



SENT VIA email: [david.woon@lacity.org](mailto:david.woon@lacity.org)

October 20, 2022

David Woon, Planning Assistant  
**City of Los Angeles, Department of City Planning**  
200 N. Spring Street, Room 763  
Los Angeles, California 90012

**RE: Amended Mitigated Negative Declaration (MND) Melrose and Seward Project  
Case Number: ENV-2021-2909-MND, CPC-2021-2908-ZC-HD-ZAD-WDI-SPR  
Responses to Appeals from SAFER and the Hancock Park Home Owners  
Association (HOA)**

Dear Mr. Woon:

Thank you for the opportunity to submit these responses to the Appeals from SAFER and the Hancock Park HOA on the above-referenced document (the "Amended MND Melrose and Seward Project") on behalf of the Project Applicant.

**APPELLANT NO. 2: Hancock Park Homeowners Association (HPHOA), represented by  
Kristina Kropp of Luna & Glushon**  
**An appeal of CPC-2021-2908-ZC-HD-ZAD-WDI-SPR**

**Appeal Dated: September 14, 2022**

**HPHOA Appeal Point 1-1:**

Appellant identifies itself as the HPHOA, a large group of residents and property owners in the Hancock Park neighborhood surrounding the Project Site and most immediately impacted thereby. Appellant states that it was founded for and is focused upon neighborhood quality of life issues.

**Response to HPHOA Appeal Point 1-1:**

Appellant introduces itself, but otherwise does not raise any specific issue challenging the City Planning Commission (CPC) regarding its findings supporting its approval of Project's Site Plan Review or any specific issue with respect to the content or adequacy of the MND or the Project's potential environmental effects, does not identify any specific deficiency in the information, facts, or analysis in the MND, and does not identify any abuse of discretion on the part of the City Planning Commission.

**HPHOA Appeal Point 1-2:**

Appellant generally describes the Project as a five-story building with commercial office and retail uses.

**Response to HPHOA Appeal Point 1-2:**

Appellant generally describes the Project as originally proposed, but otherwise does not raise any specific issue challenging the CPC regarding its findings supporting its approval of Project's Site Plan Review or any specific issue with respect to the content or adequacy of the MND or the Project's potential environmental effects, does not identify any specific deficiency in the information, facts, or analysis in the MND, and does not identify any abuse of discretion on the part of the City Planning Commission.

It should be noted that the Applicant has proposed minor modifications to the Project in the Errata to the MND. The Modified Project would be four stories and 58 feet tall at the top of its parapet, or 58 feet 3 inches tall when measured from the lowest grade within 5 feet of the building perimeter, with 61,000 square feet of commercial office as compared to the originally proposed 67,242 square feet and 500 square feet of retail space opposed to the originally proposed 647 square feet. As such, although the Modified Project would still require a Height District Change, the Modified Project would be approximately 20 feet shorter than the Project as originally proposed and only 13 feet taller than the current height district allows, rather than the Project's 33 feet taller.

**HPHOA Appeal Point 1-3:**

Appellant asserts the City Planning Commission (CPC) erred and abused its discretion in approving the Project's Site Plan Review because the Project does not meet Finding No. 4, under Site Plan Review, at page F-15 of the CPC's August 30, 2022 Letter of Determination (LOD). Appellant asserts that the Project does not consist of an arrangement of buildings and structures (including height, bulk and setbacks) . . . that is or will be compatible with existing and future development on adjacent properties and neighboring properties because the Project's height district change is new and detrimental to and incompatible with the area, because the outdoor decks "with no limitation on usage" is an element incompatible with and deleterious to the surrounding residential neighborhood, and because the Project fails to review its potential impacts on the adjacent historic library and the Hancock Park Historic Preservation Overlay Zone (HPOZ) south of Melrose Avenue.

**Response to HPHOA Appeal Point 1-3:**

Appellant's appeal point consists of conclusions that are not supported by facts or substantial evidence. As such, Appellant does not offer substantial evidence supporting its claim that the CPC erred and abused its discretion in finding that the Project fulfills the requirements of this finding, but only argument, speculation and unsupported opinion. (See, e.g., Public Resources Code § 21082.2(c).)

The Project is specifically designed such that its height and its decks would be compatible with the adjacent properties and with the neighborhood, and to meet the intent of the Citywide Design Guidelines (adopted by the CPC on October 24, 2019). The Project Site is located in an urbanized area surrounded predominantly by commercial, office and residential uses. The Project would incorporate a mixture of high-quality building materials, landscaping, pedestrian accessways, and open space areas along West Melrose Avenue and North Seward Street to promote pedestrian circulation to and from the Project building on the street level. The Project would incorporate sustainable design and energy efficient features, a solar zone on the building

roof, light-colored building materials, and high-performance glazing along its façade to provide energy efficiency and insulation. The building would also include features, such as windows that open, exterior stairways and landscaped decks that would provide users access to the outdoors.

Recognizing its adjacency to the historic John C. Fremont Branch Library and residences to the west, the Project tempers its height, bulk and massing utilizing multiple design features including open space, building materials and orientation. The Project would incorporate a high-quality gating system to shield the Project's DWP yard near its western edge along Melrose Avenue, and vegetated screenings and planters along the Project Site's western boundary to minimize glaring and visual disturbances onto the library. The Project would also include a variety of open space areas along the perimeter of the building and throughout each floor level of the building, and would combine changes in depth and horizontal plane with changes in material and character to enhance building articulation. To reduce the difference in height between the Project and library and residential properties to the west, the northwestern portion of the Project building has been designed to step back from the western property line and adjacent residential properties by approximately 30 feet starting at its third floor (26 foot and 10-inch mark). At the fourth-floor level (39 feet and 8-inch mark), the Project building would step back by an additional 12 feet and 5 inches. The terracing of this portion of the Project building would allow for natural air and light ventilation to neighboring properties. Roof decks and landscaped buffers would be located along the step back areas such that they would reduce potential nuisances such as noise and privacy concerns. As such, this terracing would along the west elevation would reduce the massing and the height of the Project building. Thus, the scale of the Project building was designed to be compatible with the residential uses and the John C. Freeman Branch Library located west of the Project Site.

The Project would also include a 4-foot demising wall and a 4-foot easement along the western boundary to serve as a buffer for the adjacent residential properties.

For the other reasons stated at pages F-16 through F-19 of the LOD, the Project would be compatible with existing and future development on adjacent and neighboring properties, including residential properties. Furthermore, Appellant offers no substantial evidence that noise, lighting or other effects from the outdoor decks, which are intended for use by small groups of people working or talking in the Project building – intended to be a creative office building, rather than an apartment complex or in student housing – would violate any City ordinances by either exceeding the ambient noise level or by being otherwise disruptive at the surrounding residential and historic properties. Office uses are generally not in use during the evening hours.

Moreover, substantial evidence in the MND and record supports the conclusions that the Project's potential impacts on the historic library and the HPOZ would not cause a substantial adverse change in the significance of either. Section V, Cultural Resources, of the MND (pages 70-72) explains that the Project Site is not located in a Historic Preservation Review or Overlay Zone. The closest Historic Preservation Overlay Zone to the Project Site is 0.0016 mile to the south across West Melrose Avenue. The Project does not propose to demolish, relocate, rehabilitate, alter or convert any of the buildings within the HPOZ, all of which would remain unchanged and in their original locations following implementation of the Project. The Project would construct a new five-story, approximately 77-foot-tall building with a subterranean parking garage on the south side of the Project Site directly across the street from the northern

boundary of the HPOZ. Even so, the northernmost portion of the HPOZ fronting Melrose Avenue to the north between Seward Street to the east and June Street to the west, contains two non-contributing resources that buffer the two contributing resources closest to the Project Site (located at 623 North Seward Street and 640 North June Street) from the Project's new building. Moreover, due to the respective locations of the HPOZ and the Project Site, the Project's new building would be physically and visually separated from the HPOZ, such that there would be a distinct visual separation between the resources contributing to the HPOZ and the Project's new construction, and once built, the Project would not obscure any of the important views of the HPOZ from any direction.

The closest historic structure to the Project Site is the John C. Freeman Branch Library located at 6121 West Melrose Avenue, approximately 8 feet to the west of the Site. The library is listed in the National Register of Historic Places and the California Register of Historical Resources, and is also designated as a Los Angeles Historic-Cultural Monument. The Project would not demolish, relocate, rehabilitate, alter or convert the library building, which would remain unchanged and in its original location following implementation of the Project. The important public views of the library include those looking north from Melrose Avenue and those looking east from North June Street, and, although the Project would be built on the west side of the Project Site immediately adjacent to the library, those important views of the library would remain unchanged by the Project. There are no existing important views of or from the library from any direction that would be blocked by the Project.

The MND also concluded that during construction, construction noise (pages 164-165, and Table 4.17) and construction vibration (pages 171-174) impacts would be less than significant at the HPOZ, and that the Project's incorporation of MM NOI-1 would reduce construction noise impacts on the library (pages 164-166 and Tables 4.17 and 4.18) and its incorporation of PDF NOI-1 and MM NOI-3 would reduce construction vibration impacts to the structure of the library (pages 171-175) to less than significant levels.

