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Via Email: alexander.truong@lacity.org

Alexander Truong
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Re: 1200 Cahuenga - Responses to SAFER Appeal

Dear Mr. Truong:

We represent Cahuenga Boulevard Owner, LLC, the applicant for the proposed 1200 N. Cahuenga Boulevard Project ("Project"). We hereby submit the following responses to the appeal filed by Supporters Alliance for Environmental Responsibility (Appellant), dated June 26, 2023, of the City Planning Commission's determination to adopt the Mitigated Negative Declaration for the Project, ENV-No. 2021-10171-MND.

Appeal Point 1-1:

Appellant asserts that the IS/MND fails to analyze the Project's potentially significant indoor air quality and health risk impacts that the Appellant claims may arise in the future as a result of carcinogenic formaldehyde emissions from composite wood products that may be used in the Project's construction and post-construction furnishings that are similar to those used in building materials and furnishings commonly found in offices, warehouses, residences, and hotels. Appellant includes a report providing a proposed methodology for assessing the cancer risk that could arise in the future due to such emissions. The Appellant also claims that the increased cancer risk posed to future Project occupants due to the formaldehyde emissions combined with vehicular emissions from the surrounding streets should have been assessed.

Response to Appeal Point 1-1:

Appellant's claims that building materials that may be used in the construction of the Project and, further, the furnishings that may then be chosen for and placed in the Project's offices once the Project has been built may release carcinogenic formaldehyde emissions that, in turn, may create a significant impact on the Project's occupants is pure speculation, not substantial evidence supporting a fair argument of a potential significant impact. (See CEQA Guidelines §§ 15064(e)(5), 15384(a).)



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Moreover, CEQA case law has long held that CEQA only recognizes impacts on the public at large, not individuals or small groups of people such as project construction workers or future project occupants. (*Parker Shattuck Neighbors v. Berkeley City Council* (2013) 222 Cal.App.4th 768, 782-86 [significant impacts need not be found “when potential health risks are confined to people associated with a project”]; *Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477, 492 [“Under CEQA, the question is whether a project will affect the environment of persons in general, not whether a project will affect particular persons”]; *Topanga Beach Renters Assn. v. Department of General Services* (1976) 58 Cal.App.3d 188, 191 [demolition of beach homes and tenant evictions not a CEQA impact].)

Appellant also mis-cites the California Supreme Court’s decision in *California Building Industry Assn. v. Bay Area Air Quality Mgmt. Dist.* (2015) 62 Cal.4th 369, 386 (“CBIA”), which does not support Appellant’s claims. Appellant relies on the Court’s restatement of the air district’s interpretation of Public Resources Code section 21083, subsection (b)(3), which the Court held went “too far” by claiming that it encompassed “these broader considerations associated with the health and safety of a project’s future residents or users.” (*Id.* at p. 387.) To the contrary, as the California Supreme Court held, section 21083, subsection (b)(3),

“is best interpreted as limited to those impacts on a project’s users or residents that arise from the project’s effects on the environment. Even if one reads into CEQA’s definition of “environment” a concern with people—a reading that, notwithstanding [section 21060.5](#), is conceivable given the Legislature’s interest in public health and safety—[section 21083](#) does not contain language directing agencies to analyze the environment’s effects on a project. Requiring such an evaluation in all circumstances would impermissibly expand the scope of CEQA.”

(*CBIA*, *supra* (emphasis in original).)

In *Topanga Beach Renters Assn.*, *supra*, the court rejected a claim that demolishing beach homes and evicting renters (with consequent adverse effects on the evicted) to create beach open space caused a significant environmental impact. (58 Cal.App.3d 188, 191, 194.) The court held that the “[a]dverse effect on persons evicted from Topanga Beach cannot alone invoke the requirements of CEQA, for all government activity has some direct or indirect adverse effect on some persons.” (*Id.* at p. 195.) Noting that the “issue [was] not whether demolition of structures [would] adversely affect particular persons but whether demolition of structures [would] adversely affect the environment of persons in general,” the court concluded no significant effect on the environment would occur because the impact affected only a particular group of people. (*Id.* See also, *Parker Shattuck Neighbors*, *supra*, 222 Cal.App.4th at pp. 782-86 [significant impacts need not be found “when potential health risks are confined to people associated with a project”].)



