

Fwd: Comments to Planning Commission on the EIR for Hollywood & Gower Project (SCH 2008011113; ENV-2016-2849-EIR)

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To: Clerk Council and Public Services <Clerk.CPS@lacity.org>

Mon, May 6, 2019 at 4:13 PM

----- Forwarded message -----

From: <stacey@lozeaudrury.com>
Date: Mon, May 6, 2019 at 3:57 PM
Subject: Comments to Planning Commission on the EIR for Hollywood & Gower Project (SCH 2008011113; ENV-2016-2849-EIR)
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Dear All,

Please find attached comments on the Project and EIR for the Hollywood & Gower Project (SCH 2008011113; ENV-2016-2849-EIR) submitted by Lozeau Drury LLP on behalf of Supporters Alliance for Environmental Responsibility ("SAFER") and its members living in the City of Los Angeles. Please note that hard copies will also be sent via overnight mail.

If you have questions, please contact our office.

Thank you,

Stacey

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May 6, 2019

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Re: Hollywood & Gower Project aka ENV-2016-2849-EIR, SCH No. 2008011113

Dear President Millman, Honorable Members of the Planning Commission, et al:

I am writing on behalf of Supporters Alliance for Environmental Responsibility ("SAFER") and its members living in the City of Los Angeles, regarding the Draft and Final Environmental Impact Report ("EIR") prepared for the Hollywood & Gower Project aka ENV-2016-2849-EIR, and SCH No. 2008011113 including all actions related or referring to the proposed demolition and removal of an existing paved surface parking lot and development of a 22 story mixed-use project containing up to 220 apartment residences, up to 3,270 square feet of commercial retail/restaurant space, and associated above-grade and subterranean parking facilities. ("Project"). The matter is scheduled for hearing by the Planning Commission on May 9, 2019 at 8:30 a.m.

We hereby adopt by reference all comments made by other entities concerning the Project and its EIR. In addition, we make the following comments.

PROJECT DESCRIPTION

The Project seeks to place 220 dwelling units, including 11 affordable units, and 3,270 square feet of ground-floor restaurant space. Parking would be provided for both the residential and commercial components of the Project per Los Angeles Municipal Code (“LAMC”) parking code requirements. The Project would consist of a single high-rise structure, irregular in shape, sited with the tallest portions of the building towards the northeastern corner of the Project Site. A four story podium would cover nearly the entire site, with an 18-story residential tower located atop the podium, for a total of 22 levels. Two subterranean parking levels would also be provided. The Project Site is located at 6100-6116 W. Hollywood Boulevard and 1633-1649 N. Gower Street (“Project Site”) in the Hollywood Community Plan area of the City of Los Angeles (the “City”). The relatively flat Project Site is approximately one acre in size (44,782 square feet after dedications/mergers), and is bounded by Hollywood Boulevard to the north, Gower Street to the east, and commercial uses to the south and west.

LEGAL STANDARD

CEQA requires that an agency analyze the potential environmental impacts of its proposed actions in an environmental impact report (“EIR”) (except in certain limited circumstances). See, e.g., Pub. Res. Code § 21100. The EIR is the very heart of CEQA. *Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652. “The ‘foremost principle’ in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.” *Comms. for a Better Env’t v. Calif. Resources Agency* (2002) 103 Cal. App. 4th 98, 109.

CEQA has two primary purposes. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project. 14 Cal. Code Regs. (“CEQA Guidelines”) § 15002(a)(1). “Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR ‘protects not only the environment but also informed self-government.’” *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564. The EIR has been described as “an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.” *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm’rs.* (2001) 91 Cal. App. 4th 1344, 1354 (“Berkeley Jets”); *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

Second, CEQA requires public agencies to avoid or reduce environmental damage when “feasible” by requiring “environmentally superior” alternatives and all feasible mitigation measures. CEQA Guidelines § 15002(a)(2) and (3); see also *Berkeley Jets*, 91 Cal. App. 4th 1344, 1354; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564. The EIR serves to provide agencies and the public with information about the environmental impacts of a proposed project and to “identify ways that environmental damage can be avoided or significantly reduced.” CEQA Guidelines §15002(a)(2). If the project will have a significant effect on the environment, the agency

may approve the project only if it finds that it has “eliminated or substantially lessened all significant effects on the environment where feasible” and that any unavoidable significant effects on the environment are “acceptable due to overriding concerns.” Pub.Res.Code (“PRC”) § 21081; CEQA Guidelines § 15092(b)(2)(A) & (B).

The EIR is the very heart of CEQA. *Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652. CEQA requires that a lead agency analyze all potentially significant environmental impacts of its proposed actions in an EIR. PRC § 21100(b)(1); CEQA Guidelines § 15126(a); *Berkeley Jets*, 91 Cal.App.4th 1344, 1354. The EIR must not only identify the impacts, but must also provide “information about how adverse the impacts will be.” *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 831. The lead agency may deem a particular impact to be insignificant only if it produces rigorous analysis and concrete substantial evidence justifying the finding. *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692. “The ‘foremost principle’ in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.” *Communities for a Better Env’t v. Calif. Resources Agency* (2002) 103 Cal.App.4th 98, 109.

