2) that the formaldehyde daily emissions from construction materials would be constant over 45 years; (3) that residents would inhale 20 cubic meters of air per day and live in the Proposed Project for an average 70-year lifetime and occupy their units 24 hours per day; and (4) that the employees would work at the Project Site for eight hours per day, five days per week, 50 weeks per year for 45 years (starting at 20 years and retiring at age 65). These assumptions are unreasonable and are not based on real life exposure potential. Further, it is unreasonable to assume that applicable laws and

⁶ California Air Resources Board, Frequently Asked Questions for Consumers, Reducing Formaldehyde Emissions from Composite Wood Products, ww3.arb.ca.gov/toxics/compwood/consumer_faq.pdf?_ga=2.32900281.682464648.1573169874-1026610208.1565143819, accessed December 2021.



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regulations pertaining to building materials would not be followed. Thus, Mr. Offermann substantially overestimates the amount of formaldehyde emissions to which future residents and workers in the Proposed Project could be exposed, as well as potential health impacts. Moreover, Mr. Offermann is speculating that composite wood materials would be used in the interior of the building. Indoor building materials will not be known until the building permit stage. As such, any further analysis on the content of indoor building materials would be speculative.

Formaldehyde, which can be found in wood products, generally contains the highest concentration when products are new, and such concentrations gradually decrease with age.⁷ Neither the SCAQMD nor the City of Los Angeles provide significance thresholds for indoor air quality. However, the California CWP Regulation is one of the most stringent regulations in effect to limit formaldehyde emissions from composite wood productions. All finished products sold or supplied to California are required to be compliant with the CWP Regulation or the US EPA Toxic Substances Control Act Title IV Regulation (whichever is more stringent). To the City's knowledge, there are no credible or peer-reviewed studies which assessed long-term indoor concentrations and associated lifetime exposure to formaldehyde in new homes and commercial spaces in California that suggest the existing rules and regulations on formaldehyde in building materials are ineffective. Nor has Mr. Offermann cited any such studies. The existing rules and regulations are robust and adequate to ensure that issues related to formaldehyde from building materials will not be an issue for indoor air quality for the Proposed Project.

In addition, the Proposed Project would be required to comply with the California Green Building Standards Code, which is Part 11 of the California Code of Regulations, commonly referred to as CALGreen. The Proposed Project would be built with materials that are compliant with current regulations, which are intended to set low levels of formaldehyde in composite wood materials. These measures have been established through CALGreen and are designed to reduce the quantity of air contaminants to acceptable levels. Division 4.5, Environmental Quality, of CALGreen provides mandatory residential measures to reduce

⁷ County of Los Angeles Public Health, Environmental Health, Indoor Air Quality, website: <http://www.publichealth.lacounty.gov/eh/TEA/ToxicEpi/indoorair.htm>, accessed October 2021.



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the quantity of air contaminants that are odorous, irritating and/or harmful to the comfort and wellbeing of a building's installers, occupants, and neighbors. It includes VOC limits for paints, coating, adhesives, adhesive bonding primers, sealants, sealant primers, and caulk. Section 4.504.3, Carpet Systems, of CALGreen establishes product requirements to meet one of the following: (1) Carpet and Rug Institute's Green Label Plus Program; (2) California Department of Public Health, "Standard Method for the Testing and Evaluation of Volatile Organic Chemical Emissions from Indoor Sources Using Environmental Chambers," Version 1.1; (3) NSF/ANSI 140 at the Gold Level; or (4) Scientific Certifications Systems Indoor Advantage Gold. Furthermore, Section 4.504.5, Composite wood products, of the CALGreen Code establishes limits for formaldehyde as specified in Cal Green Table 4.504.5.⁸

Outdoor Ventilation

With regard to PM_{2.5} ambient concentrations and whether MERV 13 filtration is included as part of the Project, the Project would be required to comply with the City of LA Green Building Code which mandates MERV 13 filtration.⁹ As such, the Proposed Project would already provide for the mechanical supply of outdoor air ventilation suggested by Mr. Offermann (i.e., MERV 13), and IEE does not provide any credible evidence of indoor air quality impacts from the Proposed Project.

