

## Maryanne Cronin

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**From:** Alexis Oropeza  
**Sent:** Monday, September 09, 2019 4:59 PM  
**To:** Maryanne Cronin  
**Subject:** FW: Request re 9.19 Planning Commission Meeting

**Alexis Oropeza**  
*Current Planning Officer*

**Long Beach Development Services | Planning Bureau**  
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[Alexis.Oropeza@longbeach.gov](mailto:Alexis.Oropeza@longbeach.gov) | [www.lbds.info](http://www.lbds.info)



**ADDRESS CHANGE:** Long Beach City Hall has moved! Please note that the address for City Hall has changed from 333 W. Ocean Boulevard to 411 W. Ocean Boulevard, Long Beach, CA 90802.

**From:** Leanna Noble <[REDACTED]>  
**Sent:** Thursday, September 5, 2019 8:50 AM  
**To:** Alexis Oropeza <[Alexis.Oropeza@longbeach.gov](mailto:Alexis.Oropeza@longbeach.gov)>  
**Subject:** Request re 9.19 Planning Commission Meeting

Dear Alexis,

NPNA asks for some clarification about the 9.19.2019 Planning Commission agenda item concerning the Ensemble proposed development at 3rd & Pacific, please. Obviously, we would prefer to receive the information prior to the actual meeting to assist us in our verbal comments at the meeting.

1. Is the Planning Commission considering the entire proposed development even though NPNA understands that the only initial construction is the smaller building?
2. What is the deadline for Ensemble to develop the entire site? It is NPNA's understanding that because these parcels were originally designated for redevelopment affordable housing there is such a deadline.
3. Since Ensemble is proposing to only construct the smaller building initially, why is the Planning Commission considering a plot merger for all 4 parcels? Is it possible for the Commission to only consider and act on the merger of the 2 parcels for the smaller building?

NPNA continues to have significant concerns about the larger proposed building. We want to make sure that our verbal comments at the 9.19 Commission meeting focus on specific decisions the Commission will be considering at that meeting.

Thanks very much for your assistance, Alexis.

Leanna Noble  
NPNA Secretary  
[REDACTED]

## Maryanne Cronin

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**From:** Leanna Noble <leannan7@gmail.com>  
**Sent:** Thursday, September 12, 2019 12:53 PM  
**To:** Maryanne Cronin; Jonathan Iniesta  
**Cc:** Alexis Oropeza; Carole Sergy  
**Subject:** NPNA Written and In-person Comments concerning Application # 1807-11 Ensemble  
Proposed Pproject on Pacific between 3rd and 4th Streets  
**Attachments:** NPNAEnsemblePlanningComletter.docx

Dear City Staff,

Please forward the attached comments from NPNA to the Planning Commission concerning Ensemble proposed development on Pacific between 3rd and 4th Streets, Planning Application Number 1807-11 (SPR18-038, TTM18-008, GPC18-004).

In addition to these written comments, NPNA intends to attend the September 19, 2019 Planning Commission to present our concerns and respectfully submitted suggestions in person.

NPNA appreciates your assistance in this matter to-date and on-going.

Leanna Noble  
NPNA Secretary



September 12, 2019

Dear City of Long Beach Planning Commission Members:

The North Pine Neighborhood Alliance (NPNA) has strong concerns about the proposed mixed-use development by Ensemble being considered at the September 19, 2019 Planning Commission meeting.

For at least two years NPNA has communicated directly with Ensemble and with City Planning staff in repeated attempts to share these concerns and provide positive input so that this proposed development can meet the financial needs of Ensemble as well the needs of our neighborhood. This on-going communication has resulted in some success with changes made by Ensemble and City Staff for which NPNA is pleased.

Here is a list of remaining concerns which are the basis of the **NPNA request that the Planning Commission adopt the Ensemble proposal with significant changes and/or mitigations:**

1. The four parcels that are part of the Ensemble proposed development were originally redevelopment sites intended for provision of low income rental housing which is in desperate need in the NPNA neighborhood. The Ensemble project does NOT address this need. Regardless of the Downtown Plan, it is imperative that the Planning Commission stand with the neighborhood to meet this need.
2. NPNA is in agreement with the scale and design of the proposed 8 story tower planned for the parcels closest to 4th and Pacific. NPNA is also in agreement with the improvements proposed for the alley that runs east to west through the proposed two buildings as long as there is significant public access without individual cost to seating and shade.
3. NPNA is strongly opposed to the 23 story tower building proposed for location on the parcels nearest 3rd and Pacific. The scale of this proposed tower is in sharp contrast to the surrounding residential neighborhood. The impacts of such a great increase of residential density (traffic, parking, increases in rents are not welcome by NPNA members who already daily endure a lack of residential parking, vehicle speeding especially along Pacific and unsafe driving which endangers much of the residential pedestrians (many of whom are seniors and disabled), as well as current commercial/retail deliveries blocking alley access (Solana Court) and existing

Page 2, NPNA letter to Planning Commission re Ensemble Project

residential garage access along with disruptive almost daily private trash hauler traffic (blocking alley access, creating noise, destroying alley paving, etc.).

NPNA respectfully asks for the following considerations and decisions from the Planning Commission:

1. Do NOT grant approval for merger of all four relevant parcels at this time, only approving the two parcels merger for the building to be located nearest to 4th and Pacific.
2. Only approve the design and construction of the proposed 8 story mixed use building at this time.
3. Require that all construction staging occur on the parcels located nearest to 3rd and Pacific and require that no sidewalks can be closed to pedestrian traffic for more than reasonable periods of time. Previous developments in the NPNA neighborhood have resulted in closure of sidewalks as well as street parking for indefinite periods of time resulting in significant problems and hardships for NPNA neighbors, many of whom are seniors and disabled who rely heavily on sidewalks and public transportation access.
4. Require Ensemble to work with NPNA and City Staff to reach agreement on a smaller scale tower development that better addresses neighborhood concerns and input.
5. If at the end of Ensemble's entitlement period, no development has been agreed to and constructed, the two parcels revert to the City for development as low cost and affordable housing or commercial/retail needs as identified with neighborhood input.

