January 17, 2023 *Via E-Mail*

Councilmember Marqueece Harris-Dawson, Chair
Planning and Land Use Management Committee
c/o Candy Rosales, City Clerk
200 North Spring Street
Los Angeles, California 90012
clerk.plumcommittee@lacity.org
candy.rosales@lacity.org

RE: CF-22-0652 - 2345 S. Santa Fe Avenue, Los Angeles, CA 90058
Case No: ENV-2019-7193-CE-2A; Related Case No: ZA 2019-7192-ZAD-1A;
AGENDA ITEM 10 – January 17, 2023 - Supplemental Response to Appeals

Honorable Chair Harris-Dawson and Members of the Planning and Land Use Committee:

Three6ixty represents the Applicant, Art Colony Property LLC ("Applicant"), and owner of the property located at 2349 S. Santa Fe Avenue, Los Angeles, CA 90058 ("Project Site") that is the subject of Case No. ENV-2019-7193-CE-2A and related Case No. ZA 2019-7192-ZAD- 1A. We write this letter to further supplement the Applicant's prior responses and enclosures dated as of October 21, 2022 and November 29, 2022, which are already a part of the record and are hereby incorporated by reference.

Most importantly, we wish to thank staff for their detailed and thorough analysis of the issues raised in the appeals. They have concluded—as did the Zoning Administrator and the Area Planning Commission before them—that the Project is exempt from the California Environmental Quality Act ("CEQA") pursuant to CEQA Guidelines Section 15332, Class 32, and that there is no substantial evidence demonstrating that any potential exception to the Class 32 categorical exemption applies in this case.

As further support for staff's conclusion, we also submit for the record a copy of the most recent letter provided to the Los Angeles Regional Water Quality Control Board ("Water Board") on behalf of the Applicant, which relates to ongoing operation of a sub-slab depressurization system at the Project Site. As is common in numerous other similarly situated properties throughout the City of Los Angeles and in other urbanized areas, this sub-slab depressurization system is overseen by the Water Board and is intended to remediate the potential for vapor intrusion from off-site sources of contamination into indoor air.

Neither the Appellant's most recent correspondence regarding the Water Board's ongoing oversight of the sub-slab depressurization system, nor the Water Board's correspondence from this morning describing their ongoing activities with respect to the Project Site, affect the City's prior CEQA conclusions in any way.

In short, and contrary to the Appellant's claims:

- there is no provision of CEQA or the CEQA Guidelines that precludes the use of the Class 32 Categorical Exemption simply because remediation of pre-existing environmental conditions is necessary, let alone where remediation is already underway pursuant to Water Board oversight. As previously detailed in staff's analysis, CEQA Guidelines

Section 15300.2 contains a narrow exception which provides that Categorical Exemptions are not to be used on a specific listing of hazardous sites (known as the "Cortese List") that is compiled pursuant to Government Code Section 65962.5. Staff's analysis, and the record before you, confirms that the Project Site is "**not** on this list. Therefore, this hazardous waste exception to the use of the Categorical Exemption does not apply." (Emphasis added.) Accordingly, the Class 32 Categorical Exemption remains fully appropriate.

- the Appellant's most recent submittal, and the follow-on letter from the Water Board, highlight that the Applicant's (pre-existing, and pro-active) remediation efforts are subject to separate oversight by the State of California acting by and through the Water Board. The Water Board is actively engaged on this issue. The *most current* testing data (which was previously provided for the City's record as part of the Applicant's October 21, 2022 Appeal Response) demonstrates that the sub-slab depressurization system is performing as intended. As noted in your staff's analysis, "*importantly, specifically with respect to the warehouse building [where the additional Joint Living and Working Quarters will be located], indoor air samples were consistently below the commercial and residential environmental screening levels*." (Emphasis added.)

- As further described in the attached correspondence, the testing data supplied by the Appellant to the Water Board and to this Committee is outdated, incomplete, and misleading. Among other errors, Appellant's testing data: (a) acknowledges, but fails to account for, numerous indoor sources of volatile organic compounds (VOCs); (b) fails to acknowledge that subsequent testing of vacant basement units, which had been cleared of indoor sources, were consistently below environmental screening levels. This indicates that the noted compounds were due to such indoor sources, and not due to environmental sources; (c) further indicates that indoor sources were likely the cause of the detected compounds because only 2 of the 5 tested apartment units showed exceedances of PCE—if vapor intrusion from sub-surface sources were a concern, consistently high levels would be expected in all apartments; and (d) includes a different mix of detected compounds than had previously been detected in the soil. This demonstrates conclusively that the compounds indicated in Appellant's report are a result of indoor sources, and are not a result of vapor intrusion from environmental sources.