While the courts review an EIR using an “abuse of discretion” standard, “the reviewing court is not to ‘uncritically rely on every study or analysis presented by a project proponent in support of its position. A ‘clearly inadequate or unsupported study is entitled to no judicial deference.’” *Berkeley Jets*, 91 Cal. App. 4th 1344, 1355 (emphasis added), quoting, *Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 391 409, fn. 12. A prejudicial abuse of discretion occurs “if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process.” *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal. App. 4th 713, 722]; *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal. App. 4th 1109, 1117; *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal. App. 4th 931, 946. The court reviews the adequacy of the EIR as an informational document under its independent judgment, without deference to the agency. *Sierra Club v. Fresno*, 6 Cal. 5th 502, 511–12, 431 P.3d 1151, 1158–59 (2018).

The lead agency must evaluate comments on the draft EIR and prepare written responses in the final EIR (“FEIR”). (PRC §21091(d)) The FEIR must include a “detailed” written response to all “significant environmental issues” raised by commenters. As the court stated in *City of Long Beach v. LA USD* (2009) 176 Cal.App.4th 889, 904:

The requirement of a detailed written response to comments helps to ensure that the lead agency will fully consider the environmental consequences of a decision before it is made, that the decision is well informed and open to public scrutiny, and that public participation in the environmental review process is meaningful.

The FEIR’s responses to comments must be detailed and must provide a reasoned, good faith analysis. (14 CCR §15088(c)) Failure to provide a substantive

response to comment render the EIR legally inadequate. (*Rural Land Owners Assoc. v. City Council* (1983) 143 Cal.App.3d 1013, 1020)

The responses to comments on a draft EIR must state reasons for rejecting suggested mitigation measures and comments on significant environmental issues. “Conclusory statements unsupported by factual information” are not an adequate response. (14 CCR §15088(b, c); *Cleary v. County of Stanislaus* (1981) 118 Cal.App.3d 348) The need for substantive, detailed response is particularly appropriate when comments have been raised by experts or other agencies. (*Berkeley Keep Jets v. Bd. of Port Comm’rs* (2001) 91 Cal.App.4th 1344, 1367; *People v. Kern* (1976) 72 Cal.app.3d 761) A reasoned analysis of the issue and references to supporting evidence are required for substantive comments raised. (*Calif. Oak Found. v. Santa Clarita* (2005) 133 Cal.App.4th 1219)

The FEIR abjectly fails to meet these legal standards, as it is riddled with conclusory statements lacking any factual support or analysis.

DISCUSSION

A. Soil Contamination.

The California Department of Toxic Substances Control (“DTSC”) has submitted comments raising concerns that soil at the Project site may be contaminated with toxic chemicals due to prior use of the site as a gas station. Leaky underground storage tanks (“USTs”) are common at prior gas station locations. <https://www.epa.gov/ust/learn-about-underground-storage-tanks-usts>. USTs can release toxic and cancer-causing chemicals, including benzene, toluene, ethylbenzene and xylene. https://www.waterboards.ca.gov/losangeles/publications_forms/forms/ust/lab_forms/labreq9-06.pdf.

Construction workers would be most at risk from soil contamination, as they may be directly exposed to contaminated soil during soil excavation and soil moving. Future residents of the Project may also be exposed since several toxic chemicals can enter the living space through soil vapor intrusion. <https://www.epa.gov/vaporintrusion/what-vapor-intrusion>

Despite DTSC’s letter, the Final EIR blithely dismisses this comment. Nevertheless, FEIR page II-4 admits:

However, due to the identified historic uses of the Project Site, it is possible that unidentified isolated areas of impacted soils may be present, and due to the lack of documentation regarding the closure or abandonment of the historic on-site underground storage tanks and hydraulic lifts, their continued existence at the Project Site cannot be ruled out. Accordingly, the Draft EIR properly identified the potential for previously unidentified soil contamination and underground storage tanks as recognized environmental conditions.

While admitting this potentially significant impact, and acknowledging the need for mitigation, the EIR defers development of the specific mitigation measure until after Project approval. The FEIR states:

As described above, Mitigation Measure MM F-1 requires the preparation of a Soil Management Plan that provides for the required investigation and/or remediation of any suspected contaminated soil encountered during construction, in conformance with the requirements of all applicable regulatory oversight agencies (see Draft EIR, pages IV.F-31 through IV.F-32).

(FEIR, p. II-6.)

CEQA prohibits such deferred mitigation. Mitigation measures must be set forth in the EIR so that the public can review their adequacy. Otherwise, difficult problems may be swept under the rug. Feasible mitigation measures for significant environmental effects must be set forth in an EIR for consideration by the lead agency's decision makers and the public before certification of the EIR and approval of a project. The formulation of mitigation measures generally cannot be deferred until after certification of the EIR and approval of a project. Guidelines, section 15126.4(a)(1)(B) states: "Formulation of mitigation measures should not be deferred until some future time. However, measures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way."

"A study conducted after approval of a project will inevitably have a diminished influence on decisionmaking. Even if the study is subject to administrative approval, it is analogous to the sort of post hoc rationalization of agency actions that has been repeatedly condemned in decisions construing CEQA." (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 307.) "[R]eliance on tentative plans for future mitigation after completion of the CEQA process significantly undermines CEQA's goals of full disclosure and informed decisionmaking; and[,] consequently, these mitigation plans have been overturned on judicial review as constituting improper deferral of environmental assessment." (*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 92.)

A revised EIR is required to propose specific mitigation measures to safeguard workers and future residents from admitted potential soil contamination that may be present at the Project site.

