

DEPARTMENT OF
CITY PLANNING

CITY PLANNING COMMISSION

DAVID H. J. AMBROZ
PRESIDENT

RENEE DAKE WILSON
VICE-PRESIDENT

CAROLINE CHOE
VAHID KHORSAND
JOHN W. MACK
SAMANTHA MILLMAN
MARC MITCHELL
VERONICA PADILLA-CAMPOS
DANA M. PERLMAN

ROCKY WILES
COMMISSION OFFICE MANAGER
(213) 978-1300

CITY OF LOS ANGELES
CALIFORNIA



ERIC GARCETTI
MAYOR

EXECUTIVE OFFICES
200 N. SPRING STREET, ROOM 525
LOS ANGELES, CA 90012-4801

VINCENT P. BERTONI, AICP
DIRECTOR
(213) 978-1271

KEVIN J. KELLER, AICP
EXECUTIVE OFFICER
(213) 978-1272

LISA M. WEBBER, AICP
DEPUTY DIRECTOR
(213) 978-1274

JAN ZATORSKI
DEPUTY DIRECTOR
(213) 978-1273

<http://planning.lacity.org>

January 11, 2018

Los Angeles City Council
c/o Office of the City Clerk
City Hall, Room 395
Los Angeles, California 90012

Attention: PLUM Committee

Dear Honorable Members:

APPEAL ANALYSIS, THE LAKE ON WILSHIRE; 1930 W. WILSHIRE BOULEVARD (1900, 1908, 1914, 1920, 1926, 1928, AND 1930, 1932, AND 1936 W. WILSHIRE BOULEVARD; 657, 659, 661, 665, 667, 669, 671 S. BONNIE BRAE, AND 654, 658, 660, 668 S. WESTLAKE AVENUE); CF 17-1272-S1

A. Project Background:

The proposed project involves the conversion of an existing 14-story medical office building (Wilshire Medical Building) into new 220-room hotel; the construction of a new 5-story, approximately 70,000 square-foot, multi-cultural and performing arts center; and the construction of a new 41-story apartment tower containing 478 dwelling units. The project will provide up to a total of 933 parking spaces.

The subject site is located in what is commonly referred to as the MacArthur Park neighborhood, within the Westlake Community Plan and just west of Downtown Los Angeles. The site is bound by Wilshire Boulevard to the north, Westlake Avenue to the west and Bonnie Brae Street to the east. The Metro Red and Purple Line Westlake/MacArthur Park Station is located one block to the west of the project.

City approvals required to develop the proposed project include:

1. A City-initiated **General Plan Amendment** to the Westlake Community Plan to: a) re-designate the parcels located at 660, 668 S. Westlake Avenue and 665, 667, 669, 671 S. Bonnie Brae Street from a Community Commercial to Regional Center Commercial land use designation; and b) remove the applicability of Footnote No. 2, which limits the portion of the site zone C2-4 to Height District No. 2 (6:1 in lieu of 13:1).
2. A **35% Density Bonus** to allow 478 units in lieu of 354 units by reserving 11% of its base density for Very-Low Income household occupancy for a period of 55 years, along with two on-menu incentives to increase permitted Floor Area up to 35%; and to permit the

Averaging of Floor Area Ratio, Density, Parking or Open Space, and permitting Vehicular Access.

3. **Density Bonus.** LAMC Section 12.22 A.25 allows a 35% density bonus because 11% of the Project residential units are restricted as affordable Very Low Income units. The recommended Regional Center designation across the entire site permits a maximum density of 200 square feet of lot area per dwelling unit and would allow a maximum of 354 units by right (based on 96,695 square feet of the net lot, includes one-half of the alley). The 35% density bonus entitles the project to 478 units that it is requesting;
4. A **Conditional Use** to permit the on- and off-site sales and consumption of a full line of alcohol for the project's proposed hotel and cultural center; and
5. **Site Plan Review** for the construction, use, and maintenance of a project containing 50 or more residential dwelling units.
6. A **Vesting Tentative Tract Map No. 74297** for the merger and resubdivision for airspace subdivision purposes. *This entitlement was approved by the Advisory Agency on March 3, 2017 and was not appealed.*

In addition to the above described land use entitlements, the project was filed with a proposed **Development Agreement** between the City of Los Angeles and Walter and Aesha Jayasinghe Family Trust pursuant to California Government Code Section 65864 *et seq.*, and the implementing procedures of the City.

