MASTER APPEAL FORM

City of Los Angeles – Department of City Planning

3.

APPEAL TO THE: LOS ANGELES CITY COUNCIL
(DIRECTOR, AREA PLANNING COMMISSION, CITY PLANNING COMMISSION, CITY COUNCIL)

REGARDING CASE #: CPC-2014-666-VCU-ZAA-SPR (CEQA: ENV-2011-2689-EIR)

PROJECT ADDRESS: 11725 W. Sunset Blvd., 11728 W. Chaparal St., 141 N. Barrington Ave.

FINAL DATE TO APPEAL: Thursday, May 28, 2015

TYPE OF APPEAL:

1. ☐ Appeal by Applicant
2. ☑ Appeal by a person, other than the applicant, claiming to be aggrieved
3. ☐ Appeal by applicant or aggrieved person from a determination made by the Department of Building and Safety

APPELLANT INFORMATION – Please print clearly

Name: Wendy-Sue Rosen

- Are you filing for yourself or on behalf of another party, organization or company?

☐ Self ☑ Other: Brentwood Residents Coalition

Address: P.O. Box 491103

Los Angeles, CA Zip: 90049

Telephone: (310) 476-1383 E-mail: BRC90049@aol.com / rosenfree@aol.com

- Are you filing to support the original applicant's position?

☐ Yes ☑ No

REPRESENTATIVE INFORMATION

Name: _____

Address: _____

_____ Zip: _____

Telephone: _____ E-mail: _____

This application is to be used for any appeals authorized by the Los Angeles Municipal Code for discretionary actions administered by the Department of City Planning.

JUSTIFICATION/REASON FOR APPEALING – Please provide on separate sheet.

Are you appealing the entire decision or parts of it?

☑ Entire ☐ Part

Your justification/reason must state:

- The reasons for the appeal
- How you are aggrieved by the decision
- Specifically the points at issue
- Why you believe the decision-maker erred or abused their discretion

ADDITIONAL INFORMATION/REQUIREMENTS

- Eight (8) copies of the following documents are required (1 original and 7 duplicates):
  - Master Appeal Form
  - Justification/Reason for Appealing document
  - Original Determination Letter
- Original applicants must provide the original receipt required to calculate 85% filing fee.
- Original applicants must pay mailing fees to BTC and submit copy of receipt.
- Applicants filing per 12.26 K "Appeals from Building Department Determinations" are considered original applicants and must provide notice per 12.26 K 7.
- Appeals to the City Council from a determination on a Tentative Tract (TT or VTT) by the City (Area) Planning Commission must be filed within 10 days of the written determination of the Commission.
- A CEQA document can only be appealed if a non-elected decision-making body (i.e. ZA, APC, CPC, etc...) makes a determination for a project that is not further appealable.

> *"If a nonelected decision-making body of a local lead agency certifies an environmental impact report, approves a negative declaration or mitigated negative declaration, or determines that a project is not subject to this division, that certification, approval, or determination may be appealed to the agency's elected decision-making body, if any."*
> *--CA Public Resources Code § 21151 (c)*

I certify that the statements contained in this application are complete and true:

Appellant Signature: _____ Date: May 27, 2015

Planning Staff Use Only

Amount 106.80	**Reviewed and Accepted by** Norma Guzman	**Date** 5/27/15
Receipt No. 0203224899	**Deemed Complete by** _____	**Date** 5/27/15

☐ Determination Authority Notified ☐ Original Receipt and BTC Receipt (if original applicant)

Brentwood Residents Coalition
May 27, 2015

CASE NO. **CPC-2014-666-VCU-ZAA-SPR**

CEQA: **ENV-2011-2689-EIR**

Location: **11725 W. Sunset Boulevard,**
11728 W. Chaparal Street, and
141 N. Barrington Avenue

JUSTIFICATION/REASON FOR APPEALING

1. The reasons for the appeal.

a. The zoning findings are not supported by substantial evidence.

b. The approved increase in floor area exceeds that permitted by code and invalidates the EIR.

c. The EIR did not consider feasible alternatives and mitigation measures due to the mischaracterization of merely desired project *features* as project *objectives.*

d. The EIR, by relying on general traffic-related thresholds, fails to consider that the increase in traffic likely to be generated by the project, when added to existing conditions, would cause a tipping point of adverse impacts for the general public.

e. The project fails to include the applicant's parcel map and lot line adjustment requests, in violation of the City's Multiple Approvals Ordinance and CEQA's anti-piecemealing requirement.

f. Substantial changes in project construction plans require EIR recirculation.

g. The EIR cannot be certified because the Statement of Overriding Considerations is incomplete and there is no justification to permit operational Saturday uses.

2. How are you aggrieved by the decision.

The Brentwood Residents Coalition is a non-profit advocacy group dedicated to the preservation and enhancement of the environment and quality of life in the Brentwood neighborhood of Los Angeles. It has been actively involved throughout the administrative review of the project. Approval of the project and the EIR will harm the BRC and its members (who reside in Brentwood) by causing the adverse environmental impacts described in this appeal and through the adverse precedent that would result from approval of the project and certification of the EIR in their current form.

