



January 9, 2020

Los Angeles City Council  
City of Los Angeles  
200 North Spring Street  
Los Angeles, California 90012

**Subject: Council File 19-1077**  
**1140 S Broadway**  
**Response to Appeal ENV-2018-3289-CE-1A**

Dear Planning and Land Use Management Committee Members:

This letter is written on behalf of my client, United Broadway, LLC, in response to the appeal of the Environmental Clearance for my client's proposed hotel to be located at 1140 South Broadway (the "project") that was filed by Irvine & Associates, Inc. on September 5, 2019. The appeal is essentially identical to the appellant's appeal of the project to the Central Area Planning Commission (filed June 6, 2019) except for the addressee. **In summary, we request that this appeal be denied.**

While no new issues have been raised in the September 5<sup>th</sup> appeal, and which United Broadway, LLC responded to on August 2, 2019 in a letter to the Central Area Planning Commission, it should be noted that United Broadway, LLC has since altered the project site plan to reflect accommodation of three of the appellant's concerns. The site plan changes are:

- A. The South Main Street public right-of-way ("ROW") now shows a 1-foot dedication to increase the half width of South Main from 44 feet to 45 feet to meet the designated ROW width for the Modified Avenue II designation along Broadway.

The new 1-foot dedication corrects a technical deficiency in the site plan described on page 2 paragraph 3, line 6 of the September 5<sup>th</sup> appeal letter from Irvine and Associates that states, "BOE Map Sheet 126A209 (Exhibit F) indicates that the existing ROW width along Broadway, in front of the Project Site, is 88 feet (44 feet half ROW width)." Note, this issue would have been addressed by the Bureau of Engineering ("BOE") in plan check pursuant to Los Angeles Municipal Code ("LAMC") Section 12.37, but is now fully corrected.

- B. The project site plan now shows a sound barrier that will be constructed with K rails and plywood along the South Main ROW.

This addresses a concern raised by the appellant on page 3, last paragraph, line 2 of the September 5<sup>th</sup> appeal letter from Irvine and Associates that states, "This feature [k rails] should be included as a Condition of Approval if it is relied on to mitigate noise levels." Since

adherence to the approved site plan is a Condition of Approval for any project, the concern raised is now resolved.

The September 5<sup>th</sup> appeal's remaining main concern is:

1. That "(w)e object to the Categorical Exemption and request that the Area Planning Commission require the Applicant to complete an expanded Initial Study environmental analysis pursuant to CEQA."

The September 5<sup>th</sup> appeal also claims that the City Planning Department erred by:

2. Not referring the project to the Bureau of Engineering (BOE) for review and identifying the appropriate dedication standards for South Broadway and the alley.
3. Not requiring the applicant to submit the Downtown Guide Checklist as a part of the Project application.

With respect to Concern #1:

The appeal raises objections that the Categorical Exemption was "improper" and calls for an "expanded Initial Study environmental analysis."

**Appeal Comment:**

"The revised noise analysis now assumes concrete trucks will stage on Broadways and a sound barrier will be constructed on the street with K rails and plywood. This feature should be included as a Condition of Approval if it is relied on to mitigate construction noise levels. If noise levels require mitigation to be less than significant, then they are generating a significant impact. A Mitigated Negative Declaration would be a more appropriate CEQA analysis in this circumstance."

**Response:**

A "Condition of Approval is relied on to mitigate construction noise levels" when a design feature needs to be added as a mitigation *after* project approval. The "K rails and plywood" are actually *construction design features* and they *will be* included as part of the construction-level design. Such construction design features are essential to prevent unanticipated noise level exceedences that might otherwise "generate a significant impact". Thus the design meets the criteria and intent of the CEQA Class 32 Categorical Exemption for urban in-fill projects.

**Appeal Comment:**

"The Project is also proposed to maintain a zero (0) foot setback to the adjacent building at 1144 S. Broadway, which is an unreinforced masonry building. This will result in an unusual situation as the proposed Project will excavate the soil adjacent to the building and will require tie backs, underpinning. Etc. No vibration studies have been conducted to assess this impact."

**Response:**

Los Angeles has many new structures being built with “a zero (0) foot setback” adjacent to an “unreinforced masonry building” as is common in metropolitan areas. Since this is a common circumstance, rather than an “unusual circumstance”, there are existing protocols such as the ones mentioned by the commentor, “tie backs, underpinning. Etc.” Furthermore, Building and Safety regulates these activities and holds the developer responsible for any damage. Developers of this project are taking all necessary and required measures to avoid damage.

