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Comments for Public Posting: Response to SAFER Appeal – Case No.
CPC-2021-8442-CU-DB-SPR-HCA; CEQA Case No.:
ENV-2008-1781-EIR; ENV-2021-8443-EAF



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VIA EMAIL ONLY

Planning and Land Use Management Committee
Los Angeles City Council
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Councilmember Katy Yaroslavsky
Councilmember John S. Lee
Councilmember Heather Hutt
City Hall, Room 340
Los Angeles, CA 90012

**RE: Response to SAFER Appeal – Case No. CPC-2021-8442-CU-DB-SPR-HCA;
CEQA Case No.: ENV-2008-1781-EIR; ENV-2021-8443-EAF**

Honorable Councilmembers:

This firm represents 2231 Western (LA), LLC (“Applicant”) the owner of the certain real property commonly referred to as 2201-2231 South Western Avenue and 2003-2029 24th Street (the “Property”). The Property contains approximately 164,849 square feet of lot area and is situated on the west side of Western Avenue between 24th Street and Interstate 10.

Portions of the Property are currently improved with (a) a 60-unit residential structure that has received a certificate of occupancy and is occupied (the “Existing Structure”) and (b) a separate 48-unit residential structure for which a building permit has been issued and is currently under construction (the “Under-Construction Structure”). The Property’s remaining lot area (100,112 square feet) is vacant and has been utilized as a parking lot (the “Vacant Portion”). Applicant proposes to utilize the Vacant Portion to construct an eight story, 364 dwelling unit mixed use structure with approximately 70,220 square feet of retail floor area and 514 parking spaces located in one below grade level and four partial above-grade levels (the “Project”). The

Project will also include various residential amenities including landscaped courtyards, decks, indoor amenities, pools, and private balconies. On February 9, 2023, the City Planning Commission (“CPC”) unanimously approved the Project, and the Letter of Determination (“LOD”) regarding the Project was mailed on April 25, 2023.¹ The Project also received strong support from the community, who praised the Project for making various adjustments and changes following community input during multiple community outreach meetings. Despite the near unanimous support for the Project by the surrounding community and the CPC, the Project was appealed by Supporters Alliance for Environmental Responsibility (“SAFER”), following its submission of multiple comment letters throughout the Project’s approval process before the CPC.

In large part, the SAFER Appeal reasserts claims and allegations raised in comment letters dated November 29, 2022 (“November Letter”), and February 6, 2022 (“February Letter”). In a letter dated January 31, 2022, we submitted detailed responses to the November Letter (“Applicant’s Response Letter”). A copy of Applicant’s Response Letter is attached hereto as Exhibit “A.” All responses to comments set forth in Applicant’s Response Letter are incorporated herein by reference. SAFER’s appeal justification is essentially the same as the February Letter. In its appeal letter, SAFER attached the February Letter as its justification for appeal. As the February Letter has been submitted as both a comment letter and as SAFER’s justification for appeal, this letter responds to the SAFER’s comments in both capacities (collectively hereinafter the “Appeal” or “Appeal Letter”).²

In its Appeal, SAFER makes a number of arguments. Specifically, SAFER claims that: (1) an Environmental Impact Report (“EIR”) is required because the City’s analysis of hazards and hazardous materials is inadequate; (2) an EIR is required because the Project will have significant air quality, health risk, and greenhouse gas emissions impacts; and (3) that the Project requires a tiered EIR because the significant and unavoidable impacts identified in the 2017 EIR will remain significant with the implementation of the Project.

As detailed below, all SAFER’s claims are unfounded, and can be disregarded, as none of SAFER’s claims amount to substantial evidence against the Project’s CEQA approval. Additionally, Meridian Consultants, Applicant’s CEQA consultants, prepared a letter responding to SAFER’s February Letter, which is attached hereto as Exhibit “B.” Additionally, Meridian has prepared a letter responding to SAFER’s Appeal (the “Meridian Letter”), which is attached hereto as Exhibit “C” and incorporated herein by reference.

¹ Three members of the CPC were not present during the vote. The five members present unanimously voted in favor of the project.

² SAFER submitted an additional letter on June 12, 2023, raising two additional claims regarding noise and formaldehyde exposure. As both claims are entirely technical and no new legal issues have been raised in the June 12 letter, we do not address those comments herein. Meridian Consultants has prepared a technical response to SAFER’s June 12 letter, which has been submitted concurrently with this letter.

I. The Substantial Evidence Standard of Review Applies to the City's Factual Determination that a Subsequent EIR is not Required

The Project qualifies as “later activities” of a Program EIR as defined by CEQA Guidelines Section 15168(c) and the City has evaluated the Project and determined that the environmental effects of the Project are within the scope of the 2017 EIR. As such, the Substantial Evidence standard of review applies to the City’s determination.

The Project is within the South Los Angeles Community Plan Area. In 2017 the City adopted an updated South Los Angeles Community Plan (the “Community Plan”), the South Los Angeles Community Plan EIR (the “Community Plan EIR” or “2017 EIR”) and adopted the South Los Angeles Community Plan Implementation Overlay (CPIO) to implement the policies of the new Community Plan. The CPIO expressly states that it is a specific plan for purposes of Public Resources Code Section 21155, which allows for an exemption from CEQA for projects that meet the criteria described in Section 21155.4. In addition, the Community Plan EIR is considered a program EIR and CEQA Guidelines section 15168 allows for “later activities” that are site specific operations within the scope of the program EIR to be considered as already evaluated by the program EIR.³

CEQA Guidelines Section 15168 states that a program EIR is an EIR which may be prepared on a series of actions that can be characterized as one large project and are related either: geographically; as logical parts in the chain of contemplated actions; in connection with issuance of rules, regulations, plans or other general criteria to govern the conduct of a continuing program; or as individual activities carried out under the same authorizing statutory or regulatory authority and having generally similar environmental effects which can be mitigated in similar ways. CEQA Guidelines section 15168(c) specifically states that later activities within a program EIR must be examined in the light of the program EIR to determine whether additional environmental documentation must be prepared for those later activities. Further, a program EIR can be used to simplify the task of preparing environmental documents on later activities in the program.⁴

As a general rule, if an EIR has been prepared for a project, the lead agency has discretion to determine whether a subsequent or supplemental EIR is necessary under Pub. Res. Code section 21166 and CEQA Guidelines section 15162, and that agency’s determination will be upheld by a reviewing court if it is supported by substantial evidence.⁵ However, courts have also applied this substantial evidence standard when reviewing an agency’s determination under CEQA Guidelines section 15168(c) that a project may be approved on the basis of a program EIR without further environmental review.⁶

³ CEQA Guidelines §15168.

⁴ CEQA Guidelines § 15168(d).

⁵ See Committee for Re-Evaluation of the T-Line Loop v. San Francisco Mun. Transp. Agency, 6 CA5th 1237, 1247 (2016), citing Kostka & Zischke, Practicing Under the California Environmental Quality Act, 2nd Edition.

⁶ See *Latinos Unidos de Napa v. City of Napa*, 221 Cal. App. 4th 192 (2013).

For example, in *Latinos Unidos De Napa v. City of Napa, et al.*, 221 Cal. App. 4th 192 (2013), the petitioner filed a petition for writ of mandate against the City of Napa, seeking to set aside the City's approval of revisions to the housing element of its general plan, and related general plan and zoning amendments, on the ground that an EIR was required to do so.⁷ There, the court weighed whether it should apply the “Fair Argument” standard or the more deferential “Substantial Evidence” standard to the City of Napa’s determination that a subsequent EIR was not required.⁸ There, the court determined that the Substantial Evidence standard applied, because the project was “the same as, or within the scope of, that which is described in [the EIR].”⁹ The court noted that “[t]reating the issue as a question of law... inappropriately undermines the deference due the agency in administrative matters. That principle of deference is otherwise honored by the substantial evidence test's resolution of any reasonable doubts in favor of the administrative finding and decision.”¹⁰

Further, in *Citizens for Responsible Equitable Environmental Development v. City of San Diego Redevelopment Agency*, 134 Cal. App 4th 598, (2005), the petitioner filed a lawsuit seeking to require the respondents to prepare a project specific EIR to analyze a hotel project.¹¹ There, the petitioner claimed, among other things, that: (1) a “fair argument” could be made that the hotel project would have significant environmental impacts; and (2) the respondents' reliance on the prior EIRs violated CEQA's rules for limited environmental review associated with a project undertaken pursuant to a “program EIR.” There, the court held that the substantial evidence standard applied, and that respondents did not violate CEQA in determining that the potential environmental effects of the hotel project were adequately examined in the Master EIR and Subsequent EIR on which the project relied.¹² In determining what standard of review to apply, the court quoted *Sierra Club, et al. v. County of Sonoma, et al.*, 6 Cal. App. 4th 1307, (1992), which reasoned:

A court reviewing an agency's decision not to prepare an EIR in the **first instance** must set aside the decision if the administrative record contains substantial evidence that a proposed project might have a significant environmental impact; in such a case, the agency has not proceeded as required by law. [Citation.] Stated another way, the question is one of law, i.e., ‘the sufficiency of the evidence to support a fair argument.’ [Citation.] Under this standard, deference to the agency's determination is not appropriate and its decision not to require an EIR can be upheld only when there is no credible evidence to the contrary. [Citation.]¹³

⁷ *Latinos Unidos de Napa v. City of Napa*, 221 Cal. App. 4th 192, 195 (2013).

⁸ *Id.*, at p. 200.

⁹ *Id.*, at p. 202.

¹⁰ *Id.*, at p. 201, *citing* *Mani Brothers Real Estate Group v. City of Los Angeles*, 153 Cal. App. 4th 1385, 1401 (2007).

¹¹ *Citizens for Responsible Equitable Environmental Development v. City of San Diego Redevelopment Agency*, 134 Cal. App. 4th 598, (2005).

¹² *Id.*

¹³ *Sierra Club, et al. v. County of Sonoma, et al.*, 6 Cal. App. 4th 1307, 1317–1318 (1992) (emphasis added).

However, the court followed, “**when a court reviews an agency decision under section 21166 not to require a subsequent or supplemental EIR on a project, the traditional, deferential substantial evidence test applies.** The court decides only whether the administrative record as a whole demonstrates substantial evidence to support the determination that the changes in the project or its circumstances were not so substantial as to require major modifications of the EIR.”¹⁴

SAFER also cites to the *Sierra Club* decision, but cites to only a portion of the *Sierra Club* court’s decision where it discusses projects outside the scope of a program EIR.¹⁵ Notably absent from SAFER’s discussion of *Sierra Club* is the portion above, where the court held that the substantial evidence standard applied.

Further, SAFER seems to claim, at least in one portion of its letter, that the less deferential fair argument standard applies and suggests that the City’s determination is a “question of law.”¹⁶ However the case cited by SAFER as authority is irrelevant to this matter. SAFER cites *Pocket Protectors*, a case that states “[i]t is a question of law, not fact, whether a fair argument exists, and the courts owe no deference to the lead agency’s determination.”¹⁷ In citing the *Pocket Protectors* case, SAFER fails to mention that *Pocket Protectors* involved a project that used a Mitigated Negative Declaration (MND), which is an entirely separate environmental review document that carries the fair argument standard of review. This project does not use an MND. In other words, SAFER cites an entirely inapplicable case when it mentions the fair argument standard and its discussion is wholly irrelevant to the instant matter.¹⁸

Here, the Project utilizes CEQA Guidelines section 15168 as the Project qualifies as “later activities” of a Program EIR as defined by CEQA Guidelines section 15168(c). Because the City has determined that the Project qualifies as a project within the scope of the 2017 EIR, the substantial evidence standard of review applies. The City has evaluated the Project and determined that the Project’s environmental effects are within the scope of the Program EIR. The Project’s consistency with the Program EIR is discussed at length in the Project’s Technical Memorandum, prepared by Meridian Consultants, LLC, and submitted to the City on or about October 2022. Applicant incorporates the Technical Memorandum by reference as evidence of the Project’s consistency.

At its meeting of February 9, 2023, the CPC found that “based on the independent judgment of the decision-maker, after consideration of the whole of the administrative record, that the Project is within the scope of the South Los Angeles Community Plan Program EIR No. ENV-2008-1781-EIR, SCH No. 200810109, pursuant to CEQA Guidelines Sections 15168 and 15162; the environmental effects of the Project were covered in the Program EIR and no new

¹⁴ *Citizens for Responsible Equitable Environmental Development v. City of San Diego Redevelopment Agency*, 134 Cal. App 4th 598, (2005).

¹⁵ SAFER Appeal, p. 3.

¹⁶ *Id.*

¹⁷ *Id.*, p. 3; *quoting* *Pocket Protectors v. City of Sacramento*, 124 Cal.App.4th 903, 928 (2004).

¹⁸ *Id.*, p. 3.

environmental effects not identified in the Program EIR will occur and no new mitigation is required; and the City has incorporated all feasible mitigation measures from the Program EIR on the Project.”¹⁹

SAFER quotes CEQA Guidelines section 15162(a) to claim various standards apply to require a subsequent EIR or Negative Declaration for the Project.²⁰ However, the CPC made its determination pursuant to CEQA Guidelines Section 15168 for program EIRs (as noted in the paragraph above). Thus, the appropriate test to apply is the test required under CEQA Guidelines section 15168(c), which notes that later activities in the program must be examined in the light of the program EIR to determine whether an additional environmental document must be prepared.²¹ CEQA Guidelines section 15162 is also incorporated within this analysis, as shown below. The criteria required for a “later activities” project to qualify per the CEQA Guidelines under section 15168(c) are:

1. If a later activity would have effects that were not examined in the program EIR, a new initial study would need to be prepared leading to either an EIR or a negative declaration. That later analysis may tier from the program EIR as provided in Section 15152.
2. If the agency finds that pursuant to Section 15162, no subsequent EIR would be required, the agency can approve the activity as being within the scope of the project covered by the program EIR, and no new environmental document would be required. **Whether a later activity is within the scope of a program EIR is a factual question that the lead agency determines based on substantial evidence in the record.** Factors that an agency may consider in making that determination include, but are not limited to, consistency of the later activity with the type of allowable land use, overall planned density and building intensity, geographic area analyzed for environmental impacts, and covered infrastructure, as described in the program EIR.
3. An agency shall incorporate feasible mitigation measures and alternatives developed in the program EIR into later activities in the program.
4. Where the later activities involve site specific operations, the agency should use a written checklist or similar device to document the evaluation of the site and the activity to determine whether the environmental effects of the operation were within the scope of the program EIR.
5. A program EIR will be most helpful in dealing with later activities if it provides a description of planned activities that would implement the program and deals with the effects of the program as specifically and comprehensively as possible. With a good and detailed project description and analysis of the

¹⁹ LOD, p. 1.

²⁰ SAFER Appeal, p. 3-4.

²¹ CEQA Guidelines § 15168(c).

program, many later activities could be found to be within the scope of the project described in the program EIR, and no further environmental documents would be required.²²

Thus, the CPC's determination that the Project is within the scope of a program EIR is a factual determination subject to the substantial evidence standard of review, as stated clearly within CEQA Guidelines section 15168(c). The burden falls on SAFER to show the City lacked substantial evidence in the record to support its determination, not, as SAFER claims, that the *City must prove via substantial evidence* that no subsequent EIR or MND is required. The City has already made a factual determination based on substantial evidence in the record. Thus, the burden falls on the SAFER to show that the City lacked substantial evidence in the record to support its factual determination. As discussed below, SAFER has failed to, and cannot, make such a showing.

II. The Project Adequately Analyzed Hazardous Materials

First, SAFER claims that a “decision to not prepare an environmental document for the Project is only permissible if the City finds, based on substantial evidence, that none of the conditions of CEQA Guidelines section 15162 have occurred.”²³ As discussed above, this is misleading. The City already made a factual determination pursuant to CEQA Guidelines section 15162 when it determined that a new EIR did not need to be prepared. The City's decision is based on substantial evidence in the record before this Committee. Because the City has made a factual determination, the burden falls on SAFER to show that substantial evidence within the record does not support the City's determination. As discussed below, there is more than sufficient substantial evidence in the record to support the City's decision, and SAFER has failed to show otherwise.

Regarding the substance of its claims in this section, SAFER claims that the City inadequately disclosed and analyzed impacts from hazards and hazardous materials, and that the Project's Phase I Environmental Assessment (“ESA”) concluded that further studies were necessary. As discussed in further detail below, both these claims are inaccurate.

First, as noted in the Technical Memorandum and Meridian Letter, the land uses on the Property have remained unchanged since certification of the Community Plan EIR. As noted in the Technical Memorandum, in 2017 the City adopted an updated Community Plan and adopted the related CPIO to implement the policies of the new Community Plan.²⁴ The Community Plan re-zoned the Property from a P (parking) zone to its current C2 commercial zone, meaning that this mixed-used commercial and residential projects, such as the Project, were anticipated within the Community Plan and its related EIR at the time of the zone change.²⁵ The Community Plan also designates the Property as Corridors Subarea C or a “General Corridor.” The General

²² CEQA Guidelines § 15168(c) (emphasis added).

²³ SAFER Appeal, p. 4.

²⁴ Technical Memorandum, p. 2.0-3.

²⁵ See South Los Angeles Community Plan, Generalized Zoning Map, available at: [https://planning.lacity.org/odocument/1b1bc18c-713d-4931-b8b3-7324d24ce6ad/Zoning\(P\)_SLA.pdf](https://planning.lacity.org/odocument/1b1bc18c-713d-4931-b8b3-7324d24ce6ad/Zoning(P)_SLA.pdf)

Corridor Subarea allows for a broad range of commercial uses and also allows multifamily residential development. Both the Community Plan's and CPIO's potential impacts were analyzed in the Community Plan EIR.²⁶

As such, there has been no substantial change in the conditions of the site relative to hazards or hazardous materials since the City adopted the Community Plan and the Community Plan EIR. In fact, the Community Plan EIR has an entire section dedicated to "Hazards and Hazardous Materials."²⁷ The EIR specifically finds that such concerns are non-existent because:

Future development projects within the CPAs will be required to conform with all applicable environmental regulations related to new construction and hazardous materials storage, use and transport. Hazardous materials would be used and stored in accordance with applicable regulations and such uses would be required to comply with federal and state laws to eliminate or reduce the consequences of hazardous materials accidents. Furthermore, as discussed above, potential hazards related to lead, asbestos, methane zones, and USTs are less than significant with compliance with existing regulations. In addition, development of sites with known contaminants would be required to undergo remediation and cleanup before construction activities could begin.²⁸

Despite this, the SAFER appeal claims that the Project's Phase I ESA inadequately disclosed and analyzed impacts from hazards and hazardous materials.²⁹ Further, SAFER claims that the ESA did not include a map or any figures to show what portion of the Project site was covered by the ESA, and therefore makes logical leap to conclude that the Project requires an EIR.

