

September 10, 2012

File Number: 27PE-161250

The Honorable Ed Reyes
Chairman of the Planning & Land Use
Management Committee
200 N. Spring Street, Room 410
Los Angeles, CA 90012

The Honorable Jose Huizar
200 N. Spring Street, Room 465
Los Angeles, CA 90012

The Honorable Mitch Englander
200 N. Spring Street, Room 405
Los Angeles, CA 90012

Re: Response to Appeal of ENV-2007-0365-MND (the "MND"), 5241-5245 W. Santa Monica Boulevard and 5238-5246 Virginia Avenue

Dear Chairman Ed Reyes and the Honorable Members of the PLUM Committee:

I am writing in response to the appeal of the MND by Ms. Seta Penosian on June 19, 2012 (the "Appeal"). In sum, the Appeal does not present any new arguments, but instead simply repackages arguments that have already been shown to be either off-point, based on a misunderstanding or irrelevant under the California Environmental Quality Act ("CEQA"). Nevertheless, this letter will again demonstrate that the Appeal fails to present substantial evidence supporting a fair argument of significant environmental effect.

The Appeal Fail to Present Substantial Evidence Supporting a Fair Argument of Significant Environmental Effect.

The Appeal raises a host of objections to the Project in an attempt to try to find something that will stick, but none of these objections provide substance or analysis. These specific objections are discussed more thoroughly in the memorandum by TAHA dated September 6, 2012 ("TAHA Letter", attached hereto as Exhibit "A").

Although the "fair argument" standard is a low threshold test, MNDs are consistently upheld where there is no substantial evidence in the record that the project may cause a significant environmental impact.¹ "The purpose of CEQA is not to generate paper, but to compel

¹ See e.g., *Porterville Citizens for Responsible Hillside Development v. City of Porterville* (2007) 157 Cal. App. 4th 885 [upholding negative declaration regarding a proposed housing development]; *Bowman v. City of Berkeley* (2004) 122 Cal. App. 4th 572 [upholding a negative declaration regarding a proposed urban in-fill housing project]; *Sierra Club v. West Side*

SheppardMullin

The Honorable Ed Reyes
The Honorable Jose Huizar
The Honorable Mitch Englander
September 10, 2012
Page 2

government at all levels to make decisions with environmental consequences in mind." *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal. 3d 376, 392-393. If the agency perceives no "substantial evidence" that the project may cause a "significant" effect on the environment, the agency *must* prepare a negative declaration. *Schaeffer Land Trust v. San Jose City Council* (1989) 215 Cal. App. 3d 612, 620; Pub. Res. Code section 21080 (c) ["If a lead agency determines that a proposed project, not otherwise exempt from this division, would not have a significant effect on the environment, the lead agency *shall* adopt a negative declaration to that effect....(emphasis added)]. In addition, the CEQA Guidelines expressly encourage agencies to adopt a negative declaration where appropriate in order to reduce delay and paperwork. CEQA Guidelines, section 15006(e) and (h).

In fact CEQA Guideline section 15064(f)(4) states 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." However, substantial evidence is "not synonymous with 'any' evidence." *Bowers v. Bernards* (1984) 150 Cal. App. 3d 870, 873. CEQA defines "substantial evidence" to include "fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact." Pub. Res. Code section 21080(e)(1); CEQA Guidelines, section 15384(b). On the other hand, "argument, speculation, unsubstantiated opinion or narrative, or evidence that is clearly inaccurate or erroneous, or evidence that is not credible shall not constitute substantial evidence." Pub. Res. Code section 21080(e)(2); CEQA Guidelines, section 15384(a). In addition, "mere uncorroborated opinion or rumor does not constitute substantial evidence." *Porterville, supra*, 157 Cal. App. 4th at 900. Similarly, "[u]nsubstantiated opinions, concerns, and suspicions about a project, though sincere and deeply felt, do not rise to the level of substantial evidence supporting a fair argument of significant environmental effect." *Leonoff, supra*, 222 Cal.App.3d at 1352.²

Irrigation District (2005) 128 Cal. App. 4th 690 [upholding negative declaration regarding a proposed groundwater management policy]; *El Dorado County Taxpayers for Quality Growth v. County of El Dorado* (2004) 122 Cal. App. 4th 1591 [upholding negative declaration regarding a proposed reclamation plan for mining operations]; *Lucas Valley Homeowners Association v. County of Marin* (1991) 233 Cal. App. 3d 130 [upholding negative declaration regarding a proposed synagogue]; *Leonoff v. Monterey County Board of Supervisors* (1990) 222 Cal. App. 3d 1337 [upholding negative declaration regarding proposed contractor's service center]; *Schaeffer Land Trust v. San Jose City Council* (1989) 215 Cal. App. 3d 612 [upholding negative declaration regarding a city's amendment to general plan to allow for the development of a mixed-use, retail, office and residential project].

² While there is some case law indicating that lay opinion can be substantial evidence, it is limited to situations involving nontechnical issues, such as whether wildlife has been observed on a site.

SheppardMullin

The Honorable Ed Reyes
The Honorable Jose Huizar
The Honorable Mitch Englander
September 10, 2012
Page 3

The determination of whether or not evidence is substantial is in itself a weighing process. "The court does not look only to the evidence relied upon by [project Appeals] to the exclusion of all contrary evidence. Evidence that rebuts, contradicts or diminishes the reliability or credibility of [project Appeals] evidence is properly considered." *Citizens to Save Our Village v. City of Claremont* (1995) 37 Cal. App. 4th 1157, 1168-1169. "A lead agency may rely on the expertise of its planning staff in determining whether a project will not have a significant impact on the environment." *Porterville, supra*, 157 Cal. App. 4th at 901; *Gentry v. City of Murrieta* (1995) 36 Cal. App. 4th 1359, 1380. "A lead agency or a court may weigh evidence on the whole record in determining the *preliminary issue* of whether evidence is 'substantial' and thus deserving of consideration." *Pocket Protectors v. City of Sacramento* (2004) 124 Cal. App. 4th 903, 935.

CEQA defines "significant effect on the environment" as "a substantial, or potentially substantial, adverse change in any of the physical conditions within the area affected by the project..." CEQA Guidelines, section 15382. "Under CEQA, the question is whether a project will affect the environment of persons in general, not whether a project will affect particular persons." *Porterville, supra*, 157 Cal. App. 4th at 900; *Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal. App. 4th 477, 492. "Thus, 'the mere possibility of adverse impact on a few people, as opposed to the environment in general,' is not sufficient to constitute substantial evidence of an adverse effect." *Porterville, supra*, 157 Cal. App. 4th at 901; *Pocket Protectors, supra*, 124 Cal. App. 4th at 929.

Applying these standards, the Appeal has not, and cannot, satisfy its burden of proof as all of the evidence in the record shows that there will be no significant impacts caused by the Project.

1. The Project will not have significant noise impacts.

The Appeal asserts that the Project will have significant noise impacts during construction. The Appeal fails to provide any substantial evidence supporting this assertion, but instead relies on out of context discussion from the MND. The MND in fact concludes that there will be less than significant noise impacts during construction. This conclusion is in line with the requirements of the City's CEQA Thresholds Guide ("Thresholds") and the LAMC's requirements on noise. Specifically, the Thresholds find there to be a potentially significant noise impact when the Project would expose "persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies". See, Thresholds Section XII.a. The City's noise ordinance relating to construction activities is established by LAMC Section 112.05, which states that "[s]aid noise limitations shall not apply where compliance therewith is technically infeasible. The burden of proving that compliance is technically infeasible shall be upon the person or persons charged with a violation of this section. Technical infeasibility shall mean that said noise limitations cannot be complied with despite the use of mufflers, shields, sound barriers and/or other noise reduction device or techniques during the operation of the equipment."

SheppardMullin

The Honorable Ed Reyes
The Honorable Jose Huizar
The Honorable Mitch Englander
September 10, 2012
Page 4

The MND requires the use of all feasible mitigation measures, which will reduce impacts to less than significant levels. The Appeal acknowledges that any further sound attenuation would be technically infeasible. As such, per the City's noise ordinance and the Thresholds, there is no evidence in the record supporting an argument that the Project's construction noise could cause a significant impact.

The Appeal does not provide any evidence that the Project would violate the City's noise ordinance, but, rather, implores the City to judge the Project by some new standard of significance – a standard that would require a full EIR of every construction project in an urban setting. However, the courts have held that expert opinions on the ultimate issue of whether the project's impacts should be classified as "significant" do not address factual issues and are not treated as substantial evidence of a significant impact. *Citizen Action to Serve All Students v Thornley* (1990) 222 Cal.App.3d 748, 755. In this instance, the expert opinion that is offered does not speak to whether or not the Project would exceed the Thresholds, but rather it speaks to what should be considered significant. As such, the Appeal fails to provide substantial evidence of a fair argument that the Project could cause a significant noise impact.

Further, the MND recognizes that the increases in noise levels caused by construction will be temporary, intermittent and limited only to the Project's immediate neighbors. Additionally, as the Appeal points out, the Site sits below the surrounding uses, which means that the noise generating equipment will be buffered by a wall of earth, which will significantly diminish how far the sound waves travel. Finally, the Appeal's analysis regarding noise impacts does not take into account the setback between the construction area and any habitable space that is provided on the neighboring parcels.

The Appeal's claims regarding vibration impacts are simply without merit. The Appeal's arguments are based on a misunderstanding of the Project and also fail to consider the additional setback provided by the multifamily building's driveway, as was pointed out in the TAHA memorandum dated May 23, 2011 and attached hereto as Exhibit "B". As such, the Appeal fails to present substantial evidence supporting a fair argument that the Project could cause significant vibration impacts.

2. The Project will not have significant impacts related to hazardous materials.

The Appeal raises the issues of a potential underground tank on the Site and the potential for the soil to contain elevated levels of hazardous materials based on the Phase II Environmental Report that was performed for the Site. These claims do not present substantial evidence supporting a fair argument that the Project could cause significant impacts relating to hazardous materials. The MND considered the findings in the Phase II report and establishes sufficient mitigation measures to ensure that no significant impacts shall occur. Specifically, the MND predicates the issuance of any grading or building permits on receiving clearance from the California Department of Toxic Substances Control ("DTSC"), the state agency tasked with and specializing in hazardous materials. This mitigation measure ensures that all potential impacts will be sufficiently mitigated prior to construction.

SheppardMullin

The Honorable Ed Reyes
The Honorable Jose Huizar
The Honorable Mitch Englander
September 10, 2012
Page 5

Courts have upheld mitigation measures that contain performance standards such as requiring engineering department approval of drainage facilities or flood control and water district approval of grading plans, are appropriate when these approvals or plans are subject to performance standards such as those typically found in applicable ordinances, rules, and standards (or such as "obtain 'no further action' designation from DTSC"). *Gentry v City of Murrieta* (1995) 36 Cal.App.4th 1359 (approving similar mitigation). See also *Sacramento Old City Ass'n v City Council* (1991) 229 Cal.App.3d 1011, 1028 (EIR requiring agency to devise measures based on performance standards upheld as proper); *Association for Protection of Env't'l Values v City of Ukiah* (1991) 2 Cal.App.4th 720, 735 (in CEQA exemption case, general building code requirements were sufficient to avoid triggering exception to CEQA exemptions); *Leonoff v Monterey County Bd. of Supervisors* (1990) 222 Cal.App.3d 1337, 1356; *Perley v Board of Supervisors* (1982) 137 Cal.App.3d 424, 429. A condition requiring compliance with another agency's environmental regulations or standards is a reasonable mitigation measure when the lead agency has "meaningful information" that would reasonably justify "an expectation of compliance" and when compliance would avoid significant impacts. *Sundstrom v County of Mendocino* (1988) 202 Cal.App.3d 296, 308.

Here, the City has predicated issuance of grading and building permits on receiving a "no further action" designation from DTSC. As such, it is impossible for the Project to proceed unless and until any potential impacts relating to hazardous materials have been fully mitigated. Therefore, the Appeal does not present substantial evidence supporting a fair argument that the Project could cause significant impacts relating to hazardous materials.

3. The Project will not have significant aesthetic impacts.

The Appeal's claim that the Project will have aesthetic impacts are without merit. The courts give great deference to a lead agency's determination of significance with regards to purported aesthetic impacts in developed urban areas with no environmentally sensitive areas. In particular, the court in *Bowman v. City of Berkeley* (2004) 122 Cal. App. 4th 572, 592 held that "we do not believe that our Legislature in enacting CEQA, any more than Congress in enacting NEPA, intended to require an EIR where the sole environmental impact is the aesthetic merit of a building in a highly developed area.... The aesthetic difference between a four-story and a three-story building on a commercial lot on a major thoroughfare in a developed urban area is not a significant environmental impact, even under the fair argument standard." "[T]he CEQA issue of aesthetics is not the judging of the individual beauty of the Project, but rather physical elements of the preexisting environment the Project may significantly impact." *Eureka Citizens for Responsible Government v. City of Eureka* (2007) 147 Cal. App. 4th 357, 376. In this instance, there are no scenic vistas, historic resources or other aesthetically sensitive uses anywhere near the Project. As such, the Planning Department's determination that there will be no significant aesthetic impacts is appropriate and should be afforded deference.

The Appeal asserts that the Project's height is out of scale with the neighborhood. This is simply not true. The proposed building on the Virginia Parcels is two-story building with a maximum height of 29 feet, which is lower than the maximum height allowed under the current

SheppardMullin

The Honorable Ed Reyes
The Honorable Jose Huizar
The Honorable Mitch Englander
September 10, 2012
Page 6

zoning. More importantly though, the City measures height from the highest part of the Project to the lowest point of natural grade within five feet of the building. Because the Site slopes downward away from Virginia Avenue, the height of the residential structure is only 24 feet and 10 inches when measured from Virginia Avenue, but has a height of 29 feet when measured in the interior of the Project. As such, The Project will only appear to be 24' 10" from the areas where the appellant, and the public generally, will be able to view the project. Both the multifamily residential structure to the east at 5248 Virginia Avenue and the school building immediately to the west are two-story buildings of comparable, if not greater, height. As the Appeal points out, the Project sits on lots that are several feet lower than the neighboring parcels, meaning that the Project's height will seem reduced by comparison. Therefore, from public rights of way and neighboring parcels, the Project will appear to be of a comparable size to the surrounding neighborhood.

The proposed building on the Santa Monica Parcels is a five-story building with a maximum height of 60 feet. The zoning on the Santa Monica Parcels does not limit the height. The school building to the west of the Site on Santa Monica Boulevard is approximately four-stories and there is another four-story building across Santa Monica Boulevard at 1096 North Kingsley Drive. Additionally, the highest point of the mixed use structure will reach an elevation of 549 feet above sea level. Virginia Avenue is 507 feet above sea level, meaning that the mixed use structure only rises to an elevation 42 feet above Virginia Avenue, and only does so in portions of the Site that are setback at least 150 feet from Virginia Avenue. As such, it is factually inaccurate to suggest that the Project will tower over the neighborhood, especially given the fact that the Project will not even be built to the maximum height allowed under the zoning. And more importantly, the MND provides analysis explaining that the Project will not block any views.

The Appeal also argues that the Project would create significant impacts by casting shadows on the driveway of the neighboring multifamily residence during the winter. However, the Appeal relies on the shade and shadow study conducted by TAHA for the Applicants' original proposal from 2005. The original proposal included 15% more floor area and resulted in the massing and height being located on and closer to the Virginia Avenue Parcels. As the Project was revised through community and Council office input, the massing and height was moved onto Santa Monica Boulevard to allow the Project to blend with the existing uses on Virginia Avenue. Further, the Thresholds state that normally there are no significant impacts from structures that are less than 60 feet high. In determining height, the Thresholds require differences in grade to be taken into account. As the Appeal points out, the Site is several feet lower than any of the surrounding uses and the Project is permitted to have a maximum height of 60 feet. As such, in accordance with the Thresholds, the Project will not have significant shading impacts.

Finally, the Appeal states that the Project will create light and glare impacts. There is no explanation for why these impacts will occur, but simply a statement that there is little lighting in the area now and therefore the Project will have an impact. This unsubstantiated assertion does not provide a fair argument of significant impacts. The MND explains how the

SheppardMullin

The Honorable Ed Reyes
The Honorable Jose Huizar
The Honorable Mitch Englander
September 10, 2012
Page 7

architectural design and articulation of the building will prevent most light from spilling over. Additionally, the MND requires shielding on outdoor lights and the use of non-reflective building materials. These mitigation measure will reduce the light created by the Project to levels not even be noticeable in this densely urban area. As such, the Project will not have significant light and glare impacts.

Furthermore, as discussed above, Petitioner cannot satisfy its burden of proof because under CEQA, the question is whether a project will affect the environment of persons in general, not whether a project will affect particular persons." *Porterville, supra*, 157 Cal. App. 4th at 900; *Mira Mar, supra*, 119 Cal. App. 4th at 492. "Thus, 'the mere possibility of adverse impact on a few people, as opposed to the environment in general,' is not sufficient to constitute substantial evidence of an adverse effect." *Porterville, supra*, 157 Cal. App. 4th at 901; *Pocket Protectors, supra*, 124 Cal. App. 4th at 929. As the court in *Bowman v. City of Berkeley, supra*, 122 Cal. App. 4th at 586 explained: "...obstruction of a few private views in a project's immediate vicinity is not generally regarded as a significant environmental impact. [citing cases].")

4. The Project will not have significant shade/shadow impacts.

The Appeal claims that the Project will cause a significant shade/shadow impact based on the shadows it will cast on the adjacent parking areas and driveways. Perhaps understanding that CEQA does not consider shadows on a driveway or parking area to be a significant impact, the Appeal attempts to re-characterize the area as a children's play area. There is no evidence that supports this characterization of the parking area other than one picture included in the Appeal of two children standing in the parking area. Other than that photograph, there is no evidence that the parking area is routinely used for anything other than parking. However, there is evidence that the area is routinely used for parking and as a driveway. The parking area is necessary to provide the off-street parking required by the LAMC. Additionally, the aerial photos, which are taken from a third party website, show the parking area being used for parking. See Appeal, p.7; TAHA Letter, Figure 1, p.5. It is clear from the evidence in the record that the parking area is not a shadow-sensitive.

The Appeal ignores the shadows that already exist. The aerial photographs included in the Appeal and the TAHA Letter show that the 12 foot parking garage and 18 foot automobile repair facility that are located adjacent to the parking area already casts a similar shadow onto the parking area. Additionally, the Project conforms to the height limits contained in the LAMC, meaning any additional shadows cast by the Project are in no way related to the discretionary approvals before the City.

5. The Project will not have significant traffic impacts.

The Appeal asserts that the Project will cause traffic impacts to Virginia Avenue. Again, this unsubstantiated assertion is based on a misunderstanding of the Project. The Project is designed so that all vehicles will enter and exit off of Santa Monica Boulevard -- there will be no entrance to the parking from Virginia Avenue. This design feature actually improves the

SheppardMullin

The Honorable Ed Reyes
The Honorable Jose Huizar
The Honorable Mitch Englander
September 10, 2012
Page 8

traffic that would occur on Virginia Avenue in comparison to if the Virginia Parcels were developed with driveways from Virginia Avenue like the neighboring parcels. Additionally, the Project is required to dedicate a 5-foot wide strip of land along Virginia Avenue and a 12-foot wide strip of land along Santa Monica Boulevard to allow for widening of the right of way. As such, the Project will actually improve traffic conditions along Virginia Avenue. Further, there are no plans to use Virginia Avenue as a haul route during construction. As such, the Project will not cause any significant traffic impacts.