Environmental review of the project involved the preparation of a Mitigated Negative Declaration (Case No. ENV-2016-3144-MND), where it was determined that the project may result in a significant impact in the following study areas: air quality; biological resources; cultural resources; geology and soils; hazards and hazardous materials; noise; public services; transportation/traffic; and utilities and service systems. However, the implementation of mitigation measures was found to reduce identified impacts to less than significant levels.

The project's Mitigated Negative Declaration was circulated for public review from December 29, 2016 through January 18, 2017. On January 10, 2017 the South Coast Air Quality Management District (SCAQMD) submitted a letter to the Department of City Planning requesting the modification of construction measures, which were subsequently amended. The Mitigated Negative Declaration was adopted by the lead agency on March 3, 2017 along with approval of Vesting Tentative Tract No. 74297. As stated above, the approval of the project's tract map was not appealed and a Notice of Determination, pursuant to CEQA Guidelines Section 15075 was filed with the Los Angeles County Recorder on March 15, 2017.

At a meeting on October 12, 2017, the City Planning Commission approved the entitlements as described above, with exception to the previously approved vesting tentative tract map, and recommended approval of the proposed Development Agreement. As a part of their action, the Commission found based on the independent judgement of the decision-maker, after consideration of the whole of the administrative record, the project was assessed in Mitigated Negative Declaration No. ENV-2016-3144-MND, adopted on March 3, 2017 (under VTT-74297) with mitigation measures and the mitigation monitoring program prepared for the Mitigated Negative Declaration; and pursuant to Sections 15162 and 15164, no subsequent EIR, Negative Declaration or Addendum was required for approval of the project.

The City Planning Commission's determination letter was issued on November 1, 2017. During the appeal period, two appeals were filed in opposition to the project. Appeal No. 1

was filed by Jose Felix Cabrera on behalf of the Coalition for an Equitable Westlake – Macarthur Park. Appeal No. 2 was filed by Luis Cabrales on behalf of Inquilinos Unidos. Both appellants are tenants within the subject site’s existing building (Wilshire Medical Building) and both are represented by the Eviction Defense Network, also a tenant within the Wilshire Medical Building. The following summarizes and responds to the submitted appeals:

B. Appeal Analyses:

1. Appellant No. 1: Jose Felix Cabrera, Coalition for an Equitable Westlake – Macarthur Park

Appellant No. 1 has appealed the entire decision of the City Planning Commission, stating that the project results in significant environmental impacts related to Land Use, Cultural Resources, Construction, Traffic, and Hazardous Substances.

- a. *Land Use: “A new 41-story residential building is completely incompatible with the existing buildings on the project site and incompatible with all of the building on adjacent parcels. The MND concludes that the project is compatible with the project site, and what is around it, but this conclusive statement is not supported by substantial evidence... The project would require a general plan amendment, which on its own shows that the project is incompatible, since it is asking the City for permission to violate the general plan. Additionally, there are at least four schools within 400 feet of the project, and the project is asking for a conditional use permit to allow the sale and consumption of alcohol within 1,400 feet of the school – this requested use is incompatible with current land use and planning.”*

Staff Response:

The consideration of land use impacts, as they pertain to CEQA, consider if a project would physically divide an established community and if a project would conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project adopted for the purposes of avoiding or mitigating an environmental effect.

The project site is located in a fully urbanized area of Los Angeles. A fully developed street network along with all basic urban infrastructure systems is located adjacent to and surrounding the project site. The project proposes the conversion of an existing office building to a hotel and the construction of a residential tower and multi-cultural center. The project would not create a physical barrier causing an impediment to travel or access the area surrounding the project site. The MND provides a complete analysis on land use that concludes based on evidence that the project does not conflict with existing land uses in the area. While the project’s proposed height is taller than the immediately surrounding area, the appeal point does not substantiate how the additional height creates a significant impact on the environment. Furthermore, Senate Bill 743 provides that potential aesthetic impacts of a mixed-use project on an infill site and within a transit priority area shall not be considered a significant impact under CEQA. The appeal point provides unsubstantiated opinion.

The General Plan Amendment associated with the project is a City initiated amendment that will re-designate a portion of the subject site from Community Commercial to Regional Center, thereby designating the entire site for Regional Center uses. The amendment was determined to be consistent with surrounding commercial properties along Wilshire Boulevard, wherein which the Regional Center designation extends beyond the street facing lots to create a more unified development with consistent regulations. The amendment permits an increased floor

area ratio for a portion the site; however, it does not allow for an increase in height as the zoning code does not limit height for the site.