3. Specifically the points at issue.

a. The mandated CUP findings cannot be made because previously-imposed conditions necessary to meet the mandated findings (and mitigate significant environmental impacts) have been removed without substantial evidence that they are no longer necessary and the scale of the project is inconsistent with the General Plan and the Community Plan.

b. The CUP and EIR analysis of the project's "floor area ratio" impacts are based on the erroneous proposition that Archer, despite its merely conditional right to operate as a school within a residential zone, has a right to develop institutional/commercial

structures on its property to the full extend authorized in zones where institutional/commercial uses are authorized on a by-right basis.

c. The EIR is invalid because the alternatives/mitigation analysis is premised on the erroneous assumption that mere project features can simply be defined as project "objectives" at the applicant's whim, thereby precluding consideration of the full range of reasonable project alternatives and mitigations.

d. The EIR, by relying on general traffic-related thresholds, fails to consider that the increase in traffic likely to be generated by the project, when added to existing conditions, would cause a tipping point of adverse impacts for the general public, and thus causes the EIR's cumulative significant impact analysis to be grossly inadequate.

e. Archer is required to apply for parcel map and lot line-adjustment approvals that have not been coordinated with review of the expansion project and will thereby proceed through the municipal approval and environmental review processes separate from the expansion project in violation of both the City's Multiple Approvals Ordinance and CEQA's anti-piecemealing requirement.

f. Archer has significantly changed its construction plans but has not subjected those changes to environmental review, thereby necessitating further environmental review and EIR recirculation.

g. The CPC's recommendation requires that the City Council adopt a "Statement of Overriding Considerations" pursuant to CEQA to permit Saturday operational uses of certain project facilities; the project EIR cannot be certified, however, because the Statement of Overriding Considerations is incomplete, and is not justified where "[s]pecific economic, legal, social, technological, or other considerations . . ." do not make mitigation measures or alternatives infeasible.

4. Why you believe the decision-maker erred or abused their discretion.

a. <u>The zoning findings are not supported by substantial evidence</u>.

First, the mandated CUP findings could only be made in 1998 when Archer obtained its CUP in 1998 because the City imposed conditions to protect the character and quality of the low density, residentially zoned (RE-11) neighborhood. Zoning Administrator Dan Green recognized that the conditions he crafted were necessary given the incongruity between the long-standing residential character of the neighborhood with the proposed institutional use of the property as a school. Archer promised to abide by these conditions, not as a first stage for future intensification, but as a bottom line, recognizing that the dubious "fit" of its institutional campus within an entirely residential setting and the already congested section of Sunset was too tight to permit anything like the enormous expansion it now proposes. Conditions imposed on a project in order to meet the mandated findings (and CEQA requirements) cannot later be removed at the property owner's whim absent *a change in circumstances* that render the targeted land use conditions unnecessary. But there has been no change of environmental conditions that would justify the drastic expansion. Indeed, traffic has gotten worse—much worse—since the school's conditional use permit was first issued, and many community members have testified regarding these worsened environmental conditions. The increase in traffic that would result from

Archer's proposal would push the situation past the tipping point. Nor has there been a change in the immediate neighborhood. Archer is still situated in a low density, residential neighborhood, with multi-family condominium and apartments across the street and next door, and single family homes directly behind it. Limitations on Archer's operations that were found necessary to protect the neighbors' quality of life in 1998 are just as necessary today.

Second, a CUP cannot be issued absent substantial evidence 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." Archer now seeks authority for massive expansions, including taller buildings than allowed by code; more floor area than permitted by code, including an almost 400-seat theatre that would cover 85% of its lot; a dramatic expansion of campus operations; and residential (RE-11) lots will be swallowed and incorporated into Archer's institutional complex, in direct conflict with specific findings of the 1998 approval. The mandated finding cannot therefore be made.

Third, a CUP cannot be issued absent substantial evidence that the project substantially conforms to the purpose, intent and provisions of the General Plan, the applicable community plan, and any applicable specific plan. To be "consistent" with the general plan, a project "must be 'compatible with' the objectives, policies, general land uses and programs specified in the general plan." *Families Unafraid to Uphold Rural El Dorado County v. El Dorado County Bd. of Supervisors*, 62 Cal.App.4th 1332, 1337 (1998). But the project is not compatible with numerous General Plan and Community Plan requirements, policies, goals and objectives—including the following:

