Office of the Los Angeles City Attorney
Hydee Feldstein Soto

REPORT NO. R25-0315
June 18, 2025

REPORT RE:

COURT-ISSUED WRIT COMMANDING THE CITY TO VACATE, SET ASIDE, OR REVOKE ITS FEBRUARY 7, 2018 ACTION ADOPTING THE MITIGATED NEGATIVE DECLARATION FOR THE PROJECT AT 12531-12575 WEST BEATRICE AND 5410-5454 SOUTH JANDY PLACE
(COUNCIL DISTRICT 11)

The Honorable City Council
of the City of Los Angeles
Room 395, City Hall
200 North Spring Street
Los Angeles, California 90012

Council File No. 17-1041

Honorable Members:

This Office presents for your consideration and action a court-issued Writ of Mandate (Writ) and court judgment (Judgment) issued in *Karney Management Company v. City of Los Angeles*, Los Angeles Superior Court Case No. BS172677 (Consolidated with Case No. 18STCP03226) (Litigation). The Writ and Judgment are attached hereto as Exhibits 1 and 2, respectively.

The Writ and Judgment require the City Council to "vacate, set aside or revoke February 7, 2018 Action" adopting the Initial Study/Mitigated Negative Declaration ("IS/MND") for the creative office campus project ("Project") in the Playa Vista neighborhood located at 12531-12575 West Beatrice and 5410-5454 South Jandy Place.

Background

On February 7, 2018, City Council determined, based on its independent judgment and after consideration of the whole of the administrative record, the Project was assessed pursuant to the California Environmental Quality Act in Mitigated Negative Declaration No. ENV-2016-1209-MND (MND). (Council File No. 17-1041.) At the same meeting, Council denied the appeal of the conditional use permit and site plan review and sustained the decision of the City Planning Commission (CPC) approving Case No. CPC-2016-1208-CU-SPR, subject to conditions of approval as modified by the Planning and Land Use Management Committee (PLUM) on January 30, 2018.

On November 19, 2018, the CPC denied a separate appeal of the parcel map exemption (Lot Line Adjustment) (Case No. AA-2017-397-PMEX) and found that the Project was assessed in the MND, adopted February 7, 2018 by the City Council, and pursuant to California Environmental Quality Act (CEQA) Guidelines, Sections 15162 and 15164, no subsequent Environmental Impact Report (EIR), negative declaration, or addendum was required for approval of the Project.

Subsequently, two petitions for writ of mandate were filed and consolidated challenging the City's approval of the Project, on the grounds that that the City's MND was inadequate under CEQA (*Karney Management Co. v. City of Los Angeles*, Los Angeles Superior Court Case No. BS172677, consolidated with Case No. 18STCP03226). On January 21, 2020, the Honorable Judge Torribio of the Los Angeles Superior Court entered a judgment granting the petition for writ of mandate as to the CEQA cause of action. The Court found that the MND was inadequate as to aesthetics, noise and traffic under the fair argument standard. The judgment vacated the City's approval of the MND and required that an EIR be prepared for the Project. However, the judgment did not invalidate the underlying land use entitlements, which remain valid.

Subsequent CEQA Analysis

In the following years, the City prepared an EIR for the Project. On March 13, 2024, the CPC certified the EIR, which includes the Draft EIR, No. ENV-2020-3533-EIR (SCH No. 2020120119) dated January 2024, the Final EIR dated February 2025, the Erratum dated February 2025, as well as the whole of the administrative record; and at the same time adopted the related CEQA findings, a Statement of Overriding Considerations and a Mitigation Monitoring Program (collectively, New Beatrice West Project EIR).

The City Council will need to separately consider an appeal brought by the Supporters Alliance for Environmental Responsibility (not the Petitioner in the underlying litigation), which challenges the adequacy of the New Beatrice West Project EIR (Case No. ENV-2020-3533-EIR). (Council File No. 17-1041-S1.)

If the City Council, after its review of the entire record related to the New Beatrice West Project EIR, determines the CEQA appeal is without merit, including for the reasons set forth in any City Planning Department transmittals found in the Council File, the City Council may, based on its independent judgment: certify the EIR, adopt the EIR findings, the Statement of Overriding Considerations and the Mitigation Monitoring Program. This action may be taken on the same agenda as City Council's action on the Writ and Judgment.

Recommendations

We recommend that City Council act in a manner consistent with the Writ and Judgment. The City Council may comply with the Writ and Judgment by placing on its agenda and taking the following proposed action to: vacate, set aside or revoke City Council's February 7, 2018 action in Council File No. 17-1041, for Planning Case No. ENV-2016-1209-MND, that sustained the City Planning Commission's adoption of the Mitigated Negative Declaration for the project at 12531-12575 West Beatrice and 5410-5454 South Jandy Place. Consistent with Writ, the proposed action would allow the underlying land use entitlements associated with the Project to remain in place.

If you have any questions regarding this matter, please contact Deputy City Attorney Parissh A. Knox at (213) 978-8191. A member of this Office will be present when you consider this matter to answer questions you may have.