Further, SWAPE claims that potential hazards were inadequately analyzed. However, potential hazards are well documented and analyzed within the record, including within the Technical Memorandum, in addition to the discussion within the Community Plan EIR. Further, SAFER's claim is contrary to both the EIR as shown above, and the ESA, which was prepared for the Project, and concluded that there was no substantial adverse condition on or in the vicinity of the Property related to hazards or hazardous materials.³⁰ SWAPE's claim is therefore unfounded, and can be disregarded.

Regarding the ESA, SAFER claims that the ESA did not specifically include a map to show what was studied. However, as noted in the Meridian Letter, the ESA included a

²⁶ Technical Memorandum, p. 2.0-3; South Los Angeles and Southeast Los Angeles Community Plan, 4.10 Land Use & Planning.

²⁷ South Los Angeles and Southeast Los Angeles Community Plans Draft EIR, 4.8 Hazards and Hazardous Materials.

²⁸ *Id.*, at 4.8-40.

²⁹ SAFER Appeal, p. 5.

³⁰ Phase I Environmental Site Assessment Report, 2137-2211 South Western Avenue, Los Angeles, California 90018, EFI Project No. 9836003585, Prepared by EFI Global, Inc., July 10, 2018.

description of the site and the surrounding area.³¹ The ESA states that Property includes “2137 to 2211 South Western Avenue” and the ESA focused on the portion of the property that has historically been utilized for automotive services, noting that the balance of the site “consists of asphalt-paved parking areas and access ways.”³² Furthermore, ESAs are conducted for a focused site but also include evaluation of surrounding properties. Thus, the ESA adequately analyzed the Property, and SAFER’s claim is unfounded.

The City relied upon substantial evidence to support the conclusion that, relative to hazards or hazardous materials, no substantial changes in the environment on or in the vicinity of the Property related had occurred that would require revision to the Community Plan EIR. SAFER’s claim should therefore be disregarded.

III. The Project Has Analyzed Potential Air Quality, Health Risk, and Greenhouse Gas Impacts and Will Not Have Significant Impacts

A. The Project Analyzed Potential Air Quality Impacts, and the City Concluded that the Project Will not have Significant Impacts

Next, SAFER claims that, pursuant to CEQA Guidelines section 15162, a subsequent EIR is required where new information since the certification of the 2017 EIR demonstrates that mitigation measures “which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure.”³³ Using this claim, SAFER argues that the 2017 EIR found that implementation of the Community Plan Update would have significant and unavoidable air quality impacts and that the 2017 EIR concluded that construction emissions would result in significant and unavoidable impacts from emissions of NO_x, VOCs, PM_{2.5}, PM₁₀, and other criteria air pollutants.³⁴

SAFER again applies incorrect legal standards to the incorrect set of facts in order to reach an incorrect conclusion. As discussed above, an analysis to determine whether a new EIR is necessary must begin with CEQA Guidelines section 15168(c). Specifically, CEQA Guidelines section 15168(c)(1), which states: “**If a later activity would have effects that were not examined in the program EIR**, a new initial study would need to be prepared leading to either an EIR or a negative declaration. That later analysis may tier from the program EIR as provided in Section 15152.” If this step is taken, an agency may find that “pursuant to Section 15162, no subsequent EIR would be required.”³⁵ Further, “the agency can approve the activity as

³¹ Meridian Letter, p.3.

³² *Id.*, p. 3; *citing* se I Environmental Site Assessment Report, 2137-2211 South Western Avenue, Los Angeles, California 90018, EFI Project No. 9836003585, Prepared by EFI Global, Inc., July 10, 2018.

³³ SAFER Appeal, p. 5.

³⁴ *Id.* at p. 5.

³⁵ CEQA Guidelines § 15168(c)(2).

being within the scope of the project covered by the program EIR, and no new environmental document would be required.”³⁶

Thus, the fact that the 2017 EIR concluded that construction air quality impacts could be significant and unavoidable because of “the absence of specific project details to assess” and “without a specific construction schedule, timing and emission levels cannot be accurately estimated” does not alone trigger the need for a new EIR.³⁷ Such a stringent standard would render program EIRs unusable, as any unknown would trigger the need for a new EIR. If fact, the EIR’s conclusion regarding potential air quality impacts itself serves as evidence that the EIR *did* study air quality impacts, anticipated some degree of development along these designated corridors, and on that basis reached conclusions on which the Project can rely.

The 2017 EIR contains a 25-page section dedicated entirely to the analysis of potential air quality impacts.³⁸ In that analysis, the EIR acknowledges potential impacts. The language “the absence of specific project details to assess” that SAFER cites to is only used in three instances within the Air Quality portion of the EIR. In all three instances, that language is used to discuss mitigation measures to impacts *that have already been acknowledged in the EIR*. In other words, the EIR has already acknowledged these impacts, and it notes that it cannot weigh in on the potential *reductions* to those impacts via mitigation measures due to the lack of specific details of individual projects. The impact has, in other words, already been analyzed and acknowledged in the 2017 EIR.

Here, the Project’s technical memorandum determined that the project would have a less than significant impact. However, *even if*, the Project was to have potential air quality impacts, multiple such impacts were already analyzed and acknowledged within the 2017 EIR, meaning regardless of whether the Project had certain air quality impacts, the Project would be able rely on the 2017 EIR because the EIR acknowledged those potential impacts. Additionally, the Project employs the specific mitigation measures outlined within the 2017 EIR, meaning that the Project has taken steps to further reduce any potential impacts that were acknowledge within the 2017 EIR by adopting the specific mitigation measures that were specifically outlined for future project in the 2017 EIR.

B. The Project’s CalEEMod Estimates and Input Data are Consistent with Industry Practice

SAFER claims that SWAPE reviewed the Project’s CalEEMod output files and found that several model inputs were inconsistent with information disclosed elsewhere in the Technical Memorandum. Specifically, SWAPE incorrectly asserts that several model inputs were inconsistent with information disclosed elsewhere in the Technical Memo for the Project.

³⁶ *Id.*

³⁷ City of Los Angeles Department of City Planning, Case Number: ENV-2008-1780-EIR, *South Los Angeles and Southeast Los Angeles Community Plans Draft EIR*, Section 4.8 Hazards & Hazardous Materials, November 3, 2016, pages 4.3-19 and 4.3-23.

³⁸ South Los Angeles and Southeast Los Angeles Community Plans Draft EIR, 4.3 Air Quality.

Again, this is false. As set forth in the Meridian Letter, the Applicant's changes to CalEEMod default settings are supported by substantial evidence in the record.³⁹ As a result, and contrary to the SWAPE Letter's inaccurate assertion, the Project's construction and operational emission are not underestimated.

As noted in the Meridian Letter, adjustment to the inputs in CalEEMod are a standard practice when project specific information is available. The model includes default values based on construction surveys conducted by SCAQMD. These give approximations of generic construction activity. However, it is recommended by SCAQMD that if the information is available, that defaults may be replaced by project specific inputs.⁴⁰ Adjustments were made to CalEEMod in order to reflect the specific details of the Project, and to reflect SCAQMD rules that are not the default setting in CalEEMod.⁴¹ For example, such changes included: (1) reductions to Architectural and Area Coating Emission Factors were made to reflect regulatory compliance with SCAQMD Rule 1113 VOC limits; (2) changes to the Architectural Coating Construction Phase Length were made to reflect an expected construction timeline specific to the project; (3) acres of grading were adjusted to reflect the expected construction timeline and the specific phase in which grading would occur; (4) the Number of Construction Worker Trips was derived from the LADOT-approved traffic assessment; and (5) Weekday, Saturday, and Sunday Operational Vehicle Trip Rates were derived from the LADOT-approved traffic assessment.⁴²

Without these adjustments, the Project's CalEEMod analysis would not be accurate to the Project's specific facts or SCAQMD's specific requirements. Such adjustments are commonly used in the City and are expected and necessary; provided they are supported by substantial evidence, which in this case they were.

Further, SAFER claims that SWAPE prepared an updated CalEEMod model using Project-specific information from the Technical Memorandum that showed that the Project would have significant impacts. However, SAFER's claims are both inaccurate and deceptive. As noted in the Meridian Letter, to achieve a result that showed significant impacts, SWAPE adjusted certain inputs in ways that were neither project-specific nor generally realistic.⁴³ For example, SWAPE inappropriately reduced the duration of construction phases in order to produce a result that exceeds the significance thresholds. The timeline used by SWAPE is not realistic and is intentionally shortened in order to increase potential impacts over time. SAFER's claims regarding CalEEMod modeling should therefore be disregarded.

³⁹ Meridian Letter, pp. 4-6.

⁴⁰ *Id.*, at p. 5.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*, pp. 5-6.

C. The Guidance From The California Office Of Environmental Health Hazard Assessment (“OEHHA”) That The Appellant’s Consultant Used To Prepare A Screening-Level Health Risk Assessment Is Not Applicable To The Project

SAFER claims that SWAPE prepared a screening-level health risk assessment (“HRA”) to evaluate potential impacts of diesel particulate matter (“DPM”) emissions during the construction and operation of the Project. Specifically, SWAPE used AERSCREEN, a screening-level air quality dispersion model, used a sensitive receptor distance of 75 meters, and analyzed impacts to individuals at different stages of life based on guidance from the California Office of Environmental Health Hazard Assessment (“OEHHA”) and San Diego County Air Pollution District (“SDAPCD”) guidance.⁴⁴ Once again, SAFER and SWAPE’s claims are based on deceptive data and measurements in order to manufacture significant impacts where none exist.

As noted in the Meridian Letter, the guidance from OEHHA that SWAPE used is not applicable to the Project. The OEHHA Guidance Manual is intended to implement the Air Toxics Hot Spots Information and Assessment Act (AB 2588) and establishes protocols for analysis but does not establish when a project must prepare a cancer risk assessment.⁴⁵ Specifically, this requirement is for any facility which manufactures, formulates, uses, or releases toxic air contaminants, carcinogens, total organic gases, particulates, or oxides of nitrogen or sulfur and any facility which is listed in any current toxics use or toxics air emission survey, inventory, or report released or compiled by a district.⁴⁶ As noted by Meridian, this project does not qualify as a “facility” per the definition above.

Additionally, the South Coast Air Quality Management District (“SCAQMD”) is the local authority for such matters for the Project, and not the SDAPCD as cited by SWAPE and SAFER.⁴⁷ SCAQMD CEQA guidelines for evaluating construction impacts do not require the preparation of an HRA to evaluate construction impacts. For construction, SCAQMD provides daily mass emissions thresholds and localized significance thresholds.⁴⁸ Further, as shown in the Project’s technical memorandum, the Project does not exceed the relevant SCAQMD thresholds.⁴⁹

SAFER’s claim regarding the preparation of an HRA is not relevant, and wholly deceptive as it applies the incorrect guidance from SDAPCD as opposed to SCAQMD. This claim should be disregarded.

⁴⁴ SAFER Appeal, p. 6. Notably, SAFER does not define “SDAPCD” in its letter, seemingly to avoid mentioning that this guidance is from San Diego County.

⁴⁵ Meridian Letter, p. 6.

⁴⁶ *Id.*

⁴⁷ SAFER Appeal, p. 6.

⁴⁸ Meridian Letter, pp. 6-7.

⁴⁹ Technical Memorandum, 2211 Western Ave., Environmental Case ENV-2021-8443-EAF, October 2022, Page 7-21.

D. The Project Adequately Analyzed Potential Green House Gas (“GHG”) Impacts

SAFER claims that the Project’s potential GHG impacts were not adequately analyzed. In doing so, SAFER vaguely claims that: (1) the Technical Memo’s quantitative GHG analysis relies on a flawed air model; (2) the Technical Memo fails to identify a potentially significant impact; (3) the Technical Memo fails to consider the performance-based standards under CARB’s Scoping Plan; and (4) the Technical Memo fails to consider the performance-based standards under SCAG’s RTP/SCS.⁵⁰

However, again, SAFER and SWAPE rely on inaccurate and deceptive methods to manufacture significant impacts when none exist. As mentioned in the Meridian Letter, the methodology used by the City to determine the significance of GHG impacts is not based on the quantitative output of CalEEMod but rather whether a project is consistent with the policies and programs of the State, City and region to address GHG emissions.⁵¹ Here, the Technical Memorandum discusses this consistency and finds that the project is consistent with these policies and programs.⁵² SAFER applies entire incorrect and inapplicable GHG emissions standards to claim that the Project will have GHG impacts and should be disregarded, as these applicable standards do not amount to substantial evidence against the Project’s approval.

IV. The Project Does Not Require A Tiered EIR

SAFER again makes a legally and factually inaccurate argument by claiming that the “Guidelines require that the City prepare an EIR or MND for the Project, which can tier from the 2017 EIR as necessary.”⁵³ As already explained earlier in this letter, this is incorrect.

SAFER jumps a logical step in its argument, by simply claiming that the Project must prepare a tiered EIR, without adequate support as to why. As previously explained above, an analysis to determine whether a new EIR is necessary must begin with CEQA Guidelines section 15168(c). Specifically, CEQA Guidelines section 15168(c)(1) states: “**If a later activity would have effects that were not examined in the program EIR**, a new initial study would need to be prepared leading to either an EIR or a negative declaration.

Here, as discussed in length above, the fact that the 2017 EIR concluded certain potential impacts *could* be significant and unavoidable because of an absence of project-specific details, does not mean that any project relying on the 2017 EIR as a Program EIR must prepare a separate tiered EIR. The EIR’s conclusion that certain potential impacts *could* be significant and unavoidable serves as evidence itself that the EIR *did* study air quality impacts, anticipated some degree of development along these designated corridors, and on that basis reached conclusions on which the Project can rely. The EIR even acknowledges potential impacts and it notes that it cannot measure the potential *reduction* of those impacts via mitigation measures due to the lack

⁵⁰ SAFER Appeal, p. 6.

⁵¹ Meridian Letter, p. 7.

⁵² Technical Memorandum, 2211 Western Ave., Environmental Case ENV-2021-8443-EAF, October 2022, Pages 7-38 through 7-47.

⁵³ SAFER Appeal, p. 7.

of specific details of individual future projects. In other words, it cannot predict how effective a mitigation measure will be for a specific future project. But this inherently means that the impact has been analyzed and acknowledged in the 2017 EIR. There is no “new” impact that SAFER can point to that would trigger the need for a new EIR.

Further, the Project employs the specific mitigation measures outlined within the 2017 EIR, meaning that the project has taken steps to further reduce potential impacts that were acknowledged within the 2017 EIR. As has been shown throughout this letter, in the Technical Memorandum, the Meridian Letter, and elsewhere in the record, no significance thresholds have been reached by the Project, and the Project will not have any significant impacts that would necessitate an EIR. An EIR is therefore not required as SAFER’s claims are based on an inaccurate reading of the law, and thresholds that are inapplicable to the Project.

V. Conclusion

The SAFER Appeal does not contain substantial evidence to support the allegations set forth therein. As discussed above and in the Meridian Letter (Exhibit “C”), SAFER’s claims are based on flawed and purposely inaccurate data intended to skew conclusions. Accordingly, CPC’s decision to approve the Project is supported by substantial evidence in the record, and CPC did not err or abuse its discretion. We, therefore, respectfully request the PLUM Committee deny the SAFER Appeal and approve the Project as recommended by CPC.

Very truly yours,

Ara Karamian

Ara Karamian
Gonzales Law Group APC

Attachments

cc: Helen Jadali (helen.jadali@lacity.org)
Sergio Ibarra (sergio.ibarra@lacity.org)

EXHIBIT A



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January 31, 2023

VIA EMAIL ONLY

Helen Jadali, City Planning Associate
Los Angeles Department of City Planning
200 N. Spring Street, Room 720
Los Angeles, CA 90012
helen.jadali@lacity.org

Re: Response to SAFER Comments on 2211 S. Western Project (CPC-2021-8442-CU-DB-SPR-HCA; ENV-2021-8443-EAF) Regarding November 30, 2022, Hearing Officer Agenda Item 1

Dear Ms. Jadali:

This office represents 2231 S Western (LA), LLC and South Western Properties SWP, LLC (the “Owners”), the owners of real property located at 2211-2231 S Western Avenue and 2029 24th Street (the “Property”) in the above-referenced matter. 2231 S Western (LA), LLC (referred to individually as the “Applicant”) proposes to utilize the vacant portion to construct an eight story, 364 dwelling unit mixed use structure with approximately 65,719 square feet of retail floor area and 514 parking spaces located in one below grade level and four partial above-grade levels (the “Project”).

Applicant seeks a 35% ministerial density bonus pursuant to Los Angeles Municipal Code (“LAMC”) Section 12.22.A.25, which implements the State Density Bonus law (California Government Code Section 65915), in addition to a conditional use permit pursuant to LAMC Section 12.24.U.26 to allow an additional 10% bonus density for a total bonus of 45%. The Project will set aside 15% of base density, or 38 dwelling units, for very low income (“VLI”) households. The Project also seeks various incentives and concessions and wavier of development standards pursuant to the State Density Bonus Law. The Property is in the South Los Angeles Community Plan (the “Community Plan”).