The commentor would need to provide *substantial evidence* that a building with “a zero (0) foot setback” adjacent to an “unreinforced masonry building” is an *unusual circumstance*. (*Berkeley Hillside Preservation, supra, 60 Cal. 4<sup>th</sup> at p. 1114*) When these standard-of-evidence requirements under CEQA are not satisfied, i.e. no substantial evidence of an unusual circumstance is presented, then an expanded level of environmental analysis or Mitigated Negative Declaration is not required.

Note, the concerns raised by the September 5<sup>th</sup> appeal were also answered in our previous August 2, 2019 response to comments sent to the Central Area Planning Commission, but are included here below for your reference:

**Excerpts from original comment letter relating to alleys and construction noise by concrete mixers on Broadway.**

**7. Comment:** “The environmental documents fail to analyze the impact resulting from the lack of dedication and improvement to the alley, located at the rear of the Project Site. As measured on Navigate LA, this alley is only 12 ft. in width (6 ft. half width). Per the Mobility Plan 2035, an alley should have a minimum width of 20 ft. (10 ft. half width). As such, at minimum, a 4 ft. dedication should be imposed on the Project in order to achieve the minimum 10 ft. half alley width required.

*Response:* The subject property abuts an existing through alley to the east, which extends from 11th Street northerly to 12th Street southerly, and ingress/egress to the site will occur along the alley (See Figure 1). The comment states that the project is required to dedicate and improve the alley.

Pursuant to Los Angeles Municipal Code (LAMC) Section 12.37 A, in pertinent part, highway dedication and improvement is only required for property in the R3 or less restrictive zones along the property frontage that abuts a major or secondary highway. As the alley is not one of these types of designated streets, no dedication or improvement is required.

During construction, the project will only be required to repair and replace any portion of the alley affected by construction, as required by the Bureau of Engineering. The applicant will process an “A” or “B” Permit as required at the time of construction to complete any alley repairs needed for the associated project construction.

**8. Comment:** “The Project's application package makes no reference to any dedication and no Bureau of Engineering (BOE) Planning Case Referral Form (PCRF) was submitted.”

*Response:* As indicated above, no dedication is required. The applicant did submit a PCRF request to BOE on June 5, 2018. A copy of the filing was provided at the time of case filing.

**9. Comment:** “Additionally, the Applicant has not requested a Waiver of Dedications and Improvements (WDI), to deviate from these standards. Pursuant to LAMC Section 12.37.I.3, “The waiver request must be set forth in the application filed with the Department of City Planning, and may not be raised for the first time at the hearing on the entitlement or at any entitlement appeal hearing.” This oversight must be addressed and warrants deeper investigation of the Project's impacts.”

*Response:* As no dedication is required pursuant to LAMC Section 12.37 A, no WDI is required pursuant to LAMC Section 12.37 I.

**10. Comment:** “It is also worth noting that at the time of submittal, the Applicant submitted the Citywide Design Guide checklist instead of the Downtown Design Guide Checklist (based on the Projects location, the Downtown Design Guide Checklist is required). This is important to add as the Downtown Design Guidelines provide additional design requirements and suggestions for both the proposed building and the alley that are not found in the Citywide Design Guidelines.”

*Response:*, We will complete the Downtown Design Guide Checklist. However, the project was considered for compliance with the Downtown Design Guide, prior to case filing on June 6, 2018. The applicant consulted with City Planning, Community Redevelopment Agency staff (CRA), BOE, and the Department of Transportation (DOT) during the design and development of the project (including meetings held on March 16, 2017, February 7, 2018, February 21, 2018, and April 3, 2018).

There was full agreement by City staff that the alley should be used for ingress/egress so as to minimize curb cuts along the property's Broadway (westerly) frontage, a designated Modified Avenue II and major north-south thorough-fare serving the community. This direction was informed by the City's Downtown Design Guide, and the project was also generally reviewed for consistency with the Downtown Design Guide and determined to comply.

Broadway provides access to the City's historic core and is the subject of policy efforts to redevelop and enhance an important part of the City's downtown. Accordingly, there are design requirements intended to enhance the pedestrian experience along this street and minimize the intrusion of curb cuts/vehicular access and reduce pedestrian/vehicular conflicts for safety purposes.