6. The Project will not have significant land use impacts.

The Appeal claims that the Project will have land use impacts by allowing a 600% increase of FAR over that which is ordinarily allowed under the current zoning. First, as noted above, the actual FAR requested for the Site is 2.37:1 and the zoning for the Virginia Avenue Parcels allows an FAR of 3:1. Second, as noted in *Wollmer v. City of Berkeley (2011) 193 Cal.App.4th 1329* the Density Bonus Ordinance and Government Code section 65915 require the City to grant the requested incentives, thereby rendering those standards inapplicable. Third, as the MND notes, the uses within the Project are compatible both with the General Plan and surrounding land uses and the Project's design ensures that the Project will not divide an existing community. Finally, the courts have determined that "[a] governing body's conclusion that a particular project is consistent with the relevant general plan carries a strong presumption of regularity that can be overcome only by a showing of abuse of discretion." *Friends of Lagoon Valley v. City of Vacaville, supra, 154 Cal. App. 4th at 816*. As such, the Project will have less than significant land use impacts.

7. The Project will not have significant air quality impacts.

The Appeal includes air quality within a laundry list of perceived impacts that could potentially be caused by the Project. This assertion by the Appeal includes no analysis and is not supported by any evidence in the record, let alone substantial evidence. The MND thoroughly discusses and analyzes the potential air quality impacts and concludes that the Project will generate less than significant air quality impacts. The Appeal fails to raise a fair argument supported by substantial evidence to the contrary.

Conclusion

All of the evidence in the administrative record supports the City's conclusion that the Project with the required mitigations will not have any significant environmental impacts. The Appeal does not raise any new issues that were not thoroughly considered and responded to previously. Additionally, the Appeal simply makes blanket statements that there will be impacts without providing any analysis or evidence to support those statements. As noted above, "mere uncorroborated opinion or rumor does not constitute substantial evidence." The Appeal has failed to satisfy its burden of proof, as all of the evidence in the record shows that there will be no significant impacts caused by the Project.

SheppardMullin

The Honorable Ed Reyes
The Honorable Jose Huizar
The Honorable Mitch Englander
September 10, 2012
Page 9

I appreciate your consideration of these issues and I am available if you have any questions or concerns.

Very truly yours,



Phillip M. Tate
for SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

SMRH:406717672.1

cc: Mr. Marcel Porras, Council District 13
Ms. Sharon Gin, Legislative Analyst
Ms. Blake Lamb, Planning Department
Mr. Peter Taglyan
Alfred Fraijo, Esq.

Exhibit A



September 6, 2012

Ms. Blake Lamb, City Planner
City of Los Angeles
Department of City Planning
200 North Spring Street, 7th Floor
Los Angeles, CA 90012

**Re: 5241-5245 W. Santa Monica Boulevard and 5238-5246 Virginia Avenue
ENV 2007-0365-MND REC3**

Dear Ms. Lamb:

The purpose of this letter is to respond to the three comment letters received on the Addendum to the Mitigated Negative Declaration (MND Addendum), prepared by the City of Los Angeles Department of City Planning (DCP). As you are aware, Terry A. Hayes Associates Inc. (TAHA) is very familiar with the mixed-use project proposed at 5241-5245 W. Santa Monica Boulevard and 5238-5246 Virginia Avenue (proposed project), as we prepared an MND analyzing the potential environmental effects of a similar project proposed by the Applicant on the project site in 2008. During the appeal process in 2011, TAHA also prepared a memorandum to respond to potential shadow and noise concerns raised by the Appellant.

Similar to how comments are typically responded to in an Environmental Impact Report, each of the three comment letters has been assigned a number (i.e., Letters 1, 2 and 3). The body of each comment letter has been separated into individual comments, which have also been numbered. This results in a tiered numbering system, whereby the first comment in Letter 1 is depicted as Comment 1-1, and so on. These numbered comments are included in their entirety, followed by the corresponding responses. Please see Attachment A.

If you have any questions, please contact me or Kevin Ferrier, Senior Planner, at (310) 839-4200. We look forward to working with you to complete the environmental process for this project.

Sincerely,

A handwritten signature in black ink, appearing to read "T.A. Hayes", written over a light blue horizontal line.

Terry A. Hayes, AICP
CEO

Attachment A: Comment Letters and Responses



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Attachment A

Comment Letters and Responses

LETTER NO. 1

June 23, 2012

Seta Panosian
5254 Virginia Avenue
Los Angeles, California 90029

COMMENT NO. 1-1

Our family's borne is on property immediately adjacent to a proposed 112,475 sq. ft. development located at 5241 - 5247 Santa Monica Blvd. and 5238 - 5246 Virginia Ave. The 45,301 square foot project site consists of five parcels on a vacant lot immediately adjacent to Kingsley Elementary School's playfield to the east, and restricted density housing to the west and north.

The three parcels fronting Santa Monica Boulevard are zoned C2-1D, with the "D" limiting designation restricting the site's Floor Area Ratio ("FAR") to 0.5:1. The two parcels fronting Virginia Avenue are zoned RD1.5-1XL, which limits development to 1 residential unit per 1,500 sq. ft. of lot area and a height of 30 feet. Under the existing zoning, on the C-2 zoned parcels the applicant could essentially build a one-story structure on half of the lot, and on the RD1.5-1XL parcels be could build a two-story, 10-unit residential building up to 30-feet in height above the natural grade.

If developed as outlined in the architect's 1/05112 construction documents, however, the 5245 Santa Monica project would have a total square footage of 112,475 sq. ft. with 181 parking spaces, and consist of two buildings on the lot's five parcels. According to the architect's documents, the buildings – which would be connected by a two-level subterranean garage covering the entire project site - consist of:

- 1). A 5-story, 66' 10" -tall structure of 74 dwelling units (Note: the May 18, 2012 Addendum on page 2 instead identifies the Santa Monica building as having 68 units with a maximum 60' height) comprising 75,035 square feet of residential floor area with 17,650 square feet of commercial space;
- 2). A two-story second building fronting Virginia Avenue, with 10 residential units (Note: the May 18, 2012 Addendum on page 2 identifies the Virginia building as floor area.

RESPONSE NO. 1-1

This comment is introductory in nature and reiterates the components of the project. The comment is noted, and no further response is necessary.

COMMENT NO. 1-2

The height and scale of the proposed Project significantly exceeds other properties in the area, and will therefore become a visual focal point. With numerous architectural elements rising above the roofline, the development's actual height would be almost 67 feet, making the Project the tallest structure on Santa Monica Blvd. for two miles while significantly blocking views and sunlight, and providing only minimal setbacks from our adjacent home and other surrounding properties. The Project would also tower above the playfield of Kingsley Elementary School, with a setback of only 8 feet.

Yet the Mitigated Negative Declaration states under the heading of Aesthetics: "the proposed five-story mixed-use project would not be substantially taller than other existing buildings in the vicinity of the project site. In addition, the design of the proposed project would be generally compatible with the Kingsley Elementary School located immediately east of the project site, as well as the other buildings in the vicinity of the proposed project site, as well as the other buildings in the vicinity of the proposed project."

Kingsley Elementary School -- which consists of one-level buildings on Virginia Ave. and two-level buildings on Santa Monica Blvd. -- at its highest point is 28 feet, or almost 40 feet lower than the proposed project. The project's massive, boxy design is also completely at odds with the articulated, open layout of Kingsley Elementary School Note photos below:

PHOTOGRAPH: Kingsley Elementary School building & playfield, viewed on Santa Monica Blvd. Project site is at left

PHOTOGRAPH: Kingsley Elementary School as viewed from the project site.

Immediately west of the project site along Santa Monica Blvd. are single-level commercial buildings, including a 24-foot-tall Jon's Market on Hobart Blvd., which would be almost 43 feet shorter than the proposed development (based upon the architect's submitted elevations). Note photo below:

South of the project site at 5222 Santa Monica Blvd. is a two-story office building that is 28 feet in height, or approximately 39 feet shorter than the proposed development. Adjacent to this structure, and southwest of the project site at 5236 Santa Monica Blvd., is a 34-foot-tall office building that would be 33 feet shorter than the proposed development A block and a half southwest of the project site at 5300 Santa Monica Blvd. is an office building constructed in 1963 under different zoning regulations that is the tallest building on Santa Monica Blvd. for the next mile. This building, at a height of 49 feet, would still be 17 feet shorter than the proposed project.

As seen in the photo below, north of the project site on Virginia Ave. are single-story craftsman bungalows original to Hollywood. The proposed project is therefore in no manner aesthetically compatible with the area, and aesthetic impacts will be significant.

PHOTOGRAPH: View from proposed project site looking north to neighboring craftsman bungalows.

RESPONSE NO. 1-2

The area surrounding the project site is predominantly two- to three-story commercial/industrial buildings along Santa Monica Boulevard, and one- to two-story multi-family residential buildings on surrounding neighborhood streets such as Hobart Boulevard, Virginia Avenue, and Kingsley Drive. The tallest building in the immediate vicinity of the project site is a four-story building at the southeast corner of Santa Monica Boulevard and Hobart Boulevard (5300 Santa Monica Boulevard). Along Santa Monica Boulevard, there is a fairly well defined "street wall" of buildings built out to the edge of the public sidewalk with no set-backs. The only un-built exceptions along Santa Monica Boulevard are surface parking lots. The majority of the commercial buildings on Santa Monica Boulevard cover more than 50 percent of their respective site areas. In a number of instances, the site coverage increases to almost 80 or 90 percent of the site area. The neighborhood area surrounding the proposed project to the north is intensely developed. Multi-family buildings in this area typically cover 80 percent or more of their respective sites. Five to ten percent of these buildings encompass two parcels or more. In the immediate vicinity of the project site along Virginia Avenue (between Hobart Boulevard and Kingsley Drive), there are approximately nine low-scale residential buildings that have front yards and are set-back from the public sidewalk approximately 20 to 25 feet. The northern portion of the proposed project would face these properties.

The building fronting Santa Monica Boulevard would be a maximum of 60 feet in height and the building fronting Virginia Avenue would be a maximum of 30 feet in height. In order to maintain the scale and architectural character of the adjacent area, the building fronting Santa Monica Boulevard is divided into two parts with a landscaped courtyard in the center and open to Santa Monica Boulevard. The building is perceived as two smaller buildings facing Santa Monica Boulevard with a landscaped edge. This pattern of an open courtyard facing the street is a common feature of early Hollywood residential Architecture. Only about two-thirds of the available street frontage is filled with the proposed building. The rest is devoted to the courtyard. The entire frontage is set back at the ground floor with landscaping and an edge of shops. The shop edge extends into the courtyard bringing pedestrians into a very pleasant, tree shaded space. Part of the frontage is further setback with a covered patio at a proposed coffee shop that will further open up the street edge.

The proposed project also incorporates a number of architectural features which significantly increase the compatibility with the neighborhood. The most prominent of these features is the step-back (above ground level) of the proposed project along Santa Monica Boulevard. The ground floor level is set back from the public side walk approximately ten feet. Each level above is stepped back from the street. The second/third level is stepped back six feet, and the fourth level is stepped back an additional ten feet. There is an additional 16-foot step back above the entrance to the parking garage. In addition, landscaping of these step backs would further emphasize a scale of individual elements that is consistent with surrounding uses. These step backs are also reinforced by very strong horizontal cornice features, as well as with changes in building materials. The overall effect from the street-level pedestrian view point is a building that will generally appear to be two to three stories in height, and made up of a smaller cluster of buildings similar to other commercial buildings on Santa Monica Boulevard. Thus, with the step back and other architectural features, the proposed project will blend almost seamlessly into the existing visual character along Santa Monica Boulevard. With incorporation of the aforementioned architectural design features, the proposed project will echo the scale, design, and height of the surrounding built environment, and would be complementary to recent modern development in the area.

The scale and height of the building facing Virginia Avenue matches the adjacent small apartment buildings. From the street, it appears to be a two-story building with trellised balconies. Stone and wood is used to resemble the one and two-story "Craftsman" style homes across the street. The Virginia building is set back 15 feet from the property line allowing for significant mature landscaping and street trees that continue the character of the neighborhood.

In addition, the design of the proposed project has been reviewed through the City's design review process to assure that the proposed project will strengthen and sustain the character, desirability and stability of the community. Therefore, with incorporation of the architectural design features and the mitigation measure related to aesthetics, the proposed project would not significantly contrast with the scale, design, and height of the surrounding built environment, and would be complementary to recent modern development in the area.

COMMENT NO. 1-3

The shade/shadow study conducted for the proposed project shows that my home's backyard and the rear lot of the adjacent apartment building at 5248 Virginia Avenue will both be in winter shadow for more than three hours as a result of the 5245 Santa Monica Project. The MND claims that no significant impact will result because the areas shaded by the project are not outdoor usable space. This conclusion is false. The areas that will be in shadow are used extensively as family recreational space, safe play areas for our children, and public recreational areas for the children and adults living at 5248 Virginia.

The project will also block all morning sunlight for units at 5248 Virginia Avenue. Units with windows that face east will lose all direct winter sunlight. Impacts will therefore be permanent and significant. The only mitigation measure possible is for the developer to reduce the height of his proposed project.

PHOTOGRAPH: Photo showing rear common recreational area and clothesline for apartment residents at 5248 Virginia Ave. The Project's Shade/Shadow study shows all morning winter sunlight blocked to rear of building. East-facing apartment units would lose all direct winter sunlight.

PHOTOGRAPH: Google Street photo of apartment building at 5248 Virginia Ave. Units would lose all direct winter morning and early afternoon sunlight.

RESPONSE NO. 1-3

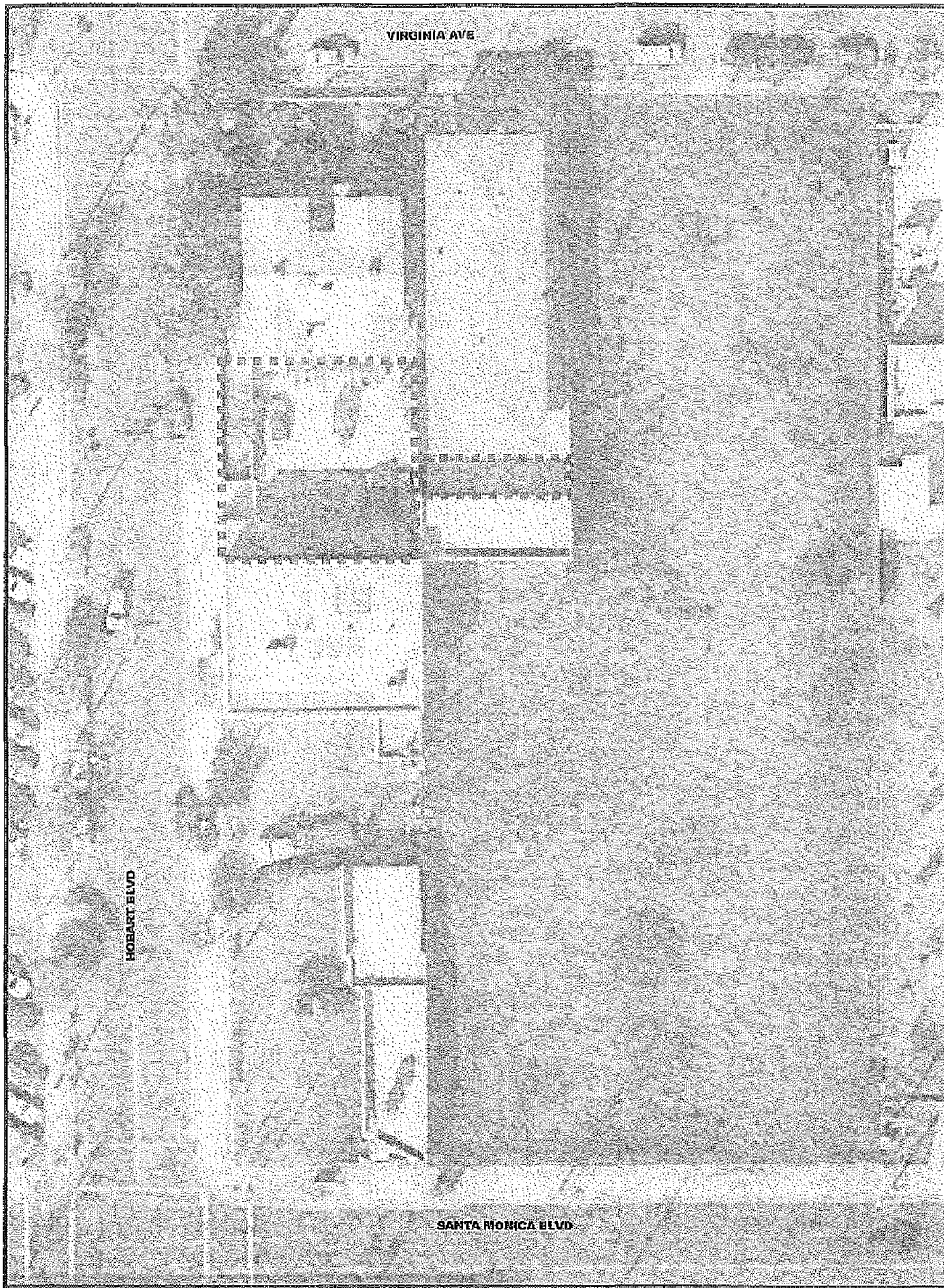
An aerial photograph identifying commenter's property located at 5254 Virginia Avenue and the multi-family property located at 5248 Virginia Avenue (between the commenter's property and the project site) is shown in **Figure 1**. The *City of Los Angeles Draft CEQA Thresholds Guide*, which is used to determine when a significant shadow impact would occur, states that a project would have a significant impact if it creates shade or shadows that affect shadow-sensitive uses for more than three consecutive hours between 9:00 a.m. and 3:00 p.m. from late October to early April, or for more than four consecutive hours between 9:00 a.m. and 5:00 p.m. from early April to late October.

As shown in the aerial photograph, the rear lot of the commenter's property and the rear lot of the adjacent multi-family property consist of paved areas that are actively being used for parking with limited or no landscaping. Shadow-sensitive uses, as defined in the *City of Los Angeles Draft CEQA Thresholds Guide*, are considered to include routinely useable outdoor spaces associated with residential, recreational, or institutional (e.g., schools, convalescent homes) land uses; commercial uses such as pedestrian-oriented outdoor spaces or restaurants with outdoor eating areas; nurseries; and existing solar collectors. While the commenter's property does have a small landscaped area along the western edge, parking areas are not considered by the *City of Los Angeles Draft CEQA Thresholds Guide* to be usable outdoor areas. Additionally, the aerial photograph shown in **Figure 1** clearly shows four cars parked within the paved area, indicating that it is in fact used as a parking area. In addition, an automobile repair facility structure, approximately 18 feet in height, currently exists immediately adjacent to the rear lot of the commenter's property. There is also an approximately 12-foot tall parking garage at the rear of the multi-family property. Photographs of these structures are presented in **Figure 2**. Shadows cast onto the rear lots of the Appellant's and multi-family properties by these existing structures are visible in the aerial photograph and appear to be similar to the shadows that would be cast by the proposed project, meaning that the paved area is already in shadows cast by the existing structures.