On November 29, 2022, Supporters Alliance for Environmental Responsibility (“SAFER”) submitted a short, two paragraph letter to the City, claiming that the Project must prepare an

Environmental Impact Report (“EIR”). SAFER’s sole argument is that the Project’s reliance on the Community Plan’s Environmental Impact Report, (ENV-2008-1780-EIR) (“the EIR”) is not specific to the Project, thus the EIR cannot be relied upon for CEQA purposes, and requests that Applicant prepare and circulate a draft EIR specific to the Project. SAFER provides no evidence, detail, or argument in its letter to support its position that an EIR is required. SAFER’s claim is unfounded, and predicated on ignoring California law. The Project does not require an EIR for two reasons: (1) the Project qualifies as “later activities” of a Program EIR as defined by CEQA Guidelines Section 15168(c) and the City of Los Angeles (the “City”) has evaluated the Project and determined that the environmental effects of the Project are within the scope of the Program EIR; and (2) the Project meets all the criteria of Public Resource Code 21155.4, is consistent with a valid programmatic EIR, and should be approved.

1. The Project Qualifies as a Later Activity Contemplated by a Program EIR as Defined by CEQA Guidelines Section 15168(c).

CEQA Guidelines Section 15168 states that a program EIR is an EIR which may be prepared on a series of actions that can be characterized as one large project and are related either: geographically; as logical parts in the chain of contemplated actions; in connection with issuance of rules, regulations, plans or other general criteria to govern the conduct of a continuing program; or as individual activities carried out under the same authorizing statutory or regulatory authority and having generally similar environmental effects which can be mitigated in similar ways. CEQA Guidelines Section 15168(c) specifically states that later activities within a Program EIR must be examined in the light of the program EIR to determine whether additional environmental documentation must be prepared for those later activities. Further, a program EIR can be used to simplify the task of preparing environmental documents on later activities in the program.¹

Here, the Project qualifies as “later activities” of a Program EIR as defined by CEQA Guidelines Section 15168(c). The City has evaluated the Project and determined that the Project’s environmental effects are within the scope of the program EIR. The Project’s consistency with the program EIR is discussed at length in the Project’s Technical Memorandum, prepared by Meridian Consultants, LLC, and submitted to the City on or about October, 2022. Applicant incorporates the Technical Memorandum by reference as evidence for the Project’s consistency. SAFER has not offered any arguments to contest the Project’s consistency with the program EIR. Instead, SAFER claims in entirely conclusory terms that a project specific EIR should be prepared to analyze the Project and its potential impacts. This is not how CEQA works. SAFER’s baseless claim that the project “*should*” prepare an EIR in order to analyze the Project and mitigate potential impacts is not a legally valid reason to require that the Project prepare an EIR. SAFER must base such a significant argument on actual California law. SAFER’s entirely conclusory claim should be disregarded. Safer has not made even *one* point as to why it believes the Project is inconsistent with the program EIR.

¹ CEQA Guidelines Section 15168(d).

Without substantial evidence to contest the Technical Memorandum, SAFER's letter cannot be taken as anything other than conclusory and should be disregarded.

2. The Project Meets the Criteria of PRC 21155.4.

Public Resources Code § 21155.4 requires, in part that a mixed-use development project, including any subdivision, or any zoning change that meets specific criteria is exempt from the California Environmental Quality Act (CEQA). Included in the criteria, is a requirement that the project "is undertaken to implement and is consistent with a specific plan for which an environmental impact report has been certified." As shown below, the Project is consistent with the applicable specific plan.

The Property is the Community Plan area. The Property is also subject to the South Los Angeles Community Plan Implementation Overlay ("CPIO"). Specifically, the Property is located within the CPIO's General Corridor subarea, and specifically Subarea C of the General Corridor subarea. The CPIO, for purposes of CEQA, including PRC § 21155.4, operates as a specific plan, zoning ordinance, and a prior plan level decision for which an EIR was certified. Because the CPIO is considered a specific plan for the purposes of PRC § 21155.4, the Project must be consistent with the CPIO to be statutorily exempt from CEQA. The Project is consistent with both the CPIO's general purposes, and the CPIO's development standards. As demonstrated in the Technical Memorandum the Project is consistent with the Community Plan and the CPIO.²

SAFER has not offered any argument whatsoever to contest the Project's consistency with the Community Plan or CPIO. Instead, SAFER makes a conclusory argument claiming nothing other than that a "project-specific EIR is required to analyze the Project and mitigate its potential impacts." Such a vague and conclusory argument is not a valid reason under CEQA to require the preparation of an EIR. Without substantial evidence to contest the Technical Memorandum, SAFER's letter cannot be taken as anything other than conclusory and should be disregarded.

3. Conclusion.

SAFER's sole argument is that a "project-specific EIR is required to analyze the Project and mitigate its potential impacts." SAFER's argument is not based in law or fact; it is entirely baseless, conclusory, and should be disregarded. As explained above, the Project does not need to prepare an EIR because: (1) the Project qualifies as "later activities" of a program EIR as defined by CEQA Guidelines Section 15168(c) and the City has evaluated the Project and determined that the environmental effects of the Project are within the scope of the program EIR; and (2) the Project meets all the criteria of Public Resource Code 21155.4, is consistent with a valid programmatic EIR, and should be approved.

The Project is consistent with the EIR under CEQA Guidelines Section 15168(c) and PRC 21155.4, and the SAFER letter should be disregarded as it cannot amount to substantial evidence

² Technical Memorandum, Section 5.

Helen Jadali
City Planning Associate
Los Angeles City Planning Department
January 31, 2023
Page 4

against the Project's approval without the requisite expert opinions necessary to form a coherent legal argument.

Should you have any questions, please feel free to reach out to me at your earliest convenience.

Very truly yours,

Ara Karamian

Ara Karamian
Gonzales Law Group APC

cc: Sergio Ibarra (Email Only)

EXHIBIT B

Date: February 8, 2023
To: Sergio Ibarra, City Planner; Helen Jadali, Planning Associate
Department of City Planning, City of Los Angeles
Cc: City Planning Commission, City of Los Angeles
From: Ned Baldwin, Meridian Consultants LLC
Subject: Response to letter from Lozeau Drury regarding CPC-2021-8442-CU-DB-SPR-HCA

Meridian Consultants has reviewed the letter submitted by Lozeau Drury dated February 6, 2023 with regard to CPC-2021-8442-CU-DB-SPR-HCA and ENV-2021-8443-EAF and provides the following responses to comments related to the analysis in the CEQA technical memorandum.

Page 4: The City concluded that “no substantial changes in the environment on or in the vicinity of the Property related to hazards or hazardous materials have occurred since certification of the Community Plan EIR that would require revision to the Community Plan EIR.” However, the City failed to provide substantial evidence in support of this conclusion.

The City was able to conclude that there have been no substantial changes related to hazards or hazardous materials as the land uses on the site have remained unchanged and the land uses on the adjacent property had been modified to remove former commercial uses and develop new residential uses. This was described in the introduction to the technical memorandum.

Page 5: Specifically, SWAPE noted that the Phase 1 Environmental Site Assessment (“ESA”) did not include “a map or any figures to show what portion of the Project site was covered by the Phase 1 ESA.” (Id. at 1.) SWAPE therefore stated that an EIR should be prepared which includes a Phase 1 ESA which encompasses the entire Project site. (Id.)

A figure was included as an attachment to the ESA. Though the ESA focuses on the portion of the site along Western containing automotive uses and which are identified in the ESA as Historical Recognized Environmental Condition, the ESA does encompass the entire Project site, as described on page 1 the ESA.

Page 5: SWAPE also noted that the Phase 1 ESA prepared for the Project concluded that further studies were necessary.

This comment is inaccurate. The conclusion on page 35 of the ESA is: “Based on the foregoing, no additional investigation is recommended at this time.”

Page 5: The 2017 EIR found that implementation of the Community Plan Update would have significant and unavoidable air quality impacts (2017 EIR, pp. 9-13.) Specifically, the 2017 EIR concluded that construction emissions would result in significant and unavoidable impacts from emissions of NOx, VOCs, PM2.5, PM10, and other criteria air pollutants. (Id.)

When it certified the 2017 EIR, the City concluded that construction air quality impacts could be significant and unavoidable because of “the absence of specific project details to assess” (page 4.3-19 and 4.3-21) and “without a specific construction schedule, timing and emission levels cannot be accurately estimated” (page 4.3-23). In the evaluation of the Project, specific project details have been provided to assess.

Page 5: SWAPE reviewed the Project’s CalEEMod output files and found that several model inputs were inconsistent with information disclosed elsewhere in the Technical Memo for the Project. Specifically, SWAPE found that the following inputs were incorrect or unsubstantiated: • Unsubstantiated Reductions to Architectural and Area Coating Emission Factors; • Unsubstantiated Changes to Architectural Coating Construction Phase Length; • Unsubstantiated Reduction to Acres of Grading Value; • Incorrect Number of Construction Worker Trips; • Underestimated Weekday, Saturday, and Sunday Operational Vehicle Trip Rates.

It is standard practice to substitute project specific information for the default values in CalEEMod. In addition, default values in CalEEMod do not always account for regulatory compliance with SCAQMD rules. Reductions to Architectural and Area Coating Emission Factors were made to reflect regulatory compliance with SCAQMD Rule 1113 VOC limits. Changes to the Architectural Coating Construction Phase Length were made to reflect the expected construction timeline specific to the project. The acres of grading were adjusted to reflect the phase in which grading would occur. During the 'shoring/grading phase' inputs were provided to site area, tons of demolition debris, and cubic yards of soil from which CalEEMod calculated an area of grading which actually over-estimated for analysis purposes. For the 'foundation' phase grading was set to zero as that activity was accounted for in the previous phase. The Number of Construction Worker Trips and Weekday, Saturday, and Sunday Operational Vehicle Trip Rates were derived from the LADOT-approved traffic assessment, as was noted in report.

Page 6: In order to more accurately estimate the Project's potential emissions, SWAPE prepared an updated CalEEMod model using Project-specific information from the Technical Memo. SWAPE found that the Project's construction-related volatile organic compound (VOC) emissions would exceed the CEQA significance threshold established by the South Coast Air Quality Management District ("SCAQMD").

SWAPE inappropriately reduced the duration of construction phases, producing a result that exceeds the thresholds. By substantially reducing the duration, emissions associated with architectural coating would be concentrated on a few days rather a longer period. The timeline assumed by SWAPE is not realistic or probable.

Page 6: SWAPE also prepared a screening-level health risk assessment ("HRA") to evaluate potential impacts of diesel particulate matter ("DPM") emissions during the construction and operation of the Project.

The City follows South Coast Air Quality Management District (SCAQMD) guidance for air quality analysis and relies on SCAQMD thresholds, not as the letter stated SDAPCD which is a San Diego area agency. The SCAQMD CEQA guidelines do not require the preparation of an HRA to evaluate construction impacts or the land uses of the types proposed. As shown in the technical memorandum prepared for the project, the project would not exceed applicable SCAQMD thresholds. Therefore, the City determined the Project would have a less than significant impact based on the methodologies recommended by SCAQMD for the project type. SCAQMD requires HRAs for stationary emission sources in accordance with AB 2588 and OEHHA Guidance. The project does not qualify as a "facility" as defined in AB 2588. As such, the HRA methodology is not applicable to the Project.

Page 6: SWAPE also found that the GHG impacts of the Project were not adequately analyzed.

SWAPE bases this allegation the CalEEMod output discussed under Air Quality. As noted in the responses above, the model inputs were appropriately established. Furthermore, the City's methodology to determine the significance of GHG impacts is not based on the quantitative output of CalEEMod but rather on consistency of a project with the policies and programs of the State, City and region to address GHG emissions. The Technical Memorandum discusses how the project is consistent; the comment letter did not challenge this conclusion.

Page 7: Because the Project will continue to result in significant impacts to air quality and GHGs that were identified as significant an unavoidable in the 2017 EIR.

This allegation is not supported by the analysis prepared for the City nor is it demonstrated by the claims made in the comment letter. The 2017 EIR concluded that there could be significant impacts to air quality and GHGs due to "the absence of specific project details to assess". Specific Project details were identified and assessed resulting in the conclusion that those impacts would in fact be less than significant with respect to the Project.

EXHIBIT C

Communication from Public

Name: Ned Baldwin

Date Submitted: 06/13/2023 03:18 PM

Council File No: 23-0557

Comments for Public Posting: The attached consists of a response prepared by Meridian Consultants to the appeal of CPC-2021-8442-CU-DB-SPR-HCA that was submitted by Supporters Alliance for Environmental Responsibility. We appreciate the opportunity to provide our perspective on the appellant's comments.

Date: June 12, 2023

To: Helen Jadali, Planning Associate
Department of City Planning, City of Los Angeles

From: Ned Baldwin, Associate
Meridian Consultants LLC

Subject: Response to Appeal submitted by Supporters Alliance for Environmental Responsibility
regarding CPC-2021-8442-CU-DB-SPR-HCA

Meridian Consultants has had the opportunity to review the appeal submitted by Supporters Alliance for Environmental Responsibility ("Appellant") dated May 10, 2023, with regard to CPC-2021-8442-CU-DB-SPR-HCA. To assist the City in its consideration of this appeal, Meridian provides the Department with the following responses.

The Appeal Application form (CP-7769) states that the Appellant is appealing "All Site Plan Review conditions." However, the 9-page Justification/Reason for Appeal focuses on the CEQA determination and not specifically on any site plan conditions. The substance of the Justification/Reason for Appeal references a comment letter dated February 6, 2023, which the Appellant submitted at the time of the Planning Commission hearing. Meridian reviewed that letter at the time and provided the City with responses in a memo dated February 8, 2023 (see attached). At the time of the Planning Commission hearing, the Meridian response memo was limited to 2-pages, as it was considered a day-of submission. Given the prior page limit placed on Meridians responses, Meridian will also take this opportunity to expand upon the responses made at that time.

The letter dated February 6, 2023, that was submitted by the Appellant contains 8 pages. The first three and a half pages provided background, project overview and discussion of legal standards; the last page is a concluding statement and signature. Meridian has no substantive comments for these portions of the letter. Starting under the heading "Discussion" at the lower portion of page 4 of the letter, and continuing through the end of page 7, is the substance of the comments contained in the letter. Within these pages are three subheadings referring to: (1) Hazards and Hazardous Materials; (2) Air Quality, Health Risk, and Greenhouse Gas Emission Impacts; and (3) that the significant and unavoidable impacts identified in the 2017 Community Plan EIR could remain significant with the Implementation of the Project. (In the letter the third subheading is labeled as four, specifically IV, but there is no subheading labeled as three.) Meridian's responses will follow the same set of headings.

I. Hazards and Hazardous Materials

Comment 1.1 [page 4]

The City concluded that “no substantial changes in the environment on or in the vicinity of the Property related to hazards or hazardous materials have occurred since certification of the Community Plan EIR that would require revision to the Community Plan EIR.” However, the City failed to provide substantial evidence in support of this conclusion.

Response 1.1

The land uses on the Project site have remained unchanged since certification of the Community Plan EIR; the land uses on the adjacent property had been modified to remove former commercial uses and develop new residential uses, a change in land use that is not associated with substantial adverse effects relative to hazards or hazardous materials as these conditions are associated with some commercial or industrial uses that store, handle, process or dispose of hazardous materials. This was described in the introduction to the technical memorandum. As such, there has been no substantial adverse change in the conditions of the site relative to hazards or hazardous materials.

The Community Plan EIR referred to federal, state, and local regulations that would reduce to less than significant the consequences of the routine use of or accidental release of hazardous materials. Specifically, the EIR states that “Hazardous materials would be used and stored in accordance with applicable regulations and such uses would be required to comply with federal and state laws to eliminate or reduce the consequences of hazardous materials accidents;” “Compliance with existing regulations would reduce any impact and ensure that construction workers and the general public would not be exposed to any unusual or excessive risks related to the release of hazardous materials into the environment during construction activities on these sites with known, documented contamination;” and “Because appropriate site investigation and remediation activities prior to development is required by law, and because all contaminated sites are required to be remediated prior to development, this impact would be less than significant.”¹ The framework of federal, state, and local regulations is still in place, so there is no change in the evidence to support this conclusion.

In addition, the Community Plan EIR states that “While all demolition and construction within the CPAs would be required to comply with all local, state, and federal regulations, further mitigation may be required to reduce risks associated with the potential for unknown toxic substances existing on sites previously used for industrial uses that used hazardous materials” and therefore included a mitigation measure that require projects within a CPIO Subarea and currently or historically zoned as industrial shall

¹ See City of Los Angeles Department of City Planning, Case Number: ENV-2008-1780-EIR, *South Los Angeles and Southeast Los Community Plans Draft EIR*, November 3, 2016; Section 4.8 Hazards & Hazardous Materials,.

prepare the equivalent of an ESA. An ESA was prepared for the Project which found that there was no substantial adverse condition on or in the vicinity of the Property related to hazards or hazardous materials.²

All of the above was documented by City in the CEQA Technical Memorandum regarding the Project. As such, the City relied upon substantial evidence to support the conclusion that, relative to hazards or hazardous materials, no substantial changes in the environment on or in the vicinity of the Property related have occurred that would require revision to the Community Plan EIR.

Comment 1.2 [page 5]

Specifically, SWAPE noted that the Phase 1 Environmental Site Assessment (“ESA”) did not include “a map or any figures to show what portion of the Project site was covered by the Phase 1 ESA.” (Id. at 1.) SWAPE therefore stated that an EIR should be prepared which includes a Phase 1 ESA which encompasses the entire Project site. (Id.)

Response 1.2

The ESA included a description of the site and the surrounding area. Specifically, the ESA states that the subject included “property located at 2137 to 2211 South Western Avenue,”³ which includes the address of the project site. The ESA focused on the portion of the property that has historically been utilized for automotive services, noting that the balance of the site “consists of asphalt-paved parking areas and access ways.” ESAs are conducted for a focused site but also include evaluation of surrounding property and would have identified any recognized environmental conditions if such were present on any part of the Project site. As such, the ESA that was reviewed to support the CEQA determination adequately considered the entire project site.