> (**1**) Objective 3.2 of the Framework Element of the General Plan because the project would cause significant traffic impacts, which render the project's traffic-related cumulative impacts considerable, which precludes a finding that the project would facilitate reduction of vehicle trips, miles traveled, and air pollution; (**2**) Framework Element Policy 3.2.4 because the siting and design of new development fails to maintain the prevailing scale and character of the residential neighborhood; (**3**) Goal 3B of the Framework Element section because the project will not preserve the stable single-family residential neighborhood because it calls for the demolition of two existing houses (and last year Archer School attempted to acquire a third house); (**4**) Objective 4.3 of the Housing section of the Framework Element since the project would not conserve the scale and character of residential neighborhood; (**5**) Objective 5.4 because Archer, as a *private* school, does not encourage the development of *community* facilities and improvements that are based on need within the centers nor does it reinforce or define those centers and the neighborhoods they serve, and because the project will increase traffic on an already over-burdened section of Sunset by allowing a tremendous increase in new events; (**6**) Goal 4 of the Community Plan because the project reduces the amount of open space within view of the residential

> neighbors and the public through the construction of large buildings (the supposed increase in open space heralded by Archer is not visible to anyone outside the campus, thus providing no *public* benefit, only a *private* benefit); (**7**) Policy 6-1.1 of the Community Plan because the project is not compatible with the neighboring (residential) uses; (**8**) Policy 13-1.2 of the Community Plan because the project will not minimize disturbances to existing traffic flow with proper ingress and egress to parking, it will increase such disturbances due to increased traffic resulting from intensified onsite uses and location (Archer enters and exits onto an already gridlocked major secondary highway from a non-signalized driveway); (**9**) Policy 13-1.3 of the Community Plan because the project will foreseeably lead to an increase in non-residential traffic onto streets designed to serve residential areas, including impacts on Chaparal, Barrington, Saltair, Kearsarge, Coyne, Layton, Woodburn and other streets that have not been sufficiently studied to support a finding that this policy would not be violated.

Moreover, the following General Plan policies and objectives implicated by the project were not even considered:

> (**1**) Sections 3.5.2 and 3.5.3 on Design and Development, (i) requiring that new development in single-family neighborhoods maintains its predominant and distinguishing characteristics such as property setbacks and building scale and (ii) promoting the maintenance of existing single-family neighborhoods and support programs for the renovation and rehabilitation of deteriorated and aging housing units; (**2**) Objective 4 of the Transportation Element, which is to preserve the existing character of lower density residential areas and maintain pedestrian-oriented environments where appropriate; and (**3**) Policy 4.1, which is to eliminate or minimize the intrusion of traffic generated by new regional or local development into residential neighborhoods while preserving an adequate collector street system.

b. <u>The increase in floor area exceeds that permitted by code and invalidates the EIR</u>.

It is indisputable that the plans call for the construction of institutional structures with a floor area far exceeding that which is permitted on a by-right basis within this residential zone. Nonetheless, Archer contends, and the EIR assumes, that Archer is entitled to build to the full extent allowable for commercial or institutional structures within zones where they *are* permitted by right. Thus, although an institutional use is authorized only on a conditional basis at the subject property, Archer claims that once the conditional use is granted, the property somehow attains the same by-right development rights available to institutions operating within zones where the institutional use is permitted by right. That absurd and wholly unsupported interpretation of the zoning regulations is central to the EIR's discussion of the huge performing arts center and thereby renders that discussion and analysis invalid.

Conditional uses may be permitted *only* if mandated conditional use findings can be made. It makes no sense to assert that standards for commercial or institutional

buildings applicable in zones where they are permitted by right are also applicable in a residential zone where the applicant's non-residential use is merely conditional. That limitation is clear from the mandated findings, which preclude conditional uses and any associated development absent a finding that "location, size, height . . . [and] other significant features" are "compatible with and will not adversely affect or further degrade adjacent properties, the surrounding neighborhood" and "substantially conforms with the purpose, intent and provisions of the General Plan, the applicable community plan, and any applicable specific plan." Thus, the mandated findings cannot be made.

Moreover, the EIR analysis is invalid and must be redone and recirculated because it is based on the erroneous assumption that Archer is entitled to build in accordance with institutional or commercial standards applicable within zones permitting such uses on a by-right basis. In considering the actual impact of the planned development, the EIR discussion must also consider the long history of land use findings establishing that the scope of development on this property must be limited to protect the character of the neighboring residential community. From the denial of the Eastern Star Home's application to build a structure within 80 feet of Chaparal residences in 1950 (and requiring a 200-foot setback) to the 1998 ZA determination requiring a 75-foot setback for a proposed (modestly sized) gymnasium, the City has consistently recognized the need to limit development on this property to protect the adjacent residential neighbors. The extensively detailed findings made and protective conditions crafted by Zoning Administrator Dan Green less than 20 years ago are just as necessary today as when Archer was first granted a conditional use permit. *See* Dec. 15, 2014, letter from Brentwood Residents Coalition to Elva Nuño-O'Donnell (describing CUB conditions imposed in 1998 as still necessary to protect the community). Thus, the EIR cannot be certified because it improperly characterizes the proposed performing arts structure as a by-right structure based on commercial development standards that are not applicable for Archer's conditional use within a residential zone.

c. <u>The EIR did not consider feasible alternatives and mitigation measures due to the mischaracterization of merely desired project features as project objectives</u>.

