

September 15, 2023

**VIA E-MAIL**

Planning and Land Use Management Committee  
City Council  
200 N. Spring Street  
Los Angeles, CA 90012  
clerk.plumcommittee@lacity.org

**Re:** Applicant's Responses to CEQA Issues Implicated in Appeals: Case Nos. ZA-2021-4710-CU-ZV-SPR, ENV-2021-4711-MND; Council File No. 23-0576

Dear Chairman Harris-Dawson and Honorable Councilmembers of the Planning and Land Use Management Committee:

This firm represents Raising Cane's (the "Applicant") regarding the proposed project (the "Project") approved by both the Zoning Administrator and the Central Area Planning Commission (the "Central APC") located at 6726-6740 West Sunset Boulevard and 1434-1456 North McCadden Place (the "Property"). The Project proposes to demolish an existing one-story, commercial structure and construct a one-story Raising Cane's drive-through restaurant at the Property.

On September 30, 2022, the Zoning Administrator approved the Project's requested entitlements. The Project as approved was appealed by Madeline Brozen to the Central APC.

At a public hearing held on March 14, 2023, the Central APC (1) adopted the Project's Mitigated Negative Declaration ("MND"); (2) denied the sole appeal filed to the Zoning Administrator's approval of the Project; (3) approved a Conditional Use Permit to allow the construction, use, and maintenance of a drive-through fast-food establishment; (4) approved Zone Variances to permit a drive-through fast-food use partially in the RD1.5-1XL zone, permit an outdoor eating area in excess of 50% of the interior dining area, and permit access and accessory parking from a more restrictive zone to a less restrictive zone; and (5) adopted Modified Conditions of Approval and Amended Findings pertaining to the Project.

Following the Central APC's approval of the Project, two appeals were filed: the first was filed by Madeline Brozen (the "Brozen Appeal") and the second was filed by Casey Maddren on behalf of the Citizens for a Better Los Angeles (the "Maddren Appeal"). On September 12, 2023, Casey Maddren submitted an additional letter in support of their appeal. While captioned and described as appeals to the Variance entitlements approved by both the

Zoning Administrator and the Central APC, both the Brozen Appeal and Maddren Appeal reference various issues that can be interpreted as California Environmental Quality Act (“CEQA”) challenges to the Project’s MND. Relatedly, the hearing notices provided by the City to the appellants and the Applicant further indicate that the Planning and Land Use Management Committee will be considering the “Mitigated Negative Declaration, Mitigation Measures, and Mitigation Monitoring Program pursuant to California Environmental Quality Act (CEQA) Guidelines, Section 15074(b), and related CEQA findings...”

In light of this, the Applicant wishes to respond to the various issues raised by the appellants that can be interpreted as CEQA challenges to the Project’s MND. This letter is intended to supplement the Applicant’s Appeal Response Letter dated September 8, 2023, which itself attaches the Applicant’s Central APC Appeal Response Letter. Together, these letters address the issues raised in the Brozen Appeal and the Maddren Appeal.

Judicial review under CEQA is generally limited to whether the public agency has abused its discretion by not proceeding as required by law or whether the City’s determinations are supported by substantial evidence, and the challenger to the CEQA review has the burden to prove either has occurred. (Pub. Res. Code § 21168; *San Franciscans Upholding the Downtown Plan v. City & County of San Francisco* (2002) 102 Cal.App.4th 656, 688; *Western States Petroleum Ass’n v. Superior Court* (1995) 9 Cal.4th 559, 573.)

If the lead agency is presented with a fair argument that a project may have a significant effect on the environment, and that argument is supported by substantial evidence, the lead agency shall prepare an environmental impact report. (CEQA Guidelines, § 15064(f)(1).)

Substantial evidence includes “facts, reasonable assumption predicated upon fact, or expert opinion supported by fact.” (Pub. Res. Code § 21080(e)(1).) **It is not argument, speculation, or unsubstantiated opinion or narrative.** (Pub. Res. Code § 21080(e)(2).) A challenger bears the burden to demonstrate that substantial record evidence supports any proffered fair argument that the project will have a significant adverse impact. (*McCann v. City of San Diego* (2021) 50 Cal.App.5th 51, 87.) If the challenger does not meet this burden, the MND must be upheld. (*Parker Shattuck Neighbors v. Berkeley City Council* (2013) 222 Cal.App.4th 768, 786; *San Bernardino Valley Audubon Soc’y*, supra, at 390.)