Sincerely,

HYDEE FELDSTEIN SOTO, City Attorney

By 

JOHN W. HEATH
Chief Assistant City Attorney

JWH:PAK:cp
Attachments

EXHIBIT 1

FILED
Superior Court of California
County of Los Angeles

JAN 06 2020

Sherri R. Carter, Executive Officer/Clerk
By _____ Deputy
ANA PEREZ

SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

KARNEY MANAGEMENT COMPANY, a California Corporation,

Petitioner,

v.

CITY OF LOS ANGELES, a municipal corporation; CITY COUNCIL OF THE CITY OF LOS ANGELES, the governing body of the City of Los Angeles; and DOES 1 through 25,

Respondents.

N.S.B. ASSOCIATES, INC., a California Corporation; FNL/BEATRICE PARTNERS, LLC, a California limited liability company; SLG PARTNERS, LLC, a California limited liability company, and ROES 1 through 25, inclusive,

Real Parties in Interest.

Case No.: BS172677
(Consolidated with Case No. 18STCP03226)

[~~PROPOSED~~] PEREMPTORY WRIT OF MANDATE

Dept.: G
Judge: Hon. John A. Torribio

DOWNEY BRAND LLP

Judgment having been entered in this proceeding, ordering that a peremptory writ of mandate be issued from this Court, IT IS HEREBY ORDERED that:

1. Immediately upon service of this writ, Respondents CITY OF LOS ANGELES and CITY OF LOS ANGELES CITY COUNCIL shall:

a) Vacate, set aside or revoke the February 7, 2018, official action of the City of Los Angeles City Council adopting the Initial Study/Mitigated Negative Declaration ("IS/MND") for the creative office campus project in the Playa Vista neighborhood of the City of Los Angeles ("Project") proposed by Real Parties in Interest N.S.B. ASSOCIATES, INC., SLG PARTNERS, LLC, and FNL/BEATRICE PARTNERS, LLC ("Real Parties").

b) Comply with this Court's September 3, 2019 Ruling Granting Petition for Writ of Mandate and with the California Environmental Quality Act ("CEQA") in connection with any further actions relating to the Project;

c) Complete and approve, prior to any further action on the Project, an adequate Environmental Impact Report in full compliance with CEQA, including among other things, addressing the traffic, noise and aesthetic impacts of the Project;

d) File and serve a return to the writ of mandate detailing what actions have been taken to comply with the Writ, Judgment and CEQA prior to any further action on the Project; and

e) Suspend all activities related to the Project that could result in any change or alteration to the physical environment, pending compliance with the Writ, Judgment, and CEQA.

2. Real Parties shall suspend all activities related to the Project that could result in any change or alteration to the physical environment, pending compliance with the Writ, Judgment, and CEQA.

3. The Court finds severability in accordance with Public Resources Code section 21168.9.

DOWNEY BRAND LLP

4. The Court retains jurisdiction pursuant to Public Resources Code section 21168.9 to enforce this peremptory writ of mandate. This Court further retains jurisdiction over Respondents' proceedings by way of a return to the peremptory writ until the Court has determined that Respondents have fully complied with all of the terms of the peremptory writ of mandate, and to take such further actions as may be appropriate consistent with the Court's ruling.

5. The Court retains jurisdiction to evaluate the appropriateness and amount of an award of attorneys' fees, if any, pursuant to Code of Civil Procedure section 1021.5.

6. Under Public Resources Code section 21168.9(c), the Court specifically does not direct Respondents to exercise their lawful discretion in any particular way.

7. Respondents must file an initial return to this writ no later than six months, following notice to Petitioner and a reasonable time for filing objections with this Court.

DATED: JAN 06 2020, ~~2019~~

HONORABLE JOHN A. TORRIBIO
JUDGE OF THE SUPERIOR COURT

DATED: JAN 06 2020, ~~2019~~

SUPERIOR COURT OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

CLERK OF THE COURT

DOWNEY BRAND LLP

EXHIBIT 2

FILED
Superior Court of California
County of Los Angeles
01/06/2020
Sherri R. Carter, Executive Officer / Clerk of Court
By: _____ Deputy
Ana Perez

SUPERIOR COURT OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

KARNEY MANAGEMENT COMPANY; a California Corporation;

Petitioner,

vs.

CITY OF LOS ANGELES, a municipal corporation; CITY COUNCIL OF THE CITY OF LOS ANGELES, the governing body of the City of Los Angeles; and DOES 1 through 25, inclusive,

Respondents,

N.S.B. ASSOCIATES, INC.; a California Corporation; FNL/BEATRICE PARTNERS, LLC, a California limited liability company; SLG PARTNERS, LLC, a California limited liability company, and ROES 1 through 25, inclusive,

Real Parties In Interest.