The commenter's property and the adjacent property cited by the commenter to the east are located within a residential zone along Virginia Avenue. However, this zone is adjacent to a commercial zone along the north side of Santa Monica Boulevard which allows a building height of 60 feet. The commercial zone is approximately 200 feet in depth. The height allowed in the commercial zone would cast shadows onto any parcels located to the north of the commercial zone. The only way for the City to have eliminated the potential shadow effect on adjacent residential zoned parcels to the north of the commercial zone would have been to significantly restrict the height of buildings within the commercial zone along the north side of Santa Monica Boulevard to approximately 20 feet in height. This has not been the case, nor are there any other restrictions in the zoning code or other development guidelines or special conditions to address minimizing shadows cast. The proposed project includes a building consistent with the height limits along Santa Monica Boulevard and also includes a lower building that is consistent with the height limits along Virginia Avenue. No height limit variances are being requested for the proposed project.

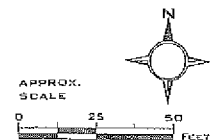
Shadows are cast in a clockwise direction from west/northwest to east/northeast from approximately 7:00 a.m. to 4:00 p.m. or later depending on the time of the year. Generally, the shortest shadows are cast during the Summer Solstice (June 20) and grow increasingly longer until the Winter Solstice (December 21). During the Winter Solstice, the sun appears to be lower in the sky and shadows are at their maximum coverage lengths. **Figures 3** through **5** display the proposed project's shadow patterns for the winter solstice, spring/fall equinox, and summer solstice periods.

Figure 3 illustrates that shadows generated from the proposed project during the winter solstice when shadows are at their maximum coverage lengths. At 9:00 a.m., the commenter's residence and rear lot would be completely shaded by the proposed project; however, project shadows would not reach the commenter's front yard. By 10:00, approximately 75 percent of the commenter's residence and rear lot would be shaded. By 11:00 a.m., less than 50 percent of the commenter's residence and rear lot would be shaded, and by 12:00 p.m., no portion of the commenter's property would be shaded. In total, some portion of the commenter's property would be shaded by the proposed project for three hours.



- Project Site
- Commenter's Back Lot (5254 Virginia Avenue)
- Multi-Family Back Lot (5248 Virginia Avenue)

SOURCE: TAHA, 2012.

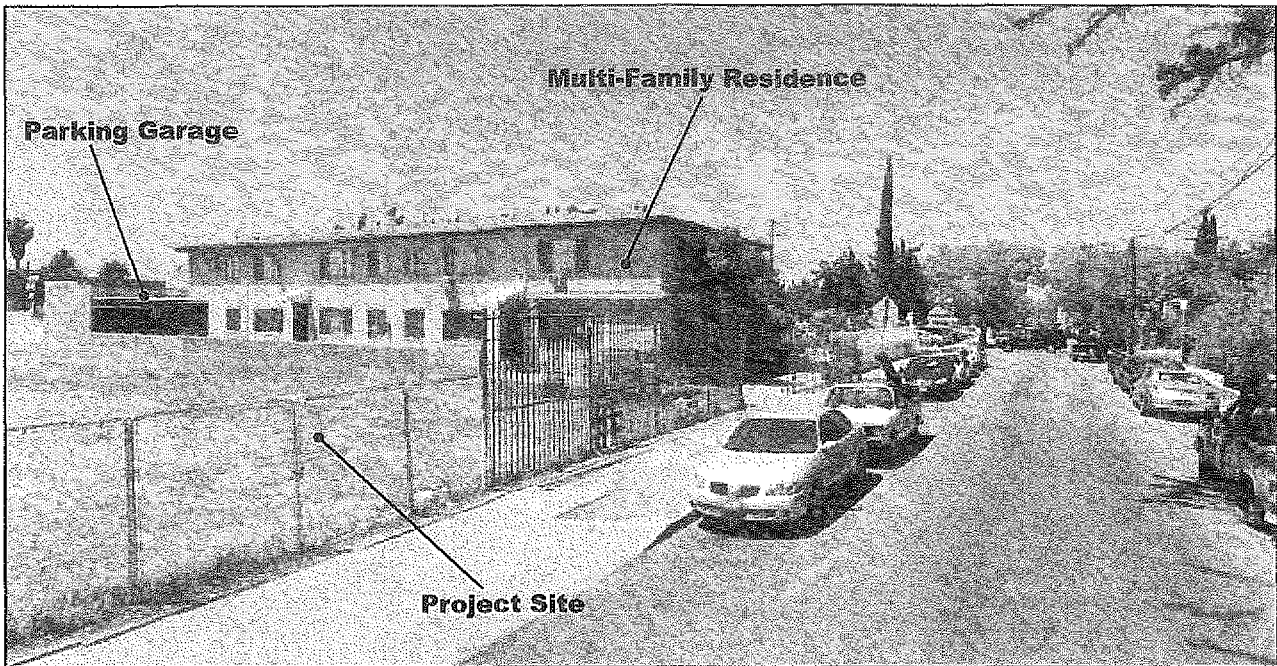


taha 5241-5245 Santa Monica Boulevard/5238-5246 Virginia Avenue
 Mitigated Negative Declaration Addendum

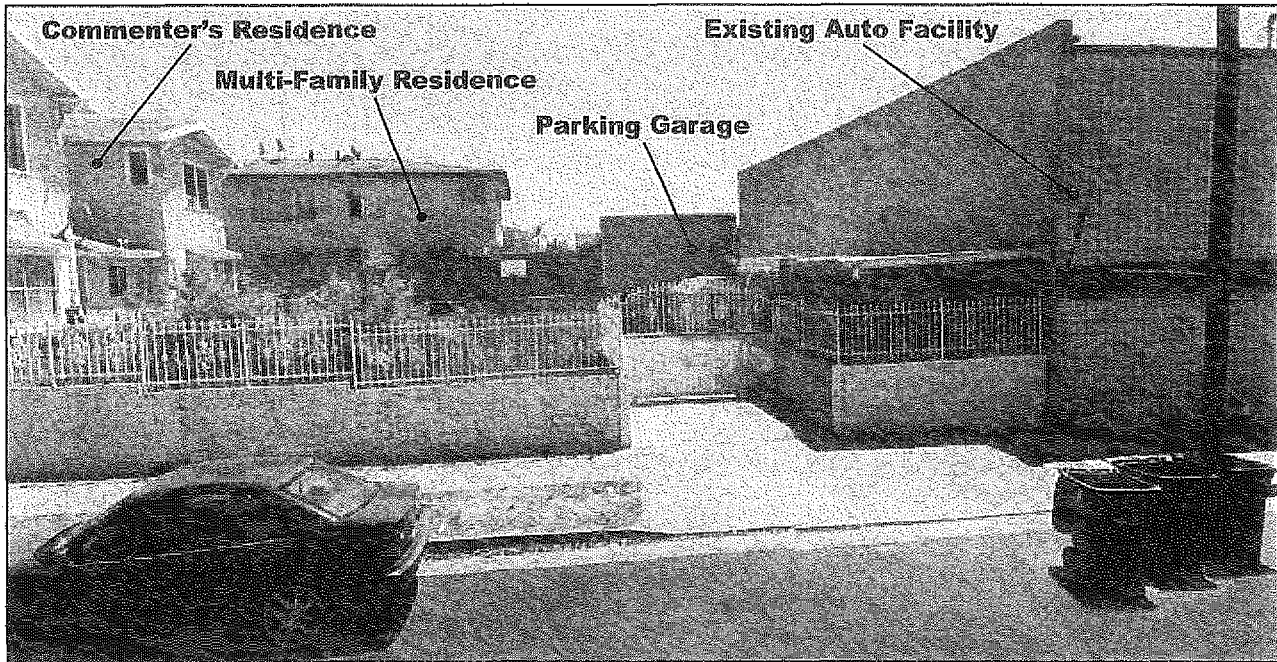
taha 2012-066 · SHAHBAZIAN CONSTRUCTION

FIGURE 1

AERIAL OF PROJECT SITE AND ADJACENT USES

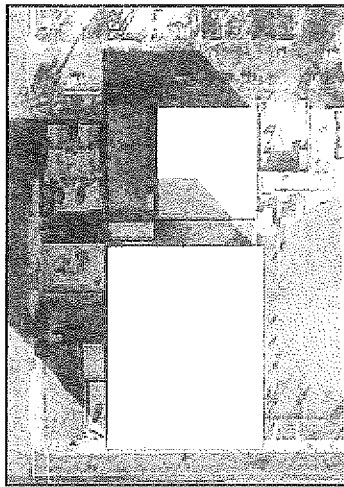


View of the existing multi-family residence at 5248 Virginia Avenue from Virginia Avenue.

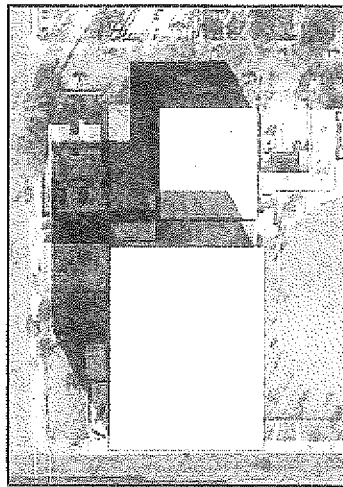


View of the Commenter's rear lot at 5254 Virginia Avenue from Hobart Boulevard.

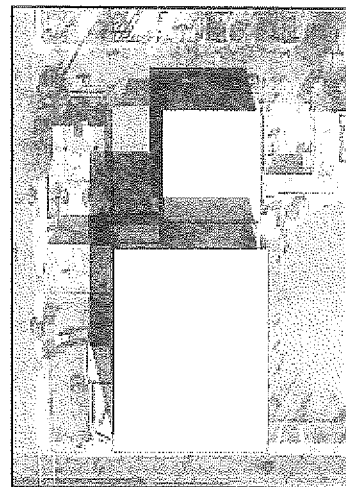
SOURCE: TAHA, 2012.



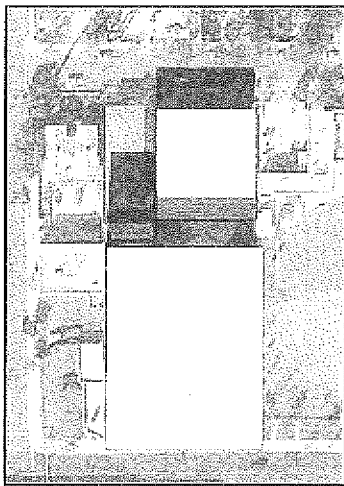
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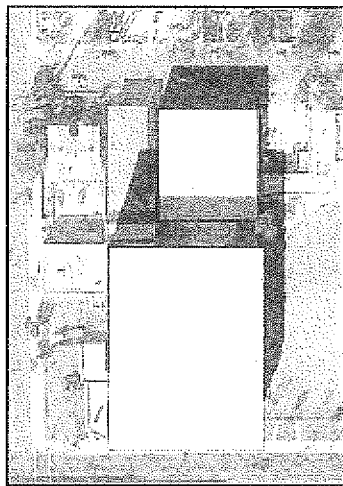
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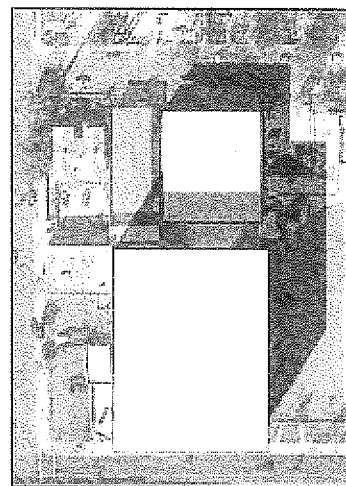
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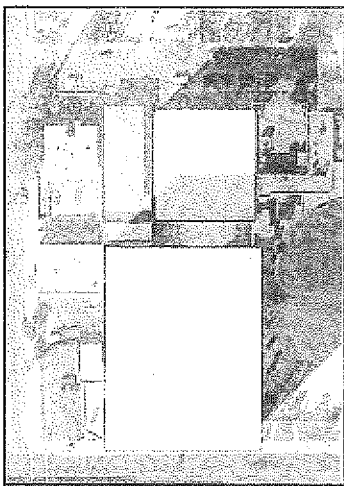
12:00 PM



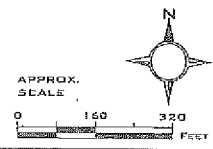
1:00 PM



2:00 PM



3:00 PM



SOURCE: TAHA, 2012.



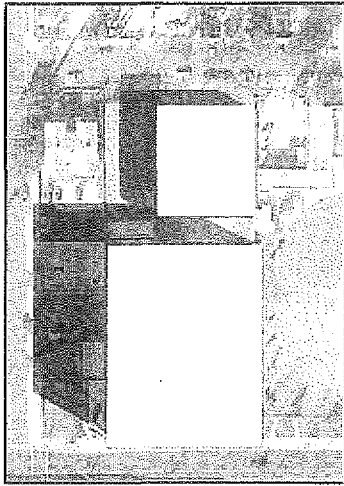
5241-5245 Santa Monica Boulevard/5238-5246 Virginia Avenue
Mitigated Negative Declaration Addendum

taha 2012-066

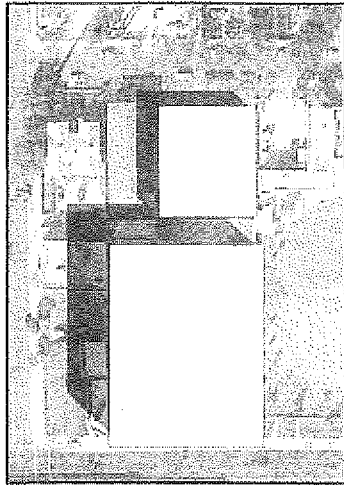
SHAHBAZIAN CONSTRUCTION

FIGURE 3

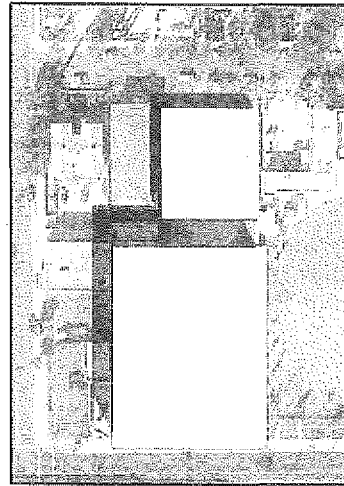
WINTER SOLSTICE SHADOWS



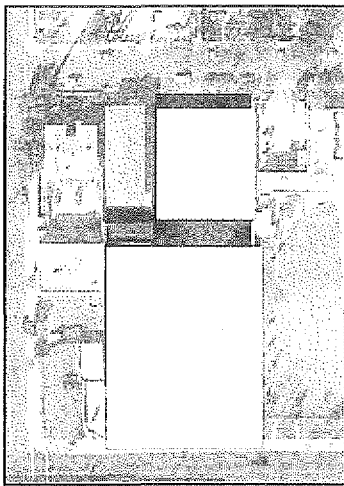
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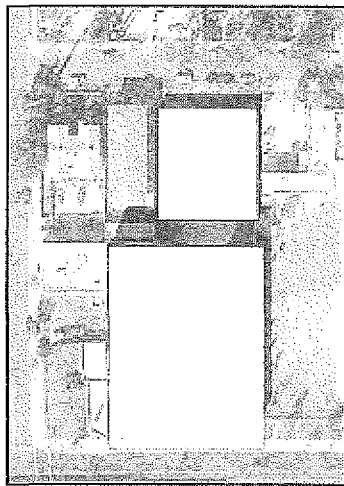
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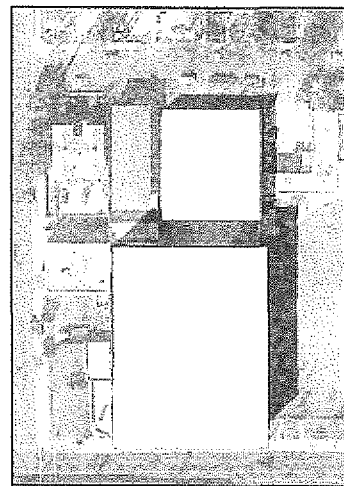
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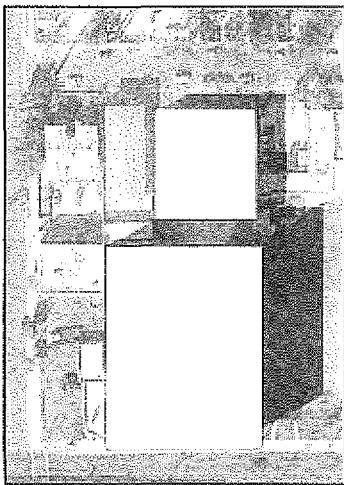
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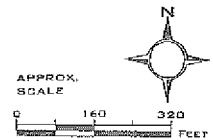
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SOURCE: TAHA, 2012.