Mitigation Measures

Similar to Mr. Offermann's argument that the City should use different methodology for impact analysis, he also recommends mitigation measures based on a faulty assumption that the Proposed Project has significant impacts. As demonstrated by the EIR analysis, and supported by substantial evidence in the record, the Proposed Project does not have significant impacts to air quality. Moreover, as required by law, the Proposed Project would comply with Section 5.504.4, Finish Pollutant Material Control, of the L.A. Green Building

⁸ California Air Resources Board, *Air Toxics Control Measure for Composite Wood as tested in accordance with ASTM E 1333*. (See California Code of Regulations, Title 17, Sections 93120 through 93120.12.)

⁹ 2020 City of Los Angeles Green Building Code Plan Check Notes, Residential Buildings.



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Code, which requires hardwood plywood, particleboard and medium density fiberboard composite wood products used on the interior or exterior of the building shall meet the requirements for formaldehyde as specified in CALGreen Table 5.504.4.5. Further, Section A5.504.4.5.1 of the L.A. Green Building Code requires composite wood products to be approved by the ARB as no-added formaldehyde (NAF) based resins or ultra-low emitting formaldehyde (ULEF) resins. Compliance with these requirements would be verified by the Department of Building and Safety through the plan approval process and as noted in item 23 of the City of Los Angeles Building Code Plan Check Notes – Form GRN-15.¹⁰

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

Conclusion

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

¹⁰ See *City of Los Angeles Building Code Plan Check Notes – Form GRN-15*, website: <https://www.ladbs.org/docs/default-source/forms/green-building-2017/green-building-code-plan-check-notes-non-residential-buildings.pdf>, accessed October 2021.

Memorandum

Date: June 13, 2022

To: City of Los Angeles, Department of City Planning

From: Veneklasen Associates

Subject: **3rd and Fairfax
Los Angeles, CA
Construction Noise and Vibration Plan – Response to SAFER Appeal
VA Project No. 4824-019**

This expert technical memorandum responds to the noise and vibration points raised in the letter prepared by Wilson Ihrig on February 4, 2022 (“Ihrig Letter”) as part of the appeal filed by Supporters Alliance for Environmental Responsibility (SAFER) on the Environmental Impact Report (“EIR”) prepared by the City of Los Angeles (“City”) for the 3rd and Fairfax Mixed Use Project (“Project”). As discussed below, the Ihrig Letter is inaccurate and technically incorrect for several reasons, including its use of inapplicable thresholds of significance, incorrect methodology, and unsupportable quantitative analysis. We discuss these points below in response to the issues raised in the Ihrig Letter.

I. The Draft and Final EIR Adequately Analyze the Impacts of the Project on Instructional Time at the School.

The Ihrig Letter claims that using a 5dBA over existing noise levels “is not an acceptable significance threshold of noise impact for school environments.” This claim is technically incorrect for several reasons.

First and foremost, the City is the Lead Agency under the California Environmental Quality Act (“CEQA”) and has the discretion to establish the thresholds of significance for analysis of noise impacts. In the Draft EIR, the City established that Appendix G of the State CEQA Guidelines is the applicable threshold of significance, which queries if the Project would result in an increase in ambient noise in excess of the standards established in the noise ordinance. In addition, the Draft EIR established quantitative standards precisely as “construction activities lasting more than ten days in a three-month period would exceed ambient exterior noise levels by 5 dBA (hourly Leq) or more at a sensitive use.” See page IV.F-22 of the Draft EIR, and page 3 and 11 of Construction Noise and Vibration Technical Report in Draft EIR Appendix F.1. Also note that the quantitative factors referenced above, and applied in the EIR, are consistent with the City’s LA CEQA Thresholds Guide regarding noise analysis for projects in the City. Therefore, it is abundantly clear that thresholds set by the City are the correct and applicable thresholds for noise impact analysis.

Second, the Ihrig Letter attempts to abandon the Lead Agency’s established threshold of significance and apply other thresholds from either the Los Angeles Unified School District (“LAUSD”) or the Collaborative for High Performance Schools (CHPS) v2.0 California design criteria. Neither LAUSD nor CHPS standards apply to the Project because the City is the Lead Agency with jurisdiction and the Project is being constructed by a private developer on private land. The thresholds used by LAUSD to construct its school facilities do not apply in that scenario. Likewise, the standards of CHPS also do not apply. Accordingly, all of the Ihrig Letter’s claims regarding noise thresholds of significance and potential quantitative impacts using inapplicable thresholds of significance are legally and technically irrelevant to the analysis in the Draft and Final EIR.