The Errata to the MND, supported by the *6101-6117 West Melrose Avenue Historic Resources Technical Report* prepared by Historic Resources Group (HRTR), clarifies and amplifies this analysis.

Regarding the library, the Errata explains that once the Project is built, it would not materially impair the significance of the library. The Project building would be built to the east of the library and, therefore, would not obscure the important views of the library looking north from Melrose Avenue and looking east from June Street.<sup>1</sup> For the reasons discussed in the Errata, the Project would not affect the integrity of the location, design, materials, workmanship, feeling or association of the library building.<sup>2</sup> The only aspect of integrity that the Project could potentially affect is integrity of setting, which would be altered by the construction of the Project's new building that did not exist during the period of significance associated with the library; however, the loss of setting in and of itself would not materially impair the library's ability to convey its historic significance and identity as an example of a Mediterranean Revival-style branch library in the Los Angeles Branch Library System in the 1920s in Hollywood, particularly as the library

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<sup>1</sup> Errata, p. 14.

<sup>2</sup> Id., pp. 14-15.

would continue to retain the remaining six aspects of integrity.<sup>3</sup> Moreover, the Project would replace an existing commercial use with a new commercial use, on a Project Site zoned for manufacturing and commercial uses, in an area that has changed substantially since the library was built in the late 1920's and now includes various multiple-storied commercial buildings as well as single- and multi-family residential buildings.

Therefore, with the Project, the library would remain intact and would continue to convey its historic significance and to retain its eligibility for its designations. With incorporation of the mitigation into the Project, Project construction would not adversely affect the library building such that the building would no longer convey its historic significance. Therefore, any adverse impacts on the historical library would not rise to a significant level.

Regarding the HPOZ, the Errata explains that it is located 0.0016 mile to the south of and across West Melrose Avenue from the Project Site. The historic character of the HPOZ as a whole is experienced primarily from the street, either walking or by car.<sup>4</sup> Although the Project would build a new five-story, approximately 77-foot tall building with a subterranean parking garage on the south side of the Project Site directly across the street from the northern boundary of the HPOZ, the northernmost portion of the HPOZ, which fronts Melrose Avenue to the north and lies between Seward Street to the east and June Street to the west, contains two non-contributing resources that buffer the two contributing resources closest to the Project Site (located at 623 North Seward Street and 640 North June Street) from the Project's new building.<sup>5</sup>

Due to the respective locations of the HPOZ and the Project Site, the Project building would be physically and visually separated from the HPOZ.<sup>6</sup> Consequently, there would be a distinct visual separation between the resources contributing to the HPOZ and the Project building, and implementation of the Project would not obscure any of the important views of the HPOZ from any direction.<sup>7</sup>

Further, for the reasons discussed in the Errata, implementation of the Project would not destroy the contributing resources, shared planning features, or spatial relationships that characterize the HPOZ as a whole and, as such, the Project would not affect the integrity of location, design, materials, workmanship, feeling or association of the HPOZ.<sup>8</sup> While the construction of a new building that did not exist in the vicinity of the HPOZ during the period of significance associated with the HPOZ, in this case, the larger setting is not critical to understanding the historic importance of the HPOZ as a collection of architecturally distinctive single-family residences, since the setting features essential to conveying the historic character and identity of the HPOZ as a whole are largely contained within its boundaries and are best experienced from inside the district, and since the HPOZ would continue to retain the remaining six aspects of integrity.<sup>9</sup>

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<sup>3</sup> Id., p. 16.

<sup>4</sup> Id., p. 15. For greater detail, see HRTR, p. 71.

<sup>5</sup> Id., p. 15.

<sup>6</sup> Id., p. 15.

<sup>7</sup> Id., p. 15.

<sup>8</sup> Id., p. 15.

<sup>9</sup> Id., pp. 15-16.





Moreover, the Project would replace an existing commercial use with a new commercial use, on a Project Site zoned for manufacturing and commercial uses, in an area that has changed substantially since the resources contributing to the HPOZ were built and now includes various multiple-storied commercial buildings as well as single- and multi-family residential buildings.

As a result, with the Project, the HPOZ and its component contributing resources would remain intact and would continue to convey their historic significance, and the HPOZ as a whole would continue to retain its eligibility for designation as such. Therefore, any adverse impacts to the HPOZ occurring as a result of the Project would not rise to a significant level.

It should be noted that the Applicant has proposed minor modifications to the Project in the Errata to the MND. The Modified Project would be four stories and 58 feet tall at the top of its parapet, or 58 feet 3 inches tall when measured from the lowest grade within 5 feet of the building perimeter, with 61,000 square feet of commercial office as compared to the originally proposed 67,242 square feet and 500 square feet of retail space opposed to the originally proposed 647 square feet. As such, although the Modified Project would still require a Height District Change, the Modified Project would be approximately 20 feet shorter than the Project as originally proposed and only 13 feet taller than the current height district allows, rather than the Project's 33 feet taller.

For these reasons, substantial evidence supports the CPC's finding in support of the Project's Site Plan Review, which was properly made.

#### **HPHOA Appeal Point 1-4:**

Appellant asserts that the CPC erred and abused its discretion in approving the Project's Site Plan Review because no substantial evidence supports its conclusion that the Project meets Finding No. 3, under Site Plan Review, at page F-12 of the LOD. Appellant asserts that the Project is not in substantial conformance with the purposes, intent and provisions of three particular goals, issues and policies of the Hollywood Community Plan: (1) encouraging the preservation and enhancement of the varied and distinctive residential character of the community and protecting lower density housing from the scattered intrusion of apartments; (2) coordinating the development of Hollywood with that of other parts of the City and the metropolitan area; and (3) promoting economic well-being and public convenience through allocating and distributing commercial lands for retail, service and office facilities in quantities and patterns based on accepted planning principles and standards. Appellant claims the Project fails to comply with these policies because its height district change, which will set a new precedent leading to increased height of new commercial buildings along Melrose Avenue, and its outdoor decks with no limitation on usage, will be detrimental to the distinctive residential character of the community. Appellant also claims that the Project is not coordinated with surrounding development or accepted planning principles and standards and does not respect the adopted zoning restrictions.

#### **Response to HPHOA Appeal Point 1-4:**

Appellant's appeal point consists of conclusions that are not supported by facts or substantial evidence. As such, Appellant does not offer substantial evidence supporting its claim that the CPC erred and abused its discretion in finding that the Project fulfills the requirements of this

finding, but only argument, speculation and unsupported opinion. (See, e.g., CEQA Guidelines §§ 15064(e)(5), 15384(a).)

Further, the CPC's finding is supported by the substantial evidence set forth at pages F-13 through F-15 of the LOD, which evidence supports the Project's consistency with the current and draft Hollywood Community Plans, and also specifically supports Objective 4 from the Hollywood Community Plan (listed as the third policy in Appellant's appeal point, above). In summary, the Project would replace an existing commercial use with a new commercial use, on a Project Site designated Commercial Manufacturing and zoned for manufacturing and commercial uses. The Project would contribute to local job expansion and would activate the streetscape with ground-floor commercial uses. The Project would also stimulate local investment and economic activity along West Melrose Avenue, which functions as an active, mixed-use corridor with access to numerous commercial services, single- and multi-family developments, and connections to public transit lines. Therefore, the Project would be within walkable distance to housing, but its 168 parking spaces on site would afford ample parking for occupants who do not live nearby. The majority of the Project's parking 168 parking spaces would be covered such that they would not impose a nuisance to nearby residences, and its surface parking area, including ADA parking spaces and valet, would be screened from single-family residences to the west by a property demising wall and a four-foot utility easement. The Project's single, two-way driveway would be located off North Seward Street, away from residential uses.

According to the most recent Hollywood Plan Update, the Project would be appropriately located in the Media District, consisting of media/entertainment jobs subareas that emphasize the preservation and expansion of media and entertainment jobs in Hollywood.

Overall, therefore, the Project is well-placed, providing needed office space in a design that is respectful of the adjacent community, on a site zoned for commercial uses and near housing and transit options.

The other two policies listed in Appellant's appeal point are not applicable to the Project. Despite Appellant's claim that the Project Site is located in a residential community, the Project Site, which lies north of West Melrose Avenue, is designated for Commercial Manufacturing uses, and the Project would replace an existing commercial use with a different commercial use; the Project would not include apartments.

The Project also would not create a height precedent in the area, as the land uses immediately surrounding the Project Site to the north, south, and east are all commercial, and there is even a four-story residential use at the southeast corner of Melrose Avenue and Seward Street and a four-story residential use at the southwest corner of Melrose Avenue and Wilcox Avenue.

Regarding the outdoor decks being incompatible with and deleterious to the neighborhood, please see Response to HPHOA Appeal Point 1-3, above.