As discussed in greater detail below, the appellants have failed to meet their burden under CEQA to provide substantial evidence supporting a fair argument that the Project would have a significant impact on the environment. Instead, the appellants’ unsupported claims, which are duplicative of those previously rejected by the Zoning Administrator and the Central APC, qualify as mere “argument, speculation, or unsubstantiated opinion or narrative.”

Consistent with this analysis, we respectfully request that the Planning and Land Use Management Committee recommend the denial of any of the appellants’ claims that could be interpreted as challenges to the Project’s MND.

**Brozen CEQA Appeal Point #1:**

The Brozen Appeal appears to claim that the City has incorrectly calculated the amount of Vehicle Miles Traveled (“VMT”) that would result from the Project because the City’s VMT calculations applied a credit for trip generation from the on-site Rite Aid store. In addition, the Brozen Appeal suggests that the City’s VMT calculations may result in “more air pollution, traffic and delays for people using public transit or driving in the area.”

**Applicant’s Response to Brozen CEQA Appeal Point #1:**

In 2019, the CEQA Statutes and Guidelines were updated, changing how transportation and circulation impacts were analyzed under CEQA. Automobile delay, as measured by “level of service” and other similar metrics, no longer constitutes a significant environmental effect under CEQA. Instead, VMT is the primary metric for evaluating a project’s impacts on the environment for purposes of transportation.

The Governor’s Office of Planning and Research (“OPR”) VMT Technical Advisory provides guidance and technical recommendations regarding assessment of VMT, thresholds of significance, and mitigation measures. As defined by OPR, “VMT measures how much actual auto travel (additional miles driven) a proposed project would create on California roads. If the project adds excessive car travel onto roads, the project may cause a significant transportation impact.”

The Technical Advisory identifies several criteria based on which certain development projects are presumed to have a less than significant impact to VMT. Projects of a certain size, location, transit availability, and those that provide a certain amount of affordable housing are presumed to have a less than significant impact to VMT. The Technical Advisory states that “adding retail opportunities into the urban fabric and thereby improving retail destination proximity, local-serving retail development tends to shorten trips and reduce VMT.” Local-serving retail, defined as retail developments under 50,000 sf, are presumed to result in a less than significant impact to VMT.

The City adopted their own VMT screening criteria as part of the Transportation Assessment Guidelines in July 2020. The guidelines require the City’s Department of Transportation (“LADOT”) to prepare an initial assessment of a proposed project to determine if a transportation assessment is required. A transportation assessment analyzes impacts or deficiencies to the circulation system generated by a proposed project, as well as identifies feasible measures or corrective conditions to offset any impacts or deficiencies identified through a transportation assessment. If a proposed project meets the VMT screening criteria, a “no impact” determination can be made.

LADOT prepared a transportation initial assessment for the proposed Project. The assessment calculates a project's daily trips and VMT using the City's Calculator tool. The trip rates were based on the Institute of Transportation Engineers Trip Generation Manual (9th Edition) trip rates for Fast-food Restaurant with Drive-throughs (ITE Land Use 934).

The VMT tool takes into account certain parameters based on a project's location (i.e., population, employment density, street connectivity, proximity and access to transit) to determine a project's traffic trips. LADOT's guidelines provide that if there were previously terminated land uses, LADOT may permit a credit in the trip generation calculations. LADOT has also implemented and enforced a policy extending the applicability of permitted VMT credits for those uses that were terminated within a two-year period preceding March 2020, when the City's Safer at Home order went into effect.

Based on LADOT's analysis and review of the Project and the termination of the prior uses, a credit for existing trip generation from the on-site Rite Aid store was found appropriate and applied to the project's trip generation. The proposed Project is estimated to generate approximately 526 daily trips. The Rite Aid use was estimated by the City to generate approximately 980 daily trips. Therefore, LADOT found that the Project would result in a reduction of 454 daily trips.

Since the Project would result in a net decrease in trips, VMT impacts were found to be less than significant. As noted in the MND, the Project is consistent with CEQA Guidelines Section 15064.3(b) and transportation impacts are considered less than significant.