NPNA is fully aware of the history and implications of the Downtown Plan. Because we have had the opportunity to work with City Staff and several developers concerning numerous proposed developments in our neighborhood, we have a solid understanding of the interests and roles of all interested parties.

NPNA has an established reputation of working in a positive manner and in support of several development projects in our neighborhood. Many of us deliberately chose to live in downtown and support improvements and evolution of our neighborhood, especially creation of affordable and low-cost housing.

NPNA also believes deeply that the current residents' needs, concerns and quality of life are an integral part of any and all decision-making concerning our neighborhood.

We look forward to leadership from the Planning Commission about our neighborhood concerns and ideas.

Sincerely,  
Carole Sergy, NPNA President and Leanna Noble, NPNA Secretary

----- Forwarded Message -----

**From:** Cedar Towers <[REDACTED]>  
**To:** [maryanne.cronin@longbeach.gov](mailto:maryanne.cronin@longbeach.gov) <[maryanne.cronin@longbeach.gov](mailto:maryanne.cronin@longbeach.gov)>;  
[jonathan.iniesta@longbeach.gov](mailto:jonathan.iniesta@longbeach.gov) <[jonathan.iniesta@longbeach.gov](mailto:jonathan.iniesta@longbeach.gov)>  
**Cc:** Cassandra Eggers <[REDACTED]>; Sweet-Ransom Robin  
<[REDACTED]>; Maria Mireles <[REDACTED]>; Brenda Danae Cuellar  
de Ceja <[REDACTED]>  
**Sent:** Sunday, September 15, 2019, 11:24:47 PM PDT  
**Subject:** Opinion on the Proposed Permit for Tyson Sayles on Behalf of Ensemble Real Estate  
Investments - Application 1807-11 (SPR18-038, TTM18-008, GPC18-004)

Ms. Cronin and Mr. Iniesta,

I am responding to the Notice of Public Hearing Planning Commission mailed on August 30, 2019 and presumed received on or about September 4, 2019.

In order to review the information on the City's Website for this project, and to provide a responsible Written Testimony on behalf of myself and the Homeowners' Association that I have been president of for approximately 28 years, and a resident of for 30 years, I was unable to make the deadline of 10 calendar days prior to the Hearing scheduled on September 19, 2019 at 5:00 p.m.

Due to my work commute, I will also be unable to attend the hearing in person. Therefore, in lieu of the mailing of copies to the Planning Commission I am provided this email. I understand the decision cannot be appealed to the Coastal Commission but can be appealed to the City Council.

**If acceptable, please provide the following to the Planning Commission:**

**For Consideration by the City of Long Beach Planning Commission  
regarding Application 1807-11 (SPR18-038, TTM18-008, GPC18-004) for the  
Proposed Permit for Tyson Sayles on Behalf of Ensemble Real Estate  
Investments**

**Background:** I am an owner occupant of a condominium in downtown long beach within the affected area of the development. This is the first time I have replied to one of these notices, so please forgive me if is a bit rough around the edges.

I have been HOA president of for approximately 28 years, and a resident of for 30 years at 335 Cedar Avenue. I submit that I have extensive experience with issues facing condominiums in general and downtown specifically.

**Concerns:**

**1) Parking:** Upon my cursory review of the 121 pages in the addendum, If I understand correctly, the complex will have Covenants, Conditions and Restrictions and

Reservations of Easements (CC and R's) and would be condominium complex with retail establishments on the ground floor. The complex is proposing 563 parking spaces for 345 residential units that span studios to three-bedroom units and to include guest parking and parking for the retail units.

**Request(s) of the Planning Commission for consideration:**

**A)** I understand and applaud the incentives for car-pooling, the blue line, buses, and the amount of parking for bicycles. **I submit based upon personal knowledge and experience that the amount of parking is not reasonable for the number of residential units and retail space(s).**

**B)** I submit that a reasonable amount of parking spaces would more appropriately be 1,035 parking spaces. The parking spaces would also allow for trucks such as PODS to drop off and pick up for move in and move outs for the buildings and also have adequate height for contractors work trucks doing remodeling and/or maintenance on the property.

**C) Reasonings:** This number is based upon the increase in residential in the general area, the reduction of parking on the streets, the incentives for filming in Long Beach which at those times also reduces temporarily the number of parking spaces on the street, street sweeping that impacts parking on the street. A large number of older buildings that were built with the same intention in the 50's and 60's and 70's of residents not needing parking, has not panned out, and renters and homeowners alike complain about how far they need to travel to park their vehicle and the concerns of vandalism of vehicles as the homeless issue continues to grow. There is also the growing delivery business of Amazon and Grub Hub, that require temporary parking. There are guests of the residents that require parking.

