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June 19, 2017

VIA EMAIL AND MESSENGER

Planning and Land Use Management Committee
Los Angeles City Council
City Hall
200 North Spring Street
Los Angeles, California 90012
Attn: Zina Cheng, Legislative Assistant and Deputy City Clerk

Council File No. 15-0672-S1
June 20, 2017 Agenda, Item No. 11

Re: Archer Forward: Haul Route Permit Application (Board File No. 170033)

Dear Chair Huizar and Honorable Committee Members:

We write on behalf of our client, The Archer School for Girls, regarding the haul route approval ("Haul Route") for the Archer Forward: Campus Preservation and Improvement Plan ("Archer Forward" or the "Project"). After a unanimous approval of the Haul Route by the Board of Building and Safety Commissioners on May 16, 2017, at which Councilmember Bonin's office supported the Haul Route, a small group of opponents filed an appeal in their continued endeavors to prevent these improvements for education of girls in our community. Archer worked with Councilmember Bonin and community leaders for a number of years to reach the rigorous conditions recommended to your Committee, and very much appreciated your Committee's approval and that of the full Council in August 2015. The opponents' CEQA challenges have been rejected by the Los Angeles Superior Court, which upheld the City's actions. We respectfully request denial of this appeal.

The Project will modernize existing facilities at the School, an all-girl, nonsectarian, independent college preparatory school serving students in grades 6 – 12, and provide a campus that can maximize the fulfillment of the School's education mission into the future. The School improvements include updated classrooms and extracurricular learning spaces, and an enhanced athletic field, all intended to improve the School's facilities in line with facilities at other schools.

The Haul Route was fully analyzed in the City Council's certified Environmental Impact Report ("EIR") for the Project, and the hours and days for the haul were approved by the

City Council in the Archer Forward CUP. The Haul Route is for "Phase 1" of Archer Forward, which includes a gymnasium, underground parking, and the enhanced athletic field..

As noted above, the opponents who now appeal the Haul Route have lost before the Superior Court at every juncture. The majority of the arguments in the appeal were raised during the administrative proceedings on the Project and were rejected by the City. Not satisfied, appellants have made the same arguments now twice before the Los Angeles Superior Court, where their arguments have again been rejected each time.

As detailed in Attachment A, Response to Appeal, the opponents' "new" claims are inaccurate and lack merit. The appeal raises no issues warranting a delay in this proceeding. Indeed, delaying this approval further would result in tangible harm to Archer by delaying the Project's construction and its benefits to Archer's students.

Archer is committed to being an excellent neighbor in Brentwood. Thousands of supporters voiced their desire for the City to approve the Project. *See* Attachment B. Archer spent hundreds of hours over nearly four years engaging with local residents, business leaders, transportation experts, and leaders from community organizations including the Brentwood Community Council, the Brentwood Homeowners Association, the Brentwood Village Chamber of Commerce, and the Residential Neighbors of Archer. It was an extremely public and transparent process, resulting in the two opponents who had been most active in the process – the Residential Neighbors of Archer and the Brentwood Homeowners Association – supporting Archer Forward.

For these reasons and the reasons detailed in the Response to Appeal, we ask that the Committee recommend that the City Council deny the appeal and affirm the Board's approval of the Haul Route. We thank you for your time and attention to this matter.

Very truly yours,

Lucinda Starrett

Lucinda Starrett
of LATHAM & WATKINS LLP

cc: The Honorable Councilmember Mike Bonin, Council District 11
Tricia Keane, Director of Planning, Council District 11
Elva Nuño-O'Donnell, Department of Planning
Elizabeth English, Head of School, The Archer School for Girls
Kimberlina Whettam, Kimberlina Whettam and Associates
James Arnone, Latham & Watkins
Beth Gordie, Latham & Watkins

ATTACHMENT A

RESPONSE TO APPEAL

On August 4, 2015, the City Council unanimously approved the Archer Forward: Campus Preservation and Improvement Plan ("Archer Forward" or the "Project"). On May 16, 2017, the Board of Building and Safety Commissioners unanimously approved the haul route for "Phase 1" of Archer Forward ("Haul Route"). The Haul Route includes export for a gymnasium, underground parking, and the enhanced athletic field at The Archer School for Girls ("Archer" or "School").

The Sunset Coalition et al., who now appeal the Haul Route, make allegedly "new" claims that are inaccurate and lack merit. Thus, the appeal raises no issues warranting a delay in this proceeding and should be denied.

A. There are No Changed Circumstances or New Information Warranting Supplemental Environmental Review

The opponents allege, without truth, that new environmental review is required for the haul route. They are wrong under the facts and under CEQA. After an EIR has been certified, further environmental review is only required under very narrow circumstances. Pursuant to California Public Resources Code section 21166, when an EIR has been certified for a project, no subsequent EIR shall be required unless:

> (a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report.
>
> (b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report.
>
> (c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.

Here, there have not been any changes proposed to the Project since the EIR's certification, nor are there changes in circumstances that require revisions to the EIR. In addition, appellants cannot point to any new information that "was not known or could not have been known" at the time of EIR certification.

The Project underwent an extraordinarily stringent and detailed environmental review before the City's elected officials unanimously approved the compromise campus improvements. The City published a Draft EIR analyzing the potential effects of Archer's proposed Project – including the Haul Route – in February 2014. The City then prepared a Final EIR for the Project, which included detailed responses to the over 500 comments received on the Draft EIR. The Final EIR analyzed the potential effects of the reduced Project and identified feasible mitigation measures and alternatives to reduce or eliminate those impacts. Subsequent to the

Final EIR's release in November 2014, six erratas were prepared for corrections or clarifications to the Final EIR.[1]

As noted above, the Haul Route was fully analyzed in the certified EIR for the Project. The Primary Route for loaded trucks is from the Project Site eastbound on Sunset Boulevard to the I-405 Freeway; the empty trucks is the reverse. The Primary Route was analyzed as Haul Route Option A in the Archer Forward EIR. *See* Draft EIR, Section IV.K. The Alternate Route for loaded trucks is from the Project Site eastbound on Sunset Boulevard, southbound on Barrington Avenue, eastbound on San Vicente Boulevard, and eastbound on Wilshire Boulevard to the I-405 Freeway; the empty trucks is the reverse. The Alternate Route was analyzed as Haul Route Option B in the Archer Forward EIR. *See* Draft EIR, Section IV.K.

In addition, while the Haul Route is for export of 80,632 cubic yards, the Draft EIR analyzed export of 98,595 cubic yards. *See* Draft EIR, Section 2 (analyzing 98,595 cubic yards of export); *see also* Errata 2 (reducing export to 95,108 cubic yards.)[2]

Moreover, the hours and days in the approved Haul Route are consistent with the approved Archer Forward Conditional Use Permit ("CUP"). Haul Route Specific Condition C.1 states that "[t]he hauling operations are restricted to the hours between 7:00 a.m. and 3:00 p.m. on Mondays through Fridays and between 8:00 a.m. and 6:00 p.m. on Saturdays. No hauling is allowed on Sundays or City Holidays." These days and hours are consistent with what the City Council approved for Archer Forward. CUP Condition of Approval 29.d.ii states "[h]aul construction activities shall be allowed from 7:00 A.M. to 3:00 P.M., Monday – Friday; and from 8:00 A.M. to 6:00 P.M. on Saturday." *See also* Draft EIR, Section IV.K.

There have not been any changes proposed to the Project since the certification of the EIR, nor are there changes in circumstances that require revisions to the EIR.

B. Construction Truck Traffic for the Haul Route was Accurately Disclosed and Analyzed in the Draft EIR

Appellants' assertion that construction truck traffic will be more intense than reported in the EIR is incorrect. Appeal at p. 3. The EIR disclosed the anticipated amount of haul from the Project site. *See* Draft EIR, Section 2 ("It is anticipated that the Project would result in the excavation of approximately 98,853 cubic yards of soil, of which approximately 258 cubic yards would be used for fill on-site and the remaining 98,595 cubic yards would be exported off-

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[1] Errata 1 identifies refinements made to the Project at the public's request. Errata 2 provides further clarification on topics raised during the Draft EIR and public hearing process, and the Project's accelerated construction schedule. Errata 3 describes further Project refinements made at the Planning Commission meeting. Errata 4 corrects an error in the Final EIR regarding cumulative traffic impacts. Errata 5 identifies additional refinements to the Project made by the PLUM Committee. Errata 6 addresses minor corrections to the Final EIR and provides clarifications regarding the three-year construction schedule.

[2] Additional haul of approximately 14,476 cubic yards will be exported for Phase 2 (the performing arts and visual arts space). Archer will apply for a separate haul route for Phase 2.

site."); *see also* Errata 2 ("With removal of the Aquatics Center and other Project refinements, the total excavation and amount of soil to be exported would be reduced to a total excavation of approximately 95,366 cubic yards and soil export of 95,108 cubic yards."). This number has not increased. The Phase 1 (gymnasium, underground parking, and athletic field) export is 80,632 cubic yards, as reflected in the Haul Route application. The remaining 14,734 cubic yards will be for Phase 2, which will be a separate haul route application.[3]

Appellants are also mistaken that Phase 1 haul would occur over the course of 20 months. Appeal at p. 3. As described in detail in the EIR and the Haul Route application, excavation and haul will occur in the summer months when school is not in session. *See* Final EIR at pp. III-662 to III-663 ("It should also be noted that the highest level of Archer truck generation and impacts would be for relatively short periods during Phase 1 construction activities (e.g., Phase 1 excavation and haul, which is anticipated to occur over the summer months when Archer and other schools are not in session).") As set forth in the Haul Route Questionnaire, the approximate duration of haul is between Memorial Day and Labor Day and will take approximately 72 days.

Finally, contrary to appellants' claims, the EIR accurately disclosed the number of trucks per day during excavation and haul. The Haul Route Questionnaire states that the Haul Route will require an average of 100 truck trips daily using double-bottom dump trucks. See Haul Route Questionnaire at p. 1. This is consistent with the Draft EIR, which analyzed a total daily round trip of 100 and estimated daily trips of 200 for the Haul Route. *See* Draft EIR, Section IV.K, Table IV.K-28. Confusingly, appellants cite to Class V and Class VI vehicle roundtrips, contending those trucks would be used for excavation and haul. Appeal at p. 3. Appellants completely misstate the facts and are simply wrong about what type of trucks will be used. Appendix C-2 of the EIR states that Class V and Class VI vehicles are 3-axle and 5-axle trucks, respectively. Appendix C-2, Attachment B. Bottom dump trucks – the type of truck used for the Haul Route – are classified as Class VIII in Appendix C-2. Indeed, the very chart appellants cite to states that there will be 100 Class VIII (bottom dump truck) trips in weeks 59 to 70 of Phase 1 (i.e., the Phase 1 excavation and haul), expressly contradicting their argument. Appendix C-2 at p. 3. Further, as explained in Errata 6 and briefed extensively before the Superior Court, the intensity of Phase 1 excavation and haul was not increased when the Project's construction schedule was shortened from six years to three years. *See* Errata 6 at pp. 6-8; *see generally* Real Party in Interest The Archer School for Girls' Opposition to Petitioner's Motion for New Trial and Joinder in City's Opposition, attached hereto as **Exhibit A**, Real Party In Interest The Archer School for Girls' Opposition Brief, attached hereto as **Exhibit B**.

C. Condition 32c Is Not an Environmental Mitigation Measure and Is Inapplicable to the Haul Route

Appellants incorrectly argue that Condition 32c, which discusses coordinating with the Department of Transportation ("LADOT") to determine whether LADOT will approve a "no right-turn-on-red" restriction on the northbound approach of Barrington Avenue at Sunset Boulevard, is an enforceable environmental mitigation measure. Appeal at pp. 4-5.

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[3] As Ms. Starrett noted during the Board of Building and Safety Commissioners hearing, Archer will come back for another haul route for Phase 2, which is the final phase of the Project.

Appellants are wrong. Condition 32c is not an environmental mitigation measure, in that it was not imposed to address any environmental concerns. During the administrative proceedings on the Project, Archer heard from neighbors and the community that a "no right-turn-on-red" restriction was desired. Therefore, Archer voluntarily added a "Project Design Feature" to engage in discussions with LADOT to determine whether LADOT would approve such a restriction. This Project Design Feature does not address any environmental impacts and was not required by or factored into the traffic analysis for the Project.

Recently, LADOT informed Archer that it will not be able to approve the requested restriction. Therefore, the City Planning Department has agreed to clear Condition 32 because accomplishing the Project Design Feature cannot be done without LADOT approval. This measure, Project Design Feature K-2 was identified and incorporated at neighbors' request with the goal of allowing more eastbound vehicles to traverse the intersection each signal cycle. *See* Final EIR at p. III-1053. LADOT did not support this measure and accordingly it was not factored into the traffic analysis for the Project, and is therefore not relied upon for mitigation. Contrary to the assertion by opponents, unlike the situation in the decision they cite, this Project Design Feature K-2 was not intended to "reduce or eliminate" the environmental impact, as was the case in *Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 656. Therefore, LADOT's refusal to approve the installation of this design feature has no bearing on the Haul Route approval.

D. The EIR Analyzed Cumulative Traffic Impacts from Nearby Projects

Appellants claim that the EIR did not analyze cumulative impacts from nearby projects that will contribute to traffic. Appeal at pp. 5-6. To the contrary, the EIR adequately analyzed cumulative projects that were known at the time of the Notice of Preparation of the EIR. *See* Draft EIR at p. III-6; *Preserve Wild Santee v. City of Santee* (2012) 20 Cal.App.4th 260 (when specific information on the impacts of potential future cumulative development is not available, an EIR is not required to speculate about the cumulative impacts that might occur). Under CEQA, the baseline for environmental impacts are typically existing conditions at the time of environmental review, and an EIR's evaluation of environmental impacts should normally measure the changes a project would make in physical conditions in the area affected by the project as they exist when the NOP is published. *See* CEQA Guidelines § 15125(a). Moreover, the cumulative impacts analysis need only list the "past, present, and *probable* future projects producing related or cumulative impacts." *Id.*, § 15130(1)(A). While the Brentwood School project NOP was released ***after*** the Archer NOP, due to the Brentwood School's close proximity to the Archer School, it was added as a related project and analyzed in the Draft EIR. *See* Draft EIR at p. III-6.

Due to the potential for unknown future projects, the EIR's "traffic analysis also explicitly took into account traffic generated by known development projects in the Brentwood area and included a background [1%] growth factor to represent traffic generated by other growth outside of Brentwood but within the Westside." Final EIR at III-803; *see also Sunset Coalition, et al. v. City of Los Angeles*, Los Angeles Superior Court Case No. BS157811 Ruling on the Merits at p. 14 (Sept. 19, 2016) (the "City compared the Project impacts to the following baseline[ ] ... 'Future (Horizon Year 2020) Base Conditions' that take into account the expected changes in traffic due to overall regional growth and traffic generated by specific development projects in the area.").

In addition, per standard City practice, the construction of large development projects would occur in accordance with project-specific construction management plans, as is the case with the Project. As construction management plans are reviewed and approved by LADOT, it is anticipated that through this process, LADOT would coordinate construction activities among the projects that have the potential to result in cumulative intersection impacts. *See* Final EIR at p. I-121. In addition, Archer is required to coordinate with LADOT to obtain approval for specified traffic improvements, alternate parking locations during the construction of the proposed parking garage, and the Pedestrian Routing Plan prior to the commencement of construction. *See* Final EIR at pp. I-126 (Mitigation Measure K-6), I-127 (Mitigation Measure K-7).

Appellants recite a list of cumulative projects listed in the Brentwood School EIR, a project that was approved nearly two years after Archer. Appeal at pp. 5-6. Nonetheless, all but two of the projects listed in the Brentwood School EIR were also analyzed in the Archer Project's EIR. *See* Draft EIR at p. III-6. Those two projects, 12029-12035 Wilshire Boulevard and Wilshire Boulevard/Stoner Avenue, are both located on Wilshire Boulevard, and would not need to use Sunset Boulevard for haul. Therefore, these projects are not likely to affect or overlap with Archer's haul.

Appellants refer to the construction of a proposed apartment project at 11600 West Dunstan Way. Appeal at p. 6. Specific information on the impacts of this project was not available during the preparation of the Project's EIR. As noted above, the EIR was not required to speculate about the cumulative impacts that might occur. The EIR adequately analyzed cumulative projects that were known at the time of the Notice of Preparation of the EIR, as required by CEQA.

E. The Project Will Not Result in Significant Air Health Risk Impacts

Appellants continue to allege that the EIR failed to disclose the Project's air health impacts, and should have used different Office of Environmental Health Hazard Assessment ("OEHHA") guidelines. Appeal at pp. 6-9. Appellants raised this issue during the administrative process, and the City was not persuaded, choosing instead to deny appellants' appeal and approve the Project. *See* Transcript of Los Angeles City Council Hearing In re Archer Forward: Campus Preservation and Improvement Plan, Council File 15-0672, at p. 6:7-8 (Aug. 4, 2015). Appellants have twice raised these claims before the Los Angeles Superior Court and have lost both times. These claims continue to lack merit and should be rejected.

Appellants raised this argument in their appeal of the City Planning Commission's unanimous approval of the Project in June 2015. Appellants argued there was "new information in the form of guidance from [OEHHA]" and asked the EIR to be recirculated using the guidance. *See* Planning and Land Use Management Committee ("PLUM") Regular Meeting In Re Archer Forward: Campus Preservation and Improvement Plan Appeals, 15-0672 Transcript at p. 9:5-12 (June 30, 2015). PLUM denied this appeal and approved the Project. Indeed, the City has discretion to determine which threshold to use. *See e.g.* CEQA Guidelines § 15064.7(a) (lead agencies may adopt and publish thresholds of significance); *see also Oakland Heritage Alliance v. City of Oakland* (2011) 195 Cal.App.4th 884, 886 (an agency is not required to adopt significance thresholds, and is not forbidden to rely on standards adopted for a particular project).

Appellants raised this argument again in their legal challenge to the Project. There, appellants again argued that the Project's EIR should have been recirculated to address the OEHHA guidelines, which they alleged would show higher air quality impacts and cancer risks than disclosed in the EIR—the very same comments they assert here. The Los Angeles Superior Court determined that the City was not required to use the new OEHHA guidelines, which were created for a different regulatory program and have not been adopted as a CEQA significance threshold for the City's voluntary health risk assessment:

> In the abstract, important new OEHHA guidelines that show significant air quality impacts could constitute significant new information requiring recirculation. However, the record shows that as of June 17, 2016, the SCAQMD had not yet evaluated or provided guidance on how the new OEHHA guidelines should be used to evaluate construction phases for typical development projects. ***Petitioners have not identified evidence in the record showing that the City was required to use the OEHHA guidelines as part of the environmental review of the Project or that SCAQMD had ever determined that the new guidelines should be used for CEQA significance analysis.***

Sunset Coalition, et al. v. City of Los Angeles, Los Angeles Superior Court Case No. BS157811 Ruling on the Merits at p. 25 (Sept. 19, 2016) (emphasis added; internal citations omitted) ("Ruling on the Merits"), attached hereto as **Exhibit C**.

Seeking a second bite at the apple, appellants brought a motion for a new trial on the grounds that a new First Appellate District case required the City to use new OEHHA guidelines. This modified argument was similarly rejected.

> CEQA grants agencies discretion to develop their own thresholds of significance . . . . Substantial evidence supports the City's decision not to use the OEHHA guidelines as part of the environmental review of the Project, or to recirculate the EIR after those revised guidelines were issued (but not yet recommended by SCAQMD to evaluate construction projects).

Sunset Coalition, et al. v. City of Los Angeles, Los Angeles Superior Court Case No. BS157811, Ruling on Motion for New Trial at p. 7 (Dec. 13, 2016) ("Ruling on Motion for New Trial"), attached hereto as **Exhibit D**.

Appellants also continue to assert that the City should have extracted the breathing rate data used in the new OEHHA guidelines and applied that factor to the Project. Appeal at p. 7. Appellants raised this exact claim before the Court, and lost: "Petitioners [have not] shown applying one of the factors from the OEHHA guidelines without the balance of the methodology would be appropriate." Ruling on Motion for New Trial at p. 6.

Appellants' arguments boil down to a disagreement about the City's data and methodology for assessing potential air health risks. Decades of CEQA case law confirm that the City's choice of methodology is entitled to substantial deference. *North Coast Rivers Alliance v. Marin Mun. Water Dist.* (2013) 216 Cal.App.4th 614, 642. Disagreement over data or methodology does not invalidate an EIR. *San Francisco Ecology Ctr. v. City & Cty. of San Francisco* (1975) 48 Cal.App.3d 584, 594 (EIR estimates cannot be attacked just because they could conflict with estimates in subsequent studies); *Eureka Citizens for Responsible Gov't v. City of Eureka* (2007) 147 Cal.App.4th 357 (accepting expert's findings despite disagreement over methodology used); *Save Cuyama Valley v. Cty. of Santa Barbara* (2013) 213 Cal.App.4th 1059, 1069 (relying on expert's conclusions despite differing opinions by other expert and agency).

F. The EIR Adequately Analyzed the Three Year Construction Schedule

Appellants' allegation that the EIR failed to disclose traffic impacts associated with the three-year construction schedule is incorrect. Appeal at pp. 10-12. Following requests from the public for less than six years of construction, the City conditioned the Project on meeting the accelerated construction schedule—i.e., three years. In response to public inquiries—including requests from appellants—the City then expanded the Draft EIR's discussion of the three-year construction schedule (i.e., accelerated construction schedule) in Erratas 2 and 6. This discussion confirmed that the three-year accelerated construction schedule would not result in new or more severe environmental impacts than a six-year schedule.

Nonetheless, appellants argue that the three-year construction schedule should have been analyzed in greater detail, including in a weekly construction schedule. Appeal at p. 10. Appellants ignore that the three-year accelerated construction schedule was analyzed in detail in the Draft EIR (*see e.g.* pp. I-38-39 [air quality impacts analysis]; IV-I-72 [Table IV.I-30, Construction Noise Levels Under Accelerated Construction Schedule]; IV-K-103 [Accelerated Construction Schedule Neighborhood Street Segment Impact Analysis]), Errata 2, and Errata 6—not just in Appendix C-3 to the Draft EIR, as appellants suggest on page 11 of their Appeal.

Appellants raised this same claim twice before the Los Angeles Superior Court, and lost both times. In rejecting appellants' claims, the Court noted that the Draft EIR's analysis of the accelerated construction schedule was legally adequate:

> [T]he draft EIR itself had a discussion of the impact of accelerating the construction schedule. That evidence was supplemented by

> information in Errata 2 and the more detailed August 3, 2015 letter responding to objections that the accelerated construction schedule had not been adequately studied. At the time the City certified the final EIR, the information regarding the accelerated schedule was fairly detailed. The City's methodology for measuring impact is based on a 'worst case' or peak scenario. Under that methodology, the significance of the day of greatest impact is analyzed. The evidence before the Council indicated that the compressed construction schedule, while resulting in more peak days in a shorter period of time, would not make more severe the environmental impact on a peak or worst case day. The court cannot conclude that it was an abuse of discretion to employ that methodology. Accordingly, there is substantial evidence in the record that compressing the construction schedule did not require recirculation of the EIR.

Ruling on the Merits, pp. 24-25.

In denying appellants' Motion for a New Trial, the Court similarly observed:

1) The Draft EIR itself has a discussion of the accelerated construction schedule, including Appendix C-3, which summarized the accelerated construction schedule assumptions, and Appendix P1, which included a traffic analysis for an accelerated schedule;

2) The Draft EIR's analysis was supplemented by information in Errata 2 and correspondence from Archer; and

3) The City's methodology for measuring construction impacts is based on a "worst day" analysis, and the accelerated construction schedule would not make more severe the environmental impact on the "worst case day."

Ruling on Motion for New Trial at pp. 7-8.

Appellants' concerns about overlapping activities (Appeal at pp. 10-11) are unfounded. The accelerated construction schedule analyzed in the Draft EIR assumed overlapping phases during a three-year span. This analysis showed that the three-year construction schedule "would not make more severe the environmental impact on a peak or worst case day." Ruling on the Merits at pp. 24-25. Further, as discussed in Erratas 2 and 6, Archer cannot increase activity beyond that analyzed on the peak day in the Draft EIR due to site constraints. *See* Errata 2 at pp. 12, 16, Errata 6 at pp. 7-8. In other words, the duration and intensity of excavation and haul, which is the most intense period of construction, is essentially the same under the three-year and six-year schedules. Errata 6 at p. 7, Exhibit 1 36-Month Construction Schedule (four months of excavation and haul under both schedules); *see* Eyestone Environmental Response to Letter from Environmental Audit, Inc. Regarding the Air Quality Analysis Included in the Environmental Impact Report for the Archer Forward: Campus Preservation and Improvement Plan at p. 4 (Aug. 3, 2015) ("Eyestone Memo") ("The six-year construction schedule already compressed the

excavation and haul to the quickest time possible given the Project design and site constraints."), attached hereto as **Exhibit E**. Appellants' recycled claims concerning "overlap" impacts continue to lack merit, and should be rejected.

Appellants also purport to attach declarations from their paid experts, Marcia Baverman and Tom Brohard, claiming that impacts would be worse under the three-years of construction. (Appeal at pp. 10-11.) Ms. Baverman and Mr. Brohard also submitted comments to the City during the Project's approval process, and submitted declarations in support of appellants' motion for new trial. Although their claims lack merit, they were nevertheless addressed in detail in a memorandum from the traffic consultant and in the Eyestone Memo. These responses confirmed that peak day construction traffic and air emissions would remain the same as that analyzed in the Draft EIR.

First, Mr. Brohard's assertions about construction traffic and equipment (Appeal at pp. 10, 12) were addressed in detail in a memorandum from the traffic consultant, Fehr & Peers. *See* Fehr & Peers, Response to (1) Letter from Tom Brohard; (2) Letter from Environmental Audit, Inc.; and (3) Letter from Susan Genis Regarding the Traffic Analysis in the Environmental Impact Report for the Archer Forward: Campus Preservation and Improvement Plan (Aug. 3, 2015) ("Fehr & Peers Memo"), attached hereto as **Exhibit F**. The Fehr & Peers Memo confirmed that peak day construction traffic would remain the same as that analyzed in the Draft EIR because the maximum number of construction truck and construction worker trips is unchanged. Fehr & Peers Memo at pp. 4-5; *see also* Errata 2 at pp. 9-16; Errata 6 at pp. 5-8; Errata 6, Appendix A, Matt Construction Technical Memorandum, at p. 1-3.

Second, Ms. Baverman's assertion about assertions about air emissions were addressed in the technical memorandum about air quality during the three-year schedule. This memorandum confirmed that the "construction timeframe was reduced based on an overall reduction in the scale of the Project..., by overlapping certain construction activities within each phase, and by expediting the sequencing of some construction activities. Even with this reduction in schedule length, the peak day of emissions would not change" because of site constraints limiting what can occur on a single day. Eyestone Memo at p. 2. For this reason, appellants' claim that impacts from construction equipment could be higher under the three-year construction schedule (Appeal at p. 12) also lacks merit. Eyestone's Memo is clear that the three-year construction schedule "assumes no increase in maximum numbers of construction equipment, grading, construction truck and construction worker trips, or construction hours of operation." Eyestone Memo at p. 3.

In addition, Mr. Brohard's and Ms. Baverman's purported concerns about overlap between North Wing Renovation work and Multipurpose Facility construction (Appeal at p. 11) were also addressed in detail in the technical memorandum, which confirmed that even where there is additional overlap, these activities would not result in emissions that exceed the peak days, given the much lower level of construction equipment required during these periods compared to the excavation and export phase for Phase 1. Eyestone Memo at p. 5. Appellants ignore that the Project originally proposed in the Draft EIR was reduced as it proceeded through the City process, and now requires less overall construction than described in the Draft EIR. *Id.* at p. 2.

Further, none of appellants' claims relate to the haul route in any way—and in fact, there were no changes to the haul route as a result of the Project's accelerated construction schedule. *See* Draft EIR at p. I-16 ("The preferred access route is Sunset Boulevard to the I-405 Freeway.").

G. There Are No "Late Filed" "Changes to the Project"

Appellants erroneously refer to "late-filed significant changes to the project." Appeal at pp. 12-13. There have been no changes to the Project since the City certified the EIR. While appellants point to alleged "changes" that occurred prior to EIR certification, these "changes" are (1) factually inaccurate; and (2) not relevant to the legal determination of whether supplemental environmental review is required for the haul route.

For example, appellants claim that Archer applied for the temporary classroom village on July 24, 2015. Appeal at p. 12. This is incorrect. Archer submitted its application for the temporary classroom village in 2014. Appellants are well aware that this argument is without merit, since they raised it and were corrected by the City during the Superior Court litigation. Nonetheless, appellants continue to make an argument they know is wrong. *See* City's Opposition to Petitioners' Motion for New Trial at p. 12 ("Petitioners' assertion that Archer applied for entitlements for temporary modular classrooms on July 24, 2015, is flatly wrong. Petitioners cite to plans stamped July 24, 2015, but they were actually *submitted* in 2014."), attached hereto as **Exhibit G**.

Appellants also argue that Errata 5 was posted on or about July 27, 2015, and thus constitutes a "late-filed significant change[ ]." Appeal at p. 12. Errata 5 discussed refinements to the Project made in response to oral and written testimony presented at the City Council's Planning and Land Use Management ("PLUM") Committee hearing that reduced the Project's potential impacts. These changes included reducing the square footage of Project buildings, reducing the size of the underground parking structure, raising the percentage of students who are required to ride the bus to school, and incorporating additional limits to the School's hours of operation.

Appellants also contend that Errata 6 was not prepared until August 2015, and was not circulated until the day of City Council approval on August 4, 2015. Appeal at p. 12. Errata 6 made corrections regarding the Project's potential health risks that clarified that the Project's health risks, which would still be less than significant. As a matter of law, that information does not constitute "significant new information" warranting recirculation. CEQA Guidelines, § 15088.5(a); *see also Beverly Hills Unified School Dist. v. Los Angeles Metro. Transp. Auth.* (2015) 241 Cal.App.4th 627, 664-666 (no recirculation required for addendum describing revised construction schedule that did not cause new significant air quality impacts.).

Moreover, appellants ignore that Errata 6 merely responded to arguments they made merely days before. While Petitioners wanted to create an endless loop of comment-delay-comment-delay, the City was justified in approving the Project with the clarifications provided in Errata 6. *See Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.* (1993) 6 Cal.4th

1112, 1132 (Public Resources Code section 21091.1 is not intended to "promote endless rounds of revisions and recirculations of EIRs.").