The description of a project's "basic objectives" is central to the validity of an EIR because (**1**) CEQA requires the imposition of any *feasible* alternatives or mitigations that substantially reduce a project's significant environmental impacts and (**2**) the feasibility of potential alternatives and mitigations is measured in relation to the project objectives.

The feasibility questions is whether the imposition of a given alternative or mitigation can "attain most of the *basic objectives* of the project" and also "avoid or substantially lessen any of the significant effects of the project." *In re Bay-Delta Programmatic Env. Impact Report*, 43 Cal.4th 1143, 1162-63 (2008) (emphasis added). The EIR must therefore "describe a range of reasonable alternatives to the project . . . which would feasibly attain *most of the basic objectives of the project*" while reducing the project's significant impacts. *Id.* (quoting CEQA Guidelines, § 15126.6(a) (emphasis added)).

The Archer EIR improperly characterizes 33 desired project features as *basic project objectives*, thereby precluding proper consideration of project alternatives or mitigation measures simply because they do not conform to one of the 33 desired project features. The record contains numerous examples of alternatives and mitigations that have been rejected without analysis other than the circular observation that the proposed alternative or mitigation is inconsistent with a feature that is misidentified as an objective. The circularity of this tactic is evident from the failure to even consider the feasibility of relocating the school or any individual school use (such as competitive sports) to another location, because providing for all school uses at the current location has been improperly characterized as a project "objective."

The absurdity of this tactic is illustrated by the "objective" to establish a "North Garden," which precludes any consideration of alternatives or mitigation measures that would not include the proposed Garden because "[e]liminating the North Garden would not meet the Project's objective to provide a North Garden." *Final EIR*, p. III-206. The absence of meaningful consideration of feasible alternatives or mitigations in the EIR is an unavoidable consequence of the improper description of mere features as "objectives." This fundamental defect renders invalid a core aspect of the EIR—the alternative and mitigation analysis—which precludes certification of the EIR.

The EIR is also defective because it contains mitigation measures that are not enforceable and fails to establish a monitoring program to ensure that the enforceable mitigation measures are actually implemented. Cal. PUB. RES. CODE § 21081.6. CEQA requires that "*feasible mitigation measures will actually be implemented as a condition of development, and not merely adopted and then neglected or disregarded.*" *Fed. of Hillside & Canyon Assocs. v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1260-1261 (italics in original). Los Angeles unfortunately has a long and troubled history of not enforcing conditions of approval, a failure that City leaders now openly acknowledge.[1] Indeed, the Los Angeles Department of Building and Safety (LADBS), the agency responsible for enforcing conditions of approval, has adopted a practice of deciding on its own whether to enforce conditions long after they have been imposed through the

---

[1] The preamble to the motion states, in part:

> According to the City's Zoning Code, there are certain types of uses that are "conditionally" appropriate in various areas of the City. These "conditional uses" are uses that may be compatible with the surrounding community if additional requirements are placed on the projects through conditions of approval. Without such conditions, the City would be unable to find that a project's location, size, height, operations, or other significant features will be compatible with the surrounding neighborhood, the General Plan, or any applicable community plan. The City would also be unable to find that the project did not adversely affect health, welfare, or safety.
>
> However, too often these conditions go overlooked because of the City's lack of resources to enforce its own conditions . . . .

Los Angeles City Council Motion 15-0020 (Bonin)(Jan. 7, 2015). *See also*, Emily Alpert Reyes and David Zahniser, *In L.A., Conditions Placed on Developers Go Unheeded*, L.A. Times, Jan. 6, 2015 (including numerous examples of conditions of approval that are either difficult to enforce or simply unenforced due to lack of resources); *available at*: http://www.latimes.com/local/cityhall/la-me-development-ignored-20150105-story.html#page=1.

CUP and environmental review process. LADBS thereby makes its own after-the-fact assessment of whether the previously imposed conditions are legally or practically enforceable.[2] Doing so, of course, fundamentally undermines the CEQA-mandated EIR process as well as the Municipal Code's CUP process. Neither community members nor the CUP/EIR decisionmaker have any way of knowing which conditions LADBS will later deem impractical or otherwise unenforceable.

Complex conditions such as those the City claims will be imposed upon the Archer project are particularly troubling because the more complex the condition, the less likely that LADBS will enforce it. An applicant's merely voluntary compliance with environmental mitigations is insufficient to correct the City's failure to impose and monitor the conditions; the City *must* adopt an adequate mitigation monitoring program and ensure that the mitigating conditions are enforced. 83 Cal.App.4th at 1260-1261; PUB. RES. CODE § 21081.6.