**D)** I did not see anywhere that the City would require that the condominium units be strictly owner occupied and would be restricted from being rentals. **I submit that the units should be required to be only owner occupied IF there is no increase to the parking or if there is no full increase of the parking to the amount submitted in this written testimony.**

**E) Reasonings:** Due to wage stagnation and the increase in the cost of rent in downtown Long Beach, many units have roommates that also have vehicles, including homeowners that need roommates to make the mortgage payments. Occupancy of units is also higher and there is the added issue of Air B and B which is not necessarily policed. The restriction of only owner occupants would also maintain the value of the units and minimize the amount of move(s) in and out(s) that are problematic at current HOAs that do not have that ability to restrict to only owner occupants. The constant moving in and out of tenants at the building structures create additional issues with

parking in the area and the street, as sometimes the trucks need to double park on the street or otherwise block access due to the moving in and out. Contractors doing building renovation for the individual units and maintenance also need parking for their work trucks.

**2) Electricity:** Upon my cursory review of the 121 pages in the addendum, If I understand correctly, the building will have “some” solar panels to reduce the impact to the electrical grid during the day.

**Request(s) of the Planning Commission for consideration:**

**A) I submit that the electricity connection for these structures is NOT pulled from the aging downtown underground electrical grid, but pulled otherwise circumventing the downtown underground electrical grid** that failed a number of years ago, leaving residences in downtown, and Cedar Towers at 335 Cedar Avenue without any power for three (3) days.

**B) Reasonings:** The downtown electrical grid is over 50 years old and while the number of buildings and electrical usage in downtown has increased, there is little increase or changes to the fragile underground electrical network which is in dire need of modification and that such modification is not cheap and for which I have not seen any public notice that updates have been done to support the growing demand on the over 50 year old system.

**3) Water:** Upon my cursory review of the 121 pages in the addendum, If I understand correctly, the buildings will have access to reclaimed water for grounds keeping/plants and will also take measures to allow for pervious areas to minimize rainwater runoff.

**Request(s) of the Planning Commission for consideration:**

**A) I submit that a restriction would not be reasonable due to dogs being walked in the area(s) and homeless persons going through trash enclosures.** I found the issue on Page 24 Table 1: under “Water Conservation and Efficiency:” where “Restrict watering methods (e.g., prohibit systems that apply water to non-vegetated surfaces) and control runoff. Prohibit businesses from using pressure washers for cleaning driveways, parking lots, sidewalks, and street surfaces. These restrictions should be included in the Covenants, Conditions, and Restrictions of the community.” **I submit this requirement not be imposed.**

**B) Reasonings:** The building using an entire block across from the new courthouse and across from the downtown police station that has rental and retail units, has sidewalks that are frequented by area resident’s dogs and homeless persons. There are areas that I avoid when going to Starbucks



because of the fecal matter residue that remains, even when the feces is picked up. There is the dog urine on the fake turf areas that accumulates. It only makes sense to clean these areas with pressure washings, even if using reclaimed water and a minimal amount of chemicals. The downtown area has a higher concentration of populace with an increased number of pets per block that far exceeds that of single home residential areas, to the point that it should be considered a health issue. I am not advocating the reduction of pets, but I am advocating that buildings should be able to clean off these areas and restrict fake turf for permeable areas or actual grass where the urine and feces residue can be absorbed into the ground and plants instead of drying and becoming a smell and/or dust to be kicked up or for homeless to lay on. It would be disingenuous to not factor the homeless and pets into any Planning Commission review.

**C) I submit that more areas of the planned buildings and the sidewalks and roads surrounding the buildings definitely include the** "...possible designs include Hollywood drives (two concrete strips with vegetation or aggregate in between) and/or the use of porous concrete, porous asphalt, turf blocks, or pervious pavers." (sic) as noted on Page 24 Table 1: under "Water Conservation and Efficiency:".

**D) Reasonings:** The building using an entire block across from the new courthouse and across from the downtown police station that has rental and retail units; the Starbucks on that corner, when beset with heavy rains, was twice flooded out because the storm drains could not handle all the rain water. The flooding was due to the storm drains backing up into the retail space within a 30-minute period as personally observed by me when in the Starbucks.

I apologize that due to time constraints, I do not have anything more to add at this time and wish to thank the Commission for their time in reviewing my concerns. I do not oppose the development, but request the submissions to minimize the impacts to the current residents in the area be given careful consideration, based upon the experiences of other developments and the real impacts that they currently have upon residents in the area.

Respectfully,

Meyer Kama, president of Cedar Towers Condominium Association (HOA) at 335 Cedar Avenue

I personally reside in [REDACTED]

My email address is [REDACTED]

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**DOWNTOWN  
LONG BEACH  
ALLIANCE**

September 19, 2019

Long Beach Planning Commission  
Civic Center Plaza  
411 West Ocean Blvd.  
Long Beach, CA 90802

RE: 3<sup>rd</sup> & Pacific Development

Dear Members of the Long Beach Planning Commission,

Please accept this correspondence on behalf of the Downtown Long Beach Alliance (DLBA) Board of Directors and enter into the public record for the Planning Commission meeting scheduled for Thursday, September 19, 2019, our support of the approval of the 3<sup>rd</sup> & Pacific Project located at 131 W 3<sup>rd</sup> Street. The 3<sup>rd</sup> & Pacific Project was presented and approved for support by DLBA's Economic Development Committee on Wednesday, January 9, 2019.

The DLBA is a non-profit organization that represents more than 1,600 businesses and 4,000 commercial and residential property owners within the two Business Improvement Districts (BIDs) in Downtown Long Beach. As one of the leading voices for the Downtown community, we want to express our support for this project and urge the Planning Commission to approve the Site Plan Review, Vesting Tentative Tract Map, and General Plan Conformity. The project aligns with the DLBA'S goal of supporting increased density near High-Quality Transit Areas as outlined in DLBA's Vision 2020: Strategic Plan, and the design standards outlined in the City's Downtown Plan (PD-30).