Regarding the Project not being coordinated with the surrounding development and disregarding accepted planning principles including adopted zoning, please see Response to HPHOA Appeal Point 1-3, above. In addition, the Zone Change requested would render the lot on the Project Site zoned C4-1XL consistent with the underlying Commercial Manufacturing designation under the Hollywood Community Plan. As the MND explains (pages 32-33), the lot

on the Project Site zoned C4-1XL located directly northwest of the intersection of West Melrose Avenue and North Seward Street is presently inconsistent with its Commercial Manufacturing land use designation under the Hollywood Community Plan. Therefore, the Zone Change would ensure that the Project Site's zoning is made consistent with its land use designation.

Therefore, substantial evidence supports the City's finding in support of its approval of the Project's Site Plan Review that the Project is in substantial conformance with the purposes, intent and provisions of the General Plan and the Hollywood Community Plan, which was properly made.

#### **HPHOA Appeal Point 1-5:**

Appellant asserts the Project does not comply with Public Resources Code Section 21099 and fails to analyze adequately and with substantial evidence the Project's parking and aesthetic impacts, and that substantial evidence supports a fair argument that the Project may have significant aesthetic impacts.

#### **Response to HPHOA Appeal Point 1-5:**

Appellant's appeal point consists of conclusions that are not supported by facts or substantial evidence. Appellant offers no facts supporting its claim the Project does not comply with Public Resources Code Section 21099, does not explain why the [MND] fails to analyze adequately and with substantial evidence the Project's parking and aesthetic impacts, and offers no substantial evidence supporting its claim that there is a fair argument the Project may have significant aesthetic impacts. As such, Appellant does not offer substantial evidence supporting its claim that the MND is inadequate under CEQA and that substantial evidence supports a fair argument that the Project may have significant impacts on the environment, but only argument, speculation and unsupported opinion. (See, e.g., CEQA Guidelines §§ 15064(e)(5), 15384(a).)

Further, Appellant is incorrect. The MND correctly states (pages 14, 37) that the Project Site is located in a Transit Priority Area in the City of Los Angeles. (See also, <http://lacitydbs.org>buildinginfo> for 6101 W MELROSE AVE 90038.) Therefore, Public Resources Code Section 21099, together with the City's Department of City Planning Zoning Information (ZI) File ZI No. 2452, render the Project exempt from the requirements to analyze the Project's potential parking and aesthetic impacts under CEQA and under the City's CEQA Threshold Guide, respectively. Even so, the MND does analyze the Project's potential parking and aesthetic impacts for informational purposes, and concludes, based on substantial evidence, that they would be less than significant.

The MND analyzes the Project's potential parking impacts and concludes, based on substantial evidence, that they would be less than significant and would contribute to the Project's less than significant transportation impacts. Section 3, Project Description, of the MND (pages 12-36) describes the Project, including its 168 vehicle parking spaces and 26 total bicycle spaces to be located in a two-level subterranean garage and a surface parking area. Table 3.2 on page 32 and Table 3.3 on page 33 set forth the Project's vehicle parking requirements and bicycle parking requirements pursuant to LAMC Section 12.21, showing that the Project conforms to the LAMC requirements. (See also Table 4.25, p. 191.) Additionally, in Section 4, under Transportation (pages 193-195), the MND discusses the effect of PDF TR-1 incorporated into the Project, which would reduce the Project's parking supply below that the LAMC would



otherwise require to account for the reductions permitted for Project's bicycle parking spaces and bicycle amenities, and of MM TR-1 also incorporated into the Project, which would reduce the Project's VMT to below the level of significance. Also under Transportation (page 195), the MND discusses that the placement of the Project's single, two-way driveway for accessing its parking on North Seward Street, a local street, is both consistent with LADOT driveway placement and location per Section 321, Driveway Design, of the LADOT *Manual of Policies and Procedures*, but also reduces the number of driveways along North Seward from four to three, thereby reducing hazards to pedestrians, cyclists and other vehicles.

The MND (pages 37-43) also analyzes the Project's potential aesthetic impacts and concludes, based on the substantial evidence set forth there, that they would be less than significant. This analysis considers the Project's potential impacts on scenic vistas, scenic resources, potential conflicts with applicable zoning and other regulations governing scenic quality and light and glare.

For these reasons, Appellant's assertions that the Project does not comply with Public Resources Code Section 21099, that the MND fails to adequately and with substantial evidence evaluate the Project's potential parking and aesthetic impacts and that substantial evidence supports a fair argument that the Project may have significant aesthetic impacts are all incorrect, baseless and improperly ignore the substantial evidence contained in the MND. The appeal point fails to offer substantial evidence supporting a fair argument that the Project may have a significant aesthetic effect.

#### **HPHOA Appeal Point 1-6:**

Appellant asserts the MND fails to support with substantial evidence its conclusions that the Project's impacts to historical resources would be less than significant, and fails to include analysis of the Secretary of the Interior's standards on the historic library or the HPOZ District, and that substantial evidence supports a fair argument that the Project will have impacts on historic resources.

#### **Response to HPHOA Appeal Point 1-6:**

Appellant's appeal point consists of conclusions that are not supported by facts or substantial evidence. Appellant fails to identify which conclusions regarding which historical resource(s) the MND fails to support with substantial evidence, offers no substantial evidence supporting its claim that the Project will have impacts on historic resources, and fails to identify which resources it claims the Project will impact. As such, Appellant offers no substantial evidence supporting its claim that the MND is inadequate under CEQA and that substantial evidence supports a fair argument that the Project may have significant impacts on the environment, but only argument, speculation and unsupported opinion. (See, e.g., CEQA Guidelines §§ 15064(e)(5), 15384(a).)

Further, Appellant is incorrect, as the conclusions that the Project's impacts regarding historical resources would be less than significant are supported by substantial evidence in the MND and record. Please see Response to HPHOA Appeal Point 1-3, above.

As explained in the Errata, the design of the Project building aligns with Secretary of Interior Standards for Rehabilitation, Standard 9, because the adjacent new construction would not

destroy any of the historic materials that characterize the HPOZ.<sup>10</sup> The Project's new construction would be differentiated from the old, while its massing, size and scale are generally designed to respect the historic integrity of the adjacent historic library and residence, as described in Response to HPHOA Appeal Point 1-3, above. The Project would also align with Standard 10 because, if the Project were removed in the future, the essential form and integrity of the existing HPOZ and historic library would be unimpaired. The Project's alignment with Standards 9 and 10 of the Secretary of the Interior's Standards for Rehabilitation further substantiates the MND's conclusion that the Project, including its height, would be compatible with and would not adversely affect the existing historic library and HPOZ.

For these reasons, Appellant's assertions that the MND fails to support with substantial evidence its conclusions that the Project's impacts to historical resources would be less than significant, and fails to include analysis of the Secretary of the Interior's standards on the historic library or the HPOZ District, and that substantial evidence supports a fair argument that the Project will have impacts on historic resources are all incorrect, baseless and improperly ignore the substantial evidence contained in the MND. The appeal point fails to offer substantial evidence supporting a fair argument that the Project may have a significant effect on the environment related to historical resources.

#### **HPHOA Appeal Point 1-7:**

Appellant asserts the MND fails to analyze the Project's height with regard to applicable land use objectives/policies, and that substantial evidence supports a fair argument that the Project will have impacts on land use/planning.

#### **Response to HPHOA Appeal Point 1-7:**

Appellant's appeal point consists of conclusions that are not supported by facts or substantial evidence. Appellant neither sets forth which applicable land use objectives/policies that the MND fails to assess the Project's height against, nor identifies the applicable land use objectives/policies that the Project's height conflicts with, nor offers substantial evidence supporting its claim that the Project's conflicts with applicable land use objectives/policies. As such, Appellant does not offer substantial evidence supporting its claim that the MND is inadequate under CEQA and that substantial evidence supports a fair argument that the Project may have significant impacts on the environment, but only argument, speculation and unsupported opinion. (See, e.g., CEQA Guidelines §§ 15064(e)(5), 15384(a).)

Further, Appellant is incorrect. The MND (pages 137-152) assesses whether the Project is consistent with, or conflicts with, applicable land use plans, including the Southern California of Government's Regional Transportation Plan/Sustainable Communities Strategies, the applicable objectives and policies of the General Plan Framework Element, the applicable policies of the Mobility Plan 2035, the Citywide Design Guidelines, and the Hollywood Community Plan and concludes, based on substantial evidence and CEQA case law, that the Project would not substantially conflict with any of them. Under CEQA, a lead agency is not

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<sup>10</sup> U.S. Dept. of Interior, The Secretary of Interior's Standards for Treatment of Historic Properties with Guidelines for Preserving, Rehabilitating and Reconstructing Historic Buildings (2017), at p. 76.

required “to establish that a project achieves perfect conformity with each and every component of such applicable plans, which often serve a variety of different and sometimes competing interests. Rather, a project must generally be compatible with plans’ relevant overall applicable objectives, policies, goals, use restrictions, and requirements related to environmental issues.” (*San Franciscans Upholding the Downtown Plan v. City & County of San Francisco* (2002) 102 Cal.App.4<sup>th</sup> 656, 678.)