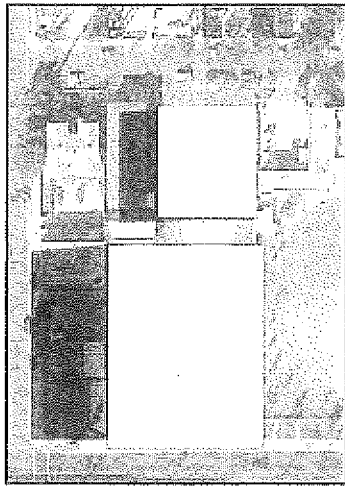
5241-5245 Santa Monica Boulevard/5238-5246 Virginia Avenue
Mitigated Negative Declaration Addendum

taha 2012-066

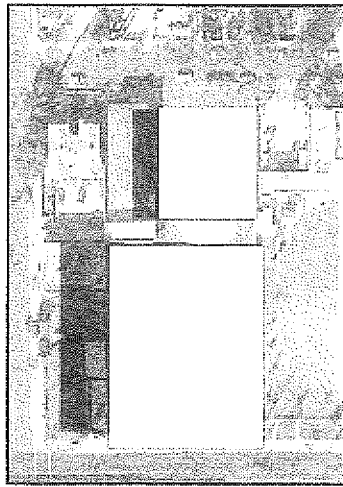
SHAHBAZIAN CONSTRUCTION

FIGURE 4

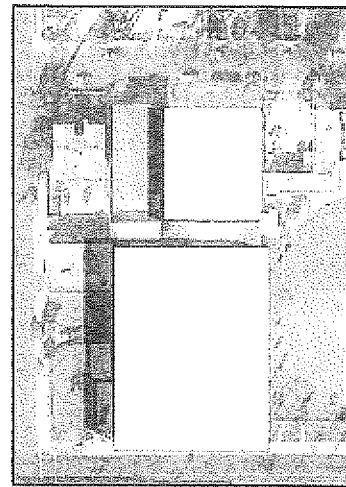
SPRING/FALL EQUINOX
SHADOWS



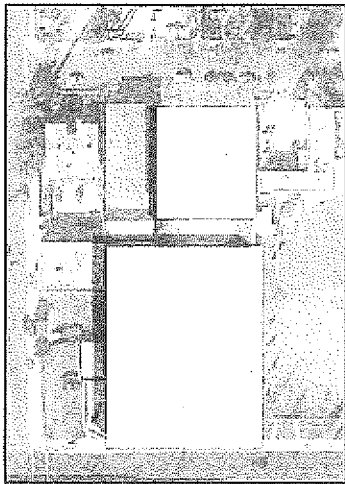
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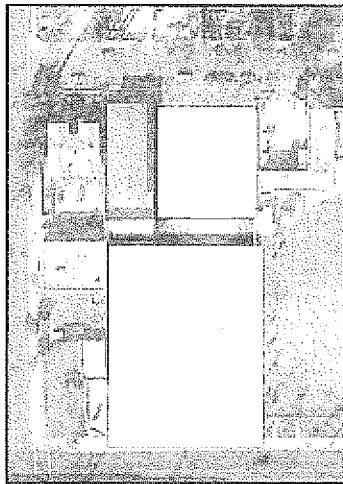
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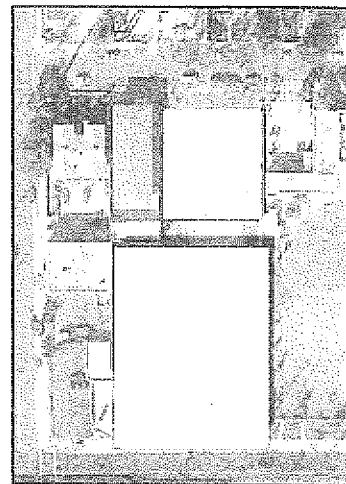
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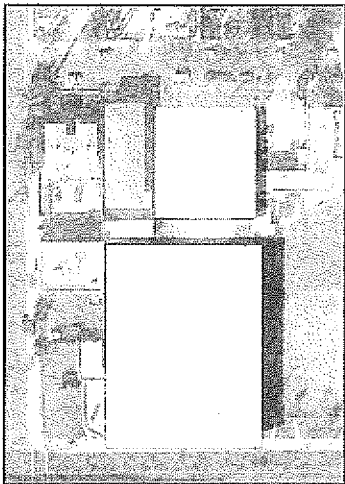
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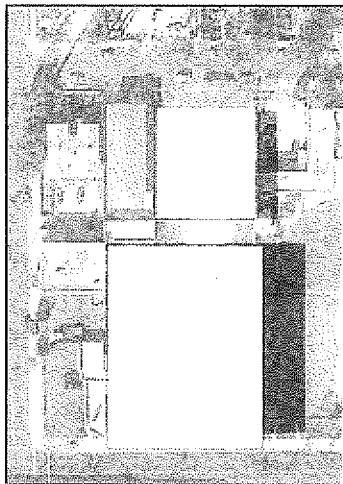
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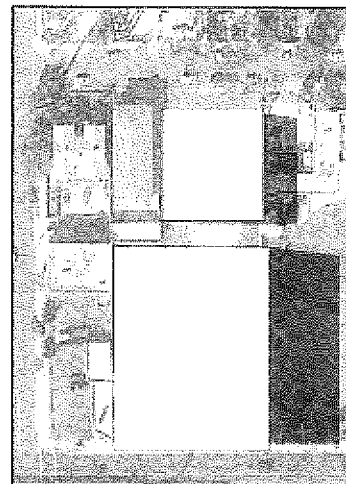
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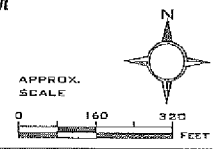
3:00 PM



4:00 PM



5:00 PM



SOURCE: TAHA, 2012.



5241-5245 Santa Monica Boulevard/5238-5246 Virginia Avenue
Mitigated Negative Declaration Addendum

taha 2012-066

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FIGURE 5

SUMMER SOLSTICE
SHADOWS

However, as stated above, the threshold for determining when a significant shadow impact would occur during the winter months is four consecutive hours. **Figures 4** through **5**, which depict the shadows cast by the proposed project during summer and spring months, also demonstrate that the proposed project would not cast shadows onto the commenter's property for more than three hours during these periods (i.e., the threshold for determining when a significant shadow impacts occur during the summer and spring months). Therefore, the proposed project would not result in a significant shadow impact to the commenter's property.

Project shadows would be cast onto the multi-family property to the east of the commenter's property for longer periods of time. Review of the shadow diagrams indicate that project shadows would be cast onto the parking/driveway area of the rear lot of multi-family property in excess of the significance threshold during both the winter and spring months. However, the area consists of driveway access and automobile parking. There are no landscaped portions, nor is there any evidence of routine outdoor use such as outdoor furniture or play equipment. This area would not qualify as routinely useable outdoor space and is not subject to the City's adopted shadow impact thresholds. Given the adopted building heights within the commercial zone, there is no practicable way for the commenter to have the expectation that shadows would not be cast onto this property from an adjacent commercial building to the south. Furthermore, shadows cast from the existing approximately 12-foot tall parking garage located at the rear of the multi-family property currently exceed the City's adopted shadow impact thresholds for the winter and summer months. Therefore, the proposed project would not result in a significant shadow impact to the multi-family property.

COMMENT NO. 1-4

Additionally, the Mitigated Negative Declaration's conclusion that construction and operational noise impacts will be Less than Significant with mitigation is grossly incorrect. The Project's Initial Study on page 5-45 acknowledges: "Construction noise levels would increase ambient noise levels by approximately 38.3 dBA L_{eq} . This would result in a significant impact without implementation of mitigation." Table 5-7 lists the existing ambient noise level at Kingsley Elementary School as 54.2 dBA, with an expected dBA increase of 34.8 to a new ambient construction noise level of 89.0 dBA. Table 5-7 lists the existing ambient noise level for both the adjacent residential apartment building and single-family homes north of the Project site as 50.7 dBA, with an expected dBA increase of 38.3 during construction. Mitigation measures N1 and N2 are estimated in the Initial Study to reduce construction noise levels to Kingsley Elementary School by 23 dBA.

RESPONSE NO. 1-4

The comment asserts that conclusion of a less-than-significant construction impact is not correct based on the predicted increase in ambient noise levels. Construction activity would potentially increase unmitigated ambient noise levels by more than 38 dBA at adjacent residential land uses. Mitigation Measure N1 through N10 are comprehensive requirements that would reduce, control, and address loud noise levels associated with construction activity. The mitigation measures include a soundwall, equipment mufflers, and a noise disturbance coordinator. Construction activity would increase ambient noise levels by more than 5 dBA after implementation of mitigation measures. Mitigation Measures N1 through N10 would reduce construction noise by the greatest extent feasible. In addition, noise levels would fluctuate depending on construction phase, equipment type and duration of use. The temporary increases in noise level due to construction activity are not considered significant. As stated in the MND, construction noise would result in a less-than-significant impact after implementation of mitigation.

The comment also asserts that conclusion of a less-than-significant operational impact is not correct. The operational analysis included an assessment of on-road vehicles, parking activity, and stationary noise. The predominant noise source for the proposed project is vehicular traffic. According to the traffic report prepared by RAJU Associates, the proposed project would generate 965 net daily vehicle trips. To ascertain off-site noise impacts, traffic was modeled under future year (2009) "no project" and "project" conditions utilizing FHWA RD-77-108 noise calculation formulas. The greatest project-related noise increase would be 0.1 dBA CNEL and would occur in three locations: Hobart Boulevard between Fountain Avenue and Santa Monica Boulevard, Normandie Avenue between Fountain Avenue and Santa Monica Boulevard, and Santa

Monica Boulevard between Hobart Boulevard and Normandie Avenue. Roadway noise levels attributed to the proposed project would increase by less than 3 dBA CNEL at all analyzed segments. Mobile noise generated by the proposed project would not cause the ambient noise level measured at the property line of the affected uses to increase by 3 dBA CNEL to or within the "normally unacceptable" or "clearly unacceptable" category or any 5-dBA or more increase in noise level. Therefore, the proposed project would result in a less-than-significant mobile noise impact.

The proposed project would include subterranean parking accessed from Santa Monica Boulevard. The majority of parking noise (e.g., door slamming), except for parking access, would be located underground and would not be audible at sensitive receptors. The ambient noise level along Santa Monica Boulevard is 64.6 dBA Leq. An automobile traveling at 25 miles per hour generates a noise level of approximately 60 dBA Leq at a distance of 50 feet. Adding parking access noise to the existing ambient noise level would result in a new ambient noise level of 65.9 dBA Leq. The incremental noise level increase of 1.3 dBA would be less than the 5-dBA significance threshold. Therefore, the proposed project would result in a less-than-significant impact related to parking noise, and the conclusion in the MND Addendum is accurate.

Potential stationary noise sources related to the long-term operations of the proposed project include mechanical equipment and parking area activities. Mechanical equipment (e.g., parking structure air vents and HVAC equipment) would be designed so as to be located within an enclosure or confined to the rooftop of the proposed structure. In addition, mechanical equipment would be screened from view as necessary to comply with provisions of the Municipal Code for on-site stationary sources. Operation of mechanical equipment would not be anticipated to increase ambient noise levels by 5 dBA or more. Therefore, the proposed project would result in a less-than-significant impact related to project stationary noise, and the conclusion in the MND Addendum is accurate.

COMMENT NO. 1-5

A 23 dBA noise reduction from the Initial Study's estimated 89 dBA construction noise level is claimed by the Initial Study with implementation of Measures N1 and N2, resulting in a mitigated dBA of 66. Yet this level remains 12 dBA above the measured existing level at Kingsley Elementary School.

RESPONSE NO. 1-5

The comment accurately characterizes the Kingsley Elementary School noise analysis. It was determined that implementation of Mitigation Measure XII-20 would control potential impacts to Kingsley Elementary School. As shown below, the mitigation measure has been strengthened to further manage noise and vibration levels at the school. Mitigation Measure XII-20 has been revised as follows:

Prior to initiating construction, the construction contractor shall coordinate with the site administrator for the Kingsley Elementary School to discuss construction activities that generate high noise and vibration levels. Upon receiving a complaint from the site administrator, the construction contractor shall complete noise and vibration monitoring at affected school facilities. Additional control measures shall be implemented if construction activity increases interior classroom noise levels by more than 5 dBA, or if vibration levels at affected buildings exceed 0.5 inches per second peak particle velocity. Coordination between the site administrator and the construction contractor shall continue on an as-needed basis throughout the construction phase of the proposed project to mitigate potential disruption of classroom activities.

This mitigation measure would ensure that activities at Kingsley Elementary School would not be impacted by the proposed project. In addition, no comment was received from Los Angeles Unified School District regarding noise levels at the school.

COMMENT NO. 1-6

For adjacent residential use, Mitigation Measure N3 was initially required to provide a six-foot-tall solid wood fence estimated to reduce construction noise levels by 6 dBA. When combined with measure N1, the 9 dBA reduction in construction noise would have still resulted in a construction level of 80 dBA, or almost a 30 dBA increase from existing levels. Added condition 34-k then substituted a ten-foot-tall sound attenuation blanket along the western portion of the site abutting 5248 Virginia Avenue, with a claim of a Sound Transmission Class Rating of 20. This presumably would result in a construction level of 66 dBA. This level, however, remains almost 16 dBA above existing levels. This Addendum now adds Mitigation Measure XII-20, requiring a noise barrier "equivalent to the highest portion of any fenestration in the residential building located upon 5248 West Virginia Ave."

RESPONSE NO. 1-6

The comment states the various iterations of the Mitigation Measure XII-20 and associated noise reduction assumptions. It does not address a specific analysis and does not require additional analysis.

COMMENT NO. 1-7

As pointed out by noise consultant Giroux & Associates in their June 8, 2011 analysis of the Project (attached at Exhibit 1), and then in a June 20, 2012 response to this Addendum (attached at Exhibit 2), such measures are not physically capable of reducing noise impacts to a level of insignificance:

"The noise and vibration analyses contain numerous errors, misinterpretations and omit appropriate thresholds of significance. In the final analysis, construction activity impacts from operations as close as 10 feet to sensitive receiver populations will generate noise and vibration impacts that cannot be fully mitigated to a less-than-significant level. Preparation of a focused EIR is clearly indicated for this project.

"The construction noise impact analysis is based upon an equipment average reference noise level of 89 dBA included in EPA recommendations for evaluating construction noise. Use of that value has two caveats. Peak noise levels may be higher than 89 dBA and people are more disturbed by noise spikes than by steady-state conditions. Secondly, and most critically, this level occurs at 50 feet from the equipment noise source. The MND acknowledges that equipment operations may occur as close as 10 feet from the property line. Under typical geometrical spreading loss, the predicted noise level at 10 feet is 14 dBA higher than at 50 feet. That would raise the reference noise level to 103 dBA when operating close to the site boundary. The data in Table 5-7 of the MND referencing an 89 dBA maximum noise level claims to contain a distance adjustment. If the distance adjustment had been correctly applied, residential uses listed as "Adjacent" would in fact experience a 50+ dBA increase rather than the indicated 38.3 dBA. Any conclusions based upon the 89 dBA reference noise level are invalid when equipment operates near the site boundary.

"The latest iteration of Condition 34k in the barrier alternative requires a noise level reduction of 15 to 25 dBA across its depth. That's quite an impossible requirement in that Caltrans, in its Technical Noise Supplement (2009), on page 6-7, states that the theoretical limit of barrier noise reduction effectiveness for a noise wall is 20 dBA. That same process of throwing numbers around willy-nilly is reflected in the claim that a 10-foot temporary barrier at the Kingsley Elementary School property line would produce "at least 20 dBA" of noise reduction. As stated by Caltrans, the maximum noise reduction effectiveness of an exceedingly tall barrier (much higher than 10 feet) is 20 dBA. The claim that a 10-foot high barrier will achieve "at least 20 dBA" is nonsensical.

"The alternative to install dual-paned windows on units facing the construction site with an ability to reduce noise levels "a minimum of 15 dBA across their depth" would not adequately reduce noise levels to below those that are highly intrusive when equipment operates close to the existing residences. Equipment may operate as close as 20 feet from the nearest residential facades. The maximum reference exterior noise level would be 97 dBA at this set-back. The MND does not identify acceptable interior noise levels, but experience shows that levels of 65 dBA are intrusive into normal conversation. Noise level reductions of 32

dBA or more would be needed to achieve interior levels that are even marginally acceptable, and would still interfere with reading, watching television, taking a nap, etc.

"The MND asserts that vibration impacts will be less than significant based upon the methodology in FTA-VA-90-1003-06 (May, 2006). A structural damage threshold of 0.5 inches/second (ips) was selected and a maximum predicted vibration level of 0.35 ips was predicted. Table 12-3 of that document, entitled "Construction Vibration Damage Criteria," states that 0.5 ips is applicable to "Reinforced concrete, steel or timber" structures, that 0.3 ips applied to "Engineered concrete and masonry" buildings, and that 0.2 ips is the damage threshold for "non-engineered timber or masonry buildings." While 0.35 ips is the correctly predicted value for a 100foot set-back, it rises to 1.00 ips if the equipment ever encroaches as close as 5 feet from the property line. Unless a mitigation measure is included that completely restricts equipment operation closer than 10 feet, the MND findings cannot be supported.

"The vibration analysis further fails to consider nuisance effects. Table 8-1 of the FTA Manual identifies a daytime nuisance vibration level of 80 - 83 VdB (vibration decibels based upon the root-mean-square vibration velocity) as intrusive for infrequent events. At 10 feet from the equipment, the vibration velocity is 99 VdB. The failure to include vibration nuisance impacts and only focus on structural damage is a clear flaw in the analysis. Given that there are no practical mitigation measures for vibration nuisance at this distance, the vibration nuisance impact is clearly significant. Impacts that cannot be mitigated to less-than-significant must be addressed in an EIR for CEQA clearance."

RESPONSE NO. 1-7

Refer to Response to Comment No. 2-3 and No. 2-4.

COMMENT NO. 1-8

As further detailed by Giroux & Associates in their June 20, 2012 letter responding to this Addendum:

"Mitigation measure XII-20 requires either a temporary noise wall with a noise level reduction of 15 to 25 dBA across its depth or the installation of dual -paned windows install units of 5248 Virginia A venue with southern or eastern elevations. We previously noted that the construction noise barrier wall cannot achieve the required reduction and is there an implausible measure. Caltrans, in its Technical Noise Supplement (2009), on page 6-7, states that the theoretical limit of barrier noise reduction effectiveness for a noise wall is 20 dBA. The noise level reduction of a barrier depends upon the path length difference (D) between the direct sound wave and the diffracted wave. The larger the difference, the greater the barrier attenuation..."

"For a 10-foot high equipment exhaust stack at 10 feet from the property line, the noise attenuation at the nearest residence for first and second story receivers as a function of temporary barrier height is as follows:

Receiver	15' Barrier	20' Barrier	30' Barrier
Ground Floor	14.7 dB	18.6 dB	20.0 dB
Second Story	5.9 dB	14.7 dB	20.0 dB

"Even a 20-foot high barrier does not achieve a 15 dB attenuation which is the minimum required in the suggested mitigation measure. None of the barriers can achieve the maximum standard of 25 dB because that exceeds the theoretical limit of barrier diffraction attenuation. The temporary barrier cannot achieve construction noise attenuation that would support a finding of a less-than-significant impact. It cannot support a CEQA finding that would allow the use of an MND as the appropriate CEQA clearance for the proposed project.

RESPONSE NO. 1-8

Refer to Response to Comment No. 2-1.

COMMENT NO. 1-9

"The alternative to install dual-paned windows on units facing the construction site with an ability to reduce noise levels "a minimum of 15 dBA across their depth" would not adequately reduce noise levels to below those that are highly intrusive when equipment operates close to the existing residences. Equipment may operate as close as 20 feet from the nearest residential facades. The maximum reference exterior noise level would be 97 dBA at this set-back. The MND does not identify acceptable interior noise levels, but experience shows that levels of 65 dBA are intrusive into normal conversation. Noise level reductions of 32 dBA or more would be needed to achieve interior levels that are even marginally acceptable, and would clearly interfere with reading, watching television, taking a nap, etc. The requirement of a "15 dBA reduction across their depth" would still allow for peak construction activity noise levels in excess of 80 dB. Such a level of noise intrusion is clearly significant. Impacts that cannot be mitigated to less-than-significant must be addressed in an EIR for CEQA clearance.

RESPONSE NO. 1-10

Refer to Response to Comment No. 2-2.

COMMENT NO. 1-11

"Our previous comments to DIR-2009-2065-DB relative to both the possible structural damage threshold and "to vibration nuisance from heavy equipment operations in close proximity to existing residential structures were obviously ignored in the MND reconsideration..."

RESPONSE NO. 1-11

Refer to Response to Comment No. 2-3 and No. 2-4.

COMMENT NO. 1-12

The Project site formerly housed several auto repair and painting operations over a period of decades. The Initial Study performed a cursory sampling of soil on the site, and the MND acknowledges that an in ground hydraulic hoist remains buried there. The MND also states that an underground storage tank may remain buried on the western portion of the site. Yet the MND proposes no remedial activity prior to approval of the Project, delaying further testing and containment excavation until after construction begins.

Deferred analysis and mitigation is a clear violation of CEQA. The very purpose of CEQA is to provide public agencies and the public in general with information about the effect that a proposed project is likely to have on the environment and to "identify ways that environmental damage can be avoided or significantly reduced." Cal. Code of Regulations, Title 14, Section 15002(a)(2). Per the Courts, the purpose of CEQA "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.