Appellants also refer to a letter from Archer's counsel from June 15, 2015, concerning the new OEHHA guidance. Appeal at p. 12. This letter responded to appellants' own correspondence on this issue. Appellants cannot reasonably fault the City and Archer for addressing their critiques. Notably, this argument was also raised before the Court in appellants' Memorandum of Points and Authorities in Support of Petitioner's Motion for New Trial: "A 35-page letter from Archer's counsel submitting a June 15, 2015 email allegedly disclaiming the need to use new OEHHA guidance and cited by the Court in its Decision was not submitted to the City until August 3, 2015." The Court held that this email "does not show that a new significant environmental impact would result from the project, or that the Draft EIR was so inadequate that public comment was meaningless." Ruling on Motion for New Trial at p. 9.

Appellants argue that Archer did not provide a current phase diagram showing the overlaps of hauling with other construction traffic after adopting the accelerated construction schedule. As described above, the length or intensity of Phase 1 excavation and haul was not changed when the Project's construction schedule was shortened from six years to three years, so no changes to the haul-related traffic analysis was required. *See* Errata 6 at pp. 6-8. All potential impacts that would occur under the shortened construction schedule were analyzed in the Draft EIR's analysis of an accelerated construction schedule that assumed overlapping phases during a three-year span. Indeed, the Court concluded the City had substantial evidence to support its conclusion that the EIR did not need to be recirculated because the three-year construction schedule did not create new significant impacts. Ruling on the Merits at p. 24. The Court noted that the Project's "draft EIR itself had a discussion of the impact of accelerating the construction schedule. That evidence was supplemented by information in Errata 2 and the more detailed August 3, 2015 letter responding to objections that the accelerated construction schedule had not been adequately studied. At the time the City certified the final EIR, the information regarding the accelerated schedule was fairly detailed." *Id.* Thus, no recirculation or new analysis was or is required.

Finally, appellants contend that Archer has not presented information as to how often it will need flagmen to block traffic to allow haul trucks to reach the 405 Freeway. Appeal at pp. 12-13. The Haul Route approval and project mitigation measures require flaggers be used to control trucks moving into and out of the Project Site. Final EIR at p. III-657. Archer will ensure flaggers are used as appropriate to mitigate its traffic impacts pursuant to the EIR's mitigation measures. Indeed, Mitigation Measure K-5 requires that Archer prepare a detailed construction management plan prior to the commencement of construction. In addition, Mitigation Measure K-6 requires that Archer submit a Construction Parking Plan to LADOT 30 days prior to the commencement of construction. Likewise, Mitigation Measure K-7 requires that Archer submit a Pedestrian Routing Plan to LADOT prior to the commencement of construction. Mitigation Measures K-5 and K-6 were completed and approved by LADOT in October 2016. Mitigation Measure K-7's Pedestrian Routing Plan is included as Section 3.4 in the Construction Traffic Management Plan, and requires that worksite traffic control plans be prepared whenever sidewalks must be closed.

H. There Are No New or More Severe Public Safety Impacts

Appellants allege that the use of double-bottom haul trucks along Sunset Boulevard could result in public safety impacts. Appeal at p. 13. These impacts were addressed in detail in the EIR, which analyzed and mitigated potential construction impacts to bicycle, pedestrian, and vehicular safety. *See* Final EIR at p. I-113. For example, Mitigation Measure K-10 provides: "Project construction activities shall not endanger passenger safety or delay student drop-off or pick-up due to changes in traffic patterns, lane adjustments, altered bus stops, or traffic lights." *Id.* at p. I-127. Likewise, Mitigation Measure K-12 states: "If necessary, appropriate traffic controls (e.g., signs) shall be installed to ensure pedestrian and vehicular safety during construction. Crossing guards shall be provided when the safety of students may be of concern relative to construction activities at impacted school crossings." *Id.* at p. I-128. Vehicle speed will be reduced to the extend feasible on the Project Site to ensure the safety of students. *Id.* at p. III-295.

The Final EIR also addressed comments regarding public safety issues, similar to those raised by appellants now. *See e.g.* Final EIR at pp. III-494, 509. "The Project would include implementation of Mitigation Measures K-4 through K-14 to address potential traffic and access issues during construction. Among other things, the mitigation measure requires that flaggers be used to control trucks moving into and out of the Project Site." *Id.* at p. III-657. Thus, the EIR adequately analyzed and mitigated potential safety impacts resulting from project construction, and appellants present no new information warranting additional analysis.

The Board's haul route approval imposes even more safety requirements. For example, Condition 6 requires "Truck Crossing" warning signs to be placed 300 feet in advance of the exit in each direction, and Condition 7 requires that flag attendants with two-way radios assist with staging and moving trucks in and out of the project area during hauling hours. Board of Building and Safety Commissioners Haul Route Approval, File No. 17003 at pp. 6-7 (May 16, 2017). Additional flag attendants may be required to mitigate any hazardous situations. *Id.*, p. 7.

In addition, as every Project must do, Archer will comply with all applicable state laws governing the use of haul trucks. For example, the California Vehicle Code governs haul vehicles and provides restrictions to ensure safe operation of such vehicles. Vehicle Code section 35551.5 provides an exemption for dump trucks for highway weight requirements. Vehicle Code section 23114 provides regulations for the prevention of spill and transportation of aggregate materials to ensure that dump vehicles are properly equipped to handle large loads, including rock fragments, pebbles, sand, dirt, gravel, cobbles, crushed base, asphalt, and other similar materials. Cal. Veh. Code § 23114(b), (d).

I. Conclusion

Appellants have not raised any issues warranting a delay in this proceeding. There have not been any changes to the Project since the City certified the EIR, nor are there changes in circumstances that require revisions to the EIR, despite appellants' arguments to the contrary. In addition, appellants cannot point to any new information that "was not known or could not have been known" at the time of EIR certification, and instead seek to reargue issues they have raised time and time again in the administrative process and in the Superior Court in an effort to further delay the Project. Appellants' appeal should be denied.

EXHIBIT A

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL JUDICIAL DISTRICT

SUNSET COALITION; BRENTWOOD RESIDENTS COALITION; BRENTWOOD HILLS HOMEOWNERS ASSOCIATION; and DAVID AND ZOFIA WRIGHT, Petitioners, v. CITY OF LOS ANGELES, Respondent. ARCHER SCHOOL FOR GIRLS, DOES 1-10, Real Party in Interest.	CASE NO. BS157811 Assigned to: Hon. Mary H. Strobel **THE ARCHER SCHOOL FOR GIRLS' OPPOSITION TO PETITIONERS' MOTION FOR NEW TRIAL AND JOINDER IN CITY'S OPPOSITION** (California Environmental Quality Act and Los Angeles Municipal Code) New Trial Motion Hearing: Date: December 13, 2016 Time: 9:30 a.m. Dept.: 82 Writ Hearing Held: July 28, 2016 Petition Filed: September 9, 2015

The Archer School for Girls joins in the City of Los Angeles' Opposition to Petitioners' Motion for New Trial. Petitioners have presented no arguable basis for a new trial.

Petitioners are a very small group – the owners of just one adjacent home and a handful of unidentified people – who stand in opposition to the vast majority of their community. The record shows that nearly every established community organization that expressed concern with the campus improvement project worked with Archer and the City and, in the end, supported Archer's campus improvements. This was made possible by Archer's willingness to accept a vast array of the strictest and costliest mitigation measures the City ever imposed on a school.

Without regard for the needless expense and delay their actions are causing Archer, Petitioners filed this inappropriate new trial motion manufacturing the flimsiest of excuses for doing so. Having already had this Court consider and address their claims, Petitioners now ask for a "do over" merely to reargue the same issues and facts the Court already considered. That is the role of the appellate courts, not the basis for a new trial motion. (See *Newman v. Los Angeles Transit Lines* (1953) 120 Cal.App.2d 685, 693 ["New trials cannot be ordered merely because a dissatisfied litigant requests it."].)

Petitioners put great importance on their speculation about a future appellate court ruling in an unrelated case, *Mission Bay Alliance*, pending before the First Appellate District, Case No. A148865. Petitioners hope that the appellate court in *Mission Bay Alliance* will reverse the trial court's decision in that case, which was in accord with this Court's decision on the issue of a revised health risk assessment protocol. Petitioners further hope that, in such a reversal, the appellate court will write something helpful to them in this case with its different facts and record. Petitioners' double speculation is not a basis for a new trial. (See Code Civ. Proc., § 657 [listing statutory grounds for a new trial].)

Petitioners also violate court rules by presenting a trial court opinion in another unrelated case, *Kottler v. City of Los Angeles*, Los Angeles County Superior Court Case No. BS 154184, as authority in this case. A trial court decision is not precedential authority for this Court to consider. (Cal. Rule of Court 8.1115.) Further, it is not even final as the City has appealed from it and, in any event and as the City details, it supports the City's positions in this case.

Lastly, Petitioners violate well-settled rules of administrative mandamus by presenting extra-record "evidence" Petitioners themselves manufactured more than a year after the City's proceedings ended. Petitioners cite no authority supporting their improper attempt to create allegedly "new" factual issues in the guise of "evidence" supporting a new trial motion. Were Petitioners' improper efforts to be rewarded, it would encourage such gamesmanship from future losing litigants to the needless burden of the courts and the other parties.

For the foregoing reasons and those set forth in the City's Opposition, Archer respectfully requests that the Court deny Petitioners' motion for a new trial.

Dated: November 28, 2016

Respectfully submitted,

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PROOF OF SERVICE

I am employed in the County of San Diego, State of California. I am over the age of 18 years and not a party to this action. My business address is Latham & Watkins LLP, 12670 High Bluff Drive, San Diego, CA 92130.

On **November 28, 2016**, I served the following document described as:

THE ARCHER SCHOOL FOR GIRLS' OPPOSITION TO PETITIONERS' MOTION FOR NEW TRIAL AND JOINDER IN CITY'S OPPOSITION

BY OVERNIGHT MAIL

I am familiar with the office practice of Latham & Watkins LLP for collecting and processing documents for overnight mail delivery by Federal Express. Under that practice, documents are deposited with the Latham & Watkins LLP personnel responsible for depositing documents in a post office, mailbox, subpost office, substation, mail chute, or other like facility regularly maintained for receipt of overnight mail by Federal Express; such documents are delivered for overnight mail delivery by Federal Express on that same day in the ordinary course of business, with delivery fees thereon fully prepaid and/or provided for. I deposited in Latham & Watkins LLP's interoffice mail a sealed envelope or package containing the above-described document and addressed as set forth below in accordance with the office practice of Latham & Watkins LLP for collecting and processing documents for overnight mail delivery by Federal Express:

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I declare that I am employed in the office of a member of the Bar of, or permitted to practice before, this Court at whose direction the service was made and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 28, 2016 at San Diego, California.

Alison L. Montera

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL JUDICIAL DISTRICT

SUNSET COALITION; BRENTWOOD RESIDENTS COALITION; BRENTWOOD HILLS HOMEOWNERS ASSOCIATION; and DAVID AND ZOFIA WRIGHT,

Petitioners,

v.

CITY OF LOS ANGELES,

Respondent.

ARCHER SCHOOL FOR GIRLS, DOES 1-10,

Real Party in Interest.

CASE NO. BS157811

Assigned to: Hon. Mary H. Strobel

REAL PARTY IN INTEREST THE ARCHER SCHOOL FOR GIRLS' OPPOSITION BRIEF

(California Environmental Quality Act and Los Angeles Municipal Code)

Writ of Mandate Hearing:
Date: July 28, 2016
Time: 1:30 p.m.
Dept.: 82

Petition Filed: September 9, 2015

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I. INTRODUCTION

The Archer School for Girls is an independent college preparatory school founded in 1995. Archer is the only non-sectarian girls school in West Los Angeles, offering multidisciplinary classes and extracurricular activities to help girls build skills to become tomorrow's leaders. In 2011, after more than a decade at its Sunset Boulevard location, Archer applied to the City to make campus improvements so its students could have facilities like those many other public and private schools enjoy. These campus improvements will help Archer fulfill its mission as a nonsectarian school serving students of diverse ethnic, racial, and socioeconomic backgrounds throughout Los Angeles.

Committed to remaining a good neighbor, Archer worked closely with residents, community leaders, and City officials to address all reasonable concerns. Archer agreed to ***hundreds*** of conditions and mitigation measures to balance having a campus that fosters a 21st century education with ensuring that its neighbors are protected. Archer's campus improvements have been carefully designed and conditioned to prevent incompatibilities between the school and surrounding uses. As a result, the project's only significant and unavoidable impacts are ***temporary*** construction impacts. Even those have been minimized by strict conditions and a short construction schedule.

Archer made major concessions and worked hard to build a broad community consensus supporting its much-needed campus improvements, ultimately earning the support of its closest neighbors, the largest and best-respected community organizations, and the City's elected leaders. Now just a small group opposes Archer's modernization plans, mirroring a similarly small group that the Court of Appeal characterized as "NIMBYs" when rejecting previous land use litigation challenging the City's original campus approvals.[1]

Archer has been a good neighbor since opening at this location in 1998. Even then the City acknowledged that Archer extensively negotiated with the community, stating that Archer's CUP "represents probably the toughest set of conditions ever imposed on a Private school." (AR412:16604.) In the years since then, the City has consistently found Archer to be in compliance with its conditions (AR664:19776-19802), stating that "***compliance with the terms and Conditions of Archer's conditional use . . . has been exemplary, complete and effective.***" (AR893:30855, 896:30943-44.)

[1] *See* Request for Judicial Notice, Exhibits A-C.

Archer has also gone above and beyond its obligations, voluntarily contributing to regional traffic improvements. (AR896:30942 [noting Archer's $1M contribution in local street improvements].) Under its new CUP, Archer will comply with even more stringent conditions in the years to come.

Oddly, Petitioners try to use Archer's compromises with the most respected community representatives to attack the school. The record shows that this project underwent extraordinarily stringent and detailed environmental review before the City's elected officials unanimously approved the compromise campus improvements. The environmental review process worked exactly as it should have, with the project that the City ultimately approved reflecting a balance of neighbors' concerns and the school's mission and needs. This small group of Petitioners simply disagrees with the City's policy decision that Archer's benefits outweigh the remaining temporary construction impacts. That is no basis to upset the City's considered judgment.

Petitioners' claims under the California Environmental Quality Act ("CEQA") (Pub. Resources Code, §§ 21000, et seq.) are unfounded. Petitioners' hyper-technical arguments about traffic and air quality impacts do not undermine the substantial evidence supporting the City's extensive analysis and reasonable conclusions. The City properly analyzed a reasonable range of project alternatives and adopted additional mitigation measures and conditions to avoid and reduce project impacts. Petitioners' assertions that the City's actions violated the Los Angeles Municipal Code ("LAMC") also lack merit. As detailed in the City's Opposition Brief, the City acted consistently with LAMC section 12.24 and no variance was required.

The City followed its Municipal Code and CEQA. The Petition should be denied.

II. CEQA STANDARD OF REVIEW

The court reviews the City's decisions under CEQA only for prejudicial abuse of discretion. (Pub. Resources Code, §§ 21168, 21168.5; *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 426 ("*Vineyard*"); *Western States Petroleum Assn. v. Super. Ct.* (1995) 9 Cal.4th 559, 568 ("*WSPA*").) Abuse of discretion occurs only if the City did not proceed in a manner required by law or if its decision was not supported by substantial evidence. (*Ibid.*) The court independently reviews the City's compliance with CEQA's procedural requirements but defers to its

factual decisions if they are supported by any substantial evidence. (*Vineyard, supra*, 40 Cal.4th at p. 435.) An EIR is presumed adequate and petitioners have the burden of proving otherwise. (*Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899, 924-925; Pub. Resources Code, § 21176.3; see also Evid. Code, § 664.) Error is not reversible unless actual prejudice is shown. (See e.g., *Neighbors for Smart Rail v. Expo. Metro Line Const. Auth.* (2013) 57 Cal.4th 439, 463; *San Francisco Baykeeper v. Cal. State Lands Com.* (2015) 242 Cal.App.4th 202, 230).

Here, Petitioners' CEQA arguments challenge the City's factual determinations, such as the methodology employed, the significance conclusions reached, the feasibility of alternatives, the amount and type of analyses to include in the EIR, and the effectiveness of mitigation measures. A long line of cases establishes that these types of challenges trigger the deferential substantial evidence standard of review.[2] The substantial evidence standard also applies to the City's decision that the EIR did not need to be recirculated. (*Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.* (1993) 6 Cal.4th 1112, 1133-1134 ("*Laurel Heights II*").)

Substantial evidence means "enough relevant information and reasonable inferences from that information that a fair argument can be made to support a conclusion, even though other conclusions might be reached." (Guidelines, § 15384(a).) "In reviewing for substantial evidence, the reviewing court 'may not set aside an agency's approval of an EIR on the ground that an opposite conclusion would have been equally or more reasonable,' for on factual questions, [the court's] task 'is not to weigh conflicting evidence and determine who has the better argument.'" (*Vineyard, supra*, 40 Cal.4th at p. 435, quoting *Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 393 ("*Laurel Heights I*").) Rather, the court must resolve all reasonable doubts and any conflict in evidence in favor of the agency's decision. (*Laurel Heights I, supra*, at p. 393; *Citizens for Responsible Equitable Environmental Development v. City of San Diego* (2011) 196 Cal.App.4th 515, 522-523.) If more than one inference can be drawn from the evidence "'[a] reviewing court is without power to substitute its deductions'" for those of the agency. (*WSPA, supra*, 9 Cal.4th at p. 571.)

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[2]See, e.g., *City of Maywood v. Los Angeles Unified School Dist.* (2012) 208 Cal.App.4th 362, 386 (factual challenges must be rejected if substantial evidence supports the agency's decision as to those matters); *Cal. Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 986 ("*CNPS*") (same).

III. THE CITY COMPLIED WITH CEQA

The City extensively analyzed, reduced in scope, and mitigated the Project over its three-year public process. Petitioners and many others extensively participated in the City's CEQA review and shaped the approved Project. Nonetheless, Petitioners criticize the City's review of two impact areas – traffic and air quality – and the Project's alternatives analysis. Petitioners' arguments are merely a disagreement with the City's methodology and conclusions, which cannot amount to a failure to comply with CEQA. (See *Sierra Club v. Cty. of Orange* (2008) 163 Cal.App.4th 523, 544-545.) Substantial evidence supports the City's analysis and conclusions, so they cannot be upset.

A. Traffic Impacts Were Appropriately Analyzed and Mitigated

Archer contributes very few trips to Sunset Boulevard. The majority of Archer students ride the bus to school, as required by one of the strictest transportation conditions of any school in Los Angeles. Under the new CUP, that already stringent requirement will become even more so. In the future, 76% of Archer's students will ride the bus and the others will carpool with at least three students. (AR4:16 [new CUP], 904:31389-90 [1998 CUP].) With that obligation, ***Archer will generate no more than two percent of rush hour traffic on Sunset.*** (AR16:1332, 87:12636.)

The City conducted a rigorous traffic analysis to ensure that Archer's potential impacts were disclosed and mitigated, eliminating any significant impacts from daily operations. (AR36:6503-6639 [Draft EIR], 56:9246-10810 [1,500+ page traffic analysis], 11481-11509 [DOT traffic assessment], 16:1161-1163 [Final EIR traffic tables].) Seeking minor "gotcha" points, Petitioners quibble with that analysis on narrow issues. An opponent's methodological nitpicking is not legal error. (*Sierra Club, supra*, 163 Cal.App.4th at pp. 544-545 ["mere fact plaintiff disagrees with the methodology . . . to measure the project's potential traffic impacts . . . does not require invalidation" of the EIR].)

The City Used An Appropriate Baseline. Petitioners disagree with one of the assumptions in the City's traffic analysis. Petitioners argue that the City erred in assuming that local street traffic volumes would decrease once the now-completed 405 Freeway HOV project was done. (Opening Brief ("O.B."), pp. 8-9.) Petitioners are wrong on the facts and the law.

During the City's approval process the 405 was being widened. (AR 16:6509.) This major construction project significantly altered area traffic patterns but just for the temporary construction

period. Accordingly, the City concluded that ***only*** comparing Archer's operational traffic impacts to temporary conditions that would not exist when the Project was implemented would be misleading. (AR16:6519-6520.) Therefore, the City analyzed traffic impacts ***two ways*** – comparing the Project to the existing, temporarily altered traffic conditions (AR16:6573-6574) and also comparing it to the conditions that would be present when the 405 widening was completed and the Archer Project implemented. ***Under either scenario, operational traffic impacts on neighborhood street segments will be insignificant.*** (AR16:6573-6578.) The City did what Petitioners argue it should have done – analyzed impacts compared to existing conditions – and nothing more is needed. (O.B., p. 8.)

Further, even had the City only compared the Project's traffic impacts to a "modified baseline," that would have been fine under CEQA. While the baseline for environmental review is ***normally*** existing conditions, agencies are free to deviate from existing conditions when a change in the physical environment will occur before project implementation. (Cal. Code Regs., tit. 14 ("Guidelines"), § 15125(a); *Neighbors*, *supra*, 57 Cal.4th at pp. 452-453.)

Substantial evidence supports the City's assumptions and methodology regarding the "modified baseline." (*Citizens for a Sustainable Treasure Island v. City and Cty. of San Francisco* (2014) 227 Cal.App.4th 1036.) Evidence of pre-405 construction conditions used to project post-construction conditions was based on traffic patterns and a comparison of traffic counts on Sunset ***before*** and during 405 construction activity. (AR16:1349-1357 [2011 and 2014 traffic comparisons], 16:1349-1357 [showing traffic volumes 50% less on street segments pre-405 construction][3], 1353, 1355 [drivers will return to their original routes once 405 construction completed], 56:9273-9274, 9381-9382 [traffic study].) It was perfectly fine for the EIR to include ***additional*** analysis reflecting a conservative approximation of traffic conditions when the 405 construction was to be completed. (AR16:1076, 1521, 1626, 6519-6520, 6569.) In fact, the City's modified baseline actually results in a calculation that yields a higher percentage of traffic attributable to Archer, increasing the likelihood that the modified analysis would show a significant impact from the school. (AR16:2245-2246.) The City

[3] Contrary to Petitioners' argument, the City concluded that this existing data was sufficient to analyze the Project's traffic and that a new traffic study did not have to be done after the 405 Freeway project's completion. Given the robust analysis of future traffic impacts in the EIR, no additional study is necessary. (See *Laurel Heights I, supra*, 47 Cal.3d at p. 416 [EIR need not perform every study recommended by commenters].)

was entitled to rely on its experts' conclusions that the modified analysis was appropriate. (*Save Our Peninsula Com. v. Monterey Cty. Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 120 [agency may choose between conflicting opinions or methodologies].) The City's dual approach was extremely conservative and was entirely consistent with CEQA. Petitioners are wrong when they argue that even more analysis was required.

Petitioners are also wrong when they imply that the EIR omitted "current baseline traffic volumes." (O.B., p. 8.) The Draft EIR included an existing conditions analysis. The City appropriately adjusted data to reflect anticipated post-405 construction conditions. (AR16:6518-6519.)

Substantial Evidence Supports the City's Conclusion that Mitigation Measures Will Work. Petitioners take issue with a single mitigation measure that limits the number of trips generated by guests arriving at or departing from certain events (AR42-43), arguing that it is not enforceable. Substantial evidence demonstrates the effectiveness and enforceability of Mitigation Measure K-2 ("MM K-2"), which sets strict vehicle-trip limits for school events. (AR462-463 [MM K-2]; see *Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011, 1027 ["where substantial evidence supports the approving agency's conclusion that mitigation measures will be effective, courts will uphold such measures against attacks based on their alleged inadequacy"]; *Assn. of Irritated Residents v. Cty. of Madera* (2003) 107 Cal.App.4th 1383, 1398 [agency's role is to weigh differing opinions and find which mitigation measures are sufficient].)

There are many tools to ensure MM K-2's effectiveness, including an independent monitor to verify compliance (AR4:21 [Condition 21(c)]), a parking reservation system to implement the trip caps, and a ***full-time*** Transportation and Parking Coordinator. (AR4:16-17, 19.) To prevent parking on residential streets, faculty, staff, and guests must have a pre-issued walking, bicycle, or transit pass, to be confirmed by transportation and parking monitors during weekdays and events. (AR4:17, 19.) If an event is expected to attract more than the allowed number of vehicles, Archer must provide off-site parking, addressing Petitioners' unsupported worry about visitors being turned away if parking is full. (AR18; O.B., p. 8.) Archer must also punish violators and deny entry to visitors who park on neighborhood streets. (AR4:18-19.) Given Archer's long-standing "exemplary" (AR893:30855)

compliance with its CUP, the City was more than justified in concluding that Archer's visitors will abide by these rules.[4] (See AR78:12178 ["traffic reductions – are groundbreaking".)

Petitioners argue that traffic will extend into non-peak hours to avoid the trip caps. (O.B., p. 8.) That argument makes no sense. The CUP conditions limit the number of parking passes issued for an "event" and, therefore, limit the number of arrivals and departures at all times (peak and non-peak hours). (AR116:13185.) Further, the latest events start no later than 7:00 p.m. and, therefore, would be subject to the trip caps. (AR4:48-50.) The parking pass quota cannot be avoided by arriving during "off-peak" hours. Either a visitor has a pass or does not.

There is No Cumulative Traffic Impact. Petitioners misleadingly cite the Final EIR to argue that the Project would result in significant cumulative traffic impacts. (O.B., pp. 8-9.) As Petitioners know well, this typographical error was identified and corrected. (AR35D:5595 [Errata 4].)

B. Construction Air Quality Impacts Were Adequately Disclosed and Mitigated

Petitioners wrongly allege that the Project's construction will result in significant air quality impacts. (O.B., p. 9.) Substantial evidence supports the City's conclusion to the contrary. (AR16:985, 1006, 5495, 32:4998-5254 [Air Quality Worksheets], 35F:5667-5669, 5679-5698.)

Petitioners cite the Draft EIR to support their claim of significant air quality impacts (O.B., p. 9) but ignore that the Final EIR incorporated refinements and additional mitigation that ***eliminated*** the possibility of such impacts. (AR985 [additional measures reducing regional air quality impacts to less than significant].) Substantial evidence, including an assessment of short-term diesel particulate emissions conducted in accordance with federal and state agency guidance, supports the City's conclusion that the Project will ***not*** increase cancer risks above the City's or the South Coast Air Quality Management District's thresholds of significance. (AR16:1970-1972, 35E:5603-5604, 35F:5667-5668, 36:6042-6046.) This analysis was conservative in that it assumed outdoor exposure for the entire length of construction and did not account for any reductions from time spent indoors, where air quality tends to be better. (AR35F:5668.) In the face of this evidence, Petitioners exclusively rely on

[4] See, e.g., *Pittman v. Boiven* (1967) 249 Cal.App.2d 207, 219 [finding jury instruction of the right to assume others with comply with law proper]; *Cooke v. Super. Ct.* (1989) 213 Cal.App.3d 401, 417, n. 14 [declining to assume a future failure to comply with the law] (*overruled on other grounds*).) Archer also signed a covenant giving neighbors the right to enforce traffic mitigations. (AR78:12178-12179 [Councilmember Bonin testimony].)

their own expert to support their higher estimate. (O.B., p. 9-10; *Citizens For a Megaplex-Free Alameda v. City of Alameda* (2007) 149 Cal.App.4th 91, 113 [Petitioners' failure to set forth evidence supporting the City's position "is deemed a concession that the evidence supports the findings"].) Not only did the Final EIR identify "multiple methodology flaws" in Petitioners' expert's calculations, but the City was well within its discretion to rely on its own experts' conclusions and reject Petitioners' expert. (AR16:1800-1802; see *Save Our Peninsula Com., supra*, 87 Cal.App.4th at p. 120.)

Petitioners also argue that the City should have required additional mitigations to offset cancer risks. (O.B., p. 10.) First, the City imposed mitigation measures to address temporary construction air quality impacts, including prohibiting idling for over five minutes (which Petitioners wrongly allege the City rejected). [5] (AR35F:5668 [requiring Tier 3 or 4 construction equipment; restricting truck and vehicle idling].) Second, because the Project would not cause any significant air quality health impacts, no ***additional*** mitigation was required. (Guidelines, § 15126.4(a)(3) ["Mitigation measures are not required for effects which are not found to be significant."].)

Petitioners also argue that a volunteered condition, PDF B-2, to prepare an updated health risk assessment ("HRA") prior to using heavy-duty construction equipment, constitutes impermissibly deferred mitigation.[6] (O.B., p. 10.) PDF B-2 is not a mitigation measure because there is no significant impact that it is mitigating so Petitioners' arguments are misplaced. (Guidelines, § 15126.4(a)(3); *Endangered Habitats League, Inc. v. Cty. of Orange* (2005) 131 Cal.App.4th 777, 794 [rejecting argument that later study was deferred mitigation because impacts were "less than significant before mitigation, as well as after it, so we cannot see how waiting for this study makes any difference"].)

Even if PDF B-2 were considered a mitigation measure, courts have long recognized that a mitigation measure requiring future studies is appropriate if it sets specific performance standards even if all specifics are not known at the time of approval. (*Defend the Bay v. City of Irvine* (2004) 119

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[5] Petitioners cite *Communities for a Better Envt v. City of Richmond* (2010) 184 Cal.App.4th 70 ("*CBE*"), to argue that these measures should have been provided in the Draft EIR. (O.B., p. 10.) Unlike *CBE*, where the Draft EIR did not provide ***any*** analysis of the relevant environmental impact, the Draft EIR here included a detailed analysis of the air quality impacts, offering ample information for public comment on potential mitigation.

[6] PDF B-2 was offered in response to Petitioners' late comments before the PLUM Committee asserting alleged air quality impacts. (AR85:12541-12542 [hearing testimony].) The addition of PDF B-2 demonstrates the responsiveness of Archer and the City to the Petitioners' concerns.

Cal.App.4th 1261, 1275-1276 [upholding measure with objective performance criteria].) Exact details on meeting the performance standards may be determined after further study has been conducted. (*North Coast Rivers Alliance v. Marin Mun. Water Dist.* (2013) 216 Cal.App.4th 614, 630-631.) PDF B-2 details a reduced emissions performance standard and a specific menu of options for meeting it. (See AR35E:5611-5612; *Endangered Habitats League, Inc., supra*, 131 Cal.App.4th at 794-796 [no deferral when agency "commit[ted] to mitigation and set out standards for a plan to follow"]; *City of Hayward v. Bd. of Trustees of Cal. State Univ.* (2015) 242 Cal.App.4th 833, 855 [traffic plan enumerated specific measures for evaluation, incorporated quantitative criteria and deadlines, and included a monitoring program].)