For these reasons, Appellant’s assertions that the MND fails to analyze the Project’s height with regard to applicable land use objectives/policies, and that substantial evidence supports a fair argument that the Project will have impacts on land use/planning are all incorrect, baseless and improperly ignore the substantial evidence contained in the MND. The appeal point fails to offer substantial evidence supporting a fair argument that the Project may have land use/planning impacts.

#### **HPHOA Appeal Point 1-8:**

Appellant asserts the MND fails to analyze the Project’s noise impacts, in particular from the use of the outdoor decks, that the mitigation measures for noise and vibration impacts fails to mitigate such impacts to less than significant, and that substantial evidence supports a fair argument that the Project will have impacts on noise/vibration.

#### **Response to HPHOA Appeal Point 1-8:**

Appellant’s appeal point consists of conclusions that are not supported by facts or substantial evidence. Appellant neither sets forth which noise impacts other than from outdoor decks the MND fails to assess, nor identifies the evidence based on which Appellant bases its assertion that the Project’s mitigation will not reduce its noise and vibration impacts to less than significant levels, nor offers substantial evidence supporting its claim that the Project will have impacts on noise/vibration. As such, Appellant does not offer substantial evidence supporting its claim that the MND is inadequate under CEQA and that substantial evidence supports a fair argument that the Project may have significant impacts on the environment, but only argument, speculation and unsupported opinion. (See, e.g., CEQA Guidelines §§ 15064(e)(5), 15384(a).)

Further, Appellant is incorrect. The MND analyzes the Project’s noise and vibration impacts in Section 4, Noise, at pages 155 through 176. Consistent with CEQA Guidelines section 15143, the MND addresses the Project’s potentially significant operational noise impacts, which do not include its outdoor decks. Since the outdoor decks do not create potentially significant noise impacts, no mitigation measures or project design features were required to be incorporated into the Project to reduce those potentially significant impacts to a less than significant level. Appellant offers no substantial evidence that noise from the outdoor decks, which are intended for use by small groups of people working or talking in the Project building, which is intended to be a creative office building, not an apartment complex or in student housing, would violate any City ordinances by either exceeding the ambient noise level or by being otherwise disruptive at the surrounding residential and historic properties. Office uses are generally not in use during the evening hours.

Similar to the Project, the Modified Project’s decks are located on the south, southeast, east and northeast sides of the building, where they face traffic on West Melrose Avenue or the commercial uses on North Seward Street or in the northern portion of the Project Site, and on

the west and northwest sides of the building, where they are buffered from the library and the residence to the west by ground-floor landscaping and by landscaping on each deck.

For these reasons, Appellant's assertions that the MND fails to analyze the Project's noise impacts, that the mitigation measures for noise and vibration impacts fail to mitigate such impacts to less than significant, and that substantial evidence supports a fair argument that the Project may have significant noise/vibration impacts are all incorrect, baseless and improperly ignore the substantial evidence contained in the MND. The appeal point fails to offer substantial evidence supporting a fair argument that the Project may have noise/vibration impacts.

**HPHOA Appeal Point 1-9:**

Appellant asserts the Project substantially increases hazards due to a geometric design feature and incompatible uses, that transportation mitigation measures for transportation impacts fail to mitigate such impacts to less than significant, and that substantial evidence supports a fair argument that the Project will have impacts on transportation.

**Response to HPHOA Appeal Point 1-9:**

Appellant's appeal point consists of conclusions that are not supported by facts or substantial evidence. Appellant fails to identify how the Project substantially increases hazards due to its geometric design feature and incompatible uses, what hazards the Project substantially increases, and what geometric design feature(s) and what incompatible uses create the substantial increase. Appellant also fails to identify the evidence on which Appellant bases those assertions, and the evidence on which Appellant bases its assertion that the Project's mitigation will not reduce its transportation hazards impacts to less than significant levels. Finally, Appellant offers no substantial evidence supporting its claim that the Project will have impacts on transportation. As such, Appellant offers no substantial evidence supporting its claim that the MND is inadequate under CEQA and that substantial evidence supports a fair argument that the Project may have significant impacts on the environment, but only argument, speculation and unsupported opinion. (See, e.g., CEQA Guidelines §§ 15064(e)(5), 15384(a).)

Further, Appellant is incorrect. At page 195, the MND assesses the Project's potential to increase hazards due to a geometric design feature or incompatible uses, and concludes, based on substantial evidence, that it does not. As the MND explains, the placement of the Project's single, two-way driveway for accessing its parking on North Seward Street, a local street, is both consistent with LADOT driveway placement and location per Section 321, Driveway Design, of the LADOT *Manual of Policies and Procedures*, and also reduces the number of driveways along North Seward from four to three, thereby reducing hazards to pedestrians, cyclists and other vehicles. During construction, pedestrian safety and access to sidewalks would be maintained during all phases of construction by providing, where necessary, temporary pedestrian facilities physically separated from construction activities and traffic, which facilities would be covered where necessary to protect pedestrians from falling objects.

Although related to emergency access, the MND provides relevant information at pages 195 and 196 in its discussion of how the Project would maintain emergency access during construction and operation. The Project's incorporation of PDF TR-1, a Construction Traffic Control/Management Plan Project Design Feature (not a mitigation measure), would ensure that on any streets adjacent to the Project Site where temporary lane closures may be required,



remaining traffic lanes would remain open to traffic. For operation, pre-construction LAFD plan review requirements and LADOT design standards would ensure that the Project would provide adequate access for all emergency vehicles, and the Project itself presents no hazardous design features.

For these reasons, Appellant's assertions that the Project substantially increases hazards due to a geometric design feature and incompatible uses, that transportation mitigation measures for transportation impacts fail to mitigate such impacts to less than significant, and that substantial evidence supports a fair argument that the Project may have significant transportation impacts are all incorrect, baseless and improperly ignore the substantial evidence contained in the MND. The appeal point fails to offer substantial evidence supporting a fair argument that the Project may have transportation impacts.

**APPELLANT NO. 2: Supporters Alliance for Environmental Responsibility (SAFER),  
represented by Richard Drury of Lozeau/Drury**  
**An appeal of CPC-2021-2908-ZC-HD-ZAD-WDI-SPR**

**Appeal Dated: September 16, 2022**

**SAFER Appeal Point 2-1:**

The Appellant asserts that the Project's "Site Plan Review entitlements" were approved in error, that the Project's MND fails to comply with CEQA because there is a fair argument that the Project would result in adverse environmental impacts, and that, before the Project can be approved, the City must set aside the Site Plan Review entitlements, prepare an EIR and circulate a Draft EIR.

**Response to SAFER Appeal Point 2-1:**

Appellant does not raise any specific error made by the CPC in approving the Project's "Site Plan Review entitlements." Appellant also does not raise any specific issue with respect to the content or adequacy of the MND or the Project's potential environmental effects, does not identify any specific deficiency in the information, facts, or analysis in the MND, and does not identify any abuse of discretion on the part of the CPC. As such, the appeal point constitutes argument, speculation and unsubstantiated opinion, not substantial evidence in support of a fair argument that the Project may have a significant impact on the environment. (CEQA Guidelines §§ 15064(f)(5), 15384(a).)

**SAFER Appeal Point 2-2:**

Appellant states that its specific appeal points have been set forth in its previously submitted comment letters dated April 15, 2022 and July 25, 2022. Appellant further asserts that, under *Orinda Assn. v. Board of Supervisors* (1986) 182 Cal.App.3d 1145, 1171, the City cannot approve the Site Plan Review for the Project until the full CEQA process has been completed to resolve the issues raised in Appellant's comment letters; otherwise, there is no substantial evidence supporting the City's determinations.



As an initial matter, *Orinda Assn.* does not apply here. That decision held that a demolition permit issued prior to the completion of a project's CEQA review was improperly issued because it had been improperly piecemealed from the overall development project, and, as a result, no analysis of its potential environmental impacts had been undertaken prior to its issuance. (*Orinda Assn.*, *supra*, at pp. 1171-71.) By contrast here, the CPC adopted the Project's MND, finding that there is no substantial evidence, considering the record as a whole, that the Project may have a significant effect on the environment. (LOD, p. 1.) For the reasons set forth below, Appellant has failed to offer substantial evidence in support of a fair argument that the Project may have a significant effect on the environment.

Responses to Appellant's April 15, 2022 comment letter are attached as Attachment 1. These responses, which were originally submitted into the record by letter sent via email on July 18, 2022, demonstrate that Appellant's comments in its April 15, 2022 comment letter fail to offer substantial evidence in support of a fair argument that the Project may have a significant effect on the environment.

Responses to Appellant's July 25, 2022, comment letter, submitted three days before the July 28, 2022 CPC hearing on the Project, are set forth below.