Comment 1.3 [page 5]

SWAPE also noted that the Phase 1 ESA prepared for the Project concluded that further studies were necessary.

Response 1.3

The ESA did not conclude that further studies were necessary. The following is the final statement found on page 35 of the ESA: “Based on the foregoing, no additional investigation is recommended at this time.” As such, the Appellant is incorrect in this assertion.

² Phase I Environmental Site Assessment Report, 2137-2211 South Western Avenue, Los Angeles, California 90018, EFI Project No. 9836003585, Prepared by EFI Global, Inc., July 10, 2018

³ Ibid, page 11

Air Quality, Health Risk, and Greenhouse Gas EmissionsComment 2.1 [page 5]

The 2017 EIR found that implementation of the Community Plan Update would have significant and unavoidable air quality impacts (2017 EIR, pp. 9-13.) Specifically, the 2017 EIR concluded that construction emissions would result in significant and unavoidable impacts from emissions of NOx, VOCs, PM2.5, PM10, and other criteria air pollutants. (Id.)

Response 2.1

The 2017 EIR concluded that construction air quality impacts could be significant and unavoidable because of “the absence of specific project details to assess” and “without a specific construction schedule, timing and emission levels cannot be accurately estimated.”⁴ The Project included specific details to assess including a construction schedule. As such, the technical memorandum prepared for the Project was able to assess the potential air quality impacts that were not assessed in the 2017 EIR. The result of this assessment was a determination that the project would have a less than significant impact. Therefore, the impacts that were determined in the 2017 EIR to potentially be significant due to a lack of project details were found in this case to not be significant once the project details were available.

Comment 2.2 [page 5]

SWAPE reviewed the Project’s CalEEMod output files and found that several model inputs were inconsistent with information disclosed elsewhere in the Technical Memo for the Project. Specifically, SWAPE found that the following inputs were incorrect or unsubstantiated:

- Unsubstantiated Reductions to Architectural and Area Coating Emission Factors
- Unsubstantiated Changes to Architectural Coating Construction Phase Length
- Unsubstantiated Reduction to Acres of Grading Value
- Incorrect Number of Construction Worker Trips
- Underestimated Weekday, Saturday, and Sunday Operational Vehicle Trip Rates

Response 2.2

Adjustment to the inputs in CalEEMod are a standard practice when project specific information is available. The model includes default values based on construction surveys conducted by SCAQMD. These give approximations of generic construction activity. However, it is recommended by SCAQMD that if the

⁴ City of Los Angeles Department of City Planning, Case Number: ENV-2008-1780-EIR, *South Los Angeles and Southeast Los Angeles Community Plans Draft EIR*, Section 4.8 Hazards & Hazardous Materials, November 3, 2016, pages 4.3-19 and 4.3-23.

information is available, that defaults may be replaced by project specific inputs.⁵ This was done for the Project. The adjustment to the inputs in the model were made to be consistent with the information provided regarding the project and used elsewhere in the analysis. In addition, default values in CalEEMod do not always account for regulatory compliance with applicable SCAQMD rules. Specifically:

- Reductions to Architectural and Area Coating Emission Factors were made to reflect regulatory compliance with SCAQMD Rule 1113 VOC limits.
- Changes to the Architectural Coating Construction Phase Length were made to reflect an expected construction timeline specific to the project.
- The acres of grading was adjusted to reflect the expected construction timeline and the specific phase in which grading would occur. During the ‘shoring/grading phase’ inputs were provided based on the area of the site, the tons of demolition debris to be removed and cubic yards of soil to be excavated. CalEEMod then calculates an area of grading based on these parameters. The resulting value was 63 acres (shown on page 6 of the AQ model output) which overestimates the grading area, giving a conservative result for analysis purposes. For the ‘foundation’ phase grading was set to zero as it was accounted for in the previous phase.
- The Number of Construction Worker Trips was derived from the LADOT-approved traffic assessment. This was noted in the AQ report.
- The Weekday, Saturday, and Sunday Operational Vehicle Trip Rates was derived from the LADOT-approved traffic assessment. This was noted in the AQ report.

Comment 2.3 [page6]

In order to more accurately estimate the Project’s potential emissions, SWAPE prepared an updated CalEEMod model using Project-specific information from the Technical Memo. SWAPE found that the Project’s construction-related volatile organic compound (VOC) emissions would exceed the CEQA significance threshold established by the South Coast Air Quality Management District (“SCAQMD”). (Ex. A, p. 10.) Specifically, SWAPE found that VOC emissions from Project construction would be 232.57 lbs/day, a 761% increase over the Technical Memo’s estimated 27 lbs/day, and a significant exceedance of the SCAQMD threshold of 75 lbs/day. (Id.)

Response 2.3

As stated in the previous response, model inputs can be adjusted and should be to reflect realistic project-specific conditions. However, to achieve a result that showed significant impacts, the Appellant’s

⁵ SCAQMD, California Emissions Estimator Model User’s Guide, May 2021, page 13

consultant adjusted certain inputs in a way that was neither project-specific nor generally realistic. SWAPE inappropriately reduced the duration of construction phases in order to produce a result that exceeds the significance thresholds. For example, the number of days on which the architectural coating of the entire project would be conducted was reduced such that the emissions associated with that activity would be concentrated on a few days rather than over a longer period of time and therefore would have significant emissions spikes on those days. SWAPE selected 10 days as the duration of that phase. However, the timeline assumed is not realistic or probable for a construction project of this size and type. It is not reasonable to expect that a 70,220-square-foot retail store, 364 residential units, all residential amenity space and parking levels would be entirely painted within a two-week period. For the analysis conducted in the Technical Memorandum for the City presumed instead that painting would be distributed over a number of weeks as different components of the Project were completed

Comment 2.4 [page 6]

SWAPE also prepared a screening-level health risk assessment (“HRA”) to evaluate potential impacts of diesel particulate matter (“DPM”) emissions during the construction and operation of the Project. (Ex. A, pp. 13-17.) SWAPE used AERSCREEN, a screening-level air quality dispersion model. (Id. at 13.) SWAPE used a sensitive receptor distance of 75 meters and analyzed impacts to individuals at different stages of life based on guidance from the California Office of Environmental Health Hazard Assessment (“OEHHA”) and SDAPCD guidance. (Id. At 17.)

Response 2.4

The guidance from the California Office of Environmental Health Hazard Assessment (“OEHHA”) that the Appellant’s consultant used to prepare a screening-level health risk assessment (“HRA”) is not applicable to the Project. The OEHHA Guidance Manual is intended to implement the Air Toxics Hot Spots Information and Assessment Act (AB 2588) and establishes protocols for analysis but does not establish when a project must prepare a cancer risk assessment. The OEHHA Guidance Manual states on page 1-3 that “The Hot Spots Act requires that each local Air Pollution Control District or Air Quality Management District (hereinafter referred to as District) determine which facilities will prepare an HRA.” California Health and Safety Code Section 44320 states that AB 2588 applies to “Any facility which manufactures, formulates, uses, or releases” toxic air contaminants, carcinogens, total organic gases, particulates, or oxides of nitrogen or sulfur and “any facility which is listed in any current toxics use or toxics air emission survey, inventory, or report released or compiled by a district.” The Project does not qualify as a “facility” subject to AB 2588 as the uses proposed and would not manufacture, formulate, use, or release the substances identified by Health and Safety Code Section 44320. Furthermore, the local district (SCAQMD)

has not issued guidance or regulation for an HRA of the type of construction proposed by the Project. As such, the OEHHA Guidance Manual is not applicable to determining the impacts of the Project.

The City follows South Coast Air Quality Management District (SCAQMD) guidance for air quality analysis and relies on SCAQMD thresholds. The SCAQMD CEQA guidelines for evaluating construction impacts do not require the preparation of an HRA to evaluate construction impacts. For construction, SCAQMD provides daily mass emissions thresholds and localized significance thresholds.

As shown in the technical memorandum prepared for the project, the project would not exceed applicable SCAQMD thresholds.⁶ Therefore, the City determined the Project would have a less than significant impact based on the methodologies recommended by SCAQMD for the project type.

SCAQMD requires HRAs for compliance with AB2588, SCAQMD Rule 1401 and Rule 1402, which regulate stationary emission sources. SCAQMD has also adopted guidance on the use of HRAs for analyzing mobile source emissions. However, this guidance refers to emissions associated with facilities such as truck stops and distribution centers that feature long term presence of diesel emission sources. The Project would not consist of this or any other land use type that would emit substantial diesel particulate matter over long periods of time.

SCAQMD has not determined that an HRA is required for commercial and residential land uses of the type proposed by the Project. Furthermore, SCAQMD has not developed any recommendations on use of the OEHHA Guidance Manual for CEQA analyses of potential construction impacts nor has the City adopted the Guidance Manual or incorporated it into the City's CEQA thresholds or methodologies.

Based on the above, the Appellant's comment is not relevant to the CEQA evaluation of the Project.

Comment 2.5 [Page 6]

SWAPE also found that the GHG impacts of the Project were not adequately analyzed.

Response 2.5

SWAP bases this allegation on its claims about the CalEEMod output discussed under Air Quality above. As noted in the responses above, the model inputs were appropriately established.

The methodology used by the City to determine the significance of GHG impacts is not based on the quantitative output of CalEEMod but rather whether a project is consistent with the policies and programs of the State, City and region that aim to reduce GHG emissions. The Technical Memorandum discusses how the project is consistent with these policies and programs.⁷ The Appellant seeks to substitute a

⁶ Technical Memorandum, 2211 WESTERN AVE, Environmental Case ENV-2021-8443-EAF, October 2022, Page 7-21.

⁷ Technical Memorandum, 2211 WESTERN AVE, Environmental Case ENV-2021-8443-EAF, October 2022, Pages 7-38 through 7-47.

methodology of its own, which is not the approach used by the City in its role as lead agency. As such, the Appellant's comment is not relevant to the CEQA evaluation of the Project.

II. Significant and Unavoidable Impacts identified in the 2017 EIR

Comment 4.1 [Page 7]

The Project will continue to result in significant impacts to air quality and GHGs that were identified as significant and unavoidable in the 2017 EIR.

Response 4.1

The 2017 EIR did conclude that there could be significant impacts to air quality emissions due to "the absence of specific project details to assess."⁸ In the absence of this level of detail, the EIR had to conclude that impacts could be significant. However, specific details have been provided to evaluate the Project. The Project was fully assessed, and it was found that impacts would be less than significant.⁹ As such, the Project does not trigger the criteria for a subsequent EIR described in CEQA Section 21166 as no major revisions would be required to the certified EIR due to project changes, new circumstances or new information. As such, no further EIR would be required as the Project meets the criteria expressed in Public Resource Code 21155.4 and CEQA Guidelines Section 15168(c).

Contrary to the Appellant's claim, impacts to GHGs were not identified as significant or unavoidable in the 2017 EIR.¹⁰

⁸ City of Los Angeles Department of City Planning, Case Number: ENV-2008-1780-EIR, *South Los Angeles and Southeast Los Angeles Community Plans Draft EIR*, Section 4.8 Hazards & Hazardous Materials, November 3, 2016, pages 4.3-19 and 4.3-23.

^{9 9} Technical Memorandum, 2211 WESTERN AVE, Environmental Case ENV-2021-8443-EAF, October 2022, Pages 7-8 through 7-22.

¹⁰ City of Los Angeles Department of City Planning, Case Number: ENV-2008-1780-EIR, *South Los Angeles and Southeast Los Angeles Community Plans Draft EIR*, Section 4.8 Hazards & Hazardous Materials, November 3, 2016, Section 4.7.

Date: February 8, 2023
To: Sergio Ibarra, City Planner; Helen Jadali, Planning Associate
Department of City Planning, City of Los Angeles
Cc: City Planning Commission, City of Los Angeles
From: Ned Baldwin, Meridian Consultants LLC
Subject: Response to letter from Lozeau Drury regarding CPC-2021-8442-CU-DB-SPR-HCA

Meridian Consultants has reviewed the letter submitted by Lozeau Drury dated February 6, 2023 with regard to CPC-2021-8442-CU-DB-SPR-HCA and ENV-2021-8443-EAF and provides the following responses to comments related to the analysis in the CEQA technical memorandum.

Page 4: The City concluded that “no substantial changes in the environment on or in the vicinity of the Property related to hazards or hazardous materials have occurred since certification of the Community Plan EIR that would require revision to the Community Plan EIR.” However, the City failed to provide substantial evidence in support of this conclusion.

The City was able to conclude that there have been no substantial changes related to hazards or hazardous materials as the land uses on the site have remained unchanged and the land uses on the adjacent property had been modified to remove former commercial uses and develop new residential uses. This was described in the introduction to the technical memorandum.

Page 5: Specifically, SWAPE noted that the Phase 1 Environmental Site Assessment (“ESA”) did not include “a map or any figures to show what portion of the Project site was covered by the Phase 1 ESA.” (Id. at 1.) SWAPE therefore stated that an EIR should be prepared which includes a Phase 1 ESA which encompasses the entire Project site. (Id.)

A figure was included as an attachment to the ESA. Though the ESA focuses on the portion of the site along Western containing automotive uses and which are identified in the ESA as Historical Recognized Environmental Condition, the ESA does encompass the entire Project site, as described on page 1 the ESA.

Page 5: SWAPE also noted that the Phase 1 ESA prepared for the Project concluded that further studies were necessary.

This comment is inaccurate. The conclusion on page 35 of the ESA is: “Based on the foregoing, no additional investigation is recommended at this time.”

Page 5: The 2017 EIR found that implementation of the Community Plan Update would have significant and unavoidable air quality impacts (2017 EIR, pp. 9-13.) Specifically, the 2017 EIR concluded that construction emissions would result in significant and unavoidable impacts from emissions of NOx, VOCs, PM2.5, PM10, and other criteria air pollutants. (Id.)

When it certified the 2017 EIR, the City concluded that construction air quality impacts could be significant and unavoidable because of “the absence of specific project details to assess” (page 4.3-19 and 4.3-21) and “without a specific construction schedule, timing and emission levels cannot be accurately estimated” (page 4.3-23). In the evaluation of the Project, specific project details have been provided to assess.

Page 5: SWAPE reviewed the Project’s CalEEMod output files and found that several model inputs were inconsistent with information disclosed elsewhere in the Technical Memo for the Project. Specifically, SWAPE found that the following inputs were incorrect or unsubstantiated: • Unsubstantiated Reductions to Architectural and Area Coating Emission Factors; • Unsubstantiated Changes to Architectural Coating Construction Phase Length; • Unsubstantiated Reduction to Acres of Grading Value; • Incorrect Number of Construction Worker Trips; • Underestimated Weekday, Saturday, and Sunday Operational Vehicle Trip Rates.

It is standard practice to substitute project specific information for the default values in CalEEMod. In addition, default values in CalEEMod do not always account for regulatory compliance with SCAQMD rules. Reductions to Architectural and Area Coating Emission Factors were made to reflect regulatory compliance with SCAQMD Rule 1113 VOC limits. Changes to the Architectural Coating Construction Phase Length were made to reflect the expected construction timeline specific to the project. The acres of grading were adjusted to reflect the phase in which grading would occur. During the 'shoring/grading phase' inputs were provided to site area, tons of demolition debris, and cubic yards of soil from which CalEEMod calculated an area of grading which actually over-estimated for analysis purposes. For the 'foundation' phase grading was set to zero as that activity was accounted for in the previous phase. The Number of Construction Worker Trips and Weekday, Saturday, and Sunday Operational Vehicle Trip Rates were derived from the LADOT-approved traffic assessment, as was noted in report.

Page 6: In order to more accurately estimate the Project's potential emissions, SWAPE prepared an updated CalEEMod model using Project-specific information from the Technical Memo. SWAPE found that the Project's construction-related volatile organic compound (VOC) emissions would exceed the CEQA significance threshold established by the South Coast Air Quality Management District ("SCAQMD").

SWAPE inappropriately reduced the duration of construction phases, producing a result that exceeds the thresholds. By substantially reducing the duration, emissions associated with architectural coating would be concentrated on a few days rather a longer period. The timeline assumed by SWAPE is not realistic or probable.

Page 6: SWAPE also prepared a screening-level health risk assessment ("HRA") to evaluate potential impacts of diesel particulate matter ("DPM") emissions during the construction and operation of the Project.

The City follows South Coast Air Quality Management District (SCAQMD) guidance for air quality analysis and relies on SCAQMD thresholds, not as the letter stated SDAPCD which is a San Diego area agency. The SCAQMD CEQA guidelines do not require the preparation of an HRA to evaluate construction impacts or the land uses of the types proposed. As shown in the technical memorandum prepared for the project, the project would not exceed applicable SCAQMD thresholds. Therefore, the City determined the Project would have a less than significant impact based on the methodologies recommended by SCAQMD for the project type. SCAQMD requires HRAs for stationary emission sources in accordance with AB 2588 and OEHHA Guidance. The project does not qualify as a "facility" as defined in AB 2588. As such, the HRA methodology is not applicable to the Project.

Page 6: SWAPE also found that the GHG impacts of the Project were not adequately analyzed.

SWAPE bases this allegation the CalEEMod output discussed under Air Quality. As noted in the responses above, the model inputs were appropriately established. Furthermore, the City's methodology to determine the significance of GHG impacts is not based on the quantitative output of CalEEMod but rather on consistency of a project with the policies and programs of the State, City and region to address GHG emissions. The Technical Memorandum discusses how the project is consistent; the comment letter did not challenge this conclusion.

Page 7: Because the Project will continue to result in significant impacts to air quality and GHGs that were identified as significant an unavoidable in the 2017 EIR.

This allegation is not supported by the analysis prepared for the City nor is it demonstrated by the claims made in the comment letter. The 2017 EIR concluded that there could be significant impacts to air quality and GHGs due to "the absence of specific project details to assess". Specific Project details were identified and assessed resulting in the conclusion that those impacts would in fact be less than significant with respect to the Project.