As it applies to the air quality and greenhouse gas emissions analysis, the Project's CEQA consultant, Kimley-Horn looked at the traffic generation associated with the Project. Kimley-Horn used a more conservative traffic trip generation assumption (e.g., no trip credit for the Rite Aid store) which resulted in more traffic trips associated with the Project, and thereby more mobile emissions. This approach represents a conservative analysis to determine the Project's impacts to air quality and greenhouse gas emissions. Based on the City's adopted CEQA guidelines and the adopted thresholds by the South Coast Air Quality Management District, the Project would result in a less than significant impact to air quality and greenhouse gas emissions. The modeled Project emissions did not exceed adopted thresholds.

**Maddren CEQA Appeal Point #1:**

The Maddren Appeal claims that "it's clear the granting of the variance will likely cause significant impacts to nearby residential uses with regard to traffic, noise and air quality."

**Applicant's Response to Maddren CEQA Appeal Point #1:**

With respect to the appellant's claims that the Project would result in significant "traffic" impacts, in 2019, the CEQA Statutes and Guidelines were updated, changing how transportation and circulation impacts were analyzed under CEQA. Automobile delay, as measured by "level of

service” and other similar metrics, no longer constitutes a significant environmental effect under CEQA. Instead, VMT is the primary metric for evaluating a project’s impacts on the environment and transportation system. Therefore, an increase in the amount of “traffic” alone would not be considered a significant impact for purposes of CEQA.

Further, the Maddren Appeal has provided no credible support for its claims that the Project would have a significant impact on “noise and air quality.” The Maddren Appeal contends that it has submitted various reports detailing complaints of residents in the City of Burbank regarding a Raising Cane’s location there. These mere complaints however, which pertain to a Raising Cane’s location in a different city, do not constitute substantial evidence supporting a fair argument that the Project would have a significant impact on either noise or air quality. CEQA Guidelines Section 15064(f)(4) makes clear that “[t]he existence of public controversy over the environmental effects of a project will not require preparation of an EIR if there is no substantial evidence before the agency that the project may have a significant effect on the environment.” The Maddren Appeal further fails to identify any threshold of significance that would be exceeded by the Project with respect to noise or air quality impacts and fails to substantiate the applicability of these unrelated complaints.

CEQA Guidelines Section 15204(c) generally provides that commenters “should explain the basis for their comments, and should submit data or references offering facts, reasonable assumptions based on facts, or expert opinion supported by facts in support of the comments.” CEQA Guidelines Section 15064(f)(5) further states that “[a]rgument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not credible, shall not constitute substantial evidence.”

Accordingly, the Maddren Appeal’s unsupported opinions and claims do not constitute substantial evidence supporting a fair argument that the Project would have a significant impact on the environment. (*Jensen v. City of Santa Rosa* (2018) 23 Cal.App.5th 877, 897. See also *Citizens Comm. to Save Our Village v. City of Claremont* (1995) 37 Cal.App.4th 1157, 1171.)

#### **Maddren CEQA Appeal Point #2:**

The Maddren Appeal claims that the Project would result in a cumulative impact to air quality because there are other drive-through restaurants located within a 1,500-foot radius of the Project site.

#### **Applicant’s Response to Maddren CEQA Appeal Point #2:**

The Maddren Appeal has provided no support for the conclusion that the Project would have a cumulative impact on air quality. The Maddren Appeal fails to substantiate how the existence of other drive-through restaurants in the vicinity of the Project would result in a cumulative impact on air quality.

CEQA Guidelines Section 15204(c) generally provides that commenters “should explain the basis for their comments, and should submit data or references offering facts, reasonable assumptions based on facts, or expert opinion supported by facts in support of the comments.” CEQA Guidelines Section 15064(f)(5) states that “[a]rgument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not credible, shall not constitute substantial evidence.” Instead, CEQA Guidelines Section 15384(b) states that “[s]ubstantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.” Accordingly, the appellant’s unsupported opinion does not constitute substantial evidence. (*Jensen v. City of Santa Rosa* (2018) 23 Cal.App.5th 877, 897. See also *Citizens Comm. to Save Our Village v. City of Claremont* (1995) 37 Cal.App.4th 1157, 1171.)