B. Toxic Air Contamination.

The EIR fails to analyze the risks of toxic air contaminants (TACs). TACs pose a particular risk to construction workers since they are released large from construction equipment. The EIR dismisses TACs, arguing that any exposure would be short term and therefore less than significant. The DEIR states:

With respect to TACs, the greatest potential for TAC emissions would involve diesel particulate emissions associated with trucks and heavy equipment. The

construction activities associated with the Project would be similar to other development projects in the City and would be subject to the regulations and laws relating to toxic air pollutants at the regional, state, and federal level that would protect sensitive receptors from substantial concentrations of these emissions. In addition, project construction activity would not result in long-term substantial sources of TAC emissions (i.e., 70 years) and would not generate ongoing construction TAC emissions. Thus, TAC emissions from the Project construction would be considered less than significant.

(DEIR, p. IV.B-35.) Michael Gonzalez raised this issue in comments on behalf of the Music Box Company. Yet, the FEIR fails to analyze or mitigate TACs.

The EIR's analysis fails to comply with applicable guidance. This justification and subsequent significance determination are incorrect, as guidance documents published by both the Office of Environmental Health Hazard Assessment (OEHHA) and the South Coast Air Quality Management District (SCAQMD) recommend analysis of both the construction and operational health risk impacts resulting from implementation of projects. As a result, until the Project's operational health risk impacts are adequately quantified, combined with the Applicant's calculated construction-related cancer risk, and compared to applicable thresholds, the FEIR cannot make any conclusions with regards to the Project's health risk impacts.

By failing to prepare an operational HRA for existing sensitive receptors, the FEIR is inconsistent with recommendations set forth by the OEHHA, the organization responsible for providing recommendations for health risk assessments in California. In February of 2015, OEHHA released its most recent *Risk Assessment Guidelines: Guidance Manual for Preparation of Health Risk Assessments*, which was formally adopted in March of 2015.¹ This guidance document describes the types of projects that warrant the preparation of a health risk assessment. Construction of the Project will produce emissions of diesel particulate matter (DPM), a human carcinogen, through the exhaust stacks of construction equipment over a construction period of 2 years (24 months). The OEHHA document recommends that all short-term projects lasting at least two months be evaluated for cancer risks to nearby sensitive receptors.² The Project's 24-month construction schedule is 12 times longer than the 2 month period requiring analysis.

Furthermore, once construction of the Project is complete, the Project will operate for a long period of time. During operation, the Project will generate vehicle trips, which will generate additional exhaust emissions, thus continuing to expose nearby sensitive receptors to emissions. The OEHHA document recommends that exposure from projects lasting more than 6 months should be evaluated for the duration of the project, and

¹ "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, available at: http://oehha.ca.gov/air/hot_spots/hotspots2015.html

² "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, available at: http://oehha.ca.gov/air/hot_spots/2015/2015GuidanceManual.pdf, p. 8-18

recommends that an exposure duration of 30 years be used to estimate individual cancer risk for the maximally exposed individual resident (MEIR).³ Even though we were not provided with the expected lifetime of the Project, we can reasonably assume that the Project will operate for at least 30 years, if not more. Therefore, health risks from Project operation should have also been evaluated by the FEIR, as a 30-year exposure duration vastly exceeds the 6-month requirement set forth by OEHHA.

Furthermore, the SCAQMD provides a specific numerical threshold of 10 in one million for determining a project's health risk impact. Therefore, in order to determine the proposed Project's health-related impact, the DEIR or FEIR should have conducted an assessment that compares both the construction and operational health risk to the SCAQMD's specific numeric threshold of 10 in one million. These recommendations reflect the most recent health risk policy, and as such, an updated assessment of health risks to nearby sensitive receptors from Project operation should be included in a revised CEQA evaluation for the Project. A Revised Draft EIR is required to analyze and mitigate risks from TACs.

C. Construction Worker Parking and Traffic Impacts Are Improperly Deferred.

The EIR improperly defers analysis of traffic and parking impacts during the construction phase. The EIR admits that traffic generated by construction workers will create significant impacts related to parking and traffic. However, the EIR improperly defers development of mitigation measures to address this impact. The Staff Report states:

The commenter speculates that the Project's construction worker parking would create impacts. However, as described in Section IV.L, Transportation/Traffic of the Draft EIR, the Project will incorporate Project Design Feature L-1, which requires the preparation of a Construction Traffic Management Plan, which will designate construction worker parking areas either on-site or in designated off-site public parking areas, require temporary traffic control during all construction activities to improve traffic flow on public roadways, and require the scheduling of construction vehicle movements to ensure that there are no vehicles waiting off-site and impeding public traffic flow on the surrounding streets. This Construction Traffic Management Plan will be reviewed and approved by LADOT prior to issuance of Project building permits. With implementation of this Project Design Feature, temporary impacts relating to construction worker parking will be less than significant.

Planning Commission Staff Report, p. 12.

The City may not rely on "preparation of a Construction Traffic Management Plan" in the future, as this constitutes deferred mitigation. As discussed above, CEQA requires

³ "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, *available at*: http://oehha.ca.gov/air/hot_spots/2015/2015GuidanceManual.pdf, p. 8-6, 8-15

the mitigation measures to be set forth in the EIR. It may not even be possible to develop a traffic management plan that is sufficient to reduce traffic impacts to less than significant. Unless the mitigation measure is set forth in the EIR it is impossible to analyze the measure for adequacy.