Case No.: BS172677
(Consolidated with Case No. 18STCP03226)

~~[PROPOSED]~~ **JUDGMENT**

Dept.: G
Judge: Hon. John A. Torribio

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On May 20 and July 10, 2019, these two consolidated matters—the Petition for Writ of Mandate filed on March 5, 2018 (Case No. BS172677, "Karney I"), and the Petition for Writ of Mandate filed on December 17, 2018 (Case No. 18STP03226, "Karney II")—were heard in Department G of the Los Angeles County Superior Court, the Honorable John A. Torribio presiding. Kristina Kropp of Luna & Glushon appeared on behalf of Petitioner KARNEY MANAGEMENT COMPANY ("Petitioner"). Clare Bronowski of Glaser Weil Fink Howard Avchen & Shapiro LLP appeared on behalf of Real Parties in Interest N.S.B. ASSOCIATES, INC., SLG PARTNERS, LLC, and FNL/BEATRICE PARTNERS, LLC (collectively "Real Parties in Interest"). Donald Sobelman of Downey Brand LLP and Parissh Knox, Deputy City Attorney for City of Los Angeles, appeared on behalf of Respondents CITY OF LOS ANGELES and CITY COUNCIL OF THE CITY OF LOS ANGELES (collectively "Respondents").

After considering the administrative record, all pleadings on file in this action, the initial trial briefs and supplemental trial briefs submitted and oral arguments made by counsel, and for the reasons set forth in the Court's Ruling, dated September 3, 2019, a copy of which is attached as **Exhibit A** hereto and incorporated in full by this reference,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. Petitioner's Petition for Writ of Mandate in Karney I is GRANTED as to the 1st cause of action with respect to Respondents' non-compliance with the California Environmental Quality Act in approving Real Party in Interests' proposed office building on the corner of West Beatrice Street and South Jandy Place in the Playa Vista neighborhood of the City ("Project").

2. Petitioner's Petition for Writ of Mandate in Karney I is DENIED as to the 2nd – 3rd causes of action.

3. Final judgment is entered in favor of Petitioners in Karney I.

4. Petitioner's Petition for Writ of Mandate is DENIED and final judgment is entered in favor of Respondents and Real Parties in Interest in Karney II.

5. A peremptory writ of mandate shall issue under the seal of this Court commanding Respondents, including all agencies, departments, subdivisions, officers,

employees, agents, and all others acting on Respondents' behalf, in concert with Respondents, or pursuant to Respondents' authority, within the time specified for a return to the writ, to:

a. Vacate, set aside or revoke the February 7, 2018 official action of the City of Los Angeles City Council adopting the Initial Study/Mitigated Negative Declaration ("IS/MND") for the Project.

b. Comply with this Court's September 3, 2019 Ruling Granting Petition for Writ of Mandate and with the California Environmental Quality Act ("CEQA") in connection with any further actions relating to the Project;

c. Complete and approve, prior to any further action on the Project, an adequate Environmental Impact Report in full compliance with CEQA, including among other things, addressing the traffic, noise and aesthetic impacts of the Project;

d. File and serve a return to the writ of mandate detailing what actions have been taken to comply with the Writ, Judgment and CEQA prior to any further action on the Project; and

e. Suspend all activities related to the Project that could result in any change or alteration to the physical environment pending compliance with CEQA and this Court's Ruling.

6. The Court finds severability in accordance with Public Resources Code section 21168.9.

7. The Court retains jurisdiction pursuant to Public Resources Code section 21168.9 to enforce the peremptory writ of mandate and judgment issued in Karney I. This Court further retains jurisdiction over Respondents' proceedings by way of a return to the peremptory writ until the Court has determined that Respondents have fully complied with all of the terms of the peremptory writ of mandate issued pursuant to this judgment in Karney I, and to take such further actions as may be appropriate consistent with the Court's ruling.

8. The Court retains jurisdiction to evaluate the appropriateness and amount of an award of attorneys' fees, if any, pursuant to Code of Civil Procedure section 1021.5.

9. Under Public Resources Code section 21168.9(c), the Court specifically does not direct Respondents to exercise their lawful discretion in any particular way.

10. This judgment constitutes the final judgment of the Court in this action for all purposes.

Dated: 01/06/2020

HONORABLE JOHN A. TORRIBIO
JUDGE OF THE SUPERIOR COURT

John A. Torribio / judge

EXHIBIT A

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

SOUTHEAST DISTRICT/NORWALK COURT

FILED
Superior Court of California
County of Los Angeles
SEP 03 2019
Sherri R. Carter, Executive Officer/Clerk
By ANA PEREZ Deputy

KARNEY MANAGEMENT COMPANY, PETITIONER, vs. CITY OF LOS ANGELES, ET AL RESPONDENT	Case No.: BS172677 AND 18STCP03226 ORDER

After the Court issued its original tentative, City and Real Party-in-Interest asked for supplemental briefing. The Court allowed same. The court has read the supplemental briefs and considered the oral arguments, and the original tentative stands:

Petitioner Karney Management Company's petition for writ of mandate in Karney I is GRANTED as to the 1st cause of action, and DENIED as to the 2nd – 3rd causes of action.

Petitioner's petition for writ of mandate in Karney II is DENIED.

Moving Party to give NOTICE.