The Downtown Plan, the guiding planning document for Downtown, was created to encourage impactful, community-oriented mixed-use developments in the area. Located in Long Beach's Downtown core, Ensemble's 3<sup>rd</sup> & Pacific project exemplifies the cutting edge of mixed-use residences. The 345-unit development will feature a 23-story high-rise in addition to an 8-story adjacent development, with both buildings incorporating sustainable building practices. Moreover, the 3<sup>rd</sup> & Pacific development will feature 14,481 square feet of ground-floor retail space.

This retail space maximizes land-use efficiency and contributes to a more cohesive neighborhood character. The project will also help to bridge the Pine Ave and Pacific Corridors by activating the corner of 3<sup>rd</sup> Street & Pacific, thus enhancing the pedestrian experience along 3<sup>rd</sup> Street. Moreover, the 3<sup>rd</sup> & Pacific At the 3<sup>rd</sup> & Pacific development, a central paseo will maximize the flow of foot traffic and micromobility through ground-floor retail space, and the project's proximity to two Metro Blue Line stations will generate greater mobility options for new Downtown residents.

We appreciate the opportunity to share our support for the continued implementation of the Downtown Plan, and we encourage the Planning Commission to support this proposed investment in our developing and diverse Downtown.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read 'Kraig Kojian', with a stylized flourish at the end.

Kraig Kojian  
President & CEO

cc: Dr. Mayor Robert Garcia, City of Long Beach  
DLBA Board of Directors  
Linda Tatum, Director of Development Services, City of Long Beach  
Tyson Sayles, Ensemble Real Estate Investments



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VIA E-MAIL AND HAND DELIVERY

September 19, 2019

Richard Lewis, Chair  
Mark Christoffels, Vice Chair  
Commissioner Ron Cruz  
Commissioner Josh LaFarga,  
Commissioner Andy Perez,  
Commissioner Jane Templin,  
Commissioner Erick Verduzco-Vega  
Dionne Bearden, Secretary  
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**Re: Comment on 3rd and Pacific Project Addendum to Downtown Plan Program EIR,  
Site Plan Review (SPR18-038)**

Dear Chair Lewis and Honorable Commissioners:

I am writing on behalf of the Supporters' Alliance for Environmental Responsibility ("SAFER") and its members living and working in and near Long Beach ("SAFER"). The City of Long Beach ("City") received an application for the development of the 3rd and Pacific Project, which includes development of two mixed-use residential and commercial buildings within the Downtown Plan Area (the "Project"). SAFER is concerned that the City is proposing to approve the Project based on an Addendum prepared based on the assertion that the Project is consistent with the City of Long Beach Downtown Plan Program Environmental Impact Report approved by the City in 2011 (the "2011 PEIR"). As discussed below, because there is substantial evidence that the Project will have significant impacts not analyzed in the 2011 PEIR, a tiered EIR must be prepared for the Project. Approval of the Project based on an addendum violates the California Environmental Quality Act ("CEQA"), Pub. Res. Code section 21000, et seq.

### **PROJECT DESCRIPTION**

The Project proposes to develop a mixed-use residential and commercial development in the Downtown Plan area. The proposed project would replace two existing surface parking lots

with two buildings— an 8-story building at the north end of the property (North Building) and a 23-story high rise building at the south portion of the site (South Building) on a 1.2-acre site. Both buildings would include ground floor retail, with residential units on the upper stories.

The proposed project would include a total of 345 residential units that would range from studios to 3-bedroom units, 14,437 sf of retail commercial space, 563 vehicle parking spaces, and 128 bicycle parking spaces. The project's residential component would consist of 429,456 square feet (sf) of residential uses, including amenities, 14,337 sf of commercial retail uses, 217,493 sf of parking. The proposed project would also include 42,307 sf of open space, namely 13,944 sf of residential common outdoor open space, 11,688 sf of residential indoor common open space, 11,340 sf of residential private open space, and 5,335 sf of public open space. The proposed project's gross building area would be approximately 661,430 sf, including all below-grade levels.

## **DISCUSSION**

SAFER hereby requests that the City prepare an environmental impact report ("EIR") to analyze the significant environmental impacts of the Project and to propose all feasible mitigation measures and alternatives to reduce those impacts. The City may not rely on an addendum to the 2011 PEIR for several reasons, including, but not limited to, the following:

### **I. CEQA REQUIRES THE CITY TO PREPARE A TIERED EIR FOR THE PROJECT INSTEAD OF AN ADDENDUM.**

CEQA permits agencies to 'tier' EIRs, in which general matters and environmental effects are considered in an EIR "prepared for a policy, plan, program or ordinance followed by narrower or site-specific [EIRs] which incorporate by reference the discussion in any prior [EIR] and which concentrate on the environmental effects which (a) are capable of being mitigated, or (b) were not analyzed as significant effects on the environment in the prior [EIR]." (Pub. Res. Code § 21068.5.) The initial general policy-oriented EIR is called a programmatic EIR ("PEIR") and offers the advantage of allowing "the lead agency to consider broad policy alternatives and program wide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts." (EIR 14 CCR §15168.) "[T]iering is appropriate when it helps a public agency to focus upon the issues ripe for decision at each level of environmental review and in order to exclude duplicative analysis of environmental effects examined in previous [EIRs]." (Pub Resources Code § 21093.) CEQA regulations strongly promote tiering of EIRs, stating that "[EIRs] shall be tiered whenever feasible, as determined by the lead agency." (Cal Pub Resources Code § 21093.)