RESPONSE NO. 1-12

The commenter states an opinion that the MND Addendum violates CEQA because mitigation measures included in the MND Addendum require further testing be completed after approval of the proposed project. Mitigation Measure V-150 (Hazardous Material Sites) states that prior to the issuance of any grading and building permits, the Applicant shall obtain site closure from the oversight agency, such as the Cal-EPA Department of Toxic Substances Control (DTSC). This is also known as a "no further action" designation and is granted from the oversight agency when site issues are no longer a concern for human health or the environment. Therefore, because the mitigation measure is enforceable and includes a performance standard that must be met in order to insure that project impacts would be mitigated, the MND Addendum does not improperly defer mitigation.

COMMENT NO. 1-13

Steel underground storage tanks containing petroleum fuels have been a major source of environmental concern due to their potential release of fuels once corrosion of the steel occurs. Similarly, an auto service garage might have had a waste oil tank and perhaps an oil/water separator connected to the industrial sewer. Either would have had the potential to leak waste petroleum and VOC degreaser to surrounding soils.

A gasoline release from underground storage tanks would contaminate surrounding soil and groundwater with Benzene and MTBE. The California Office of Environmental Health Hazard Assessment considers each of these compounds to be potentially carcinogenic toward humans. In high concentrations, significant cancer risks may result due to inhalation exposure in indoor air, which may occur in a building located directly above detected contaminants. Any groundwater plume involving Benzene and MTBE may also migrate as a result of natural groundwater movement. Hence these potential carcinogens may pose an impending threat to not only the health and safety of future residents of the site, but also to surrounding residential occupants and school children. As summarized in the attached report by BioTex Services (attached at Exhibit 3), "due to the apparent limited scope of the investigation, certain subsurface soil conditions remain to be resolved..."

RESPONSE NO. 1-13

As discussed in Response No. 1-12, mitigation measures included in the MND Addendum require further testing be completed and the Applicant to obtain a "no further action" designation from DTSC prior to the issuance of any grading and building permits. DTSC will review on all background information, sample analysis results, environmental assessment reports and any other information pertinent to the hazardous substance management and/or release, characterization, and cleanup of the project site to identify areas of concern, and to determine additional work, if any, is required to complete the investigation/remediation of the project site.

See Responses 3-1 through 3-5 for responses to the comments from BioTox Services cited in this comment.

COMMENT NO. 1-14

A proper assessment of the project site prior to the development's approval by the City is therefore essential, since an agency may not avoid preparing an EIR by failing to gather relevant data. In Sundstrom v. County of Mendocino (1988) 202 Cal. App. 3d 296, 311, the court explained that, because "CEQA places the burden of environmental investigation on government rather than the public," an agency "should not be allowed to hide behind its own failure to gather relevant data." Sundstrom also pointed to the fallacy of deferred mitigation, stating at page 307: "By deferring environmental assessment to a future date, the conditions run counter to that policy of CEQA which requires environmental review at the earliest feasible stage in the planning process (See Public Resources Code Section 21003.1)." This opinion is consistent with the California Supreme Court's statement in No Oil, Inc. v. City of Los Angeles (1974) 13 Cal. 3d 68, that EIRs should be prepared in "doubtful case[s]," so that agencies do not make decisions "without the relevant data or a detailed study of it ... One of the purposes of the impact statement is to insure that the relevant environmental data are before the agency and considered by it prior to the decision to commit... to the project" (No Oil, Inc. supra, at p. 84).

"By deferring environmental assessment to a future date, the conditions run counter to that policy of CEQA which requires environmental review at the earliest feasible stage in the planning process (See Public Resources Code Section 21003.1) ... 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 supra, at 307.

RESPONSE NO. 1-14

As discussed in Response Nos. 1-12 and 1-13, Mitigation Measure V-150 (Hazardous Material Sites) states that the Applicant shall obtain site closure from the oversight agency, such as the Cal-EPA Department of Toxic Substances Control (DTSC) prior to the issuance of any grading and building permits. This is also known as a "no further action" designation and is granted from the oversight agency when site issues are no longer a concern for human health or the environment. DTSC will review on all background information, sample analysis results, environmental assessment reports and any other information pertinent to the hazardous substance management and/or release, characterization, and cleanup of the project site to identify areas of concern, and to determine additional work, if any, is required to complete the investigation/remediation of the project site. Therefore, because the mitigation measure is enforceable and includes a performance standard that must be met in order to insure that project impacts would be mitigated, the MND Addendum does not improperly defer mitigation.

COMMENT NO. 1-15

Other potentially significant impacts, such as traffic hazards to adjacent Kingsley Elementary School students, and construction dust and operational exhaust that these children will be exposed to on a daily basis, are glossed over in the MND and necessitate further analysis. The acute dangers poised by the project to the hundreds of school children who attend Kingsley Elementary require the extensive analysis accomplished by an Environmental Impact Report.

RESPONSE NO. 1-15

As discussed in the Initial Study, a traffic study was prepared for a project proposed on the project site by Raju Associates, Inc. dated June 2007. After revisions to the proposed project, a supplemental traffic analysis was prepared for the revised project. The revised traffic analysis concluded that none of the intersections would be significantly impacted by project related-traffic. The Los Angeles Department of Transportation (LADOT) has reviewed the supplemental traffic analysis in a letter dated January 20, 2012 and found that the updated project is expected to generate fewer trips than the previous project for all time periods. Traffic impacts have therefore been further reduced.

Construction dust was assessed on both the regional (i.e., on- and off-site) and local (i.e., on-site) levels in accordance with guidance and methodology set by the South Coast Air Quality Management District. The results of the analysis indicated the regional particulate matter emissions would be 2 pounds per day, which would be less than the 150 pounds per day regional significance threshold. Localized emissions would also be 2 pounds per day, and less than the 5 pounds per day localized screening threshold. In addition, it is mandatory for all construction projects in the Basin to comply with SCAQMD Rule 403 for Fugitive Dust. Specific Rule 403 control requirements include, but are not limited to, applying water in sufficient quantities to prevent the generation of visible dust plumes, applying soil binders to uncovered areas, reestablishing ground cover as quickly as possible, utilizing a wheel washing system to remove bulk material from tires and vehicle undercarriages before vehicles exit the project site, and maintaining effective cover over exposed areas. Compliance with Rule 403 would reduce fugitive dust emissions associated with construction activities by approximately 61 percent.

A significant impact would occur if the proposed project exposed sensitive receptors to substantial pollutant concentrations. The greatest potential for toxic air contaminant (TAC) emissions during construction would be diesel particulate emissions associated with heavy-duty construction equipment. According to SCAQMD methodology, health effects from carcinogenic air toxics are usually described in terms of individual cancer risk. "Individual Cancer Risk" is the likelihood that a person continuously exposed to concentrations of TACs over a 70-year lifetime will contract cancer based on the use of standard risk-assessment methodology. Given the relatively short-term construction schedule of 25 months, the proposed project would not result in a long-term (i.e., 70 years) substantial source of TAC emissions. There would not be residual emissions after construction or any corresponding individual cancer risk. As such, project-related TAC emission impacts during construction would be less than significant.

Regarding exposure to operational exhaust, the primary source of potential TACs would be diesel particulates from occasional delivery trucks (e.g., truck traffic on local streets and on-site truck idling). The SCAQMD recommends that health risk assessments be conducted for substantial sources of diesel particulates (e.g., truck stops and warehouse distribution facilities) and has provided guidance for analyzing mobile source diesel emissions. The proposed project would develop residential uses on the project site. Potential localized TAC impacts from on-site sources of diesel particulate emissions would be minimal since only a limited number of heavy-duty trucks (e.g., delivery trucks) would access the project site, and the trucks that do visit the project site would not idle on the project site for extended periods of time. In addition, the proposed project would not include stationary sources that would generate substantial TAC emissions. Based on the limited activity of the TAC sources, the proposed project would not warrant the need for a health risk assessment associated with on-site activities, and a less-than-significant impact related to substantial pollutant concentrations would occur.

COMMENT NO. 1-16

The major premise behind the establishment of the California Environmental Quality Act of 1970 was to require public agencies to give serious and proper consideration to activities which affect the quality of our environment, to find feasible alternatives in order to prevent damage to the environment, and to provide needed information to the public. Public Resources Code § 2 1061.

A strong presumption in favor of requiring preparation of an EIR is built into CEQA. This presumption is reflected in what is known as the "fair argument" standard, under which an agency must prepare an EIR whenever substantial evidence in the record supports a fair argument that a project may have a significant effect on the environment. Laurel Heights Improvement Association v. Regents of the University of California (1993) 6 Cal.4th 1112, 1123; No Oil, Inc. v. City of Los Angeles, supra, 13 Cal.3d 68, 75.

Under CEQA and CEQA Guidelines, if a project may cause a significant effect on the environment, the lead agency must prepare an EIR. Pub. Res. Code §§ 21100, 21151. A project "may" have a significant effect on the environment if there is a "reasonable probability" that it will result in a significant impact No Oil, Inc. v. City of Los Angeles, supra, 13 Cal.3d at 83 n. 16. If any aspect of the project may result in a significant impact on the environment, an EIR must be prepared even if the overall effect of the project is beneficial. CEQA Guidelines § 15063(b)(1).

This standard sets a "low threshold" for requiring preparation of an EIR. Citizen Action To Serve All Students v. Thornley (1990) 222 Cal.App.3d 748, 754. If substantial evidence supports a "fair argument" that a project may have a significant environmental effect, the lead agency must prepare an EIR even if it is also presented with other substantial evidence indicating that the project will have no significant effect. No Oil, Inc. v. City of Los Angeles, supra; Brentwood Association for no Drilling, Inc. v. City of Los Angeles (1982) 134 Cal.App.3d 491.

The CEQA Guidelines at 14 Cal. Code Regs. § 15384(a) define "substantial evidence" as "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached ... " Under Pub. Res. Code §§ 21080(e), 21082.2(c), and CEQA Guidelines §§ 15064(1)(5) and 15384, facts, reasonable assumptions predicated on facts, and expert opinions supported by facts can constitute substantial evidence.

"Under the fair argument approach, any substantial evidence supporting a fair argument that a project may have a significant environment effect would trigger the preparation of an EIR." Communities for a Better Environment v. California Resources Agency (2002) 103 Cal.App.4th 98,113 (italics in original).

Communities for a Better Environment is also significant because it clarifies that agency "thresholds of significance" are not necessarily the threshold that may be used in determining the existence of a "significant" impact. A significant impact may occur even if the particular impact does not trigger or exceed an agency's arbitrarily set threshold of significance. *Id.* at 114.

An agency must prepare an EIR whenever it can be fairly argued on the basis of substantial evidence that a project may have a significant environmental impact. If there is substantial evidence both for and against preparing an EIR, the agency must prepare the EIR.

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." (City of Inyo v. Yorty (1973) 32 Cal.App.3d 795, 810 [108 Cal.Rptr. 377].)

"Under the regulatory guidelines of CEQA, an EIR is required if 'there is substantial evidence that *any aspect of the project...* may cause a significant effect on the environment...' (Cal. Code Regs., tit. 14, Section 15063, subd. (b)(1).)" Sundstrom v. County of Mendocino, supra, 202 Cal.App.3d at p. 309.

As noted previously, the project site is immediately adjacent to Kingsley Elementary School and over 300 parents of children attending this school signed petitions demanding that the City prepare an EIR (attached at Exhibit 4). Under CEQA, public controversy over a proposed development is in itself one of the triggers for an EIR. "[T]he existence of serious public controversy concerning the environmental effect of a project in itself indicates that preparation of an EIR is desirable. One major purpose of an EIR is... to demonstrate to an apprehensive citizenry that the agency has in fact analyzed and considered the ecological implications of its action." No Oil. Inc. v. City of Los Angeles, supra, 13 Cal.3d 68, 85-86, fn. Deleted.

California Code of Regulations, Title 14, Section 15064, subdivision (h) provides: "In marginal cases where it is not clear whether there is substantial evidence that a project may have a significant effect on the environment, the lead agency shall be guided by the following factors: (1) If there is serious public controversy over the environment effect of a project, the lead agency shall consider the effect or effects subject to the controversy to be significant and shall prepare an EIR."

"Whether the administrative record contains a fair argument sufficient to trigger preparation of an EIR is a question of law, not a question of fact, and so under this unique test, deference to the agency's determination is not appropriate and its decision not to require an EIR can be upheld only when there is no credible evidence to the contrary." Sierra Club v. County of Sonoma, 6 Cal. App. 4th 1307, 1318 (1992).

"Testimony of area residents that are not qualified environmental experts qualifies as substantial evidence when based on relevant personal observations." City of Cannel By-the-Sea v. Board of Supervisors (1986) 183 Cal.App.3d 229, 246 n.8.

RESPONSE NO. 1-16

The commenter states an opinion that an EIR should be prepared for the proposed project and cites a number of court cases. Since the proposed project's environmental impacts can be mitigated to a less-than-significant level, the City of Los Angeles Planning Department has determined that the appropriate environmental clearance for the proposed project is a MND. The decision to require an MND instead of an EIR is in compliance with the California Environmental Quality Act (CEQA) and supported by substantial evidence on the record.

COMMENT NO. 1-17

A fair argument of aesthetic impacts triggers the preparation of an EIR. Ocean View Estates Homeowners' Associations v. Montecity Water District (2004) 116 Cal.App. 4th 396 (EIR required based on subjective views of residents regarding potential aesthetic impacts of reservoir affecting private views).

We have repeatedly argued that the project, which would be the tallest building on Santa Monica Boulevard for two miles, will have significant impacts to the aesthetics of our low-scale residential community. In Mira Mar Mobile Community v. City of Oceanside (2004) 119 Cal.App.4th 477, the City of Oceanside was required to prepare an Environmental Impact Report to examine the impacts on views by a proposed development, with the Court reaffirming that "Aesthetic issues, such as public and private views, are properly studied in an EIR to assess the impacts of a project (§ 21100(d); Ocean View Homeowners Ass'n,

Inc. v. Montecito Water Dist. (2004) 116 Cal.App.4th 396, 402-403.)" Mira MND, supra. 119 Cal.App.4th at 492-493.

"As on other CEQA topics, the opinions of area residents, if based on direct observation, may be relevant as to aesthetic impact and may constitute substantial evidence in support of a fair argument; no special expertise is required on this topic." The Pocket Protectors v. City of Sacramento (2004), 124 Cal.App.4th at 937; (emphasis added).

RESPONSE NO. 1-17

See Responses 1-2 and 1-3 for a discussion of the proposed project's aesthetic impacts. As discussed in Response No. 1-16, since the proposed project's environmental impacts can be mitigated to a less-than-significant level, the decision to require an MND instead of an EIR is in compliance with CEQA.

COMMENT NO. 1-18

Our neighborhood would be significantly and permanently impacted by development of the proposed project. As residents of this community for over 35 years, my family joins with our concerned neighbors in respectfully requesting that the Planning Department require the project to undergo a thorough and impartial environmental review through an Environmental Impact Report.

RESPONSE NO. 1-18

The commenter reiterates an opinion that an EIR should be prepared for the proposed project. See Responses 1-16.

LETTER NO. 2

Hans D. Giroux, Senior Analysis
Giroux & Associates
1820 E. Garry Street
Santa Ana, CA 92705

COMMENT NO. 2-1

On behalf of concerned neighbors near the proposed project, we have been asked to review the construction noise mitigation measures contained in the addendum reconsideration of ENV-2007-0365-MND-REC3 dated May 18, 2012. We had previously submitted comments to DIR-2009-2065-DB. Mitigation Measure XII-20 requires either a temporary noise wall with a noise level reduction of 15 to 25 dBA across its depth or the installation of dual-paned windows in all units of 5248 Virginia Avenue with southern or eastern elevations. We previously noted that the construction noise barrier wall cannot achieve the required reduction and is therefore an implausible measure. Caltrans, in its Technical Noise Supplement (2009), on page 6-7, states that the theoretical limit of barrier noise reduction effectiveness for a noise wall is 20 dBA. The noise level reduction of a barrier depends upon the path length difference (D) between the direct sound wave and the diffracted wave. The larger the difference, the greater the barrier attenuation. The scientific formula for this calculation for a sound wave peaking at 550 – 600 cycles per second is as follows when D is expressed in feet:

$$\text{Attenuation} = 20 \times \text{Log} (6.28 \times D)^{1/2} / \tanh (6.28 \times D)^{1/2}$$

For a 10-foot high equipment exhaust stack at 10 feet from the property line, the noise attenuation at the nearest residence for first and second story receivers as a function of temporary barrier height is as follows:

Receiver	15' Barrier	20' Barrier	30' Barrier
Ground Floor	14.7 dB	18.6 dB	20.0 dB
Second Story	5.9 dB	14.7 dB	20.0 dB

Even a 20-foot high barrier does not achieve a 15 dB attenuation which is the minimum required in the suggested mitigation measure. None of the barriers can achieve the maximum standard of 25 dB because that exceeds the theoretical limit of barrier diffraction attenuation. The temporary barrier cannot achieve construction noise attenuation that would support a finding of a less-than-significant impact. It cannot support a CEQA finding that would allow the use of an MND as the appropriate CEQA clearance for the proposed project.

RESPONSE NO. 2-1

The comment asserts that the temporary barrier cannot achieve construction noise attenuation that would support a finding of a less-than-significant impact. The level of significance is based on the implementation of feasible mitigation measures instead of a particular noise level. The wall described in Mitigation Measure XII-20 would reduce noise levels between 15 and 20 dBA, not 25 dBA. Regardless of the specific noise attenuation level associated with the wall, Mitigation Measure XII-20 includes multiple measures [that would reduce, control,]and address loud noise levels associated with construction activity. In addition, noise levels would fluctuate depending on construction phase, equipment type and duration of use. The temporary and not substantial increases in noise level due to construction activity are not considered significant. The conclusion in the MND Addendum is accurate, and no further analysis is necessary.

COMMENT NO. 2-2

The alternative to install dual-paned windows on units facing the construction site with an ability to reduce noise levels "a minimum of 15 dBA across their depth" would not adequately reduce noise levels to below those that are highly intrusive when equipment operates close to the existing residences. Equipment may operate as close as 20 feet from the nearest residential facades. The maximum reference exterior noise level would be 97 dBA at this set-back. The MND does not identify acceptable interior noise levels, but experience shows that levels of 65 dBA are intrusive into normal conversation. Noise level reductions of 32 dBA or more would be needed to achieve interior levels that are even marginally acceptable, and would clearly interfere with reading, watching television, taking a nap, etc. The requirement of a "15 dBA reduction across their depth" would still allow for peak construction activity noise levels in excess of 80 dB. Such a level of noise intrusion is clearly significant. Impacts that cannot be mitigated to less-than-significant must be addressed in an EIR for CEQA clearance.

RESPONSE NO. 2-2

It is accurate that construction noise levels may interfere with normal conversation inside adjacent land uses. Construction activity would be short-term and would occur during daytime hours when most people are not in their residence. In addition, the majority of Kingsley Elementary School classrooms are located on the eastern portion of the school site, away from construction activity. The City has not adopted significance thresholds related to interior noise levels resulting from construction activity. Similar to the outdoor construction noise, interior construction noise would result in a less-than-significant impact with implementation of mitigation measures as demonstrated in the MND and its technical studies.

COMMENT NO. 2-3

Our previous comments to DIR-2009-2065-DB relative to both the possible structural damage threshold and to vibration nuisance from heavy equipment operations in close proximity to existing residential structures were obviously ignored in the MND reconsideration. We have attached our previous comments and respectfully request that they be addressed in the EIR for this project that is clearly indicated as necessary in order to meet CEQA requirements for full public disclosure.