Third, the LAUSD or CHPS thresholds that the Ihrig Letter proposes are for school construction – not construction of private buildings near schools. Specifically, the LAUSD School Design Guide, June 2020, incorporated by reference here, states that it “presents guidelines and criteria for the planning, design, and technical development of new schools, modernizations and building expansion projects.” In other words, the School Design Guide applies only to LAUSD facilities and not to projects constructed in the vicinity of schools, as is the case here. Likewise, note that CHPS is a 501(c)(3) non-profit organization that provides resources to schools and school districts regarding school design, construction and operation. As a result, in no way are the standards or criteria established by CHPS applicable to the Project or applicable to the EIR as thresholds of significance. Thus, the quantitative performance criteria used in the

Ihrig Letter are facially incorrect and inapplicable. As a result, the impact results shown in the narrative or tables in the Ihrig Letter are equally invalid.

Fourth, even if the Ihrig Letter could legitimately use its suggested thresholds (which it cannot legally or technically) there are quantitative and methodology errors. For example, the Ihrig Letter references existing background noise levels of 41 – 42 dBA LASmin time averaged and linear averages of 34 – 37 dBA. The LA CEQA Thresholds Guide criteria, as well as even the CHPS design criteria, utilize the Equivalent Sound Level (L_{eq}) noise metric which is the average sound energy level over a given time interval. The L_{eq} includes contributions from steady-state and transient sound, such as due to occupant activities. The LASmin, on the other hand, reflects the minimum or lowest sound pressure level and is not indicative of the actual background noise level as defined by the Thresholds Guide or as established by the thresholds in the Draft EIR. Also, the measured existing ambient noise level for each classroom is reported in Table IV.F-8 of the Draft EIR (63.5 LAeq dBA in Classroom 21 and 63.9 LAeq dBA in Classroom 28). The commenter does not explicitly state which classroom achieved the LASmin values given that there were two classrooms monitored for noise. Additionally, the linear average noise levels reported are invalid because a linear (arithmetic) average is not appropriate for averaging a logarithmic (decibel) value such as sound pressure levels.

In addition, the Ihrig Letter hypothesizes that the calculated 22.9 dBA exterior-to-interior noise reduction was then used to calculate an interior noise level attributable to exterior noise sources of 39 dBA. Given the exterior-to-interior noise contribution, Ihrig states that noise levels inside classrooms from construction noise cannot exceed 43 dBA in order to not exceed existing ambient levels by more than 5 dBA. Most importantly, note that the rationale applied here is concocted based on inapplicable thresholds and standards. The 43dBA proposed by Ihrig is not the significance threshold in the Draft EIR. Instead, the 43 dBA was created by Ihrig to support its conclusions and in no way can replace the City's thresholds of significance used in the EIR and based on substantial evidence. Also important, note that the Construction Noise and Vibration Technical Report includes actual noise measurements from outside and inside the classrooms while school was in session. LAUSD allowed access to its facilities specifically for these long-term noise measurements to ensure comprehensive data and environmental analysis. See Draft EIR, page IV.F-18 for additional details. These measurements represent actual conditions during instruction time in the classrooms. These measurements were included in the Draft EIR analysis particularly to ensure accurate noise measurements and modeling. In stark contrast, the Ihrig Letter did not take any noise measurements at the Project Site, near the school, and surely not inside the classrooms. Therefore, the validity of the evidence in the Construction Noise and Vibration Technical Report and Draft EIR is far superior to the hypothetical and speculative analysis contained in the Ihrig Letter.

Moreover, even if both the CHPS criteria and the LASmin metric for existing background noise were applicable (which it is not) in determining interior noise level acceptability, Veneklasen determined that maximum construction noise levels from the Project would still be at or below 43 dBA inside either classroom with the proposed sound barriers. This result is summarized in Table IV.F-19 of the Draft EIR. Therefore, in no case does the Ihrig Letter's use of thresholds or noise criteria withstand technical scrutiny.