Once a program EIR has been prepared, "[s]ubsequent activities in the program must be examined in light of the program EIR to determine whether an additional environmental document must be prepared." (14 CCR § 15168(c).) The first consideration is whether the activity proposed is covered by the PEIR. (*Id.*) If a later project is outside the scope of the program, then it is treated as a separate project and the PEIR may not be relied upon in further review. (*Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307.) The second consideration

is whether the “later activity would have effects that were not examined in the program EIR.” (CCR §§ 15168(c)(1).) A PEIR may only serve “to the extent that it contemplates and adequately analyzes the potential environmental impacts of the project.” (*Sierra Nevada Conservation v. County of El Dorado* ( “*El Dorado*”) (2012) 202 Cal.App.4th 1156). If the PEIR does not evaluate the environmental impacts of the project, a tiered EIR must be completed before the project is approved. (*Id.*) For these inquiries, the “fair argument test” applies. (*Sierra Club*, 6 Cal.App.4th 1307, 1318; *See also Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152, 1164 (“when a prior EIR has been prepared and certified for a program or plan, the question for a court reviewing an agency’s decision not to use a tiered EIR for a later project ‘is one of law, i.e., the sufficiency of the evidence to support a fair argument.’”))

Under the fair argument test, a new EIR must be prepared “whenever it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impact. (*Id.* at 1316 (quotations omitted).) When applying the fair argument test, “deference to the agency’s determination is not appropriate and its decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.” (*Sierra Club*, 6 Cal. App. 4th at 1312.) “[I]f there is substantial evidence in the record that the later project may arguably have a significant adverse effect on the environment which was not examined in the prior program EIR, doubts must be resolved in favor of environmental review and the agency must prepare a new tiered EIR, notwithstanding the existence of contrary evidence.” (*Sierra Club*, 6 Cal.App.4th at 1319.)

In *Friends of College of San Mateo Gardens* the California Supreme Court explained the differing analyses that apply when a project EIR was originally approved and changes are being made to the project, and when a tiered program EIR was originally prepared and a subsequent project is proposed consistent with the program or plan:

For project EIRs, of course, a subsequent or supplemental impact report is required in the event there are substantial changes to the project or its circumstances, or in the event of material new and previously unavailable information. (*Friends of Mammoth*, citing § 21166.) In contrast, when a tiered EIR has been prepared, review of a subsequent project proposal is more searching. **If the subsequent project is consistent with the program or plan for which the EIR was certified, then ‘CEQA requires a lead agency to prepare an initial study to determine if the later project may cause significant environmental effects not examined in the first tier EIR.’** (*Ibid.* citing Pub. Resources Code, § 21094, subds. (a), (c).) ‘If the subsequent project is not consistent with the program or plan, it is treated as a new project and must be fully analyzed in a project—or another tiered EIR if it may have a significant effect on the environment.’ (*Friends of Mammoth*, at pp. 528–529, 98 Cal.Rptr.2d 334.)

(*Friends of Coll. of San Mateo Gardens v. San Mateo County Cmty. Coll. Dist.* (“*San Mateo Gardens*”) (2016) 1 Cal.5th 937, 960.)

Here, the City prepared a program EIR in 2011 for the Downtown Plan Project.<sup>1</sup> As a result, CEQA requires the City to prepare an initial study to determine if the Project *may* cause significant environmental effects not examined in the PEIR. (Pub. Res. Code § 21094.) As discussed below, there is substantial evidence supporting a fair argument that the Project may result in significant environmental impacts that were not previously analyzed in the PEIR. Accordingly, an EIR must be prepared for the Project.

## **II. THE CITY CANNOT ISSUE AN ADDENDUM FOR THE PROJECT BECAUSE THE PROJECT WAS NOT ADDRESSED IN THE PROGRAM EIR.**

The City is wrong in concluding that the Project can be analyzed under CEQA Guidelines Section 15164 and 15162 because those sections are only applicable when a project has recently undergone CEQA review. As the California Supreme Court explained in *San Mateo Gardens*, subsequent CEQA review provisions “can apply only if the project has been subject to initial review; they can have no application if the agency has proposed a new project that has not previously been subject to review.” (*Friends of Coll. of San Mateo Gardens v. San Mateo County Cmty. Coll. Dist.* (“*San Mateo Gardens*”) (2016) 1 Cal.5th 937, 950.) Agencies can prepare addendums for project modifications or revisions and avoid further environmental review, but only if the project has a previously certified EIR or negative declaration. (*See Save our Heritage v. City of San Diego* (2018) 28 Cal.App.5th 656, 667.)

If the proposed Project had already been addressed in the 2011 PEIR, the standard for determining whether further review is required would be governed by 14 CCR §15162 and Pub. Res. C. §21166, and an addendum could potentially be allowed under § 15164. These sections are inapplicable here, however, because the proposed Project has never undergone CEQA review. Neither an EIR nor a negative declaration was prepared for the Project, and the Project was never mentioned or discussed in the PEIR. As a result, the City cannot rely on the subsequent review provisions of CEQA Guidelines sections 15162 or 15164.

## **III. THERE IS SUBSTANTIAL EVIDENCE THAT THE PROJECT WILL HAVE SIGNIFICANT ENVIRONMENTAL IMPACT.**

### **A. There is Substantial Evidence that the Project may have a Significant Impact on Indoor Air Quality.**

Formaldehyde is a known human carcinogen. Many composite wood products typically used in residential and office building construction contain formaldehyde-based glues which off-gas formaldehyde over a very long time period. The primary source of formaldehyde indoors is

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<sup>1</sup> The 2011 PEIR states that it was “prepared in accordance with the provisions of the California Environmental Quality Act (CEQA) and Section 15168 of the CEQA Guidelines, which provides for the preparation of a PEIR ‘[i]n connection with issuance of rules, regulations, plans, or other general criteria to govern the conduct of a continuing program.’” (2011 PEIR, p. 1-1.)



composite wood products manufactured with urea-formaldehyde resins, such as plywood, medium density fiberboard, and particle board. These materials are commonly used in residential and office building construction for flooring, cabinetry, baseboards, window shades, interior doors, and window and door trims.