Communication from Public

Name: Response to SAFER Letter
Date Submitted: 06/16/2023 04:52 PM
Council File No: 23-0557
Comments for Public Posting: Response to SAFER Appeal – Case No.
CPC-2021-8442-CU-DB-SPR-HCA; CEQA Case No.:
ENV-2008-1781-EIR; ENV-2021-8443-EAF



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June 16, 2023

VIA EMAIL ONLY

Planning and Land Use Management Committee
Los Angeles City Council
Councilmember Marques Harris-Dawson, Chair
Councilmember Monica Rodriguez, Vice Chair
Councilmember Katy Yaroslavsky
Councilmember John S. Lee
Councilmember Heather Hutt
City Hall, Room 340
Los Angeles, CA 90012

**RE: Response to SAFER Appeal – Case No. CPC-2021-8442-CU-DB-SPR-HCA;
CEQA Case No.: ENV-2008-1781-EIR; ENV-2021-8443-EAF**

Honorable Councilmembers:

This firm represents 2231 Western (LA), LLC (“Applicant”) the owner of the certain real property commonly referred to as 2201-2231 South Western Avenue and 2003-2029 24th Street (the “Property”). The Property contains approximately 164,849 square feet of lot area and is situated on the west side of Western Avenue between 24th Street and Interstate 10.

Portions of the Property are currently improved with (a) a 60-unit residential structure that has received a certificate of occupancy and is occupied (the “Existing Structure”) and (b) a separate 48-unit residential structure for which a building permit has been issued and is currently under construction (the “Under-Construction Structure”). The Property’s remaining lot area (100,112 square feet) is vacant and has been utilized as a parking lot (the “Vacant Portion”). Applicant proposes to utilize the Vacant Portion to construct an eight story, 364 dwelling unit mixed use structure with approximately 70,220 square feet of retail floor area and 514 parking spaces located in one below grade level and four partial above-grade levels (the “Project”). The

Project will also include various residential amenities including landscaped courtyards, decks, indoor amenities, pools, and private balconies. On February 9, 2023, the City Planning Commission (“CPC”) unanimously approved the Project, and the Letter of Determination (“LOD”) regarding the Project was mailed on April 25, 2023.¹ The Project also received strong support from the community, who praised the Project for making various adjustments and changes following community input during multiple community outreach meetings. Despite the near unanimous support for the Project by the surrounding community and the CPC, the Project was appealed by Supporters Alliance for Environmental Responsibility (“SAFER”), following its submission of multiple comment letters throughout the Project’s approval process before the CPC.

In large part, the SAFER Appeal reasserts claims and allegations raised in comment letters dated November 29, 2022 (“November Letter”), and February 6, 2022 (“February Letter”). In a letter dated January 31, 2022, we submitted detailed responses to the November Letter (“Applicant’s Response Letter”). A copy of Applicant’s Response Letter is attached hereto as Exhibit “A.” All responses to comments set forth in Applicant’s Response Letter are incorporated herein by reference. SAFER’s appeal justification is essentially the same as the February Letter. In its appeal letter, SAFER attached the February Letter as its justification for appeal. As the February Letter has been submitted as both a comment letter and as SAFER’s justification for appeal, this letter responds to the SAFER’s comments in both capacities (collectively hereinafter the “Appeal” or “Appeal Letter”).²

In its Appeal, SAFER makes a number of arguments. Specifically, SAFER claims that: (1) an Environmental Impact Report (“EIR”) is required because the City’s analysis of hazards and hazardous materials is inadequate; (2) an EIR is required because the Project will have significant air quality, health risk, and greenhouse gas emissions impacts; and (3) that the Project requires a tiered EIR because the significant and unavoidable impacts identified in the 2017 EIR will remain significant with the implementation of the Project.

As detailed below, all SAFER’s claims are unfounded, and can be disregarded, as none of SAFER’s claims amount to substantial evidence against the Project’s CEQA approval. Additionally, Meridian Consultants, Applicant’s CEQA consultants, prepared a letter responding to SAFER’s February Letter, which is attached hereto as Exhibit “B.” Additionally, Meridian has prepared a letter responding to SAFER’s Appeal (the “Meridian Letter”), which is attached hereto as Exhibit “C” and incorporated herein by reference.

¹ Three members of the CPC were not present during the vote. The five members present unanimously voted in favor of the project.

² SAFER submitted an additional letter on June 12, 2023, raising two additional claims regarding noise and formaldehyde exposure. As both claims are entirely technical and no new legal issues have been raised in the June 12 letter, we do not address those comments herein. Meridian Consultants has prepared a technical response to SAFER’s June 12 letter, which has been submitted concurrently with this letter.

I. The Substantial Evidence Standard of Review Applies to the City's Factual Determination that a Subsequent EIR is not Required

The Project qualifies as “later activities” of a Program EIR as defined by CEQA Guidelines Section 15168(c) and the City has evaluated the Project and determined that the environmental effects of the Project are within the scope of the 2017 EIR. As such, the Substantial Evidence standard of review applies to the City's determination.

The Project is within the South Los Angeles Community Plan Area. In 2017 the City adopted an updated South Los Angeles Community Plan (the “Community Plan”), the South Los Angeles Community Plan EIR (the “Community Plan EIR” or “2017 EIR”) and adopted the South Los Angeles Community Plan Implementation Overlay (CPIO) to implement the policies of the new Community Plan. The CPIO expressly states that it is a specific plan for purposes of Public Resources Code Section 21155, which allows for an exemption from CEQA for projects that meet the criteria described in Section 21155.4. In addition, the Community Plan EIR is considered a program EIR and CEQA Guidelines section 15168 allows for “later activities” that are site specific operations within the scope of the program EIR to be considered as already evaluated by the program EIR.³

CEQA Guidelines Section 15168 states that a program EIR is an EIR which may be prepared on a series of actions that can be characterized as one large project and are related either: geographically; as logical parts in the chain of contemplated actions; in connection with issuance of rules, regulations, plans or other general criteria to govern the conduct of a continuing program; or as individual activities carried out under the same authorizing statutory or regulatory authority and having generally similar environmental effects which can be mitigated in similar ways. CEQA Guidelines section 15168(c) specifically states that later activities within a program EIR must be examined in the light of the program EIR to determine whether additional environmental documentation must be prepared for those later activities. Further, a program EIR can be used to simplify the task of preparing environmental documents on later activities in the program.⁴

As a general rule, if an EIR has been prepared for a project, the lead agency has discretion to determine whether a subsequent or supplemental EIR is necessary under Pub. Res. Code section 21166 and CEQA Guidelines section 15162, and that agency's determination will be upheld by a reviewing court if it is supported by substantial evidence.⁵ However, courts have also applied this substantial evidence standard when reviewing an agency's determination under CEQA Guidelines section 15168(c) that a project may be approved on the basis of a program EIR without further environmental review.⁶

³ CEQA Guidelines §15168.

⁴ CEQA Guidelines § 15168(d).

⁵ See Committee for Re-Evaluation of the T-Line Loop v. San Francisco Mun. Transp. Agency, 6 CA5th 1237, 1247 (2016), citing Kostka & Zischke, Practicing Under the California Environmental Quality Act, 2nd Edition.

⁶ See *Latinos Unidos de Napa v. City of Napa*, 221 Cal. App. 4th 192 (2013).

For example, in *Latinos Unidos De Napa v. City of Napa, et al.*, 221 Cal. App. 4th 192 (2013), the petitioner filed a petition for writ of mandate against the City of Napa, seeking to set aside the City's approval of revisions to the housing element of its general plan, and related general plan and zoning amendments, on the ground that an EIR was required to do so.⁷ There, the court weighed whether it should apply the “Fair Argument” standard or the more deferential “Substantial Evidence” standard to the City of Napa’s determination that a subsequent EIR was not required.⁸ There, the court determined that the Substantial Evidence standard applied, because the project was “the same as, or within the scope of, that which is described in [the EIR].”⁹ The court noted that “[t]reating the issue as a question of law... inappropriately undermines the deference due the agency in administrative matters. That principle of deference is otherwise honored by the substantial evidence test's resolution of any reasonable doubts in favor of the administrative finding and decision.”¹⁰

Further, in *Citizens for Responsible Equitable Environmental Development v. City of San Diego Redevelopment Agency*, 134 Cal. App 4th 598, (2005), the petitioner filed a lawsuit seeking to require the respondents to prepare a project specific EIR to analyze a hotel project.¹¹ There, the petitioner claimed, among other things, that: (1) a “fair argument” could be made that the hotel project would have significant environmental impacts; and (2) the respondents' reliance on the prior EIRs violated CEQA's rules for limited environmental review associated with a project undertaken pursuant to a “program EIR.” There, the court held that the substantial evidence standard applied, and that respondents did not violate CEQA in determining that the potential environmental effects of the hotel project were adequately examined in the Master EIR and Subsequent EIR on which the project relied.¹² In determining what standard of review to apply, the court quoted *Sierra Club, et al. v. County of Sonoma, et al.*, 6 Cal. App. 4th 1307, (1992), which reasoned:

A court reviewing an agency's decision not to prepare an EIR in the **first instance** must set aside the decision if the administrative record contains substantial evidence that a proposed project might have a significant environmental impact; in such a case, the agency has not proceeded as required by law. [Citation.] Stated another way, the question is one of law, i.e., ‘the sufficiency of the evidence to support a fair argument.’ [Citation.] Under this standard, deference to the agency's determination is not appropriate and its decision not to require an EIR can be upheld only when there is no credible evidence to the contrary. [Citation.]¹³

⁷ *Latinos Unidos de Napa v. City of Napa*, 221 Cal. App. 4th 192, 195 (2013).

⁸ *Id.*, at p. 200.

⁹ *Id.*, at p. 202.

¹⁰ *Id.*, at p. 201, *citing* *Mani Brothers Real Estate Group v. City of Los Angeles*, 153 Cal. App. 4th 1385, 1401 (2007).

¹¹ *Citizens for Responsible Equitable Environmental Development v. City of San Diego Redevelopment Agency*, 134 Cal. App. 4th 598, (2005).

¹² *Id.*

¹³ *Sierra Club, et al. v. County of Sonoma, et al.*, 6 Cal. App. 4th 1307, 1317–1318 (1992) (emphasis added).

However, the court followed, “**when a court reviews an agency decision under section 21166 not to require a subsequent or supplemental EIR on a project, the traditional, deferential substantial evidence test applies.** The court decides only whether the administrative record as a whole demonstrates substantial evidence to support the determination that the changes in the project or its circumstances were not so substantial as to require major modifications of the EIR.”¹⁴

SAFER also cites to the *Sierra Club* decision, but cites to only a portion of the *Sierra Club* court’s decision where it discusses projects outside the scope of a program EIR.¹⁵ Notably absent from SAFER’s discussion of *Sierra Club* is the portion above, where the court held that the substantial evidence standard applied.

Further, SAFER seems to claim, at least in one portion of its letter, that the less deferential fair argument standard applies and suggests that the City’s determination is a “question of law.”¹⁶ However the case cited by SAFER as authority is irrelevant to this matter. SAFER cites *Pocket Protectors*, a case that states “[i]t is a question of law, not fact, whether a fair argument exists, and the courts owe no deference to the lead agency’s determination.”¹⁷ In citing the *Pocket Protectors* case, SAFER fails to mention that *Pocket Protectors* involved a project that used a Mitigated Negative Declaration (MND), which is an entirely separate environmental review document that carries the fair argument standard of review. This project does not use an MND. In other words, SAFER cites an entirely inapplicable case when it mentions the fair argument standard and its discussion is wholly irrelevant to the instant matter.¹⁸

Here, the Project utilizes CEQA Guidelines section 15168 as the Project qualifies as “later activities” of a Program EIR as defined by CEQA Guidelines section 15168(c). Because the City has determined that the Project qualifies as a project within the scope of the 2017 EIR, the substantial evidence standard of review applies. The City has evaluated the Project and determined that the Project’s environmental effects are within the scope of the Program EIR. The Project’s consistency with the Program EIR is discussed at length in the Project’s Technical Memorandum, prepared by Meridian Consultants, LLC, and submitted to the City on or about October 2022. Applicant incorporates the Technical Memorandum by reference as evidence of the Project’s consistency.

At its meeting of February 9, 2023, the CPC found that “based on the independent judgment of the decision-maker, after consideration of the whole of the administrative record, that the Project is within the scope of the South Los Angeles Community Plan Program EIR No. ENV-2008-1781-EIR, SCH No. 200810109, pursuant to CEQA Guidelines Sections 15168 and 15162; the environmental effects of the Project were covered in the Program EIR and no new

¹⁴ *Citizens for Responsible Equitable Environmental Development v. City of San Diego Redevelopment Agency*, 134 Cal. App 4th 598, (2005).

¹⁵ SAFER Appeal, p. 3.

¹⁶ *Id.*

¹⁷ *Id.*, p. 3; *quoting* *Pocket Protectors v. City of Sacramento*, 124 Cal.App.4th 903, 928 (2004).

¹⁸ *Id.*, p. 3.

environmental effects not identified in the Program EIR will occur and no new mitigation is required; and the City has incorporated all feasible mitigation measures from the Program EIR on the Project.”¹⁹

SAFER quotes CEQA Guidelines section 15162(a) to claim various standards apply to require a subsequent EIR or Negative Declaration for the Project.²⁰ However, the CPC made its determination pursuant to CEQA Guidelines Section 15168 for program EIRs (as noted in the paragraph above). Thus, the appropriate test to apply is the test required under CEQA Guidelines section 15168(c), which notes that later activities in the program must be examined in the light of the program EIR to determine whether an additional environmental document must be prepared.²¹ CEQA Guidelines section 15162 is also incorporated within this analysis, as shown below. The criteria required for a “later activities” project to qualify per the CEQA Guidelines under section 15168(c) are:

1. If a later activity would have effects that were not examined in the program EIR, a new initial study would need to be prepared leading to either an EIR or a negative declaration. That later analysis may tier from the program EIR as provided in Section 15152.
2. If the agency finds that pursuant to Section 15162, no subsequent EIR would be required, the agency can approve the activity as being within the scope of the project covered by the program EIR, and no new environmental document would be required. **Whether a later activity is within the scope of a program EIR is a factual question that the lead agency determines based on substantial evidence in the record.** Factors that an agency may consider in making that determination include, but are not limited to, consistency of the later activity with the type of allowable land use, overall planned density and building intensity, geographic area analyzed for environmental impacts, and covered infrastructure, as described in the program EIR.
3. An agency shall incorporate feasible mitigation measures and alternatives developed in the program EIR into later activities in the program.
4. Where the later activities involve site specific operations, the agency should use a written checklist or similar device to document the evaluation of the site and the activity to determine whether the environmental effects of the operation were within the scope of the program EIR.
5. A program EIR will be most helpful in dealing with later activities if it provides a description of planned activities that would implement the program and deals with the effects of the program as specifically and comprehensively as possible. With a good and detailed project description and analysis of the

¹⁹ LOD, p. 1.

²⁰ SAFER Appeal, p. 3-4.

²¹ CEQA Guidelines § 15168(c).

program, many later activities could be found to be within the scope of the project described in the program EIR, and no further environmental documents would be required.²²

Thus, the CPC's determination that the Project is within the scope of a program EIR is a factual determination subject to the substantial evidence standard of review, as stated clearly within CEQA Guidelines section 15168(c). The burden falls on SAFER to show the City lacked substantial evidence in the record to support its determination, not, as SAFER claims, that the *City must prove via substantial evidence* that no subsequent EIR or MND is required. The City has already made a factual determination based on substantial evidence in the record. Thus, the burden falls on the SAFER to show that the City lacked substantial evidence in the record to support its factual determination. As discussed below, SAFER has failed to, and cannot, make such a showing.

II. The Project Adequately Analyzed Hazardous Materials

First, SAFER claims that a “decision to not prepare an environmental document for the Project is only permissible if the City finds, based on substantial evidence, that none of the conditions of CEQA Guidelines section 15162 have occurred.”²³ As discussed above, this is misleading. The City already made a factual determination pursuant to CEQA Guidelines section 15162 when it determined that a new EIR did not need to be prepared. The City's decision is based on substantial evidence in the record before this Committee. Because the City has made a factual determination, the burden falls on SAFER to show that substantial evidence within the record does not support the City's determination. As discussed below, there is more than sufficient substantial evidence in the record to support the City's decision, and SAFER has failed to show otherwise.

Regarding the substance of its claims in this section, SAFER claims that the City inadequately disclosed and analyzed impacts from hazards and hazardous materials, and that the Project's Phase I Environmental Assessment (“ESA”) concluded that further studies were necessary. As discussed in further detail below, both these claims are inaccurate.

First, as noted in the Technical Memorandum and Meridian Letter, the land uses on the Property have remained unchanged since certification of the Community Plan EIR. As noted in the Technical Memorandum, in 2017 the City adopted an updated Community Plan and adopted the related CPIO to implement the policies of the new Community Plan.²⁴ The Community Plan re-zoned the Property from a P (parking) zone to its current C2 commercial zone, meaning that this mixed-used commercial and residential projects, such as the Project, were anticipated within the Community Plan and its related EIR at the time of the zone change.²⁵ The Community Plan also designates the Property as Corridors Subarea C or a “General Corridor.” The General

²² CEQA Guidelines § 15168(c) (emphasis added).

²³ SAFER Appeal, p. 4.

²⁴ Technical Memorandum, p. 2.0-3.