II. The EIR Discloses the Proper Range of Construction Noise and Uses the Correct Methodologies.

The Ihrig Letter claims that the “range of construction noise presented in the Draft EIR is not fully disclosed” because the distances from construction activity to receptor is model based on the “typical distance to each receptor.” The Ihrig Letter suggest that closer distances to the receptors should be used for modeling noise impacts. However, that suggested approach is not consistent with the methodology established in the EIR, and the applicable guidance documents used in the Construction Noise and Vibration Technical Report. This is, once again, the Ihrig Letter making up a methodology that does not apply to the Project in order to support its faulty conclusions.

To be clear, the impact analysis in the Draft EIR is based on well-founded methods of noise impact analysis. Specifically, the methodology and calculations in the EIR are in accordance with the methodology established by the Federal Transit Administration (“FTA”) Noise and Vibration Impact Assessment Manual and Federal Highway Administration (“FHWA”) Construction Noise Handbook where applicable. See Section 6.0: Prediction and Modeling in the Construction Noise and Vibration Technical Report for a detailed discussion of the correct methodology for the Project. In addition, the FTA document explains why it is acceptable to use typical distances from noise sources to receptors to model construction noise for complex construction projects with mobile equipment that moves around

the construction site during phases of development; and it provides that mobile equipment moves around the construction site with power applied in cyclic fashion (bulldozers, loaders), or to and from the site (trucks); movement around the site is considered in the construction noise prediction procedure. Stated differently, the actual locations of each piece of equipment and corresponding distances to receptors will vary over a given time period.

For the Project, demolition and construction activities will occur over the entire project site. As such, the actual locations of the equipment used during demolition will be over the entire site, so the average distance between noise source and receiver is properly set as the center of the entire site for noise modeling purposes. As expected, equipment noise levels at the adjacent properties will increase and decrease as equipment is at the nearest and farthest locations away on the project site, respectively. Thus, only using the nearest distances (as suggested in the Ihrig Letter) in calculations misrepresents hourly noise levels on adjacent properties by overestimation, and does not reflect the reality of construction activities. See Draft EIR, pages IV.F-28-29 for additional discussion, with particular note that the construction noise calculations in the Draft EIR assumed that the entire fleet of construction equipment involved in each phase was operating simultaneously during each phase. That is a highly conservative assumption, that ensures conservative impact analysis, because during construction, not all of the equipment would be used during a single phase. Therefore, the Draft EIR provided noise analysis based upon the correct methodologies in the EIR and based upon the industry standards and applicable reference documents.

With respect to vibration, closer distances are used between sources and receptors because of the criteria regarding the possibility of structural damage and human annoyance or disturbance. See Tables IV.F-2 and IV.F-3 in the Draft EIR. On the other hand, noise modeling criteria only regard annoyance or disturbance over specified hourly or daily durations because noise would not result in structural damage. Thus, the Draft EIR used closer distances to model potential vibrations impacts, which is also aligned with modeling protocol. Also note that, the Draft EIR contains mitigation measure MM-NOI-3, which requires a 70 foot setback for heavy machinery from the nearest occupied building while school is in session to ensure that the Project does not create a human annoyance. Thus, the Draft EIR demonstrated that vibration impacts are less than significant (regarding structural and human annoyance) using conservative distance estimates and applied mitigation.

III. The Effectiveness of Noise Mitigation in the Draft EIR is Supported by Substantial Evidence and Consistent with Applicable Codes.

The first claim in this portion of the Ihrig Letter is that noise barrier mitigation is not as effective as stated in the Draft EIR. The Ihrig Letter does not cite to evidence for its position. Instead, its claims, and the quantitative results presented in Tables 1-3 of the Ihrig Letter modify the applicable thresholds of significance, adjust distances to receptors, and assume measuring elevations, all done to support the intended result of demonstrating a significant noise impact. As discussed below, the Draft EIR is based on substantial evidence and follows standard noise modeling methodologies, including the assumptions for noise barrier mitigation effectiveness.