Given the prevalence of materials with formaldehyde-based resins that will be used in constructing the Project and the residential buildings, there is a significant likelihood that the Project's emissions of formaldehyde to air will result in very significant cancer risks to future residents and workers in the buildings. Even if the materials used within the buildings comply with the Airborne Toxic Control Measures (ATCM) of the California Air Resources Board (CARB), significant emissions of formaldehyde may still occur.

The residential buildings will have significant impacts on air quality and health risks by emitting cancer-causing levels of formaldehyde into the air that will expose workers and residents to cancer risks well in excess of SCAQMD's threshold of significance. A 2018 study by Chan et al. (attached as Exhibit A) measured formaldehyde levels in new structures constructed after the 2009 CARB rules went into effect. Even though new buildings conforming to CARB's ATCM had a 30% lower median indoor formaldehyde concentration and cancer risk than buildings built prior to the enactment of the ATCM, the levels of formaldehyde will still pose cancer risks greater than 100 in a million, well above the 10 in one million significance threshold established by the SCAQMD.

Based on expert comments submitted on other similar projects and assuming all the Project's and the residential building materials are compliant with the California Air Resources Board's formaldehyde airborne toxics control measure, future residents and employees using the Project will be exposed to a cancer risk from formaldehyde greater than the SCAQMD's CEQA significance threshold for airborne cancer risk of 10 per million.

The City has a duty to investigate issues relating to a project's potential environmental impacts. (*See County Sanitation Dist. No. 2 v. County of Kern*, (2005) 127 Cal.App.4th 1544, 1597–98. [“[U]nder CEQA, the lead agency bears a burden to investigate potential environmental impacts.”].) “If the local agency has failed to study an area of possible environmental impact, a fair argument may be based on the limited facts in the record. Deficiencies in the record may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences.” (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.) Given the lack of study conducted by the City on the health risks posed by emissions of formaldehyde from new residential projects, a fair argument exists that such emissions from the Project may pose significant health risks. As a result, the City must prepare an EIR to analyze and mitigate this potentially significant impact.

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**B. There is Substantial Evidence that the Project may have a Significant Impact on Biological Resources as a Result of Window Collisions.**

The Project as planned would contribute to an ongoing national catastrophe in bird collision deaths caused by poorly planned incorporation of windows into building designs. Constructing 8- and 23-story buildings, as the Project proposes to do, will not only take aerial habitat from birds, but it will also interfere with the movement of birds in the region and it will result in large numbers of annual window collision fatalities.

Window collisions are often characterized as either the second or third largest source or anthropogenic-caused bird mortality. The numbers behind these characterizations are often attributed to Klem's (1990)<sup>2</sup> and Dunn's (1993)<sup>3</sup> estimates of about 100 million to 1 billion bird fatalities in the USA, or more recently Loss et al.'s (2014)<sup>4</sup> estimate of 365-988 million bird fatalities in the USA or Calvert et al.'s (2013)<sup>5</sup> and Machtans et al.'s (2013)<sup>6</sup> estimates of 22.4 million and 25 million bird fatalities in Canada, respectively.

Gelb and Delacretaz (2009)<sup>7</sup> recorded 5,400 bird fatalities under buildings in New York City, based on a decade of monitoring only during migration periods, and some of the high-rises were associated with hundreds of fatalities each. Klem et al. (2009)<sup>8</sup> monitored 73 building façades in New York City during 114 days of two migratory periods, tallying 549 collision victims, nearly 5 birds per day. Borden et al. (2010)<sup>9</sup> surveyed a 1.8 km route 3 times per week

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<sup>2</sup> Klem, D., Jr. 1990. Collisions between birds and windows: mortality and prevention. *Journal of Field Ornithology* 61:120-128.

<sup>3</sup> Dunn, E. H. 1993. Bird mortality from striking residential windows in winter. *Journal of Field Ornithology* 64:302-309.

<sup>4</sup> Loss, S. R., T. Will, S. S. Loss, and P. P. Marra. 2014. Bird-building collisions in the United States: Estimates of annual mortality and species vulnerability. *The Condor: Ornithological Applications* 116:8-23. DOI: 10.1650/CONDOR-13-090.1

<sup>5</sup> Calvert, A. M., C. A. Bishop, R. D. Elliot, E. A. Krebs, T. M. Kydd, C. S. Machtans, and G. J. Robertson. 2013. A synthesis of human-related avian mortality in Canada. *Avian Conservation and Ecology* 8(2): 11. <http://dx.doi.org/10.5751/ACE-00581-080211>

<sup>6</sup> Machtans, C. S., C. H. R. Wedeles, and E. M. Bayne. 2013. A first estimate for Canada of the number of birds killed by colliding with building windows. *Avian Conservation and Ecology* 8(2):6. <http://dx.doi.org/10.5751/ACE-00568-080206>

<sup>7</sup> Gelb, Y. and N. Delacretaz. 2009. Windows and vegetation: Primary factors in Manhattan bird collisions. *Northeastern Naturalist* 16:455-470.

<sup>8</sup> Klem, D., Jr. 2009. Preventing bird-window collisions. *The Wilson Journal of Ornithology* 121:314-321.