The Project’s MND thoroughly analyzed the potential for cumulative air quality impacts resulting from construction emissions and operational emissions. (See, e.g., pp. 35-39 of the MND.) As detailed in the MND, a significant impact to air quality would occur if the Project would result in a cumulatively considerable net increase of any criteria pollutant for which the region is non-attainment under an applicable National Ambient Air Quality Standards or the California Ambient Air Quality Standards (including releasing emissions that exceed quantitative thresholds for ozone precursors). The appellant has failed to identify any flaw in the analysis of the MND, or the technical reports underlying the MND, which concluded that the Project’s contribution to regional pollutant concentrations would not be cumulatively considerable. The Maddren Appeal merely points to the existence of other restaurants in the vicinity of the Project in support of its conclusion that the MND’s analysis was deficient.

**Maddren CEQA Appeal Point #3:**

The Maddren Appeal claims that the Project would result in a significant impact on air quality because the Project would “[e]xpose sensitive receptors to substantial pollutant concentrations.”

**Applicant’s Response to Maddren CEQA Appeal Point #3:**

The Maddren Appeal has provided no support for the conclusion that the Project would expose sensitive receptors to substantial pollutant concentrations. The Maddren Appeal merely claims that “[t]he addition of yet another drive-thru next to the residential neighborhood south of the project site will subject residents to higher levels of pollutant concentrations.”

The MND analyzes this threshold of significance in detail and such analysis is supported by technical reports in the MND, which analyze the emission thresholds and the Project’s emission calculations. (See, e.g., pp. 39-41 of the MND.) The analysis in the MND addresses the exposure of sensitive receptors for CO hotspots; localized emissions concentrations; toxic air contaminants; and asbestos and lead-based paint during demolition activities. (*Id.*) The Maddren Appeal identifies no flaw with the MND’s analysis on these criteria, and instead merely concludes, without support, that the Project would result in a significant impact.

CEQA Guidelines Section 15204(c) generally provides that commenters “should explain the basis for their comments, and should submit data or references offering facts, reasonable assumptions based on facts, or expert opinion supported by facts in support of the comments.” CEQA Guidelines Section 15064(f)(5) states that “[a]rgument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not credible, shall not constitute substantial evidence.” Instead, CEQA Guidelines Section 15384(b) states that “[s]ubstantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.” Accordingly, the appellant’s unsupported opinion does not constitute substantial evidence. (*Jensen v. City of Santa Rosa* (2018) 23 Cal.App.5th 877, 897. See also *Citizens Comm. to Save Our Village v. City of Claremont* (1995) 37 Cal.App.4th 1157, 1171.)

**Maddren CEQA Appeal Point #4:**

The Maddren Appeal claims that the Project would “[c]onflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of greenhouse gases.”

**Applicant’s Response to Maddren CEQA Appeal Point #4:**

In support of its claim, the Maddren Appeal only identifies two planning-level and generalized policies with which it claims the Project is inconsistent. The Maddren Appeal claims that the Project would conflict with the Mobility Plan’s initiative to “[t]arget greenhouse gas reductions through a more sustainable transportation system” and with the City’s 2019 Sustainable City Plan, which identifies targets for reducing VMT per capita and increasing non-vehicular trips.

The MND analyzes the identified threshold of significance in detail and such analysis is supported by well-reasoned explanations. (See, e.g., pp. 59-62 of MND.) The analysis analyzes the Project’s consistency with the applicable Sustainable Communities and Climate Protection Act, the Southern California Association of Governments’ Sustainable Communities Strategy, and the City’s Sustainable City Plan. The analysis concludes that there would be no such conflict with any of the applicable plans, policies, or regulations.

The appellant does not rebut any of the MND’s analysis, but instead attempts to handpick policies with which it concludes, again without any support, that the Project would be inconsistent. The policies identified by the appellant are planning-level policies, and do not apply on a project-specific basis. The appellant further fails to substantiate or explain how the Project would conflict with any of such policies.

CEQA Guidelines Section 15204(c) generally provides that commenters “should explain the basis for their comments, and should submit data or references offering facts, reasonable assumptions based on facts, or expert opinion supported by facts in support of the comments.” CEQA Guidelines Section 15064(f)(5) states that “[a]rgument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not

credible, shall not constitute substantial evidence.” Instead, CEQA Guidelines Section 15384(b) states that “[s]ubstantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.” Accordingly, the appellant’s unsupported opinion does not constitute substantial evidence. (*Jensen v. City of Santa Rosa* (2018) 23 Cal.App.5th 877, 897. See also *Citizens Comm. to Save Our Village v. City of Claremont* (1995) 37 Cal.App.4th 1157, 1171.)