The project has been so designed to provide a pedestrian-scaled and oriented development along Broadway, with a main lobby, ground floor restaurant, and outdoor dining area. Vehicular access is therefore provided at the rear of the site along the alley and away from

Broadway. Ultimately, per the Downtown Design Guide Section D, the project has been reviewed by appropriate staff, including DOT, and the Associate Zoning Administrator will make the final determination of compliance with the Design Guide and make affirmative general plan findings.

**11. Comment:** “In addition to the required alley dedication, the lack of any necessary improvements, such as those outlined in the Downtown Design Guidelines, further exasperate the negative impacts of the Project. For example, the Downtown Design Guidelines state that projects should "ensure that residents are not adversely impacted by the use of alleys for parking access, service, and loading," "illuminate alleys for both vehicles and pedestrians," and be designed with "permeable paving to infiltrate storm water and eliminate standing water." As the subject Project is not currently proposing any improvements to the alley, they are failing to comply with the Downtown Design Guidelines.”

*Response:* Alley dedication has been addressed above. The project will incorporate any improvements required by BOE under the “A” or “B” Permit needed for the project. The commenter is also misquoting the Downtown Design Guide on page 25. The text “ensure that residents are not adversely impacted by the use of alleys for parking access, service, and loading” is a guideline, not a requirement. The guideline is implemented by criteria 9, 10, and 11.

Criteria 9 is a requirement that each home buyer and renter in the Downtown shall sign a statement acknowledging that:

- Sound levels may be higher than in other locations due to traffic on streets and alleys, street activity, ground floor uses, vehicular loading, and trash collection;
- There will be additional development all around them;
- Alleys will be used as the primary access to all parking in the Downtown and for loading, utilities and trash collection.

These criteria are not related to the proposed project. However, nearby home buyers and renters will benefit from the guideline as they will be aware of the higher ambient sound levels in the Downtown, including ambient noise associated with the project.

Criteria 10 is a requirement that “residential units shall not be located on the ground floor adjacent to alleys in order to reduce light, glare, and noise concerns.” There are no residential units in the ground floor of the project. The requirement will also provide protection for any potential residential units in nearby future projects.

Criteria 11 is a requirement that residential units shall be designed to maintain interior sound levels, when windows are closed, at or below 45 dB. Because the exterior sound level may exceed 60 dB, measures in addition to conventional construction are suggested to meet the interior standard, including:

- Use of 1/4" laminated or double glazing in windows
- Installation of rubberized asphalt in the alleys.

Residential units will be required to comply to help reduce noise, and the project will install rubberized asphalt if required by BOE under its "A" or "B" Permit process.

The project will have security lighting around the property, including along the alley. Subject to BOE approval, the project may incorporate green alley elements such as permeable paving under its "A" or "B" Permit process.

**14. Comment:** "The assumptions in the [Construction Noise Impact Analysis] CNIA are flawed and the conclusion is incorrect. The study found that concrete mixer trucks and concrete pump trucks will produce a noise levels of up to 76 dBA at 50 feet from the source. These sound levels exceed the LAMC threshold of 75 dBA as documented in Table 2 of the CNIA. As such a significant noise impact would occur and an EIR must be prepared."

*Response:* The commenter states that, a: "a significant noise impact would occur" and b: "an EIR must be prepared."

With regard to a ("a significant noise impact would occur"), the study shows that a noise barrier around the project site will reduce the noise levels of concrete mixer trucks and concrete pump trucks, operating simultaneously, to below the significance threshold level of 75 dBA. Eilar Associates, Inc. has specifically responded as follows:

"As shown in Table 5 of the revised report (Section 3.5), concrete mixer trucks and concrete pump trucks produce a noise level of up to 76 dBA and 74 dBA at 50 feet from the source, respectively. These noise levels do not take into consideration the proposed temporary construction barrier, which will lower the noise levels at off-site properties. As shown in Table 7 of the revised report (Section 5.2), noise impacts from the concrete mixer trucks and concrete pump truck (in the Foundations phase of construction) will be attenuated to 65.4 dBA at a distance of 50 feet from the source with the proposed temporary barrier wall in place. This noise impact complies with the City of Los Angeles Municipal Code, and therefore is not expected to result in a significant impact." (Mo Ouwenga, Eilar Associates, Inc. Response to Noise Comments for Hyatt Centric, 01/24/2019) (Eilar Associates, Inc. 01/24/2019)