Petitioner Karney Management Company seeks a peremptory writ of mandate, challenging City of Los Angeles and City Council of the City of Los Angeles's approval of an office building in the Playa Vista neighborhood of the city.

These are two consolidated matters: the Petition for Writ of Mandate ("Karney I") filed on 3/5/18 (Case No. BS172677), and the Petition for Writ of Mandate ("Karney II") filed on 12/17/18 (Case No. 18STP03226).

JUDICIAL NOTICE is taken of Petitioner and Respondent's exhibits. (Ev. Code 452-453.)

Project Description

The proposed 135-foot high office building is located on the corner of West Beatrice Street and South Jandy Place in the Playa Vista neighborhood of the city.

Writ of Mandamus Standard

Where a writ is issued for the purpose of inquiring into the validity of any final administrative order or decision made as the result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior tribunal, corporation, board, or officer, the case shall be heard by the court sitting without a jury. (CCP 1094.5(a).) The inquiry in such a case shall extend to the questions whether the respondent has proceeded without, or in excess of, jurisdiction; whether there was a fair trial; and whether there was any prejudicial abuse of discretion. Abuse of discretion is established if the respondent has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence. (CCP 1094.5(b).) Where it is claimed that the findings are not supported by the evidence, in cases in which the court is authorized by law to exercise its independent judgment on the evidence, abuse of discretion is established if the court determines that the findings are not supported by the weight of the evidence. In all other cases, abuse of discretion is established if the court determines that the findings are not supported by substantial evidence in the light of the whole record. (CCP 1094.5(c).)

KARNEY I

The Petition for Writ of Mandate ("Karney I"), filed on 3/5/18, asserts causes of action for:

1. Violation of CEQA – Inadequate MND
2. CUP Findings are Not Supported by Substantial Evidence
3. Violations of State and City laws

1st Cause of Action: CEQA Violation

The 1st Cause of Action alleges Violation of CEQA for an Inadequate MND. Petitioner contends that the Project will have significant environmental impacts on: Traffic, Noise, Aesthetics, Hazards, Air Quality, and Cumulative Impacts, and that the MND was issued in error.

MND Standard: A public agency must prepare an EIR whenever substantial evidence supports a "fair argument" that a proposed project "may" have a significant effect on the environment. (Pub. Res. Code 21100, 21151; 14 CCR 15002(f)(1), (f)(2); No Oil, Inc. v. City of Los Angeles (1974) 13 Cal. 3d 68, 75.) The fair argument standard is a "low threshold" test. (No Oil, supra, 13 Cal.3d at 84.)

The purpose of the environmental assessment and initial study is to "enable an applicant or lead agency to modify a project, mitigating adverse impacts before an EIR is prepared, thereby enabling the project to qualify for a negative declaration." (14 CCR 15063(c)(2).) A negative declaration shall be prepared if there is no substantial evidence in light of the whole record before the lead agency that a project will have a significant effect on the environment. (Pub.

Res. Code 21080(c); San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus (1996) 42 Cal. App. 4th 608 617.)

"Mitigated negative declaration" means a negative declaration prepared for a project when the initial study has identified potentially significant effects on the environment, but (1) revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would occur, and (2) there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment. (Pub. Res. Code 21064.5.)

Traffic Impacts

On 4/20/17, the Planning Department determined that although the Project could have a significant effect on the environment, only an MND was required. (AR 181-185.)

The responses to comments were filed on 6/2/17 and 6/26/17. (AR 979-1061.)

On 6/6/17 and 7/27/17, a Hearing Officer of the Planning Department and the City Planning Commission held public hearings and took testimony from the public. (AR 1172 and 2328-2406.) The Planning Department recommended, and the City Planning Commission approved, the entitlements and MND. (AR 1092 and 2328-2406.)

The MND states that a "significant impact would occur if the proposed project would increase traffic above the existing traffic load of the street system" (AR 285), and the "proposed project would generate... a net increase of 1,946 daily trips over existing conditions" – "973 inbound trips and 973 outbound trips" (AR 286, 791.) With mitigation, the "impacts related to traffic circulation would be less than significant." (AR 289.)

Petitioner contends the MND ignores the fact that the Project will substantially increase hazards due to placement of two driveways and 973 new vehicle trips along Jandy Place, a narrow, 400-foot long cul-de-sac street, and which intersects with another small cul-de-sac street. (AR 2346, 2354, 2356, 2358, 2362-63, 2366, 4031, 4034, 4036, and 4255-56.)

Personal observations of residents on nontechnical subjects such as traffic/transportation qualify as substantial evidence in support of a fair agreement. (Taxpayers for accountable School Bond Spending v. San Diego Unified School Dist. (2013) 215 Cal.App.4th 1013, 1054.)