**Maddren CEQA Appeal Point #5:**

The Maddren Appeal claims that the Project’s MND was deficient because the MND applied an incorrect threshold of significance. The Maddren Appeal claims that the MND suffers from “ridiculously limited sampling” and that “[t]he MND includes a lot of technical babble to make it look as though the authors considered noise impacts.”

**Applicant’s Response to Maddren CEQA Appeal Point #5:**

The MND analyzes the identified threshold of significance in detail and such analysis is supported by well-reasoned explanations. (See, e.g., pp. 77-88 of MND.) The MND’s noise analysis analyzes the nearest noise-sensitive uses and applied the standards set forth in the City’s CEQA Thresholds Guide to help evaluate the potential noise impacts of the Project. The adopted noise standards in the Thresholds Guidelines are based, in part, on the community noise compatibility guidelines established by the State Office of Planning and Research (OPR) for use in assessing the compatibility of various land use types with a range of noise levels.

Rather than provide substantial evidence supporting a fair argument that the Project would result in a significant impact on noise, the appellant merely claims that the MND was required to analyze various factors handpicked by the appellant (e.g., the engine noise that is emitted by muscle cars). The appellant has not identified any requirement under CEQA or the City’s CEQA Thresholds Guide to analyze the miscellaneous factors it has identified.

CEQA Guidelines Section 15204(c) generally provides that commenters “should explain the basis for their comments, and should submit data or references offering facts, reasonable assumptions based on facts, or expert opinion supported by facts in support of the comments.” CEQA Guidelines Section 15064(f)(5) states that “[a]rgument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not credible, shall not constitute substantial evidence.” Instead, CEQA Guidelines Section 15384(b) states that “[s]ubstantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.” Accordingly, the appellant’s unsupported opinion does not constitute substantial evidence. (*Jensen v. City of Santa Rosa* (2018) 23 Cal.App.5th 877, 897. See also *Citizens Comm. to Save Our Village v. City of Claremont* (1995) 37 Cal.App.4th 1157, 1171.)



**Maddren CEQA Appeal Point #6:**

The Maddren Appeal claims that the Project would result in a significant impact on transportation because the MND fails to accurately represent the increase in traffic that would result from the Project and because the Project would conflict with various planning-level (and non-project specific) policies pertaining to transportation the appellant has identified.

**Applicant's Response to Maddren CEQA Appeal Point #6:**

As a threshold matter, the appellant's claims regarding the purported increase in traffic are misguided, and do not identify any deficiency in the Project's CEQA analysis. In 2019, the CEQA Statutes and Guidelines were updated, changing how transportation and circulation impacts were analyzed under CEQA. Automobile delay, as measured by "level of service" and other similar metrics, no longer alone constitutes a significant environmental effect under CEQA. Instead, VMT is the primary metric for evaluating a project's impacts on the environment and transportation system.

The MND analyzes the identified threshold of significance in detail and such analysis is supported by well-reasoned explanations. (See, e.g., pp. 94-99 of MND.) The appellant does not rebut any of the MND's analysis, but instead attempts to handpick General Plan policies with which it concludes, again without any support, that the Project would be inconsistent. The policies identified by the appellant are planning-level policies, and do not apply on a project-specific basis. The appellant further fails to substantiate or explain how the Project would conflict with any of such policies.

A project is consistent with a General Plan for purposes of CEQA if it is compatible with the plan's objectives, policies, general land uses, and programs, and will not obstruct their attainment. *Orange Citizens for Parks & Recreation v Superior Court*, 2 Cal.5th 141. CEQA acknowledges that General Plans balance a range of competing interests, so projects cannot be in perfect conformity with each of the policies; they must instead be compatible with the plan's policies. *Holden v City of San Diego* (2019) 43 Cal.App.5th 404.

Further, CEQA Guidelines Section 15204(c) generally provides that commenters "should explain the basis for their comments, and should submit data or references offering facts, reasonable assumptions based on facts, or expert opinion supported by facts in support of the comments." CEQA Guidelines Section 15064(f)(5) states that "[a]rgument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not credible, shall not constitute substantial evidence." Instead, CEQA Guidelines Section 15384(b) states that "[s]ubstantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts."