The Conditional Use that was granted for the on- and off-site sales of alcohol is associated with project's proposed hotel and multi-cultural center. It was determined that while the proposed uses will be located on a site that is surrounded by many diverse uses, is it well distanced and/or buffered from sensitive uses. The service of alcohol will be located within a contained environment, where monitoring is facilitated and the operator has been conditioned for strict oversight regarding the sale of alcohol. Furthermore, the project has been conditioned to require subsequent Plan Approvals for any use of the property that sells alcohol.

- b. *Cultural Resources: "A 41-story residential tower, even if physically detached from the site's existing 14-story historic building, will diminish the character and structure of a known historic resources. The MND concludes, without any substantial evidence that there will be no substantial adverse changes that reduce the integrity or significance of historic resources. However, the reality contradicts the conclusion since, inevitably, a 41-story modern apartment tower that is three times the scale of the historic building will diminish the significance and integrity of the historic building."*

Staff Response:

The adopted Mitigated Negative Declaration provides expert opinion that is supported by fact. Substantial evidence is provided in the historic analysis included in the appendix of the project's MND and is summarized in the MND. A qualified expert professional meeting the Secretary of the Interior's Professional Qualification Standards determined that: "Analysis of the potential impacts to historical resources has found that rehabilitation of the Wilshire Medical Building has the potential to result in a significant impact without mitigation to ensure that rehabilitation will be conducted in accordance with the Secretary of the Interior's Standards for Rehabilitation." Furthermore, it was determined that the project's proposed new construction, "will not result in substantial adverse changes that reduces the integrity or significance of historic resources wither adjacent to or in the near vicinity of the project site." In conjunction with the adoption of the MND, the approval of the project adopted mitigation measures that were determined to be sufficient in ensuring protection of historic resources from potential impacts associated with the project that may occur during construction. The appeal point provides unsubstantiated opinion.

- c. *Construction: "The 32-month project construction schedule of the MND is based on a start date of November 2016 and an end date of 2020, and uses 2016 and 2020 as a baseline year. An updated schedule and feasibility schedule must be provided to support a new construction schedule. The MND states that there will be 6,429 truck trips require to haul project construction related material; however, there is no quantitative impact analysis of how these trucks would impact traffic... It is impossible to claim less than significant construction impacts associated with truck trips...Additionally, it is impossible to ascertain whether other diesel-emitting construction equipment was accounted for in the Air Quality analysis for the construction phase. Also, there is no analysis as to whether Sunshine Canyon landfill in Sylmar will be open or have capacity for the construction related trash generated by the project."*

Staff Response:

The construction dates of the MND were utilized for modeling potential air quality emission in the CalEEMod software. An approximate 32-month schedule was assumed and this represents a conservative and standard approach to analyze future project impacts. An updated schedule is not required given that emission factors rely on daily emissions and that the proposed overall length of each construction phase is not affected. Mitigation measures which include the required use of the cleanest available on- and off-road construction equipment have been adopted and will be required at any time construction of the project is commenced.

The Los Angeles Department of Transportation (LADOT) considers construction-related traffic to cause adverse but not significant impacts due to the fact that, while inconvenient, construction-related traffic impacts are temporary in nature. LADOT requires the implementation of worksite traffic control plans to ensure that any construction-related impacts are minimized to the greatest extent possible. As stated in the adopted MND, the project will be required to comply with all conditions contained in its LADOT approval letter, which requires that a construction worksite traffic control plan be submitted to LADOT for formal review and approval.

The air quality analysis that was prepared for the project analyzed potential impacts from diesel-fueled construction equipment. Construction related emissions were estimated using SCAQMD's CalEEMod software. This analysis, included in the MND's appendix, analyzed on-site construction equipment and off-site hauling trucks.

Finally, the demolition and construction debris that was calculated and analyzed for the project is projected to be approximately 3.86 tons per day. The Sunshine Canyon Landfill can accept 12,100 tons per day (and presently accepts approximately 7,800 tons per day on weekdays and 3,000 tons per day on Saturdays). Therefore, it is accurate to conclude that the landfill will be able to accommodate the project's expected 3.86 tons per day.

The appeal point does not provide any substantial evidence that the project would have a significant impact or require further CEQA review.