C. Alternatives Were Adequately Analyzed and Properly Rejected as Infeasible

1. The Project Objectives Allowed a Reasonable Range of Alternatives

Under CEQA, a lead agency must consider a "reasonable range" of alternatives "which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project." (Guidelines, § 15126.6(a); see also *id.*, § 13053.5(a).) An agency need not consider "every conceivable alternative" and may determine how many are a reasonable range. (*Id.*, § 15126.6(a); *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 566.) An agency's selection of alternatives will be upheld unless "'manifestly unreasonable.'" (*CNPS, supra*, 177 Cal.App.4th at p. 988, *quoting Fed. of Hillside & Canyon Assns. v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1265.)

Here, "[t]he underlying purpose of the Project is to modernize the facilities and provide Archer with a campus that can maximize[7] the fulfillment of its educational mission now and in the future." (AR36:5866-5867.) This objective was sufficiently broad to enable the City to analyze five alternatives, including two "no project" alternatives and three action alternatives: (1) a reconfigured site plan, (2) a reduced Project site, and (3) a reduced grading alternative. (AR36:6687-6826.) Thus, the City

[7] Petitioners object to the City's use of the word "maximize" in the Project objectives. (O.B., p. 11.) There is no prohibition under CEQA on using the word "maximize" in an objective. (See *Citizens Opposing a Dangerous Envt v. County of Kern* (2014) 228 Cal.App.4th 360, 367-368 [upholding EIR with project objective to "[m]aximize energy production. . ."].) "Maximizing" the functionality and use of facilities for educational purposes is consistent with Archer's educational mission. (AR36:5866-5870, 87:12626 [describing Archer's dynamic classes, such as engineering, design, film making and robotics].)

appropriately used the objectives to "develop a reasonable range of alternatives to evaluate in the EIR" and they were not too narrow. (Guidelines, § 15124(b); *In re Bay-Delta Programmatic EIR Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1166 [alternatives analysis may be structured "around a reasonable definition of underlying purpose and need not study alternatives that cannot achieve that basic goal"]; *Sierra Club v. Cty. of Napa* (2004) 121 Cal.App.4th 1490 [adopting applicant's objective of constructing a new winery facility that consolidates operations, minimizes costs and reduces highway usage]; *Save San Francisco Bay Assn. v. San Francisco Bay Conservation and Development Com.* (1992) 10 Cal.App.4th 908, 929 [lead agency may limit alternatives to those "which could feasibly accomplish the project's purpose"].)

2. Alternatives 2 and 5 Were Properly Rejected as Infeasible

Where a project will result in significant and unavoidable environmental impacts, a lead agency must adopt a less-impactful alternative unless the alternative is "infeasible." (Pub. Resources Code § 21081(a)(3); Guidelines, § 15091(a)(3).) A lead agency may properly reject an alternative as "infeasible" for a number of reasons, including if it is inconsistent or does not satisfy a project objective. (See *San Diego Citizenry Group v. Cty. of San Diego* (2013) 219 Cal.App.4th 1, 18 [rejecting alternative that would not achieve key objective to same extent as proposed project]; *CNPS, supra*, 177 Cal.App.4th at p. 1002 [alternatives infeasible because they would not satisfy key objectives].) An agency's infeasibility findings are "entitled to great deference." (*CNPS,* at p. 997.)

Despite the fact that the City analyzed a reasonable range of alternatives, Petitioners allege that the Project's objectives were too narrow because the City relied on them, in part, in rejecting Petitioners' favored alternatives[8] – Alternatives 2 and 5. (O.B., pp. 11-12.) Petitioners allege that the City rejected these alternatives because they were "less profitable"[9] or economically infeasible. Petitioners cite *Uphold Our Heritage v. Town of Woodside* (2007) 147 Cal.App.4th 587, 599, where a City improperly rejected an alternative as economically infeasible when there was insufficient evidence

[8] Petitioners claim, without citation, that the community "overwhelmingly supported" Alternative 2 (O.B., p. 11) but fail to note that Alternative 2 was a "no project" alternative. In contrast, the record shows that it was the approved Project that received broad community support. (AR85:12564-12565, 12579, 12628.)

[9] Petitioners assert without citation that Archer is a for-profit business. (O.B., p. 11.) That odd claim is entirely false. Archer is a non-profit 501(c)(3) organization. (AR81:12304, 127:13401, 16:3040.)

of costs. (O.B., p. 11.) Here, however, ***the City did not reject the alternatives due to costs***. Instead, after carefully considering Alternatives 2 and 5 and based on that substantial evidence, the City concluded that the alternatives would not meet ***many*** of the Project's objectives, including providing dedicated space for visual and performing arts (Alternative 2) and athletics (both), and meeting environmental sustainability goals (both). (AR36:6727-6729, 6821-6824.) The City appropriately rejected these alternatives as infeasible for failing to meet key Project objectives. (*CNPS, supra*, at pp. 998, 1001-1003 [upholding rejection of alternatives for failing to meet objectives; City may balance competing interests in making feasibility findings].)

3. The EIR Did Not Have To Study Splitting Up The School

Wishing that the Project's temporary construction impacts would occur in someone else's backyard, Petitioners argue that the City should have analyzed forcing Archer to split-up its school by putting the new facilities elsewhere. (O.B., pp. 12-13.) In fact, the City considered analyzing alternate sites and correctly concluded that such alternatives were infeasible because they would not meet the basic Project objectives and did not need further analysis. (AR16:1403-1405, 36:6689.)

There is no requirement that alternative sites be explored. (*CNPS, supra*, 177 Cal.App.4th at p. 993; *Mira Mar Mobile Cmty. v. City of Oceanside* (2004) 119 Cal.App.4th 477, 491 [lead agency has discretion to evaluate on-site or off-site alternatives or both].) An agency may properly determine that no feasible locations exist either because basic project objectives cannot be achieved at another site or because there are no sites meeting the criteria for feasible alternate sites. (*City of Long Beach v. Los Angeles Unified School Dist.* (2009) 176 Cal. App. 4th 889, 921.)

Alternatives presented in an EIR must be able to "feasibly attain most of the basic objectives of the project." (Guidelines, § 15126.6(a).) As explained in the EIR, an alternate site would not meet most of the basic Project objectives. (AR16:1403-1405, 36:6689.) The Project objectives are closely tied to improving existing operations by creating a cohesive and integrated campus environment with new, state-of-the-art and technologically advanced facilities. (AR36:5866-5870.) The City found that developing the Project on an alternate site would not achieve these objectives or ensure the continued preservation of the historic Main Building. (AR16:1404, 36:6689.) Further, Archer already owns its

existing campus and does not own or control another comparable site.[10] (*Save Our Residential Envt v. City of West Hollywood* (1992) 9 Cal.App.4th 1745, 1752 [CEQA does not require studying off-site alternatives when no suitably available alternative location exists]; see *Jones v. Regents of Univ. of Cal.* (2010) 183 Cal.App.4th 818, 828 [EIR need not consider off-site location that would not achieve the primary objective of creating a campus-like setting at the existing site].)

Additionally, an EIR is not required to analyze alternate sites that would not eliminate or substantially reduce significant adverse effects. (Guidelines, § 15126.6(f)(2)(A).) The City found that development on an alternate site would likely produce the same significant construction-related noise, vibration, and construction traffic impacts as the Project, just in a different location. (AR16:1404.) Splitting the campus between two sites would also disrupt the school's busing program and add to traffic congestion between locations. (AR16:1405.) Petitioners offer no evidence that an alternate or split site would eliminate such impacts.[11] (See *Mann v. Cmty. Redevelopment Agency* (1991) 233 Cal.App.3d 1143, 1151 [EIR upheld where appellants presented no evidence that their alternative offered "substantial environmental advantages" over alternatives analyzed in the EIR].) The City's conclusion that an alternative site need not be analyzed in detail is entitled to deference and should be upheld. (See *Citizens of Goleta Valley, supra,* 52 Cal.3d at p. 576.)

4. Substantial Evidence Supports the City's Overriding Considerations

Without providing any support or reasoning, Petitioners assert that the City's statement of overriding considerations is not supported by substantial evidence.[12] (O.B., at 13.) A statement of overriding considerations is reviewed for substantial evidence. (Guidelines, § 15093(b); *Laurel Heights I, supra*, 47 Cal.3d at pp. 392-93.) The record contains ample evidence of the Project's benefits, including providing school facilities in proximity to residences, adding landscaping and street improvements, maintaining the historic Eastern Star home, and supporting girls' education. (AR9:494-

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[10] A lead agency may consider whether a property is owned or can reasonably be acquired by the project proponent" when determining whether an alternate site is feasible. (*Citizens of Goleta Valley, supra*, 52 Cal.3d at p. 574; see also Guidelines, § 15126(f)(1).)

[11] Petitioners' brief does not identify a single suitable alternative site. (*Save Our Residential Envt v. City of W. Hollywood* (1992) 9 Cal.App.4th 1745, 1754 ["surely [Petitioners] would have identified the alternative sites meriting analysis" if any existed.].)

[12] Petitioners' citation to *San Joaquin Raptor/Wildlife Rescue Center v. Cty. of Stanislaus* (1994) 27 Cal.App.4th 713, 732 (O.B., p. 9) is puzzling given that the case does not analyze the adequacy of a statement of overriding considerations.

505.) The City appropriately concluded that overriding considerations justified the Project despite its temporary impacts during construction. Petitioners' disagreement with the City's policy choices does not amount to legal error. (*Citizens of Goleta Valley, supra,* 52 Cal.3d at p. 576 ["[A]pproving [a] development project [is] a delicate task which requires a balancing of interests"].)

D. The City Was Not Required to Recirculate the EIR

Petitioners argue that the ***reduction*** in the Project's construction period and other minor clarifications to the Project's environmental documents require further environmental review and recirculation of the EIR. (O.B., pp. 13-15.) Petitioners are wrong.

Recirculation is the exception, not the rule. (*Laurel Heights II, supra,* 6 Cal.4th at p. 1132.) Recirculation is only required where "significant new information" is added to an EIR after public notice of the document's availability. (Pub. Resources Code, § 21092.1; Guidelines, § 15088.5(a).) "New information added to an EIR is not 'significant'" unless the public is deprived "of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project proponents have declined to implement." (*Id.*, § 15088.5(a).) Recirculation is not required if the new information "merely clarifies," "amplifies" or "makes insignificant modifications." (*Id.*, § 15088.5(b).) Here, the erratas do not constitute "significant new information" requiring recirculation because they do not identify any new significant impacts, any substantially more severe significant impacts, or any new feasible alternative or mitigation measure that would reduce significant impacts but that the City refused to implement.

Petitioners ignore that all potential impacts that would occur under the shortened construction schedule were analyzed in the Draft EIR's analysis of an accelerated construction schedule that assumed overlapping phases during a three-year span. (AR35F:5669, 36:5892, 6047, 6417-6423, 6466-6467, 6598-6604, 41:7086-7091; *see also* AR16:1006, 1047-1049, 1061-1062; 35B:5492-5499.) At the request of many community members, the construction timeline was reduced from six to three years by overlapping previously separate construction phases and eliminating gaps in construction that were

intended to reduce disruption to school operations. [13] (AR35B:5492-5499, 35F:5669-5672, 5675-5678.) ***The three-year schedule does not increase overall grading and excavation, nor does it increase the maximum equipment, activity, trips, or hours above that evaluated for the peak construction day in the Draft EIR's accelerated construction analysis.*** (AR35B:5493, 35F:5670-5672.) While the intensity of the peak days does not change,[14] the number of peak days would be greater under the three-year schedule. (AR35B:5493, 35F:5670-5672.) This change is not a new impact, as construction impacts are determined based on a peak day and because Archer cannot increase activity beyond that analyzed on the peak day in the Draft EIR due to site constraints. (AR35B:5495, 5499, 35F:5671-5672.) In other words, the duration and intensity of excavation and haul, which is the most intense period of construction, is essentially the same under the three- and six-year schedules. (AR35F:5671, 5678 [four months of excavation and haul under both the three-year and six-year construction schedules].)

Petitioners wrongly contend that emissions from construction would exceed regional NO_x thresholds. (O.B., p. 15.) In fact, the City has imposed mitigation measures that reduce Project-level and cumulative regional air quality impacts during construction to less than significant levels. Petitioners offer no argument to suggest that the City's conclusion is not supported by substantial evidence, which it is. (AR15:985, 16:1012-1013, 1547-1549.)

Petitioners also claim that Errata 6 disclosed new and more severe health risk impacts. (O.B., p. 13-14.) To the contrary, Errata 6 made corrections regarding the Project's potential health risks that clarified that the Project's health risks would be slightly higher than presented in the Final EIR but would still be less than significant. (AR35F:5672.) As a matter of law, that information does not constitute "significant new information" warranting recirculation. (Guidelines, § 15088.5(a); see also *Beverly Hills Unified School Dist. v. Los Angeles Metro. Transp. Auth.* (2015) 241 Cal.App.4th 627,

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[13] See, e.g., AR166:14780 (letter from Councilmember Bonin), 16:2886 (Petitioners Wrights objecting to the "duration" of a six-year construction schedule).

[14] Petitioners suggest that the three-year construction schedule would result in "intensified impacts" during peak hours. (O.B., p. 14-15.) This is flatly wrong. The three-year construction schedule would not increase peak day activity. (AR35F:5670, 70:12107-12116 [DOT concurrence letter].) Thus, potential air quality, noise, and traffic impacts would not exceed the maximum analyzed in the EIR for a single day. (See also AR127:13391-13394.)

664-666 [no recirculation required for addendum describing revised construction schedule that did not cause new significant air quality impacts.].)

Petitioners further object to the release of Errata 6 the day before the City Council hearing. (O.B., pp. 13-14.) Petitioners ignore that PDF B-2 and Errata 6 merely responded to arguments they made during a hearing days before. (AR85:12541-12542 [hearing testimony].) While Petitioners wanted to create an endless loop of comment-delay-comment-delay, the City was justified in approving the Project with the clarifications provided in Errata 6. (AR5:52 [incorporating Errata 6 into approval motion]; see *Laurel Heights II*, 6 Cal.4th at p. 1132 [Public Resources Code section 21091.1 is not intended to "promote endless rounds of revisions and recirculations of EIRs"].)

Finally, Petitioners argue that the EIR should have been recirculated to address updated HRA guidance promulgated by the Office of Environmental Health Hazard Assessment, which Petitioners allege would show a higher cancer risk for students and residents than disclosed in the EIR. (O.B., p. 15.) Not only has the City not adopted this guidance (AR81:12559), Archer will prepare an updated HRA prior to the use of heavy-duty construction equipment. (AR35E:5611-5612.) PDF B-2 assures that the Project will not exceed air quality standards under the guidance in place during construction. Because PDF B-2 ensures that no new impacts will occur, recirculation was not required.

IV. CONCLUSION

The City carried out a rigorous and lengthy public process. Archer made many concessions. Archer, its closest neighbors, and the community's most respected organizations all compromised so that the Project the City approved balanced competing viewpoints. The City's elected officials used their judgment to approve the compromise Project. Petitioners, a small group that would accept no compromises, are entitled to their opinions but their opinions cannot override the City's decisions based on the extensive administrative record before the Court. The Petition should be denied.

Dated: June 23, 2016

Respectfully submitted,

LATHAM & WATKINS LLP

By _____
Benjamin J. Hanelin
Attorneys for Real Party in Interest
The Archer School for Girls

PROOF OF SERVICE

I am employed in the County of San Diego, State of California. I am over the age of 18 years and not a party to this action. My business address is Latham & Watkins LLP, 12670 High Bluff Drive, San Diego, CA 92130.

On **June 23, 2016**, I served the following document described as:

REAL PARTY IN INTEREST THE ARCHER SCHOOL FOR GIRLS' OPPOSITION BRIEF

REAL PARTY IN INTEREST THE ARCHER SCHOOL FOR GIRLS' NOTICE OF JOINDER AND JOINDER IN RESPONDENT'S OPPOSITION BRIEF

BY OVERNIGHT MAIL

I am familiar with the office practice of Latham & Watkins LLP for collecting and processing documents for overnight mail delivery by Federal Express. Under that practice, documents are deposited with the Latham & Watkins LLP personnel responsible for depositing documents in a post office, mailbox, subpost office, substation, mail chute, or other like facility regularly maintained for receipt of overnight mail by Federal Express; such documents are delivered for overnight mail delivery by Federal Express on that same day in the ordinary course of business, with delivery fees thereon fully prepaid and/or provided for. I deposited in Latham & Watkins LLP's interoffice mail a sealed envelope or package containing the above-described document and addressed as set forth below in accordance with the office practice of Latham & Watkins LLP for collecting and processing documents for overnight mail delivery by Federal Express:

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I declare that I am employed in the office of a member of the Bar of, or permitted to practice before, this Court at whose direction the service was made and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 23, 2016 at San Diego, California.

Alison L. Montera

LA\4551144

EXHIBIT C

Sunset Coalition, et al.
v.
City of Los Angeles

Archer School for Girls, Real Party in Interest

BS157811

Decision on Submitted Matter:
Petition for Writ of Mandate - DENIED

Petitioners Sunset Coalition, Brentwood Residents Coalition, Brentwood Hills Homeowners Association, and David and Zofia Wright ("Petitioners") petitioned for a writ of mandate compelling Respondent City of Los Angeles ("City") to set aside its approval and environmental impact report ("EIR") for an expansion project of the campus of Real Party Archer School for Girls ("Archer"). Petitioners contended that the conditional use permit approved by City violates various provisions of the Los Angeles Municipal Code and Charter that restrict floor area, height, and setback of buildings. Petitioners contended that the EIR certified by City violated CEQA because the EIR fails to address significant impacts and feasible alternatives to the project, and because City did not recirculate the document for public comment after several erratas were issued after the Final EIR was made public. After considering the papers submitted and oral argument on July 28, 2016, the court took the matter under submission. The court now issues its ruling denying the petition.

Judicial Notice

Petitioners' Exhibits A-H – Granted. (Evid. Code § 452(b), (c).)

City's Exhibits A-H – Granted. (Evid. Code § 452(b)-(d).)

Statement of the Case

The Archer School for Girls

Archer is a private preparatory school currently located on Sunset Boulevard approximately one-half mile west of the 405 freeway. (Administrative Record (AR) 70:11749.) The school is in the R3 (Medium Residential) and RE11 (Very Low Residential) zones. (AR 70:11750.) The surrounding properties are within residential and "Neighborhood Commercial" zones, and include apartments and condominiums, a small shopping center, and single-family residences. Five other schools are located in the immediate vicinity of Archer. Two universities – The University of California, Los Angeles, and Mount St. Mary's University -- are located within three miles of Archer. (AR 70:11752; see AR 36:5856-5857 [map and aerial view].)

The Archer campus was formerly occupied by the Eastern Star Home for women. An example of Spanish Colonial Revival architecture, the Eastern Star Home was built in 1931 and is listed on the California Register of Historic Places. Archer acquired the property and made renovations in 1996. (AR 36:5723, 5858.)

In 1998, the City approved a conditional use permit (CUP) for the school. (AR 70:11750; 36:5858; 904:31370.) The existing facilities are comprised of approximately 95,000 square feet of floor area and include classrooms and offices, a non-regulation size playing field, a sport court, and two surface parking lots with 109 parking spaces. (AR 70:11750-11751.) The school was approved as a private school for girls, grades 6 to 12. Maximum enrollment is 518 students. (AR 70:11751.) The existing CUP also permits a 12,000 square foot gymnasium that was never built. (AR 70:11764.)

Archer Proposes an Expansion Project

In October 2011, Archer applied to modify its CUP to expand its physical facilities and operations. (AR 822:20375.) As described in a subsequent permit application, dated February 25, 2014, Archer "would modernize Archer's classrooms, athletic and visual and performing arts facilities, provide underground parking, and enhance pedestrian and green space to provide Archer with a campus that can continue fulfilling its educational mission." (AR 644:19559; see AR 9:337, 9:343; hereafter "the Project".)

As originally proposed, the Project consisted of improvements to the existing Archer campus and the development of a Multi-Purpose Facility, a Performing Arts Center, a Visual Arts Center, an open-air Aquatics Center, and an underground parking garage. (70:11743.) The Project site consists of six record lots totaling 6.2 acres and two adjacent residential parcels totaling 1.1 acres. The Project site is bound by Chaparal Street to the north, Sunset Boulevard to the south, Barrington Avenue and residential uses to the east, and residential uses to the west. (AR 70:11750; 734:20131 [map].)

Environmental Review and Approval Process

In February 2014, after a two-year review process, the City published a Draft EIR analyzing the Project's potential environmental effects. (AR 70:11755, 9:344.) The City then prepared a Final EIR, which was made public in November 2014 and which included responses to the over 500 comments received on the Draft EIR. (AR 16:1195-3064.) The Final EIR described the potential effects of the Project and identified additional mitigation measures and alternatives to reduce or eliminate those impacts. (AR 16:955-1194.) The Final EIR found that the Project would result in significant and unavoidable construction noise, construction vibration, operational noise, and construction-related traffic. (AR 16:993-994.) The Final EIR revised the Draft EIR to find that two Project impacts which were previously found to be significant and unavoidable – construction-relation emissions and operational traffic at intersections – to be less than significant with mitigation. (Ibid.)

After the Final EIR's release, six errata were issued by City. (See AR 35A:5401-35F:5665.) In Errata 2, issued in April 2015, City indicated that in response to comments raised after release of the Final EIR, the construction timeline was compressed from 6 years to 3 years "by expediting the sequencing of construction activities and providing for more overlap of construction activities." (AR 35b:5492-5493.)

Based on public comments receiving in response to the Draft EIR, the Project was refined in the Final EIR and subsequently with Erratas 1 and 2. The Project floor area was reduced by approximately 15,000 square feet; the underground parking structure was reduced by approximately 10,000 square feet; and the number of seats at the Performing Arts Center was reduced from 650 to 395. The proposed Aquatics Center was also eliminated from the Project. (AR 70:11744, 11756; see AR 4:8, 70:11849 [map].)

Following a public hearing, the Planning Commission unanimously approved the Project and certified the EIR. (AR 9:344, 7A:215-216.) The Planning Commission's approval included a number of conditions in response to comments made in the review process, including conditions reducing the number of special events per year, restricting family events, and adding an annual trip cap for certain events. (AR 35C:5571-5572.)

Several groups appealed the Planning Commission's approval to the City Council. The Council's Planning and Land Use Management Committee ("PLUM") heard the appeals at a public hearing on June 30, 2015, and approved modified conditions. (AR 7:170-214 [conditions], 85:12584 [transcript].) Some appeals were settled. (See AR 85:12579.) The PLUM Committee recommended denying the remaining appeals. (AR 5A:160-162.)

On August 4, 2015, the City Council unanimously approved the CUP for the Project and certified the EIR. (AR 5:52-159; 2:6; 8:293-330.) The City Council approved numerous conditions on the Project, including a 20-year enrollment cap at 518 students. (AR 4:8-16.) City Council also approved conditions requiring 76 percent of Archer students to ride the school bus, and the others to carpool with at least three students. (AR 4:16-17.)

Standard of Review

Conditional Use Permit

"The issuance of a conditional use permit is a quasi-judicial administrative action, which the trial court reviews under *administrative* mandamus procedures pursuant to Code of Civil Procedure section 1094.5.... [T]he trial court reviews the whole administrative record to determine whether the agency's findings are supported by substantial evidence and whether the agency committed any errors of law. [Citations.]" (*Neighbors in Support of Appropriate Land Use v. County of Tuolumne* (2007) 157 Cal.App.4th 997, 1005; see also *Mountain Defense League v. Board of Supervisors* (1977) 65 Cal.App.3d 723, 728.)

In applying the substantial evidence test, "reasonable doubts must be resolved in favor of the decision of the agency." (*Breakzone Billiards v. City of Torrance* (2000) 81 Cal.App.4th 1205, 1244.) The trial court "may reverse an agency's decision only if, based on the evidence before the agency, a reasonable person could not reach the conclusion reached by the agency." (Ibid.)

To the extent Petitioners challenge City's interpretation of the LAMC and Charter, the court exercises its independent judgment because the interpretation of a statute or ordinance is a question of law. (*Yamaha Corp. of America v. State Bd. Of Equalization* (1998) 19 Cal.4th 1, 11-12.) However, a city's interpretation of its own municipal code and charter is entitled to considerable deference. (See Ibid.; *Citizens for Responsible Equitable Environmental Development v. City of San Diego* (2010) 184 Cal.App.4th 1032, 1047.)

CEQA

In an action challenging an agency's decision under CEQA, the trial court reviews the agency's decision for a prejudicial abuse of discretion. (Pub. Res. Code, § 21168.5.) "Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence." (Ibid.; see also *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.) Challenges to an agency's failure to proceed in a manner required by CEQA are subject to a less deferential standard than challenges to an agency's factual conclusions. (*Vineyard, supra* at 435.) In reviewing these claims, the Court must "determine *de novo* whether the agency has employed the correct procedures," including ensuring that the EIR is sufficient as an informational document. (Ibid.; see *Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20, 26.)

In actions challenging an agency's factual determinations, substantial evidence is defined as "enough relevant evidence 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." (Title 14 Cal. Code Regs. ("CEQA Guidelines") § 15384(a).) "A court may not set aside an agency's approval of an EIR on the ground that an opposite conclusions would have been equally or more reasonable." (*Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376, 393.) "The reviewing court must resolve reasonable doubts in favor of the administrative finding and decision." (Ibid.)

An agency is presumed to have regularly performed its official duties. (Evidence Code § 664.) Petitioners bear the burden of proof to demonstrate, by citation to the administrative record, that the EIR is legally inadequate and that the agency abused its discretion in certifying it. (See *South Orange County Wastewater Authority v. City of Dana Point* (2011) 196 Cal.App.4th 1604, 1612; see *Cherry Valley Pass Acres and Neighbors v. City of Beaumont* (2010) 190 Cal. App. 4th 316, 327-28.)

Analysis

City's Approval of the Project pursuant to the LAMC and City Charter

Petitioners contend that the conditional use permit approved by City violates various provisions of the Los Angeles Municipal Code ("LAMC") and City Charter that restrict floor area, height, and setback of buildings. Before addressing those arguments, the court observes what Petitioners *do not* challenge: The LAMC allows independent schools to be permitted in a residential zone pursuant to a CUP. (LAMC §§ 12.24.T.3.b; 12.24.U.24.) To avoid adversely affecting the surrounding neighborhood, City cannot approve a CUP unless certain findings are made. (LAMC § 12.24.E.) The City expressly made the findings required by section 12.24.E and set forth evidence supporting those findings. (AR 8:293-313, 13:892-910.) As discussed further below, Petitioners largely do not challenge those findings or the supporting evidence. Rather, Petitioners argue that the Project violates other LAMC and Charter provisions, upon which the City did not rely in its approval.

Floor Area Limits for the Project

Petitioners contend that City should have applied to the Project the floor area requirements set forth in LAMC section 12.07.01.C.5 for residential development. Petitioners specifically challenge the floor area of the Performing Arts Center, but they appear to contend that all of the proposed buildings violate residential floor area limits. (Opening Brief (OB) 3.)

LAMC section 12.07.01.C.5 limits the "residential floor area" in buildings in RE11 zoned properties to 35 percent of the lot size.[1] The definition of "Floor Area" in the LAMC states that "Buildings on properties zoned RA, RE, RS, and R1, except properties in the Coastal Zone which are not designated as Hillside Area, are subject to the definition of Residential Floor Area." "Floor Area, Residential" is defined as "the area in square feet confined within the exterior walls of a Building or Accessory Building on a Lot in an RA, RE, RS, or R1 Zone." The term "Building" is defined as "any structure" for "enclosure" of "persons." (LAMC § 12.03; see Petitioners' RJN Exh. A, C.) The court notes that section 12.07.01 includes wording and provisions that seem designed specifically for residential development. Also, the phrase "residential floor area" is not capitalized, while some other defined words in section 12.07.01 are capitalized (e.g. Hillside Area.) However, Petitioners otherwise set forth a plausible reading of section 12.07.01, in light of definitions in 12.03, that the floor area limits apply to all buildings in the RE11 zone.

Petitioners cite evidence that the approved floor area of the Performing Arts Center is 17,758 square feet. (AR 7:170.) The record includes some evidence that the RE11 zoned lot on which the Performing Arts Center would be built is 22,492.5 square

[1] A 20 percent bonus is also allowed if certain specified criteria are met.

feet.[2] (329:16346.) City does not dispute Petitioners' floor-area calculation, of greater than 35 percent of lot size, when the Performing Arts Center or other proposed buildings are considered separately. (City Oppo. 8.)

City argues that it adopted "clarifying changes" to the Baseline Mansionization Ordinance ("BMO") and additional legislative findings to provide that it was not intended to apply to schools and other non-residential development. In reply, Petitioners do not dispute that the residential floor area limits in section 12.07.01.C.5 were established as part of the BMO.[3] On July 1, 2008, shortly after the BMO was passed, councilmembers Weiss and Greuel introduced a motion calling for clarification of the ordinance's application to non-residential development. The motion expressed concern that the BMO "appears to regulate and may restrict the expansion of public benefit institutions, such as schools ... which occupy single-family lots." (AR 127:13386; City' RJN Exh. D.) On February 25, 2009, the City Council adopted the following findings in reference to the BMO:

> There are several uses (schools, religious institutions, police/fire stations, etc.) in single family zones that are only allowed with the approval of a discretionary entitlement such as a Conditional Use Permit or Public Benefit Project. These types of uses are a completely different type of development from single-family homes, and have entirely different scales. The [BMO] was never intended to address the size of non-residential structures which were already permitted through these types of discretionary reviews. Moreover, the issues that go along with the construction of the types of facilities are typically addressed through the required public hearing processes and conditions of approval which help to mitigate potential impacts on surrounding properties. (City's RJN Exh. E, F.)

The City Council found that CUPs provide one of several processes, which also include variances, through which the Zoning Administrator may approve limited deviations from LAMC regulations. (Ibid.) These findings, adopted by the entire City Council, suggest the City Council did not intend the residential floor area limits in section 12.07.01.C.5 to apply to schools that are allowed in the RE zone pursuant to a discretionary CUP.