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As such, Appellant has not identified any defect in the content or adequacy of the IS/MND or in its analyses of the Project's potential environmental effects, and Appellant's claims constitute mere "[a]rgument, speculation, [and] unsubstantiated opinion or narrative," not substantial evidence supporting a fair argument that the Project may have a significant effect on the environment. (See CEQA Guidelines §§ 15064(e)(5), 15384(a).)

Appeal Point 1-2:

Appellant asserts that the air quality analysis cannot be relied upon to support the IS/MND's conclusion that the Project's potential operational air quality impacts would be less than significant because, in Appellant's opinion, the number of operational vehicle trips used in the analysis was inconsistent with the information in the IS/MND and "unsubstantiated."

Response to Appeal Point 1-2:

Appellant refers to pages 3-4 of Exhibit B to support for its assertion that the number of operational vehicle trips used for the operational air quality analysis was incorrect, where the Appellant's expert asserts that "the Project site became vacant at least 4 years prior to any environmental analysis" and therefore "the existing conditions of the Project site should be considered as vacant." Appellant's expert claims that this four-year gap was created when the Project Site changed ownership in 2015/2016, after which the Stratford School operated at the Project Site from 2016 until December 2021, when it ceased operating, but "the earliest environmental analyses for this Project were not prepared until 2021." As such, the Project's traffic assessment should not have subtracted any existing trips from the Project's projected operational vehicle trips. (Exhibit B, p. 4.)

Appellant's and its expert's reasoning is contrary to the substantial evidence in the IS/MND. As Appellant acknowledges, the IS/MND states that the Stratton School operated at the Project Site until the end of December, 2021, when it closed permanently. (IS/MND, pp. 89-90.) The Transportation Assessment prepared by Overland Transportation, Inc. was also dated December 2021. (*Id.*, p. 205, App. K-1.) The Transportation Assessment (Appendix K-1 to the IS/MND) reported the results of the analyses of the Project's potential transportation-related impacts as required by the Los Angeles Department of Transportation's Transportation Impact Study Guidelines ("TAG"), "which sets forth the revised thresholds of significance for evaluating transportation impacts as well as screening and evaluation criteria for determining impacts" in accordance with the methodology established by the California Natural Resources Agency when it finalized the 2018 updates to the CEQA Guidelines. (*Id.*; see also p. 111.)

Therefore, the statement that the Project Site was vacant for four years before any environmental analysis was commenced for the Project is unfounded. As such, Appellant's challenge to the Transportation Assessment's estimate of the Project's number of operational daily trips is similarly



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unfounded, as is its challenge to the estimate of the Project's air quality emissions and resulting significance conclusions. The results of the Air Quality analysis are correct and constitute substantial evidence supporting the IS/MND's conclusion that the Project would result in less than significant air quality impacts.

By contrast, Appellant's assertions that the IS/MND's estimation of the Project's operational vehicle trips is defective because "the Project site became vacant at least 4 years prior to any environmental analysis" and therefore "the existing conditions of the Project site should be considered as vacant" constitute unsubstantiated opinion or narrative," not substantial evidence supporting a fair argument that the Project may have a significant effect on the environment. (See CEQA Guidelines §§ 15064(e)(5), 15384(a).)

For these reasons, Appellant has not identified any defect in the content or adequacy of the IS/MND or in its analyses of the Project's potential environmental effects, and Appellant's claims constitute mere "[a]rgument, speculation, [and] unsubstantiated opinion or narrative," not substantial evidence supporting a fair argument that the Project may have a significant effect on the environment. (See CEQA Guidelines §§ 15064(e)(5), 15384(a).)

Appeal Point 1-3:

The Appellant asserts the IS/MND's analysis of the Project's potential greenhouse gas (GHG) impacts and its conclusion that the Project would result in less-than-significant GHG impacts violate CEQA and are not supported by substantial evidence because (1) the GHG emissions were calculated using an "unsubstantiated" air model, (2) an "updated" air model including "the correct operational daily vehicle trip rate of 766" indicates the Project may have a potentially significant GHG impact, (3) the IS/MND's consistency analysis fails to consider the performance-based standards underlying CARB's Scoping Plan and thus its conclusion the Project would not conflict with the Scoping Plan is unsupported, and (4) the IS/MND's consistency analysis fails to consider the performance-based standards under SCAG's RTP/SCS.