HANS D. GIROUX

SUMMARY OF QUALIFICATIONS AND EXPERIENCE

EDUCATION:

Bachelor of Arts in Physics, University of California (Berkeley), 1965.
Bachelor of Science in Meteorology, University of Utah, 1966.
Graduate studies in Meteorology, University of Wisconsin, 1967-68.
Masters of Science in Meteorology, UCLA, 1972.
Candidacy for Doctorate in Meteorology, UCLA, 1974.

PROFESSIONAL EXPERIENCE:

Weather Forecaster, U.S. Air Force. Truax AFB, Madison. WI, 1966-67.
Staff Weather Officer/Chief Forecaster. McChord AFB, WA, 1968-69,
Teaching Assistant, Basic Meteorology/Advanced Dynamics, UCLA, 1969-71.
Research Assistant, California Marine Layer Structure, UCLA, 1971.
Research Assistant, Remote Air Pollution Sensing by Satellites, UCLA, 1972.
Research Assistant, Climate Change - Aircraft Pollution, UCLA, 1973.
Instructor, Basic Meteorology, Cal State Northridge, 1972-74.
Air Pollution Meteorologist. S-Cubed, LaJolla, CA 1973 -75.
Senior Meteorologist, Meteorology Research, Inc., Altadena, CA 1975-77.
Instructor, Weather for Flight Aircrews. Orange Coast College, 1976.
Instructor, Basic Meteorology, Golden West Community College, 1976-81.
Instructor, Basic Meteorology, Orange Coast College. 1977-81.
Consultant, Atmospheric Impact Processes, Irvine, CA, 1977-present.

PRINCIPAL PROFESSIONAL RESPONSIBILITIES:

- Military:** Performed operational weather forecasting for jet aircrews; trained new personnel; responsible for ground safety, security, records administration, quality control, forecasting methodology research, and liaison with other base units; air defense battle staff weather officer; and deputy detachment commander.
- University:** Conducted laboratory sessions; instructed students in the use of meteorological instrumentation; demonstrated weather analysis techniques; supervised student weather observation programs; gave lectures and tests.
- Private:** Prepared air quality impact assessments for coal* and oil-fired, nuclear, solar geothermal and wind energy power generation systems; prepared impact assessments for transportation systems, industrial emissions sources, wastewater treatment plants, landfills, toxic disposal sites, oil processing facilities, mining operations, commercial, residential, institutional and recreational land uses, airports and harbors; conducted atmospheric gas tracer experiments; developed numerical airflow analyses; and conducted numerous meteorological and air quality data acquisition programs with a very strong emphasis in arid environments, geothermal development, odors and nuisance and in regional pollution impacts from Southern California urbanization.
- Air Quality** Developed impact assessments for roadways sources, construction equipment, sand and gravel plants, wineries, industrial equipment, gas recovery plants, railroads, recreational activities and oil refineries; monitored ambient noise levels from above sources, calibrated highway traffic noise model (FHWA-RD-77-108), and calculated sensitive receptor noise exposures; wrote community noise ordinances, purchased monitoring equipment and trained city staff; performed noise mitigation studies including barrier design, location, equipment noise control, and residential building retrofits.

PROFESSIONAL REFERENCES

Mr. Rich Ayala, Senior Planner, City of Ontario, 909-395-2421
Mr. Jerry Backoff, Planning Director, City of San Marcos, 760-744-1050
Mr. Albert Armijo, Planning Director, City of Aliso Viejo, 949-425-2527
Ms. Alia Hokuki, Senior Planner, AECOM, Inc., 949-660-8044
Dr. Joyce Hsiao, President, Orion Environmental Associates, 415-951-9503
Ms. Valerie Geier, President, Geier & Geier Consulting, 510-644-2535
Mr. Tom Dodson, President, Tom Dodson & Associates, 909-882-3612
Mr. David Tanner, President, EARS, 949-646-8958
Ms. Betty Dehoney, Principal Planner, HDR, Inc., 858-712-8400

RESPONSE NO. 2-3

Responses to the comments included in the June 8, 2011 letter prepared by Giroux & Associates Environmental Consultants are presented in Response No. 2-4, below.

COMMENT NO. 2-4

On behalf of concerned neighbors near the proposed project, we have been asked to review the construction noise and vibration analyses for technical accuracy and adequacy. As evidenced in the continuing evolution of Condition 34 k., the initial MND conclusions are thoroughly suspect. The noise and vibration analyses contain numerous errors, misinterpretations and omit appropriate thresholds of significance. In the final analysis, construction activity impacts from operations as close as 10 feet to sensitive receiver populations will generate noise and vibration impacts that cannot be fully mitigated to a less-than-significant level. Preparation of a focused EIR is clearly indicated for this project.

The construction noise impact analysis is based upon an equipment average reference noise level of 89 dBA included in EPA recommendations for evaluating construction noise. Use of that value has two caveats. Peak noise levels may be higher than 89 dBA and people are more disturbed by noise spikes than by steady-state conditions. Secondly, and most critically, this level occurs at 50 feet from the equipment noise source. The MND acknowledges that equipment operations may occur as close as 10 feet from the property line. Under typical geometrical spreading loss, the predicted noise level at 10 feet is 14 dBA higher than at 50 feet. That would raise the reference noise level to 103 dBA when operating close to the site boundary. The data in Table 5-7 of the MND referencing an 89 dBA maximum noise level claims 10 contain a distance adjustment. If the distance adjustment had been correctly applied, residential uses listed as "Adjacent" would in fact experience a 50+ dBA increase rather than the indicated 38.3 dBA. Any conclusions based upon the 89 dBA reference noise level are invalid when equipment operates near the site boundary.

The latest iteration of Condition 34 k. in the barrier alternative requires a noise level reduction of 15 to 25 dBA across its depth. That's quite an impossible requirement in that Caltrans, in its Technical Noise Supplement (2009), on page 6-7, states that the theoretical limit of barrier noise reduction effectiveness for a noise wall is 20 dBA. That same process of throwing numbers around willy-nilly is reflected in the claim that a 10-foot temporary barrier at the Kingsley Elementary School property line would produce "at least 20 dBA" of noise reduction. As stated by Caltrans, the maximum noise reduction effectiveness of an exceedingly tall barrier (much higher than 10 feet) is 20 dBA. The claim that a 10-foot high barrier will achieve "at least 20 dBA" is nonsensical.

The alternative to install dual-paned windows on units facing the construction site with an ability to reduce noise levels "a minimum of 15 dBA across their depth" would not adequately reduce noise levels to below those that are highly intrusive when equipment operates close to the existing residences. Equipment may operate as close as 20 feet from the nearest residential facades. The maximum reference exterior noise level would be 97 dBA at this set-back. The MND does not identify acceptable interior noise levels, but experience shows that levels of 65 dBA are intrusive into normal conversation. Noise level reductions of 32 dBA or more would be needed to achieve interior levels that are even marginally acceptable, and would still interfere with reading, watching television, taking a nap, etc.

The MND asserts that vibration impacts will be less than significant based upon the methodology in FT A-V A-90-1 003-06 (May, 2006). A structural damage threshold of 0.5 inches/second (ips) was selected and a maximum predicted vibration level of 0.35 ips was predicted. Table 12-3 of that document, entitled "Construction Vibration Damage Criteria," states that 0.5 ips is applicable to "Reinforced concrete, steel or timber" structures, but that 0.3 ips applied to "Engineered concrete and masonry" buildings, and that 0.2 ips is the damage threshold for "Non-engineered timber or masonry buildings." While 0.35 ips is the correctly predicted value for a 10-foot set-back, it rises to 1.00 ips if the equipment ever encroaches as close as 5 feet from the property line. Unless a mitigation measure is included that completely restricts equipment operation closer than 10 feet, the MND findings cannot be supported.

The vibration analysis further fails to consider nuisance effects. Table 8-1 of the ITA Manual identifies a daytime nuisance vibration level of 80 - 83 VdB (vibration decibels based upon the root-mean-square vibration velocity) as intrusive for infrequent events. At 10 feet from the equipment, the vibration velocity is 99 VdB. The failure to include vibration nuisance impacts and only focus on structural damage is a clear flaw in the analysis. Given that there are no practical mitigation measures for vibration nuisance at this distance, the vibration nuisance impact is clearly significant. Impacts that cannot be mitigated to less-than-significant must be addressed in an EIR for CEQA clearance.

RESPONSE NO. 2-4

The first paragraph of the letter provides a summary of the entire letter, and no response is necessary.

The second paragraph discusses construction noise levels. The letter states that peak construction noise levels may be higher than the 89 dBA noise level used in the MND Addendum analysis. This is an accurate statement. However, construction noise analyses are not required to be prepared using peak noise levels. The construction analysis presented in the MND Addendum is based on an Environmental Protection Agency-recommended noise level for general construction activity, and the noise level accurately describes typical noise levels at a construction site. The 89-dBA is often used to assess construction noise levels under CEQA, including numerous projects within the City of Los Angeles, and is an industry standard for noise analyses. It was appropriate to base the MND Addendum analysis on an equipment noise level of 89 dBA at 50 feet.

The second paragraph also states that construction activity would occur within ten feet of adjacent land uses and that the MND Addendum assessed a 50-foot distance. The letter further indicates that noise levels will be higher than presented in the MND Addendum at the residences closer than ten feet, and that the conclusions based on 89 dBA at 50 feet are not valid. It is accurate that the operation of equipment within 50 feet of land uses may generate noise levels in excess of 89 dBA. However, the noise mitigation measures listed in the MND Addendum would be just as effective for construction noise at 10 feet as they would be for construction noise at 50 feet. The comprehensive list of measures would still mitigate noise to the greatest extent feasible. The conclusion based upon the 89 dBA reference noise level at 50 feet remains valid.

The third paragraph of the letter states that the Condition 34 k. requirement of a noise barrier capable of reducing noise impacts between 15 and 25 dBA is not possible. Condition 34k mistakenly referenced a 15 to 25 dBA reduction from the barrier. The wall described in the mitigation measure would reduce noise levels between 15 and 20 dBA, not 25 dBA. This is entirely possible based on materials used to produce sound attenuation blankets designed to reduce construction noise exposure. The description of mitigated construction noise and the associated conclusion of less than significant are accurate.

The fourth paragraph discusses dual-paned windows and intrusive interior noise levels. It is accurate that construction noise levels may interfere with normal conversation inside adjacent land uses. Construction activity would be short-term and would occur during daytime hours when most people are not in their residence. In addition, the majority of Kingsley Elementary School classrooms are located on the eastern portion of the school site, away from construction activity. The City has not established a significance threshold related to interior construction noise levels. Similar to the outdoor construction noise, interior construction noise would be temporary and intermittent, and would result in a less-than-significant impact with implementation of mitigation measures.

The fifth paragraph discusses construction vibration building damage levels. The letter states that the impacts were based on FTA guidance. This is not correct. The impacts were based on the Federal Railroad Administration (FRA) document, "High-Speed Ground Transportation Noise and Vibration Impact Assessment" (October 2005). The FRA document states that fragile buildings can be exposed to 0.5 inches per second of vibration without experiencing damage. Heavy-duty equipment utilized during construction activity (e.g., large bulldozers) would generate vibration levels of approximately 0.089 inches per second at a distance of 25 feet. At ten feet, vibration levels generated by heavy-duty construction equipment would be

approximately 0.35 inches per second PPV. This vibration level would be less than the 0.5 inches per second FRA damage standard.

The sixth and last paragraph states that the analysis did not consider vibration nuisance. The City has not established a significance threshold for nuisance impacts related to construction vibration. Construction activity would be short-term and would occur during daytime hours when most people are not in their residence. In addition, the majority of Kingsley Elementary School classrooms are located on the eastern portion of the school site, away from construction activity.

LETTER NO. 3

June 22, 2012

Donald V. Greenlee, PhD, DABT
BioTox Services
12744 La Maida Street
Valley Village, CA 91607

COMMENT NO. 3-1

On behalf of concerned neighbors near the proposed project site, I have reviewed the Phase II Subsurface Soil Investigation report (the Report) for commercial property located at 5243-5253 Santa Monica Boulevard in Los Angeles, California (the Site) and dated March 31, 2005. The Phase II work and report were performed by EP Associates Environmental Consulting and Management (Glendale, CA). The purpose of my review was to determine whether, as a result of this report, subsurface soil conditions have been adequately defined at the Site. I have concluded that, due to the apparent limited scope of the investigation, certain subsurface soil conditions remain to be resolved as discussed below.

RESPONSE NO. 3-1

This comment is introductory in nature and states subsurface soil conditions at the project site are unresolved. No response is necessary.

COMMENT NO. 3-2

- **Potential UST:** The Report concluded that a waste oil underground storage tank (UST) may exist beneath the Site near the western portion of the parking area and adjacent to one of the businesses formerly located on-Site named "George's Muffler & Frame." The Report recommended that a subsurface investigation be conducted in this area to determine whether such a UST exists. Typically, a ground-penetrating radar (GPR) survey would be performed across the parking area surface. This is a non-invasive method that is commonly used to identify underground structures. In addition, fill caps or steel cover plates that enable UST pump-out should be visible at ground surface. No mention of such caps/plates was made in the Report. If a UST containing waste oil does exist on-Site, it presents an environmental hazard because of the potential for hazardous waste release from the tank, either through UST leakage or redevelopment activities. In California, waste oil is considered a hazardous waste (termed a "non-RCRA waste"). Thus, a GPR survey and possible UST removal and testing of underlying soils with LA City Fire Department oversight needs to be performed.

RESPONSE NO. 3-2

Mitigation Measures have been included in the MND Addendum to address the potential UST. Specifically, Mitigation Measure VIII-150 states that further testing shall be completed to determine if a potential UST is located near the western portion of the project site parking area. If a UST is identified, additional subsurface investigation of that portion of the project site shall occur and removed if warranted. This mitigation measure further requires the Applicant obtain site closure from the oversight agency, such as the Cal-EPA Department of Toxic Substances Control (DTSC) prior to the issuance of any grading and building permits. This is also known as a "no further action" designation and is granted from the oversight agency when site issues are no longer a concern for human health or the environment.

COMMENT NO. 3-3

- **Elevated Lead in Soil:** In the northeastern corner of the Site, lead was detected at 405 mg/kg in boring B-3 at 1 ft depth (ie, B3-1'). The current lead soil screening level (SSL) for residential land use is 80 mg/kg and for commercial land use it is 320 mg/kg (OEHHA, 2010). Because lead in sample B3-1' exceeds the 80 mg/kg SSL, the lateral and vertical extent of elevated lead concentrations should be determined and impacted soils should be excavated.

RESPONSE NO. 3-3

As discussed in Response No. 3-2, mitigation measures included in the MND Addendum require the Applicant to obtain a "no further action" designation from DTSC prior to the issuance of any grading and building permits. DTSC will review on all background information, sample analysis results, environmental assessment reports and any other information pertinent to the hazardous substance management and/or release, characterization, and cleanup of the project site to identify areas of concern, and to determine additional work, if any, is required to complete the investigation/remediation of the project site.

COMMENT NO. 3-4

- **Total Petroleum Hydrocarbon Impacts to Soil:** Also in sample B3-1', total petroleum hydrocarbons (TPH) were detected at 720 mg/kg. The composition of TPH in sample B3-1, was speciated according to carbon chain lengths, where carbon chain fractions ranging from 13 to 22 carbons in length (ie, C13-C22) comprised 209 mg/kg TPH and carbon chain fractions ranging from C23-C40 comprised 511 mg/kg TPH. Applicable cleanup guidelines for TPH in soil are provided in the Los Angeles Regional Water Quality Control Board's Interim Site Assessment and Cleanup Guidebook, dated May 1996. Soil TPH cleanup levels are listed in Table 4-1 (Maximum Soil Screening Levels for TPH and BTEX Above Drinking Water Aquifers) as a function of distance from underlying groundwater. The Report stated that the depth to groundwater was 19.1 ft in groundwater Well #2671A, located approximately 1 mile southwest of the Site. Assuming groundwater is located less than 20 feet from the soil surface at the Site, the soil cleanup target for the C13-C22 TPH fraction is 100 mg/kg. Thus, cleanup of TPH-impacted Site soils near boring B-3 needs to be addressed.

RESPONSE NO. 3-4

As discussed in Responses Nos. 3-2 and 3-3, above, mitigation measures included in the MND Addendum require the Applicant to obtain a "no further action" designation from DTSC prior to the issuance of any grading and building permits. DTSC will review on all background information, sample analysis results, environmental assessment reports and any other information pertinent to the hazardous substance management and/or release, characterization, and cleanup of the project site to identify areas of concern, and to determine additional work, if any, is required to complete the investigation/remediation of the project site.

COMMENT NO. 3-5

Concerning my qualifications, I have 22 years experience in the environmental consulting industry and am a Diplomat of the American Board of Toxicology (DABT; resume enclosed). If you have any questions about this review, you may contact me at the phone number or email address shown below.

REFERENCES

Los Angeles Regional Water Quality Control Board's Interim Site Assessment and Cleanup Guidebook, May 1996.

Office of Environmental Health Hazard Assessment (OEHHA), "Soil-Screening Numbers (mg/kg soil) for Nonvolatile Chemicals Based on Total Exposure to Contaminated Soil: Inhalation, Ingestion and Dermal Absorption," September 23, 2010. Available at: <http://oehha.ca.gov/risk/chhsttable1.html#table1>.

DONALD V. GREENLEE, PhD, DABT
BioTox Services

12744 La Maida
North Hollywood, CA 91607

Phone/Fax: (818)508-7746
E-mail: biotox@pacbell.net

EXPERIENCE SUMMARY:

- **Risk Assessments:** During the past 16 years, authored approximately 50-100 human health risk assessments (HHRAs) for industrial and commercial clients. Evaluated indoor vapor and outdoor vapor/particulate inhalation and outdoor direct soil contact chronic exposure pathways for residential, industrial and construction worker receptors. Chemicals of concern included volatile organic compounds (VOCs), metals, polynuclear aromatic hydrocarbons (PAHs), polychlorinated biphenyls (PCBs), dioxins/furans, pesticides and TPH carbon fractions. Routinely presented results to clients and regulatory agencies. Outcome of risk assessments generally facilitated timely and safe development of properties.
- **Air Pollution Control:** Authored air permit applications for industrial facilities. Modeled air dispersions of potential chemical releases for construction of air toxics HHRAs for compliance with SCAQMD Rule 1401 and for emergency planning in Risk Management Prevention Plans (RMPPs). Measured air emissions of VOCs and particulates for various construction projects. Co-authored report for the San Joaquin Valley Unified Air Pollution Control District that evaluated air emission inventories and latest control technologies for 13 major air emissions sources.
- **Compliance Audits:** Principal author of EHS compliance audits for industrial facilities. Updated programs and provided support in hazardous materials (HM) management [e.g., hazardous waste (HW) storage/disposal, personnel training, S8 14 waste minimization, waste water treatment permits, stormwater plans, lab chemical hygiene plans, emergency response, SPCC plans], health and safety e.g., illness/injury, blood-borne pathogens, respiratory protection, hazard communication, confined spaces, forklifts] and air regulatory compliance [eg, RECLAIM, CEMS, Rule 1158 & 1470J. Achieved economical/least liability disposal of HW streams for industrial clients, including auditing TSDFs and tolling subcontractors, manifest tracking and report writing. Principal author of HM Management Plans for several naval installations in San Diego. Managed/performed Phase II sampling projects for industrial facilities; managed Phase III remediation projects.