In reply, Petitioners point out that "clarifying changes" were apparently not made to the codified version of 12.07.01.C.5. Rather, it appears City Council's February 25, 2009 motion made changes to LAMC section 12.21.1, a more general provision entitled *Height of Building or Structures*. Petitioners contend section 12.21.1 was revised to state that for RE-zoned properties "the total residential floor area shall comply with the floor area restrictions for each zone." (City's RJN Exh. E; see Reply 5.)

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[2] The pages cited in Petitioners' opening brief do not show that square footage. (See AR 734:20131.)

[3] Section 12.07.01.C.5 was added by ordinance No. 179,883, effective 6/29/08, which was the same ordinance number as the BMO. (See Petitioners' RJN Exh. B; City's RJN Exh. E.)

The court finds sufficient ambiguity in the language of sections 12.21.1 and 12.07.01.C.5 so that the City Council's legislative findings, set forth above, should be considered. In that context, the court concludes that the floor area limits in section 12.07.01.C.5 do not apply to schools permitted by a CUP in a RE11 zone. This result comports with the City Council's findings, and is a reasonable reading of the municipal code given that a permitted school is necessarily different than a residential home, and is already subject to discretionary review. Finally, while the court exercises its *independent judgment*, City's *interpretation* of the ordinance is entitled to *significant* deference. (*Citizens for Responsible Equitable Environmental Development v. City of San Diego* (2010) 184 Cal.App.4th 1032, 1047.)

Because no residential development is proposed as part of the Project, City determined applicable floor area limits from LAMC section 12.21.1.A.1, which provides that the total floor area contained in a lot in Height District No. 1 shall not exceed three times the "Buildable Area of the Lot." (City Oppo. 7.) At full build-out, the Project is approximately 148,995 square feet. (AR 8:319.) City cites to evidence, which Petitioners do not counter, that the total "Buildable Area" of the Project site is approximately 234,800 square feet. (AR 8:319 [704,399 total allowable floor area, divided by 3].) Under this calculation, the Project is approximately 21 percent of the total allowable floor area and well below the global 3:1 ratio set forth in section 12.21.1.A.1.

As Petitioners point out, the City's calculation of floor area is based on the project as a whole, and the City did not process the Project as a unified development under 12.24.W.19 which allows floor area averaging in certain zones. However, the record cited to by Petitioners appears to support a conclusion that the 3:1 ratio would not be exceeded even if calculated per lot. (AR 125:13355).

City also relies on its authority under LAMC section 12.24F to support its finding the Project complies with applicable floor area limits. Under that section, to approve a CUP, the City must make certain findings, including that "the project's location, size height, operations and other significant features will be compatible with and will not affect or further degrade adjacent properties, the surrounding neighborhood, or the public health, welfare, and safety."(LAMC section 12.24E). Further, subsection F of 12.24 provides that the decision-maker may impose conditions related to the findings set forth in subsection E, and "may state that the height and area regulations required by other provisions of this Chapter shall not apply to the conditional use approved."

As discussed further below, City made the requisite findings under section 12.24.E for a CUP, and it therefore had discretion under section 12.24.F to state that certain height and area regulations do not apply to the approved use. In its approval decision, City found that the residential floor area limits in 12.07.01.C do not apply because Archer does not propose to build dormitories or any other residential uses. (AR 8:298.) City also found that the Project's design will ensure that its "size and appearance" is compatible with the surrounding scale and character of the neighborhood. (Ibid.) Therefore, Petitioners fail to show that issuance of the CUP

violated the municipal code's provisions regarding floor areas for the Project.[4] (CCP § 1094.5(b).)

At the hearing, Petitioners argued that City was also required to adopt the findings set forth in LAMC section 12.24.X.10 before issuing the CUP. LAMC section 12.24.E provides that "the decision-maker shall also make any additional findings required by Subsections U., V., W. and X, and shall determine that the project satisfies all applicable requirements in those subsections." Petitioners argue by virtue of subsection X.10 regarding excess height in certain residential zones, City was required to make additional findings not made as part of the project approval. Respondents persuasively argue that subsection X.10, which allows certain action by a Zoning Administrator, does not apply to the Project. Rather, the relevant subsection in 12.24 is subsection U, which pertains to conditional use permits approved by the City Planning Commission with Appeal to the City Council. Specifically, subsection U.24 allows schools as a conditional use. That subsection does not require the additional findings set forth in subsection X.10.

Future Lot-Line Adjustments

Petitioners contend that LAMC section 12.36.B requires the Project's potential future lot-line adjustment to be included in Archer's initial application. (OB 4-5.) Section 12.36.B provides that "[a]pplicants shall file applications at the same time for all approvals reasonably related and necessary to complete the project."

The Project site consists of eight separate parcels. (AR 70:11750, 35b:5488.) As indicated in the statement of facts, in response to public comments, the Project was reduced to eliminate the proposed aquatics center and refined to maintain the majority of the Barrington Parcel for residential use. (AR 35a:5401, 35b:5490-91, 70:11755.) Based on these modifications, Archer proposed to extend the eastern lot line of the Chaparal parcel south so that it intersects with the existing southern lot line of the Barrington Parcel, combining the Chaparal Parcel and the campus portion of the Barrington Parcel. The remaining residential portion of the Barrington Parcel would be maintained in residential use. (AR 35b:5490-91; 70:11744.)

In Errata 2, the City explained that this lot line adjustment need not occur prior to the Project's approval because it qualified for a parcel map exemption under LAMC section 17.50.B.3,[5] (AR 35b:5490-91) and because the adjustment was not necessary

[4] City also argues that the Project complies with the residential floor area limits of section 12.07.01.C.5 when the Project site is considered as a whole. (City Oppo. 8.) For the reasons stated, the court need not address that argument.

[5] Section 17.50.B.3 states that the parcel map regulations shall not apply to certain divisions of land, including: "Those where the Advisory Agency or the Appeal Board determines that all the following conditions exist: (1) A lot line adjustment is made between four or fewer existing adjoining lots or parcels and the land taken from one lot or parcel is added to an adjoining lot or parcel; (2) The resulting number of lots or

for the completion of the Project. City further stated: "If the Project is approved, and a Lot Line Adjustment is denied, the Project would still be permitted to proceed pursuant to the terms and conditions of a conditional use permit; however, lot lines would not be adjusted to only permit residential uses within the Barrington Parcel. Thus, because the Project is not dependent upon the Lot Line Adjustment, the Project may proceed to approval without the prior approval of the Lot Line Adjustment." (Ibid.) Ultimately, the City adopted a condition of approval requiring Archer to seek the lot-line adjustment. (AR 4:10.)

In the moving brief, Petitioners argue, citing LAMC section 17.50.B.3.c.3, that City could not approve the lot line adjustment because the resulting floor area ratios would not conform to the requirements of the zoning ordinance. However, as discussed above, the Project's floor area falls below the 3:1 limit for non-residential uses. Moreover, section 12.24.F allows City to state in its approval that the height and area regulations required by other provisions of the Code are not applicable to the CUP.

In reply, Petitioners contend that the lot line adjustment was necessary so that the Project could be built across separate parcels (LAMC 17.50.B.2). While it appears the adjustment would not require a parcel map under LAMC section 17.50.B.3, it appears a lot line adjustment would still be needed. Petitioners' stated concern is that Archer should have requested the lot line adjustment in its original application, and allowing a later application would be prohibited piecemealing of the project. However, because preservation of a portion of the lots for residential use was not a part of the original proposal, Archer could not have applied for the lot line adjustment simultaneously.

City found in Errata No. 1 that eliminating the Aquatic Center and adding the potential lot-line adjustment would reduce the Project's environmental impacts. (AR 35a:5429.) Petitioners fail to show that City piecemealed the environmental review with respect to the lot-line adjustment condition. The lot line adjustment simply would not change the impacts of the project. (See *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal.3d 376, 397(piecemealing occurs when "future expansion" of a project would "likely change the scope or nature of the initial project or its environmental effects."))

LAMC and Charter Variance Requirements

Petitioners contend that City lacked authority to grant height and area "modifications" for the Project without requiring variances. As part of this argument, Petitioners contend that City's interpretation of LAMC section 12.24.F creates a conflict with section 12.28.A, which requires a variance for an increase in height limit of more

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parcels remains the same or is decreased; (3) The parcels or lots resulting from the lot line adjustment will conform to the local general plan, any applicable coastal plan, and zoning and building ordinances."

than 20 percent. Petitioners also contend City violated variance requirements in City Charter section 562. (OB 5-8.)

Exhaustion of Administrative Remedies

City contends that Petitioners failed to raise these arguments before City during the administrative proceedings. (City Oppo. 14-15.) In an action or proceeding challenging local zoning and planning decisions made at a public hearing, "the issues raised shall be limited to those raised in the public hearing or in written correspondence delivered to the public agency ...." (Gov. Code § 65009(b)(1); see *Park Area Neighbors v. Town of Fairfax* (1994) 29 Cal.App.4th 1442, 1448.) "The petitioner bears the burden of demonstrating that the issues raised in the judicial proceeding were first raised at the administrative level." (*Sierra Club v. City of Orange* (2008) 163 Cal.App.4th 523, 536.) The petitioner is not required to have brought the precise legal inadequacy that it raises before the trial court to the administrative agency's attention to preserve the issue for judicial review so long as the petitioner fairly apprised the agency of the substance of its claim. (*Save Our Residential Environment v. City of West Hollywood* (1992) 9 Cal.App.4th 1745, 1750.)

Petitioners cite the following statement in a comment letter as evidence of exhaustion: "While educational institutions are a permitted conditional use on RE-zoned properties, the municipal code contains no exemption from the generally applicable height and floor area restrictions for the residential zone in which the school use is constructed." (See AR 179:14842; see Reply 10.)

This comment letter, and the other portions of the record cited by Petitioners (see Reply 10), discussed the height limits of section 12.07.01.C and 12.03, and did not expressly address City's interpretation of section 12.24.F or argue that a variance was required. Nevertheless, Petitioners argued that City misapplied the governing provisions regarding floor area on RE-zoned properties, which impliedly challenged City's reliance on section 12.24.F to permit Archer's requested height and area modifications. (See AR 7A:236 [conditional use modification conditions under section 12.24.F].) Although the argument was not spelled out in detail, City was given sufficient notice of a challenge to their reliance on section 12.24.F to grant height and area modifications. Therefore, Petitioners exhausted administrative remedies.

City had Authority to Grant Height and Area Modifications pursuant to LAMC Section 12.24.F and Charter Section 563

As discussed above, LAMC section 12.24.F, which is part of City's CUP ordinance, provides in part: "In approving a project, the decision-maker may impose conditions related to the interests addressed in the findings set forth in Subsection E. The decision may state that the height and area regulations required by other provisions of this Chapter shall not apply to the conditional use approved." (emphasis added.)

Section 12.24.E provides in full: " A decision-maker shall not grant a conditional use or other approval ... without finding: 1. that the project will enhance the built environment in the surrounding neighborhood or will perform a function or provide a service that is essential or beneficial to the community, city, or region; 2. that the project's location, size, height, operations and other significant features will be compatible with and will not adversely affect or further degrade adjacent properties, the surrounding neighborhood, or the public health, welfare, and safety; and 3. that the project substantially conforms with the purpose, intent and provisions of the General Plan, the applicable community plan, and any applicable specific plan."

Here, the City adopted each of the findings required by section 12.24.E. The findings set forth evidence supporting the City's conclusions. (AR 8:293-313, 13:892-910.) Petitioners concede, by not raising the issue, that City made the requisite findings to grant a CUP under section 12.24.E, and that those findings are supported by substantial evidence. (See *Inyo Citizens for Better Planning v. Inyo County Board of Supervisors* (2009) 180 Cal.App.4th 1, 14 [arguments waived if not raised].)

Petitioners argue, primarily in reply, that the Project's approved height and "façade" will be different from residential buildings in the surrounding neighborhood. (Reply 8; see also OB 7:27-28.) Petitioners do not persuasively respond to the evidence cited in City's findings that the Project's height and size are compatible with the surrounding neighborhood. For instance, the City found, and Petitioners have not disputed, that the North Wing would visually appear an average of 31 feet, 4 inches from adjacent properties and would not be visible from Sunset Boulevard. The Multipurpose Facility would present as 28 feet to Chaparal Street, which is lower than the permitted height for the surrounding neighborhood homes and is lower than many of the existing street trees. Of the 11 single-family residences along Chaparal Street adjacent or across from Archer, 5 have heights greater than 28 feet, and the tallest reaches more than 33 feet. (AR 8:300-302.) Petitioners fail to satisfy their burden of demonstrating, by citation to the record, that City's findings under section 12.24.E are not supported by substantial evidence or otherwise constitute an abuse of discretion. (See *Wheeler v. Gregg* (1949) 90 Cal.App.2d 348, 361.)

Petitioners argue that section 12.24.F should be interpreted to allow waiver of height and area regulations only where the conditions make a project more compatible with its surroundings, not merely to accommodate an applicant's requests. (OB 6.) To grant a CUP, the City must find that the project's size and height are compatible with the surrounding neighborhood. (LAMC § 12.24.E.) As stated, City made that finding. While the CUP must satisfy the compatibility requirements, section 12.24.F does not otherwise limit City's discretion to state that the height and area regulations provided by other provisions of the Code are not applicable to the CUP. Petitioners have not cited any authority to support a contrary interpretation. Moreover, City's interpretation is consistent with the plain language of the ordinance and deserves significant deference. (*Citizens for Responsible Equitable Environmental Development v. City of San Diego* (2010) 184 Cal.App.4th 1032, 1047.)

Petitioners assert that City's interpretation of section 12.24.F creates a conflict with section 12.28.A, which provides in part: "The Zoning Administrator shall have the authority to grant adjustments in the Yard, area, Building line and height requirements of Chapter 1 of this Code.... A request for an increase of 20 percent or more shall be made as an application for a variance pursuant to Section 12.27 of this Code, *except as may be permitted by other provisions of Chapter 1 of this Code.*" (emphasis added.) Section 12.24.F, which is part of Chapter 1 of the Code, allows the City to state that the height and area regulations required by other provisions of the Code are not applicable to the CUP. While Petitioners hypothesize that the City's interpretation could allow the City to approve a CUP for a skyscraper in a residential area without a variance (OB 7), the compatibility findings required under section 12.24.F would almost certainly preclude this result. Petitioners do not show a conflict between City's interpretation of section 12.24.F and with section 12.28.A.[6]

Petitioners also assert that City Charter section 562 prohibits City from exercising its authority under section 12.24.F without making variance findings. (OB 7.) However, Charter section 563, cited by City, authorizes the City Council to prescribe by ordinance the procedure for the granting of CUPs. (City's RJN Exh. G.) Charter section 563 does not require that such quasi-judicial approvals be predicated on the five findings set forth in Charter section 562 for variances. Having failed to show that City abused its discretion under LAMC section 12.24.E and F, Petitioners' discussion of Charter section 562, which governs variances and not CUPs, is unpersuasive.

"Where a zoning ordinance authorizes the planning commission or city council to grant a conditional use permit upon finding the existence of certain facts, their action will not be disturbed by the courts in the absence of a clear and convincing showing of the abuse of the power of discretion vested in them." (*Wheeler v. Gregg* (1949) 90 Cal.App.2d 348, 361.) Petitioners fail to show an abuse of discretion in City's approval of the Project pursuant to the LAMC and City Charter.

City's Approval of the Project under CEQA

Traffic Impacts and Proposed Mitigation

Petitioners contend that City made improper assumptions in its traffic analysis. They also argue that proposed mitigation measures are inadequate to address the Project's traffic impacts. (OB 8-9; Reply 3-5.)

Additional Modified Traffic Analysis for Residential Streets

During the City's environmental review of the Project, major construction was being completed on the 405 Freeway. The "I-405 Sepulveda Pass Improvement Project" included widening of the freeway to add a northbound carpool lane, among

[6] Moreover, at least for the North Wing, which has a maximum height of 41 feet, 4 inches, the increase over the 36 feet permitted by section 12.21.1 is less than 20 percent. (See City Oppo. 11, fn. 5; AR 8:300-301.)

other major modifications to the I-405 corridor. (16:1349.) In its Final EIR, City found that Sunset Boulevard had become more congested during the 405 construction, and reflected slower travel times and reduced traffic volumes (because of congestion). City also found that the 405 construction temporarily increased congestion on residential streets near Archer, resulting in increased traffic volumes on those streets. (AR 16:1349-1350 [summary of 405 construction]; 16:1353-1355 [drivers to return to pre-405 construction routes].)

The record includes evidence that City conducted an extensive analysis of the potential traffic impacts of the Project. (See 56:9246-9373 [traffic analysis].) According to the Draft and Final EIRs, City analyzed traffic at multiple local intersections for several daily time periods on non-event school days. City's analysis found no significant traffic impacts when using 70 percent busing of Archer students. (16 AR 1161-1162; 36:6516-6517.) The Final EIR also indicates that City analyzed traffic impacts for "event days" with 300 attendees finding significant impacts for several intersections with 70 percent busing. The EIR showed no significant impacts for these intersections when additional limits on the events were used. (16 AR 1163.)

In the moving brief, Petitioners criticize an assumption in the "modified analysis" used in the Draft and Final EIRs that reduces daily traffic volumes on certain residential streets by 50 percent "to reflect a conservative approximation of traffic conditions" after the 405 construction is complete. (OB 8, citing AR 36:5826 [draft EIR]; see AR 16: 1076 [final EIR].) In reply, Petitioners elaborate, stating that "Archer provides no evidence that a 50% adjustment was appropriate." (Reply 3.)

Initially, the 50 percent reduction was apparently made as part of an *additional* analysis included "to be conservative" in assessing the traffic impact on multiple neighborhood streets. (See AR 16:1076; see also AR 16:1626.) The record includes evidence that City considered the same traffic analysis without the 50 percent reduction. (See AR 16:6568-6578 [Draft EIR]; AR 56:9315-9318.)

Petitioners have not pointed to evidence that the inclusion of the additional "modified analysis" reflecting a conservative 50 percent reduction materially skewed the results of the impacts analysis. There is evidence that the 50 percent reduction was reasonable. (See AR 16:1355-1357 [showing reduced volumes, more than 50 percent for some time periods, during afternoon rush hour on Barrington Ave. and Chaparal St. in 2014 compared to 2011, in midst of 405 construction].) Petitioners cite the letter of one traffic expert, but the letter does not address the appropriateness of the 50 percent reduction. (OB 8; see AR 115:13050-13050.1.) Also, the 50 percent reduction in traffic volume would increase the likelihood that the modified analysis would show a significant impact of traffic from Archer. Moreover, City was entitled to choose between conflicting expert opinions. (See *Save our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 120.) Petitioners fail to show a prejudicial abuse of discretion with respect to the inclusion of the 50 percent reduction.

Traffic Baseline Analysis

Petitioners challenge the baseline of traffic data utilized by City, arguing that an EIR must focus on impacts to the existing environment. (Reply 3-4.)

The baseline for CEQA environmental review is normally the existing conditions at the time of the review. (CEQA Guidelines § 15125(a); *Neighbors for Smart Rail v. Exposition Metro Line Const. Authority* (2013) 57 Cal.4th 439, 452.) However, "in appropriate circumstances an existing conditions analysis may take account of environmental conditions that will exist when the project begins operations; the agency is not strictly limited to those prevailing during the period of EIR preparation. An agency may, where appropriate, adjust its existing conditions baseline to account for a major change in environmental conditions that is expected to occur before project implementation." (*Neighbors, supra* at 452-453.)

Here, City compared the Project impacts to the following baselines: (1) a "Baseline Conditions scenario" that was developed "to evaluate Project impacts against a baseline that does not include the existing, temporary, traffic congestion associated with construction of the I-405 Sepulveda Pass Improvement Project"; and (2) "Future (Horizon Year 2020) Base Conditions" that take into account the expected changes in traffic due to overall regional growth and traffic generated by specific development projects in the area. (AR 36:6519-6523 [Draft EIR]; see also AR 16:1071-1096 [Final EIR]; 56:9256-9258 [traffic study].) For these baselines, City replaced "existing intersection traffic counts" at several intersections with counts from 2006 or 2008 to reflect conditions without the effects of the 405 construction.[7] (AR 36:6520; see also AR 56:9273-9274, 9285 [applying future growth estimates to baseline traffic volumes described in Chapter 3, pertaining to "Baseline Conditions"].)

In the moving brief, Petitioners argue that a traffic expert concluded that, rather than rely on approximations, the traffic analysis should have used new traffic counts taken when school resumed in September 2015. (OB 8, citing AR 115:13050-13050.1.) Petitioners' analysis, and the cited letter, do not demonstrate that City's selection of baselines was improper or not supported by substantial evidence. Petitioners do not point to evidence disputing that the 405 construction was anticipated to end before the heaviest periods of Project construction would begin, or that traffic counts during 405

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[7] Archer states that City compared the Project to "the existing, temporarily altered traffic conditions." (Oppo. 5, citing "AR 16:6573-6574", but presumably meaning AR 36:6573-6574.) The pages cited for this assertion, and surrounding pages, discuss the "Baseline Conditions" and "Future (Horizon Year 2020) Conditions" described above. Archer apparently means that the EIR analyzed the baseline at the time of the review, adjusting data for several intersections to pre-405 construction condition. As stated above, Petitioners do not show that the baselines selected by City were erroneous. The court also notes that the Draft EIR does point to analysis of the Project's potential impacts during construction of the North Wing Restoration assuming the 405 construction has not yet been completed. (AR 36:6519, fn. 1; see 56:9351-9352 [Tables 12A and 12A-1].)

construction, at least for some intersections, would be misleading to the decisionmakers and the public. (AR 36:6519-6520.) City's selection of baselines was based on a thorough traffic study. (See AR 56:9256-9258.) Petitioners fail to show a prejudicial abuse of discretion.

Traffic Mitigation Measures

In the opening brief, Petitioners argue that "the proposed mitigation measures are inadequate to address the Project's significant traffic impacts." Petitioners do not specify the "significant traffic impacts" to which they refer. (OB 8.) Petitioners apparently take issue with Mitigation Measure K-2 (MM K-2), which sets vehicle-trip limits for schools events from 3 p.m. to 7 p.m. on weekdays, and 1 to 2 p.m. on Saturdays. (OB 8; AR 9:462-463.)

The CUP includes conditions that support MM K-2's effectiveness, including an independent monitor to verify compliance, a parking reservation system to implement trip caps, and a full-time Transportation and Parking Coordinator. To prevent parking on residential streets, faculty, staff, and guests must have a pre-issued walking, bicycle, or transit pass, to be confirmed by transportation monitors during weekdays and events. If an event is expected to attract more than the allowed number of vehicles, Archer must provide off-site parking. (AR 4:16-19.)

Petitioners fail to demonstrate, by citation to the record, that the mitigation measures with respect to traffic will be ineffective. (See *Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011, 1027.) The comment letter cited by Petitioners is insufficient to show that substantial evidence does not support the effectiveness of MM K-2. (AR 115:13050-13054.) Petitioners argue that visitors may be turned away if parking limitations are exceeded. However, as discussed above, conditions require Archer to provide excess off-site parking; to require students, staff, and guests to have transit passes; and Archer to monitor the use of transit passes and punish violators. Archer points to evidence that it has a positive history of complying with similar traffic conditions in its 1998 CUP. (AR 893:30855.) Accordingly, there is substantial evidence that City properly concluded that MM K-2 will be effective mitigation.

Extension of Peak Hours on Event Days

In the moving brief, Petitioners argue that MM K-2 extends peak hour traffic into formerly non-peak hours, thereby creating a significant impact. (OB 8.) While visitors on event days would presumably leave during non-peak hours, the CUP conditions limit the number of parking passes issued for an "event," including the number of persons that would leave during non-peak hours. Petitioners cite an expert opinion letter, which asserts, without further analysis, that events at Archer will "create extended peak hours that have not been studied." (AR 115:13051.)

At the hearing, in response, Archer argued that the traffic analysis appropriately assessed traffic impacts based on peak hours. Archer pointed out that the limitation on parking passes issued for an event necessarily resulted in a cap on both the number of arriving cars and departing cars. Archer also points to a response submitted to the City Council on August 3, 2015, addressing this concern. (AR 03158) In that response, Archer states that "departures from weekday evening events would typically be after 9:00 p.m., past the peak period of traffic on the surrounding street system." The analysis of significant impacts was based, in part, on thresholds set forth in *City of Los Angeles CEQA Thresholds Guide* and in consultation with Los Angeles Department of Transportation (LADOT). (AR 36:6542.) LADOT reviewed and approved the traffic study included as Appendix P to the Draft EIR. (AR 36:6503.) The court does not find that the City abused its discretion by not studying further weekday departures after 7 p.m. for special events.

Air Quality Impacts

Petitioners argue that air quality impacts from the construction phase of the Project, particularly NOx and diesel particulate emissions, were inadequately disclosed and mitigated. Petitioners also argue that a condition, requiring City to prepare an updated health risk assessment prior to using heavy-duty construction equipment, constitutes impermissibly deferred mitigation. Petitioners also contend that an accelerated three-year construction schedule intensified air quality impacts from a six-year schedule discussed in the Draft EIR. (OB 9-10.)

NOx Emissions

Petitioners argue, citing the Draft EIR, that the Project will have significant NOx emissions during the construction phase. (See AR 36:5763.) However, in the Final EIR, City stated: "[T]he project has been refined to enhance the mitigation included in the Draft EIR. With incorporation of the refined mitigation, Project-level and cumulative regional air quality impacts during construction would be reduced to less than significant with mitigation." (AR 16:1013; see also 16:985, 993 [finding no significant regional emissions with mitigation].) Therefore, Petitioners are incorrect to the extent they argue that the EIR found significant NOx emissions.

Petitioners contend that there is no evidentiary support for these statements in the Final EIR. (OB 15; Reply 5.) Petitioners point out that the new mitigation measures in the Final EIR include a construction vehicle speed limit and additional watering of dirt. (AR 16:1138-1140.) Petitioners have highlighted portions of the draft EIR showing significance in NOx emissions, but the evidence discusses the "unmitigated project." (AR 36:6039 [chart showing unmitigated NOx emissions].)

In opposition, Archer cites to a discussion and "refined analysis" in the Final EIR of NOx emissions after mitigation. Considering additional mitigation measures incorporated in the Final EIR, City concluded that the Project's NOx emissions during

construction would be less than significant. (AR 16:1138-1140 [showing revised mitigation measures] 16:1547-1549; see also 16:1012-1013.) In this analysis, City referred to supporting calculations submitted as Appendix F-2 to the Final EIR. (AR 16:1548; see also AR 32:4998-5254 [Appendix F-2: Supplemental Air Quality Worksheets].)

Petitioners cite to evidence from Appendix F-2 that shows regional Phase I and Phase II construction NOx emissions totaling 88 and 63 pounds per day, respectively, with a significance threshold of 100 pounds per day. (AR 32:5005.) Petitioners apparently contend that these emissions may be added together to account for the compression of the construction schedule to three years. The court addresses below City's analysis and disclosure of an accelerated construction schedule.

Diesel Particulate Emissions

Petitioners argue that the EIR failed to disclose the full significance of the Project's diesel particulate emissions. (OB 9-10.) The EIR discloses a maximum incremental cancer risk of 9.4 in a million, which Petitioners concede is below the threshold of significance. (AR 35F:5668.) Petitioners cite to a contrary expert opinion, the "SWAPE Analysis," finding mitigated cancer risks as high as 30.8 in a million for adults and 51.3 in a million for children. (AR 505:19284.) In the Final EIR, City discussed the SWAPE Analysis and explained why it was relying on its own experts' conclusions instead. (AR 16:1800-1802.) Petitioners do not discuss the analysis of City's experts and fail to show that it does not constitute substantial evidence in support of City's finding of non-significance. (See *Citizens for a Megaplex-Free Alameda v. City of Alameda* (2007) 149 Cal.App.4th 91, 113 [petitioner's failure to discuss all material evidence "is deemed a concession that the evidence supports the findings"].) City had discretion to rely on its own expert's opinion. (AR 16:1800-1802; see also 32:4998-5254 [Air Quality Worksheets].)

Petitioners argue that City should have required additional mitigation to offset cancer risks. (OB 10.) "Mitigation measures are not required for effects which are not found to be significant." (CEQA Guidelines, § 15126.4(a)(3).) As stated, the Final EIR found diesel particulate emissions for the Project would not be significant. Moreover, City imposed mitigation measures to address temporary construction air quality impacts, including prohibiting idling for more than five minutes when not in use. (AR 5:92; see also AR 35F:5668 [requiring Tier 3 or 4 construction equipment].) While Petitioners argue that no condition prevents diesel vehicles from staging or queuing within 1,000 feet of sensitive receptors, they do not show that the mitigation imposed is ineffective or that their proposed mitigation would be feasible.[8]

[8] Petitioners also argue that a condition, Project Design Feature B-2 (PDF B-2), to prepare an updated health risk assessment prior to using heavy-duty construction equipment, constitutes impermissibly deferred mitigation. (OB 10.) The court addresses *infra* whether PDF B-2 shows "significant new information" that required recirculation.

Alternatives

"An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decisionmaking and public participation. An EIR is not required to consider alternatives which are infeasible." (CEQA Guidelines, § 15126.6(a).) "The range of potential alternatives to the proposed project shall include those that could feasibly accomplish most of the basic objectives of the project and could avoid or substantially lessen one or more of the significant effects." (Id. § 15126.6(c).)

Every EIR is not required to include a discussion of the predicted impacts of alternative off-site locations for a proposed project. (See *Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477, 491.) However, in the event alternative locations are considered by the lead agency but rejected as infeasible, the EIR must identify those alternatives and briefly explain the reasons underlying the lead agency's infeasibility determination. (CEQA Guidelines, § 15126.6(c).)

The Project Objectives

Petitioners contend that the Projective objectives were overly restrictive and therefore constrained the analysis of alternatives. Petitioners challenge Archer's use of the term "maximize" in its objectives, noting that City staff recommended against use of this language because it might constrain the alternatives analysis.[9] (OB 11; see Supplemental AR 28:1444-1447.)

The Draft EIR states that "the underlying purpose of the Project is to modernize the facilities and provide Archer with a campus that can maximize the fulfillment of its educational mission now and in the future." (AR 36:5867.) "Academic Objectives" include, among others, to "provide new facilities on the Archer campus that can accommodate the entire Middle School and Upper School separately and simultaneously, at two locations." (Ibid.) The Draft EIR also sets forth objectives for athletics and performing arts, and for maximizing student safety and the number of on-site parking spaces. (Id. at 5869.)