- d. *Traffic: "When discussing the 1,355 net new trips caused by the project, the MND incorporates a 10 percent internal capture reduction but does so without supporting analysis or supporting evidence. Additionally, the project is in very close proximity to four elementary and middle schools. However, the mitigation measure proposed to address the significant impact created by the increase in traffic caused by the project is simply to defer mitigation because the MND states that some plan will be developed in the future, but doesn't explain what that plan is, nor does it allow for an analysis of that plan or any safety measures that will be put in place.... There needs to be more analysis done on how pedestrians, especially the children in the area, will be protected due to the new trips generated by the project."*

Staff Response:

The analyzed 10% internal capture reduction of the project's traffic study was applied to the trip generation for the proposed apartment and hotel. This is done to account for person trips made between the different uses of the project site without using an off-site road system. The methodology and assumptions used for review of the project's traffic impacts were established in conjunction with the Department of Transportation through a Memorandum of Understanding that was approved in June of 2016.

Mitigation measures have been adopted to ensure pedestrian safety, including the safety of potential students walking near the site. In addition, the project has not been designed nor approved with any design features that pose as dangerous for pedestrians in and around the project site. Finally, the specific appeal point does not provide evidence that the project would directly cause or increase harm to potential pedestrians in and around the area. The appeal point provides unsubstantiated opinion.

- e. *Lead: "Based on the age of the existing structures on the project site, the existence of lead based paints, asbestos, and mold, it is not only possible but highly likely. This MND does not appropriately evaluate or disclose the potential impacts and risks associated with the release, disposal, and exposure to people of lead based paints, asbestos, petroleum hydrocarbon contamination, and mold. The MND simply makes a straw man argument by concluding, without substantial evidence, that compliance with the Los Angeles Municipal Code's methane regulations would serve[s] as a substitute for a mitigation measure; however, following the law (here the municipal code) is not a mitigation measure under CEQA."*

Staff Response:

Environmental review of the project included the review of a Phase I Environmental Site Assessment, a Phase II Site Investigation and Site Closure Report, and a Soils Management Plan. The treatment and proper disposal of lead, asbestos, and mold is regulated via mandatory compliance measures. These measures were listed in the project's Mitigated Negative Declaration as Regulatory Compliance Measures and not as Mitigation Measures. Such requirements are standardized regulations, required by law, which would be applicable to any demolition, tenant improvement, and new construction within the City. There is no evidence that suggests environmental impacts would remain after compliance with standardized regulations for lead, asbestos, and mold and, therefore, it was determined that further mitigation measures were not required.

A thorough site analysis which included the testing of soil and water sample testing concluded that any present petroleum hydrocarbons are not expected to present a threat to groundwater. Nonetheless, the project was conditioned to adhere to a Soils Management Plan, included in the MND, that would reduce any potential impacts to less than significant levels.

The specific appeal point does not provide any substantial evidence that such regulations and adopted mitigation measures would not be sufficient to abate any potential lead, asbestos, mold, or petroleum hydrocarbons on the subject site.

The above described appeal points do not raise any new CEQA impacts that change the conclusion of the project's Mitigated Negative Declaration, nor do they provide any substantial evidence to support that further review under CEQA is required.

2. Appellant No. 2: Luis Cabrera, Inquilinos Unidos

Appellant No. 2 has appealed the entire decision of the City Planning Commission, asserting that the environmental review conducted for the project was inadequate. Specifically, the appellant states that the project has several potentially significant environmental impacts relating to Air Quality, Trees, Cultural Resources, Greenhouse Gas Emissions, Hazardous Materials, and Noise, necessitating that an Environmental Impact Report to be prepared.

- a. *Air Quality: "...the MND fails to explain or discuss how it arrived at the specific thresholds on which the City relied, and fails to justify why adoption of those thresholds is appropriate for the project. The City thus failed to meet its obligation to undertake a fact-based investigation of the project's potential impacts on air quality, and to explain the basis for its determination that those impacts are mitigatable to a level of insignificance...The MND fails to properly analyze cumulative construction and operational effects on air quality as a result of the project and other proposed developments near the project site...The MND's analysis of air quality impacts on sensitive receptors is inadequate to show that significant impacts will not occur..."*

Staff Response:

The project's MND appropriately relied on the South Coast Air Quality Management District's (SCAQMD) thresholds of significance for air quality impacts. As stated in the Los Angeles CEQA Thresholds Guide, "The City of Los Angeles has not adopted specific Citywide significance thresholds for air quality impacts. However, because the SCAQMD's regulatory role in the air basin, this Thresholds Guide references the screening criteria, significance thresholds and analysis methodologies in the CEQA Air Quality Handbook to assist in evaluating projects proposed within the City." As such, the City's analysis of the project's potential impacts on air quality were fact-based with substantial evidence to explain the basis of determination that the adoption of mitigation measures would reduce potential impacts to less than significant levels.