- None of these Water Board-related matters are properly the subject of the narrow appeal before this Committee, which relates solely to whether the project meets the criteria for the Class 32 Categorical Exemption. All of Applicant's objections, even if they were based on accurate data (which they are not), relate to the theoretical impacts of the environment on the project, and not of the project on the environment. *This is the opposite of what CEQA requires*. As described by the California Supreme Court in *California Building Industry Association v. Bay Area Air Quality Management District* (2015) 62 Cal.4th 369, "CEQA's text, statutory structure, and purpose" indicate that agencies are not required to analyze the impact of existing environmental conditions on a project's future residents. Such matters are already subject to detailed regulatory

structures, as evidenced by the correspondence already submitted to the Committee, . These theoretical impacts do not alter the City's proper conclusion that the project fully satisfies each and every one of the criteria for the Class 32 Categorical Exemption for infill development.

In closing, we fully concur with staff's recommendation that the appeals of ENV-2019-7193-CE be denied in their entirety. The last-minute correspondence provided by the Appellant does not alter this analysis. We respectfully request that the Committee deny the appeals, without delay, at your meeting of January 17, 2023.

Sincerely,

Dana A. Sayles, AICP
Applicant Representative

Cc: Council District 14
Jonathan Hershey, Associate Zoning Administrator
Rogelio Navar, Fifteen Group
Amy Forbes, Gibson, Dunn & Crutcher LLP

EXHIBITS:
1) January 13, 2023 Letter from P. Modlin to the Regional Water Quality Control Board

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January 13, 2023

VIA E-MAIL

Hugh Marley
Los Angeles Regional Water Quality Control Board
320 West 4th Street, Suite 200
Los Angeles, CA 90013

Re: Review of Indoor Air Sampling Report Pursuant to California Water Code Section 13267 Order

Dear Mr. Marley:

I write on behalf of Art Colony Property LLC ("Art Colony") in response to your letter dated December 22, 2022, in which you demand that Art Colony submit a vapor intrusion assessment workplan. We appreciate your agreement to meet with us on February 1 to discuss this request. To assist in your preparation for that meeting, below we describe our concerns with the Regional Board's December 22 letter.

We believe that the Regional Board has failed to provide any credible technical basis for requesting a vapor intrusion assessment workplan, because the data clearly shows the existing sub-slab depressurization system is mitigating any risk of vapor intrusion. Nor is there any legal basis to demand that Art Colony perform any investigation of impacts from subsurface VOCs, because the source of those VOCs is likely on adjoining properties for which Art Colony has no legal responsibility.

Art Colony became the owner of the Santa Fe Art Colony ("SFAC") property in June 2018. Promptly upon acquiring the property, Art Colony engaged AEI Consultants to design, install and operate a sub-slab depressurization system to mitigate the potential for vapor intrusion from PCE in the soil gas, from off-site sources, into indoor air. This system has operated continuously since April 2019. Art Colony has undertaken these activities voluntarily and at considerable expense, despite the fact that investigations conducted to date show the likely source of PCE is from adjoining properties and not from the SFAC property.

In an order dated May 20, 2022 ("Order"), the Regional Board directed Art Colony to submit certain documentation relating to AEI's work and other information, which Art Colony provided to the Regional Board on July 21, 2022. Included in this submission was a July 21, 2022 Sub-Slab Depressurization System ("SSDS") Performance Report. This report included data on indoor air testing and vacuum measurements which showed that the system was operating as intended to mitigate the potential for vapor intrusion into indoor air.

Your December 22 letter seeks to require a new vapor intrusion investigation, but fails to even mention, much less discuss, any of the voluminous materials submitted by Art Colony in response to the Order. In particular, your December 22 letter ignores the SSDS performance report, which shows that the requested investigation is unnecessary. Instead, your letter relies exclusively on a report prepared by GeoEnviro Services, Inc. ("GES") on behalf of the Eviction Defense Network, apparently in support of ongoing litigation brought by tenants of Art Colony.