While the Draft EIR used the term "maximize" for several Project objectives and in the underlying purpose, City provided detailed analysis of the objectives and did not

[9] Petitioners also assert that Archer is a for-profit business so that "maximizing" educational objectives is really about lost probability of alternatives. (OB 11.) The record shows that Archer is a non-profit 501(c)(3) organization. (See AR 81:12304; 16:3040.) Thus, this argument lacks merit.

focus on the word "maximize" as the basis for finding alternatives infeasible. (See e.g. AR 6727-6729.) Thus, the use of the word "maximize" in the objectives or underlying purpose does not establish, in itself, that the objectives were overly restrictive.

Petitioners contend that City improperly rejected Alternative 2, "No Project—Development and Use in Accordance with Existing Approvals"; and Alternative 5, "Reduced Excavation, Export, and Program" because of overly restrictive objectives. (See AR 36:6688, 6692-6694.) Alternative 2 was based on the existing CUP, under which Archer still has a permit to build a 12,000 square foot gymnasium. (AR 70:11764.) Alternative 5 would be similar to the proposed Project but with a reduced size. (AR 36:6796.) City concluded that these alternatives would not meet many of the Project's objectives, including providing dedicated space for visual and performing arts (Alternative 2), athletics (both), and environmental sustainability (both). (AR 36:6727-6729, 6821-6824.) Petitioners do not challenge the evidentiary basis for these conclusions, only that the objectives were too restrictive. Because there is substantial evidence that these alternatives did not meet several important objectives, City did not abuse its discretion in rejecting these alternatives as infeasible. (*California Native Plant Soc. v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 1001-1003 [agency may balance competing interests].)

Offsite Locations

Petitioners argue that City should have included an alternative that required Archer to use offsite locations for athletics and other school functions. (OB 12-13.) Petitioners point to evidence that Archer, as well as other private schools in the area, have used offsite locations for athletics and special events. (See e.g. AR 23:3370.)

City rejected the analysis of offsite alternatives as infeasible. (AR 36:6689.) City explained the reasons it found that an alternate site would not meet most of the basic Project objectives. Among other findings, City stated that the Project objectives are closely tied to creating an integrated campus. Archer already owns its campus and does not own or control another comparable site. City found that development on an alternate site could produce the same significant construction-related impacts, just in a different location. City also found that splitting the campus could disrupt the school's busing program. (AR 36:6689-70.) There is no strict requirement that City explore alternative sites. Because there is substantial evidence that alternative sites would not meet several important Project objectives, City did not abuse its discretion in rejecting these alternatives as infeasible. (*California Native Plant Soc. v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 1001-1003; see also Evid. Code § 664.)

Overriding Considerations

Petitioners briefly challenge City's Statement of Overriding Considerations, but they incorporate the arguments, discussed above, that feasible alternatives and mitigation measures existed. (OB 13; Reply 9.) As Petitioners do not challenge the

Statement of Overriding Considerations on other grounds, this argument fails for the reasons stated above.

Recirculation of the EIR

Petitioners argue that City posed important new information in its Erratas that required recirculation.

Recirculation is required when "significant new information" is added to an EIR after public notice and comment but prior to certification of the EIR. (Pub. Resources Code § 21092.1.) "New information added to an EIR is not 'significant' unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement." (CEQA Guidelines § 15088.5(a).)

"'Significant new information' requiring recirculation include, for example, a disclosure showing that: (1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented. (2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance. (3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project's proponents decline to adopt it. (4) The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded." (CEQA Guidelines § 15088.5(a); see *Laurel Heights Improvement Association v. Regents of the University of California* (1993) 6 Cal.4th 1112, 1126-1132.)

"Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR." (Id. § 15088.5(b).)

"An agency's determination not to recirculate an EIR is given substantial deference and is presumed to be correct. A party challenging the determination bears the burden of showing that substantial evidence does not support the agency's decision not to recirculate." (*Beverly Hills Unified School District v. Los Angeles County Metropolitan Transportation Authority* (2015) 241 Cal.App.4th 627, 661.)

Accelerated Three-Year Construction Schedule

Petitioners contend that an accelerated three-year construction schedule intensified air quality and construction traffic impacts from a six-year schedule discussed in the Draft EIR. (OB 9, 14-15; Reply 6, 9-10.) Petitioners also contend that the analysis of accelerated construction in the Draft EIR was insufficient. (OB 15:7-8.)

In the Draft EIR, Archer initially proposed construction to take place over 75 months or approximately 6 years. (39:7048-7065 [75-month schedule]; see AR 5:137.) Under the six-year schedule, construction of the Project would be implemented in phases commencing with the North Wing Renovation and followed by Phase 1 and Phase 2, as defined in the Draft EIR.[10] (AR 36:6047; see 36:5871-5880 [discussing Phases 1 and 2]; 36:5891-5895 [Project construction plan].) However, City also indicated in the Draft EIR that, "the Project's construction schedule could be accelerated so that all phases of the Project are constructed concurrently and completed within a shorter time period." (AR 36:5734, 5892.) In the Draft EIR, City analyzed the effects of the accelerated schedule as follows:

> [A]s with the proposed six-year schedule, under an accelerated construction scenario, the maximum daily impacts would occur during the mass excavation and export phase. In addition, when compared with the six-year schedule, the accelerated schedule would not increase the use of on-site equipment or number of trucks on a daily basis during this phase of construction. As a result, the maximum daily construction impacts presented [in the Draft EIR] would also represent peak construction impacts under an accelerated schedule. However, under the accelerated schedule, the duration of peak construction days could be increased to handle the mass excavation spoils from both Phase 1 and Phase 2. Construction impacts under an accelerated schedule would also be greater during other phases of construction due to the condensed timeframe for construction and associated increased intensity of construction activities. However, such impacts during these other phases would not be greater than the maximum daily construction impacts presented [in the Draft EIR.] (AR 36:6047.)

The Final EIR similarly discussed and analyzed the possibility of an accelerated construction schedule. (AR 16:1006.)

In Errata 2, issued in April 2015, City indicated that in response to comments raised after release of the Final EIR, the construction timeline was compressed from six years to three years "by expediting the sequencing of construction activities and providing for more overlap of construction activities." (AR 35b:5492-5493.) City stated that "the potential impacts of the 3-year construction timeframe ... have been addressed

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[10] Construction of Phase 1 would include the underground parking structure, athletics fields, and Multipurpose Facility. Phase 2 would include the Visual Arts Center and Performing Arts Center. The Draft EIR states that concurrent construction of Phase 2 buildings may occur, and overlap of North Wing Renovation and excavation and haul activities associated with Phase 1 may occur. (AR 36:5891.) A 36-month construction schedule prepared by Matt Construction, after issuance of the Draft and Final EIRs, shows construction of the Performing Arts Center and Visual Arts Center (Phase 2) starting in month 24, immediately after completion of North Wing Renovation and Phase 1. The schedule suggests excavation and haul for Phase 2 could overlap for a month with the completion of the Multipurpose Facility (Phase 1). (AR 5:140.)

as part of the accelerated construction schedule analyzed in the Draft EIR." (AR 35b:5495.) With respect to construction-related air quality impacts, City found that the three-year schedule would not result in an increase in construction equipment, grading, construction truck or work trips, or construction hours of operation above that already evaluated for the peak construction day under the accelerated schedule within the Draft EIR. (AR 35b:5495.) For construction-related traffic impacts, City similarly concluded in Errata 2 that the construction traffic impacts of the three-year schedule would not result in new significant impacts or a substantial increase in the impacts identified in the EIR. (AR 35b:5498-5499.) The Errata also noted that "the difference between a 3-year construction schedule and the schedule evaluated in the Draft EIR for the Project (6 year construction schedule) would be the number of days during which peak construction activities could occur." (AR 35b:5493).

Petitioners argue that the Draft and Final EIRs discussed an accelerated schedule without specifically defining the number of months over which construction would occur. (OB 14.) Appendix C-1 to the Draft EIR provides a detailed Construction Activity Schedule for a 75-month period. (See AR 39:7048; see also AR 58:11434-11451 [traffic tables for 75 months].) Appendices C-4 and F-2 to the Final EIR include information about a 5-year schedule. (AR 32:5004; AR 29:4963-4967.) In contrast, a 3-year accelerated schedule was not specifically discussed. (See AR 36:6047; 41:7087-7088 [Accelerated Construction Schedule Assumptions]; AR 56:9362-9366 [traffic report for accelerated schedule].)

While the Draft EIR provided detailed information about the proposed 75-month schedule, its analysis of the accelerated schedule was far less detailed. Appendix C-1 to the Draft EIR set forth a 75-month construction schedule showing the work to be performed each month, the number of workers onsite, the parking location, large deliveries and exports, and large equipment onsite. (AR 39:7048-7065.) Appendix C-2 estimated the number of daily round trips, per week for 75 months, for 10 vehicle classifications used in construction. (AR 40:7066-7085.) This detailed information about the 75-month schedule allowed meaningful public comment about the assumptions used in City's significance analyses. (See AR 36:5891-5895.)

Archer argues that the Draft EIR also analyzed an accelerated construction schedule that assumed overlapping phases during a three-year span. However, in the pages cited by Archer, City states that a six-year timeline "was used as the basis for the construction period air quality analysis." City states in the Draft EIR, without elaboration, that "project construction could be concurrent and completed within a shorter time period." (Archer Oppo. 13; see AR 36:6407, 6598.) The pages cited do not provide any detailed information about how compressing the construction schedule by more than half, 75 months to 36 months, would change the construction activities.

Although not discussed by the parties, the court notes that Appendix C-3 to the Draft EIR includes a letter from Matt Construction, dated February 6, 2014, that provides information regarding accelerated construction of the Project. This letter does

not specify the number of months for which Matt Construction analyzed accelerated construction. Moreover, this letter lacked detail in discussing how an accelerated schedule would impact construction activities. Matt Construction opined that maximum daily round trips per vehicle classification "are expected to be similar," but would occur on more days under accelerated construction. The letter concluded, without detail or analysis, that haul routes, staging, truck queuing, installation of sound barriers, properly line shoring activities, and construction hours would be "similar" to those under the 75-month project. The letter also noted that the Temporary Classroom Village would be relocated under an accelerated construction. (AR 41:7086-7091.) While Appendix C-3 provided some information about accelerated construction, it does not specify a time period or provide detailed analysis.[11]

Appendix P-1 to the Draft EIR also provides a brief analysis of the traffic impacts of the accelerated construction schedule. However, the assumptions about construction activities in this appendix appear to be based largely on Matt Construction's February 6, 2014 letter. The traffic analysis of accelerated construction is also conclusory with respect to how compression of the construction schedule would affect assumptions used in the analysis. (AR 56:9362-9366.)

In opposition, Archer cites to a LADOT email, dated April 9, 2015, stating that LADOT had received a three-year construction traffic memo and concurred that the accelerated three-year schedule would not result in any additional impacts. (AR 70:12107-12116.) The LADOT letter attaches an expert traffic analysis from Fehr & Peers, which concluded that the three-year construction schedule would not result in any new significant traffic impacts. (Ibid.) The record also includes an analysis from Matt Construction, dated August 3, 2015, regarding the three-year schedule. (AR 5:137.) Matt Construction opined that "the assumptions for maximum construction activity remain consistent because the maximum construction activity that can occur on the Project site on any given day is limited by the Project's location in an infill site in a residential neighborhood ... and on a Project site with limited acreage, access points, and laydown areas." (AR 5:138.) Even in this subsequent letter, Matt Construction did not provide detailed, month-by-month analysis of the accelerated 36-month construction schedule. (See 5:140 [one-page chart].)

On August 3, 2015, the day before the EIR was certified, Archer also submitted a detailed written response to objections by Project opponents that the accelerated construction schedule was not adequately analyzed in the EIR. (AR 116:13161-13165.) Archer's counsel attached an air quality analysis of Eyestone Environmental, also dated August 3, 2015, which concluded based on construction assumptions of Matt Construction that "the peak day of emissions" would not change for a three-year

[11] Appendix C-4 to the Final EIR is a subsequent letter from Matt Construction that discusses construction assumptions for a 60-month schedule. (AR 29:4963-4967.) This letter also concludes that construction activity would be "similar" to the 75-month schedule, but a detailed comparison is not provided. Moreover, this 60-month schedule is significantly less compressed than the 36-month schedule.

construction schedule. The expert noted that the Draft EIR "conservatively analyzed air quality emissions by basing the significance determination on the 'peak day' of emissions." (AR 116:13169.) This information also was not provided with the Draft EIR and was not subject to public review and comment. Also, the assumptions about construction activities in this report were also apparently based on Matt Construction's letters.

Archer argues that the three-year accelerated schedule does not change the significance analysis because the intensity of peak days does not change. (Archer Oppo. 14.) Appendix P1-1 to the Draft EIR states that "the construction period traffic impact analysis focuses on the period of peak construction traffic activity within each of the following eight different periods...." (AR 56:9344-9345; see also 56:9347-9348 [discussing "peak activity"].) Appendix F-1 to the Draft EIR includes air impacts analysis that appears to use peak construction activity. (AR 44:7453-7460.) In Errata 2, City noted that under *L.A. CEQA Thresholds Guide*, project air quality impacts are evaluated "using the worst-case day, as was evaluated in the Draft EIR." (AR 35b:5498-5499.) The record includes evidence that air quality impacts, including cancer risks, are evaluated based on peak days. (See AR 505:19284; 35f:5680-5682.)

Archer cites to *Beverly Hills Unified School District v. Los Angeles County Metropolitan Transportation Authority* (2015) 241 Cal.App.4th 627, 661, a case that affirmed an agency's decision not to recirculate an EIR after the project's construction schedule was lengthened. While that case provides some guidance, it is ultimately distinguishable on its facts. In *Beverly Hills*, the construction schedule was substantially lengthened from 48 months to 84 months. The Court of Appeal noted that while "the final EIS/EIR reported an increase in the time from excavation to station completion, the actual duration of construction is unchanged from the draft EIS/EIR, as shown in each EIS/EIR's table entitled 'Generalized Sequence and Approximate Duration of Construction Activities.'" (Id. at 666.)

The question is whether there is substantial evidence in the record to support a conclusion that the EIR did not need to be recirculated because the 3 year construction schedule did not create new significant impacts. The court concludes that the City did have substantial evidence to support that conclusion. First the draft EIR itself had a discussion of the impact of accelerating the construction schedule. That evidence was supplemented by information in Errata 2 and the more detailed August 3, 2015 letter responding to objections that the accelerated construction schedule had not been adequately studied. At the time the City certified the final EIR, the information regarding the accelerated schedule was fairly detailed. The City's methodology for measuring impact is based on a "worst case" or peak scenario. Under that methodology, the significance of the day of greatest impact is analyzed. The evidence before the Council indicated that the compressed construction schedule, while resulting in more peak days in a shorter period of time, would not make more severe the environmental impact on a peak or worst case day. The court cannot conclude that it was an abuse of discretion to

employ that methodology. Accordingly, there is substantial evidence in the record that compressing the construction schedule did not require recirculation of the EIR.

New OEHHA Guidelines

Petitioners argue that the EIR should have been recirculated to address updated Office of Environmental Health Hazard Assessment (OEHHA) guidelines, which Petitioners contend would show higher air quality impacts and cancer risks than disclosed in the EIR. (OB 15.) In a comment letter dated August 3, 2015, Petitioners indicated that the new OEHHA guidelines were issued by the state in March 2016. (AR 115:13039.) Petitioners cite an opinion letter attached to this comment, which states that "the new guidelines, as applied to this project, would increase the risk values substantially above those under prior guidelines." The commenter stated that cancer risk is expected to increase approximately 10 fold for short term events, pushing the cancer risk above the significance threshold. (See AR 115:13047-13048.)

In the abstract, important new OEHHA guidelines that show significant air quality impacts could constitute significant new information requiring recirculation. However, the record shows that as of June 17, 2016, the SCAQMD had not yet evaluated or provided guidance on how the new OEHHA guidelines should be used to evaluate construction phases for typical development projects. (AR 116:13180). Petitioners have not identified evidence in the record showing that the City was required to use the OEHHA guidelines as part of the environmental review of the Project or that SCAQMD had ever determined that the new guidelines should be used for CEQA significance analysis. In fact, substantial evidence in the record was to the contrary. (Ibid.)

In opposition, Archer contends that recirculation was not required because, pursuant to a condition in the CUP, Project Design Feature B-2 (PDF B-2), Archer will prepare an updated health risk assessment (HRA) prior to the use of heavy-duty construction equipment. (Archer Oppo. 15.)

PDF B-2 requires the following:

> Prior to the start of construction involving the use of heavy duty construction equipment, the Project Applicant shall prepare an updated Health Risk Assessment, including any available guidance provided by SCAQMD, to utilize the then-most current version as applicable of the Guidance Manual for Preparation of Health Risk Assessments, Air Toxics Hot Spots Program, issued by the Office of Environmental Health Hazard Assessment [OEHHA].... If and to the extent necessary based on the updated Health Risk Assessment, the Project shall incorporate additional measures to reduce such emissions and keep the Project below the standards, including, but not limited to, any of the following measures:
>
> - Require the use of 2010 and new diesel haul trucks ....

- [Three additional mitigation measures]

Verification of Project compliance with this measure shall be provided by submittal of the updated Health Risk Assessment ... to the Department of City Planning. (AR 5:88.)

City apparently added PDF B-2 in response to arguments made by Petitioners before the PLUM Committee in June 2015, after the Final EIR was issued. (AR 85:12541-12542.) Petitioners also discussed the new guidelines in a letter dated August 3, 2015, the day before the EIR was approved. (AR 115:13035.)

Petitioners contend that PDF B-2 constitutes impermissible deferred mitigation. (OB 10.) Because the Final EIR did not find significant air quality impacts, mitigation was not required based on the impacts disclosed by City. (CEQA Guidelines, § 15126.4(a)(3).) Resolution of this issue is dependent in part on the City's obligation to apply the new OEHHA guidelines. As discussed above, substantial evidence in the record supports the conclusion that, at all times relevant to this petition, City was not required to use the revised OEHHA guidelines and SCAQMD had not determined that the new guidelines should be used for CEQA significance analysis.

Errata 6

Petitioners also contends that Errata 6 disclosed new and more severe air quality impacts than had been disclosed previously. Errata 6 was posted on August 3, 2015, the day before the City Council hearing at which the Project and EIR were approved. (See AR 35f:5665-5698.) Contrary to Petitioners' assertion, Errata 6 makes corrections that show the Project's *mitigated* health risks would be slightly higher than presented in the Final EIR, but would still be less than significant. (AR 35f:5668, 5672-73, 5680-81.) Petitioners do not challenge the evidentiary value of these revised calculations. Accordingly, because the new disclosed health risks are still below a level of significance, Petitioners fail to show that the information constitutes "significant new information" requiring recirculation. (CEQA Guidelines § 15088.5(a)-(b).)

Conclusion

The petition is denied.

DATED: September 19, 2016

Mary H Strobel

MARY H. STROBEL,
JUDGE OF THE SUPERIOR COURT

EXHIBIT D

#10

Sunset Coalition, et al.
v.
City of Los Angeles

Archer School for Girls, Real Party in Interest

BS157811

Judge Mary Strobel
Hearing: December 13, 2016

Tentative Decision on Motion for New Trial: DENIED

Petitioners Sunset Coalition, Brentwood Residents Coalition, Brentwood Hills Homeowners Association, and David and Zofia Wright ("Petitioners") move for a new trial on the grounds that the judgment is against law. Respondent City of Los Angeles ("City") and Real Party Archer School for Girls ("Archer") oppose the motion.

Background and Procedural History

On September 9, 2015, Petitioners filed a petition for writ of mandate. City and Archer answered the petition on March 17 and 22, 2016, respectively. In the petition, Petitioners sought a writ of mandate compelling City to set aside its approval and environmental impact report ("EIR") for an expansion project of Archer's school campus. Petitioners contended that the conditional use permit approved by City violates various provisions of the Los Angeles Municipal Code and Charter that restrict floor area, height, and setback of buildings. Petitioners contended that the EIR certified by City violated CEQA because the EIR failed to address significant impacts and feasible alternatives to the project, and because City did not recirculate the document for public comment after several erratas were issued after the Final EIR was made public.

After considering the papers submitted and oral argument on July 28, 2016, the court took the matter under submission. On September 19, 2016, the court issued its decision on submitted matter, denying the petition in full. On October 13, 2016, the court entered judgment denying the petition. On October 19, 2016, City served notice of entry of judgment. On November 1, 2016, Petitioners filed its notice of intent to move for new trial. The court has received Petitioners' opening brief, City's and Archer's oppositions, and Petitioners' replies.

The court incorporates by this reference the Statement of the Case provided in the court's decision on submitted matter filed September 19, 2016.

Standard of Review

A motion for new trial may be brought because of an "error in law, occurring at the trial and excepted to by the party making the application." (CCP §657(7).) A new trial also may be granted if the "decision is against law." (Id. § 657(6).) A new trial

cannot be granted for error of law unless the error was prejudicial. (*Bristow v. Ferguson* (1981) 121 Cal.App.3d 823, 826.)

Motion to Augment the Administrative Record

In support of the motion for new trial, Petitioners submit two expert declarations and various exhibits that are not part of the administrative record. The court interprets Petitioners' evidentiary submissions as a motion to augment the administrative record. City objects to Exhibits B to H of the Carstens Declaration, and to the expert declarations of Tom Brohard and Marcia Baverman.[1]

In general, "a hearing on a writ of administrative mandamus is conducted solely on the record of the proceedings before the administrative agency." (*Toyota of Visalia, Inc. v. New Motor Vehicle Bd.* (1987) 188 Cal.App.3d 872, 881.) However, extra-record evidence may be admitted if, in the exercise of reasonable diligence, the relevant evidence could not have been produced or was improperly excluded at the hearing. (CCP § 1094.5(e); *Pomona Valley Hosp. Med. Ctr. v. Superior Court* (1997) 55 Cal.App.4th 93, 100.) Evidence of subsequent events can also be received by court to the extent that it is relevant; that is, to the extent that it would otherwise be admissible under section 1094.5(e). (See *Fort Mojave Indian Tribe v. Dept. of Health Services* (1995) 38 Cal.App.4th 1574, 1593.)

Exhibits C to H of Carstens Declaration

Exhibits C to H of the Carstens Declaration are excerpts of legal briefs and portions of the administrative record from an unrelated CEQA case, *Mission Bay Alliance v. Office of Community Investment and Infrastructure*, which was pending before the First District Court of Appeal when the motion for new trial was filed. The case was decided on November 28, 2016. While the court judicially notices the published decision in *Mission Bay Alliance*, Petitioners fail to show that the legal briefs and portions of the administrative record from that case are relevant to the instant writ proceedings. (See Oppo. to Objections; see Reply to City 2-3.) Accordingly, the motion to augment the record with Exhibits C to H of the Carstens Declaration is DENIED.[2]

Exhibit M to Carstens Declaration

Exhibit M to the Carstens Declaration is a SCAQMD PowerPoint presentation regarding OEHHA procedures. (Carstens Decl. ¶ 14.) Although City has not expressly objected, this document is apparently extra-record evidence. Petitioners fail to show

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[1] Exhibit B to the Carstens Declaration is a transcript of the writ hearing in this case on July 28, 2016. That exhibit is not extra-record evidence. To the extent City intended to object to that transcript, the objection is overruled.

[2] Although no request for judicial notice has been submitted by Petitioners, the court declines to take judicial notice of these documents because they are irrelevant and also improper extra-record evidence.

this document should be admitted under CCP section 1094.5(e). The motion to augment as to Exhibit M is DENIED.

Declarations of Tom Brohard and Marcia Baverman

Tom Brohard and Marcia Baverman submitted expert opinions against the Project during the administrative proceedings, with respect to traffic impacts and health risk assessments, respectively. (See AR 503:19226; see Brohard Decl. ¶ 3; Baverman Decl. ¶ 3.) In the new declarations submitted with the new trial motion, Brohard and Baverman re-examine and provide new and expanded opinions on the evidence before the City when it approved the Project. In CEQA cases, "extra-record evidence can never be admitted merely to contradict the evidence the administrative agency relied on in making a quasi-legislative [or quasi-adjudicatory] decision or to raise a question regarding the wisdom of that decision."[3] (*Western States Petroleum Assn. v. Sup. Ct.* (1995) 9 Cal.4th 559, 579; see *Eureka Citizens for Responsible Government v. City of Eureka* (2007) 147 Cal.App.4th 357, 367.) The Brohard and Baverman declarations fall squarely within this rule against extra-record evidence. Petitioners provide no evidence they were unable to submit these declarations in the exercise of reasonable diligence during the administrative proceedings.

Petitioners argue that the declarations are "not new evidence," and that Brohard and Baverman "distill and interpret the evidence of the certified administrative record in an attempt to clarify Petitioner's arguments for the Court." (Oppo. to Objections 2.) In *Berkeley Keep Jets Over the Bay Committee v. Board of Port Com'rs* (2001) 91 Cal.App.4th 1344, cited by Petitioners to support augmentation, the court took judicial notice of a declaration of Paul Allen, an air pollution research specialist with CARB, which was first submitted in the writ proceedings. (Id. 1365.) Allen's declaration contradicted the agency's assertion, citing a prior conversation with Allen, that CARB had expressed concern about the 1994 speciation profile #586 (to estimate emissions from jet aircraft). In his declaration, Allen stated he in fact told the agency "speciation profile #586 is the best profile available" and that the old speciation profile from 1991 should not be used. (Id. 1365-1366.) Therefore, the Allen declaration was considered by the court because it showed agency misconduct and a lack of a good faith effort to inform decisionmakers about the more accurate 1994 profile.

Neither the Brohard nor Baverman declarations clarify the record in a manner similar to the Allen declaration in *Berkeley*. *Berkeley* does not support admitting these new, expanded expert opinions. In Berkeley, the declaration was submitted in connection with the writ trial. Here, Petitioners seek to submit this extra-record evidence at even a later stage – in connection with its new trial motion. Petitioners'

[3] While *Western* involved a traditional mandamus action challenging a quasi-legislative decision, the California Supreme Court's reasoning has been applied to administrative mandamus review of quasi-judicial decisions. (See *Cadiz Land Co. v. Rail Cycle LP* (2002) 83 Cal.App.4th 74, 120; *Eureka Citizens for Responsible Government v. City of Eureka* (2007) 147 Cal.App.4th 357, 367.)

submission of lengthy expert declarations at this time is also improper because Petitioners did not move for new trial on the grounds of "newly discovered evidence." (CCP § 657(4).) Also, there is no evidence of "reasonable diligence" to support a new trial under section 657(4).

The motion to augment the record with the Brohard and Baverman Declarations is DENIED.

Analysis

Recirculation of EIR

In their motion for new trial, Petitioners contend that the court erroneously concluded that substantial evidence supports City's decision that recirculation of the EIR was not required. (See Opening Brief (OB) 2-10.) Specifically, Petitioners contend that the EIR should have been recirculated based on (1) updated OEHHA guidelines for analyzing air quality impacts[4]; (2) to address the three-year construction schedule; and (3) to address "late-filed" changes or new information added shortly before approval of the EIR.

Law Governing Recirculation of EIRs

Recirculation is required when "significant new information" is added to an EIR after public notice and comment but prior to certification of the EIR. (Pub. Resources Code § 21092.1.) "New information added to an EIR is not 'significant' unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement." (CEQA Guidelines § 15088.5(a).)

"'Significant new information' requiring recirculation include, for example, a disclosure showing that: (1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented. (2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance. (3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the significant environmental impacts of the project, but the project's proponents decline to adopt it. (4) The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded." (CEQA Guidelines § 15088.5(a); see *Laurel*

[4] In the motion for new trial, Petitioners do not focus on the OEHHA Guidelines as a basis for recirculation. In the writ briefs, Petitioners argued that the new guidelines, issued after the Draft and Final EIRs were made public, required recirculation. The OEHHA Guidelines relate to recirculation because they were not approved by SCAQMD until after the Final EIR was made public.

Heights Improvement Association v. Regents of the University of California (1993) 6 Cal.4th 1112, 1126-1132.)

"Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR." (Id. § 15088.5(b).)

"An agency's determination not to recirculate an EIR is given substantial deference and is presumed to be correct. A party challenging the determination bears the burden of showing that substantial evidence does not support the agency's decision not to recirculate.". (*Beverly Hills Unified School District v. Los Angeles County Metropolitan Transportation Authority* (2015) 241 Cal.App.4th 627, 661.)

OEHHA Guidelines

In the legal briefs for the writ hearing, Petitioners argued that the EIR should have been recirculated to address updated Office of Environmental Health Hazard Assessment (OEHHA) guidelines, which Petitioners argued would show higher air quality impacts and cancer risks than disclosed in the EIR. In a comment letter dated August 3, 2015, Petitioners indicated that the new OEHHA guidelines were issued by the state in March 2015, and by SCAQMD on June 5, 2015. (AR 115:13039.) Petitioners cited an opinion letter attached to this comment, which states that "the new guidelines, as applied to this project, would increase the risk values substantially above those under prior guidelines." The commenter stated that cancer risk is expected to increase approximately 10 fold for short term events, pushing the cancer risk above the significance threshold. (See AR 115:13047-13048.)

The court rejected Petitioner's arguments, stating: "[T]he record shows that as of June 17, 2016, the SCAQMD had not yet evaluated or provided guidance on how the new OEHHA guidelines should be used to evaluate construction phases for typical development projects. (AR 116:13180). Petitioners have not identified evidence in the record showing that the City was required to use the OEHHA guidelines as part of the environmental review of the Project or that SCAQMD had ever determined that the new guidelines should be used for CEQA significance analysis. In fact, substantial evidence in the record was to the contrary. (Ibid.)"

In the motion for new trial, Petitioners first argue, citing *Berkeley Keep Jets Over the Bay Committee v. Board of Port Com'rs* (2001) 91 Cal.App.4th 1344, that the OEHHA Guidelines "reflect the best current scientific assessment of the existing environment when it comes to evaluating air pollution impacts that affect children's health." (OB 3-4.) Petitioners do not cite evidence from the administrative record to support this assertion. *Berkeley* is distinguishable because Petitioners have not pointed to evidence contradicting Jillian Wong's June 17, 2015 email, stating that SCAQMD was "currently evaluating" whether to recommend use of the new OEHHA guidelines to evaluate construction phases for typical development projects. (AR 116:13180; see

also AR 116:13175-13177 [technical memorandum].) In addition to Jillian Wong's email, the record also includes a technical memorandum from Eyestone Environmental stating that SCAQMD "has not adopted the new version of the Guidance Document for use in CEQA analyses." (AR 13177.) Petitioners cite no evidence in the record contradicting that expert's statement.