**SAFER Appeal Point 2-2-1:**

Appellant states that the letter addresses the MND for the Project. Appellant states that it previously submitted comments on the Project in its April 15, 2022 letter, and requests the City prepare an EIR because there is substantia evidence of a fair argument that the Project may have adverse environmental impacts. Appellant states that the comments in its July 25, 2022 letter have been prepared with the assistance of Deborah Jue of Wilson Irhig, described as an acoustics, noise and vibration expert, and asserts that, because there is substantia evidence of a fair argument that the Project may have adverse environmental impacts, an EIR is required.

**Response to SAFER Appeal Point 2-2-1:**

Appellant does not raise any specific issue with respect to the content or adequacy of the MND or the Project's potential environmental effects, does not identify any specific deficiency in the information, facts, or analysis in the MND, and does not identify any abuse of discretion on the part of the CPC. As such, the appeal point constitutes argument, speculation and unsubstantiated opinion, not substantial evidence in support of a fair argument that the Project may have a significant impact on the environment. (CEQA Guidelines §§ 15064(f)(5), 15384(a).)

**SAFER Appeal Point 2-2-2:**

Appellant asserts that the MND's discussion of the thresholds used by the City for determining significant construction noise impacts are unclear and unintelligible because, due to a missing paragraph break, the construction noise thresholds appear to be included in the same paragraph as the construction vibration impacts.

### **Response to SAFER Appeal Point 2-2-2:**

As Ms. Jue points out at page 1 of Exhibit A to Appellant's July 25, 2022 letter, the MND contains a typographical error on page 158, resulting in the paragraphs addressing the construction noise thresholds and construction vibration thresholds being inadvertently combined in the MND's discussion of Significance Criteria. However, the MND's subsequent discussion of the Project's potential construction noise impacts is clear, based on the thresholds identified in the MND's Significance Criteria section (pages 157-159), and supported by substantial evidence.

At pages 159 and 160, the MND assesses the existing noise environment by taking ambient noise level measurements, and describes the methodology used to do so, showing the measurement locations around the Project Site on Figure 4.1 at page 161. At pages 160 and 161, the MND reports in Table 4.15 the results of the ambient noise level measurements, which ranged from 57.5 dBA  $L_{eq}$  to 74.6 dBA  $L_{eq}$ , and notes that the noise monitoring outputs were included in Appendix G to the MND.

At page 162, the MND notes the locations of the sensitive receptors closest to the Project Site, and at pages 162 through 164, discusses the construction equipment expected to be used during construction, the noise levels that would be generated by that equipment and how the Project construction noise levels at the sensitive receptor locations were calculated. Table 4.17 at page 164 reports that Project construction noise levels would exceed the City's threshold of 5 dBA  $L_{eq}$  above daytime ambient noise levels at two sensitive receptor locations, NM2 and NM3, as the MND discusses at page 165, and would also exceed the LAMC "if feasible" limit of 75 dBA. However, as Table 4.18 on page 165 reports, with implementation of mitigation measure MM NOI-1 from page 166, requiring installation of a continuous sound barrier along the western boundary of the Project Site constructed of materials, such as ½ inch plywood, that achieves a transmission loss value of at least 14 dBA and is tall enough to break the line of sight between the Project Site and the affected library and residence, the noise levels at NM2 and NM3 would be reduced to less than significant levels under the City's 5 dBA over daytime ambient noise levels threshold. The MND also notes that MM NOI-1 would also reduce Project construction noise levels such that they would not exceed the LAMC's 75 dBA construction noise standard.

The text of the Significance Thresholds section in the Noise Analysis of the MND is corrected in the Errata to read, as follows:

#### ***"Construction Noise and Vibration***

The 2006 L.A. CEQA Thresholds Guide identifies the following criteria to evaluate construction noise:

- *Construction activities lasting more than one day would exceed existing ambient exterior noise levels by 10 dBA or more at a noise sensitive use;*
- *Construction activities lasting more than 10 days in a three-month period would exceed existing ambient exterior noise levels by 5 dBA or more at a noise sensitive use; or*

- *Construction activities would exceed the ambient noise level by 5 dBA at a noise sensitive use between the hours of 9:00 P.M. and 7:00 A.M. Monday through Friday, before 8:00 A.M. or after 6:00 P.M. on Saturday, or anytime on Sunday.*

The City currently does not have significance criteria to assess vibration impacts during construction. Thus, Federal Transit Administration (FTA) guidelines set forth in FTA's Transit Noise and Vibration Assessment, dated September 2018, are used to evaluate potential impacts related to construction vibration for both potential building damage and human annoyance. The FTA guidelines regarding construction vibration are the most current guidelines and are commonly used in evaluating vibration impacts."

The MND's analysis and the resulting significance conclusions regarding construction noise and vibration impacts are clear and firmly based on substantial evidence. Appellant's assertion that, because the discussion of construction noise and construction vibration thresholds were combined into one paragraph, the construction noise thresholds discussion is unintelligible is baseless and improperly ignores the substantial evidence contained in the MND. The appeal point fails to offer substantial evidence supporting a fair argument that the Project may have a significant environmental effect requiring the preparation of an EIR.

#### **SAFER Appeal Point 2-2-3:**

Appellant asserts that the MND's discussion of the construction noise ordinances at page 165 is confusing because it appears to adopt those ordinances as thresholds when they were not discussed under the MND's Significance Thresholds section.

#### **Response to SAFER Appeal Point 2-2-3:**

The MND creates no such confusion. As the MND reports, LAMC Section 41.40 is an absolute prohibition on construction during certain hours of the day on Mondays through Saturdays and holidays, and all day on Sundays. Project construction, like all other project construction, must and will comply with LAMC Section 41.40. As the MND reports at page 157, as well as page 165, LAMC Section 112.05 contains a construction noise standard of 75 dBA, but one that need not be met if compliance is not feasible. Notably, the LAMC 75 dBA standard is not included in the MND's Significance Thresholds section.

As discussed in Response to SAFER Appeal Point 2-2-2, above, as reported in Table 4-18 on page 165, with implementation of mitigation measure MM NOI-1 from page 166, requiring installation of a continuous sound barrier along the western boundary of the Project Site constructed of materials, such as ½ inch plywood, that achieves a transmission loss value of at least 14 dBA and is tall enough to break the line of sight between the Project Site and the affected library and residence, the noise levels at NM2 and NM3 would be reduced to less than significant levels under the City's 5 dBA above ambient daytime noise levels threshold. The MND also notes that MM NOI-1 would also reduce Project construction noise levels such that they would not exceed the LAMC's 75 dBA construction noise standard.

This analysis and the resulting significance conclusions are clear and firmly based on substantial evidence. Appellant's assertions that the MND's conclusions that Project construction noise impacts would be less than significant are not supported by substantial

evidence because it is unclear which threshold is being used and whether the LAMC's 75 dBA standard is being used as a threshold are incorrect and improperly ignore the substantial evidence contained in the MND. The appeal point fails to offer substantial evidence supporting a fair argument that the Project may have a significant environmental effect requiring the preparation of an EIR.

**SAFER Appeal Point 2-2-4:**

Appellant asserts that the City improperly concluded that off-site construction noise created by haul trucks would be less than significant and that a different noise measurement should have been used, relying on the opinion of Ms. Jue and the decision in *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4<sup>th</sup> 332, 342, where the City concluded without a traffic report that a project would have a less than significant impact on traffic because it proposed only 21 dwelling units when the threshold for a traffic report was 40 dwelling units. Appellant claims that, as a result, mitigation for these impacts is required and an EIR must be prepared to address this potentially significant impact.

**Response to SAFER Appeal Point 2-2-4:**

Appellant's appeal point consists of assertions and conclusions that are not supported by facts or substantial evidence.

The 76  $L_{max}$  dBA noise level typically generated by a haul truck was taken from Table 4.16, *Noise Range of Construction Equipment*, at page 163 of the MND. That Table reported the noise levels of construction equipment compiled by the FTA, as determined by the FHWA's Roadway Construction Noise Model (RCNM). As shown in Table 4.16, the RCNM determines construction equipment noise levels in  $L_{max}$ . The MND (page 166) identified the likely haul truck route as traveling out of the Project Site along Melrose Avenue to Normandy Avenue to the 101 Freeway.

Table 4.15 in the MND (page 160) reports the ambient noise levels at the four locations used to determine the existing noise conditions surrounding the Project Site in  $L_{eq}$ ,  $L_{max}$  and  $L_{min}$ ; three of these locations (NM1, NM2 and NM4) measured noise levels along Melrose Avenue. Therefore, when the MND assessed the Project's off-site construction noise that would be generated by its 70 haul truck trips per day (35 round trips; page 166), it compared the haul truck 76  $L_{max}$  dBA against the highest ambient noise level of 89.4  $L_{max}$  at NM4 (page 160) and concluded that the truck would not generate noise levels greater than the threshold, in this case 5 dBA above the ambient level of 89.4  $L_{max}$ . Notably, the noise levels at NM1 and NM2, the other Melrose Avenue locations, were not much lower, at 88.0  $L_{max}$  and 88.5  $L_{max}$ , respectively (page 160), so the conclusion would have been the same had those ambient levels been used. Therefore, the MND concluded, based on substantial evidence, that because each passing truck would generate a noise level of 76  $L_{max}$  dBA in an ambient noise level environment of 89.4  $L_{max}$  (or 88.0  $L_{max}$  or 88.5  $L_{max}$ ), the truck noise would not create a significant noise impact.