D. Aesthetic Impacts are Improperly Dismissed.

The EIR and Staff Report improperly dismiss aesthetic impacts as less than significant, relying on an erroneous interpretation of SB 743, Pub. Res. Code §21099. As the Hollywood Residents' Association points out in their letter, the Project would tower over neighboring buildings, as it would be 100 feet taller than any building in the area on Hollywood Boulevard. Thus, it would clearly have a significant aesthetic impact. As discussed by the Music Box Company, this impact would be particularly severe on the adjacent, historic Fonda Theater, which is 1-2 stories, and which will be dwarfed by the 20-story Project.

The EIR and Staff Report erroneously dismiss aesthetic impacts, stating:

As described in Section IV.A, Aesthetics, of the Draft EIR, the Project Site is located within a Transit Priority Area. As such, in accordance with Senate Bill 743 and Section 21099(d)(1) of the Public Resources Code, the mixed-use Project's potential aesthetic impacts, including those impacts relating to visual quality, views, glare, and shade/shadow impacts, shall not be considered a significant impact on the environment as a matter of law.

(Staff Report, p. 9).

The EIR and Staff Report misconstrue SB 743, which states:

(d)(1) Aesthetic and parking impacts of a residential, mixed-use residential, or employment center project on an infill site within a transit priority area shall not be considered significant impacts on the environment.

(2)(A) This subdivision does not affect, change, or modify the authority of a lead agency to consider aesthetic impacts pursuant to local design review ordinances or other discretionary powers provided by other laws or policies.

(B) For the purposes of this subdivision, aesthetic impacts **do not include impacts on historical or cultural resources.**

(e) **This section does not affect the authority of a public agency to establish or adopt thresholds of significance that are more protective of the environment.**

First, SB 743 expressly excludes aesthetic impacts to historic resources. The City admits that the Fonda Theater is an historic resource. Therefore the obvious aesthetic impacts to the Fonda Theater are not eliminated by SB 743. As discussed by counsel for

Music Box Company, the Project, which will tower over the adjacent Fonda Theater, will clearly have significant impacts on the Fonda Theater, including noise impacts, aesthetic impacts, and others.

Second, SB 743 states that, "This section does not affect the authority of a public agency to establish or adopt thresholds of significance that are more protective of the environment." PRC §21099(e). Thus, if the City has more stringent CEQA thresholds, then those thresholds control.

The City of Los Angeles has its own CEQA thresholds, set forth in the Los Angeles CEQA Thresholds Guide. <http://planning.lacity.org/Documents/MajorProjects/CEQAThresholdsGuide.pdf>. The City's CEQA Guidelines set forth screening criteria for aesthetic impacts (CEQA Guide, p. A.1-2).

- Does the project include a proposed zone change or variance that would increase density, height, and bulk in areas where there is a consistent theme, style, or building height and setbacks?
- Does the project include a proposal to develop or allow development in an existing natural open space area (not including previously developed or infill lots)?
- Would the project result in the removal of one or more features that contribute to the valued aesthetic character or image of the neighborhood, community, or localized area?
- Would the project introduce features that would detract from the existing valued aesthetic quality of a neighborhood, community, or localized area by conflicting with important aesthetic elements or the quality of the area (such as theme, style, setbacks, density, massing, etc.) or by being inconsistent with applicable design guidelines?

The Project meets almost all of the criteria for having a significant aesthetic impact. As set forth in SB 743, the City's more stringent CEQA thresholds control over SB 743. A revised DEIR is therefore required to analyze and mitigate the Project's aesthetics impacts, including consideration of Project alternatives that would have lesser impacts.

E. The Project Fails to Comply with Measure JJJ Affordable Housing Requirements.

On November 8, 2016, the votes passed Measure JJJ in Los Angeles. Measure JJJ amended the Los Angeles Municipal Code to include, inter alia, affordable housing requirements for residential developments. Measure JJJ contained the following provisions for projects with ten or more residential rental units:

If the General Plan amendment, zone change or height district change results in a residential density increase greater than 35%, then the Project shall provide no less than 5% of the total units at rents affordable to Extremely Low Income households, and either 6% of the total units at rents affordable to Very Low Income households or 15% of the total units at rents affordable to Lower Income households, inclusive of any Replacement Units; or

...

If the General Plan amendment, zone change or height district change allows a residential use where not previously allowed, then the Project shall provide no less than 5% of the total units at rents affordable to Extremely Low Income households, and either 11% of the total units at rents affordable to Very Low Income households or 20% of the total units at rents affordable to Lower Income households, inclusive of any Replacement Units.

(Los Angeles Municipal Code (“LAMC”) § 11.5.11(a)(1).)

The Project seeks a zone and height district change to allow this massive Project to be constructed on a small one-acre parcel. The DEIR states:

In conjunction with the C4 zoning designation, the Project Site’s Height District 2 designation does not impose a height limitation but normally imposes a maximum floor area ratio (“FAR”) of 6:1. However, the “D” limitation of the Project Site’s zoning limits the total floor area contained in all buildings to a maximum floor area ratio of 2:1 (per Ordinance No. 165,662, adopted in 1990. Pursuant to the floor area limits contemplated by Hollywood Community Plan Land Use Map Footnote No. 9 and the Hollywood Redevelopment Plan for properties designated as Regional Centers, the **Project Applicant is requesting a vesting zone and height district change to establish a maximum FAR of 4.5:1 for the Project Site.** The Project’s approximately 198,720 square feet of proposed floor area would result in a FAR of approximately 4.44:1, which complies with this limit.