The Commission has approved conditions that are practically unenforceable without any monitoring to ensure compliance. For just one example, Archer has required trip caps (maximums) on "guests" arriving between 3-4:00 P.M. each school day. *See* Condition of Approval A.13(d)(iii)(1)(a)[3] (the number of sub-parts is a reflection of the complexity the conditions of approval are – condition A.13 alone occupies more than 3.5 pages of the conditions of approval). Guests beyond that number may not arrive at the school during the restricted hour. But that condition has no realistic possibility of being enforced. If, despite the condition, a greater number of guests arrives and they are turned away, they will likely choose to park in the surrounding residential neighborhood. Neither the school nor any City agency can realistically cause Archer family members or friends, or family members or friends of visiting student athletes or performers from attempting to contravene the conditions. Public streets and parking spaces are public, after all. But even if they leave the area, the purpose of the environmental condition (to limit car trips on overburdened Sunset Boulevard at the height of the afternoon rush hour) will still have been thwarted because these extra guests will have driven to the area during the restrictive hours, rendering the mitigation ineffective in achieving its purpose. This condition is just one of many such practically unenforceable conditions, which necessarily provide inadequate environmental mitigation.

d. <u>The EIR, by relying on general traffic-related thresholds, fails to consider that the increase in traffic likely to be generated by the project, when added to existing conditions, would cause a tipping point of adverse impacts for the general public, and thus causes the EIR's cumulative impact analysis to be inadequate</u>.

Community members have raised numerous concerns regarding the EIR's inadequate cumulative impact analysis, especially with respect to traffic and traffic-related impacts. CEQA Guideline § 15130(a) requires that an EIR must analyze cumulative

[2] Reyes and Zahniser, *supra* note 1.

[3] While condition A.13 is not identified as an environmental mitigation, it clearly would be part of the parking reservation system identified in Environmental Condition E.67, and the A.13 requirements are repeated in Environmental Condition E.70. Thus, it is an environmental condition.

project impacts when the incremental effect of the project combined with the effects of past projects, other current projects, and probable future projects will result in a cumulatively considerable impact. Because the City's traffic impact analysis focuses primarily on the level of service of intersections in the vicinity of the project (which are already beyond the point of failure during peak traffic hours), and not on the actual flow of traffic, the EIR's cumulative impact analysis is necessarily incomplete. Notwithstanding the inadequate analysis, the EIR still admits that impacts to intersections will be cumulatively considerable. *See* Final EIR at I-119 ("[T]he Project's contribution to impacts that would occur under the future cumulative conditions would be considerable, and cumulative impacts would be significant at those intersections impacted by the Project. Although mitigation would reduce several of the significant impacts to less-than-significant levels, some of the impacts would remain significant and unavoidable.").

Despite this very recent admission, a newer document submitted with Archer's final submissions to the City, the Statement of Overriding Considerations ("SOC"), now claims that there is ***no*** cumulatively considerable traffic-related impact, only "the potential for" several impacts. SOC, pp. 121-124. But this newest document references the recent document that explains that there ***are*** cumulatively considerable impacts. SOC, p.124. This confusing double-talk with respect to cumulative traffic impacts is nonsensical, and evades one of the primary functions of CEQA, which is "informing the public and government officials of the environmental consequences of decisions before they are made." *Sierra Club v. County of Sonoma* (1992) 6 Cal.App. 4th 1307, 1315. Any additional traffic generated by the project must have a cumulatively considerable environmental impact where the local infrastructure is already so overburdened as to already be well beyond the tipping point. As one astute community member noted at recent public hearings for the project, one cannot pour more water into an already full-to-overflowing glass.

The cumulative impact analysis must be revised to address the full array of cumulative impacts and, given that the applicant's own documents are in disagreement as to the existence of cumulatively considerable impacts, must at least be clarified and recirculated to provide sufficient information to community members and the decisionmaker to make a fully informed decision.

e. <u>The project fails to include the applicant's parcel map and lot line adjustment requests, in violation of the City's Multiple Approvals Ordinance and CEQA's anti-piecemealing requirement</u>.

Archer is required to apply for a parcel map or lot line adjustment to incorporate the Barrington Ave. parcel into the project. But it has improperly deferred seeking the lot line adjustment until after the expansion project. The project does not therefore include the lot line adjustment application. That segmenting of the project violates both the City's Multiple Approvals Ordinance and CEQA's anti-piecemealing requirement.

Section 12.36.B of the Municipal Code provides that "[a]pplicants shall file applications at the same time for all approvals reasonably related to complete the project." As the statutory term "shall" indicates, this coordination of all project-related ap-

provals is mandatory—the city has no discretion to ignore the requirement. The ordinance assures (among other things) that municipal decision-makers consider the impacts all related discretionary-approval applications and craft conditions necessary to eliminate or reduce the environmental impacts.