As a starting point, note that Section 111.02(a) Sound Level Measurement Procedure and Criteria of Los Angeles Municipal Code (“LAMC”) states “except where impractical, the microphone [for sound level measurements] shall be located four to five feet above the ground and ten feet or more from the nearest reflective surface. However, in those cases where another elevation is deemed appropriate, the later shall be utilized.” Here, the Draft EIR and noise technical report were prepared at the discretion of the City and used the placement of noise measuring devices both at grade level (four to five feet above ground) and at higher elevations (such as the rooftops of classrooms at the school) to secure the most accurate noise measurements for analysis. For other off-site receptors such as nearby residential properties, the noise measuring devices were placed at grade because that represents the publicly accessible place for measurement, and represents an accurate noise location for the receptor’s general environment instead of a particular person’s environment such as a balcony or unit of a particular tenant. Thus, the Draft EIR includes the appropriate noise analysis, inclusive of elevation factors, and is supported by code and evidence.

Similarly, the effectiveness of the Project’s noise barriers is also supported by evidence. Mitigation Measure MM-NOI-1, on page IV.F-43 of the Draft EIR has detailed sound barrier characteristics, and includes a performance standard that the barriers shall be capable of achieving a minimal Sound Transmission Class (“STC”) rating of 32. The Draft EIR requires these noise barriers to be erected prior to the start of construction activities.

Moreover, the calculation results in the Ihrig Letter are flawed for several reasons. First, it includes varying source setback distances (established by Ihrig, not the City) as well as three different phases of construction: demolition, grading, and building construction. Note that Ihrig combined demolition and grading phases in the tabulated results. Combining results for these two phases misrepresents construction noise levels at receptors since these phases will occur at different times, not simultaneously.

Second, the Ihrig Letter indicates that where construction activities are further away from the noise barrier and the receptor is on the 2nd floor, barrier effectiveness is limited. As discussed above, this assertion is not supported by evidence and is not consistent with the code-based and evidenced-based method used in the Draft EIR. It is important to note that, our calculations indicate even with elevated receptors and distanced construction noise sources, the noise barrier will be effective and resulting noise will be below impact thresholds. See specifically results in Table IV.F-19 for NVSR-1 – Inside Classroom 21 (L1). Similarly, the Ihrig Letter infers that calculations for building construction on the fourth floor of the Project show lower barrier effectiveness due to direct line-of-sight. Note however, that equipment used within the building for construction is mobile and much of the time located away from the edges of the open floor or level. As such, the structure of the building under construction will provide a level of noise shielding to closer receptors. And, even before the building façade is completed at elevation, the heavy machinery that generates the highest noise levels remains at grade level and is shielded by the noise barriers proposed as mitigation and the existing structures on the site. For example, the Ihrig Letter assumed that all of the construction equipment responsible for the 88.3 dBA shown for Building Construction in Appendix F.1 of the Draft EIR would all be located at an elevated level on the construction site (4th floor). This value was calculated using many equipment pieces with most located on ground level (e.g. backhoe, crane, concrete mixer truck, concrete pump truck, forklift, generator, front end loader, and tractor). The actual equipment that would be located above grade (e.g. welder, saws, light duty tools, etc.) have much lower noise levels (e.g. welder is 74 dBA at 50 feet whereas a tractor is 84 dBA at 50 feet per Table IV.F-10) and are used more intermittently. Due to differences in noise level alone, ground level equipment are the driving factor in overall noise levels at receptors, not elevated equipment.

Third, we note that Tables 1-3 in the Ihrig Letter are faulty for several reasons. One, the significance thresholds indicated are invalid as discussed in Section I of this memo. Applicable thresholds per the Lead Agency are ambient levels plus 5 dBA L_{eq} and shown in Tables IV.F-11 and IV.F-19. Note that results shown in Tables 1 and 2 in the Ihrig Letter are below the applicable CEQA thresholds. Secondly, distances to receptors indicated for “Nearest” and “Southern half” are invalid as discussed in Section II of this memo. The actual locations of each piece of equipment and corresponding distances to receptors will vary over a given time period; therefore, the average distance, which corresponds to the center of the site where equipment will operate, is applicable per the FTA document for assessing construction noise and vibration and shown in Tables IV.F-11 and IV.F-19. Lastly, noted noise reductions from barrier walls are incorrect which may be due to erroneous source and receptor heights as well as distances to noise barriers.

Therefore, based on the reasons set forth in this technical memorandum, the Ihrig Letter does not withstand technical scrutiny, is inaccurate and erroneous, and does not apply reasonable thresholds of significance or methodologies.