(DEIR p. II-6).

Since the Project has more than 10 residential units, and requires a zone change and height district change, Measure JJJ applies to the Project. Pursuant to Measure JJJ, the Project requires a minimum of 11% affordable housing (and possibly up to 20%). The Project proposes that only 11 units of the 220 units be designated affordable – 5%. Thus, the Project includes less than half of the affordable units required by Measure JJJ.

F. The Project Lacks Affordable Housing in Conflict with the General Plan.

As discussed above, the Project does not include sufficient affordable housing units, in disregard of the applicable General Plan policies. Gen Pl. Housing Element Policy 4.1.1 states that the City should “[p]rovide sufficient land use and density to accommodate an adequate supply of housing units by type and cost within each City subregion to meet the 20-year projections of housing needs.” Policies of note include

Policy 1.1.3, which states the City should “[f]acilitate new construction and preservation of a range of housing types that address the particular needs of the city’s households.”

Chapter 1, Housing Needs Assessment, identifies Los Angeles’s share of the housing needs established in the RHNA. In particular, Table 1.29, City of Los Angeles Regional Housing Needs Assessment Allocation for the period of 2014–2021, indicates that Los Angeles’ needs assessment allocation includes 82,002 housing units, of which 35,412 units, or 43.2 percent, would be for above moderate-income households. The remaining 56.8 percent of the needed housing units consisting of 13,728 moderate-income units (16.8 percent), 12,435 low-income units (15.2 percent), 10,213 very low-income units (12.5 percent), and 10,213 extremely low-income units (12.5 percent).

The Sustainable City pLAN of April 8, 2015 provides a roadmap achieving sustainability through short-term (by 2017) results and setting long-term (by 2025 and 2035) goals for a cleaner environment and stronger economy. The pLAN sets forth a goal of transforming Los Angeles into an environmentally healthy, economically prosperous, and equitable City over the next 20 years. Key visions for long-term aspirations by 2035 regarding the preferred development in the Project vicinity include the following:

- Housing and Development: We address LA’s housing shortage, ensure that most new units are accessible to high-quality transit, and close the gap between incomes and rents.

The Housing & Development chapter of the Sustainable City pLAN includes the following goals:

- Start constructing 17,000 new units of housing within 1,500 feet of transit by 2017.
- Provide 100,000 new housing units by 2021, leading to 150,000 new housing units by 2025.
- Reduce the number of rent-burdened households by at least 15 percentage points by 2035.

It is well-established that urban decay is a CEQA issue. The lack of affordable housing has led to an increase in homelessness, which is a prime contributor to urban decay. In *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) (124 Cal.App.4th 1184) (*Bakersfield Citizens*), the court expressly held that an EIR must analyze a project’s potential to cause urban decay if there is substantial evidence showing that the project may lead to such impacts. The court pointed out that CEQA requires the project proponent to discuss the project’s economic and social impacts where “[a]n EIR may trace a chain of cause and effect from a proposed decision on a project through anticipated economic or social changes resulting from the project to physical changes caused in turn by the economic and social changes.” (CEQA Guidelines §§ 15131(a) and 15064(f).)

Where a local or regional policy of general applicability, such as an ordinance, is adopted in order to avoid or mitigate environmental effects, a conflict with that policy in

itself indicates a potentially significant impact on the environment. (*Pocket Protectors v. Sacramento* (2005) 124 Cal.App.4th 903.) Indeed, any inconsistencies between a proposed project and applicable plans must be discussed in an EIR. (14 CCR § 15125(d); *City of Long Beach v. Los Angeles Unif. School Dist.* (2009) 176 Cal. App. 4th 889, 918; *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal. App. 4th 859, 874 (EIR inadequate when Lead Agency failed to identify relationship of project to relevant local plans).) A Project's inconsistencies with local plans and policies constitute significant impacts under CEQA. (*Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 783-4, 32 Cal.Rptr.3d 177; see also, *County of El Dorado v. Dept. of Transp.* (2005) 133 Cal.App.4th 1376 (fact that a project may be consistent with a plan, such as an air plan, does not necessarily mean that it does not have significant impacts).)

CEQA requires the lead agency to determine whether the "environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly," (PRC § 21083(b)(3), (d)), and to "take immediate steps to identify any critical thresholds for the health and safety of the people of the state and take all coordinated actions necessary to prevent such thresholds being reached." See PRC §21000 et seq.

Furthermore, CEQA Guidelines Appendix G, Section XII provides that a project will have significant impacts where it will:

- Induce substantial population growth or concentration of population in an area, either directly (for example, by proposing new housing or businesses), or indirectly (for example, through extension of roads or other infrastructure);
- Displace substantial numbers of existing housing necessitating the construction of replacement housing elsewhere; or
- Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere. See CEQA Guidelines Appendix G, Section XII.

Here, the Project is likely to lead to gentrification of the area, which will displace local low-income residents, who will be forced to move elsewhere. See Kalama D. Harris, Attorney General, "Environmental Justice at the Local and Regional Level," May 8, 2012, available at

http://oag.ca.gov/sites/all/files/pdfs/environment/ej_fact_sheet_final_050712.pdf.