With regard to b ("an EIR must be prepared"), according to CEQA, only when there are significant impacts that cannot be mitigated. An MND must be prepared when there are significant impacts that can be mitigated. A Categorical Exemption applies only when potentially significant impacts are avoided by design before project approval. Our evaluation has included design modifications and may include more design modifications that will ensure that it avoids potentially significant impacts in the design phase. (California Code of Regulations Title 14§ 1500 et seq. (See Appendix A, CEQA Process Flowchart)

**15. Comment:** “The analysis in the CNIA incorrectly assumes that a noise barrier around the perimeter of the Project Site would be effective in reducing noise levels from concrete and mixing trucks. However, this assumption is flawed because the concrete trucks cannot occupy the Project Site when the foundation is being poured. Concrete trucks will likely be staged adjacent to the site on Broadway or in the alley. Thus, the sound barrier will be completely ineffective in attenuating noise because it would not block the line of sight from the noise sources and the receptors.”

*Response:* The commenter stated that “this assumption is flawed because the concrete trucks cannot occupy the Project Site when the foundation is being poured. Concrete trucks will likely be staged adjacent to the site on Broadway or in the alley. Thus, the sound barrier will be completely ineffective in attenuating noise because it would not block the line of sight from the noise sources and the receptors.”

The premise that the assumption is “flawed because the concrete trucks cannot occupy the Project Site when the foundation is being poured,” is not accurate, “concrete ready mix trucks will drive down a temporary dirt ramp to the bottom of the site excavation and pour a portion, perhaps one half or so, of the foundations. After that, the concrete ready mix trucks and concrete pump can stage on Broadway where a temporary sound wall can be installed on top of a K rail at the street side of the parking.” (Mark Montoya, Snyder Langston, pers. Comm. 12-24-2018).

Additionally, Eilar Associates, Inc. has responded as follows: “...a sound attenuation barrier may be used to attenuate noise from the concrete trucks as they queue along the roadway [S. Broadway]. The sound barrier may be constructed using K-rail with plywood along the top and should have a minimum height of ten (10) feet. This barrier would block line of sight from the noise sources to off-site receptors and would be expected to provide approximately 10 decibels of attenuation.” (Mo Ouwenga, Eilar Associates, Inc. Response to Noise Comments for Hyatt Centric, 01/24/2019) (Eilar Associates, Inc., 01/24/2019 See Section 5.2)

Finally, our construction implementation design plan requires the construction contractor to advise us in our final design on how to implement the staging to avoid exceeding significance thresholds for noise due to a staging issue.

With respect to Concern #2:

This is not a matter relevant to the project’s Environmental Cleanace. That said, we resolved concerns regarding street dedication along South Broadway and the alley with our response to comments from the initial objections raised during the project’s public hearing prior to approval of the proposed project by the Zoning Administrator. A one-foot dedication on South Broadway will be required per code, and will be provided, along with appropriate improvements, as part of the project’s building permitting process. The BOE will ensure compliance for the project’s building permit plans during plan check, so there is no need for any further action. There is no requirement for alley dedication.

**United Broadway, LLC**  
**Appeal Response Letter**

The proposed project, unlike the appellant's project referenced in their appeal, is not a subdivision. There may be confusion about the infrastructure requirements for differing types of project, as subdivision projects are required to provide infrastructure to serve the new subdivision. To reiterate, the only infrastructure requirement for the subject project per LAMC Section 12.37, is to provide highway dedication and improvements along any major or secondary highway or collector street, which applies to the Broadway frontage only. Accordingly, no report from the BOE Land Development Group is required either (which would be the case with a subdivision).

With respect to Concern #3:

This is not a matter relevant to the project's Environmental Clearance. That said, no new objections have been raised by this appeal except to again point out that there is a Down Town Design Checklist ("DTDC") document, which we previously acknowledged does in fact exist as a planning guide; however as previously stated, there is no requirement to submit and/or publish the checklist for approval. It is also not listed on the City Planning website. In this regard, please see attached the current City Planning application submittal checklist, which has no requirement to file the DTDC. Standard public counter procedure is only to require submittal of the Citywide Design Guidelines.

Consideration of the Downtown Design Guidelines (DDG) occurs during project review. Accordingly, compliance with the DDG was carefully evaluated in our Design Plan Review Meeting with City Planning staff as previously stated. The DDG requirements were then incorporated into the project design, and reviewed and considered by the Zoning Administrator. The project complies with the DDG and there is no error in processing.