²⁵ See South Los Angeles Community Plan, Generalized Zoning Map, available at: [https://planning.lacity.org/odocument/1b1bc18c-713d-4931-b8b3-7324d24ce6ad/Zoning\(P\)_SLA.pdf](https://planning.lacity.org/odocument/1b1bc18c-713d-4931-b8b3-7324d24ce6ad/Zoning(P)_SLA.pdf)

Corridor Subarea allows for a broad range of commercial uses and also allows multifamily residential development. Both the Community Plan's and CPIO's potential impacts were analyzed in the Community Plan EIR.²⁶

As such, there has been no substantial change in the conditions of the site relative to hazards or hazardous materials since the City adopted the Community Plan and the Community Plan EIR. In fact, the Community Plan EIR has an entire section dedicated to "Hazards and Hazardous Materials."²⁷ The EIR specifically finds that such concerns are non-existent because:

Future development projects within the CPAs will be required to conform with all applicable environmental regulations related to new construction and hazardous materials storage, use and transport. Hazardous materials would be used and stored in accordance with applicable regulations and such uses would be required to comply with federal and state laws to eliminate or reduce the consequences of hazardous materials accidents. Furthermore, as discussed above, potential hazards related to lead, asbestos, methane zones, and USTs are less than significant with compliance with existing regulations. In addition, development of sites with known contaminants would be required to undergo remediation and cleanup before construction activities could begin.²⁸

Despite this, the SAFER appeal claims that the Project's Phase I ESA inadequately disclosed and analyzed impacts from hazards and hazardous materials.²⁹ Further, SAFER claims that the ESA did not include a map or any figures to show what portion of the Project site was covered by the ESA, and therefore makes logical leap to conclude that the Project requires an EIR.

Further, SWAPE claims that potential hazards were inadequately analyzed. However, potential hazards are well documented and analyzed within the record, including within the Technical Memorandum, in addition to the discussion within the Community Plan EIR. Further, SAFER's claim is contrary to both the EIR as shown above, and the ESA, which was prepared for the Project, and concluded that there was no substantial adverse condition on or in the vicinity of the Property related to hazards or hazardous materials.³⁰ SWAPE's claim is therefore unfounded, and can be disregarded.

Regarding the ESA, SAFER claims that the ESA did not specifically include a map to show what was studied. However, as noted in the Meridian Letter, the ESA included a

²⁶ Technical Memorandum, p. 2.0-3; South Los Angeles and Southeast Los Angeles Community Plan, 4.10 Land Use & Planning.

²⁷ South Los Angeles and Southeast Los Angeles Community Plans Draft EIR, 4.8 Hazards and Hazardous Materials.

²⁸ *Id.*, at 4.8-40.

²⁹ SAFER Appeal, p. 5.

³⁰ Phase I Environmental Site Assessment Report, 2137-2211 South Western Avenue, Los Angeles, California 90018, EFI Project No. 9836003585, Prepared by EFI Global, Inc., July 10, 2018.

description of the site and the surrounding area.³¹ The ESA states that Property includes “2137 to 2211 South Western Avenue” and the ESA focused on the portion of the property that has historically been utilized for automotive services, noting that the balance of the site “consists of asphalt-paved parking areas and access ways.”³² Furthermore, ESAs are conducted for a focused site but also include evaluation of surrounding properties. Thus, the ESA adequately analyzed the Property, and SAFER’s claim is unfounded.

The City relied upon substantial evidence to support the conclusion that, relative to hazards or hazardous materials, no substantial changes in the environment on or in the vicinity of the Property related had occurred that would require revision to the Community Plan EIR. SAFER’s claim should therefore be disregarded.

III. The Project Has Analyzed Potential Air Quality, Health Risk, and Greenhouse Gas Impacts and Will Not Have Significant Impacts

A. The Project Analyzed Potential Air Quality Impacts, and the City Concluded that the Project Will not have Significant Impacts

Next, SAFER claims that, pursuant to CEQA Guidelines section 15162, a subsequent EIR is required where new information since the certification of the 2017 EIR demonstrates that mitigation measures “which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure.”³³ Using this claim, SAFER argues that the 2017 EIR found that implementation of the Community Plan Update would have significant and unavoidable air quality impacts and that the 2017 EIR concluded that construction emissions would result in significant and unavoidable impacts from emissions of NO_x, VOCs, PM_{2.5}, PM₁₀, and other criteria air pollutants.³⁴

SAFER again applies incorrect legal standards to the incorrect set of facts in order to reach an incorrect conclusion. As discussed above, an analysis to determine whether a new EIR is necessary must begin with CEQA Guidelines section 15168(c). Specifically, CEQA Guidelines section 15168(c)(1), which states: “**If a later activity would have effects that were not examined in the program EIR**, a new initial study would need to be prepared leading to either an EIR or a negative declaration. That later analysis may tier from the program EIR as provided in Section 15152.” If this step is taken, an agency may find that “pursuant to Section 15162, no subsequent EIR would be required.”³⁵ Further, “the agency can approve the activity as

³¹ Meridian Letter, p.3.

³² *Id.*, p. 3; *citing* se I Environmental Site Assessment Report, 2137-2211 South Western Avenue, Los Angeles, California 90018, EFI Project No. 9836003585, Prepared by EFI Global, Inc., July 10, 2018.

³³ SAFER Appeal, p. 5.

³⁴ *Id.* at p. 5.

³⁵ CEQA Guidelines § 15168(c)(2).

being within the scope of the project covered by the program EIR, and no new environmental document would be required.”³⁶

Thus, the fact that the 2017 EIR concluded that construction air quality impacts could be significant and unavoidable because of “the absence of specific project details to assess” and “without a specific construction schedule, timing and emission levels cannot be accurately estimated” does not alone trigger the need for a new EIR.³⁷ Such a stringent standard would render program EIRs unusable, as any unknown would trigger the need for a new EIR. If fact, the EIR’s conclusion regarding potential air quality impacts itself serves as evidence that the EIR *did* study air quality impacts, anticipated some degree of development along these designated corridors, and on that basis reached conclusions on which the Project can rely.

The 2017 EIR contains a 25-page section dedicated entirely to the analysis of potential air quality impacts.³⁸ In that analysis, the EIR acknowledges potential impacts. The language “the absence of specific project details to assess” that SAFER cites to is only used in three instances within the Air Quality portion of the EIR. In all three instances, that language is used to discuss mitigation measures to impacts *that have already been acknowledged in the EIR*. In other words, the EIR has already acknowledged these impacts, and it notes that it cannot weigh in on the potential *reductions* to those impacts via mitigation measures due to the lack of specific details of individual projects. The impact has, in other words, already been analyzed and acknowledged in the 2017 EIR.

Here, the Project’s technical memorandum determined that the project would have a less than significant impact. However, *even if*, the Project was to have potential air quality impacts, multiple such impacts were already analyzed and acknowledged within the 2017 EIR, meaning regardless of whether the Project had certain air quality impacts, the Project would be able rely on the 2017 EIR because the EIR acknowledged those potential impacts. Additionally, the Project employs the specific mitigation measures outlined within the 2017 EIR, meaning that the Project has taken steps to further reduce any potential impacts that were acknowledge within the 2017 EIR by adopting the specific mitigation measures that were specifically outlined for future project in the 2017 EIR.

B. The Project’s CalEEMod Estimates and Input Data are Consistent with Industry Practice

SAFER claims that SWAPE reviewed the Project’s CalEEMod output files and found that several model inputs were inconsistent with information disclosed elsewhere in the Technical Memorandum. Specifically, SWAPE incorrectly asserts that several model inputs were inconsistent with information disclosed elsewhere in the Technical Memo for the Project.

³⁶ *Id.*

³⁷ City of Los Angeles Department of City Planning, Case Number: ENV-2008-1780-EIR, *South Los Angeles and Southeast Los Angeles Community Plans Draft EIR*, Section 4.8 Hazards & Hazardous Materials, November 3, 2016, pages 4.3-19 and 4.3-23.

³⁸ South Los Angeles and Southeast Los Angeles Community Plans Draft EIR, 4.3 Air Quality.

Again, this is false. As set forth in the Meridian Letter, the Applicant's changes to CalEEMod default settings are supported by substantial evidence in the record.³⁹ As a result, and contrary to the SWAPE Letter's inaccurate assertion, the Project's construction and operational emission are not underestimated.

As noted in the Meridian Letter, adjustment to the inputs in CalEEMod are a standard practice when project specific information is available. The model includes default values based on construction surveys conducted by SCAQMD. These give approximations of generic construction activity. However, it is recommended by SCAQMD that if the information is available, that defaults may be replaced by project specific inputs.⁴⁰ Adjustments were made to CalEEMod in order to reflect the specific details of the Project, and to reflect SCAQMD rules that are not the default setting in CalEEMod.⁴¹ For example, such changes included: (1) reductions to Architectural and Area Coating Emission Factors were made to reflect regulatory compliance with SCAQMD Rule 1113 VOC limits; (2) changes to the Architectural Coating Construction Phase Length were made to reflect an expected construction timeline specific to the project; (3) acres of grading were adjusted to reflect the expected construction timeline and the specific phase in which grading would occur; (4) the Number of Construction Worker Trips was derived from the LADOT-approved traffic assessment; and (5) Weekday, Saturday, and Sunday Operational Vehicle Trip Rates were derived from the LADOT-approved traffic assessment.⁴²

Without these adjustments, the Project's CalEEMod analysis would not be accurate to the Project's specific facts or SCAQMD's specific requirements. Such adjustments are commonly used in the City and are expected and necessary; provided they are supported by substantial evidence, which in this case they were.

Further, SAFER claims that SWAPE prepared an updated CalEEMod model using Project-specific information from the Technical Memorandum that showed that the Project would have significant impacts. However, SAFER's claims are both inaccurate and deceptive. As noted in the Meridian Letter, to achieve a result that showed significant impacts, SWAPE adjusted certain inputs in ways that were neither project-specific nor generally realistic.⁴³ For example, SWAPE inappropriately reduced the duration of construction phases in order to produce a result that exceeds the significance thresholds. The timeline used by SWAPE is not realistic and is intentionally shortened in order to increase potential impacts over time. SAFER's claims regarding CalEEMod modeling should therefore be disregarded.

³⁹ Meridian Letter, pp. 4-6.

⁴⁰ *Id.*, at p. 5.

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Id.*, pp. 5-6.

C. The Guidance From The California Office Of Environmental Health Hazard Assessment (“OEHHA”) That The Appellant’s Consultant Used To Prepare A Screening-Level Health Risk Assessment Is Not Applicable To The Project

SAFER claims that SWAPE prepared a screening-level health risk assessment (“HRA”) to evaluate potential impacts of diesel particulate matter (“DPM”) emissions during the construction and operation of the Project. Specifically, SWAPE used AERSCREEN, a screening-level air quality dispersion model, used a sensitive receptor distance of 75 meters, and analyzed impacts to individuals at different stages of life based on guidance from the California Office of Environmental Health Hazard Assessment (“OEHHA”) and San Diego County Air Pollution District (“SDAPCD”) guidance.⁴⁴ Once again, SAFER and SWAPE’s claims are based on deceptive data and measurements in order to manufacture significant impacts where none exist.

As noted in the Meridian Letter, the guidance from OEHHA that SWAPE used is not applicable to the Project. The OEHHA Guidance Manual is intended to implement the Air Toxics Hot Spots Information and Assessment Act (AB 2588) and establishes protocols for analysis but does not establish when a project must prepare a cancer risk assessment.⁴⁵ Specifically, this requirement is for any facility which manufactures, formulates, uses, or releases toxic air contaminants, carcinogens, total organic gases, particulates, or oxides of nitrogen or sulfur and any facility which is listed in any current toxics use or toxics air emission survey, inventory, or report released or compiled by a district.⁴⁶ As noted by Meridian, this project does not qualify as a “facility” per the definition above.

Additionally, the South Coast Air Quality Management District (“SCAQMD”) is the local authority for such matters for the Project, and not the SDAPCD as cited by SWAPE and SAFER.⁴⁷ SCAQMD CEQA guidelines for evaluating construction impacts do not require the preparation of an HRA to evaluate construction impacts. For construction, SCAQMD provides daily mass emissions thresholds and localized significance thresholds.⁴⁸ Further, as shown in the Project’s technical memorandum, the Project does not exceed the relevant SCAQMD thresholds.⁴⁹

SAFER’s claim regarding the preparation of an HRA is not relevant, and wholly deceptive as it applies the incorrect guidance from SDAPCD as opposed to SCAQMD. This claim should be disregarded.

⁴⁴ SAFER Appeal, p. 6. Notably, SAFER does not define “SDAPCD” in its letter, seemingly to avoid mentioning that this guidance is from San Diego County.

⁴⁵ Meridian Letter, p. 6.

⁴⁶ *Id.*

⁴⁷ SAFER Appeal, p. 6.

⁴⁸ Meridian Letter, pp. 6-7.

⁴⁹ Technical Memorandum, 2211 Western Ave., Environmental Case ENV-2021-8443-EAF, October 2022, Page 7-21.

D. The Project Adequately Analyzed Potential Green House Gas (“GHG”) Impacts

SAFER claims that the Project’s potential GHG impacts were not adequately analyzed. In doing so, SAFER vaguely claims that: (1) the Technical Memo’s quantitative GHG analysis relies on a flawed air model; (2) the Technical Memo fails to identify a potentially significant impact; (3) the Technical Memo fails to consider the performance-based standards under CARB’s Scoping Plan; and (4) the Technical Memo fails to consider the performance-based standards under SCAG’s RTP/SCS.⁵⁰

However, again, SAFER and SWAPE rely on inaccurate and deceptive methods to manufacture significant impacts when none exist. As mentioned in the Meridian Letter, the methodology used by the City to determine the significance of GHG impacts is not based on the quantitative output of CalEEMod but rather whether a project is consistent with the policies and programs of the State, City and region to address GHG emissions.⁵¹ Here, the Technical Memorandum discusses this consistency and finds that the project is consistent with these policies and programs.⁵² SAFER applies entire incorrect and inapplicable GHG emissions standards to claim that the Project will have GHG impacts and should be disregarded, as these applicable standards do not amount to substantial evidence against the Project’s approval.

IV. The Project Does Not Require A Tiered EIR

SAFER again makes a legally and factually inaccurate argument by claiming that the “Guidelines require that the City prepare an EIR or MND for the Project, which can tier from the 2017 EIR as necessary.”⁵³ As already explained earlier in this letter, this is incorrect.

SAFER jumps a logical step in its argument, by simply claiming that the Project must prepare a tiered EIR, without adequate support as to why. As previously explained above, an analysis to determine whether a new EIR is necessary must begin with CEQA Guidelines section 15168(c). Specifically, CEQA Guidelines section 15168(c)(1) states: “**If a later activity would have effects that were not examined in the program EIR**, a new initial study would need to be prepared leading to either an EIR or a negative declaration.

Here, as discussed in length above, the fact that the 2017 EIR concluded certain potential impacts *could* be significant and unavoidable because of an absence of project-specific details, does not mean that any project relying on the 2017 EIR as a Program EIR must prepare a separate tiered EIR. The EIR’s conclusion that certain potential impacts *could* be significant and unavoidable serves as evidence itself that the EIR *did* study air quality impacts, anticipated some degree of development along these designated corridors, and on that basis reached conclusions on which the Project can rely. The EIR even acknowledges potential impacts and it notes that it cannot measure the potential *reduction* of those impacts via mitigation measures due to the lack

⁵⁰ SAFER Appeal, p. 6.

⁵¹ Meridian Letter, p. 7.

⁵² Technical Memorandum, 2211 Western Ave., Environmental Case ENV-2021-8443-EAF, October 2022, Pages 7-38 through 7-47.

⁵³ SAFER Appeal, p. 7.

of specific details of individual future projects. In other words, it cannot predict how effective a mitigation measure will be for a specific future project. But this inherently means that the impact has been analyzed and acknowledged in the 2017 EIR. There is no “new” impact that SAFER can point to that would trigger the need for a new EIR.

Further, the Project employs the specific mitigation measures outlined within the 2017 EIR, meaning that the project has taken steps to further reduce potential impacts that were acknowledged within the 2017 EIR. As has been shown throughout this letter, in the Technical Memorandum, the Meridian Letter, and elsewhere in the record, no significance thresholds have been reached by the Project, and the Project will not have any significant impacts that would necessitate an EIR. An EIR is therefore not required as SAFER’s claims are based on an inaccurate reading of the law, and thresholds that are inapplicable to the Project.

V. Conclusion

The SAFER Appeal does not contain substantial evidence to support the allegations set forth therein. As discussed above and in the Meridian Letter (Exhibit “C”), SAFER’s claims are based on flawed and purposely inaccurate data intended to skew conclusions. Accordingly, CPC’s decision to approve the Project is supported by substantial evidence in the record, and CPC did not err or abuse its discretion. We, therefore, respectfully request the PLUM Committee deny the SAFER Appeal and approve the Project as recommended by CPC.

Very truly yours,

Ara Karamian

Ara Karamian
Gonzales Law Group APC

Attachments

cc: Helen Jadali (helen.jadali@lacity.org)
Sergio Ibarra (sergio.ibarra@lacity.org)

EXHIBIT A



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January 31, 2023

VIA EMAIL ONLY

Helen Jadali, City Planning Associate
Los Angeles Department of City Planning
200 N. Spring Street, Room 720
Los Angeles, CA 90012
helen.jadali@lacity.org

Re: Response to SAFER Comments on 2211 S. Western Project (CPC-2021-8442-CU-DB-SPR-HCA; ENV-2021-8443-EAF) Regarding November 30, 2022, Hearing Officer Agenda Item 1

Dear Ms. Jadali:

This office represents 2231 S Western (LA), LLC and South Western Properties SWP, LLC (the “Owners”), the owners of real property located at 2211-2231 S Western Avenue and 2029 24th Street (the “Property”) in the above-referenced matter. 2231 S Western (LA), LLC (referred to individually as the “Applicant”) proposes to utilize the vacant portion to construct an eight story, 364 dwelling unit mixed use structure with approximately 65,719 square feet of retail floor area and 514 parking spaces located in one below grade level and four partial above-grade levels (the “Project”).

Applicant seeks a 35% ministerial density bonus pursuant to Los Angeles Municipal Code (“LAMC”) Section 12.22.A.25, which implements the State Density Bonus law (California Government Code Section 65915), in addition to a conditional use permit pursuant to LAMC Section 12.24.U.26 to allow an additional 10% bonus density for a total bonus of 45%. The Project will set aside 15% of base density, or 38 dwelling units, for very low income (“VLI”) households. The Project also seeks various incentives and concessions and wavier of development standards pursuant to the State Density Bonus Law. The Property is in the South Los Angeles Community Plan (the “Community Plan”).