The project's MND analyzed cumulative impacts on proximate sensitive receptors. The analysis concludes, based on fact-based evidence, that the project's air quality impacts would not lead to an exceedance of health-based air quality standards at four sensitive receptors in the project's vicinity during construction. Cumulative construction emissions are considered when projects are within proximity of each other which could potentially result in a larger impact on local sensitive receptors. Given that SCAQMD does not have thresholds of significance for cumulative analyses, the MND concludes that other projects constructed at the same time would be subject to the environmental review of potential construction impacts. Based on the analysis of future projects, two developments are proposed in the project vicinity, however, neither was found to substantially contribute to air quality impacts upon the four sensitive receptors (all within 60 feet of the subject site) listed in the MND. This was concluded after determining that the two proposed developments in the area were located approximately 450 feet away from the identified sensitive receptors. With regards to operational impacts, the project's air quality analysis confirmed that the project would be consistent with the Air Quality Management Plan. An analysis of unmitigated, estimated daily operations emissions, calculated from SCAQMD's CalEEMod program, determined that the project would not exceed any localized or regional significance thresholds. As a result, the MND concludes that cumulative operational impacts are less than significant given the project's negligible on-site emissions and the absence of any existing development that creates any significant on-site emissions that could substantially impact proximate sensitive receptors.

As described, the project's MND analyzed potential environmental impacts on sensitive receptors located the closest to the site. The list of sensitive receptors potentially impacted by the project was created using criteria provided by the State of California Air Resources Board (ARB) and the SCAQMD. The four identified sensitive receptors are considerably closer than those cited by the appellant. The fact-based analysis of the MND calculated that the project's impacts on such receptors would "generate negligible pollutant concentrations of CO, NO₂, PM_{2.5}, or PM₁₀ at

sensitive receptors and would be considered less than significant.” In addition, the project’s construction impacts were determined to create short-term impacts that could be mitigated to less than significant levels.

Finally, in a letter dated January 10, 2017, SCAQMD reviewed the project’s air quality analysis and did not dispute the calculated construction and operational impacts of the project.

- b. *Trees: “The MND fails to adequately analyze the environmental impacts of cutting down 79 trees on the project site...the record does not demonstrate that significant impacts will not occur as a result of the loss of trees...Trees have aesthetic value, and aesthetic impacts are environmental impacts under CEQA....trees also help combat climate change by absorbing carbon dioxide... There is therefore a fair argument that removing 79 trees will have a significant global-warming effect... Trees also conserve energy. They can reduce the energy demand for cooling buildings... Eliminating trees at the project site thus also has indirect global-warming effects by increasing energy needs...There is a lack of substantial evidence that mitigation measure MM-4-1 will mitigate the loss of trees to insignificance... Further, mitigation measure MM-4-1 represents ineffective mitigation...”*

Staff Response:

A methodology or threshold of significance as it relates to a potential significant impact created by tree loss does not exist. The MND determined that the project will not impact any established protected trees and provides the City’s standard replacement program as a mitigation to ensure a 1:1 replacement of any lost non-protected trees on the subject site. As far as potential aesthetic impacts, Senate Bill 743 provides that aesthetic of a mixed-use project, located on an infill site, and within a transit priority area shall not be considered a significant impact under CEQA. The project meets the criteria of Senate Bill 743 and, thus, there is no merit to potential aesthetic impacts created by the project.

With regards to the trees’ absorption of CO₂, the amount of CO₂ absorbed and sequestered by a tree annually and over its life is negligible compared to the amount of released during construction and operation of the project. The appeal point does not provide any calculated evidence of the subject site and is, thus, determined to be unsupported opinion that does not rise to the level of substantial evidence needed to determine that the project would have a significant environmental impact or warrant further review under CEQA.

The required tree replacement ratio is a standard mitigation measure that ensures that trees are replaced on a 1:1 ratio. The project’s proposed landscape plan will be reviewed and approved by the City prior to the approval of any building permits. The project’s trees and landscaped areas will be maintained according to specifications of any approved landscaped plan and pursuant to standardized City requirements. The appeal point states that the project’s approved mitigation is inadequate but fails to substantiate this claim or calculate what *would be* effective mitigation.