On 7/27/17, members of the public testified at the City Planning Commission Meeting. Travis Murphy is a facilities manager for TOMS Shoes LLC, a direct neighbor of the proposed project. Murphy testified, "the main concern for us is just the amount of traffic. So there's already a parking problem in our neighborhood. And there's only two ways out of this neighborhood. And now that we're going to bring 800 plus cars in it's... going to be a big problem... that's one of the biggest concerns is... the traffic issue." (AR 2346.) Kristina Kropp, representing Karney Management, testified, "what you have here is a huge 155-foot building and all the associated parking, and landscaping, and hardscape, and all the tenants and workers that are going to come in here, and all of it is

going on two small dead-end streets... there's no other way out of this little development except going down Jandy and Beatrice. And so staff's comment that traffic impacts are mere... assertions by neighbors that are not backed up with any analysis is completely incorrect." Finally, Allen Mesropy of Digital Doman on 12641 Beatrice Street testified, "traffic in this... cul-de-sac is... going to completely... gridlock. (AR 2362-3.)

Further, on 10/13/17, Coco Traffic Planners, Inc. reviewed the traffic study prepared by Real Parties' traffic consultants. "The review aimed at verifying the accuracy of the study's conclusions." (AR 4350.) Coco concluded, "the traffic associated with the proposed office building will create a significant number of trips, impacting the intersections of Jandy Place with Beatrice Street... and Westlawn Avenue with Beatrice Street... These are small two lane streets, and intersections, where the project's traffic will create potentially hazardous conditions, associated with the type of traffic control, visibility, speed limit. The additional traffic associated with the next door building will worsen the hazardous conditions that already will result from the major increase in traffic." (AR 4353.)

On 11/20/17, Karney Management Company, through counsel, alerted City of the traffic problem: "The Project proposes half of its ingress/egress along Jandy Place, a 400-foot long cul-de-sac street which is already congested most of the day. Jandy Place already serve as the only access to several buildings... If the Project is constructed, Beatrice Street, which is also a congested cul-de-sac, would experience enormous spill-over, severely and negatively impacting adjacent uses' ability to access their business... the Project will create a substantially increased hazard at the intersection of Jandy and Beatrice, a condition that is neither addressed nor mitigated in the MND. (AR 4255-56.)

In opposition, City and Real Parties contend that the consultant's conclusion of "hazard" is without support. (RP Opposition, 10:1-2.) However, Coco adequately explains that the hazardous conditions are based on the "type of traffic control, visibility, and speed limit." (AR 4353.) Further, at AR 4355, Coco explains, "by using average rates, the proposed project shows a lower traffic generation than it would, if the correct procedure were employed." The methodology used by traffic study showed 311 vehicle trips in the morning, but the methodology proposed by Petitioner's consultant shows an increase of 330 trips in the morning, a higher volume. (AR 4355.)

The mitigation measures outlined by Respondents include restriping Jefferson Boulevard/Westlawn Avenue, Grosvenor Boulevard/Jefferson Boulevard, and Campus Center Drive-Centinela Avenue/Jefferson Boulevard. (AR 813.) However, the MND does not explain how restriping these other adjacent streets would mitigate the net increase of 1,946 daily trips along Beatrice Street and Jandy Place, both of which are streets that end in cul-de-sacs.

Accordingly, the court finds that Petitioner has produced substantial evidence in the record of a fair argument that the proposed project may have a significant effect on traffic impacts. (Pub. Res. Code 21100, 21151; 14 CCR 15002(f)(1), (f)(2); No Oil, Inc. v. City of Los Angeles (1974) 13 Cal. 3d 68, 75.) This is a "low threshold" test. (No Oil, supra, 13 Cal.3d at 84).

City and Real Party obscure the well settled CEQA principle that a public agency "must" prepare an EIR whenever "substantial evidence" supports a "fair argument" that a proposed project "may" have a significant effect on the environment (No Oil, Inc. v. City of Los Angeles (1974) 13 Cal. 3d 68, 75), and if such exists, contrary evidence is not adequate to support the decision to

dispense with the EIR. (Sierra Club v. County of Sonoma (1992) 6 Cal.App.4th 1307, 1316.)

Noise

The MND discloses that a "significant impact would occur if the proposed project would result in exposure of persons to or generation of noise levels in excess of standards established in the general plan, noise ordinance, of applicable standards of other agencies." (AR 272.) "Pursuant to LAMC 112.05, construction noise levels are exempt from the 75 dBA noise threshold if all technically feasible noise attenuation measures are implemented. The estimated construction-related noise levels associated with the proposed project would exceed the numerical threshold of 75 dBA at 50 feet from the noise source as outlined in the LAMC." (AR 275.)

"Sound editing studios, such as 740 Sound Design or Digital Domain [neighboring businesses to the Project], are particularly sensitive to increased noise levels that may interfere with business operations. Mitigation Measure XII-27 would ensure that construction noise would not interfere with 740 Sound Design or Digital Domain operations by requiring noise complaints to be quickly addressed and resolved... engine mufflers would reduce equipment noise levels by at least 3 dBA. The other mitigation measures... will assist in controlling construction noise. Therefore, impacts related to on-site construction noise would be less than significant with mitigation incorporated." (AR 275.)