EMPLOYMENT HISTORY

2008-009 Risk Assessor, URS Corporation, Los Angeles, California
2001; 2005 Part-time faculty, Cal State Univ-Northridge (taught Hazardous Materials Management)
1994-current Independent Environmental Toxicologist Consultant
199 -1993 Senior Project Scientist, ERM-West (environmental consulting firm)
1989-1991 Assist. Professor, Neurology Department. School of Medicine, University of Southern CA
1982-1989 Assist. Professor, Biomedical Sciences Dept, College of Osteopathic Medicine, Ohio Univ.

EDUCATION AND CERTIFICATIONS

DABT Diplomate of the American Board of Toxicology
CPP Certified Permitting Professional at South Coast Air Quality Management District
Hazardous Waste Operations and 8 Hr. Refresher Training (current)
Certificate Hazardous Materials Management, University of California-Los Angeles
PhD Biochemistry, University of California-Riverside
BSe Chemistry, University of New Mexico

AFFILIATIONS

Society of Toxicology (SOT) American Chemical Society (ACS)

REFERENCES, PROJECTS COMPLETED and PUBLICATIONS: Provided upon request

RESPONSE NO. 3-5

This comment states the commenter's qualifications and is not a specific comment on the environmental analysis in the MND Addendum. No response is necessary.

Exhibit B



Memorandum

TO: Phillip Tate
Sheppard Mullen LLP

FROM: Terry A. Hayes Associates Inc. (TAHA)
Kevin Ferrier, Senior Planner
Sam Silverman, Senior Associate

DATE: May 17, 2011

RE: Case No. DIR-2009-2065
5241-5247 Santa Monica Boulevard

The purpose of this memorandum is to respond to environmental concerns related to potential shadow and noise impacts that have been raised by the Appellant.

Background

In October 2008, Terry A Hayes Associates Inc. (TAHA) prepared a Initial Study/Mitigated Negative Declaration (IS/MND) analyzing the potential environmental effects of the construction of one building with 74 assisted living units (72,757 square feet), five retail units (14,002 square feet), five medical office units (11,839 square feet), ten regular office units (16,073 square feet), and 9,041 square feet of common open space. The project evaluated was to be five stories tall with a maximum height of 59 feet with two levels of subterranean parking. This project has since been redesigned, and the Los Angeles Department of City Planning prepared another IS/MND for the revised project that references the IS/MND that TAHA prepared in 2008.

The revised project consists of the construction two buildings. The building fronting Santa Monica Boulevard would contain 14,947 square feet of commercial floor area and 39 residential units within 46,678 square feet of residential floor area. This building would be five stories tall with a maximum height of 60 feet. The building fronting Virginia Avenue would be three stories with a maximum height of 29 feet. This building would include ten residential units plus recreational facilities within 20,415 square feet of floor area. Two subterranean parking structures below each building would provide parking for the residential and commercial uses.

Shade/Shadow Impacts

The *City of Los Angeles Draft CEQA Thresholds Guide* is used to establish when a significant shadow impact would occur. Specifically, the CEQA Thresholds Guide state that a project would have a significant impact if it creates shade or shadows that affect shadow-sensitive uses for more than three consecutive hours between 9:00 a.m. and 3:00 p.m. from late October to early April, or for more than four consecutive hours between 9:00 a.m. and 5:00 p.m. from early April to late October.¹ Shadow-sensitive uses, as defined in the CEQA Thresholds Guide, are considered to include, routinely useable outdoor spaces associated with residential, recreational, or institutional (e.g., schools, convalescent homes) land uses; commercial uses such as pedestrian-oriented outdoor spaces or restaurants with outdoor eating areas; nurseries, and existing solar collectors.

The letter submitted by the Appellant states that the proposed project would result in significant shadow impacts to their property located at 5254 Virginia Avenue. The letter further states that the proposed project would also result in significant shadow impacts to the multi-family property located at 5248 Virginia Avenue (between the Appellant's property and the project site). An aerial photograph identifying these properties and the property's outdoor spaces is shown in Attachment A.

As shown in the aerial photograph, the rear lot of the Appellant's property and the rear lot of the adjacent multi-family property consist of paved parking areas with limited or no landscaping. While, the Appellant's property does have a small landscaped area along the western edge, parking areas are not typically considered usable outdoor areas. In addition, an existing automobile repair facility structure, approximately 18 feet in height, currently exists immediately adjacent the rear lot of the Appellant's property. Similarly, there is an approximately 12-foot tall parking garage at the rear of the multi-family property. Photographs of these structures are presented in Attachment B. Shadows cast onto the rear lots of the Appellant's and multi-family properties by these existing structures are visible in the aerial photograph.

The Appellant's property, as well as the adjacent property cited by the Appellant to the east, are both located within a residential zone along Virginia Avenue. This zone, however, is adjacent to a commercial zone along the north side of Santa Monica Boulevard which allows a building height of 60 feet. The commercial zone is approximately 200 feet in depth. As adopted by the City, the height allowed in the commercial zone would cast shadows onto any parcels located to the north of the commercial zone. The only way for the City to have eliminated the potential shadow effect on adjacent residentially zone parcels to the north of the commercial zone would be significantly restrict the height of buildings within the commercial zone along the north side of Santa Monica Boulevard. To avoid or significantly minimize shadows from the commercial zone, buildings would have to be restricted to approximately 20 feet in height. This has not been the case, nor are there any other restrictions in the zoning code or other development guidelines or special conditions to address minimizing shadows cast. The proposed project includes a building consistent with the height limits along Santa Monica Boulevard and also includes a lower building that is consistent with the height limits along Virginia Avenue. No height limit variances are being requested for the proposed project.

Shadows are cast in a clockwise direction from west/northwest to east/northeast from approximately 7:00 a.m. to 4:00 p.m. or later depending on the time of the year. Generally, the shortest shadows are cast during the Summer Solstice (June 20) and grow increasingly longer until the Winter Solstice (December 21). During the Winter Solstice, the sun appears to be lower in the sky and shadows are at their maximum coverage lengths. Attachments C.1 through C.3 display the proposed project's shadow patterns for the winter, spring/fall and summer solstice periods. It should be noted that the shadow

¹ *Los Angeles CEQA Thresholds Guide*, Significance Threshold for Shading, page A.3-2.

patterns presented in these figures are different than those included in the IS/MND that we prepared in 2008, as the proposed project has been redesigned and reduced in height.

Attachment C.1 illustrates that shadows generated from the proposed project during the winter solstice when shadows are at their maximum coverage lengths. At 9:00 a.m., the Appellant's residence and rear lot would be completely shaded by the proposed project; however, project shadows would not reach the Appellant's front yard. By 10:00, approximately 75 percent of the Appellant's residence and rear lot would be shaded. By 11:00 a.m., less than 50 percent of the Appellant's residence and rear lot would be shaded, and by 12:00 p.m., no portion of the Appellant's property would be shaded. In total, some portion of the Appellant's property would be shaded by the proposed project for three hours. However, as stated above, the threshold for determining when a significant shadow impact would occur during the winter months is four consecutive hours. Attachments C.2 and C.3, which depict the shadows cast by the proposed project during summer and spring months, also demonstrate that the proposed project would not cast shadows onto the Appellant property for more than three hours during these periods (i.e., the threshold for determining when a significant shadow impacts occur during the summer and spring months). Therefore, the proposed project would not result in a significant shadow impact to the Appellant's property.

Project shadows would be cast onto the multi-family property to the east of the Appellant for longer periods of time. Review of the shadow diagrams indicate that project shadows would be cast onto the parking/driveway area of the rear lot of multi-family property in excess of the significance threshold during both the winter and spring months. However, the area consists of driveway access and automobile parking. There are no landscaped portions, nor is there any evidence of routine outdoor use such as outdoor furniture or play equipment. This area would not qualify as routinely useable outdoor space and is not subject to the City's adopted shadow impact thresholds. Given the adopted building heights within the commercial zone, there is no practicable way for Appellant to have the expectation that shadows would not be cast onto this property from an adjacent commercial building to the south. Furthermore, existing shadows cast from the approximately 12-foot tall parking garage located at the rear of the multi-family property currently exceed the City's adopted shadow impact thresholds for the winter and summer months. Therefore, the proposed project would not result in a significant shadow impact to the multi-family property.

Noise Impacts

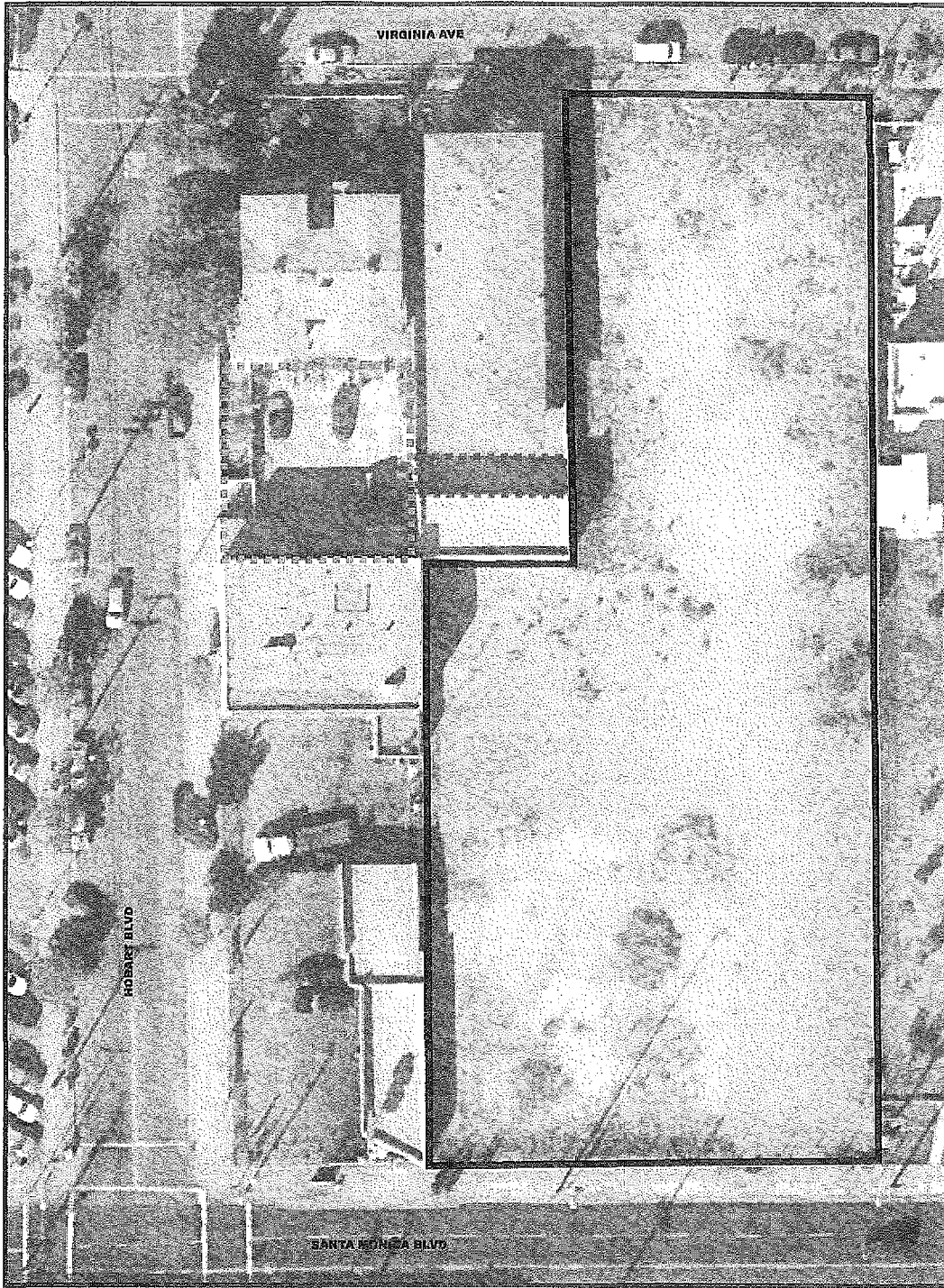
The noise portion of the letter submitted by the Appellant (page 9) begins by summarizing the construction analysis included in the IS/MND. It then goes on to state that the conclusion of a less-than-significant construction noise impact is not correct because noise levels would increase by at least 12 dBA at sensitive receptors. The letter further states that page 51 of the IS/MND indicates that a significant impact would result if, "The proposed project causes the ambient noise level measured at the property line of residential or school land uses to increase by 3 dBA to 70 dBA CNEL or greater or any 5-dBA or more increase in noise level." The Appellant incorrectly references the operational significance threshold for the construction analysis. Page 51 of the IS/MND also states that, "A significant construction noise impact would result if, "Construction activities would exceed the ambient noise level by 5 dBA at a noise sensitive use between the hours of 9:00 p.m. and 7:00 a.m. Monday through Friday, before 8:00 a.m. or after 6:00 p.m. on Saturday, or anytime on Sunday *unless mitigated to the greatest extent feasible.*" The IS/MND includes various mitigation measures to control construction noise, including a ten-foot sound attenuation blanket with a Sound Transmission Class Rating of 20. The sound blanket will effectively mitigate ground-level noise levels at ground-level receptors. Multi-story receptors will have direct line-of-site to construction activity. In addition, ground-level receptors will have direct line-of-site to above-ground construction activities. It is technically infeasible to erect a sound blanket with the height to block all direct line-of-site between construction activity and receptors.




The Appellant states that no mitigation measures have been provided for operational noise impacts. The IS/MND did not identify significant operational noise impacts; therefore, no mitigation measures are necessary.

The Appellant states that the USEPA indicates that back hoes can generate a noise level of 73-95 dBA and a tractor can generate a noise level of 77-98 dBA, which is not consistent with the assumed construction noise level of 89 dBA in the IS/MND. The USEPA also lists general construction noise levels by phase. For example, typical construction noise levels for excavation and grading activities are approximately 89 dBA. The IS/MND reasonably based the noise analysis on USEPA data for construction phases. Noise levels would typically be lower than presented in the IS/MND as equipment moves away from receptors and the building shell is constructed.

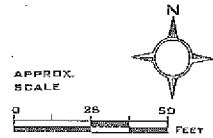
Vibration Impacts

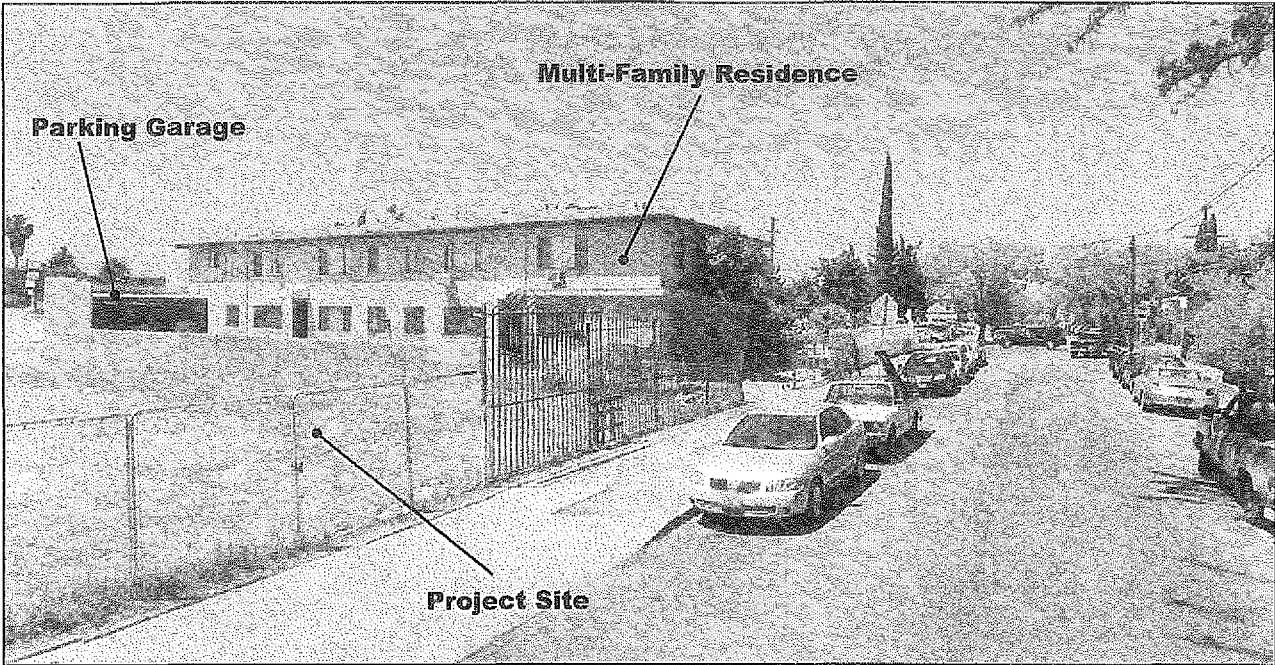
The Appellant states that the excavation activity will be immediately adjacent to the property line with 5428 Virginia Avenue and that the building could suffer structural damage. The 5428 Virginia Avenue building is not set on the property line. It is set back approximately ten feet from the project site. According to analysis completed based on Federal Rail Transit guidance, typical construction activity is unlikely to cause building damage at this distance.



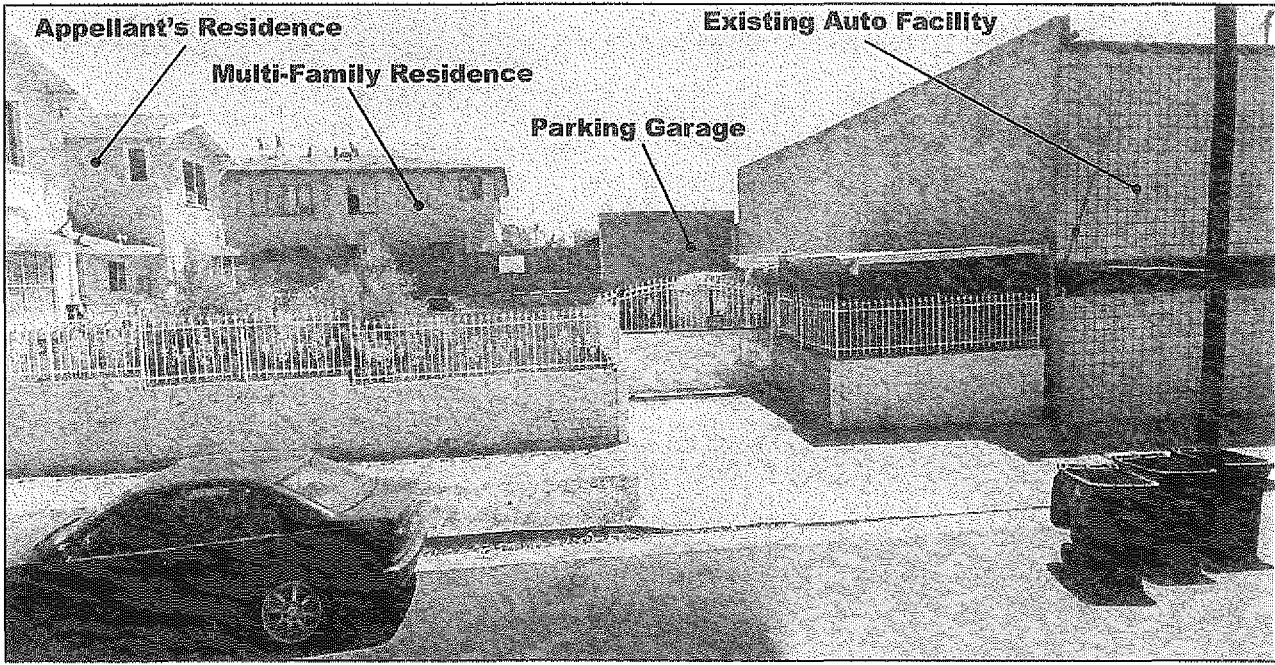
-  Project Site
-  Appellant's Rear Lot (5254 Virginia Avenue)
-  Multi-Family Rear Lot (5248 Virginia Avenue)

SOURCE: TAHA, 2011.