<sup>9</sup> Borden, W. C., O. M. Lockhart, A. W. Jones, and M. S. Lyons. 2010. Seasonal, taxonomic, and local habitat components of bird-window collisions on an urban university campus in Cleveland, OH. *Ohio Journal of Science* 110(3):44-52.

during 12-month period and found 271 bird fatalities of 50 species. Parkins et al. (2015)<sup>10</sup> found 35 bird fatalities of 16 species within only 45 days of monitoring under 4 building façades. In San Francisco, Kahle et al. (2016)<sup>11</sup> found 355 collision victims within 1,762 days under a 5-story building. Ocampo-Peñuela et al. (2016)<sup>12</sup> searched the perimeters of 6 buildings on a university campus, finding 86 fatalities after 63 days of surveys. One of these buildings produced 61 of the 86 fatalities, and another building with collision-deterrent glass caused only 2 of the fatalities.

Here, there is ample evidence to support a fair argument that the Project will result in many collision fatalities of birds, and that this may result in a significant impact. Yet neither the 2011 PEIR nor the Addendum make any attempt to analyze this potentially significant impact. An EIR is required to fully analyze and mitigate this impact.

#### **IV. THE CITY MUST PREPARE AN EIR BECAUSE THE 2011 PROGRAM EIR ADMITS SIGNIFICANT AND UNAVAILABLE ENVIRONMENTAL IMPACTS.**

An EIR must be prepared for the Project because the 2011 PEIR determined that the Downtown Plan would cause significant and unavoidable impacts on aesthetics, air quality, cultural resources, greenhouse gases, noise, population and housing, public services, transportation and traffic, and utilities and service systems. (Addendum, p. 8.)

In the case of *Communities for a Better Environment v. Cal. Resources Agency* (2002) 103 Cal.App.4th 98, 122-125, the court of appeal held that when a “first tier” EIR admits a significant, unavoidable environmental impact, then the agency must prepare second tier EIRs for later projects to ensure that those unmitigated impacts are “mitigated or avoided.” (*Id.* citing CEQA Guidelines §15152(f)) The court reasoned that the unmitigated impacts was not “adequately addressed” in the first tier EIR since it was not “mitigated or avoided.” (*Id.*) Thus, significant effects disclosed in first tier EIRs will trigger second tier EIRs unless such effects have been “adequately addressed,” in a way that ensures the effects will be “mitigated or avoided.” (*Id.*) Such a second tier EIR is required, even if the impact still cannot be fully mitigated and a statement of overriding considerations will be required. The court explained, “The requirement of a statement of overriding considerations is central to CEQA’s role as a public accountability statute; it requires public officials, in approving environmental detrimental

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<sup>10</sup> Parkins, K. L., S. B. Elbin, and E. Barnes. 2015. Light, Glass, and Bird–building Collisions in an Urban Park. *Northeastern Naturalist* 22:84-94.

<sup>11</sup> Kahle, L. Q., M. E. Flannery, and J. P. Dumbacher. 2016. Bird-window collisions at a west-coast urban park museum: analyses of bird biology and window attributes from Golden Gate Park, San Francisco. *PLoS ONE* 11(1):e144600 DOI 10.1371/journal.pone.0144600.

<sup>12</sup> Ocampo-Peñuela, N., R. S. Winton, C. J. Wu, E. Zambello, T. W. Wittig and N. L. Cagle . 2016. Patterns of bird-window collisions inform mitigation on a university campus. *PeerJ* 4:e1652;DOI10.7717/peerj.1652

projects, to justify their decisions based on counterbalancing social, economic or other benefits, and to point to substantial evidence in support.” (*Id.* at 124-125)

Since the 2011 PEIR admitted numerous significant, unmitigated impacts, a second tier EIR is not required to determine if mitigation measure can now be imposed to reduce or eliminate those impacts. If the impacts still remain significant and unavoidable, a statement of overriding considerations will be required.

### **CONCLUSION**

For the above reasons, the City must prepare an EIR to analyze and mitigate the impacts of the Project that were not previously analyzed in the 2011 PEIR. The County may not on an addendum.

Sincerely,

A handwritten signature in blue ink, appearing to be 'R. Davis', with a long horizontal flourish extending to the right.

Rebecca L. Davis

# EXHIBIT A

# Indoor Air Quality in New California Homes with Mechanical Ventilation

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## SUMMARY

The Healthy Efficient New Gas Homes (HENGH) study measured indoor air quality and mechanical ventilation use in 70 new California homes. This paper summarizes preliminary results collected from 42 homes. In addition to measurements of formaldehyde, nitrogen dioxide (NO<sub>2</sub>), and PM<sub>2.5</sub> that are discussed here, HENGH also monitored other indoor environmental parameters (e.g., CO<sub>2</sub>) and indoor activities (e.g., cooking, fan use) using sensors and occupant logs. Each home was monitored for one week. Diagnostic tests were performed to characterize building envelope and duct leakage, and mechanical system airflow. Comparisons of indoor formaldehyde, NO<sub>2</sub>, and PM<sub>2.5</sub> with a prior California New Home Study (CNHS) (Offermann, 2009) suggest that contaminant levels are lower than measured from about 10 years ago. The role of mechanical ventilation on indoor contaminant levels will be evaluated.

## KEYWORDS

Formaldehyde; nitrogen dioxide; particles; home performance; field study

## 1 INTRODUCTION

The HENGH field study (2016–2018) aimed to measure indoor air quality in 70 new California homes that have mechanical ventilation. Eligible houses were built in 2011 or later; had an operable whole-dwelling mechanical ventilation system; used natural gas for space heating, water heating, and/or cooking; and had no smoking in the home. Study participants were asked to rely on mechanical ventilation and avoid window use during the one-week monitoring period. All homes had a venting kitchen range hood or over the range microwave and bathroom exhaust fans. This paper presents summary results of formaldehyde, NO<sub>2</sub>, and PM<sub>2.5</sub> measurements in 42 homes. The full dataset is expected to be available in summer 2018.