Response to Appeal Point 1-3:

Appellant is incorrect with respect to each appeal point raised.

Regarding Appellant's first point, see Response to Appeal Point 1-2, above. The analyses conducted using the CalEEMod and the Transportation Assessment's estimate of the Project's number of operational daily trips were valid and produced substantial evidence in support of the IS/MND's calculation of the Project's estimated GHG emissions for the reasons stated in Response to Appeal Point 1-2.



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There are a number of errors inherent in the Appellant's second point. First, CEQA Guidelines Section 15064.4 states that a lead agency should make a good-faith effort, based on available information, to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a project. A lead agency has the discretion to determine, in the context of a particular project, whether to: (1) use a model or methodology to quantify greenhouse gas emissions resulting from a project, and which model or methodology to use; or (2) rely on a qualitative analysis or performance-based standards. As explained in Section VIII, *Greenhouse Gas Emissions*, of the IS/MND, at pages 108, 109 and 112 (emphasis added):

"CEQA Guidelines Section 15064.4 addresses a lead agency's determination of the significance of a project's GHG emissions, but does not establish a threshold of significance for such emissions. Instead, Section 15064.4 grants a lead agency the discretion to choose, based on substantial evidence, to determine significance based on quantifying the project's GHG emissions and/or conducting a qualitative analysis or an analysis based on performance standards, and to select the model or methodology the lead agency determines to be most appropriate for each particular project. . . .

Guidelines Section 15064.7 grants lead agencies the discretion to establish significance thresholds for individual projects or adopt them for their respective jurisdictions. In doing so, lead agencies may appropriately look to thresholds, including quantitative, qualitative or performance standards, developed by other public agencies, or suggested by other experts, such as the SCAQMD and the California Air Pollution Control Officer's Association (CAPCOA), so long as any threshold chosen is supported by substantial evidence. . . .

Although GHG emissions can be quantified, CARB, SCAQMD and the City of Los Angeles have yet to adopt project-level numeric significance thresholds for GHG emissions that would be applicable to the Project. The California Natural Resources Agency has also clarified that the effects of GHG emissions are cumulative impacts, and that they should be analyzed in the context of CEQA's requirements for cumulative impact analysis (see Section 15064(h)(3)).¹ Further, the Governor's Office of Planning and Research's (OPR) technical advisory on CEQA and climate change, the Natural Resources Agency's Final Statement of Reasons, and CEQA Guidelines Section 15064.4 provide that a qualitative analysis of project-level impacts to determine whether a project's GHG impacts are significant can be based on a project's consistency with previously approved plans and mitigation programs, as long as such plans

¹ See generally California Natural Resources Agency, Final Statement of Reasons for Regulatory Action, December 2009, pp. 11–13, 14, 16; see also Letter from Cynthia Bryant, Director of the Office of Planning and Research to Mike Chrisman, Secretary for Natural Resources, April 13, 2009, www.opr.ca.gov/docs/Transmittal_Letter.pdf, accessed May 1, 2017.



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have adequately analyzed and mitigated GHG emissions to a less than significant level.² In the absence of any applicable adopted numeric threshold, the significance of the Project's GHG emissions is evaluated consistent with CEQA Guidelines Section 15064.4(b)(2) by considering whether the Project complies with applicable plans, policies, regulations and requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of GHG emissions. This evaluation of consistency with such plans is the **sole basis** for determining the significance of the Project's GHG-related impacts on the environment.”

Therefore, the quantitative assessment of the Project's GHG emissions was made in order to provide information; it was not used by the City to determine the significance of the Project's GHG emissions. Rather, as stated above, the significance of those emissions was determined by the Project's consistency with the identified plans and policies.

In addition, support for this threshold is found in California Supreme Court case law, such as *Center for Biological Diversity et al. vs. California Department of Fish and Wildlife* and *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 576. The fact that the City has not as of this time adopted a quantitative threshold for development projects is not a reason to halt all new development projects, particularly where a qualitative threshold is authorized by state law and policy and no clear methodology for determining quantitative thresholds exists.