On November 29, 2022, Supporters Alliance for Environmental Responsibility (“SAFER”) submitted a short, two paragraph letter to the City, claiming that the Project must prepare an

Environmental Impact Report (“EIR”). SAFER’s sole argument is that the Project’s reliance on the Community Plan’s Environmental Impact Report, (ENV-2008-1780-EIR) (“the EIR”) is not specific to the Project, thus the EIR cannot be relied upon for CEQA purposes, and requests that Applicant prepare and circulate a draft EIR specific to the Project. SAFER provides no evidence, detail, or argument in its letter to support its position that an EIR is required. SAFER’s claim is unfounded, and predicated on ignoring California law. The Project does not require an EIR for two reasons: (1) the Project qualifies as “later activities” of a Program EIR as defined by CEQA Guidelines Section 15168(c) and the City of Los Angeles (the “City”) has evaluated the Project and determined that the environmental effects of the Project are within the scope of the Program EIR; and (2) the Project meets all the criteria of Public Resource Code 21155.4, is consistent with a valid programmatic EIR, and should be approved.

1. The Project Qualifies as a Later Activity Contemplated by a Program EIR as Defined by CEQA Guidelines Section 15168(c).

CEQA Guidelines Section 15168 states that a program EIR is an EIR which may be prepared on a series of actions that can be characterized as one large project and are related either: geographically; as logical parts in the chain of contemplated actions; in connection with issuance of rules, regulations, plans or other general criteria to govern the conduct of a continuing program; or as individual activities carried out under the same authorizing statutory or regulatory authority and having generally similar environmental effects which can be mitigated in similar ways. CEQA Guidelines Section 15168(c) specifically states that later activities within a Program EIR must be examined in the light of the program EIR to determine whether additional environmental documentation must be prepared for those later activities. Further, a program EIR can be used to simplify the task of preparing environmental documents on later activities in the program.¹

Here, the Project qualifies as “later activities” of a Program EIR as defined by CEQA Guidelines Section 15168(c). The City has evaluated the Project and determined that the Project’s environmental effects are within the scope of the program EIR. The Project’s consistency with the program EIR is discussed at length in the Project’s Technical Memorandum, prepared by Meridian Consultants, LLC, and submitted to the City on or about October, 2022. Applicant incorporates the Technical Memorandum by reference as evidence for the Project’s consistency. SAFER has not offered any arguments to contest the Project’s consistency with the program EIR. Instead, SAFER claims in entirely conclusory terms that a project specific EIR should be prepared to analyze the Project and its potential impacts. This is not how CEQA works. SAFER’s baseless claim that the project “*should*” prepare an EIR in order to analyze the Project and mitigate potential impacts is not a legally valid reason to require that the Project prepare an EIR. SAFER must base such a significant argument on actual California law. SAFER’s entirely conclusory claim should be disregarded. Safer has not made even *one* point as to why it believes the Project is inconsistent with the program EIR.

¹ CEQA Guidelines Section 15168(d).

Without substantial evidence to contest the Technical Memorandum, SAFER's letter cannot be taken as anything other than conclusory and should be disregarded.

2. The Project Meets the Criteria of PRC 21155.4.

Public Resources Code § 21155.4 requires, in part that a mixed-use development project, including any subdivision, or any zoning change that meets specific criteria is exempt from the California Environmental Quality Act (CEQA). Included in the criteria, is a requirement that the project "is undertaken to implement and is consistent with a specific plan for which an environmental impact report has been certified." As shown below, the Project is consistent with the applicable specific plan.

The Property is the Community Plan area. The Property is also subject to the South Los Angeles Community Plan Implementation Overlay ("CPIO"). Specifically, the Property is located within the CPIO's General Corridor subarea, and specifically Subarea C of the General Corridor subarea. The CPIO, for purposes of CEQA, including PRC § 21155.4, operates as a specific plan, zoning ordinance, and a prior plan level decision for which an EIR was certified. Because the CPIO is considered a specific plan for the purposes of PRC § 21155.4, the Project must be consistent with the CPIO to be statutorily exempt from CEQA. The Project is consistent with both the CPIO's general purposes, and the CPIO's development standards. As demonstrated in the Technical Memorandum the Project is consistent with the Community Plan and the CPIO.²

SAFER has not offered any argument whatsoever to contest the Project's consistency with the Community Plan or CPIO. Instead, SAFER makes a conclusory argument claiming nothing other than that a "project-specific EIR is required to analyze the Project and mitigate its potential impacts." Such a vague and conclusory argument is not a valid reason under CEQA to require the preparation of an EIR. Without substantial evidence to contest the Technical Memorandum, SAFER's letter cannot be taken as anything other than conclusory and should be disregarded.

3. Conclusion.

SAFER's sole argument is that a "project-specific EIR is required to analyze the Project and mitigate its potential impacts." SAFER's argument is not based in law or fact; it is entirely baseless, conclusory, and should be disregarded. As explained above, the Project does not need to prepare an EIR because: (1) the Project qualifies as "later activities" of a program EIR as defined by CEQA Guidelines Section 15168(c) and the City has evaluated the Project and determined that the environmental effects of the Project are within the scope of the program EIR; and (2) the Project meets all the criteria of Public Resource Code 21155.4, is consistent with a valid programmatic EIR, and should be approved.

The Project is consistent with the EIR under CEQA Guidelines Section 15168(c) and PRC 21155.4, and the SAFER letter should be disregarded as it cannot amount to substantial evidence

² Technical Memorandum, Section 5.

Helen Jadali
City Planning Associate
Los Angeles City Planning Department
January 31, 2023
Page 4

against the Project's approval without the requisite expert opinions necessary to form a coherent legal argument.

Should you have any questions, please feel free to reach out to me at your earliest convenience.

Very truly yours,

Ara Karamian

Ara Karamian
Gonzales Law Group APC

cc: Sergio Ibarra (Email Only)

EXHIBIT B

Date: February 8, 2023
To: Sergio Ibarra, City Planner; Helen Jadali, Planning Associate
Department of City Planning, City of Los Angeles
Cc: City Planning Commission, City of Los Angeles
From: Ned Baldwin, Meridian Consultants LLC
Subject: Response to letter from Lozeau Drury regarding CPC-2021-8442-CU-DB-SPR-HCA

Meridian Consultants has reviewed the letter submitted by Lozeau Drury dated February 6, 2023 with regard to CPC-2021-8442-CU-DB-SPR-HCA and ENV-2021-8443-EAF and provides the following responses to comments related to the analysis in the CEQA technical memorandum.

Page 4: The City concluded that “no substantial changes in the environment on or in the vicinity of the Property related to hazards or hazardous materials have occurred since certification of the Community Plan EIR that would require revision to the Community Plan EIR.” However, the City failed to provide substantial evidence in support of this conclusion.

The City was able to conclude that there have been no substantial changes related to hazards or hazardous materials as the land uses on the site have remained unchanged and the land uses on the adjacent property had been modified to remove former commercial uses and develop new residential uses. This was described in the introduction to the technical memorandum.

Page 5: Specifically, SWAPE noted that the Phase 1 Environmental Site Assessment (“ESA”) did not include “a map or any figures to show what portion of the Project site was covered by the Phase 1 ESA.” (Id. at 1.) SWAPE therefore stated that an EIR should be prepared which includes a Phase 1 ESA which encompasses the entire Project site. (Id.)

A figure was included as an attachment to the ESA. Though the ESA focuses on the portion of the site along Western containing automotive uses and which are identified in the ESA as Historical Recognized Environmental Condition, the ESA does encompass the entire Project site, as described on page 1 the ESA.

Page 5: SWAPE also noted that the Phase 1 ESA prepared for the Project concluded that further studies were necessary.

This comment is inaccurate. The conclusion on page 35 of the ESA is: “Based on the foregoing, no additional investigation is recommended at this time.”

Page 5: The 2017 EIR found that implementation of the Community Plan Update would have significant and unavoidable air quality impacts (2017 EIR, pp. 9-13.) Specifically, the 2017 EIR concluded that construction emissions would result in significant and unavoidable impacts from emissions of NOx, VOCs, PM2.5, PM10, and other criteria air pollutants. (Id.)

When it certified the 2017 EIR, the City concluded that construction air quality impacts could be significant and unavoidable because of “the absence of specific project details to assess” (page 4.3-19 and 4.3-21) and “without a specific construction schedule, timing and emission levels cannot be accurately estimated” (page 4.3-23). In the evaluation of the Project, specific project details have been provided to assess.

Page 5: SWAPE reviewed the Project’s CalEEMod output files and found that several model inputs were inconsistent with information disclosed elsewhere in the Technical Memo for the Project. Specifically, SWAPE found that the following inputs were incorrect or unsubstantiated: • Unsubstantiated Reductions to Architectural and Area Coating Emission Factors; • Unsubstantiated Changes to Architectural Coating Construction Phase Length; • Unsubstantiated Reduction to Acres of Grading Value; • Incorrect Number of Construction Worker Trips; • Underestimated Weekday, Saturday, and Sunday Operational Vehicle Trip Rates.

It is standard practice to substitute project specific information for the default values in CalEEMod. In addition, default values in CalEEMod do not always account for regulatory compliance with SCAQMD rules. Reductions to Architectural and Area Coating Emission Factors were made to reflect regulatory compliance with SCAQMD Rule 1113 VOC limits. Changes to the Architectural Coating Construction Phase Length were made to reflect the expected construction timeline specific to the project. The acres of grading were adjusted to reflect the phase in which grading would occur. During the 'shoring/grading phase' inputs were provided to site area, tons of demolition debris, and cubic yards of soil from which CalEEMod calculated an area of grading which actually over-estimated for analysis purposes. For the 'foundation' phase grading was set to zero as that activity was accounted for in the previous phase. The Number of Construction Worker Trips and Weekday, Saturday, and Sunday Operational Vehicle Trip Rates were derived from the LADOT-approved traffic assessment, as was noted in report.

Page 6: In order to more accurately estimate the Project's potential emissions, SWAPE prepared an updated CalEEMod model using Project-specific information from the Technical Memo. SWAPE found that the Project's construction-related volatile organic compound (VOC) emissions would exceed the CEQA significance threshold established by the South Coast Air Quality Management District ("SCAQMD").

SWAPE inappropriately reduced the duration of construction phases, producing a result that exceeds the thresholds. By substantially reducing the duration, emissions associated with architectural coating would be concentrated on a few days rather a longer period. The timeline assumed by SWAPE is not realistic or probable.

Page 6: SWAPE also prepared a screening-level health risk assessment ("HRA") to evaluate potential impacts of diesel particulate matter ("DPM") emissions during the construction and operation of the Project.

The City follows South Coast Air Quality Management District (SCAQMD) guidance for air quality analysis and relies on SCAQMD thresholds, not as the letter stated SDAPCD which is a San Diego area agency. The SCAQMD CEQA guidelines do not require the preparation of an HRA to evaluate construction impacts or the land uses of the types proposed. As shown in the technical memorandum prepared for the project, the project would not exceed applicable SCAQMD thresholds. Therefore, the City determined the Project would have a less than significant impact based on the methodologies recommended by SCAQMD for the project type. SCAQMD requires HRAs for stationary emission sources in accordance with AB 2588 and OEHHA Guidance. The project does not qualify as a "facility" as defined in AB 2588. As such, the HRA methodology is not applicable to the Project.

Page 6: SWAPE also found that the GHG impacts of the Project were not adequately analyzed.

SWAPE bases this allegation the CalEEMod output discussed under Air Quality. As noted in the responses above, the model inputs were appropriately established. Furthermore, the City's methodology to determine the significance of GHG impacts is not based on the quantitative output of CalEEMod but rather on consistency of a project with the policies and programs of the State, City and region to address GHG emissions. The Technical Memorandum discusses how the project is consistent; the comment letter did not challenge this conclusion.

Page 7: Because the Project will continue to result in significant impacts to air quality and GHGs that were identified as significant an unavoidable in the 2017 EIR.

This allegation is not supported by the analysis prepared for the City nor is it demonstrated by the claims made in the comment letter. The 2017 EIR concluded that there could be significant impacts to air quality and GHGs due to "the absence of specific project details to assess". Specific Project details were identified and assessed resulting in the conclusion that those impacts would in fact be less than significant with respect to the Project.

EXHIBIT C

Communication from Public

Name: Ned Baldwin

Date Submitted: 06/13/2023 03:18 PM

Council File No: 23-0557

Comments for Public Posting: The attached consists of a response prepared by Meridian Consultants to the appeal of CPC-2021-8442-CU-DB-SPR-HCA that was submitted by Supporters Alliance for Environmental Responsibility. We appreciate the opportunity to provide our perspective on the appellant's comments.

Date: June 12, 2023

To: Helen Jadali, Planning Associate
Department of City Planning, City of Los Angeles

From: Ned Baldwin, Associate
Meridian Consultants LLC

Subject: Response to Appeal submitted by Supporters Alliance for Environmental Responsibility
regarding CPC-2021-8442-CU-DB-SPR-HCA

Meridian Consultants has had the opportunity to review the appeal submitted by Supporters Alliance for Environmental Responsibility ("Appellant") dated May 10, 2023, with regard to CPC-2021-8442-CU-DB-SPR-HCA. To assist the City in its consideration of this appeal, Meridian provides the Department with the following responses.

The Appeal Application form (CP-7769) states that the Appellant is appealing "All Site Plan Review conditions." However, the 9-page Justification/Reason for Appeal focuses on the CEQA determination and not specifically on any site plan conditions. The substance of the Justification/Reason for Appeal references a comment letter dated February 6, 2023, which the Appellant submitted at the time of the Planning Commission hearing. Meridian reviewed that letter at the time and provided the City with responses in a memo dated February 8, 2023 (see attached). At the time of the Planning Commission hearing, the Meridian response memo was limited to 2-pages, as it was considered a day-of submission. Given the prior page limit placed on Meridians responses, Meridian will also take this opportunity to expand upon the responses made at that time.

The letter dated February 6, 2023, that was submitted by the Appellant contains 8 pages. The first three and a half pages provided background, project overview and discussion of legal standards; the last page is a concluding statement and signature. Meridian has no substantive comments for these portions of the letter. Starting under the heading "Discussion" at the lower portion of page 4 of the letter, and continuing through the end of page 7, is the substance of the comments contained in the letter. Within these pages are three subheadings referring to: (1) Hazards and Hazardous Materials; (2) Air Quality, Health Risk, and Greenhouse Gas Emission Impacts; and (3) that the significant and unavoidable impacts identified in the 2017 Community Plan EIR could remain significant with the Implementation of the Project. (In the letter the third subheading is labeled as four, specifically IV, but there is no subheading labeled as three.) Meridian's responses will follow the same set of headings.

I. Hazards and Hazardous Materials

Comment 1.1 [page 4]

The City concluded that “no substantial changes in the environment on or in the vicinity of the Property related to hazards or hazardous materials have occurred since certification of the Community Plan EIR that would require revision to the Community Plan EIR.” However, the City failed to provide substantial evidence in support of this conclusion.

Response 1.1

The land uses on the Project site have remained unchanged since certification of the Community Plan EIR; the land uses on the adjacent property had been modified to remove former commercial uses and develop new residential uses, a change in land use that is not associated with substantial adverse effects relative to hazards or hazardous materials as these conditions are associated with some commercial or industrial uses that store, handle, process or dispose of hazardous materials. This was described in the introduction to the technical memorandum. As such, there has been no substantial adverse change in the conditions of the site relative to hazards or hazardous materials.

The Community Plan EIR referred to federal, state, and local regulations that would reduce to less than significant the consequences of the routine use of or accidental release of hazardous materials. Specifically, the EIR states that “Hazardous materials would be used and stored in accordance with applicable regulations and such uses would be required to comply with federal and state laws to eliminate or reduce the consequences of hazardous materials accidents;” “Compliance with existing regulations would reduce any impact and ensure that construction workers and the general public would not be exposed to any unusual or excessive risks related to the release of hazardous materials into the environment during construction activities on these sites with known, documented contamination;” and “Because appropriate site investigation and remediation activities prior to development is required by law, and because all contaminated sites are required to be remediated prior to development, this impact would be less than significant.”¹ The framework of federal, state, and local regulations is still in place, so there is no change in the evidence to support this conclusion.

In addition, the Community Plan EIR states that “While all demolition and construction within the CPAs would be required to comply with all local, state, and federal regulations, further mitigation may be required to reduce risks associated with the potential for unknown toxic substances existing on sites previously used for industrial uses that used hazardous materials” and therefore included a mitigation measure that require projects within a CPIO Subarea and currently or historically zoned as industrial shall

¹ See City of Los Angeles Department of City Planning, Case Number: ENV-2008-1780-EIR, *South Los Angeles and Southeast Los Community Plans Draft EIR*, November 3, 2016; Section 4.8 Hazards & Hazardous Materials,.

prepare the equivalent of an ESA. An ESA was prepared for the Project which found that there was no substantial adverse condition on or in the vicinity of the Property related to hazards or hazardous materials.²

All of the above was documented by City in the CEQA Technical Memorandum regarding the Project. As such, the City relied upon substantial evidence to support the conclusion that, relative to hazards or hazardous materials, no substantial changes in the environment on or in the vicinity of the Property related have occurred that would require revision to the Community Plan EIR.

Comment 1.2 [page 5]

Specifically, SWAPE noted that the Phase 1 Environmental Site Assessment (“ESA”) did not include “a map or any figures to show what portion of the Project site was covered by the Phase 1 ESA.” (Id. at 1.) SWAPE therefore stated that an EIR should be prepared which includes a Phase 1 ESA which encompasses the entire Project site. (Id.)

Response 1.2

The ESA included a description of the site and the surrounding area. Specifically, the ESA states that the subject included “property located at 2137 to 2211 South Western Avenue,”³ which includes the address of the project site. The ESA focused on the portion of the property that has historically been utilized for automotive services, noting that the balance of the site “consists of asphalt-paved parking areas and access ways.” ESAs are conducted for a focused site but also include evaluation of surrounding property and would have identified any recognized environmental conditions if such were present on any part of the Project site. As such, the ESA that was reviewed to support the CEQA determination adequately considered the entire project site.