Accordingly, the appellant's unsupported opinion does not constitute substantial evidence. (*Jensen v. City of Santa Rosa* (2018) 23 Cal.App.5th 877, 897. See also *Citizens Comm. to Save Our Village v. City of Claremont* (1995) 37 Cal.App.4th 1157, 1171.)

**Maddren CEQA Appeal Point #7:**

The Maddren Appeal claims that the Project would result in inadequate emergency access.

**Applicant's Response to Maddren CEQA Appeal Point #7:**

The MND analyzes the identified threshold of significance in detail and such analysis is supported by well-reasoned explanations, which provides as follows (see, e.g., pp. 96-99 of MND):

“...the proposed project would provide access from Sunset Boulevard and McCadden Place. The driveways on Sunset Boulevard and McCadden Place would provide emergency vehicle access to the site. Additionally, the proposed project would be required to incorporate all applicable design and safety requirements as set forth in fire codes, building codes, and safety standards. No changes to the existing roadway network would occur. As previously discussed in Threshold 4.9f, Sunset Boulevard, Highland Avenue, U.S. 101, and Santa Monica Boulevard are evacuation routes in the event of an emergency situation. The project would not require the complete closure of any public or private streets or roadways during construction. Temporary construction activities would not impede use of the road for emergencies or access for emergency response vehicles. Therefore, the project would not result in inadequate emergency access.”

The appellant claims, without any support, that the MND has “avoid[ed] any consideration of the actual conditions created by a Raising Cane’s drive-thru and the surrounding context” and that the MND’s Traffic Management Plan does not produce an accurate picture of operations. The appellant does not however provide any substantial evidence supporting its claims.

CEQA Guidelines Section 15204(c) generally provides that commenters “should explain the basis for their comments, and should submit data or references offering facts, reasonable assumptions based on facts, or expert opinion supported by facts in support of the comments.” CEQA Guidelines Section 15064(f)(5) states that “[a]rgument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not credible, shall not constitute substantial evidence.” Instead, CEQA Guidelines Section 15384(b) states that “[s]ubstantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.” Accordingly, the appellant’s unsupported opinion does not constitute substantial evidence. (*Jensen v. City of Santa Rosa* (2018) 23 Cal.App.5th 877, 897. See also *Citizens Comm. to Save Our Village v. City of Claremont* (1995) 37 Cal.App.4th 1157, 1171.)

**Maddren CEQA Appeal Point #8:**

The Maddren Appeal claims that the Project would conflict with various elements of the General Plan, which include the Air Quality Element, the Noise Element, the Plan for a Health LA, and the Mobility Plan.

**Applicant's Response to Maddren CEQA Appeal Point #8:**

To the extent the appellant's claims implicate CEQA issues, a project is consistent with a General Plan for purposes of CEQA if it is compatible with the plan's objectives, policies, general land uses, and programs, and will not obstruct their attainment. *Orange Citizens for Parks & Recreation v Superior Court*, 2 Cal.5th 141. CEQA acknowledges that General Plans balance a range of competing interests, so projects cannot be in perfect conformity with each of the policies; they must instead be compatible with the plan's policies. *Holden v City of San Diego* (2019) 43 Cal.App.5th 404. The MND analyzes whether the project would cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect. (See, e.g., pp. 74-75 of MND.) Further, the Central APC reviewed and weighed the record of the proceedings, which included substantial evidence to support the Central APC's finding of substantial consistency, including the Zoning Administrator's findings regarding the Project, the statements of Department of City Planning staff, the MND, and the Applicant's Central APC Appeal Response Letter. In particular, the Applicant's Central APC Appeal Response Letter analyzes in detail the Project's consistency with various elements of the General Plan, including the Land Use Element and Mobility Plan 2035.

Further, it is well settled law that a project need not be in perfect conformity with each and every General Plan policy. (See, e.g., *Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490, 1509.)

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Based on the foregoing, we respectfully request that the Planning and Land Use Management Committee uphold the comprehensive findings and determinations of the Central APC and vote to recommend denial of the appeals, both of which demonstrably lack merit.

We appreciate and look forward to your future consideration of the Project.

Very truly yours,

Cox, Castle & Nicholson LLP



David P. Waite