Further addressing Appellant's second point, setting aside the fact that the City properly exercised its discretion to use a qualitative analysis of the Project's GHG emissions and Appellant's use of and update of what Appellant characterizes as an “unsubstantiated” air model, there are two defects in Appellant's reasoning. First, Appellant's purported 3.0 MT CO₂e/SP/yr threshold, which Appellant claims to be SCAQMD's 2035 service population efficiency target, is in fact merely the result of a calculation made by Appellant based on threshold proposals reflected in the minutes from a 2010 SCAQMD GHG working group session – proposals that had not yet been presented to the SCAQMD Board. (See Ex. B, p. 6 fn. 7.) Appellant presents no evidence, and there is no evidence, that these proposals were ever adopted by SCAQMD. Therefore, no substantial evidence supports Appellant's 3.0 MT CO₂e/SP/yr threshold. Second, Appellant's mathematical calculation is incorrect. The 766 daily vehicle trip rate used in Appellant's calculation is incorrect for the reasons stated in Response to Appeal Point 1-2, above.

Finally, regarding Appellant's third and fourth points, Section VIII, *Greenhouse Gas Emissions*, of the IS/MND properly assesses the Project's consistency with the City's pertinent plans and policies under the applicable CEQA standard. Under CEQA, a lead agency is not required “to establish that a project

² Governor's Office of Planning and Research, Technical Advisory—CEQA and Climate Change: Addressing Climate Change through California Environmental Quality Act (CEQA) Review, 2008; California Natural Resources Agency, Final Statement of Reasons for Regulatory Action, December 2009, p. 22–26.



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achieves perfect conformity with each and every component of such applicable plans, which often serve a variety of different and sometimes competing interests.” Rather, as pertinent here, a project must generally “be compatible with” a plan’s applicable objectives, policies, goals, use restrictions, and requirements related to environmental issues. (*San Franciscans Upholding the Downtown Plan v. City & County of San Francisco* (2002) 102 Cal.App.4th 656, 678.) That Appellant can point to two or three performance-based standards that Appellant claims were overlooked or ignored is not material since the analysis shows that the Project is generally consistent, as CEQA requires. Further, Appellant again argues that the City should have used different standards for determining significance, when the City properly exercised its discretion to conduct the qualitative analysis contained in the IS/MND in the manner that it did.

In sum, Appellant’s claims that the GHG analysis and conclusions are invalid and violate CEQA are themselves flawed and incorrect, and constitute mere “[a]rgument, speculation, [and] unsubstantiated opinion or narrative,” not substantial evidence supporting a fair argument that the Project may result in a significant impact. (See CEQA Guidelines §§ 15064(e)(5), 15384(a).)

Appeal Point 1-4:

Appellant asserts the IS/MND contains substantial evidence of a fair argument that the Project may result in significant health and environmental impacts due to soil contamination, and that the record does not contain substantial evidence that the potential impacts would be mitigated to a less than significant level.

Appellant asserts that the Vapor Intrusion Assessment Report, attached as Appendix H.2 to the IS/MND, which states that PCE was detected in significant concentrations in soil vapor and indoor air at the Project site, and the Project’s resulting incorporation of mitigation measures (HAZ-1, HAZ-2 and HAZ-3) provide substantial evidence that the Project could cause significant health and environmental impacts from contaminated soil at the Project site that the IS/MND fails to analyze or mitigate. Appellant further claims that, because the IS/MND does not mention any correspondence with the RWQCB “regarding the findings of PCE in soil gas and indoor air at the Project site nor of any outreach for regulatory review and approval of the mitigation that is proposed,” and because SWAPE asserts that “RWQCB review and approval is important to ensure mitigation as proposed in the IS/MND is [protective] of construction worker health and safety as well as the health and safety of future office workers,” an EIR must be prepared.