State law also requires coordination of environmental review sufficient to assure that all potentially significant impacts of the related requests for approval are considered together. CEQA requires that the lead agency fully analyze all related discretionary-approval applications in a single environmental document. By prohibiting the "piecemealing" or "segmenting" of projects, CEQA ensures "that environmental considerations [do] not become submerged by chopping a large project into little ones, each with a potential impact on the environment, which cumulatively may have disastrous consequences." *Burbank-Glendale-Pasadena Airport Authority v. Hensler*, 233 Cal.App.3d 577, 592 (1991).

The project was therefore improperly approved and must be reconsidered together with a parcel map/lot line adjustment request under a revised and recirculated EIR.

f. Substantial changes in project construction plans require EIR recirculation.

Archer recently announced that it has changed its construction plans. Instead moving its classrooms offsite during the construction process, it now intends to demolish the houses on Chaparal and Barrington and install temporary classrooms to accommodate 450-500 students. While a memorandum attached to the draft EIR contained some preliminary analysis of a temporary classrooms alternative, the classrooms were not located in the area previously specified. The new plan would also increase the use of Barrington Avenue for entering and exiting the property beyond that which has previously been considered, and would require all Archer staff, faculty, students, and construction workers to park offsite.

The new "accelerated schedule" is also lacking in details and analysis sufficient for meaningful, non-speculative environmental review and likewise deprives the community of any opportunity to provide informed comments on the incomplete, poorly-defined project alternative. There is no discussion where the offsite parking would be located, whether there is sufficient parking available nearby for all these people to walk to campus, or whether some sort of shuttle or other transportation alternative would be provided, and if so, what the impacts on traffic and circulation in the project vicinity might be.

Finally, the "three-year construction plan" is a misleading misnomer. There is no determinative deadline for completing construction. The conditions of approval provide no calendar deadline and therefore no remedy to the community for delay beyond the supposed "three years." Because the plan is so lacking in details, there is no non-speculative way to estimate when the project will be completed.

Archer's recent analysis presumes one of two scenarios: either construction activities will be permitted on Saturdays, or if Saturday construction is not permitted, construction activities will be at least an additional seven and a half months (*see* Fehr & Peers Memorandum, *Archer Forward: Campus Preservation and Improvement Plan -- Traffic Analysis of Three-Year Construction Phasing Plan* (April 7, 2015)). An additional seven and

one half months of construction, if accurate, is approximately 20% more time than three years. Noise impacts associated with the accelerated plan would remain significant and unavoidable, requiring a statement of overriding consideration. Imposing intolerable noise disruptions upon nearby residential property owners for three years-worth of Saturdays is completely unacceptable, and thus the three-year construction schedule proposed is not realistically an option.

But even if Saturday construction were approved, the project is too complex to be completed in the advertised three years. The construction schedule has eight subparts and requires almost two full pages within the conditions of approval. Tellingly, the first subpart specifies that three years is cumulative, not consecutive, excluding from the time estimate any period in which no construction activities occur. And for unexplained reasons, the vaguely-defined "Preconstruction Activities and Post-Construction Activities" are not to be counted against the 36-month "deadline" either. Moreover, the condition only requires that the applicant be in "general conformance," a meaningless standard given the lack of specificity provided. In sum, this "condition" has no teeth—there is no reasonable possibility that the City would shut down this politically-powerful institution's ambitious expansion project for taking longer than the unrealistic 3-year estimate.

The foreseeable result is that neighbors will lose the right to quietly enjoy their residences for more than 3 years of Saturdays.

g. <u>The EIR cannot be certified because the Statement of Overriding Considerations is incomplete and there is no justification to permit operational Saturday uses.</u>

Where an agency approves a project with significant environmental effects that will not be avoided or substantially lessened, the agency *must* adopt a "Statement of Overriding Considerations" setting forth the reasons for its action. PUB. RES. CODE § 21081. As discussed above in Part 4(d), it appears that the project requires such a statement based on cumulatively considerable traffic impacts that the EIR found to be significant. The SOC, however, relies on the final EIR but at the same time denies that traffic impacts will be significant. On this basis alone, the SOC is inadequate because it is incomplete–it does not provide any justification to accept significant traffic impacts identified by the EIR.

Moreover, the SOC is not merely a statement of the decisionmaker's *preference* for the project notwithstanding its significant environmental effects. CEQA requires that the decisionmaker follow a precise statutory "finding" scheme. *First*, the "public agency must make one or more of the following findings *with respect to each significant effect*:

> **(1)** Changes or alterations have been required in, or incorporated into, the project which mitigate or avoid the significant effects on the environment. **(2)** Those changes or alterations are within the responsibility and jurisdiction of another public agency and have been, or can and should be, adopted by that other agency. **(3)** Specific economic, legal, social, technological, or other considerations, including considerations for the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report."

PUB. RES. CODE § 21081(a) (emphasis added). *Second*, where the agency relies on the finding in subsection (a)(3), above, it must *also* find that "specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment."