However, Petitioner's noise consultant, Douglas Kim points out that the MND's mitigation measures fail to "quantitatively or qualitatively demonstrate the effectiveness of the proposed mitigation" to a less than significant level. (AR

4331-4333.) Further, "there are at least two additional noise-sensitive studio land uses... within 500 feet of the project site, and neither would be shielded from the project's construction activities... ATN Stages... and Vista Studios... ATN Stages would be projected to experience construction noise levels of 84.9 dBA... [and] Vista Studios would be projected to experience construction noise levels of 82.2 dBA." (AR 4333-34.)

Further, ground vibrations are considered impactful if they create a vibration of 72 VdB or greater. (AR 4338.) Petitioner has produced evidence that construction impacts will generate vibration levels up to 78 VdB, constituting a significant effect on the environment. (AR 4338.)

Accordingly, the court finds that Petitioner has produced substantial evidence in the record of a fair argument that the proposed project may have a significant effect on noise impacts.

In its supplemental papers, the City puts great emphasis on the project meeting or being under the thresholds for noise. This of no consequence because complying with thresholds does not automatically determine whether an effect is significant. (Protect the Historic Amador Waterways v. Amador Water Agency (2004) 116 Cal.App.4th 1109-1110.)

The City also argued that ATN Stages and Vista Studios came on site after the MND was prepared. Again, this is without merit. Information that is learned during the public comment period can and does require the lead agency to pursue an additional round of consultation and analysis. (Vineyard Area for Responsible Growth, Inc. v. City of Rancho Cordova (2007) 40 Cal.4th 412, 447-449.) City and Real Parties were made aware of the existence of ATN Stages

and Vista Studios in comments to the MND. (AR 4033-4034, 4338.) "ATN Stages would be projected to experience construction noise levels of 84.9 dBA... [and] Vista Studios would be projected to experience construction noise levels of 82.2 dBA." (AR 4333-34.)

Under CEQA, impacts identified during the comment period (prior to certification) must be incorporated into the environmental document. (Pub. Res. Code 21092.1.)

Aesthetics

A project's impact on the aesthetic character of a surrounding community is a proper subject of CEQA and comments about incomparability and inconsistencies with prevailing building heights and architectural styles can present a fair argument regarding aesthetic impacts. (Protect Niles v. City of Fremont (2018) 25 Cal.App.5th 1129, 1147.)

Petitioner presented evidence to the City that the Project's building's height (155 feet) is 4.6 times the average height of the other buildings in the neighborhood. (**See AR 3986-87**.)

In opposition, Respondents contend that the testimony of Petitioner's owners, managers, partners and tenants are "individualized" complaint, and not substantial evidence of the fair argument. However, case law is firm that the area residents' opinions based on direct observation may constitute substantial evidence in support of a fair argument. Personal observations of residents regarding building heights and architectural styles being inconsistent with the neighborhood may constitute substantial evidence of a fair argument regarding

aesthetic impacts. (Protect Niles v. City of Fremont (2018) 25 Cal.App.5th 1129, 1147.) No special expertise is required. (Friends of the College of San Mateo Gardens v. San Mateo County Community College Dist. (2017) 11 Cal.App.5th 596, 609.) An EIR may be mandated where neighborhood residents provide personal knowledge of aesthetic impact. (Citizens for Responsible & Open Government v. City of Grand Terrace (2008) 160 Cal.App.4th 1323, 1335.)

Here, the testimony of the very neighbors affected by the development constitutes substantial evidence of a fair argument of the Project's impact on aesthetics. (AR 4031, 4033, 4036, 2347.)

Hazards

Petitioner contends that because the Project is located within the City designated Methane Zone Map, it carries "a risk of methane intrusion emanating as a result of project activities." (Opening Brief, 15:11.)

However, the methane zone is an existing condition of the local environment rather than a physical impact of the Project on the environment. (See Cal. Building Industry Assn. v. Bay Area Air Quality Management Dist. (2015) 62 Cal.4th 369, 387.)

Further, Petitioner does not identify any substantial evidence in the record of a "risk of methane intrusion" as a result of construction activities. Therefore, the court finds that Petitioner failed to produce evidence of a fair argument that construction activities would create "methane intrusion."

Air Quality

The MND evaluated the Project under the 2012 Air Quality Management Plan ("AQMP") (AR 243), and not the 2016 AQMP (AR 4258).

Petitioner contends that the air quality evaluation was made under the wrong AQMP. However, at the time of the environmental document, the final 2016 AQMP had not been published. (AR 4077.) Additionally, Petitioner failed to present evidence that the Project would create a significant impact under the 2016 AQMP.

Regardless, City's expert prepared a supplemental air quality memo that explained that no impacts would occur even if the project was analyzed under the 2016 AQMP. (AR 4077.)

Accordingly, the court finds that Petitioners failed to establish a fair argument that the project will have significant effect on air quality.

Cumulative Impacts

Petitioner contends that the MND's cumulative impact analysis is deficient because it merely states that the impacts of each additional project will be evaluated and mitigated on a case by case basis; therefore the cumulative impacts to which the proposed project would contribute would be less than significant. (AR 296.)