Further support for this conclusion is provided by the MND in Table 4.19, *Off-Site Traffic Noise Impacts – Existing with Project Conditions* (page 167). As reported there, the Existing

ADT for Melrose Avenue west of Wilcox is 10,900 and east of Wilcox is 12,510. A doubling of traffic is required to increase traffic noise by 3 dBA.<sup>11</sup> Adding the anticipated 70 daily haul trips to these numbers would not cause a significant increase in the construction-related traffic noise, as 70 trucks would represent only a 0.64 percent increase in the amount of traffic that is already traveling along the haul route. Therefore, the amount of daily haul traffic added to the haul route along Melrose Avenue would not cause a significant increase (3dBA or higher) in traffic noise.

Finally, Appellant's assumption that the haul trucks would be equivalent to "frequent vehicle passbys" is unsubstantiated and incorrect. The 70 truck trips relate to 35 haul trucks, which would travel to the Project Site, be loaded with excavated materials and then drive out to the designated land fill. This process would occur 35 times over the construction day, and would not result in frequent "passbys" along the haul route.

Further, *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4<sup>th</sup> 322, 342, cited by Appellant, does not apply to these circumstances. There, the Court of Appeal held that the City applied an arbitrary threshold that prevented it from analyzing the traffic impacts of a new, relatively small residential development, despite substantial evidence from the community that existing road conditions were already dangerous and that traffic that would be added by even the small residential development would increase the hazards. (Id. at pp. 341-342.) In that circumstance, the Court held, the City applied its threshold "in a way that foreclose[d] the consideration of any other substantial evidence showing there may be a significant effect." (Id. at p. 342.) By contrast here, the City simply compared the noise levels that would be generated by the haul trucks (taken from FTA data) against the existing ambient noise levels along Melrose Avenue, the expected haul route and a heavily traveled roadway, and concluded that the haul trucks would not be heard over the relatively high existing roadway noise.

This analysis of off-site construction noise and the resulting significance conclusions are clear and firmly based on substantial evidence. Appellant's assertions that the MND's conclusions that Project off-site construction noise impacts would be less than significant are not supported by substantial evidence and that the City should have used a different noise measurement are incorrect and improperly ignore the substantial evidence contained in the MND. The appeal point fails to offer substantial evidence supporting a fair argument that the Project may have a significant environmental effect requiring the preparation of an EIR.

#### **SAFER Appeal Point 2-2-5:**

Appellant asserts that the City's methodology used to determine the ambient noise levels was improper and violated the City's own standards, and that the City must take additional ambient noise measurements in the morning and evening in order to correctly define the ambient noise levels. Appellant asserts that, without these additional noise measurements, the MND lacks substantial evidence supporting the conclusion that Project construction noise level impacts would be less than significant.

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<sup>11</sup> See LA CEQA Thresholds Guide, page 1.2-7.



**Response to SAFER Appeal Point 2-2-5:**

Appellant's appeal point consists of conclusions that are not supported by facts or substantial evidence. Appellant mis-states Ms. Jue's statement, which merely asserts, in general, that it is purportedly "customary," not customary in her profession, to obtain a 24-hour measurement of noise to document baseline noise conditions. Appellant additionally offers a mis-reading of LAMC section 111.01(a) as supporting Appellant's position that the MND's methodology was improper, when in fact it supports the MND's methodology, and argues, as does Ms. Jue, that the noise readings taken were artificially high because they were taken mid-day, during the "lunchtime commute[].".

Appellant's appeal point is entirely incorrect. The LAMC sets forth the proper methodology for assessing ambient noise levels. LAMC section 111.02, Sound Level Measurement and Criteria, subdivision (a), provides:

- (a) Any sound level measurement made pursuant to the provisions of this chapter shall be measured with a sound level meter using the "A" weighting and response as indicated in Section 111.01(k) of this article.

Except when impractical, the microphone 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 appropriated, the latter shall be utilized.

Interior sound level measurements shall be made at a point at least four feet from the wall, ceiling, or floor nearest the noise source. Calibration of the sound level meter, utilizing an acoustic calibrator shall be performed immediately prior to recording any sound level data.

The ambient noise level and the level of a particular noise being measured shall be the numerical average of noise measurements taken at a given location during a given time period.

Significantly, LAMC section 111.01(a) defines "ambient noise" as "the composite of noise from all sources near and far in a given environment, exclusive of occasional and transient intrusive noise sources and of the particular noise source or sources to be measured. Ambient noise shall be averaged over a period of at least 15 minutes at a location and time of day comparable to that during which the measurement is taken of the particular noise source being measured.

Therefore, the City does not require 24-hour readings to establish ambient noise levels in an area. The noise levels are reported in  $L_{eq}$ , which gives the Average Sound Level over the period of the measurement, which was 15 minutes. Therefore, the ambient noise levels reported in the MND were obtained in accordance with LAMC guidance. No additional ambient noise readings to establish baseline noise levels are either warranted or required.

Further, the noise measurements were taken at a reasonable time of day, outside the peak hour traffic times and outside the times when traffic tends to be lighter. Appellant offers no evidentiary support for its bald assertion of the existence of a "lunchtime commute," or for its

implication that, even if one did exist, the traffic during such time would be less representative of the average traffic along Melrose Avenue, a high traffic street, Seward and June Streets.

The determination of the ambient noise levels and the resulting significance conclusions were proper, and are clearly described and firmly based on substantial evidence in the MND. Appellant's assertions that the MND's conclusions that Project construction noise impacts would be less than significant are not supported by substantial evidence because the ambient noise levels were improperly measured are incorrect and improperly ignore both LAMC requirements and the substantial evidence contained in the MND. Appellant offers no substantial evidence supporting its claims that the MND improperly determined the ambient noise levels. As such, Appellant offers no substantial evidence supporting its claim that the MND is inadequate under CEQA and that substantial evidence supports a fair argument that the Project may have significant impacts on the environment, but only argument, speculation and unsupported opinion. (See, e.g., CEQA Guidelines §§ 15064(e)(5), 15384(a).) The appeal point fails to offer substantial evidence supporting a fair argument that the Project may have a significant environmental effect requiring the preparation of an EIR.

#### **SAFER Appeal Point 2-2-6:**

Appellant asserts that the MND lacks substantial evidence supporting the efficacy and feasibility of the sound barrier required by the feature incorporated into the Project and described in the MND as mitigation measure MM NOI-1. Appellant claims the barrier would have to be up to 26 feet tall and be supported with a "substantial foundation." Relying on *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727, Appellant claims that because there is no substantial evidence that such a barrier is both feasible and would reduce the potentially significant impact, the MND lacks substantial evidence supporting its conclusion that Project construction noise impacts would be less than significant.

#### **Response to SAFER Appeal Point 2-2-6:**

Contrary to Appellant's assertion, sound barriers in general are an accepted means of reducing construction noise and are frequently employed by construction projects in the City for this purpose. See, for example, LAMC section 112.05, which lists sound barriers among the list of feasible measures that can be employed to reduce construction noise to the City standard of 75 dBA.

Further, substantial evidence supports both the efficacy and the feasibility of the sound barrier required by the feature incorporated into the Project and described in the MND as mitigation measure MM NOI-1. The use of an acoustical curtain, as a temporary construction noise barrier that blocks the line-of-sight between construction activities and receptors can reduce noise impacts by up to 32 dBA.<sup>12</sup> Therefore, the conclusion that requisite level of mitigation can be achieved with use of a sound blanket/curtain is supported by substantial evidence, and that curtain can be hung on a frame to achieve whatever height is necessary to block the line-of-sight. Impacts remain less than significant with the incorporation of MM NOI-1.

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<sup>12</sup> Source: <https://www.acousticalsolutions.com/curtain-stop/sound-blankets.htm>

Appellant's assertions that that sound barrier would have to be up to 26 feet tall and must be supported by a substantial foundation are pure speculation, since the library and the adjacent residence are both one story structures. The sound barrier need only block the line of sight to these structures.

Further, Ms. Jue's opinion, upon which Appellant's appeal point is based, is founded on mere argument, speculation and unsubstantiated opinion, not substantial evidence. (CEQA § 15064(e)(5); CEQA Guidelines § 15384(a).) Ms. Jue does not set forth her calculations based on the Project and the Project Site. Rather, she speculates that, under certain circumstances that she fails to describe, "[d]epending on source height and proximity to the sound barrier, our calculations suggest..." that the sound barrier may have to be as tall as 26 feet, and that it "could" require a substantial foundation, the details of which she also fails to describe. Ignoring the features incorporated into the Project described in the MND as MM NOI-2, which prohibits heavy construction equipment from operating within 80 feet of the façade of the residential use and 63 feet of the façade of the historic library located west of the western boundary of the Project Site, and MM NOI-3, which prohibits heavy construction equipment from operating within 21 feet of the historic library, Ms. Jue also claims that the sound barrier would have to be more protective if heavy construction equipment were to operate "for a substantial portion of the construction work" within 15 feet of the sound barrier. As such, Ms. Jue offers only speculation and unsubstantiated opinion that ignores the substantial evidence contained in the MND, but does not offer substantial evidence supporting a fair argument that MM NOI-1 would not reduce the Project's potential construction impacts to a less than significant level.