The statutory scheme is thus abundantly clear: before an agency can justify its approval of a project with a Statement of Overriding Considerations, it must *first* find that the mitigation measures or alternatives for each significant effect identified in the EIR are infeasible. The City cannot meet this high standard here.

For example, the school has, for its entire history at the project site, used offsite athletic facilities, proving that such use is entirely feasible, if not entirely preferable to Archer. Other feasible mitigations to these weekend athletic uses have not even been considered (for example, weekend athletic uses could be limited to the interior of the gymnasium, and there is no explanation other than preference, why simply not using the athletic field on weekends would not be feasible). The Commission has disregarded these and other mitigations and recommended approval of 10 weekend athletic field uses, and claims that it has adopted "all feasible mitigation measures." SOC pp.157-158. With respect to athletic field use on Saturdays, this claim is demonstrably false.

The required SOC Findings are entirely conclusory and not based on substantial evidence. They evince a judgment based on a preference for a particular project feature, and do not respect the mandated statutory scheme. "[A] statement of overriding considerations, like an EIR, must make a good faith effort to inform the public . . . . Likewise, the statement's status as a policy judgment does not insulate it from CEQA's central demand that environmental decisions be made after the public and decision makers have been informed of their consequences and the reasons for and against them." *Woodward Park Homeowners Assn., Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 718.

The Statement of Overriding Considerations is inadequate, and thus the EIR cannot be approved.

15-0020

PLANNING & LAND USE MANAGEMENT

MOTION

According to the City's Zoning Code, there are certain types of uses that are "conditionally" appropriate in various areas of the City. These "conditional uses" are uses that may be made compatible with the surrounding community if additional requirements are placed on the projects through conditions of approval. Without such conditions, the City would be unable to find that a project's location, size, height, operations, or other significant features will be compatible with the surrounding neighborhood, the General Plan, or any applicable community plan. The City would also be unable to find that the project did not adversely affect health, welfare, or safety.

However, too often these conditions go overlooked because of the City's lack of resources to enforce its own conditions. Yesterday, the Los Angeles Times published an article, *In L.A., Conditions Placed on Developers Go Unheeded*, that spoke to the need for additional fees to cover the expense of allocating more staff to inspect and enforce the conditions of approval on the City's many projects. In other jurisdictions, such as Los Angeles County, conditions of approval specify the number of inspections required over the duration of the grant term necessary to ensure proper compliance with the conditions of approval. The conditions also obligate an applicant to cover the cost of such inspections. This approach ensures that the City has the resources it needs to enforce commitments made to the community, and helps to keep neighborhoods first.

I THEREFORE MOVE that the Council instruct the Planning Department to report back in 45 days on the best practices of other jurisdictions, including the County of Los Angeles, to ensure proper resource allocation for condition inspections and enforcement.

I FURTHER MOVE that the Council instruct the Planning Department, in consultation with the City Attorney, and any other appropriate City department, bureau, or agency, to work cooperatively to propose a method by which inspection fees related to condition compliance are required and collected by the City prior to the release of any final approval of a project.

PRESENTED BY: _____
MIKE BONIN
Councilmember, 11th District

SECONDED BY: _____

ORIGINAL

In L.A., conditions placed on developers go unheeded

By EMILY ALPERT REYES AND DAVID ZAHNISER

JANUARY 6, 2015, 6:00 AM

Worried about how new shops, bars and apartments might affect Los Angeles neighborhoods, community groups and city officials have tried to tie strings to local development.

They have demanded parking spots to ease the crunch on crowded streets, sought to limit the hours businesses can stay open, and even insisted on community perks such as a senior center. But many neighborhood activists complain that once the city gives the green light for development, those promises are overlooked.

For example, in the Fairfax area, the Grove was supposed to include a 500-square-foot employment office along with its gleaming shops and buzzing restaurants, according to planning documents. Yet last year — more than a decade after the mall opened — the city planning department found that no such job center existed.

The Grove developer, Caruso Affiliated, created a new online portal for hiring and said it was providing job postings and applications at its concierge desk, steps that satisfied the planning department. But that happened only after years of hectoring by a local consultant, who remains unconvinced that the developer and property owner Gilmore Co. fulfilled their promises.

"It bothers me that the community was taken advantage of," said land use consultant Robert Cherno. "I'm not asking them to do anything they're not supposed to do."

Another case recently landed the city in court: The developer of a 22-story apartment building in Hollywood was required by the planning department to preserve the facade of the Old Spaghetti Factory, a restaurant building on the site. Yet two years ago, the developer obtained a permit from another city agency to raze the entire structure. A similar facade was built in its place.

In an internal email, one city official called it a "demo permit fiasco." A judge invalidated construction permits for the building last year, throwing its future into question.

And in yet another case, city planners required the 526-unit Da Vinci apartment project alongside the 110 Freeway to have a ventilation system with higher-strength air filters to capture some of the particles produced from vehicle exhaust. Developer G.H. Palmer Associates did not take steps to install the proper equipment until after The Times began asking city officials about the requirement, a Building and Safety spokesman said.