However, the court finds that the MND adequately identifies 29 other, known and related projects that may impact traffic (AR 783-786), and the noise analysis is based on the future traffic conditions analyzed in the traffic study.

Further, Petitioner failed to present any evidence that the cumulative impacts would create a significant effect on the environment.

Accordingly, the court finds that the MND is deficient with regard to Traffic Impacts, Noise, and Aesthetics.

2nd Cause of Action: CUP Findings

Petitioner's 2nd Cause of Action alleges that the CUP Findings are not supported by substantial evidence.

Standard: Substantial evidence consists of enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. (Smith v. County of Los Angeles (1989) 211 Cal.App.3d 188, 199.) The court is required to "accord great deference to the agency's determination. This is because the body which adopted the general plan policies in its legislative capacity has unique competence to interpret those policies when applying them in its adjudicatory capacity." (Save Our Peninsula Comm. v. Monterey County Bd. of Supervisors (2001) 87 Cal.App.4th 99, 142.)

Petitioner contends that City's approval violates LAMC 12.24.U.14(b)(1), which requires City to make a finding that the project provides for an arrangement of uses, buildings, structures, open spaces and other improvements that are

compatible with the scale and character of the adjacent properties and surrounding neighborhood. According to Petitioner, the 135-foot building with an additional 20 feet of rooftop equipment is not compatible in scale to the low-height, one/two story buildings surrounding it.

However, the record shows that City considered the scale and characteristics of the adjacent properties and surrounding neighborhood, including the nature, bulk, scale, and height of the surrounding uses. (AR 2377.)

The Project is "located within a commercial office and industrial low- and medium-rise, mixed-use neighborhood," that is "a mix of commercial, light industrial, and multi-family residential uses." (AR 25-26.) The surrounding land uses include "[a] five-story apartment building is located on the southwestern side of the project site, across Beatrice Street. Additionally, there are several commercial office and industrial buildings located to the west, north, and southeast of the project site. Adjacent to the eastern side of the project site are two (2) two-story commercial office/industrial buildings. Further east are single-family homes across Grosvenor Boulevard, filling the area from Hammock Street to Beatrice Street. A six-level parking structure is located adjacent to the project site's northeastern side." (AR 05.) Further, City determined that while "the proposed development would be taller and greater in mass than the immediately surrounding buildings, the project is consistent with the applicable zoning, as well as with the floor area ratios of development in the vicinity. (AR 1104.)

"To ensure that the project is compatible with the surrounding neighborhood, the project has been designed with ground level setbacks along the Beatrice Street and Jandy Place street frontages and within the development. These areas are landscaped, pedestrian oriented, and provide passive seating areas for the project... In doing so, the project reduces impacts to the predominately residential street face on the south side of Beatrice Street and allows for increased open space and landscaping... Landscaped terraces are open to the adjoining streets and pedestrian court. (AR 28-29.) "With respect to surrounding uses, the project... modulat[es] in height... with varying size floor plates accented by outdoor areas and extensive landscaping. In recognition of the nearby single-family and multi-family uses, the Project's tallest elements are oriented away from the east and south. As such, the Project's height and scale are in keeping with the neighborhood context, and consistent with the nearby varied creative office, commercial and residential buildings... While the applicant had the ability to redevelop the existing [low-scale] building, the Applicant voluntarily chose to maintain the low scale element on the Property to provide a mix of building

scales with a single campus in keeping with the neighboring properties. (AR 35-39.)

City's determination is accorded great deference. (Save Our Peninsula Comm. v. Monterey County Bd. of Supervisors (2001) 87 Cal.App.4th 99, 142; Friends of Lagoon Valley v. City of Vacaville (2007) 154 Cal.App.4th 807, 816.) The court finds that substantial evidence supports Respondents' consideration of the surrounding neighborhood. The decision to place ground level setbacks near the residential streets and the tallest elements away from the residential neighborhood, is thoughtful and respectful of the character of the surrounding neighborhood.

Accordingly, the 2nd cause of action is DENIED.

3rd Cause of Action: Violation of LAMC and Subdivision Map Act

The 3rd cause of action alleges violation of LAMC Commercial Corner Regulations (Petition, ¶79-80), LAMC 12.24.W.19 (Id., ¶81-83), LAMC 12.36.B (Id. ¶83-86), Subdivision Map Act Lot Line Adjustments (Id. at ¶87-92).

Petitioner's Opening Brief does not address the 3rd cause of action, and the record does not indicate that the 3rd cause of action was ever dismissed. As such, the 3rd cause of action is DENIED.

Accordingly, the Karney I writ of mandamus is GRANTED as to the 1st cause of action, and DENIED as to the 2nd – 3rd causes of action.

KARNEY II

The Petition for Writ of Mandate ("Karney II"), filed on 12/17/18, asserts causes of action for:

1. Violation of Subdivision Map Act
2. Violation of Los Angeles Municipal Code

Petitioner explains that because the lot line adjustment was not granted until 11/19/18 (after Karney I was filed), Petitioner filed Karney II, Case No. 18STCP03226, to address the lot line adjustment.