A supplemental EIR should be prepared to analyze the impacts of the Project's lack of affordable housing and the impact on urban decay. It should propose feasible mitigation measures, such as requiring more affordable housing in the Project, contributions to low-income housing funding, etc.

G. The Project Will Have a Significant Health Risk Impact from its Indoor Air Quality Impacts.

Formaldehyde is a known human carcinogen. Many composite wood products typically used in residential and office building construction contain formaldehyde-based glues which off-gas formaldehyde over a very long time period. The primary source of

formaldehyde indoors is composite wood products manufactured with urea-formaldehyde resins, such as plywood, medium density fiberboard, and particle board. These materials are commonly used in residential and office building construction for flooring, cabinetry, baseboards, window shades, interior doors, and window and door trims. Given the prominence of materials with formaldehyde-based resins that will be used in constructing the Project and the residential buildings, there is a significant likelihood that the Project's emissions of formaldehyde to air will result in very significant cancer risks to future residents and workers in the buildings. Even if the materials used within the buildings comply with the Airborne Toxic Control Measures (ATCM) of the California Air Resources Board (CARB), significant emissions of formaldehyde may still occur.

The residential buildings will have significant impacts on air quality and health risks by emitting cancer-causing levels of formaldehyde into the air that will expose workers and residents to cancer risks well in excess of SCAQMD's threshold of significance. A 2018 study by Chan et al. (attached as Exhibit A) measured formaldehyde levels in new structures constructed after the 2009 CARB rules went into effect. Even though new buildings conforming to CARB's ATCM had a 30% lower median indoor formaldehyde concentration and cancer risk than buildings built prior to the enactment of the ATCM, the levels of formaldehyde still posed cancer risks greater than 100 in a million, well above the 10 in one million significance threshold established by the SCAQMD.

Based on expert comments submitted on other similar projects and assuming all the Project's and the residential building materials are compliant with the California Air Resources Board's formaldehyde airborne toxics control measure, future residents and employees using the Project will be exposed to a cancer risk from formaldehyde greater than the SCAQMD's CEQA significance threshold for airborne cancer risk of 10 per million. Currently, the City does not have any idea what risk will be posed by formaldehyde emissions from the Project or the residences.

The City has a duty to investigate issues relating to a project's potential environmental impacts. (See *County Sanitation Dist. No. 2 v. County of Kern*, (2005) 127 Cal.App.4th 1544, 1597–98. [“[U]nder CEQA, the lead agency bears a burden to investigate potential environmental impacts.”].) “If the local agency has failed to study an area of possible environmental impact, a fair argument may be based on the limited facts in the record. Deficiencies in the record may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences.” (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.) Given the lack of study conducted by the City on the health risks posed by emissions of formaldehyde from new residential projects, a fair argument exists that such emissions from the Project may pose significant health risks. As a result, the City should prepare an EIR which calculates the health risks that the formaldehyde emissions may have on future residents and workers and identifies appropriate mitigation measures.

CONCLUSION

For the foregoing reasons, SAFER requests that the City require staff to prepare a revised draft EIR to address and mitigate the above issues, as well as to address the issues raised by other commenters. Thank you.

Sincerely,



Richard T. Drury
Lozeau | Drury LLP

EXHIBIT A

Indoor Air Quality in New California Homes with Mechanical Ventilation

Wanyu Chan^{1,*}, Yang-Seon Kim¹, Brett Singer¹, Iain Walker¹

¹ Lawrence Berkeley National Laboratory, Berkeley, USA

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SUMMARY

The Healthy Efficient New Gas Homes (HENGH) study measured indoor air quality and mechanical ventilation use in 70 new California homes. This paper summarizes preliminary results collected from 42 homes. In addition to measurements of formaldehyde, nitrogen dioxide (NO₂), and PM_{2.5} that are discussed here, HENGH also monitored other indoor environmental parameters (e.g., CO₂) and indoor activities (e.g., cooking, fan use) using sensors and occupant logs. Each home was monitored for one week. Diagnostic tests were performed to characterize building envelope and duct leakage, and mechanical system airflow. Comparisons of indoor formaldehyde, NO₂, and PM_{2.5} with a prior California New Home Study (CNHS) (Offermann, 2009) suggest that contaminant levels are lower than measured from about 10 years ago. The role of mechanical ventilation on indoor contaminant levels will be evaluated.

KEYWORDS

Formaldehyde; nitrogen dioxide; particles; home performance; field study

1 INTRODUCTION

The HENGH field study (2016–2018) aimed to measure indoor air quality in 70 new California homes that have mechanical ventilation. Eligible houses were built in 2011 or later; had an operable whole-dwelling mechanical ventilation system; used natural gas for space heating, water heating, and/or cooking; and had no smoking in the home. Study participants were asked to rely on mechanical ventilation and avoid window use during the one-week monitoring period. All homes had a venting kitchen range hood or over the range microwave and bathroom exhaust fans. This paper presents summary results of formaldehyde, NO₂, and PM_{2.5} measurements in 42 homes. The full dataset is expected to be available in summer 2018.