Therefore, the MND's analysis and the resulting significance conclusions are clear and firmly based on substantial evidence, and substantial evidence supports the feasibility and effectiveness of MM NOI-1. Appellant's assertions that the MND's conclusions that Project construction noise impacts would be less than significant are not supported by substantial evidence because the MND contains no substantial evidence that MM NOI-1 is either effective or feasible are incorrect, constitute mere argument, speculation and unsupported argument, and improperly ignore the substantial evidence contained in the MND. The appeal point fails to offer substantial evidence supporting a fair argument that the Project may have a significant environmental effect requiring the preparation of an EIR.

#### **SAFER Appeal Point 2-2-7:**

Appellant asserts that the MND lacks substantial evidence that the Project can be constructed completely and comply with the terms of MM NOI-2 and MM NOI-3.

#### **Response to SAFER Appeal Point 2-2-7:**

MM NOI-2 (addressing potential human annoyance due to construction vibration) and MM NOI-3 (addressing potential structural damage due to construction vibration), which are features incorporated into the Project but are described in the MND as mitigation measures, prevent the construction contractor from using heavy construction equipment within certain distances from the façade of the library and residence adjacent to the western boundary of the Project Site and from the commercial building to the north of the Project building within the Project Site. As the MND states, repeatedly, the Applicant agreed to incorporate these and the other mitigation measures into the Project as design features before the MND was released for public review. As discussed at pages 169 through 175 of the MND, the Project's incorporation

of these features, together with PDF NOI-1 (prohibition against the use of pile drivers), would reduce potential construction vibration impacts to less than significant levels.

The Applicant has incorporated these features into the Project, and these features are included in the Mitigation Monitoring Plan, which begins at page 239 of the MND, and requirements for their monitoring and enforcement are provided there. Therefore, the Project is legally bound to comply with these features during construction. Whether or not the Project can be constructed “completely” and comply with MM NOI-2 and MM NOI-3 is not an issue under CEQA that the MND is required to address, much less support with substantial evidence.

Therefore, Appellant’s assertion that the MND must contain substantial evidence showing that the Project can be constructed completely while at the same time complying with MM NOI-2 and MM NOI-3 does not address a CEQA requirement. The appeal point fails to offer substantial evidence supporting a fair argument that the Project may have a significant environmental effect requiring the preparation of an EIR.

#### **SAFER Appeal Point 2-2-8:**

Appellant asserts that the MND fails to provide details regarding how effective MM NOI-1, MM NOI-2 and MM NOI-3 would be. Appellant also claims that, because none of these measures is included as “Conditions of Approval,” none should be included as part of the Project’s impact analysis.

#### **Response to SAFER Appeal Point 2-2-8:**

Appellant again ignores the substantial evidence in the MND, which does provide information regarding the effectiveness of these measures. At page 166 of the MND, the statement of MM NOI-1 contains the specific requirements for the sound barrier and the standard it must achieve: it must be tall enough to break the line-of-site between Project construction activities and the adjacent library and residential use (the two sensitive noise receptors identified as potentially significantly impacted); it must be constructed of materials that would reduce the construction noise levels experienced by these off-site sensitive uses by at least 14 dBA, such as ½ inch plywood; and its supporting structure must be engineered and erected according to applicable codes. In footnote 103, the recommended the use of ½ inch plywood is supported by a citation to Table 3 in the FHWA Noise Barrier Handbook (July 2011), which provides data that ½ inch plywood provides a transmission loss of 20 dBA. (See *Tracy First v. City of Tracy* (2009) 177 Cal.App.4<sup>th</sup> 912, 933-34 [EIR’s statement that project would exceed Title 24’s required energy efficiency standards was sufficient evidence to show the project would have a less than significant impact regarding wasteful, inefficient and unnecessary energy consumption]; see also, *Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4<sup>th</sup> 884, 906 [compliance with regulations is a common and reasonable mitigation measure].)

MM NOI-2 (addressing potential human annoyance due to construction vibration) and MM NOI-3 (addressing potential structural damage due to construction vibration) prevent the construction contractor from using heavy construction equipment within certain distances from the façade of the library and residence adjacent to the western boundary of the Project Site and from the commercial building to the north of the Project building within the Project Site. At pages 169 through 175 of the MND, the MND reports (i) the vibration levels produced by

specific heavy equipment, (ii) the threshold vibration levels above which humans within the structures adjacent to the Project Site will experience significant human annoyance impacts, (iii) the threshold vibration levels the types of structures adjacent to the Project Site will experience significant structural damage impacts, and (iv) the distances from the structures adjacent to the Project Site where vibration levels would be below these threshold levels. The distances set in MM NOI-2 were set based on the analysis of human annoyance vibration impacts, to ensure that the vibration from heavy construction equipment would not result in significant human annoyance vibration impacts. The distances set in MM NOI-3 were set based on the analysis of structural damage vibration impacts, and NOI-3 together with PDF NOI-1 ensure that the vibration from heavy construction equipment would not result in significant structural damage vibration impacts. Therefore, the MND does in fact contain details – substantial evidence – proving the effectiveness of MM NOI-2 and MM NOI-3, which substantial evidence Appellant has ignored.

Finally, it is unclear what Appellant means that MM NOI-1, MM NOI-2 and MM NOI-3 should not be included in the Project's impact analysis since they are not "Conditions of Approval." These measures, together with PDF NOI-1, are included in the Mitigation Monitoring Program, which begins at page 239 of the MND, and requirements for their monitoring and enforcement are provided there.

Therefore, the MND's noise and vibration impacts analyses and the resulting significance conclusions are clear and based on substantial evidence. Appellant's assertions that the MND's conclusions that Project construction noise and vibration impacts would be less than significant are not supported by substantial evidence are incorrect, constitute mere argument, speculation and unsupported argument, and improperly ignore the substantial evidence contained in the MND. The appeal point fails to offer substantial evidence supporting a fair argument that the Project may have a significant environmental effect requiring the preparation of an EIR.

#### **SAFER Appeal Point 2-2-9:**

Appellant asserts that MM NOI-2 is inconsistent with the text of the MND at page 175, and should be corrected to include a prohibition against the use of excavators, as well.

#### **Response to SAFER Appeal Point 2-2-9:**

The language of MM NOI-2 will be corrected to include a prohibition against the use of excavators, as well. As corrected, MM NOI-2 will read, as follows:

**MM NOI-2:** The construction contractor shall not use excavator, large bulldozer or caisson drill within 80 feet of the façade of the residential use located west of the Project Site at 716 North June Street and within 63 feet of the façade of the John C. Fremont Branch Library located west of the Project Site.

#### **SAFER Appeal Point 2-2-10:**

Appellant asserts that the MND proposes a traffic management plan to mitigate off-site truck noise to less than significant levels, but fails to provide evidence demonstrating that noise levels would in fact be reduced.



**Response to SAFER Appeal Point 2-2-10:**

The MND does not propose a traffic management plan to mitigate potentially significant off-site truck noise impacts. The MND concludes, at page 166, that potential off-site construction noise impacts created by trucks would be less than significant and no mitigation is required. At pages 194 and 915, the MND lists Transportation Demand Management strategies, incorporated into the Project as PDF TR-1 (reduced parking and bicycle infrastructure) and other as MM TR-2 (education and encouragement, commute trip reductions), that reduce the Project's Vehicle Miles Traveled, but that have nothing to do with off-site noise impacts.

Therefore, the appeal point fails to offer substantial evidence supporting a fair argument that the Project may have a significant environmental effect requiring the preparation of an EIR.

**SAFER Appeal Point 2-2-11:**

Appellant claims that the MND's assertion that on-site stationary noise sources must comply with LAMC requirements is not sufficient unless the LAMC requirement is included in the MMP and that the MND should contain evidence that such compliance with this "City threshold" is feasible.

**Response to SAFER Appeal Point 2-2-11:**

The MND explains that, like all other HVAC units and exhaust fans installed in the City, the Project's HVAC units and exhaust fans must comply with LAMC section 112.02(a), which requires that such equipment produce noise levels at other occupied premises of no higher than 5 dBA above ambient noise levels. This is a standard, mandatory code requirement in the City that applies to all HVAC units and exhaust fans, except in the case of emergency or periodic maintenance or testing (see LAMC section 112.02(b)). It is not mitigation. This code requirement is routinely met and, if not met, the unit will not pass the City's inspection. Thus, there is no need for compliance to be imposed through mitigation, and the feasibility of the requirement is obvious. (See *Tracy First v. City of Tracy* (2009) 177 Cal.App.4<sup>th</sup> 912, 933-34 [EIR's statement that project would exceed Title 24's required energy efficiency standards was sufficient evidence to show the project would have a less than significant impact regarding wasteful, inefficient and unnecessary energy consumption].)