- c. *Cultural Resources: “The Wilshire Medical Building is indisputably a historical resource, and the MND recognizes that if the character-defining features of the building are not retained, there would result a potential adverse effect to the significance of the building yet the MND fails to explain how the building’s interior character-defining features will be retained.... There is no showing that this [the building’s] renovation can be accomplished without destroying many of the character-*

defining features... The mitigation measures for historic resources fall far short of what CEQA requires in this area. Mitigation measure MM-5-1 provides only that the applicant will engage a qualified historic preservation consultant to oversee the design development (MND p. 3-46). This is vague and deferred mitigation and improperly deferred analysis that should have been included in the MND, because in its absence, there is no substantial evidence to support the conclusion that impacts to historical resources will be less than significant... Additionally the MND concludes without substantial evidence that the addition of the cultural center, parking structure, and residential tower will not significantly impact the integrity or significance of the Wilshire Medical Building...The MND states that compliance with the regulatory compliance measure RCM-5-2 would render any impacts to paleontological resources less than significance (MND p. 3-47). Yet, that regulatory compliance measure, the only measure to address such impacts, does not provide for any capture and processing of excavated material, so potential impacts to small fossils are unaddressed in the MND..."

Staff Response:

The MND's historic analysis took into consideration the changes to the site's existing historic resource through the proposed renovation. As previously stated, substantial evidence is provided in the historic analysis included in the appendix of the project's MND and is summarized in the MND. A qualified expert professional meeting the Secretary of the Interior's Professional Qualification Standards determined that: "Analysis of the potential impacts to historical resources has found that rehabilitation of the Wilshire Medical Building has the potential to result in a significant impact without mitigation to ensure that rehabilitation will be conducted in accordance with the Secretary of the Interior's Standards for Rehabilitation." Furthermore, it was determined that the project's proposed new construction, "will not result in substantial adverse changes that reduces the integrity or significance of historic resources wither adjacent to or in the near vicinity of the project site." The formal report conducted for the project was reviewed and approved by the Department of City Planning's Office of Historic Resources prior to incorporation into the MND and final adoption of any proposed mitigation measures. The approval of the project adopted mitigation measures that were determined to be sufficient in ensuring protection of historic resources from potential impacts associated with the project that may occur during construction. These mitigation measures are not deferred but rather are performance standards that will ensure compliance with the Secretary of the Interior Standards for Rehabilitation and ensure that CEQA impacts remain at less than significant levels.

With regards to paleontological impacts, the Natural History Museum stated that there could be potential vertebrate fossils and that excavation should be monitored closely to quickly and professionally recover any fossil remains that are unearthed while not impeding project development. The adopted MND includes the required regulatory compliance measures which incorporate the requests of the Natural History Museum, including having a qualified paleontologist evaluate any potential find and ensure that any discovered resource is treated in accordance with federal, state, and local guidelines, including those set forth in the California public Resource Code Section 21083.2. The appeal point does not provide any substantial evidence to support the assertion that the project may have a significant environmental impact or that further CEQA review is required. The appellant's assertions of impacts to cultural resources are unsubstantiated opinion and does not rise to the level of any expert opinion supported by fact, as the MND's analysis does.

- d. *Greenhouse Gas Emissions: “The MND’s analysis of greenhouse gas (GHG) emissions compares the Project with an estimated No Action Taken (NAT) Scenario, in which GHG emissions are estimated in the absence of any GHG reduction measures. The MND states that the analysis uses the 2014 Revised AB 32 Scoping Plan’s statewide goals as an approach to evaluate the Project’s emissions, and that the reductions in CO₂e emissions for the Project exceed the State’s AB 32 Scoping Plan goal, so the Project would exceed its contribution to statewide climate obligations (MND p. 3-79). The NAT scenario used in the MND’s GHG analysis is a totally artificial construct: It is a hypothetical version of the project not based in any reality... The MND’s approach to GHG analysis was rejected by the California Supreme Court in Center for Biological Diversity v California Department of Fish and Wildlife (2015) 62 Cal.4th 204, 225-226, in which the Court found the record contained no substantial evidence that a project-level reduction of GHGs in comparison with a business-as-usual scenario was consistent with achieving AB 32’s statewide goal of reducing GHGs 29 percent below business as usual. Because the MND relies on analysis that the Supreme Court has invalidated and was therefore an improper analysis, there is a fair argument that the project, with estimated annual GHG emissions of 9,637 CO₂e, may have significant impacts. This analysis is supported by the SCAQMD’s threshold of 3,000 MTCO₂e for mixed-use project such as this one...”*