Response to Appeal Point 1-4:

Appellant’s assertions that the IS/MND contains substantial evidence of a fair argument that the Project may have significant health and environmental impacts due to soil vapor contamination and indoor air contamination at the Project site are in error, in the first instance, because such contamination are not impacts of the Project, but are instead conditions of the existing environment – baseline conditions – that



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CEQA does not require the Project to mitigate. The Soil Vapor Intrusion Assessment assessed “the potential for intrusion of PCE into the existing on-Site buildings and subterranean garage” (Appendix H.2, p. 2) and sampled the indoor and ambient air in the existing classrooms and subterranean garage. (*Id.*, p. 4.) These analyses were done to enable the IS/MND to assess whether the Project would “create a significant hazard to the public or the environment through the exacerbation of reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment.”³ (IS/MND, pp. 126 through 132.)

Based on the analyses and recommendations contained in the Soil Vapor Intrusion Assessment, the IS/MND concludes that the Project’s incorporation of Mitigation Measures HAZ-1, HAZ-2 and HAZ-3, requiring installation of a vapor barrier along the base and walls of all subterranean garages with a sub-slab collection and ventilation system, to be operated as an active or passive system based on guidance from the regulatory agency; ongoing annual monitoring and reporting with sampling for 10 years; and monitoring of elevators running from parking lots into the overlying spaces, respectively, would ensure that development of the Project, including both the upgraded building and the new buildings, would not exacerbate reasonably foreseeable upset and accident conditions involving the release of PCE. (*Id.*; see, esp., p. 129.)

As such, Appellant has not identified any defect in either the IS/MND’s or the Soil Vapor Intrusion Assessment’s analyses or the mitigation measures incorporated into the Project. Appellant’s assertions that the existing conditions are potential impacts of the Project, including on construction workers and future office workers, requiring analysis and mitigation are contrary to established CEQA case law. As discussed above in Response to Appeal Point 1-1, in *California Building Industry Ass’n v. Bay Area Air Quality Mgmt. Dist.* (2015) 62 Cal.4th 369, 386 (“*CBIA*”), the California Supreme Court held that CEQA does not generally require lead agencies to consider *the environment’s* effects on a project. (*CBIA*, 62 Cal.4th at 386-387.) The only exception is the need to “analyze any significant environmental effects the project might cause by bringing development and people into the area affected” such as by “locating development in ... areas susceptible to hazardous conditions.” (*Id.* at 388 (“CEQA calls upon an agency to evaluate existing conditions in order to assess whether a project could exacerbate hazards that are already present”).) As discussed above, the IS/MND analyzed whether the Project would exacerbate the PCE soil vapor contamination in the existing setting by bringing people to the hazardous condition and, thus, to a potentially significant impact related to a reasonably foreseeable upset and accident condition involving the release of PCE, and concluded that, with the Project’s incorporation of Mitigation Measures HAZ-1, HAZ-2 and HAZ-3, it would not and that the potential impact would be less than significant. As such, Appellant’s claim ignores the California Supreme Court’s *CBIA* decision and the Project’s incorporated mitigation.

³ See *California Building Industry Ass’n v. Bay Area Air Quality Mgmt. Dist.* (2015) 62 Cal.4th 369, 388.



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Nor has Appellant's expert, SWAPE, offered any substantial evidence supporting a fair argument there is any defect in the analyses included in either the IS/MND or the Soil Vapor Intrusion Assessment or in the mitigation measures incorporated into the Project. Instead, SWAPE merely suggests that RWQCB review and approval is important to ensure the proposed mitigation is protective of construction workers and future office workers. SWAPE does not assert that such review and approval is required. The mitigation measures require installation of protective vapor barriers with ongoing monitoring and reporting for 10 years to ensure the safety of the indoor air for the occupants. Again, as discussed in Response to Appeal Point 1-1, above, CEQA only recognizes impacts on the public at large, not individuals or small groups of people such as project construction workers or future project occupants.

For the reasons stated above, Appellant has not identified any defect in the content or adequacy of the IS/MND or in its analyses of the Project's potential environmental effects, and Appellant's claims constitute mere "[a]rgument, speculation, [and] unsubstantiated opinion or narrative," not substantial evidence. (See CEQA Guidelines §§ 15064(e)(5), 15384(a).)

Thank you for your consideration.

Very truly yours,

A handwritten signature in black ink, appearing to read 'K. Casper'.

Kyndra Joy Casper