Petitioners also makes a new argument that the City should have extracted the breathing rate data used in the new OEHHA Guidelines, and applied that factor to its methodology of assessing risk. (Opening Brief, p.7) Petitioners do not point to evidence they exhausted their administrative remedies by presenting this argument to the City during the administrative process. Additionally, Petitioners do not support the contention the City was "relying upon factual information that the [City] knew was outdated in assessing impacts." (Id.) The City was using the then current SCAQMD guidance as to analysis of impacts. Nor, as Respondents argue, has Petitioners shown applying one of the factors from the OEHHA guidelines without the balance of the methodology would appropriate.

In the moving brief, Petitioners argued that the decision in *Mission Bay Alliance*, which had not yet been issued, might address "the issue of mandatory use of the latest and most accurate breathing rates." (OB 4-5.) The published decision in *Mission Bay Alliance*, issued November 29, 2016, is consistent with the finding that City was not required to recirculate the EIR based on the OEHHA Guidelines, as there is evidence SCAQMD had not yet recommended use of the guidelines to evaluate construction phases of development projects. (AR 116:13180; *Mission Bay Alliance* (A148865), Slip Op. at 50 ["'CEQA grants agencies discretion to develop their own thresholds of significance' and an agency's choice of a significance threshold will be upheld if founded on substantial evidence."].) *Mission Bay Alliance* does not support Petitioners' motion for new trial.

Petitioners argue that although the OEHHA Guidance "applies to the Toxic Hotspot program," City was required to use it to evaluate construction air quality impacts because it represents the "most accurate information available." (OB 5-6.) Similarly, Petitioners argue that the OEHHA Guidance "is not so new or unproven" that agencies may disregard it, even if SCAQMD had not recommended its use to evaluate construction impacts under CEQA. (OB 7.) In reply, Petitioners argue that SCAQMD's "slow action is not determinative of the propriety of using the updated, scientifically more accurate OEHHA Guidance." (Reply 5.) Petitioners argue that "the City's methodology is not at issue so much as its use of incorrect factual baseline information." (Reply 6.)

Throughout these arguments, Petitioners rely on extra-record evidence from the Baverman Declaration and Exhibit H to the Carstens Declaration, which contains portions of the administrative record in *Mission Bay Alliance*. For the reasons discussed above, the court denies Petitioners' request to augment the record, and does not consider this evidence.

Contrary to Petitioners' assertion, their arguments regarding the updated OEHHA Guidelines boils down to a disagreement about methodology. "'CEQA grants agencies discretion to develop their own thresholds of significance' and an agency's choice of a significance threshold will be upheld if founded on substantial evidence." (*Mission Bay Alliance* (A148865), Slip Op. at 50; *Save Cuyama Valley v, County of Santa Barbara* (2013) 213 Cal.App.4th 1059, 1068.) (AR 116:13180). "An agency's determination not to recirculate an EIR is given substantial deference and is presumed to be correct." (*Beverly Hills Unified School District v. Los Angeles County Metropolitan Transportation Authority* (2015) 241 Cal.App.4th 627, 661.) Substantial evidence supports City's decision not to use the OEHHA guidelines as part of the environmental review of the Project, or to recirculate the EIR after those revised guidelines were issued (but not yet recommended by SCAQMD to evaluate construction projects).[5] (AR 116:13180; see also AR 116:13175-13177 [technical memorandum].)

Petitioners fail to show grounds for a new trial based on the revised OEHHA Guidelines.

Three-Year Construction Schedule

In the motion for new trial and reply brief, Petitioners argue that substantial evidence does not support City's decision that recirculation of the EIR was not required for additional analysis of the compressed three-year construction schedule. (OB 7-10; Reply 7-8.)

For the most part, Petitioners merely rehash arguments that were already made and considered by the court in denying the petition. As stated in the court's decision: "The question is whether there is substantial evidence in the record to support a conclusion that the EIR did not need to be recirculated because the 3 year construction schedule did not create new significant impacts. The court concludes that the City did have substantial evidence to support that conclusion. First the draft EIR itself had a discussion of the impact of accelerating the construction schedule. That evidence was supplemented by information in Errata 2 and the more detailed August 3, 2015 letter responding to objections that the accelerated construction schedule had not been adequately studied. At the time the City certified the final EIR, the information regarding the accelerated schedule was fairly detailed. The City's methodology for measuring impact is based on a 'worst case' or peak scenario. Under that methodology, the significance of the day of greatest impact is analyzed. The evidence before the Council indicated that the compressed construction schedule, while resulting in more peak days in a shorter period of time, would not make more severe the environmental impact on a peak or worst case day. The court cannot conclude that it was an abuse of discretion to

[5] Exhibit M to the Carstens Declaration appears to be impermissible extra-record evidence. However, this exhibit, a SCAQMD PowerPoint presentation, support City's decision because it confirms that SCAQMD had not yet determined how to use OEHHA's Toxic Hot Spots procedure for its CEQA processes. (Exh, M at p. 27; see City Oppo. 7.)

employ that methodology. Accordingly, there is substantial evidence in the record that compressing the construction schedule did not require recirculation of the EIR." (Decision 24-25.)

In the motion for new trial, Petitioners improperly rely on the expert declarations of Brohard and Baverman to assert that the three-year schedule will result in worse traffic and health impacts than analyzed in the EIR. As discussed, these declarations are extra-record evidence and may not be considered. (CCP § 1094.5(e).) Petitioners make no reasonable argument for consideration of this extra-record evidence. The *Berkeley* case, discussed above, does not support admitting extra-record evidence, the purpose of which is clearly to contradict the evidence relied on by City in making its decision. (See *Western States Petroleum Assn. v. Sup. Ct.* (1995) 9 Cal.4th 559, 579.)

Moreover, the Brohard and Baverman declarations are consistent with the finding that City's methodology for measuring impact is based on a "worst case" or peak scenario. (See Brohard Decl. ¶ 23 [Draft EIR evaluated "worst-case day number of ... trips"]; Baverman Decl. ¶ 13.) As discussed in the court's writ decision, substantial evidence supports the finding that peak-day construction traffic and peak-day emissions would remain the same as analyzed in the Draft EIR because of site constraints limiting what construction activity could occur on a single day. (See AR 116:13182-86 [August 3, 2015 traffic analysis]; AR 70:12107-12116 [DOT concurrence]; 116:13168-13178 [August 3, 2015 air quality analysis]; 41:7087-7091 [Appendix C-3]; 5:137-140 [Matt Construction August 3, 2015 analysis].) There may be contrary expert opinions in the record. However, City had discretion to find recirculation was not required based on the substantial evidence cited above and in the writ decision.

Petitioners state, without analysis of applicable case authority, that the EIR should have been recirculated because "the draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded." (OB 9; see CEQA Guidelines § 15088.5(a)(4), citing *Mountain Lion Coalition v. Fish and Game Com.* (1989) 214 Cal.App.3d 1043.) It appears Petitioners have not previously argued in their legal briefs or at oral argument that recirculation was required for this reason under Guidelines § 15088.5(a)(4).

Petitioners fail to show that City abused its discretion in finding that recirculation was not required under CEQA Guidelines § 15088.5(a)(4). The Draft EIR analyzed the effects of an accelerated construction schedule. (AR 36:6047.) Appendix C-3 to the Draft EIR summarized the accelerated construction schedule assumptions, (AR 41:7086-7091), and Appendix P1 included a traffic analysis for an accelerated schedule. (AR 56:9362-68, 9373.) The Draft EIR analyses considered the "peak day" for construction impacts. (AR 56:9344-48 [peak traffic]; 44:7453-7460 [peak air emissions].) While the Draft EIR did not specifically discuss a three-year schedule and perhaps could have been more detailed on this issue, it provided sufficient information about the assumptions underlying an accelerated schedule, including a three-year schedule, so that meaningful public review and comment were possible.

Petitioners fail to show grounds for a new trial based on the City's decision not to recirculate the EIR for additional analysis of the three-year construction schedule.

Recirculation of EIR to Review Significant New Information

Petitioners contend that recirculation was required to give the public adequate opportunity to review significant new information added to the EIR shortly before approval. (OB 10; Reply 8.)

Petitioners state that Errata 5 was posted on July 27, 2015 and Errata 6 was circulated in August 2015, at the time the Project was approved. (OB 10.) The dates the erratas were made public do not show that recirculation was required.

Petitioners state that applications for various entitlements such as temporary modular classrooms were filed on July 24, 2015. (OB 10; AR 118:13187-13200.) While the plans cited by Petitioners are stamped July 24, 2015, the cited record does not show when the applications were filed. In opposition, City states that the applications were submitted in 2014. (Oppo. 12; AR 644:19559-19565.) Petitioners show no basis for recirculation in the record cited.

Petitioners state that revised health risk calculations using mathematically corrected values, provided as the "Revised Appendix F-2 Worksheets," were not prepared until August 3, 2015. (OB 10.) The court addressed this argument in its writ decision: "Errata 6 makes corrections that show the Project's *mitigated* health risks would be slightly higher than presented in the Final EIR, but would still be less than significant. (AR 35f:5668, 5672-73, 5680-81.)" (Decision at 26.) Petitioners still fail to show that the information constitutes "significant new information" requiring recirculation. (CEQA Guidelines § 15088.5(a)-(b).)

Petitioners refer to a letter from Archer's counsel, dated August 3, 2015, which submitted the email from Jillian Wong of SCAQMD, discussed above, regarding the OEHHA Guidelines. (OB 10.) Counsel also submitted a letter from Eyestone Environmental dated August 3, 2015, which responded to a memorandum of Environmental Audit, Inc. on July 28, 2015 regarding the air quality analysis in the EIR. (AR 116:13166, 13180.) As discussed above, Wong's email concerned OEHHA Guidelines that were not issued by SCAQMD until after the Final EIR was made public. Wong's email supports City's decision not to recirculate the EIR based on the revised OEHHA Guidelines. It does not show that a new significant environmental impact would result from the project, or that the Draft EIR was so inadequate that public comment was meaningless.

Petitioners fail to show grounds for a new trial based on new information added to the EIR shortly before approval.

City's Approval of the Project pursuant to the LAMC and City Charter

Petitioners contend that the court made various errors in law when it concluded that City's interpretation and application of the Los Angeles Municipal Code (LAMC) and Charter was reasonable. (OB 10-14.)

The Conditional Use Permit

Petitioners challenge the court's conclusion that a variance was not required to allow the Project to vary from the applicable height regulations. (OB 10-11; Reply 8-9.) In the court's writ decision, the court analyzed City's discretion to grant a CUP under LAMC sections 12.24.E and 12.24.F. (Decision 10-11.) The court wrote:

> LAMC section 12.24.F, which is part of City's CUP ordinance, provides in part: "In approving a project, the decision-maker may impose conditions related to the interests addressed in the findings set forth in Subsection E. The decision may state that the height and area regulations required by other provisions of this Chapter shall not apply to the conditional use approved." ... [¶]
>
> Here, the City adopted each of the findings required by section 12.24.E. The findings set forth evidence supporting the City's conclusions. (AR 8:293-313, 13:892-910.) Petitioners concede, by not raising the issue, that City made the requisite findings to grant a CUP under section 12.24.E, and that those findings are supported by substantial evidence.... [¶¶]
>
> Petitioners argue that section 12.24.F should be interpreted to allow waiver of height and area regulations only where the conditions make a project more compatible with its surroundings, not merely to accommodate an applicant's requests. (OB 6.) To grant a CUP, the City must find that the project's size and height are compatible with the surrounding neighborhood. (LAMC § 12.24.E.) As stated, City made that finding. While the CUP must satisfy the compatibility requirements, section 12.24.F does not otherwise limit City's discretion to state that the height and area regulations provided by other provisions of the Code are not applicable to the CUP. Petitioners have not cited any authority to support a contrary interpretation. (Decision 10-11.)

In the motion for new trial, Petitioners cite to a July 29, 2016, trial court ruling in *Kottler v. City of Los Angeles*, Los Angeles Superior Court Case No. BS154184. (See Carstens Decl. Exh. A.) The trial court's ruling in this case, which is on appeal, is not published appellate precedent and therefore cannot show that the court's writ decision is against law. (CCP § 657(6), (7).) Moreover, *Kottler* was a challenge to a zoning administrator adjustment under LAMC section 12.28(C)(4), and did not address City's

power under LAMC sections 12.24.E and 12.24.F to grant height modifications in connection with a CUP.[6]

Petitioners fail to show that the court's interpretation of section 12.24.F was against law.

Use of Capitalization in LAMC section 12.07.01.C.5

In their writ briefs and motion for new trial, Petitioners argue that City should have applied the residential floor area restrictions in LAMC section 12.07.01.C.5. Finding that the ordinance was ambiguous, the court concluded, for various reasons, that the floor area limits in section 12.07.01.C.5 do not apply. (Decision 5-7.)

The court observed, *inter alia*, that "the phrase 'residential floor area' is not capitalized, while some other defined words in section 12.07.01 are capitalized (e.g. Hillside Area.)" Petitioners now contend that further briefing was required to address this observation. (OB 11.) The authority cited by Petitioners is not dipositive on the pertinent issue of interpretation, where the ordinance uses capitalization for some material words, but not others. (See *People v. Sup. Ct.* (1990) 224 Cal.App.3d 1405, 1409 [noting that "when the statute was adopted in 1937 there was a more plentiful use of capital letters on words which in modern usage would not be capitalized"].) More importantly, the court's observation about the phrase "residential floor area" was not the only basis on which the court concluded section 12.07.01.C.5 is ambiguous. Petitioners show no basis for a new trial as a result of this observation.

The Baseline Mansionization Ordinance

Petitioners contend that the court should not have considered the City's legislative clarification that the Baseline Mansionization Ordinance (BMO) does not apply to schools in residential zones. While Petitioners do not dispute that the legislative clarification supports the court's interpretation, they argue that the clarifying motion did not actually revise the LAMC in a way that would show the BMO does not apply to schools in residential zones. (OB 12-13; Reply 8-9.)

In the court's writ decision, the court analyzed the language of section 12.07.01.C.5 and found it to be sufficiently ambiguous so that it was appropriate to consider City's legislative clarifications. The court noted that "section 12.07.01 includes wording and provisions that seem designed specifically for residential development." The court also stated that City's interpretation was a "reasonable reading of the municipal code given that a permitted school is necessarily different than a residential home, and is already subject to discretionary review." (Decision 5, 7.) Petitioners do not specifically challenge those conclusions in their motion for new trial.

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[6] *Kottler* cited to *Essick v. City of Los Angeles* (1950) 34 Cal.2d 614, 623. That case also does not support a contrary interpretation of section 12.24.F.

The additional extrinsic sources cited by Petitioners in their motion for new trial are consistent with the court's interpretation of the BMO. For instance, the October 30, 2008 PLUM report refers to an "*unintended* possible interpretation" of the BMO to include schools and other uses "which are allowed with other discretionary permits." The report indicates that a prosed revision to Section 12.28 of the LAMC would clarify that other provisions of the LAMC, such as section 12.24, "allow for non-compliance with the development regulations of the LAMC for these types of uses." (Carstens Decl. Exh. J.) This legislative history material suggests that City did not intend the BMO to apply to schools in residential zones.

Moreover, the legislative materials cited by Petitioners also suggest that non-conforming uses can be allowed under section 12.24.F. The court reached this conclusion in its writ decision. (See Decision 7-8.) Petitioners do not respond to that conclusion in their discussion of the BMO.

Petitioners do not show grounds for a new trial with respect to the court's conclusion that the BMO does not apply to schools in residential zones.[7]

LAMC Section 12.24.X.10

Petitioners' reiterate their argument, made at the writ hearing, that LAMC section 12.24.X.10 requires application of height limits to the Project. (OB 13-14; Reply 10.)

As analyzed in the court's writ decision: "LAMC section 12.24.E provides that 'the decision-maker shall also make any additional findings required by Subsections U., V., W. and X, and shall determine that the project satisfies all applicable requirements in those subsections.' Petitioners argue by virtue of subsection X.10 regarding excess height in certain residential zones, City was required to make additional findings not made as part of the project approval. Respondents persuasively argue that subsection X.10, which allows certain action by a Zoning Administrator, does not apply to the Project. Rather, the relevant subsection in 12.24 is subsection U, which pertains to conditional use permits approved by the City Planning Commission with Appeal to the City Council. Specifically, subsection U.24 allows schools as a conditional use. That subsection does not require the additional findings set forth in subsection X.10." (Decision 8.)

In short, the proposed use is a school under subsection U.24, City did not grant an approval under subsection X.10, and therefore findings under subsection X.10 were not required. Petitioners show no basis for a new trial.

Conclusion

[7] The ZIMAS reports cited by Petitioners are inconclusive because, as argued by City, they can be interpreted to state simply that the schools are located in an area within the boundaries of the BMO. (See Oppo. 14; Reply 10; Carstens Decl. Exh. L.)

The motion for new trial is DENIED.

EXHIBIT E

eyestone
ENVIRONMENTAL

August 3, 2015

RE: RESPONSE TO LETTER FROM ENVIRONMENTAL AUDIT, INC. REGARDING THE AIR QUALITY ANALYSIS INCLUDED IN THE ENVIRONMENTAL IMPACT REPORT FOR THE ARCHER FORWARD: CAMPUS PRESERVATION AND IMPROVEMENT PLAN

This memorandum addresses comments received in a letter from Environmental Audit, Inc. dated July 28, 2015 regarding the air quality analysis included in the Environmental Impact Report (EIR) for the Archer Forward: Campus Preservation and Improvement Plan (Project). The Draft EIR, Final EIR, Errata 1, Errata 2, Errata 3, Errata 4, Errata 5, and Errata 6 comprise the EIR for the Project as referred to herein.

Comments from Environmental Audit, Inc. indicated that the numbers presented in air quality appendices of the EIR do not support the information presented in the main sections of the EIR and specifically referenced Appendix F-2 of the Final EIR and Table IV.B-13 included in the Draft EIR. It is noted that in response to public comments on the Draft EIR, Appendix F-2 of the Final EIR provided an update to Appendix F.1 of the Draft EIR. The construction regional and localized criteria pollutant analyses and HRA were updated to include analysis of each month of construction activity based on the peak daily construction activity for that month. The update also included further quantification of mitigation measures. As noted, CalEEMod does not provide an option to quantify the reduction in emissions from implementing Mitigation Measure B-6 (80 percent of haul trucks during Phase 1—Excavation and Grading meeting EPA Model Year 2007 NO_x emissions levels) and were therefore calculated outside of the CalEEMod model. The results of the updated analyses were then included in Section II, Corrections and Additions to the Draft EIR, of the Final EIR. To provide further clarification, an explanation of the examples referenced by Environmental Audit, Inc. is provided below.

- Table IV.B-13, Mitigated Project Construction Emissions, included in the Draft EIR shows the peak value as 127 lbs/day for NO_x. However, this table was revised in the Final EIR (see Revised Table IV.B-13, Project with Mitigation—Estimate of Regional Construction Emissions, on page II-37 of Section II, Corrections and Additions to the Draft EIR, of the Final EIR). The Revised Table IV.B-13 included in the Final EIR shows that the NO_x value was revised to 95 lb/day consistent with Appendix F-2 of the Final EIR.
- The 111 lb/day number from Table IV.B-13 of the Draft EIR referenced by Environmental Audit, Inc. was not a typo. In fact, it was the maximum emissions from Phase 1-Excavation and Grading exclusively without concurrent North Wing Renovation.

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Exhibit 1-1

- Environmental Audit, Inc. correctly identifies that Appendix F-2 of the Final EIR shows the peak as 94.9 lb/day NO_x which is also shown in Revised Table IV.B-13, Project with Mitigation—Estimate of Regional Construction Emissions, on page II-37 of Section II, Corrections and Additions to the Draft EIR, of the Final EIR. As discussed above and at the beginning of Appendix F-2, CalEEMod does not provide an option to quantify the reduction in emissions from implementing Mitigation Measure B-6. Therefore, this additional reduction in emissions was calculated outside of the CalEEMod model and was included as Appendix F.1-1(c) of Appendix F-2 of the Final EIR. Once Mitigation Measure B-6 is accounted for, the CalEEMod output of 133.6 lb/day NO_x is reduced to 94.9 lb/day NO_x.

Comments from Environmental Audit, Inc. also stated that the lack of a three year construction schedule does not provide sufficient evidence that there is no change in peak day emissions and that most of the data in the appendices would support a change in peak daily emissions due to overlap during Phase 1 and Phase 2 of the Project. As discussed in Errata 2 to the Final EIR, the Project has been refined to be implemented within a 3-year construction timeframe. MATT Construction prepared a memorandum which provides additional clarifications regarding construction assumptions for the 3-year construction schedule, which is included in Errata 6 to the Final EIR (referred to as MATT Construction's 3-Year Construction Memorandum). The construction timeframe was reduced based on an overall reduction in the scale of the Project (i.e., the Project now requires less construction than described in the Draft EIR), by overlapping certain construction activities within each phase, and by expediting the sequencing of some construction activities. Even with this reduction in schedule length, the peak day of emissions would not change. Specifically, the Draft EIR conservatively analyzed air quality emissions by basing the significance determination on the "peak day" of emissions, or the worst day when the Project has the highest daily level of pollutant emissions. As such, if the peak day emissions from the Draft EIR are not exceeded, then the significance determination reached in the Draft EIR would not change, which is the case here. Each of these items is discussed in more detail below.

A reduction in construction activities to a 3-year timeframe is partially accomplished because the overall scale of the Project has been reduced compared to what was analyzed in the Draft EIR based on Project refinements and responses to concerns raised by the public. As described in the Final EIR, proposed refinements to the Project include the following: (1) the North Wing Renovation was reduced from 39,071 square feet to 30,400 square feet; (2) the Multipurpose Facility was reduced from 41,400 square feet to 39,330 square feet; and (3) the Performing Arts Center was reduced from 22,600 square feet to 19,025 square feet with a reduction in seating from 650 seats to 395 seats. In addition, as described in Errata 1 to the Final EIR, the proposed Aquatics Center was eliminated. In response to additional comments raised during the PLUM Committee hearing regarding the size of the proposed Performing Arts Center, the PLUM Committee further refined the

Project to reduce the Performing Arts Center from 19,025 square feet to 17,758 square feet. In addition, the number of fixed seats has been reduced from 395 fixed seats to 350 fixed seats, which may be expandable by an additional 45 seats using portable chairs for a total of 395 seats.

In addition to reducing the scale of the Project, the construction schedule can be reduced to three years based on overlapping certain activities, an option that was available because the prior schedule conservatively left room for additional compression if appropriate. Although the 3-year construction schedule would be more compressed, the construction activities that led to the peak day emissions would not materially change due to practical limitations of the Project Site. As discussed in MATT Construction's 3-Year Construction Schedule Memorandum, it is expected that the 3-year construction schedule would commence with Preconstruction Activities followed by demolition of the existing North Wing and the residences on the Chaparal and Barrington Parcels. During demolition activities, shoring and site preparation of the Project Site would also occur. Excavation and haul would then begin (which is anticipated to occur over the summer months when Archer and other schools are not in session), which is of similar duration and construction intensity as the excavation and haul under the six-year construction schedule. During the excavation and haul, the Temporary Classroom Village would be installed, which would involve minimal onsite activity because the modular classrooms are prefabricated. Construction of the North Wing Renovation and Phase 1 (underground parking garage, athletic field, and Multipurpose Facility) would occur after the excavation and haul activities are completed. Once Phase 1 is completed Phase 2 (Performing Arts Center and Visual Arts Center) would begin.

It is anticipated that construction activities under the approximate 3-year construction timeframe would occur Monday through Saturday, up to eight hours per day, as permitted by the Los Angeles Municipal Code.

The 3-year construction schedule tiers off of the accelerated construction schedule analyzed in the Draft EIR and assumes no increase in maximum numbers of construction equipment, grading, construction truck and construction worker trips, or construction hours of operation. The maximum construction activity for the 3-year construction schedule remains consistent with the maximum construction activity analyzed in the Draft EIR because the intensity of construction that can occur on the Project Site on any given day is limited by the Project's location as an infill site in a residential neighborhood that is impacted by traffic and by the Project Site's limited acreage, access points, and laydown areas. Further, the activities that can occur on site on any given day are limited by the Project's design and required construction sequencing. Because of these limitations, the

maximum on-site activities for the 3-year schedule cannot exceed what was already analyzed in the EIR.

For example, the activities associated with demolition of the existing North Wing and the residences on the Chaparal and Barrington Parcels, excavation and haul of the Project Site, or concrete pours under the 3-year construction schedule would not exceed the maximum construction activity described in the Draft EIR for similar activities (see the Construction Activity Schedule and the Round Trips per Vehicle Classification prepared by Paul W. Speer, Inc. and included in Appendix C-1 and Appendix C-2 of the Draft EIR, respectively as well as the Accelerated Construction Memorandum prepared by MATT Construction and included as Appendix C-3 of the Draft EIR). For instance, during excavation and haul, which is when the maximum number of truck trips and the maximum use of heavy-duty construction equipment would occur on a given day, the maximum amount of excavation and haul and associated truck trips and use of equipment that could occur on a given day cannot increase beyond the maximum included in the Draft EIR. The six-year construction schedule already compressed the excavation and haul to the quickest time possible given the Project design and site constraints. It is not possible to increase the maximum number of truck trips or the use of heavy-equipment on-site that would occur during the peak day because of constraints such as the size of the Project site, the time it takes to load a haul truck, the restrictions on haul hours, and traffic in the surrounding area.

As shown, in Appendix F-2 of the Final EIR, the three months (Months 14-16) of excavation and export for Phase 1 would result in the maximum daily emissions, thus representing the peak day emissions. It should be noted that construction activities associated with the North Wing Renovation were also included in these three months, which makes the peak day estimate even more conservative.

Concrete pour days for foundations would represent the next closest peak day of emissions and would be less than Phase 1 excavation and export. Concrete pour days also require heavy-duty construction equipment and truck trips. The number of concrete pour days required to construct the Project would not increase as a function of reducing the construction timeframe to three years. Also, the intensity of construction would not change on these concrete pour days as only a certain amount of concrete could be poured on a given day given the practical constraints of the site. Thus, the amount of construction activity on any given concrete pour day would not change in any material manner, but the 3-year construction may lead to more pour days occurring in any given week or month. This would not change the peak-daily impacts disclosed in the Final EIR that would occur during Phase 1 excavation and export. As the EIR conservatively based the significance determination on peak day emissions, the EIR significance determination would not change

if the peak day emissions do not change, which is the case here. Thus, impacts remain less than significant.

As discussed above, the 3-year construction schedule will include additional overlapping activities during the different building construction phases (e.g., the North Wing Renovation, Multipurpose Facility, and underground parking structure). However, even where there is additional overlap, these activities would not result in emissions that exceed the peak days discussed above given the much lower level of construction equipment required during these periods compared to the excavation and export phase for Phase 1. In other words, there would not be a new peak day. As an example, Appendix F-2 of the Final EIR shows that Month 47 of Phase 2 construction only results in approximately 30 percent of the 100 pounds per day regional NO_x threshold even though this month of activity includes concurrent construction of the Aquatic and Visual Arts Center and Performing Arts Center, which was analyzed to complete construction of the Project in 4.5 years, meaning activity under this month could triple and still be below the maximum daily emissions resulting from the peak-day of activity under excavation of the Parking Structure.

In conclusion, the 3-year construction schedule analyzed in Errata 2 tiers off of the accelerated construction schedule that was analyzed in the Draft EIR and assumes no increase in maximum numbers of construction equipment, grading, construction truck and construction worker trips, or construction hours of operation above that were already evaluated for the peak construction day within the Draft EIR. Thus, the intensity of activity on the peak construction days would not exceed the peak days already analyzed in the Draft EIR, although there may be more days when peak construction activities could occur. Because the Draft EIR significance determination is conservatively based on peak day emissions, the significance determination would not change because the peak day has not been exceeded. Therefore, impacts remain less than significant.

Comments from Environmental Audit Inc. further alleged that assuming no overlap in schedule would occur during the peak months (months 14-16), then Phase 1 and Phase 2 would have to overlap almost entirely to be completed in the remaining two years of the 3-year construction schedule presented in the Final EIR. Environmental Audit Inc. then notes that the chance of a new peak day occurring during the first 6-7 months of the Phase 1/Phase 2 overlap is very high and that if the first six months are staggered to avoid creating a new peak, there would be no realistic way to complete the Project within the 3-year construction schedule without increasing the amount of construction occurring during day to day operations. Environmental Audit Inc. suggests that increasing day to day construction operations would merit further analysis to assure a new peak is not generated in later months.

As detailed above, there would not be an increase in peak day emissions compared to what was analyzed in the Draft EIR. This comment by Environmental Audit Inc. also does not properly describe how construction activities would be scheduled under the 3-year schedule. As stated above, there would be no overlap between Phase 1 and Phase 2. Peak conditions described in Months 14-16 of the Draft EIR during the excavation and export for Phase 1 would occur in the first few months of the construction. The remaining construction months may see additional overlap of activities , to accommodate the 3-year schedule. For a more complete summary of the 3-year construction schedule, see Errata 2 and Errata 6.

Environmental Audit, Inc. also indicated that in order to determine the actual air quality impacts due to overlapping phases, the Project would have to be remodeled in CalEEMod. As discussed above, no additional modeling would be necessary as the peak conditions, those used for measuring air quality impacts, were identified. Impacts would remain less than significant with incorporation of mitigation measures. The CalEEMod runs provided in the Draft EIR and Final EIR (see Appendix F-1 of the Draft EIR and Appendix F-2 of the Final EIR) remain representative of the emissions that would occur during the 3-year construction schedule. As explained above, the peak day emissions would not change, therefore the determination of significance would not change and no additional CalEEMod runs are necessary.

Other comments made by Environmental Audit, Inc. noted that the calculated ground level concentration (GLC) should be 0.39 ug/m3 instead of the 0.25 ugm3 found in Appendix F.1-1(d). This comment is in reference to a subsequent comment made by Environmental Audit, Inc. regarding equipment hours versus modeled hours (10.8 hours / 7 hours x 0.25 ug/m3 = 0.39 ug/m3). As discussed in detail below in response to the subsequent comment, and as determined in the Draft EIR and Final EIR, potential short-term construction air toxic impacts would remain less than significant with incorporation of mitigation measures.