In conclusion, we respectfully request that the appeal of the project's Environmental Clearance be denied.

Sincerely,



Debbie Kinsinger  
Owner/Principal Scientist  
Kinsinger Environmental Consulting

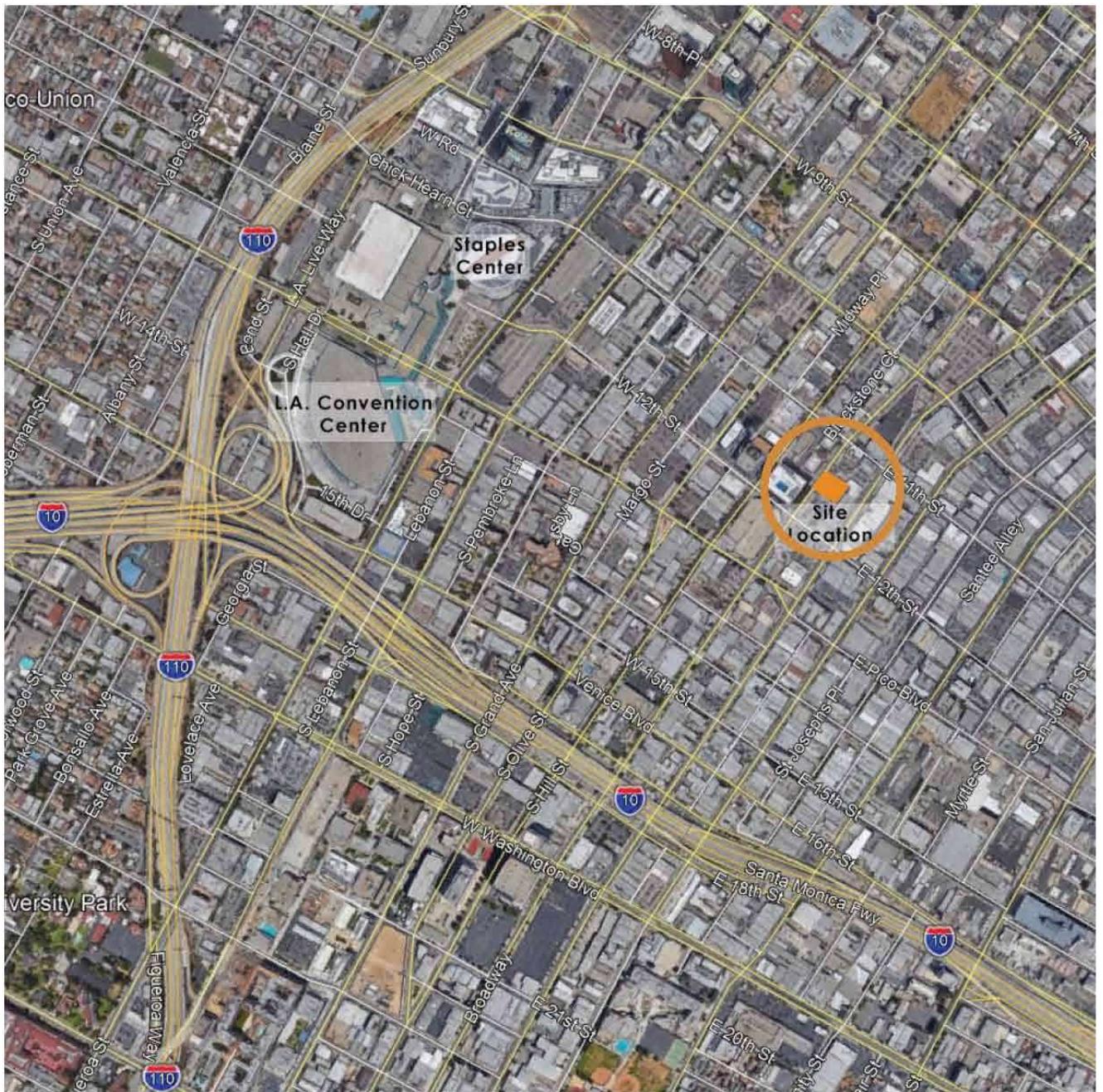


Figure 1 Hyatt Centric Los Angeles, 1138-1140 S. Broadway, Los Angeles, CA 90015 – Vicinity Map