## 2 METHODS

Integrated one-week concentrations of formaldehyde and NO<sub>x</sub> were measured using SKC UMEx-100 and Ogawa passive samplers. Formaldehyde samplers were deployed in the main living space, master bedroom, and outdoors. PM<sub>2.5</sub> were measured using a pair of photometers (ES-642/BT-645, MetOne Instruments) indoor in the main living space and outdoors. PM<sub>2.5</sub> filter samples were collected using a co-located pDR-1500 (ThermoFisher) in a subset of the homes and time-resolved photometer data were adjusted using the gravimetric measurements. Results are compared with a prior field study CNHS (2007–2008) (Offermann, 2009) that monitored for contaminant concentrations over a 24-hour period in 108 homes built between 2002 and 2004, including a subset of 26 homes with whole-dwelling mechanical ventilation.

## 3 RESULTS

Figure 1 compares the indoor concentrations of formaldehyde, NO<sub>2</sub>, and PM<sub>2.5</sub> measured by the two studies. Results of HENGH are one-week averaged concentrations, whereas CHNS are 24-hour averages. HENGH measured lower indoor concentrations of formaldehyde and PM<sub>2.5</sub>, compared to CNHS. For NO<sub>2</sub>, the indoor concentrations measured by the two studies

are similar. Summary statistics of indoor and outdoor contaminant concentrations (mean and median concentrations; N=number of homes with available data) are presented in Table 1.

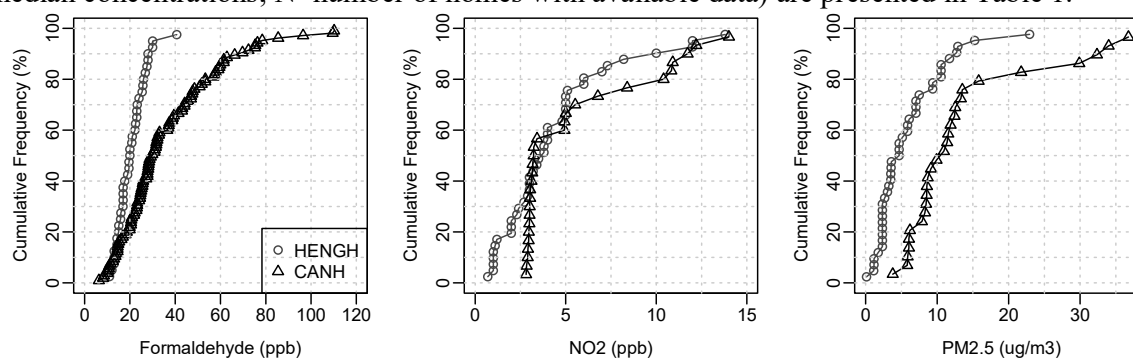


Figure 1. Comparisons of indoor contaminant concentrations measured by two studies.

Table 1. Summary statistics of indoor and outdoor contaminant concentrations.

	HENGH - Indoor			CNHS - Indoor			HENGH - Outdoor			CNHS - Outdoor		
	N	Median	Mean	N	Median	Mean	N	Median	Mean	N	Median	Mean
Formaldehyde (ppb)	39	20.0	20.6	104	29.5	36.3	38	2.0	2.0	43	1.8	2.8
NO <sub>2</sub> (ppb)	40	3.7	4.4	29	3.2	5.4	40	3.0	3.1	11	3.1	3.5
PM <sub>2.5</sub> (ug/m <sup>3</sup> )	41	4.7	5.8	28	10.4	13.3	42	5.9	7.7	11	8.7	7.9

#### 4 DISCUSSION

The lower formaldehyde concentrations measured by HENGH in comparison to CNHS may be attributable to California's regulation to limit formaldehyde emissions from composite wood products that came into effect between the two studies. Gas cooking is a significant source of indoor NO<sub>2</sub> (Mullen et al., 2016). Even though NO<sub>2</sub> concentrations measured by HENGH are similar to levels found in CNHS, the two studies differed in that HENGH homes all use gas for cooking, whereas almost all homes (98%) from the prior study used electric ranges. More analysis is needed to determine the effectiveness of source control, such as range hood use during cooking, on indoor concentrations of cooking emissions such as NO<sub>2</sub> and PM<sub>2.5</sub>. Lower PM<sub>2.5</sub> indoors measured by HENGH compared to CNHS may be explained from a combination of lower outdoor PM<sub>2.5</sub> levels, reduced particle penetration due to tighter building envelopes (Stephens and Siegel, 2012) combined with exhaust ventilation, and use of medium efficiency air filter (MERV 11 or better) in some HENGH homes. Further analysis of the data will evaluate the role of mechanical ventilation, including local exhaust and whole-dwelling ventilation system, on measured indoor contaminant levels.

#### 5 CONCLUSIONS

New California homes now have lower indoor formaldehyde levels than previously measured, likely as a result of California's formaldehyde emission standards. Indoor concentrations of NO<sub>2</sub> and PM<sub>2.5</sub> measured are also low compared to a prior study of new homes in California.

#### ACKNOWLEDGEMENT

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#### 6 REFERENCES

Mullen NA et al. 2016 *Indoor Air* 26(2):231–245.

Offermann FJ. 2009. California Air Resource Board and California Energy Commission  
Report CEC-500-2009-085.  
Stephens B, Siegel JA. 2012 *Indoor Air* 22(6):501–513.