Staff Response:

As noted previously, the project’s MND was previously certified by the lead agency on March 3, 2017. As such, substantial evidence is required to support a determination for additional review under CEQA Guidelines Section 15162. The fair argument standard that the appellant repeatedly cites is incorrect. The MND uses the 2014 Revised AB 32 Scoping Plan’s statewide goals to evaluate the proposed project’s impact on Greenhouse Gas Emissions. The analysis of the project’s MND found that its NAT comparison based on the Scoping Plan is appropriate because the project would contribute to statewide GHG reduction goals, including vehicle trip reductions, public transit and pedestrian travel, and attracting existing trips, that far exceed the State’s AB 32 Scoping Plan goal of a 4.5 percent reduction from the overall transportation sector by 2020.

The MND does not use a “No Action Taken” approach as the threshold for significance. Instead, the analysis discloses the project’s GHG emissions and compares it to a NAT scenario as a point of reference. It is one of various perspectives on analyzing this proposed development that is consistent with the California Supreme court’s ruling. The MND’s analysis of GHG emissions discloses the project’s potential direct emissions and impacts and looks at its consistency with climate action plans and policies, which is consistent with case law and best practices.

The project’s adopted MND provides information on federal, state, regional, and local plans that intend to reduce GHG emissions from development. The appeal point’s comparison to a 3,000 MTCO₂e (metric tons of carbon dioxide equivalent) is a comparison to a draft concept that has not been formally approved by the SCAQMD. That being said, the SCAQMD submitted a comment letter to the project’s MND and had no issue with the project’s analysis. Ultimately, the appellant’s GHG emission arguments are unsubstantiated opinion and do not provide any quantified, substantial evidence that the project would have a significant environmental impact or require further review under CEQA.

- e. *Hazardous Materials: “In the past, the project site contained a gas station and auto repair facility, which represent a recognized environmental condition, according to the*

MND. The MN explains past site assessments have identified petroleum hydrocarbons in the soil, including benzene, toluene, ethylbenzenes, xylenes, and MTBE. As explained on the EPA's issue website for vapor intrusion, attached as Exhibit 3, the process of vapor intrusions, even at low concentrations, can lead to the accumulation of volatile chemicals in interior spaces and pose a significant human health risk. The MND, however, fails to evaluate the concentrations of these chemicals found on the site for their significance and potential toxicity...The MND concludes there is a potential for asbestos-containing building materials and lead-based paint at the project site, and it acknowledges that exposure to asbestos and lead could be hazardous to the health of demolition workers and area residents and employees. Despite the potential for a significant impact, the MND indicates that no testing was completed for asbestos-containing building materials or lead-based paint (MND p. 3-99). The City thus failed to undertake the required fact-based investigation of the project's potential effects from these hazardous materials. The MND relies on regulatory compliance measure RCM 8-1-1 to support its conclusion that impacts from release of hazardous materials will be less than significant with mitigation (MND p. 3-103)...The MND fails to adequately support the conclusion that there would be less than significant impacts with respect to whether the project may release toxic emissions within one-quarter mile of an existing or proposed school...The conclusion that impacts to individuals at those schools would be less than significant relies on the inadequate regulatory compliance measures discussed above..."

Staff Response:

As previously stated, environmental review of the project included the review of a Phase I Environmental Site Assessment, a Phase II Site Investigation and Site Closure Report, and a Soils Management Plan. The Phase II analyzed on-site soil, provided the results of its testing and concluded that a Soils Management Plan should be implemented to ensure the proper handling of petroleum-impacted soil. The site investigation also stated that "Redevelopment of the site is anticipated to preclude completion of the vapor pathway into the ground-floor commercial space (i.e. subterranean parking) by removing the impacted soils from which the vapors are originating. (Appendix G-2, Site Investigation, to the MND, page 11). Therefore, it was determined that any potential issue with soils will be mitigated to less than significant levels by the adoption of mitigation measure MM-8-1, which requires the project to comply with the recommendations of the completed Soils Management Plan. The implementation of the plan's recommendations would ensure that contaminated soils and vapor intrusion potential is abated in a regulated process to ensure that no significant human health risks remain.