Environmental Audit, Inc. also states that while the Draft EIR claims 9.1 cancer cases per one million people, the tables in Appendix F.1-1(d) claim 8.2 cancer cases per million people. In addition, Environmental Audit, Inc. asserts that using the 8.2 cancer cases per million people would scale up to 12.6 cancer cases per one million people for a 4.5 year construction schedule, which would be above the CEQA threshold of 10 cancer cases per one million people. This is not correct. As previously discussed above, Appendix F-2 of the Final EIR provided an update to Appendix F.1 of the Draft EIR and included an updated Health Risk Assessment (HRA). Therefore, the 9.1 in a million cancer risk provided in the Draft EIR was updated by the Final EIR based on the discussion provided in Appendix F-2 of the Final EIR. With regard to the reference made by

Environmental Audit, Inc. to the ground level concentration, this is also incorrect, as discussed in further detail below. As determined in the Draft EIR and Final EIR, potential short-term construction air toxic impacts would remain less than significant with incorporation of mitigation measures.

Additional comments raised by Environmental Audit, Inc. observe that in the tables included in Appendix F.1-1(d), the diesel emission rate was based on approximately 10.8 hours per day of equipment operations and that the AERMOD run, which models the dispersion of those diesel emissions, was based on seven hours per day. Environmental Audit, Inc. notes that correcting this error in methodology would increase the ground level concentration and, therefore, risk by 54 percent.

It is noted that this comment incorrectly identifies that the diesel emissions rate was based on 10.8 hours per day of equipment operations. The CalEEMod modeling files discussed above and provided in Appendix F-2 of the Final EIR clearly show that construction equipment would operate eight hours per day. Specifically, the eight hours per day reference is shown in Appendix F.1-1(a), CalEEMod Output Files for Mitigated Construction Regional Criteria Pollutant Emissions, of Appendix F-2 of the Final EIR. As discussed in Appendix F.1-1(d) of Appendix F-2 of the Final EIR, the calculation of construction DPM emissions for the peak day on a monthly basis (referenced CalEEMod output files) was used to calculate the total emissions over the duration of construction by applying the number of days of construction per month multiplied by the pounds per day emission rate. These total emissions of DPM were then modeled using the SCAQMD recommended AERMOD dispersion model. As discussed in Appendix F-2 of the Final EIR, AERMOD requires an emission rate in grams per second. Since AERMOD calculates emissions for each meteorological day, a correction factor was also applied to the annual emission rate so that the annual concentration does not reflect 365 days of construction per year, which would considerably overestimate potential impacts. This was calculated as follows: Total DPM emissions of 856 pounds / total construction days of 1,261 days / 8 hours per day / 60 minutes per hour / 60 seconds per minute x 453.54 grams per pound x the ratio of actual construction days (1,261 days / calendar days over 58 months).

Notwithstanding the above, Environmental Audit, Inc. does identify a technical error in the modeling output file in which the output file shows that the emissions were modeled for seven hours per day. This error has been corrected (see Errata 6 to the EIR) and the updated risk calculation sheets, modeling output file, and annual scalar isopleth are attached to this letter. Based on this refinement to the assessment to address this technical error, the health risks from the Project would increase from 5.0 to 5.7 in a million for offsite receptors, which is still below the applicable significance threshold (10 in one million). For potential onsite student and staff exposure at the School, the maximum

mitigated cancer risk would increase from 8.2 to 9.4 and from 4.9 to 5.6 in a million, respectively, which is still below the applicable significance threshold. It is noted that this risk assumes an outdoor exposure for the entire length of construction and does not account for any reductions from the time spent indoors where air quality tends to be better. Consistent with the results of the health risk assessment included in the Draft EIR, potential impacts to sensitive receptors within the Project area (i.e., nearby residences and Archer students) would be less than significant with incorporation of proposed mitigation measures. The above calculation of student health risk conservatively assumes that student programs would be provided on campus during the summer months of construction. However, given the construction schedule, no extended student activities are planned for the Project Site during the summer months of North Wing Improvements and Phase I Excavation and Grading and onsite student risk would decrease to 8.5 in a million. Under either basis, the analysis demonstrates that impacts remain less than significant.

Environmental Audit, Inc. also commented that the diesel emission rates for the risk analysis were based on the 4.5 year construction schedule and that diesel emission rates need to be readjusted for the 3-year schedule in order to correctly calculate health risk for construction as the actual effect on health risk cannot be determined without knowing if the hours per day or total PM would change due to a compressed schedule.

This comment made by Environmental Audit, Inc. that total DPM emissions over the entire construction duration would increase under the compressed construction schedule is not correct. As discussed above, a compressed schedule could increase daily emissions for non-peak days. However, even assuming no efficiencies for redundancies of equipment usage or deliveries that could be realized under a compressed schedule, which makes the analysis more conservative, the total DPM emissions over the entire construction duration would not increase. Since cancer risk as calculated in the Final EIR is based on the total exposure to a pollutant, the overall exposure does not change whether an individual is exposed during a 3-year period or a 4.5-year period. Because the total exposure would not change, the Final EIR analysis would not change. Thus, there is no need to update the analysis.

Lastly, Environmental Audit, Inc. commented that the health risk analysis in the EIR is based on the outdated 2003 OEHHA health risk assessment guidance. Environmental Audit, Inc. notes that the new OEHHA guidance was adopted by the state on March 6, 2015, and adopted on June 5, 2015, by the AQMD, which governs regional air quality standards in the Los Angeles Basin. Environmental Audit, Inc. states that the new guidelines, as applied to this Project, would increase the risk values substantially above those under prior guidelines. Environmental Audit, Inc. specifically provides that the cancer risk is expected to increase approximately 10 fold for short term events, such as

construction, under the new guidelines because of the added sensitivity toward younger populations. Environmental Audit, Inc. then concludes that the new guidance would push the already significant health risk under the old guidance well into the hundreds of cancer cases per million people.

As discussed in Errata 5 to the Final EIR, subsequent to release of the Draft EIR for public review and preparation and distribution of the Final EIR, the Office of Environmental Health Hazard Assessment (OEHHA) adopted a new version of the Air Toxics Hot Spots Program Guidance Manual for the Preparation of Risk Assessments (Guidance Manual).[1] The Guidance Manual was developed by OEHHA, in conjunction with the California Air Resources Board (CARB), for use in implementing the Air Toxics "Hot Spots" Program (Health and Safety Code Section 44360 et. seq.). The Air Toxics "Hot Spots" Program requires stationary sources to report the types and quantities of certain substances routinely released into the air. The goals of the Air Toxics "Hot Spots" Act are to collect emission data, to identify facilities having localized impacts, to ascertain health risks, to notify nearby residents of significant risks, and to reduce those significant risks to acceptable levels.

The intent in developing the Guidance Manual is to provide health risk assessment procedures for use in the Air Toxics Hot Spots Program or for the permitting of new or modified stationary sources. Air districts are to determine which facilities will prepare a health risk assessment based on a prioritization process. The Guidance Manual provides recommendations related to cancer risk evaluation of short-term projects. As discussed in Section 8.2.10 of the Guidance Manual, "The local air pollution control districts sometimes use the risk assessment guidelines for the Hot Spots program in permitting decisions for short-term projects such as construction or waste site remediation."

Per the South Coast Air Quality Management District's (SCAQMD) direction, the analysis was conducted consistent with SCAQMD's Risk Assessment Procedures for Rules

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[1] *Office of Environmental Health Hazard Assessment. Air Toxicology and Epidemiology, Adoption of Air Toxics Hot Spots Program Guidance Manual for Preparation of Health Risk Assessments. March 6, 2015. Available at: http://www.oehha.ca.gov/air/hot_spots/hotspots2015.html, accessed July 13, 2015.*

1401 and 212 and is based on OEHHA's Guidance Manual from August 2003.2 Contrary to what is stated in this comment, the SCAQMD has not adopted the new version of the Guidance Document for use in CEQA analyses. According to Jillian Wong, Ph.D., SCAQMD CEQA Program Supervisor, SCAQMD is currently evaluating the new Guidance Manual and will start the public participation process this summer as they develop recommendations on its use for SCAQMD CEQA analyses.[3]

Based on the health risk assessment of short-term construction diesel particulate emissions provided in Section IV.B, Air Quality, of the Draft EIR, Section III, Responses to Comments, of the Final EIR, and the update to the HRA based on this comment letter, the Project's construction equipment emissions would be below the significance thresholds when considering regulations administered by SCAQMD as to short-term construction diesel particulate emissions from construction equipment. That determination was made based on the analytical requirements established by the City. In response to the concern that the existing methodology may be updated by the City and the SCAQMD based on the updated OEHHA Guidance Manual prior to issuance of a building permit for the Project, Project Design Feature B-2, provided under Section C, Corrections and Additions to the EIR, has been included.

Specifically, Project Design Feature B-2 provides that, prior to the start of construction requiring the use of heavy-duty equipment, an updated Health Risk Assessment will be prepared using available guidance provided by SCAQMD to utilize the then-most current version of the OEHHA Guidance Manual. The updated Health Risk Assessment will assess the potential for the project to generate certain emissions that could cause an exceedance of the significance thresholds identified in the Draft EIR. If necessary based on the updated Health Risk Assessment, the project will incorporate additional measures to reduce emissions below the significance thresholds, as described in Errata 5 to the Final EIR.

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[2] *SCAQMD. Risk Assessment Procedures for Rules 1401 and 212, Version 7.0. July 1, 2005. Available at: http://www.aqmd.gov/docs/default-source/planning/risk-assessment/risk-assessment-procedures-v-7.pdf?sfvrsn=4, accessed July 13, 2015.*

[3] *Jillian Wong, Ph.D., SCAQMD CEQA Program Supervisor, Personal Communication via email, June 17, 2015 (included as Attachment 1).*

In summary, the conclusions with respect to the Project's potential air quality impacts as presented in the EIR would remain and no new significant air quality impacts would occur based on the comments made by Environmental Audit, Inc. and summarized above.

Should you have any questions regarding the above, please do not hesitate to contact me at (424) 207- 5330.

Sincerely,

Stephanie Eyestone-Jones
EYESTONE ENVIRONMENTAL, LLC
President

Attachment 1

Mark Hagmann

Subject: FW: OEHHA risk assessment guidelines

From: Jillian Wong [mailto:jwong1@aqmd.gov]
Sent: Wednesday, June 17, 2015 7:10 AM
To: Mark Hagmann
Subject: RE: OEHHA risk assessment guidelines

We are currently evaluating that and will likely start the public participation process this summer as we develop those recommendations.

Jillian Wong, Ph.D.
South Coast AQMD
21865 Copley Drive,
Diamond Bar, CA 91765
Direct: 909.396.3176

From: Mark Hagmann [mailto:m.hagmann@eyestoneeir.com]
Sent: Wednesday, June 17, 2015 4:15 AM
To: Jillian Wong
Subject: OEHHA risk assessment guidelines

I wanted to follow-up on a conversation we had several months ago regarding OEHHA's newly adopted guidelines. Now that the OEHHA guidelines are final, has SCAQMD had time to review and provide guidance on how the OEHHA guidelines should be used to evaluate construction phases for typical development projects? Any recommendations would be helpful.

Mark Hagmann, P.E.
Director of Air Quality

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Exhibit 1-13

EXHIBIT F

FEHR PEERS

MEMORANDUM

Date: August 3, 2015

From: Tom Gaul and Spencer Reed, Fehr & Peers

Subject: ***Response to (1) Letter from Tom Brohard; (2) Letter from Environmental Audit, Inc.; and (3) Letter from Susan Genis Regarding the Traffic Analysis in the Environmental Impact Report for the Archer Forward: Campus Preservation and Improvement Plan***

Ref: SM12-2511

This memorandum addresses comments received in: (1) a letter from Tom Brohard dated July 28, 2015; (2) a letter from Environmental Audit, Inc. dated July 28, 2015; and (3) a letter from Susan Genis dated June 24, 2015, regarding the traffic analysis included in the Environmental Impact Report (EIR) for the Archer Forward: Campus Preservation and Improvement Plan (Project). The Draft EIR, Final EIR, Errata 1, Errata 2, Errata 3, Errata 4, Errata 5, and Errata 6 comprise the EIR for the Project as referred to herein.

Brohard Letter Dated July 28, 2015

Comments from Mr. Brohard indicated that although Errata 2 presented the compressed three-year construction period, Errata 2 does not include the number of construction trips by vehicle type for each phase of all components of the school expansion, basic information required for proper analyses of traffic impacts. As set forth in Errata 2, similar to what is proposed for a 3-year construction schedule, the Draft EIR analyzed a construction schedule during which Project construction activities could be constructed concurrently (the accelerated construction schedule). The 3-year construction schedule tiers off of the accelerated construction schedule and assumes no increase in maximum numbers of construction truck and construction worker trips, or construction hours of operation above that which were already evaluated for the peak construction day within the Draft EIR. To provide additional clarification, the memorandum from MATT Construction dated August 3, 2015, and included in Errata 6 confirms that the EIR analyzed a worst-case day, and the number of construction trucks and construction worker trips on any given day in the three-year construction schedule will not exceed the number of trucks and construction worker trips for the worst-case day analyzed in the EIR. Although this information was already contained in the Draft EIR, Final EIR, and Errata 2, further clarification about the three-year construction schedule has been provided in Errata 6.

Mr. Brohard also stated that with a compressed three-year schedule, construction phases and the associated construction vehicle trips will overlap rather than being stretched out over six years. While certain aspects of the construction phases will overlap with the three-year construction schedule, the three-year construction schedule has been designed to ensure that the number of construction trucks and workers on any given day will not exceed the level of activity evaluated in the Draft EIR. As discussed in Topical Response III.C.6, Overview of Construction Traffic and Parking, in the Final EIR, the level of activity on the Project Site was always expected to vary throughout each construction phase, and the analysis in the Draft EIR was conducted for the absolute worst-case day within each construction phase. It was anticipated that the impacts would be lower throughout much of each phase than the worst-case day

Exhibit 2-1

identified in the Draft EIR for each phase. In other words, it was not anticipated that the construction truck and worker trips shown for each construction phase in Tables IV.K-28 and IV.K-29 in the Draft EIR would be present on every day throughout the phase, but rather on the worst-case peak day within the phase. As a result, there is the ability to accelerate the construction schedule by increasing the number of days with peak levels of construction activity without the need to generate more construction trips on any given day than were anticipated in the Draft EIR.

Mr. Brohard also outlines four steps that he asserts are required to properly identify, analyze, and mitigate the traffic impacts of the modified project construction schedule on Sunset Boulevard and other roads and intersections. First, Mr. Brohard states that Archer must determine current traffic volumes and should take new traffic counts after schools resume in September 2015 to properly identify the current baseline traffic volumes. The baseline for analysis under CEQA, however, is typically established by the date of the Notice of Preparation (NOP) for the EIR, which in this case was in 2012. As discussed in Section IV.K.3.d(2) of the Draft EIR, the baseline was appropriately adjusted to reflect the effects of the I-405 Sepulveda Pass Improvement Project construction, which was underway at that time. The traffic analyses in the Draft EIR and the Final EIR also take into consideration background traffic growth and traffic generated by related projects. Further information regarding the effect of the I-405 Sepulveda Pass Improvement Project construction was provided in Topical Response III.C.10, Traffic Congestion along Sunset Boulevard, in the Final EIR.

Second, Mr. Brohard states that Archer must determine baseline traffic volumes during construction that take into account that construction is now planned to begin in summer of 2017 and is forecast to last three years and construction trips related to other reasonably foreseeable projects in the area with concurrent construction schedules such as the Brentwood School Education Master Plan. The traffic analysis of the three-year construction schedule presented in Appendix A of Errata 2 to the Final EIR extended the forecast year to year 2017 for the evaluation of potential impacts during the peak excavation and haul period. The year 2017 baseline in in Errata 2 includes traffic generated by related projects, including traffic that could be generated by the Brentwood School project upon its completion (see Table 4 in the Transportation Analysis Report in Appendix P.1 to the Draft EIR). Any further addition of Brentwood School construction trips would be duplicative and speculative since the magnitude and phasing of these trips are not currently known.

Third, Mr. Brohard states that the EIR must develop passenger car equivalent (PCE) trips at the beginning of Archer construction and during peak construction activities must be developed for the compressed schedule. Mr. Brohard states that, in developing PCE trips, five axle trucks should be considered to be equal to at least 3 passenger cars. As discussed on page IV.K-84 of the Draft EIR, construction vehicle trips were converted to PCEs as part of the analysis of construction-period traffic impacts in the Draft EIR. As discussed in the Response to Comment 33-58 in the Final EIR, the Highway Capacity Manual (HCM), a national standard authored by the Transportation Research Board, establishes passenger car equivalency (PCE) factors as adjustment factors to reflect the additional space occupied by heavy vehicles and differences in their operating characteristics, compared with passenger cars. The 2010 HCM recommends a PCE factor of 2.0 for use at intersections. The Transportation Analysis Report included as Appendix P.1 of the Draft EIR utilized PCE factors of 1.5, 2.0, and 2.5, depending on truck type, with the highest PCE value of 2.5 applied to 5-axle, heavy-duty trucks; large bottom-dump haul tractor-trailers; and special oversize construction vehicles. Thus, for the largest vehicles (larger than typical trucks), a higher value was applied than that which is recommended in the HCM to present a worst-case analysis.

Exhibit 2-2

Fourth, Mr. Brohard states that the EIR must develop appropriate mitigation measures during construction by distributing PCE trips for the various phases of construction to the roadway network at critical intersections and on roadways such as Sunset Boulevard and added to the baseline traffic volumes during construction. Since the three-year schedule would not have a greater number of construction truck or worker trips on any given day than the peak daily levels evaluated in the Draft EIR, the traffic analysis presented in Appendix A to Errata 2 evaluated the effect of the addition of PCE construction trips to the roadway network for the two phases identified in the Draft EIR with the greatest level of impact: Phase I Excavation and Haul (with the highest number of truck trips) added to year 2017 conditions and Remainder of Phase 1D (with the highest number of construction workers parked on site) added to the year 2020 conditions.

Mr. Brohard also states that Los Angeles Department of Transportation (LADOT) thresholds should be used to determine the locations of significant construction traffic impacts. Given the temporary nature of construction, LADOT often considers construction-related traffic impacts to be temporarily adverse but less than significant. According to the City of Los Angeles CEQA Threshold Guidelines, however, the determination of significant construction impacts should be made on a case-by-case basis. In light of the duration of Project construction, the standard LADOT thresholds were applied in the Draft EIR, the Final EIR, and Errata 2 to determine the significance of construction-period impacts.

Regarding mitigation measures, a series of mitigation measures are identified in the Draft EIR and Final EIR and are contained in the Revised Mitigation Monitoring Program in Errata 5. These mitigation measures include a worksite traffic control plan (Mitigation Measure K-4), a construction traffic management plan (Mitigation Measure K-5), a construction parking plan (Mitigation Measure K-6), a construction pedestrian routing plan (Mitigation Measure K-7), and various other related measures (Mitigation Measures K-8 through K-14). The Mitigation Monitoring Program sets forth the responsibilities and reporting requirements regarding monitoring of these measures. Since no additional traffic impacts were found in Errata 2 for the three-year construction period than were found in the construction analyses in the Draft EIR and the Final EIR, these mitigation measures apply equally to the three-year construction period.

Mr. Brohard also states that no data or analysis have been provided to support Errata 2's conclusion that compression of the six year construction period into three years beginning in 2017 will not create any additional significant construction impacts. However, as stated above, analysis of the potential traffic impacts of the three-year construction schedule was provided in Appendix A to Errata 2.

Regarding operational impacts, Mr. Brohard states that limitations on arrivals and on departures at the Archer parking garage will not reduce trips that will occur as guests will come to the area to attend an event ready to enter the structure at 7:00 PM when there are no limitations on the count. Mr. Brohard claims that the Final EIR confuses the capacity of and hourly limitations at the parking structure with the trips that will be generated by the special events, and states that limiting arrivals does not and will not limit departures. Mr. Brohard further states that the proposed mitigation measures are not feasible or practical, and will not produce the arrival and departure limitations that are required to eliminate significant traffic impacts.

As discussed in Errata 2, Mitigation Measure K-2 includes operational mitigation measures to mitigate significant traffic impacts associated with an event day for Interscholastic Athletic Competitions and Special Events. As set forth in Mitigation Measure K-2, these limits would be enforced via feasible measures that will be incorporated in the School's Event Parking and Transportation Management Plan, which would be developed in accordance with Project Design Feature K-7. A primary feature of the Event

Parking and Transportation Management Plan is a parking reservation system. This parking reservation system would ensure that the arrival vehicle limits set forth in Mitigation Measure K-2 during certain Interscholastic Athletic Competitions and Special Events are met. The parking reservation system is expected to consist of a mobile application with an automated parking reservation and ticketing system for those Interscholastic Athletic Competitions and Special Events that are subject to the limits in Mitigation Measure K-2. Guests seeking to attend an Interscholastic Athletic Competition or Special Event without a parking reservation or a Walking, Biking, or Transit Pass would be denied access to the campus. The School would monitor the event limits by issuing Parking Passes through the mobile application described above. As set forth in Project Design Feature K-7, the mobile application would include a reporting capability so that system logs can be generated regarding the issued parking reservations. Project Design Feature K-7 has been further refined to clarify these provisions (refer to revised Project Design Feature K-7 below). In addition, as described in Project Design Feature K-1, to ensure implementation of the Traffic Management Program, the School would continue to inform parents, students, faculty, and staff in writing on an annual basis of all rules regulating School traffic. The School would also maintain a progressive disciplinary system of enforcement to ensure compliance with the Traffic Management Program. In addition, prior to the beginning of each Academic Year, the School would inform other schools that will be participating in Interscholastic Athletic Competitions of the rules regulating School traffic and parking, including the parking reservation system.

Since the monitoring would be via the number of Parking Passes issued for an event, it will by definition limit both arrivals to and departures from the event. It will also eliminate the potential that additional guest vehicles beyond the limit would arrive for a 7:00 PM event but would wait to enter the garage after 7:00 PM.

Finally, Mr. Brohard states that events at Archer School will also create extended peak hours that have not been studied. Traffic generated by these events will travel through the adjacent neighborhoods and on major roadways and intersections both before and after the events are held at the school. Specifically, Mr. Brohard states that there are no limits for departures after the weekday events after 7:00 PM. Given the nature of the trip generating characteristics of the Project and in consideration of traffic levels on the adjacent roadway system, the EIR studied five different peak hours of traffic: weekday 7:00-8:00 AM, weekday 3:00-4:00 PM, weekday 5:00-6:00 PM, weekday 6:00-7:00 PM, and Saturday 1:00-2:00 PM. The weekday 3:00-4:00 PM and 6:00-7:00 PM hours encompass the arrival periods for most of the anticipated events and have been studied. Departures from weekday evening events would typically be after 9:00 PM, past the peak period of traffic on the surrounding street system.

Environmental Audit, Inc. Letter Dated July 28, 2015

Environmental Audit, Inc. alleges that overlapping Phase 1 and Phase 2 construction traffic would change the peak traffic conditions studied in the EIR. While certain aspects of the construction phases will overlap with the three-year construction schedule, the three-year construction schedule has been designed to ensure that the number of construction trucks and construction worker trips on any given day will not exceed the level of activity evaluated in the Draft EIR. As discussed in Topical Response III.C.6, Overview of Construction Traffic and Parking, in the Final EIR, the level of activity on the construction site was always expected to vary throughout each construction phase, and the analysis in the Draft EIR was conducted for the absolute worst-case day within each construction phase. It was anticipated that the impacts would be lower throughout much of each phase than the worst-case day identified in the Draft EIR for each phase. In other words, it was not anticipated that the construction truck and worker trips

shown for each construction phase in Tables IV.K-28 and IV.K-29 in the Draft EIR would be present on every day throughout the phase, but rather on the worst-case peak day within the phase. As a result, there is the ability to accelerate the construction schedule without the need to generate more construction trips on any given day than the worst-case peak day analyzed in the Draft EIR.

Genis Letter Dated June 24, 2015

Ms. Genis states that the EIR discusses an accelerated construction schedule without defining what the accelerated construction schedule would be. Ms. Genis notes that the traffic generation tables in Appendix H to Draft EIR Appendix P show trip generation only for each phase of construction and indicate only minor overlaps in the six-year schedule, and do not show all phases generating traffic simultaneously or construction occurring simultaneously with School operations. In response to Ms. Genis' comments, please refer to Appendix C-3 of the Draft EIR, Accelerated Construction Schedule Assumptions, and the memorandum from MATT Construction dated August 3, 2015 included in Errata 6. Although this information was already contained in the Draft EIR, Final EIR, and Errata 2, further clarification about the three-year construction schedule has been provided in Errata 6. As described therein, not all phases would occur simultaneously during the three-year construction schedule. Specifically, as described in the memorandum from MATT Construction dated August 3, 2015, and Errata 6, Phase 1 and Phase 2 would not overlap during the three-year construction schedule.

The 3-year construction schedule tiers off of the accelerated construction schedule and assumes no increase in maximum numbers of construction truck and construction worker trips, or construction hours of operation, above that which were already evaluated for the peak construction day within the Draft EIR. In addition, Fehr & Peers conducted an analysis of intersection impacts under the 3-year construction schedule and determined that intersection impacts during construction would be similar to the traffic impacts identified for the Project. Finally, continued school operations on the site was assumed in all of the construction traffic impact analyses presented in the Draft EIR and the Final EIR and thus would not result in additional impacts beyond those identified in the Draft EIR and the Final EIR.

EXHIBIT G

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SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES – CENTRAL DISTRICT

SUNSET COALITION; BRENTWOOD RESIDENTS COALITION; BRENTWOOD HILLS HOMEOWNERS ASSOCIATION; and DAVID AND ZOFIA WRIGHT,

Petitioners,

v.

CITY OF LOS ANGELES,

Respondent;

ARCHER SCHOOL FOR GIRLS; DOES 1 - 10,

Real Parties in Interest.

Case No. BS157811

RESPONDENT CITY OF LOS ANGELES' OPPOSITION TO PETITIONERS' MOTION FOR NEW TRIAL

Hon. Mary H. Strobel
Dept. 82

Hearing Date: December 13, 2016
Time: 9:30 a.m.

Petition filed: September 9, 2015

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I. INTRODUCTION

Petitioners' motion for new trial is improper and should be denied. Were it to be granted it would encourage all disappointed litigants in CEQA and land use cases to demand two merits hearings.

First, Petitioners offer pure speculation that an unrelated appellate case pending in San Francisco might result in a ruling *on the record presented there* that a health risk assessment there should have been done differently. Conjecture about future rulings in unrelated cases are not grounds for a new trial in this case.

Second, Petitioners violate court rules by citing to a trial court ruling in yet another unrelated case. It is improper for Petitioners to cite trial court rulings (Cal. Rules of Court, rule 8.1115), all the more so given that it is on appeal, not final, and irrelevant.

Third, Petitioners violate administrative mandamus rules by submitting new "evidence" in the form of declarations from people who participated in the administrative process. There is no imaginable basis for the post-trial introduction of extra-record evidence from people who had every opportunity to say whatever they wanted to say during the administrative proceedings. Respondent has filed objections to Petitioners' new evidence concurrently with this brief.

Fourth, Petitioners violate clear rules governing new trial motions when they seek a new trial based on their mere preference that this Court had ruled in their favor. Simply disagreeing with this Court's lengthy and detailed ruling is not a ground for new trial. (See *Newman v. Los Angeles Transit Lines* (1953) 120 Cal.App.2d 685, 693 ["New trials cannot be ordered merely because a dissatisfied litigant requests it."].) Petitioners make no serious attempt to show that this Court made any "error in law" meriting a retrial. Petitioners merely rehash their old arguments without even trying to meet the high standard required to grant a motion for a new trial.

Sanctions are appropriate where a motion for new trial is "merely an attempt to get 'a second bite at the apple' after the trial court had made it clear that further litigation of the issue was unwarranted." (*In re Marriage of Falcone* (2008) 164 Cal.App.4th 814, 821, 830.) For these reasons, Petitioners' motion for new trial should be summarily denied.

II. LEGAL STANDARDS APPLICABLE TO A MOTION FOR NEW TRIAL

The grounds for a motion for new trial are statutory. A new trial may only be granted on a ground specified in the notice of intent to move. (See *Wagner v. Singleton* (1982) 133 Cal.App.3d 69, 72.) These narrowly defined statutory grounds set forth in Code of Civil Procedure section 657 provide that a new trial can be granted only where the alleged error "*materially affect[s] the substantial rights* of [the objecting] party." (Code Civ. Proc., § 657, italics added.) Whether the ground exists is almost always a question of law, and the Court has no discretion to grant a new trial in the absence of such ground. (See *Stoddard v. Rheem* (1961) 192 Cal.App.2d 49, 53.) Even if a statutory ground did exist, and none does here, it remains discretionary whether the Court grants a new trial. (Code Civ. Proc., § 657; accord *Los Angeles v. Decker* (1977) 18 Cal.3d 860, 871.)

A motion for new trial is not to be used to raise substantive disagreement with the court's earlier ruling, nor is it to allow "a disappointed litigant" to retry its case through the motion. (*Linhart v. Nelson* (1976) 18 Cal.3d 641, 644; *Newman, supra*, 120 Cal.App.2d at p. 693.) Instead, a moving party must show the existence of clearly "erroneous and prejudicial" discrepancies in the trial proceedings that resulted in a "miscarriage of justice." (*Dodds v. Gifford* (1932) 127 Cal.App. 629, 634; accord *Brown v. George Pepperdine Foundation* (1943) 23 Cal.2d 256, 262 ["The trial court . . . [must] deny a new trial for error of law unless such error is prejudicial"]; Cal. Const., art. VI, § 13; see also *Sherman v. Kinetic Concepts, Inc.* (1998) 67 Cal.App.4th 1152, 1161 ["The trial court is bound by the rule of California Constitution, article VI, section 13, that prejudicial error is the basis for a new trial, and there is no discretion to grant a new trial for harmless error"].)