2 METHODS

Integrated one-week concentrations of formaldehyde and NO_x were measured using SKC UMEx-100 and Ogawa passive samplers. Formaldehyde samplers were deployed in the main living space, master bedroom, and outdoors. PM_{2.5} were measured using a pair of photometers (ES-642/BT-645, MetOne Instruments) indoor in the main living space and outdoors. PM_{2.5} filter samples were collected using a co-located pDR-1500 (ThermoFisher) in a subset of the homes and time-resolved photometer data were adjusted using the gravimetric measurements. Results are compared with a prior field study CNHS (2007–2008) (Offermann, 2009) that monitored for contaminant concentrations over a 24-hour period in 108 homes built between 2002 and 2004, including a subset of 26 homes with whole-dwelling mechanical ventilation.

3 RESULTS

Figure 1 compares the indoor concentrations of formaldehyde, NO₂, and PM_{2.5} measured by the two studies. Results of HENGH are one-week averaged concentrations, whereas CHNS are 24-hour averages. HENGH measured lower indoor concentrations of formaldehyde and PM_{2.5}, compared to CNHS. For NO₂, the indoor concentrations measured by the two studies

are similar. Summary statistics of indoor and outdoor contaminant concentrations (mean and median concentrations; N=number of homes with available data) are presented in Table 1.

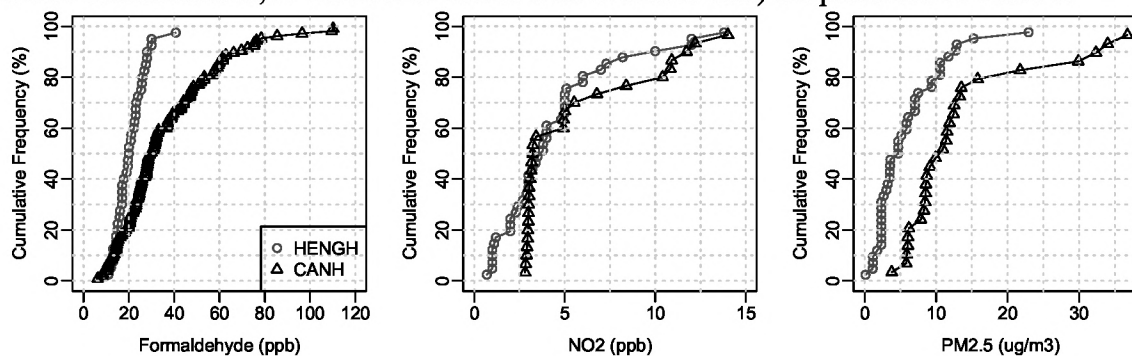


Figure 1. Comparisons of indoor contaminant concentrations measured by two studies.

Table 1. Summary statistics of indoor and outdoor contaminant concentrations.

	HENGH - Indoor			CNHS - Indoor			HENGH - Outdoor			CNHS - Outdoor		
	N	Median	Mean	N	Median	Mean	N	Median	Mean	N	Median	Mean
Formaldehyde (ppb)	39	20.0	20.6	104	29.5	36.3	38	2.0	2.0	43	1.8	2.8
NO ₂ (ppb)	40	3.7	4.4	29	3.2	5.4	40	3.0	3.1	11	3.1	3.5
PM _{2.5} (ug/m ³)	41	4.7	5.8	28	10.4	13.3	42	5.9	7.7	11	8.7	7.9

4 DISCUSSION

The lower formaldehyde concentrations measured by HENGH in comparison to CNHS may be attributable to California’s regulation to limit formaldehyde emissions from composite wood products that came into effect between the two studies. Gas cooking is a significant source of indoor NO₂ (Mullen et al., 2016). Even though NO₂ concentrations measured by HENGH are similar to levels found in CNHS, the two studies differed in that HENGH homes all use gas for cooking, whereas almost all homes (98%) from the prior study used electric ranges. More analysis is needed to determine the effectiveness of source control, such as range hood use during cooking, on indoor concentrations of cooking emissions such as NO₂ and PM_{2.5}. Lower PM_{2.5} indoors measured by HENGH compared to CNHS may be explained from a combination of lower outdoor PM_{2.5} levels, reduced particle penetration due to tighter building envelopes (Stephens and Siegel, 2012) combined with exhaust ventilation, and use of medium efficiency air filter (MERV 11 or better) in some HENGH homes. Further analysis of the data will evaluate the role of mechanical ventilation, including local exhaust and whole-dwelling ventilation system, on measured indoor contaminant levels.

5 CONCLUSIONS

New California homes now have lower indoor formaldehyde levels than previously measured, likely as a result of California’s formaldehyde emission standards. Indoor concentrations of NO₂ and PM_{2.5} measured are also low compared to a prior study of new homes in California.

ACKNOWLEDGEMENT

LBNL work on the project was supported by the California Energy Commission. Field data collection was performed by the Gas Technology Institute. Support for field teams was provided by Pacific Gas & Electric and the Southern California Gas Company.

6 REFERENCES

Mullen NA et al. 2016 *Indoor Air* 26(2):231–245.

Offermann FJ. 2009. California Air Resource Board and California Energy Commission Report CEC-500-2009-085.
Stephens B, Siegel JA. 2012 *Indoor Air* 22(6):501–513.