The treatment and proper disposal of lead, asbestos, and mold is regulated via mandatory compliance measures. These measures were listed in the project's Mitigated Negative Declaration as Regulatory Compliance Measures and not as Mitigation Measures. Such requirements are standardized regulations, required by law, which would be applicable to any demolition, tenant improvement, and new construction within the City. There is no evidence that suggests environmental impacts would remain after compliance with standardized regulations for lead, asbestos, and mold and, therefore, it was determined that further mitigation measures were not required. The MND discloses the schools located within one quarter mile of the project. The MND's mitigation measures and citation to regulations would ensure that construction and operation emissions would remain less than significant. Any schools in the vicinity of the site would be shielded from the project site by the distance between them, intervening existing structures, and standard construction walls that would surround the subject construction site.

Additional studies or mitigation measures are not warranted to reduce any impact beyond existing, established criteria. The City relies on the regulations in place that abate potential asbestos and lead in buildings pursuant to legally required health and safety protocols. The appellant's argument is does not provide any substantial evidence, such as project specific study, to support that the project may have a significant environmental impact or warrant additional review.

- f. *Noise: The MND concludes that off-site construction-related noise impacts would be less than significant, but the explanation for that conclusion is insufficient. Hauling of excavated soils would involve an average of 107 haul trips per day via Wilshire Boulevard and Alvarado Street. The MND states that this vehicle activity would only marginally increase ambient noise levels along the haul route (MND p. 3-154), but no substantial evidence is provided to support that assertion. Although according to the MND, a 3 dBA increase in roadway noise require an approximate doubling of roadway traffic volume assuming the travel speed and fleet mix remain constant, the addition of haul trucks to the roadways will change the fleet mix. For that reason, the MND's statement that the addition of haul trucks would not nearly double the traffic volumes on located roadways is irrelevant... there is a fair argument that the project's construction-related activities may have a significant effect on off-site noise impacts."*

Staff Response:

The Los Angeles CEQA Thresholds Guide states that generally noise levels increase approximately 3 dBA for each doubling of roadway traffic volume, assuming that the speed and fleet mix remain constant. The project's MND concluded that, although the addition of haul trucks would alter the fleet mix of the project haul route, their minimal addition to load roadways would not nearly double those roads' traffic volumes, let alone augment their traffic to levels capable of producing 5 dBA increases. In addition to this, Los Angeles Municipal Code Noise regulations regulate construction noise, including hours of operation, and best practices.

With respect to construction noise, the City of Los Angeles has established policies and regulations concerning the generation and control of noise that could adversely affect its citizens and noise-sensitive land uses. These regulations pertain to construction hours. LAMC Section 41.40 (Noise Due to Construction, Excavation Work – When Prohibited) and LAMC Section 112.05 (Maximum Noise Level of Powered Equipment or Powered Hand Tools) also specify the maximum noise level of powered equipment or powered hand tools. LAMC Section 41.40 specifies that no person shall, between the hours of 9:00 p.m. and 7:00 a.m. of the following day, perform any construction or repair work of any kind upon, or any excavating for, any building or structure. In addition, the operation, repair or servicing of construction equipment and the delivery of construction materials to the project site shall be prohibited during the hours specified. Section 112.05 of the LAMC states that between the hours of 7:00 a.m. and 10:00 p.m., in any residential zone of the City or within 500 feet thereof, no person shall operate or cause to be operated any powered equipment or powered hand tool that produces a maximum noise level exceeding the 75 dBA for construction equipment at a distance of 50 feet. The 75 dBA noise limitation does not apply when compliance is not technically feasible. Section 112.02 of the LAMC prohibits air conditioning, refrigeration, heating, pumping, and filtering equipment from increasing existing average ambient noise levels by more than 5 dBA. As a result of compliance with mandatory regulations and policies, applicable to all new construction, in addition to the project's adopted mitigation measures, the proposed project will not result in any significant noise impacts.

C. Conclusion:

Staff recommends that the PLUM Committee recommend for Council Action to deny the submitted appeals and sustain the City Planning Commission's approval of the proposed project. Given that the project's Mitigated Negative Declaration was certified and adopted by the lead agency (through the approval of VTT-74297) on March 3, 2017, CEQA Guidelines Section 15162 require that substantial evidence is required to support a determination for additional review. While both appellants argue that the project warrants further environmental review through the potential preparation of an Environmental Impact Report, the Department of City Planning maintains that the argued appeal points represent unsubstantiated opinions and speculations and do not provide any substantial evidence through expert studies, facts, or evidence supporting a finding that supplemental CEQA review is required.

Sincerely,

VINCENT P. BERTONI, AICP
Director of Planning



Nicholas Hendricks
Senior City Planner

VPB:NH:JM

c: Gerald Gubaton, Planning Director, Council District No. 1