III. THE MOTION SHOULD BE DENIED, AS THERE WERE NO ERRORS IN LAW.

Petitioners' notice of intent to move for new trial identifies only section 657, subdivisions (6) and (7) as grounds. Petitioners are not entitled to a new trial under either subdivision because they cannot establish that the Court's well-reasoned Decision was "against the law" or based on an "error in law." Petitioners present no authority showing the Court ruled incorrectly. Instead, Petitioners repackage their old arguments and legal theories, forcing this Court, the City, and the Real Party to waste resources indulging Petitioners' improper request for a do-over. That is precisely the sort of "second-chance" request section 657 prohibits.

To prevail under subdivision (6), Petitioners must show there is insufficient evidence to justify the decision or that the "decision is against the law." (Code Civ. Proc., § 657, subd. (6).) The findings must be "so inconsistent, ambiguous and uncertain that they are incapable of being reconciled and it is impossible to tell how a material issue is determined." (*Renfer v. Skaggs* (1950) 96 Cal.App.2d 380, 385.) "[T]he words 'against the law' do not import a situation in which the court weighs conflicting evidence and merely finds a balance against the judgment." (*Bray v. Rosen* (1959) 167 Cal.App.2d 680, 683.) A new trial on the basis that a decision is 'against the law' "is authorized only where there is *no substantial evidence*" to support the decision. (*S. F. Bay Area Rapid Transit Dist. v. McKeegan* (1968) 265 Cal.App.2d 263, 273; *Thompson v. Guyer-Hays* (1962) 207 Cal.App.2d 366, 375, italics added.)

To prevail under subdivision (7), Petitioners must establish (1) an "[e]rror in law, occurring at the trial[,] (2) excepted to by the party making the application," that was (3) sufficient to prejudice the party at trial. (Code Civ. Proc., § 657, subd. (7); see *Mosesian v. Pennwalt Corp.* (1987) 191 Cal.App.3d 851, 866-67 [error must be prejudicial to grant relief]; see *Bristow v. Ferguson* (1981) 121 Cal.App.3d 823, 826 ["If it clearly appears that the error could not have affected the result of the trial, the court is bound to deny the motion"].) A court has "no discretion to grant a new trial unless its original ruling, as a matter of law, was erroneous." (*Ramirez v. USAA Casualty Ins. Co.* (1991) 234 Cal.App.3d 391, 397.) If there were no legal errors at trial, an order granting a new trial on the basis of error in law will be reversed. (*Treber v. Super. Ct.* (1968) 68 Cal.2d 128, 136.)

A. The Court's Decision that the City complied with CEQA was not an "error in law" or "against law."

This Court correctly found that the City did not abuse its discretion in certifying the EIR. An EIR is presumed adequate and petitioners have the burden of proving otherwise. (*Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899, 924-925 (*Rialto Citizens*); Pub. Resources Code, § 21167.3; see also Evid. Code, § 664.) The court reviews the City's decisions under CEQA only for prejudicial abuse of discretion. (Pub. Resources Code, § 21168; *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 426 (*Vineyard*); *Western States Petroleum Assn. v. Super. Ct.* (1995) 9 Cal.4th 559, 568.) Abuse of discretion occurs only if the City did not proceed in a manner required by law or if its decision was not supported by substantial evidence. (*Ibid.*) Error is not

reversible unless actual prejudice is shown. (See e.g., *Neighbors for Smart Rail v. Expo. Metro Line Const. Auth.* (2013) 57 Cal.4th 439, 463; *S.F. Baykeeper v. Cal. State Lands Com.* (2015) 242 Cal.App.4th 202, 230). This Court correctly applied these standards in rejecting Petitioners' arguments the first time.

1. The City's health risk analysis is supported by substantial evidence.

Petitioners focus on the pendency of an unrelated case, *Mission Bay Alliance v. Office of Community Investment and Infrastructure*, First Appellate District Case No. A148865, involving a challenge to the Golden State Warriors Event Center. (See P&As at pp. 4-5 [stating that a new trial "would allow an opportunity for [a] soon-to-be-expected Court of Appeal decision…to inform the final ruling…."].) Petitioners' speculation about potential future appellate authority is no basis for a new trial. Under well-settled law, this Court correctly found that the City was *not* required to use the new OEHHA guidelines *created for a different regulatory program and not adopted as a CEQA significance threshold* for the City's voluntary health risks assessment (HRA). (Decision at 25.) Petitioners' arguments—many of which were never raised during the City's administrative process should be wholly disregarded.

a. No health risk assessment was required.

Petitioners concede that a HRA was not even required (Baverman Decl., ¶ 17), yet rehash their attack on the model the City used to assess risks from temporary construction activities. The "SCAQMD CEQA Handbook does not recommend a health risk assessment for short-term construction emissions." (AR36:6046.) They are done where a project is a "substantial source of diesel particulate matter (e.g., truck stops and warehouse distribution facilities)." (AR36:6054.)

b. The health risk assessment was conservative.

Petitioners assert that danger awaits Archer's students, claiming to be concerned for the very girls they want to deprive of a modernized campus. To the contrary, the HRA used very conservative assumptions, like assuming 365-day per year exposure. (AR35F:5680-5682.) Also, health effects from air toxics are usually described in terms of risk *over a 70-year lifetime*. (AR36:6042, 6046.) Archer's construction activities will last just three years. (AR36:6061.)

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c. The City's use of SCAQMD's recommended health risk assessment guidance was supported by substantial evidence.

The Court correctly held that "Petitioners have not identified evidence in the record showing that the City was required to use the OEHHA guidelines as part of the environmental review of the Project or that SCAQMD had ever determined that the new guidelines should be used for CEQA significance analysis. In fact, substantial evidence in the record was to the contrary." (Decision at 25.) As the Court correctly found, "the record shows that as of June 17, 2016, SCAQMD had not yet evaluated or provided guidance on how the new OEHHA guidelines should be used to evaluate construction phases for typical development projects." (*Ibid.*)

The Decision is supported by more than substantial evidence. (See AR116:13180 [SCAQMD stating that it has no recommendations for OEHHA's new guidance]; AR35E:5603-5604, [explaining that HRA used SCAQMD's recommended procedures]; AR116:13168-13178 [technical memo stating same]; AR116:13166 [same].) This and other record evidence demonstrates that construction-related toxic emission impacts would be less than significant.[1] (See AR36:6046, 6054, 6061 [Draft EIR]; 35E:5603-5604 [Errata 5]; 35F:5667-5668 [Errata 6]; 35F:5679-5698 [technical worksheets]; 116:13177 [Eyestone memo].)

Nonetheless, in light of concern that the existing methodology could change, Archer incorporated a requirement for an updated HRA and any mitigation measures that might be needed to ensure no significant health risk. (AR35E:5611.)

d. The City's choice of methodology is entitled to deference.

Petitioners' arguments boil down to a disagreement about the City's data and methodology for assessing potential air health risks. Decades of CEQA case law confirm that the City's choice of methodology is entitled to substantial deference. (*North Coast Rivers Alliance v. Marin Mun. Water Dist.* (2013) 216 Cal.App.4th 614, 642 (*North Coast*).) Disagreement over data or methodology does not invalidate an EIR. (*San Francisco Ecology Ctr. v. City & Cty. of San Francisco* (1975) 48 Cal.App.3d 584,

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[1] Marcia Baverman's Declaration suggests that a temporary classroom village would expose students to air health risks during construction. (Baverman Decl., ¶ 20.) This declaration is extra-record evidence which should not be considered (Code Civ. Proc., § 1094.5) and is contradicted by substantial record evidence confirming the opposite. (AR116:13174-13175; 35F:5668.)

594 [EIR estimates cannot be attacked just because they could conflict with estimates in subsequent studies]; *Eureka Citizens for Responsible Gov't v. City of Eureka* (2007) 147 Cal.App.4th 357, 372 [accepting expert's findings despite disagreement over methodology used]; *Save Cuyama Valley v. Cty. of Santa Barbara* (2013) 213 Cal.App.4th 1059, 1069 [relying on expert's conclusions despite differing opinions by other expert and agency].) "The issue is not whether other methods might have been used, but whether the agency relied on evidence that a 'reasonable mind might accept as sufficient to support'" the EIR's conclusions. (*North Coast*, *supra*, 216 Cal.App.4th at p. 642.)

CEQA lead agencies are also not required to change their methodology to reflect developments late in the EIR process. (*Bay Area Citizens v. Assn. of Bay Area Govts.* (2016) 248 Cal.App.4th 966.) *Bay Area Citizens* confirmed that new standards issued "just four months before the DEIR and seven months before the FEIR" did not need to be included in an EIR given the short time period to prepare a new model for environmental review. (*Id.* at p. 1017; see also CEQA Guidelines, § 15204, subd. (a) ["CEQA docs not require a lead agency to conduct every test or perform all research, study, and experimentation recommended or demanded by commentors"]; *Rialto Citizens*, *supra*, 208 Cal.App.4th at p. 937 ["An EIR is required to evaluate a particular environmental impact only to the extent it is 'reasonably feasible' to do so"].) Here, the revised OEHHA guidance was issued one year *after* the Draft EIR was released and three months ***after*** the Final EIR was completed. There are not even SCAQMD implementing recommendations available today. (AR116:13180). The City had no duty to change its methodology *after* completing the EIR.

e. The City was not required to apply the OEHHA guidance.

The OEHHA methodology is not a CEQA significance threshold and is not applicable here. (See Health & Safety Code, §§ 44360, subd. (b)(3) [guidelines apply only to facilities subject to the Air Toxics Hot Spots program], 44320 [listing the types of facilities subject to the Air Toxics Hot Spots program, such as manufacturing facilities—not schools].) SCAQMD has not yet evaluated or provided guidance on how the new OEHHA protocol should be used to evaluate construction phases for typical development projects. (AR116:13180.)

Petitioners' new documents purporting to show that the OEHHA protocol applies to CEQA analyses of school projects (Carstens Decl., Exs. H, M) should not be considered. (See Code Civ. Proc., § 1094.5.) Further, the documents do not support Petitioners' claims.

First, Exhibit H (selected pages from the administrative record in the *Mission Bay* case) addresses that California *school districts* perform risk assessments for *proposed* new school sites. (P&As at 6; Carstens Decl., Ex. H, p. 30990.) The City is *not* a school district and the Archer campus is not a *proposed* new school site—it has been an operating school at the same location for over almost 20 years. (AR36:5858.)

Second, Exhibit M to the Carstens Declaration, a SCAQMD PowerPoint presentation, confirms that SCAQMD intends to "[d]evelop a work plan to phase in and to prioritize implementation of the revised OEHHA procedures" (Carstens Decl., Ex. M, p. 27), and that SCAQMD has not yet determined how to utilize OEHHA's Toxic Hot Spots procedures for its CEQA processes.

f. Petitioners' new arguments regarding breathing rates are not properly before the Court and miss the mark.

Petitioners are barred from raising new arguments about breathing rates for children and the elderly that they allege the City should have used in determining air health risks. (P&As at 2-4; *Temecula Band of Luiseno Mission Indians v. Rancho California Water Dist.* (1996) 43 Cal.App.4th 425, 434 [a "failure to exhaust their administrative remedies bars them from raising this issue now."]; Pub. Resources Code, § 21177, subd. (a) [a CEQA challenge is not preserved "unless the alleged grounds for noncompliance with [CEQA] were presented to the public agency. . . prior to the close of the public hearing"].) Even if Petitioners had raised these arguments during the administrative appeal, substantial evidence supports the City's use of the SCAQMD guidance still in effect today, which itself is based on OEHHA guidance in place when the Draft EIR was prepared. This Court properly upheld the City's action.

Petitioners cite *Berkeley Keep Jets Over the Bay Committee v. Bd. of Port Com'rs* (2001) 91 Cal.App.4th 1344 to argue that the City failed to use the most current scientific information. Petitioners' failure to cite previously to a 15-year old decision makes it improper to do so now. In any event, *Berkeley Keep Jets* is readily distinguished. There, the lead agency explicitly disregarded direction from the California Air Resources Board—the agency promulgating and implementing the guidance—to use the Air Resources Board's newer guidance. (*Id.* at 1366-1367.) That is not what happened here. Here, SCAQMD—the agency that the City relied on for its CEQA significance threshold and that itself still uses the previous OEHHA protocol—confirmed the City should use SCAQMD's current Risk Assessment Procedures

because SCAQMD has not yet developed recommendations for using the revised OEHHA protocol in CEQA documents. (AR35E:5603; 116:13175-13177 [technical memorandum], 13180 [SCAQMD confirming that it has not developed standards for the new OEHHA protocol].) The City was free to follow SCAQMD's direction.

Lastly, it is improper for Petitioners to cherry-pick a single component out of a new model—which incorporates many different factors—to argue that other modeling is inaccurate because of differences in that single component. Petitioners are, in effect, expressing disagreement with SCAQMD's existing risk assessment procedures. (AR35E:5603-5604.) This disagreement is not a basis for finding "legal error" in this Court's decision.

2. Recirculation of the EIR was not required.

Recirculation is the exception, not the rule. (*Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.* (1993) 6 Cal.4th 1112, 1132.) Recirculation is only required where "significant new information" is added to an EIR after public notice of the document's availability. (Pub. Resources Code, § 21092.1.) New information is not "significant" unless the public is deprived "of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project" or feasible alternatives or mitigation measures "that the project proponents have declined to implement." (CEQA Guidelines, § 15088.5, subd. (a).)

Neither the City's statement that the "accelerated construction schedule" would take three years nor the City's publication of additional responses to Petitioners' continuous critiques constitute "significant new information." All these actions show is a school being reduced in size in response to the public's concerns; not any new or substantially more severe significant impacts or a new feasible alternative or mitigation measure that the applicant refused to implement.

a. The three-year construction schedule was analyzed and disclosed in the EIR; it was not new.

Petitioners continue to argue that the City's perceived reduction in the School's construction schedule required recirculation of the EIR. Petitioners raise no new issues that the Court did not already consider and reject in its Decision.

This Court addressed the City's discussion of the three-year construction schedule in detail and determined that substantial evidence supported the City's decision not to recirculate the EIR because the

three-year construction schedule did not create new significant impacts. The Court acknowledged that "the draft EIR itself had a discussion of the impact of accelerating the construction schedule," which "was supplemented by information in Errata 2" and the August 3, 2015, letter responding to Petitioners' objections that the faster schedule had not been adequately studied. The Court concluded that the shorter schedule "would not make more severe the environmental impact on a peak or worst case day . . . Accordingly, there is substantial evidence in the record that compressing the construction schedule did not require recirculation of the EIR." (Decision at 24-25.)

Petitioners ignore the fact that the Draft EIR analyzed an "accelerated construction schedule" that assumed overlapping phases during a three-year span. (AR35F:5669, 36:5892, 6047, 6417-6423, 6466-6467, 6598-6604, 41:7086-7091; see also AR16:1006, 1047-1049, 1061-1062; 35B:5492-5499.) *This is the same schedule as the three-year construction schedule that was approved.* Said differently, the "accelerated construction schedule" is accomplished in three years.

The three-year construction schedule's impacts were also specifically analyzed. Separate sections analyzing impacts from the accelerated construction schedule were included in the Air Quality (AR36:6047), Noise (AR36:6417-6423, 6466-6467), and Traffic, Access, and Parking sections of the Draft EIR (AR36:6598-6604). Appendix C-3 to the Draft EIR summarized the accelerated construction schedule assumptions (AR41:7086-7091), and Appendix P1 included detailed traffic analyses for it (AR56:9362-9368, 9373). LADOT also reviewed and concurred in the traffic analysis for the accelerated construction schedule. (AR70:12107-12116.) All of these Draft EIR analyses considered the "peak day" for construction impacts. (AR56:9344-9345 [peak traffic]; 56:9347-9348 [same]; 44:7453-7460 [peak air emissions].) The three-year schedule does not increase overall grading and excavation, maximum equipment, activity, trips or hours above that evaluated for the peak day in the Draft EIR's accelerated construction analysis. (AR35B:5493, 35F:5670-5672; 70:12107-12116 [DOT concurrence letter].) Thus, potential air quality, noise, and traffic impacts would not exceed the single-day maximum analyzed in the EIR. (AR127:13391-13394.)

Petitioners submit declarations from paid experts claiming worse impacts under three-years of construction. These declarations are extra-record evidence and may not be considered. (Code Civ. Proc., § 1094.5.) In any event, their assertions were addressed in detail by the City. Brohard's

assertions about construction traffic were addressed in detail in a memorandum from the City's traffic consultant. (AR116:13182-13186.) Substantial record evidence confirms that peak-day construction traffic would remain the same as that analyzed in the Draft EIR because the maximum number of construction truck and construction worker trips is unchanged. (AR116:13162, 13165; 35B:5492-5499; 35F:5669-5672; 35F:5675-5677.) Baverman's assertions about peak day emissions were addressed in a technical memorandum about air quality during the three-year schedule. (AR116:13168-13178 [explaining the "construction timeframe was reduced based on an overall reduction in the scale of the Project…, by overlapping certain construction activities within each phase, and by expediting the sequencing of some construction activities. Even with this reduction in schedule length, the peak day of emissions would not change" because of site constraints limiting what can occur on a single day].) Baverman's assertion about overlap between North Wing Renovation work and Multipurpose Facility construction was also addressed. (See AR116:13172 ["even where there is additional overlap, these activities would not result in emissions that exceed the peak days" and providing calculations for overlapping work].) Baverman also claims that the City must re-model the School's emissions (Baverman Decl., ¶ 13), but the City already confirmed new modeling was not necessary since peak day air quality impacts remain unchanged. (AR116:13173.) Further, Baverman's suggestion that decreasing the duration of construction would somehow increase the overall amount of construction emissions was refuted. (AR116:13175 [confirming total emissions not increasing].) Finally, Baverman's claim that on-campus air health risks would be significant (Baverman Decl., ¶ 20) is wrong; the City analyzed on-campus impacts and found they would be less than significant. (AR35F:5668, 5681, 5684.)

Following requests from the public for a shorter construction schedule,[2] the City conditioned the project on meeting the accelerated schedule. In response to public inquiries—including requests from Petitioners—the City then expanded the Draft EIR's discussion of the accelerated construction schedule in Erratas 2 and 6. (AR35B:549299 [Errata 2]; AR35F:5669-72 [Errata 6].) This discussion confirmed what

[2] See, e.g., AR166:14780 (letter from Councilmember Bonin), 16:2886 (Petitioner Wrights objecting to the "duration" of a six-year construction schedule).

the Draft EIR already stated: the accelerated construction schedule would not result in new or more severe environmental impacts.

Petitioners contend that the three-year schedule "reflected substantial changes to the Project itself." (P&As at p. 8.) Petitioners ignore that the Draft EIR analyzed the shorter schedule. Petitioners also argue that the record does not support the Erratas' conclusion that there would be no changes in the peak days of construction traffic and airborne toxins. (*Id.* at 2-3.) However, as discussed in Erratas 2 and 6, Archer cannot increase activity beyond that analyzed on the peak day in the Draft EIR due to site constraints. (AR35B:5495, 5499, 35F:5671-5672.) In other words, the duration and intensity of excavation and haul, which is the most intense period of construction, is essentially the same under the three-year and six-year schedules. (AR35F:5671, 5678 [four months of excavation and haul under both schedules]; 116:13171 ["The six-year construction schedule already compressed the excavation and haul to the quickest time possible given the Project design and site constraints."].) Nothing related to the three-year construction schedule was new. Recirculation was not required.

b. There were no project changes requiring recirculation.

Petitioners contend that the City should have recirculated the EIR to address "significant changes" in Erratas 5 and 6. (P&As at p. 10.) Petitioners are wrong.

Errata 5 discussed Project refinements in response to oral and written testimony presented at the Planning and Land Use Management (PLUM) Committee hearing that *reduced the Project's potential impacts.* These changes included *reducing* the square footage of buildings, *reducing* the size of the underground parking structure, *raising* the percentage of students required to ride the bus to school, and placing *additional limits* to the School's hours of operation. (AR35E:5598-5613.)

Errata 6 addresses specific corrections to the Final EIR and provides additional clarification regarding the three-year construction. (AR35F:5666.) Errata 6 made no changes to the Project. (AR35F:5672-5673.) Nonetheless, Petitioners contend these minor corrections and clarifications required recirculation. This Court already considered these arguments, finding that "[c]ontrary to Petitioners' assertion, Errata 6 makes corrections that show the Project's mitigated health risks would be slightly higher than presented in the Final EIR, but would still be less than significant. . . Petitioners fail to show that the information constitutes 'significant new information' requiring recirculation." (Decision at 26.)

Other documents Petitioners reference also are not "significant new information" requiring recirculation. (CEQA Guidelines § 15088.5, subds. (a)-(b).) First, Petitioners' assertion that Archer applied for entitlements for temporary modular classrooms on July 24, 2015, is flatly wrong. Petitioners cite to plans stamped July 24, 2015, while applications were actually *submitted* in 2014. (AR644:19559-19565.) Second, Petitioners refer to a letter from Archer's counsel, dated August 3, 2015, discussing the OEHHA guidance. (AR116:13152-13186.) *This letter responded to Petitioners' correspondence on this issue from earlier that same day.* (AR115:13035-44.) Petitioners cannot reasonably fault the City and Archer for addressing their critiques. Further, the SCAQMD email attached to the August 3, 2015, letter was sent to the City's consultant two months earlier. (AR116:13180.) This email is not "new information" as it simply confirms the EIR's assumptions.

B. The Court's finding that the City correctly interpreted and applied its Municipal Code was not an "error in law" or "against law."

The Court correctly found that the City's interpretation and application of its own Municipal Code was reasonable, and that the City fully complied with the LAMC's plain language governing the approval of schools in residential zones. The City's interpretation of its Code is entitled to deference (*Gray v. Cty. of Madera* (2008) 167 Cal.App.4th 1099, 1129-1130), as it is "a subject as to which the City has expertise and technical knowledge." (*Citizens for Responsible Equitable Envt. Dev. v. City of San Diego* (2010) 184 Cal.App.4th 1032, 1047.) Here, deference is especially appropriate because the City's interpretation has been consistently maintained and "given 'careful consideration by senior [City] officials.'" (*Id.* at p. 1047.)

1. A variance was not required for the school.

Petitioners challenge the Court's conclusion that a variance was not required to allow the School to vary from the applicable height regulations. Petitioners ignore that the LAMC explicitly allows modifications to "height and area regulations" for CUPs (LAMC, § 12.24.F) and that CUPs and variances are fundamentally different types of land use approvals. (*Tustin Height Assn. v. Bd. of Supervisors* (1959) 170 Cal.App.2d. 619, 626 [CUPs, variances, and nonconforming uses are different types of zoning exceptions].) This distinction is based on the fundamental difference between a CUP, which is designed for uses that are necessary or desirable, and a variance, which requires a showing of hardship. (*Id.* at pp. 626-627.)

This Court's Decision is entirely in accord. (Decision at 11.) The Court properly confirmed that "[w]here a zoning ordinance authorizes the planning commission or city council to grant a conditional use permit upon finding the existence of certain facts, their action will not be disturbed by the courts in the absence of a clear and convincing showing of the abuse of the power of discretion vested in them." (Decision at 12 [citing *Wheeler v. Gregg* (1949) 90 Cal.App.2d 348, 361].) Petitioners "failed to show an abuse of discretion in City's approval of the Project pursuant to the LAMC and City Charter." (Decision at 12.)

In complete contravention of court rules, Petitioners cite a July 29, 2016, trial court ruling in *Kottler v. City of Los Angeles*, L.A. County Superior Court Case No. BS 154184 (appeal pending). Not only is *Kottler* completely improper to cite (Cal. Rules of Court, rule 8.1115), it is entirely irrelevant. *Kottler* was a challenge to a zoning administrator adjustment under LAMC section 12.28(C)(4). Archer did not apply for or receive an "adjustment" under that section. Rather, the Project's height modifications were approved with a CUP under section 12.24.F.

Further, *Kottler* supports the City's actions here: "'A conditional use is a separate and distinct concept from a variance'" (*Kottler*, *supra*, at p. 7), and that "LAMC 12.24 relates to conditional use permits and other quasi-judicial approvals and is not relevant here." (*Ibid.*) *Kottler,* just like this Court's Decision, recognizes the clear differences between CUPs and variances. *Kottler* does not make this Court's conclusion that a variance was not required an "error in law" or "against law."

2. "Residential floor area" limitations do not apply to schools.

Petitioners rehash their assertion that the City should have applied the residential floor area restrictions in LAMC section 12.07.01.C.5. The Court correctly rejected that claim once before, concluding that the floor area limits in section 12.07.01.C.5 do not apply. (Decision at 7.) This Court observed that, *inter alia*, "the phrase 'residential floor Area' is not capitalized, while some other defined words in section 12.07.01 are capitalized (e.g. Hillside Area.)." (*Ibid.*)

Petitioners now claim that this Court's "alternative ground" for determining that the LAMC's definition of "residential floor area" was ambiguous and that they should be allowed to brief it now. (P&As

at p. 11.)[3] However, the Court did not base its conclusion that the language is ambiguous *solely* on the capitalization of words. As Petitioners admit, this was simply one of several factors leading to the Court's conclusion. Based on the Court's overall analysis of the applicable LAMC provisions, the Court appropriately concluded that there is "sufficient ambiguity in the language of sections 12.21.1 and 12.07.01.C.5" to warrant consideration of the City Council's legislative findings confirming that residential floor area limits do not apply to institutional uses. (*Id.* at 7.)

3. The Baseline Mansionization Ordinance does not apply to the project.

Petitioners argue that the Court should not have considered the City's legislative clarification that the Baseline Mansionization Ordinance (BMO) does not apply to schools in residential zones. (P&As at p. 12.) But "when the language of a statute is susceptible to more than one reasonable construction it is appropriate to turn to extrinsic aids, including the legislative history of the measure, to ascertain its meaning." (*Diamond Multimedia Systems, Inc. v. Super. Ct.* (1999) 19 Cal.4th 1036.) The Court properly considered the clarifying changes to the BMO and additional legislative findings confirming the BMO was not intended to apply to schools and other non-residential development.[4]

After the BMO's adoption, the City Council adopted clarifying findings confirming "the BMO was never intended to address the size of non-residential structures which were already permitted through these types of discretionary reviews" and that the "issues that go along with the construction of" non-residential facilities would be addressed "through the required public hearing process and conditions of approval which help to mitigate potential impacts on surrounding uses." (AR127:13386.) The Court correctly found that these findings, and a reasonable reading of the BMO, confirmed that it does not apply to "schools permitted by a CUP," which are "necessarily different than a residential home, and [are] already subject to discretionary review." (Decision at 6-7.)

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[3] Petitioners complain that they were not able to brief the issue of capitalization, yet they feel unconstrained in raising new arguments regarding height limit variance procedures under LAMC section 12.24.X.10 at oral argument and in the instant motion.

[4] Petitioners argue that the BMO applies to other independent schools. (Carstens Decl., ¶ 13.) The cited ZIMAS reports do not state that the BMO applies to either of the schools but merely indicate that the schools are located in an area within the boundaries of the BMO.

Petitioners now argue that legislative statements that "simply . . . say what [the legislature] did mean" should not be considered and that a legislature has no authority to interpret its own statutes. (Ps & As at p. 12.) Petitioners' cited authority is contrary to their own argument and confirms that "'a subsequent expression of the Legislature as to the intent of the prior statute . . . may properly be used in determining the effect of a prior act.'" (*Ibid.* [relying on legislature's clarification and declaration interpreting an existing law].) Petitioners demonstrate no error in this Court's consideration of the City Council findings on the BMO and its application to school uses.

4. No additional findings are required under LAMC Section 12.24.X.10.

Petitioners argue that "all" findings under LAMC section 12.24 subsections U., V., W., and X were required for the approved height modification. (P&As at pp. 13-14.) This Court correctly rejected this issue raised for the first time at oral argument, finding that LAMC section 12.14.X.10 only requires that that the City make findings for "applicable requirements." (Decision at 8.) Because the proposed use is a school, "the relevant subsection in 12.24 is subsection U," which allows schools as a conditional use. (*Ibid.*) "[S]ubsection [U] does not require the additional findings set forth in subsection X.10." (*Ibid.*) Here, the City made the findings required for a school under subsection U.24. No more was required.

IV. CONCLUSION

Petitioners demand another bite at the apple after a rigorous and lengthy public process before the City, robust briefing and a full hearing on the merits before this Court. While Petitioners may now second-guess certain of their litigation strategies, their claimed errors do not render the Court's well-reasoned decision "against the law" or based on an "error in law." Substantial evidence supports the City's and Court's decisions and they need not be revisited. The Court properly denied Petitioners' Petition for Writ of Mandate and should similarly deny Petitioners' motion for a new trial.

Respectfully submitted,

Dated: November 28, 2016

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By: _____
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CITY OF LOS ANGELES

Sunset Coalition et al. v. City of Los Angeles
Los Angeles County Case No. BS157811

PROOF OF SERVICE

I, Bonnie Thorne, am employed in the County of Sacramento. My business address is 555 Capitol Mall, Suite 800, Sacramento, CA 95814, and email address is bthorne@rmmenvirolaw.com. I am over the age of 18 years and not a party to the above-entitled action.

I am familiar with Remy Moose Manley, LLP's practice for collection and processing mail whereby mail is sealed, given the appropriate postage and placed in a designated mail collection area. Each day mail is collected and deposited in a USPS mailbox after the close of each business day.

On November 28, 2016, I served the following:

RESPONDENT CITY OF LOS ANGELES' OPPOSITION TO PETITIONERS' MOTION FOR NEW TRIAL

☐ **BY FIRST CLASS MAIL** by causing a true copy thereof to be placed in a sealed envelope, with postage fully prepaid, addressed to the following person(s) or representative(s) as listed below, and placed for collection and mailing following ordinary business practices.

☒ **BY OVERNIGHT DELIVERY** by causing a true copy thereof to be placed in an envelope or package designated by the express service carrier with delivery fees paid or provided for, addressed to the person(s) or representative(s) as listed below, and deposited in a dropbox or other facility regularly maintained by the express service carrier.

☐ **BY FACSIMILE** by causing a true copy thereof to be delivered via facsimile from (916) 443-9017, to the following person(s) or representative(s) at the facsimile number(s) listed below, with a transmission reported as complete and without error.

☐ **BY ELECTRONIC TRANSMISSION OR EMAIL** by causing a true copy thereof to be electronically delivered to the following person(s) or representative(s) at the email address(es) listed below. I did not receive any electronic message or other indication that the transmission was unsuccessful.

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury that the foregoing is true and correct. Executed this 28th day of November 2016, at Sacramento, California.

Bonnie Thorne

Sunset Coalition et al. v. City of Los Angeles
Los Angeles County Case No. BS157811

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ATTACHMENT B