City officials say thin staffing at the Department of Building and Safety and a monitoring system driven by complaints rather than proactive enforcement has made it harder to ensure that such conditions are followed. Such "conditions of approval" are requirements that a project must satisfy to comply with municipal and environmental rules, planning officials say.

The problem has persisted over time. Five and a half years ago, then-Controller Laura Chick said she had long wondered who made sure developers adhered to such restrictions.

"The answer is, 'No one,'" Chick wrote in an introduction to a related audit. Her report found that none of the city departments involved in vetting new developments could ensure that such promises were kept.

In reaction, city departments pledged to coordinate better and change their ways. But the same complaints emerged again two years ago, when City Councilman Paul Koretz wrote in CityWatch, an independent newsletter and website on neighborhood issues, that the "valiant and unstinting efforts" of local groups to impose restrictions were not necessarily paying off.

In the face of such frustrations, the city created a new team in the planning department in 2013. It is focused exclusively on new cases in which businesses have agreed to specific conditions in order to serve alcohol or provide live entertainment.

"The system is set up, right now, basically on the honor system," said Rocky Wiles, supervisor of the Condition Compliance Unit. "We shouldn't rely on the community to be enforcing these conditions. It should be the department. But that takes a lot of resources."

Her unit currently has four employees, including Wiles herself. Wiles wants to charge new fees that will pay for more workers to conduct spot inspections of projects, but it is unclear when the unit will be able to tackle other conditions besides those tied to alcohol and live entertainment.

Critics argue that beyond the new unit, the problem needs to be tackled systematically, with a transparent way to watchdog all kinds of projects once they are completed. "There needs to be regular monitoring. And there needs to be definitive actions based on the findings," said Mike Eveloff,

president of the advocacy group Fix the City.

Part of the problem is that the city and its planners sometimes impose conditions that it has no practical way to enforce, said Building and Safety spokesman Luke Zamperini. Though the planning department crafts conditions, his agency is responsible for investigating alleged violations.

Zamperini said that in one case, a Jewish school was required to have only "so many people in there for so many purposes" after certain hours — a rule that would require an inspector to stop in and question people about why they were there, he said. When a Building and Safety inspector tried to meet with a school official during Friday religious services, it spurred an uproar.

"He had no idea it was Yom Kippur," a major religious holiday, Zamperini said.

Planning officials also say that some kinds of conditions that have been offered up by businesses cannot be legally enforced, either because they are not tied to planning department findings about how the development will affect the area, or because they fall under the jurisdiction of another agency, such as the California Department of Alcoholic Beverage Control.

Nearly a year ago, City Atty. Mike Feuer warned a Venice neighborhood group that some kinds of conditions related to selling alcohol — including banning the sale of single cans or limiting the number of exterior signs advertising alcohol — were prohibited. David Greene, president of the Eagle Rock Neighborhood Council, said he now tells residents to think carefully about whether they want new businesses that serve alcohol, instead of trying to soften their effects with restrictions on hours, signage or operations.

"There's no system to enforce them," Greene said.

Last year, the planning department found that there was no evidence of the jobs program and recruiting office that had been promised at the Grove. Associate Zoning Administrator David Weintraub said that since then, the developer had created a jobs website and provided space at its concierge desk for job seekers to meet the requirements. Caruso Affiliated sent a statement to The Times saying it was confident that it was "satisfying the hundreds of conditions outlined ... for the property."

Cherno is still not convinced. In addition to the jobs center, Cherno and Diana Plotkin — president of the Beverly Wilshire Homes Assn.— point to a provision that promises a 3,000-square-foot senior center for the use of the community. The planning department says an existing community room on the second floor of the Historic Farmer's Market met that requirement.

Plotkin said that wasn't what they expected when they worked out the conditions. Cherno said one condition required that the local City Council office be involved in the design of the community center, but the Farmers Market room was built before 1939. And the space is reached by a flight of stairs that makes it inaccessible for people in wheelchairs.

Weintraub said the room was not in violation of city rules because it was built before wheelchair accessibility was required. He said the council office had vetted and approved the community room, which has been heavily used — holding more than 1,800 meetings last year, according to the company.

Twelve years ago, the Beverly Wilshire Homes Assn. sued the city and the Grove owner over the community room and other conditions. The attorney who represented them, Rob Glushon, said they eventually struck a settlement after securing funding for traffic control but abandoned the quest for a new community room because he thought the wording was not clear enough to keep pushing. When asked about the promises tied to the Grove, Councilman Tom LaBonge said he had never gotten a complaint about what he called "a much loved center of community activity."

His deputy, Renee Weitzer, argued the Grove had met the requirements to provide a job center.

"They have an office. They have a bulletin board. That's considered a job center," Weitzer said.

emily.alpert@latimes.com

david.zahniser@latimes.com

Follow @LATimesemily and @DavidZahniser for news about L.A. City Hall