Fwd: CEQA and Land Use Notice Request for Paseo Marina Project aka ENV-2016-3343-EIR and SCH2017061017

Anna Martinez <anna.martinez@lacity.org>
To: Clerk Council and Public Services <Clerk.CPS@lacity.org>

Mon, May 6, 2019 at 12:35 PM

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Anna Martinez
Office of the City Clerk
200 North Spring Street, Room 360
Los Angeles, CA 90012
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Mail Stop 160-01



----- Forwarded message -----

From: **Komalpreet Toor** <komal@lozeaudrury.com>
Date: Tue, Apr 23, 2019 at 1:29 PM
Subject: CEQA and Land Use Notice Request for Paseo Marina Project aka ENV-2016- 3343-EIR and SCH2017061017
To: Sergio Ibarra <sergio.ibarra@lacity.org>, <lisa.webber@lacity.org>, <cityclerk@lacity.org>, Planning CPC <cpc@lacity.org>
Cc: Richard Drury <richard@lozeaudrury.com>, Hannah Hughes <hannah@lozeaudrury.com>, Theresa Rettinghouse <stacey@lozeaudrury.com>

Good afternoon Mr. Ibarra, Ms. Webber, Ms. Wolcott, and Planning Commission Secretary,

Attached please find a CEQA and Land Use Notice Request on behalf Supporters Alliance For Environmental Responsibility ("SAFER") regarding the Draft Environmental Impact Report ("DEIR") prepared for the Project known as Paseo Marina Project aka ENV-2016- 3343-EIR and SCH2017061017.

Please note that a hard copy will follow via U.S. Mail. If you have any questions, please feel free to contact our office. Thank you.

Best,
Komal

--
Komalpreet Toor
Legal Assistant
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 **2019.04.23 CEQA and Land Use Notice Request for the Paseo Marina Project.pdf**
160K



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Via Email and U.S. Mail

April 23, 2019

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City of Los Angeles
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Los Angeles, CA 90012
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Re: CEQA and Land Use Notice Request for the Paseo Marina Project aka ENV-2016-3343-EIR and SCH2017061017

Dear Mr. Ibarra, Ms. Webber, Ms. Wolcott, and Planning Commission Secretary:

I am writing on behalf of the Supporters Alliance For Environmental Responsibility ("SAFER") regarding the Paseo Marina Project aka ENV-2016-3343-EIR and SCH2017061017 including all actions related or referring to the proposed replacement of three existing shopping center-related buildings within the existing Marina Marketplace shopping center and associated surface parking areas with a new mixed-use development consisting of 658 multi-family residential units within three seven-story buildings, up to 27,300 square feet of neighborhood-serving commercial uses, and 1,217 vehicle parking spaces and 752 bicycle parking spaces contained in two subterranean parking levels and two above-grade parking levels located within each of the three buildings located at 13400–13450 Maxella Avenue and 4305–4363 Glencoe Avenue in the City of Los Angeles ("Project").

We hereby request that the City of Los Angeles ("City") send by electronic mail, if possible or U.S. mail to our firm at the address below notice of any and all actions or hearings related to activities undertaken, authorized, approved, permitted, licensed, or certified by the City and any of its subdivisions, and/or supported, in whole or in part, through contracts, grants, subsidies, loans or other forms of assistance from the City, including, but not limited to the following:

- Notice of any public hearing in connection with the Project as required by California Planning and Zoning Law pursuant to Government Code Section 65091.
- Any and all notices prepared for the Project pursuant to the California Environmental Quality Act ("CEQA"), including, but not limited to:

April 23, 2019

CEQA and Land Use Notice Request for the Paseo Marina Project aka ENV-2016-3343-EIR and SCH2017061017

Page 2 of 2

- Notices of any public hearing held pursuant to CEQA.
- Notices of determination that an Environmental Impact Report (“EIR”) is required for the Project, prepared pursuant to Public Resources Code Section 21080.4.
- Notices of any scoping meeting held pursuant to Public Resources Code Section 21083.9.
- Notices of preparation of an EIR or a negative declaration for the Project, prepared pursuant to Public Resources Code Section 21092.
- Notices of availability of an EIR or a negative declaration for the Project, prepared pursuant to Public Resources Code Section 21152 and Section 15087 of Title 14 of the California Code of Regulations.
- Notices of approval and/or determination to carry out the Project, prepared pursuant to Public Resources Code Section 21152 or any other provision of law.
- Notices of approval or certification of any EIR or negative declaration, prepared pursuant to Public Resources Code Section 21152 or any other provision of law.
- Notices of determination that the Project is exempt from CEQA, prepared pursuant to Public Resources Code section 21152 or any other provision of law.
- Notice of any Final EIR prepared pursuant to CEQA.
- Notice of determination, prepared pursuant to Public Resources Code Section 21108 or Section 21152.

Please note that we are requesting notices of CEQA actions and notices of any public hearings to be held under any provision of Title 7 of the California Government Code governing California Planning and Zoning Law. **This request is filed pursuant to Public Resources Code Sections 21092.2 and 21167(f), and Government Code Section 65092**, which require local counties to mail such notices to any person who has filed a written request for them with the clerk of the agency’s governing body.

Please send notice by electronic mail, if possible or U.S. mail to:

Richard Drury
Komalpreet Toor
Hannah Hughes
Lozeau Drury LLP
1939 Harrison Street, Suite 150
Oakland, CA 94612
richard@lozeaudrury.com
komal@lozeaudrury.com
hannah@lozeaudrury.com

Please call if you have any questions. Thank you for your attention to this matter.

Sincerely,



Komalpreet Toor
Legal Assistant
Lozeau | Drury LLP