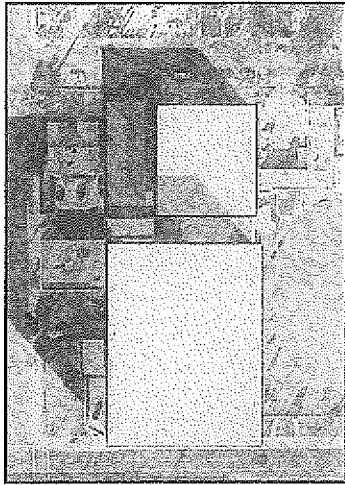


View of the existing multi-family residence at 5248 Virginia Avenue.

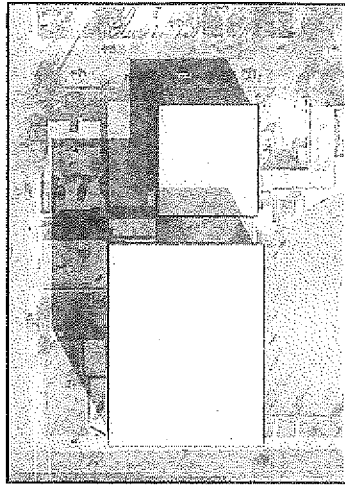


View of the Appellant's rear lot at 5254 Virginia Avenue.

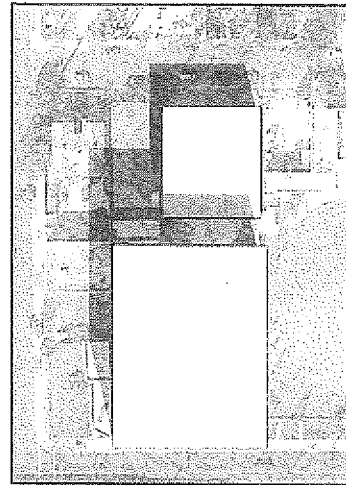
SOURCE: TAHA, 2011.



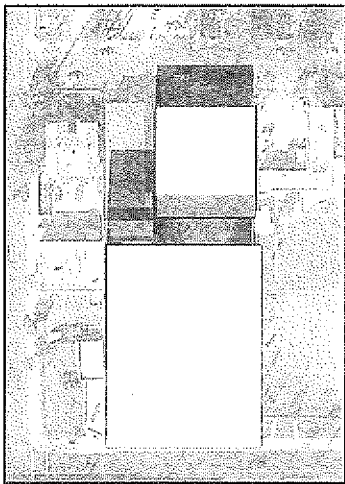
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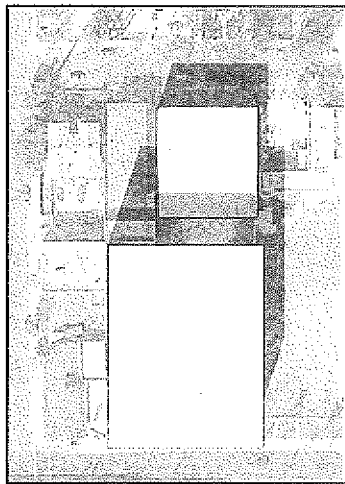
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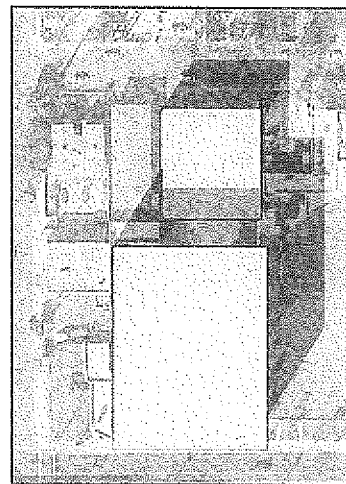
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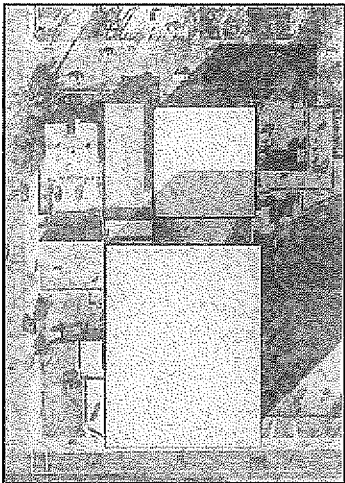
12:00 PM



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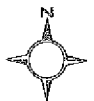
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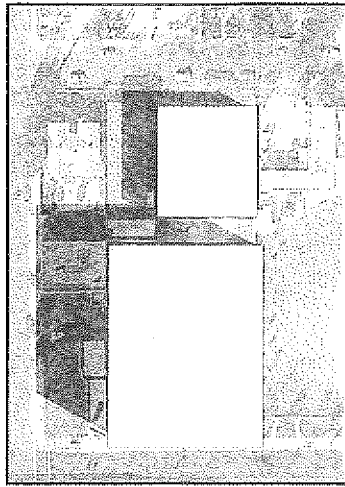


3:00 PM

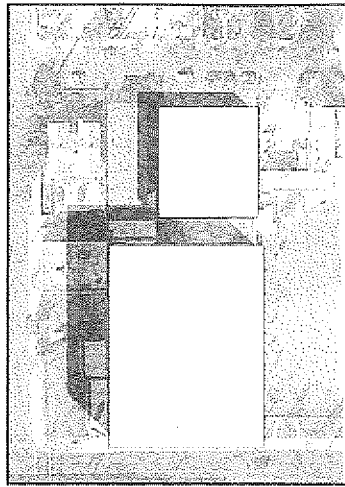
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APPROX.
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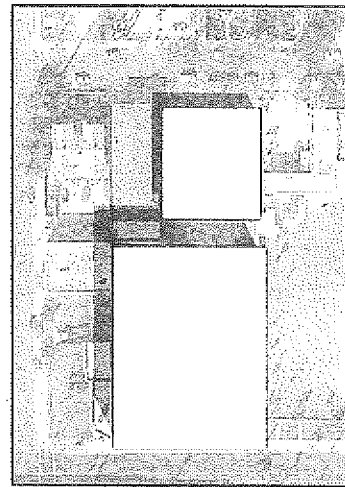




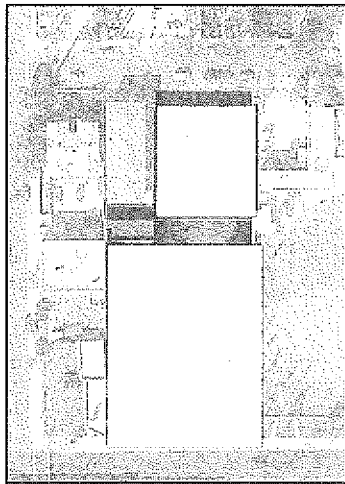
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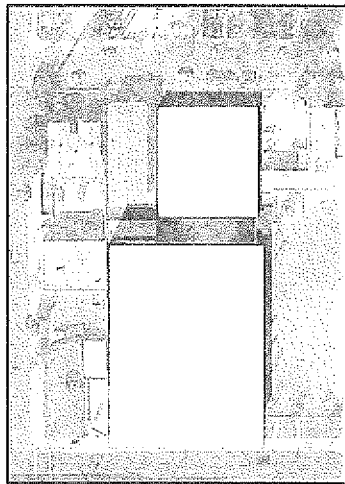
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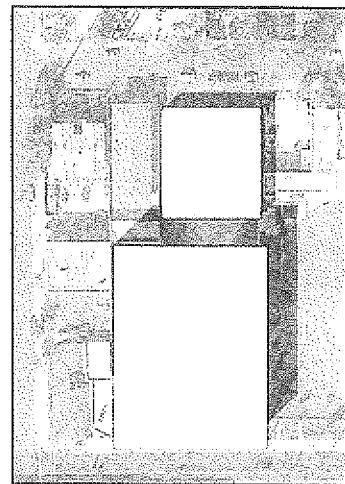
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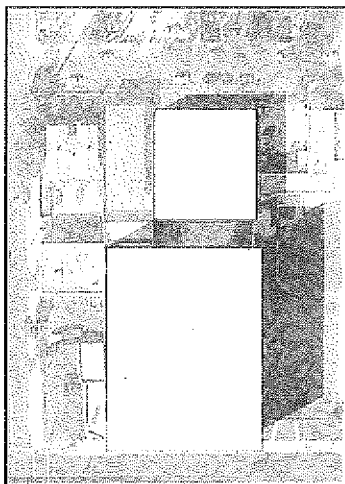
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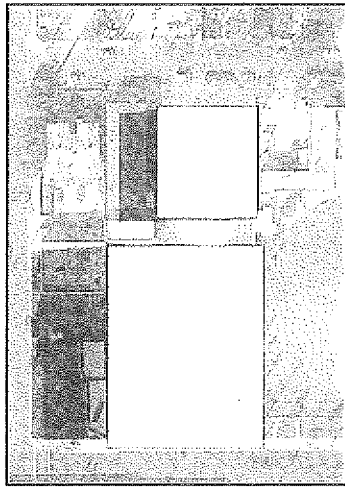
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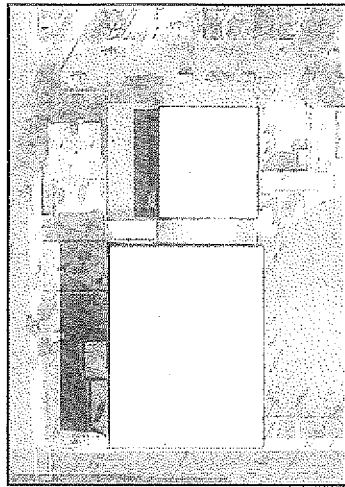
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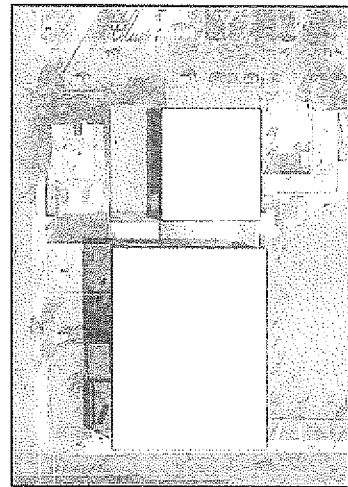




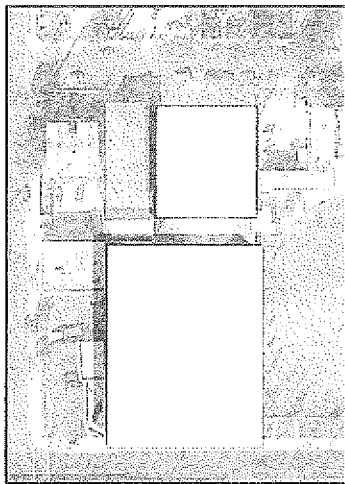
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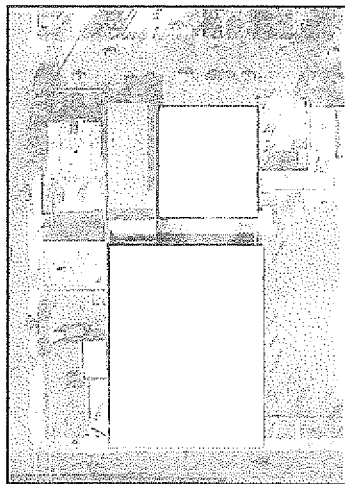
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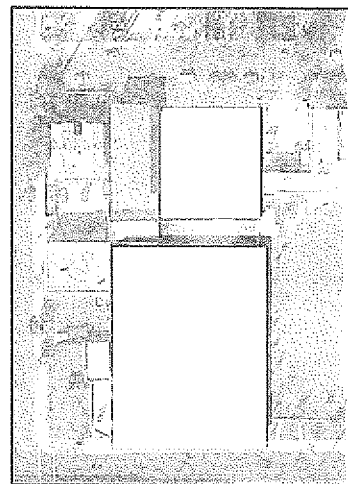
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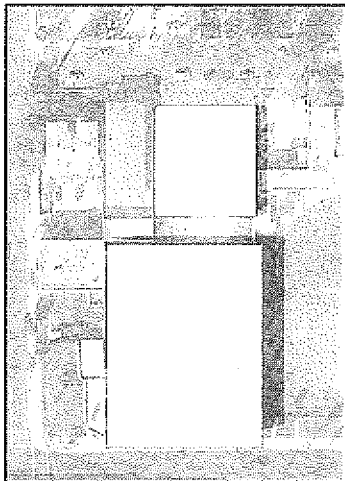
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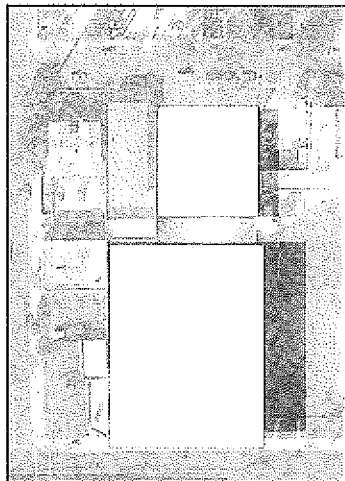
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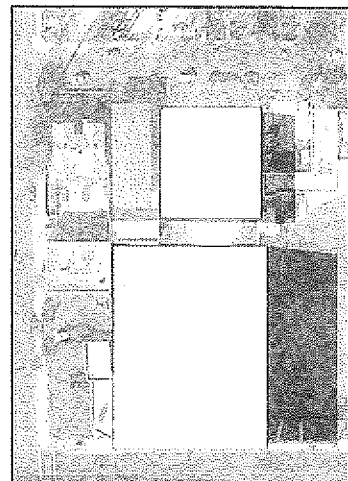
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SOURCE: TAHA, 2011.





July 11, 2011

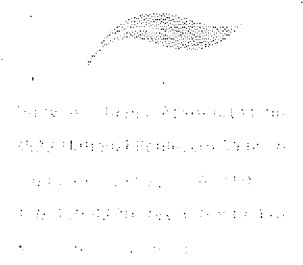
James Williams
City of Los Angeles
City Planning Commission
200 North Spring Street, Room 272
Los Angeles, CA 90012

**RE: Case No. DIR-2009-2065-DB-1A
5241-5247 Santa Monica Boulevard and 5238-5246 Virginia Avenue**

The purpose of this memorandum is to respond to the Giroux & Associates Environmental Consultants letter dated June 8, 2011 related to construction noise and vibration. The first paragraph of the letter provides a summary of the entire letter. Specific issues discussed in the letter are addressed below.

The second paragraph discusses construction noise levels. The letter states that peak construction noise levels may be higher than the 89 decibel (dBA) noise level used in the Mitigated Negative Declaration (MND) analysis. This is an accurate statement. However, construction noise analyses are not required to be prepared using peak noise levels. The construction analysis presented in the MND is based on an Environmental Protection Agency-recommended noise level for general construction activity, and the noise level accurately describes typical noise levels at a construction site. The 89-dBA is often used to assess construction noise levels under the California Environmental Quality Act (CEQA), including numerous projects within the City of Los Angeles, and is an industry standard for noise analyses. It was appropriate to base the MND analysis on an equipment noise level of 89 dBA at 50 feet, and no further analysis is necessary.

The second paragraph also states that construction activity would occur closer to adjacent land uses (i.e., approximately ten feet) than the 50-foot distance assessed in the MND. The letter further indicates that noise levels will be higher than presented in the MND at the residences closer than ten feet, and that the conclusions based on 89 dBA at 50 feet are not valid. It is accurate that the operation of equipment within 50 feet of land uses may generate noise levels in excess of 89 dBA. However, the typical noise levels shown in the MND were presented for informational purposes. The level of significance is based on the implementation of feasible mitigation measures instead of a particular noise level. The conclusion in the MND is accurate, and no further analysis is necessary.



James Williams
July 11, 2011
Page 2

The third paragraph of the letter states that the Condition 34 k. requirement of a noise barrier capable of reducing noise impacts between 15 and 25 dBA is not possible. Page 6-4 of the same Caltrans document referenced in the letter (*Technical Noise Supplement*, 2009), states that a barrier should have a transmission loss (TL) of at least ten dBA more than the desired noise reduction. The theoretical 20-dBA noise reduction limit referenced in the letter is a Federal Highway Administration standard based on permanent highway walls (e.g., wood and plexiglass). Many companies make noise walls made from acoustical material that absorbs sound better than the materials discussed in the Caltrans document. These acoustical blankets are fully capable of reducing noise levels by 15 and 25 dBA. For example, one manufacturer states "Boasting average 20 to 40+ decibel level drops, these self hanging blankets are suspended either from a ceiling or floor mounted frame."¹

The fourth paragraph discusses dual-paned windows and intrusive interior noise levels. It is accurate that construction noise levels may interfere with normal conversation inside adjacent land uses. Construction activity would be short-term and would occur during daytime hours when most people are not in their residence. In addition, the majority of Kingsley Elementary School classrooms are located on the eastern portion of the school site, away from construction activity. Similar to the outdoor construction noise, interior construction noise would result in a less-than-significant impact with implementation of mitigation measures.

The fifth paragraph discusses construction vibration building damage levels. The letter states that the impacts were based on Federal Transit Administration (FTA) guidance. This is not correct. The impacts were based on the Federal Railroad Administration (FRA) document, "High-Speed Ground Transportation Noise and Vibration Impact Assessment" (October 2005). The FRA document states that fragile buildings can be exposed to 0.5 inches per second of vibration without experiencing damage. Heavy-duty equipment utilized during construction activity (e.g., large bulldozers) would generate vibration levels of approximately 0.089 inches per second at a distance of 25 feet. At ten feet, vibration levels generated by heavy-duty construction equipment would be approximately 0.35 inches per second PPV. This vibration level would be less than the 0.5 inches per second FRA damage standard. The conclusion in the MND is accurate, and no further analysis is necessary.

The sixth and last paragraph states that the analysis did not consider vibration nuisance. Construction activity would be short-term and would occur during daytime hours when most people are not in their residence. In addition, the majority of Kingsley Elementary School classrooms are located on the eastern portion of the school site, away from construction activity. The City has not established a significance threshold for nuisance impacts related to construction vibration, and no further analysis is necessary.

In conclusion, there are a numerous examples of other projects in close proximity to sensitive receptors, similar to the proposed project, that have been cleared with an MND for purposes of CEQA using this methodology within the City of Los Angeles.

Sincerely,



Sam Silverman, Senior Associate

cc: Phillip Tate, Sheppard Mullen LLP
Blake Lamb, Planner, City of Los Angeles

¹<http://www.allnoisecontrol.com/products/AcousticBlanket.cfm>.