**SAFER Appeal Point 2-2-12:**

Appellant repeats its claim that the MND is inadequate for the reasons stated in its July 25, 2022 and its April 15, 2022 letters, and asks that the City prepare an EIR to fully analyze and mitigate the Project's significant adverse environmental impacts.

**Response to SAFER Appeal Point 2-2-12:**

For the reasons set forth in Responses to SAFER Appeal Points 2-1, 2-2 and 2-2-1 through 2-2-12, inclusive, the MND is adequate and contains substantial evidence supporting its analyses and significance conclusions, and Appellant's appeal points fail to offer substantial evidence supporting a fair argument that the Project may result in potentially significant environmental impacts.

**SAFER Appeal Point 2-2-13:**

Ms. Jue of Wilson Ihrig states she has reviewed the MND for the Project and generally describes the Project.

**Response to SAFER Appeal Point 2-2-13:**

The appeal point is an introduction to the letter, but does not raise any specific issue with respect to the content or adequacy of the MND or the Project's potential environmental effects, does not identify any specific deficiency in the information, facts, or analysis in the MND, and does not identify any abuse of discretion on the part of the City Planning Commission. As such, the appeal point constitutes argument, speculation and unsubstantiated opinion, not substantial evidence in support of a fair argument that the Project may have a significant impact on the environment. (CEQA Guidelines §§ 15064(f)(5), 15384(a).)

**SAFER Appeal Point 2-2-14:**

Ms. Jue states there is a typographical error at page 158 of the MND under Significance Thresholds, where a paragraph break is missing that would separate the discussion of construction noise thresholds from construction vibration thresholds. Ms. Jue copied the paragraph into her letter.

**Response to SAFER Appeal Point 2-2-14:**

Ms. Jue is correct; there should be a paragraph break after the first sentence and before the second sentence of the identified paragraph.

**SAFER Appeal Point 2-2-15:**

Ms. Jue notes that, at page 164, the MND discusses LAMC section 112.05, but does not include its 75 dBA standard in its Significance Thresholds section, and claims that, as a result, it is not clear whether the MND is using the 75 dBA standard as a significance threshold in the noise analysis.

**Response to SAFER Appeal Point 2-2-15:**

Please see Response to SAFER Appeal Point 2-2-3, above.

**SAFER Appeal Point 2-2-16:**

Ms. Jue challenges the use of short-term noise measurements for documenting the ambient daytime noise levels in the Project Site area, and claims that at least one 24-hour measurement should have been taken. As a result, Ms. Jue asserts, the Applicable Standards in Table 4.17, which represent 5 dBA above the measured daytime ambient noise levels "are not suitably selected to determine **potential** significance from construction activities." (Emphasis added.)

**Response to SAFER Appeal Point 2-2-16:**

Please see Response to SAFER Appeal Point 2-2-5, above.

**SAFER Appeal Point 2-2-17:**

Ms. Jue repeats her contention that the MND is confusing on whether the LAMC section 112.05 “if feasible” 75 dBA construction noise standard is a significance threshold, and asserts that it should be considering the requirements for an MND set forth in CEQA Guidelines section 15070(b). Ms. Jue also asserts that the impact analyses are incomplete because they do not consider the potential for construction noise levels to exceed 75 dBA to be a significant impact.

**Response to SAFER Appeal Point 2-2-17:**

Please see Response to SAFER Appeal Point 2-2-3, above.

Additionally, the MND repeatedly states that the Applicant has agreed to incorporate each of the identified mitigation measures and project design features into the Project as Project features, as required by CEQA Guidelines section 15070(b), and the MND concludes, based on substantial evidence, that the Project would have a less than significant, or no, impact on the environment with the incorporation of these features.

Under Significance Thresholds, the MND’s Noise analysis clearly omits the 75 dBA standard set forth in LAMC section 112.02 from its listed noise thresholds, and does not use that standard in its analysis of the Project’s potentially significant noise impacts (see, e.g., Tables 4.17 and 4.18 at pages 164 and 165). However, the analysis does note, at pages 164 through 166, that unmitigated construction noise at NM2 (library) and NM 3 (residential use) would be significant both under the 5 dBA over ambient noise levels used as the threshold and under the LAMC section 112.02 75 dBA standard, but that with the Project’s incorporation of MM NOI-1, mitigated construction noise levels at those locations would not exceed thresholds or the LAMC 75 dBA standard.

Therefore, while the MND considers the significance of Project construction noise levels in comparison to the chosen thresholds, it also considers Project construction noise levels in comparison to the LAMC’s 75 dBA standard, which the Project can feasibly meet with the implementation of MM NOI-1. Thus, the MND contains the information Ms. Jue asserts the MND should contain.

**SAFER Appeal Point 2-2-18:**

Ms. Jue challenges the ambient noise measurements the MND uses to conclude that off-site construction noise would be less than significant, and claims that different noise measurements should have been used that would have shown that off-site construction noise would be significant and require mitigation.

**Response to SAFER Appeal Point 2-2-18:**

Please see Response to SAFER Appeal Point 2-2-4, above.

**SAFER Appeal Point 2-2-19:**

Ms. Jue asserts that the MND contains no substantial evidence that the sound barrier called for by MM NOI-1 would be feasible. She speculates that, depending upon the height of the construction equipment and its distance from the sound barrier, the barrier may have to be up to 26 feet tall with a substantial foundation, and if heavy equipment were operating within 15 feet of the barrier for “a substantial portion of the construction work,” the barrier “should provide STC 40 or greater.”

**Response to SAFER Appeal Point 2-2-19:**

Please see Response to SAFER Appeal Point 2-2-6, above.

**SAFER Appeal Point 2-2-20:**

Ms. Jue claims that because off-site truck noise would be significant, a traffic management plan would be required to limit truck noise, and that it would be possible to reduce the impact by including truck routes, speed controls and limits on revving, but that the MND must provide the necessary evidence.

**Response to SAFER Appeal Point 2-2-20:**

Please see Response to SAFER Appeal Point 2-2-4, above. The MND concludes, based on substantial evidence, that the Project’s off-site construction noise impacts from trucks would be less than significant. Therefore, Ms. Jue’s assertions that the impact would be significant and would require mitigation, and the potential contents of that mitigation, constitute argument, speculation and unsubstantiated opinion, not substantial evidence in support of a fair argument that the Project may have a significant impact on the environment. (CEQA Guidelines §§ 15064(f)(5), 15384(a).)

**SAFER Appeal Point 2-2-21:**

Ms. Jue claims that the MND’s assertion that on-site stationary noise sources must comply with LAMC requirements is not sufficient unless the LAMC requirement is included in the MMP and that the MND should contain evidence that such compliance with this “City threshold” is feasible.

**Response to SAFER Appeal Point 2-2-21:**

Please see Response to SAFER Appeal Point 2-2-11, above.

**SAFER Appeal Point 2-2-22:**

Ms. Jue asserts that the MND provides no evidence that the buffer distances required in MM NOI-2 and MM NOI-3 would still be viable for the Project to be constructed.

**Response to SAFER Appeal Point 2-2-22:**

Please see Responses to SAFER Appeal Points 2-2-7 and 2-2-8, above.



**SAFER Appeal Point 2-2-23:**

Ms. Jue concludes by summarizing most of the points raised in her letter to Lozeau/Drury, LLP.

**Response to SAFER Appeal Point 2-2-23:**

Please see Responses to SAFER Appeal Points 2-2-13 through 2-2-22, inclusive, above.

For the reasons set forth in Responses to HPHOA Appeal Points 1-1 through 1-9 and SAFER Appeal Points 2-1, 2-2, and 2-2-1 through 2-2-23, inclusive, the CPC's findings in support of the Project's Site Plan Review Approval were supported by substantial evidence and property, and the Project's MND is adequate and contains substantial evidence supporting its analyses and significance conclusions. Appellant's appeal points fail to offer substantial evidence supporting a fair argument that the Project may result in potentially significant environmental impacts.

Thank you for the opportunity to submit these responses. EcoTierra Consulting, Inc. is available to address any questions you may have with respect to the responses. Please feel free to contact me at (213) 235-4774, or by email at [jenny@ecotierraconsulting.com](mailto:jenny@ecotierraconsulting.com).

Sincerely,

A handwritten signature in black ink, appearing to read "Jenny Mailhot", is positioned above the typed name.

**Jenny Mailhot, Project Manager**

633 W. 5<sup>th</sup> Street, 26<sup>th</sup> Floor  
Los Angeles, California 90071  
(213) 235-4774 (direct line)

[jenny@ecotierraconsulting.com](mailto:jenny@ecotierraconsulting.com)