Comment 1.3 [page 5]

SWAPE also noted that the Phase 1 ESA prepared for the Project concluded that further studies were necessary.

Response 1.3

The ESA did not conclude that further studies were necessary. The following is the final statement found on page 35 of the ESA: “Based on the foregoing, no additional investigation is recommended at this time.” As such, the Appellant is incorrect in this assertion.

² Phase I Environmental Site Assessment Report, 2137-2211 South Western Avenue, Los Angeles, California 90018, EFI Project No. 9836003585, Prepared by EFI Global, Inc., July 10, 2018

³ Ibid, page 11

Air Quality, Health Risk, and Greenhouse Gas EmissionsComment 2.1 [page 5]

The 2017 EIR found that implementation of the Community Plan Update would have significant and unavoidable air quality impacts (2017 EIR, pp. 9-13.) Specifically, the 2017 EIR concluded that construction emissions would result in significant and unavoidable impacts from emissions of NOx, VOCs, PM2.5, PM10, and other criteria air pollutants. (Id.)

Response 2.1

The 2017 EIR concluded that construction air quality impacts could be significant and unavoidable because of “the absence of specific project details to assess” and “without a specific construction schedule, timing and emission levels cannot be accurately estimated.”⁴ The Project included specific details to assess including a construction schedule. As such, the technical memorandum prepared for the Project was able to assess the potential air quality impacts that were not assessed in the 2017 EIR. The result of this assessment was a determination that the project would have a less than significant impact. Therefore, the impacts that were determined in the 2017 EIR to potentially be significant due to a lack of project details were found in this case to not be significant once the project details were available.

Comment 2.2 [page 5]

SWAPE reviewed the Project’s CalEEMod output files and found that several model inputs were inconsistent with information disclosed elsewhere in the Technical Memo for the Project. Specifically, SWAPE found that the following inputs were incorrect or unsubstantiated:

- Unsubstantiated Reductions to Architectural and Area Coating Emission Factors
- Unsubstantiated Changes to Architectural Coating Construction Phase Length
- Unsubstantiated Reduction to Acres of Grading Value
- Incorrect Number of Construction Worker Trips
- Underestimated Weekday, Saturday, and Sunday Operational Vehicle Trip Rates

Response 2.2

Adjustment to the inputs in CalEEMod are a standard practice when project specific information is available. The model includes default values based on construction surveys conducted by SCAQMD. These give approximations of generic construction activity. However, it is recommended by SCAQMD that if the

⁴ City of Los Angeles Department of City Planning, Case Number: ENV-2008-1780-EIR, *South Los Angeles and Southeast Los Angeles Community Plans Draft EIR*, Section 4.8 Hazards & Hazardous Materials, November 3, 2016, pages 4.3-19 and 4.3-23.

information is available, that defaults may be replaced by project specific inputs.⁵ This was done for the Project. The adjustment to the inputs in the model were made to be consistent with the information provided regarding the project and used elsewhere in the analysis. In addition, default values in CalEEMod do not always account for regulatory compliance with applicable SCAQMD rules. Specifically:

- Reductions to Architectural and Area Coating Emission Factors were made to reflect regulatory compliance with SCAQMD Rule 1113 VOC limits.
- Changes to the Architectural Coating Construction Phase Length were made to reflect an expected construction timeline specific to the project.
- The acres of grading was adjusted to reflect the expected construction timeline and the specific phase in which grading would occur. During the ‘shoring/grading phase’ inputs were provided based on the area of the site, the tons of demolition debris to be removed and cubic yards of soil to be excavated. CalEEMod then calculates an area of grading based on these parameters. The resulting value was 63 acres (shown on page 6 of the AQ model output) which overestimates the grading area, giving a conservative result for analysis purposes. For the ‘foundation’ phase grading was set to zero as it was accounted for in the previous phase.
- The Number of Construction Worker Trips was derived from the LADOT-approved traffic assessment. This was noted in the AQ report.
- The Weekday, Saturday, and Sunday Operational Vehicle Trip Rates was derived from the LADOT-approved traffic assessment. This was noted in the AQ report.

Comment 2.3 [page6]

In order to more accurately estimate the Project’s potential emissions, SWAPE prepared an updated CalEEMod model using Project-specific information from the Technical Memo. SWAPE found that the Project’s construction-related volatile organic compound (VOC) emissions would exceed the CEQA significance threshold established by the South Coast Air Quality Management District (“SCAQMD”). (Ex. A, p. 10.) Specifically, SWAPE found that VOC emissions from Project construction would be 232.57 lbs/day, a 761% increase over the Technical Memo’s estimated 27 lbs/day, and a significant exceedance of the SCAQMD threshold of 75 lbs/day. (Id.)

Response 2.3

As stated in the previous response, model inputs can be adjusted and should be to reflect realistic project-specific conditions. However, to achieve a result that showed significant impacts, the Appellant’s

⁵ SCAQMD, California Emissions Estimator Model User’s Guide, May 2021, page 13

consultant adjusted certain inputs in a way that was neither project-specific nor generally realistic. SWAPE inappropriately reduced the duration of construction phases in order to produce a result that exceeds the significance thresholds. For example, the number of days on which the architectural coating of the entire project would be conducted was reduced such that the emissions associated with that activity would be concentrated on a few days rather than over a longer period of time and therefore would have significant emissions spikes on those days. SWAPE selected 10 days as the duration of that phase. However, the timeline assumed is not realistic or probable for a construction project of this size and type. It is not reasonable to expect that a 70,220-square-foot retail store, 364 residential units, all residential amenity space and parking levels would be entirely painted within a two-week period. For the analysis conducted in the Technical Memorandum for the City presumed instead that painting would be distributed over a number of weeks as different components of the Project were completed

Comment 2.4 [page 6]

SWAPE also prepared a screening-level health risk assessment (“HRA”) to evaluate potential impacts of diesel particulate matter (“DPM”) emissions during the construction and operation of the Project. (Ex. A, pp. 13-17.) SWAPE used AERSCREEN, a screening-level air quality dispersion model. (Id. at 13.) SWAPE used a sensitive receptor distance of 75 meters and analyzed impacts to individuals at different stages of life based on guidance from the California Office of Environmental Health Hazard Assessment (“OEHHA”) and SDAPCD guidance. (Id. At 17.)

Response 2.4

The guidance from the California Office of Environmental Health Hazard Assessment (“OEHHA”) that the Appellant’s consultant used to prepare a screening-level health risk assessment (“HRA”) is not applicable to the Project. The OEHHA Guidance Manual is intended to implement the Air Toxics Hot Spots Information and Assessment Act (AB 2588) and establishes protocols for analysis but does not establish when a project must prepare a cancer risk assessment. The OEHHA Guidance Manual states on page 1-3 that “The Hot Spots Act requires that each local Air Pollution Control District or Air Quality Management District (hereinafter referred to as District) determine which facilities will prepare an HRA.” California Health and Safety Code Section 44320 states that AB 2588 applies to “Any facility which manufactures, formulates, uses, or releases” toxic air contaminants, carcinogens, total organic gases, particulates, or oxides of nitrogen or sulfur and “any facility which is listed in any current toxics use or toxics air emission survey, inventory, or report released or compiled by a district.” The Project does not qualify as a “facility” subject to AB 2588 as the uses proposed and would not manufacture, formulate, use, or release the substances identified by Health and Safety Code Section 44320. Furthermore, the local district (SCAQMD)

has not issued guidance or regulation for an HRA of the type of construction proposed by the Project. As such, the OEHHA Guidance Manual is not applicable to determining the impacts of the Project.

The City follows South Coast Air Quality Management District (SCAQMD) guidance for air quality analysis and relies on SCAQMD thresholds. The SCAQMD CEQA guidelines for evaluating construction impacts do not require the preparation of an HRA to evaluate construction impacts. For construction, SCAQMD provides daily mass emissions thresholds and localized significance thresholds.

As shown in the technical memorandum prepared for the project, the project would not exceed applicable SCAQMD thresholds.⁶ Therefore, the City determined the Project would have a less than significant impact based on the methodologies recommended by SCAQMD for the project type.

SCAQMD requires HRAs for compliance with AB2588, SCAQMD Rule 1401 and Rule 1402, which regulate stationary emission sources. SCAQMD has also adopted guidance on the use of HRAs for analyzing mobile source emissions. However, this guidance refers to emissions associated with facilities such as truck stops and distribution centers that feature long term presence of diesel emission sources. The Project would not consist of this or any other land use type that would emit substantial diesel particulate matter over long periods of time.

SCAQMD has not determined that an HRA is required for commercial and residential land uses of the type proposed by the Project. Furthermore, SCAQMD has not developed any recommendations on use of the OEHHA Guidance Manual for CEQA analyses of potential construction impacts nor has the City adopted the Guidance Manual or incorporated it into the City's CEQA thresholds or methodologies.

Based on the above, the Appellant's comment is not relevant to the CEQA evaluation of the Project.

Comment 2.5 [Page 6]

SWAPE also found that the GHG impacts of the Project were not adequately analyzed.

Response 2.5

SWAP bases this allegation on its claims about the CalEEMod output discussed under Air Quality above. As noted in the responses above, the model inputs were appropriately established.

The methodology used by the City to determine the significance of GHG impacts is not based on the quantitative output of CalEEMod but rather whether a project is consistent with the policies and programs of the State, City and region that aim to reduce GHG emissions. The Technical Memorandum discusses how the project is consistent with these policies and programs.⁷ The Appellant seeks to substitute a

⁶ Technical Memorandum, 2211 WESTERN AVE, Environmental Case ENV-2021-8443-EAF, October 2022, Page 7-21.

⁷ Technical Memorandum, 2211 WESTERN AVE, Environmental Case ENV-2021-8443-EAF, October 2022, Pages 7-38 through 7-47.

methodology of its own, which is not the approach used by the City in its role as lead agency. As such, the Appellant's comment is not relevant to the CEQA evaluation of the Project.

II. Significant and Unavoidable Impacts identified in the 2017 EIR

Comment 4.1 [Page 7]

The Project will continue to result in significant impacts to air quality and GHGs that were identified as significant and unavoidable in the 2017 EIR.

Response 4.1

The 2017 EIR did conclude that there could be significant impacts to air quality emissions due to "the absence of specific project details to assess."⁸ In the absence of this level of detail, the EIR had to conclude that impacts could be significant. However, specific details have been provided to evaluate the Project. The Project was fully assessed, and it was found that impacts would be less than significant.⁹ As such, the Project does not trigger the criteria for a subsequent EIR described in CEQA Section 21166 as no major revisions would be required to the certified EIR due to project changes, new circumstances or new information. As such, no further EIR would be required as the Project meets the criteria expressed in Public Resource Code 21155.4 and CEQA Guidelines Section 15168(c).

Contrary to the Appellant's claim, impacts to GHGs were not identified as significant or unavoidable in the 2017 EIR.¹⁰

⁸ City of Los Angeles Department of City Planning, Case Number: ENV-2008-1780-EIR, *South Los Angeles and Southeast Los Angeles Community Plans Draft EIR*, Section 4.8 Hazards & Hazardous Materials, November 3, 2016, pages 4.3-19 and 4.3-23.

^{9 9} Technical Memorandum, 2211 WESTERN AVE, Environmental Case ENV-2021-8443-EAF, October 2022, Pages 7-8 through 7-22.

¹⁰ City of Los Angeles Department of City Planning, Case Number: ENV-2008-1780-EIR, *South Los Angeles and Southeast Los Angeles Community Plans Draft EIR*, Section 4.8 Hazards & Hazardous Materials, November 3, 2016, Section 4.7.

Date: February 8, 2023
To: Sergio Ibarra, City Planner; Helen Jadali, Planning Associate
Department of City Planning, City of Los Angeles
Cc: City Planning Commission, City of Los Angeles
From: Ned Baldwin, Meridian Consultants LLC
Subject: Response to letter from Lozeau Drury regarding CPC-2021-8442-CU-DB-SPR-HCA

Meridian Consultants has reviewed the letter submitted by Lozeau Drury dated February 6, 2023 with regard to CPC-2021-8442-CU-DB-SPR-HCA and ENV-2021-8443-EAF and provides the following responses to comments related to the analysis in the CEQA technical memorandum.

Page 4: The City concluded that “no substantial changes in the environment on or in the vicinity of the Property related to hazards or hazardous materials have occurred since certification of the Community Plan EIR that would require revision to the Community Plan EIR.” However, the City failed to provide substantial evidence in support of this conclusion.

The City was able to conclude that there have been no substantial changes related to hazards or hazardous materials as the land uses on the site have remained unchanged and the land uses on the adjacent property had been modified to remove former commercial uses and develop new residential uses. This was described in the introduction to the technical memorandum.

Page 5: Specifically, SWAPE noted that the Phase 1 Environmental Site Assessment (“ESA”) did not include “a map or any figures to show what portion of the Project site was covered by the Phase 1 ESA.” (Id. at 1.) SWAPE therefore stated that an EIR should be prepared which includes a Phase 1 ESA which encompasses the entire Project site. (Id.)

A figure was included as an attachment to the ESA. Though the ESA focuses on the portion of the site along Western containing automotive uses and which are identified in the ESA as Historical Recognized Environmental Condition, the ESA does encompass the entire Project site, as described on page 1 the ESA.

Page 5: SWAPE also noted that the Phase 1 ESA prepared for the Project concluded that further studies were necessary.

This comment is inaccurate. The conclusion on page 35 of the ESA is: “Based on the foregoing, no additional investigation is recommended at this time.”

Page 5: The 2017 EIR found that implementation of the Community Plan Update would have significant and unavoidable air quality impacts (2017 EIR, pp. 9-13.) Specifically, the 2017 EIR concluded that construction emissions would result in significant and unavoidable impacts from emissions of NOx, VOCs, PM2.5, PM10, and other criteria air pollutants. (Id.)

When it certified the 2017 EIR, the City concluded that construction air quality impacts could be significant and unavoidable because of “the absence of specific project details to assess” (page 4.3-19 and 4.3-21) and “without a specific construction schedule, timing and emission levels cannot be accurately estimated” (page 4.3-23). In the evaluation of the Project, specific project details have been provided to assess.

Page 5: SWAPE reviewed the Project’s CalEEMod output files and found that several model inputs were inconsistent with information disclosed elsewhere in the Technical Memo for the Project. Specifically, SWAPE found that the following inputs were incorrect or unsubstantiated: • Unsubstantiated Reductions to Architectural and Area Coating Emission Factors; • Unsubstantiated Changes to Architectural Coating Construction Phase Length; • Unsubstantiated Reduction to Acres of Grading Value; • Incorrect Number of Construction Worker Trips; • Underestimated Weekday, Saturday, and Sunday Operational Vehicle Trip Rates.

It is standard practice to substitute project specific information for the default values in CalEEMod. In addition, default values in CalEEMod do not always account for regulatory compliance with SCAQMD rules. Reductions to Architectural and Area Coating Emission Factors were made to reflect regulatory compliance with SCAQMD Rule 1113 VOC limits. Changes to the Architectural Coating Construction Phase Length were made to reflect the expected construction timeline specific to the project. The acres of grading were adjusted to reflect the phase in which grading would occur. During the 'shoring/grading phase' inputs were provided to site area, tons of demolition debris, and cubic yards of soil from which CalEEMod calculated an area of grading which actually over-estimated for analysis purposes. For the 'foundation' phase grading was set to zero as that activity was accounted for in the previous phase. The Number of Construction Worker Trips and Weekday, Saturday, and Sunday Operational Vehicle Trip Rates were derived from the LADOT-approved traffic assessment, as was noted in report.

Page 6: In order to more accurately estimate the Project's potential emissions, SWAPE prepared an updated CalEEMod model using Project-specific information from the Technical Memo. SWAPE found that the Project's construction-related volatile organic compound (VOC) emissions would exceed the CEQA significance threshold established by the South Coast Air Quality Management District ("SCAQMD").

SWAPE inappropriately reduced the duration of construction phases, producing a result that exceeds the thresholds. By substantially reducing the duration, emissions associated with architectural coating would be concentrated on a few days rather a longer period. The timeline assumed by SWAPE is not realistic or probable.

Page 6: SWAPE also prepared a screening-level health risk assessment ("HRA") to evaluate potential impacts of diesel particulate matter ("DPM") emissions during the construction and operation of the Project.

The City follows South Coast Air Quality Management District (SCAQMD) guidance for air quality analysis and relies on SCAQMD thresholds, not as the letter stated SDAPCD which is a San Diego area agency. The SCAQMD CEQA guidelines do not require the preparation of an HRA to evaluate construction impacts or the land uses of the types proposed. As shown in the technical memorandum prepared for the project, the project would not exceed applicable SCAQMD thresholds. Therefore, the City determined the Project would have a less than significant impact based on the methodologies recommended by SCAQMD for the project type. SCAQMD requires HRAs for stationary emission sources in accordance with AB 2588 and OEHHA Guidance. The project does not qualify as a "facility" as defined in AB 2588. As such, the HRA methodology is not applicable to the Project.

Page 6: SWAPE also found that the GHG impacts of the Project were not adequately analyzed.

SWAPE bases this allegation the CalEEMod output discussed under Air Quality. As noted in the responses above, the model inputs were appropriately established. Furthermore, the City's methodology to determine the significance of GHG impacts is not based on the quantitative output of CalEEMod but rather on consistency of a project with the policies and programs of the State, City and region to address GHG emissions. The Technical Memorandum discusses how the project is consistent; the comment letter did not challenge this conclusion.

Page 7: Because the Project will continue to result in significant impacts to air quality and GHGs that were identified as significant an unavoidable in the 2017 EIR.

This allegation is not supported by the analysis prepared for the City nor is it demonstrated by the claims made in the comment letter. The 2017 EIR concluded that there could be significant impacts to air quality and GHGs due to "the absence of specific project details to assess". Specific Project details were identified and assessed resulting in the conclusion that those impacts would in fact be less than significant with respect to the Project.