This litigation originated when a group of SFAC tenants refused to pay rent. Art Colony was forced to bring legal action to evict them, which has been successful. In response, these same tenants have brought multiple lawsuits against Art Colony, in which they have attempted to use the pre-existing environmental conditions for leverage. It now appears that these same litigants are attempting to involve the Regional Board as a way of manufacturing evidence to support their legal claims.

As noted, your December 22 letter relies solely on a report that appears to have been generated for the tenants to use in their litigation. Specifically, your letter states: "[t]he [GES] Report indicated that the VOCs present in indoor air may be due to soil vapor intrusion through the building foundation and/or basement walls into indoor air. . . . Based on the data and information provided in the [GES] Report, [Art Colony is] required to submit a comprehensive Vapor Intrusion Assessment Work Plan . . ."

Your December 22 letter does not explain why it entirely ignores the documentation showing the SSDS is operating properly and instead relies on a third party's litigation report. Moreover, the GES report contains a number of obvious defects that are adopted without question by your December 22 letter, including among others the following:

First, the GES report identifies numerous potential indoor sources of the VOCs detected in indoor air, and then assumes they did not contribute to the detections, an assumption adopted by your December 22 letter. This assumption is directly contradicted by subsequent testing performed in vacant basement units that had been cleared of all indoor sources. This sampling, which is included in the July 2022 SSDS performance report, shows PCE levels consistently below screening levels once the indoor sources were removed.

Second, the indoor air data reported by GES, on its face, does not support the conclusion that there is potential vapor intrusion. For example, the GES report includes indoor air data for five apartments in the basement of building 2401. If vapor intrusion were a concern, we would expect to see consistently high levels of PCE in all of these apartments. But only two of the five apartments had PCE detections above screening levels, and three were non-detect for PCE. GES makes no effort to explain how this data could be consistent with its conclusions, and neither does your December 22 letter.

Third, and most troubling, GES fails to include any comparison of the soil vapor data to the indoor air data, rendering its conclusion that there is potential intrusion of soil vapor into indoor air invalid on its face. Had GES included such a discussion, it would have been immediately apparent that there were significant indoor sources of VOCs, which may explain why GES omitted this critical data.

GES reported that the following VOCs were detected in indoor air at higher concentrations than in outdoor air: acetone, benzene, ethylbenzene, toluene, and xylenes. Based on these results, GES suggested that there was potential for vapor intrusion, a conclusion that your December 22 letter uncritically adopted.

What GES did not mention, and what your December 22 letter also ignores, is that in 21 soil gas samples taken at the Art Colony Property in 2020, there were zero detections of acetone, ethylbenzene, and xylenes. And while there were a handful of detections of toluene and benzene in the deeper soil gas samples, there were none in the shallow samples. This soil gas data, which was submitted to the Regional Board by Fulcrum Resources Environmental in September 2020, demonstrates conclusively that these VOCs were present in indoor air as a result of indoor sources, not because of vapor intrusion.[1]

For these reasons, the litigation-related opinions offered by GES are wholly unreliable. The Regional Board's demand for a further investigation, which was based solely on the GES report, therefore lacks any legitimate basis.

Even if the Regional Board could articulate a technical basis for a further investigation, it has no authority to demand Art Colony to perform it. As you no doubt are aware, investigations have indicated that adjacent properties are the likely source for this contamination, and those properties are already under Regional Board oversight. While you acknowledge this in a separate letter dated December 28, you also suggest in that letter that because the SFAC property was part of a larger parcel that included the adjacent properties ***prior*** to Art Colony's ownership, then Art Colony is somehow a responsible party for contamination originating at those adjacent properties that Art Colony never owned. As you surely must realize, there is no legal basis for this suggestion. If the Regional Board desires further investigation of that contamination, it should direct the actual responsible parties for the contamination source to conduct that investigation.

[1] We note as well that GES reported no detections of PCE in ambient air, which is inconsistent with EKI's detection of significant PCE levels in ambient air. This discrepancy calls into question the reliability of GES's ambient air samples.

Sincerely,

Peter S. Modlin

PSM/pjb

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