Respondents urge the court to deem Petitioner's failure to address the lot line adjustment in Karney I (3rd cause of action) as a waiver. However, because the claim was not ripe until 11/19/18, the court finds the claim is properly asserted in Karney II.

1st Cause of Action: Violation of Subdivision Map Act

Gov. Code 66412(d) provides an exception to the application of the Map Act: "This division shall be inapplicable to any of the following... A lot line adjustment **between** four or fewer existing adjoining parcels, where the land taken from one parcel is added to an adjoining parcel, and where a greater number of parcels than originally existed is not thereby created, if the lot line adjustment is approved by the local agency, or advisory agency."

According to Petitioner, the Project site is comprised of five parcels of land. (P-AR 171-182, 250, 284), and therefore violates the Subdivision Map Act.

In opposition, Respondents contend that the lot line approval adjusted three existing adjoining parcels (i.e. Lots 19, 20, and 21) (P-AR 201-02, 227-8.)

The court agrees with Respondents. While the project site consisted of 5 lots, only the 3 "existing adjoining parcels" are involved in the lot line adjustment. The operable word here is a line adjustment "between" existing adjoining parcels. The 2 lot lines "between" the 3 lots "is added to an adjoining parcel" in each case, and the number of parcels created by the lot line adjustment is no "greater number of parcels than original existed is not thereby created." (Gov. Code 66412(d).) The 3 original parcels became 3 adjusted parcels that did not create a greater number of parcels.

Thus, the court finds substantial evidence supports City's approval of the lot line adjustment.

2nd Cause of Action: Violation of Los Angeles Municipal Code

Petitioner contends the lot line adjustment violates LAMC Commercial Corner Development standards.

Standard: Courts recognize that a local agency is uniquely qualified to interpret its own municipal code and will therefore give due consideration to a city's understanding of the meaning of its own ordinance. (Yamaha Corp., 19 Cal.4th at 7-8.)

LAMC 12.03 defines a "Commercial Corner Development" as: 1) "any commercially used corner lot located in a C or M zone... or 2) any multi-family residentially used corner lot located in a C zone... a Commercial Corner Development can be located on more than one lot only if the lots are adjacent, not divided by a public street, have a common parking area, and one or more buildings are erected or are proposed to be erected upon the lots."

Petitioner contends that the entirety of the five lots constitute a Commercial Corner Development because the lots are adjacent, not divided by a public street, have a common parking area, and one or more buildings are proposed to be erected upon the lots. Therefore, LAMC 12.22.A.23(a)(1) applies, and the project, which is located in Height District No. 1 (i.e. the Project Site) violates the LAMC because it exceeds a maximum height of 45 feet.

In opposition, Respondent contends that the Commercial Corner Development standards do not apply because the 20' x 20' Corner Lot created by the lot line approval will only be used for landscaping and open space purposes. (P-AR 29, 300-01.) Therefore, it is neither a "commercially used corner lot" nor a "multi-family residentially used corner lot."

City determined that while the 20' x 20' corner lot will be adjacent to the proposed creative office project, the lot was excluded from consideration of the larger office development because it will not contain any structure, and will not require or share a common parking area with the larger project. (AR 154, P-AR 286, 300-01.)

Further, Petitioner's definition requires the court to add words to the LAMC, i.e. that "one or more buildings are erected or are proposed to be erected upon [**at least one of**] the lots." However, one or more buildings will not be erected on the corner lot.

Therefore, the court finds City's interpretation of its code provision is reasonable and comports with the LAMC.

Accordingly, Karney II writ of mandamus is DENIED.

* * *

City and Real Parties are reminded that this court is faced with a situation where an EIR was not prepared; City approved the project via an MND, which is governed by a fair argument, "low threshold" test. (No Oil, Inc. v. City of Los Angeles (1974) 13 Cal.3d 68, 75.)

With respect to aesthetics, Protect Niles v. City of Fremont (2018) 25 Cal.App.5th 1129 and Friends of the College of San Mateo Gardens v. San Mateo County Community College Dist. (2017) 11 Cal.App.45th 596 held that aesthetic issues may be studied under CEQA. "[A]esthetic judgments are inherently subjective. But "[p]ersonal observations on these nontechnical issues can constitute substantial evidence." (Ibid.) Here, the comments about incompatibility were not solely based on vague notions of beauty or personal preference, but were grounded in inconsistencies with the prevailing building heights and architectural styles of the Niles HOD neighborhood and commercial core." (Protect Niles, supra 25 Cal.App.5th 1147.)

In addition to the testimony of the neighbors affected by the development (AR 4031, 4033, 4036, 2347), AR 3987 is a schematic comparison of the building height of the project in relation to the neighborhood. This schematic shows a project that is out of scale with the present neighborhood, and in light of the testimony of the neighbors affected by the project, constitutes substantial evidence of a fair argument of the Project's impact on aesthetics. An EIR would

"inform the public and its responsible officials of the environmental consequences of their decisions before they are made." (Protect Niles, supra 25 Cal.App.5th 1138.)

With respect to traffic, Respondents contend that the Court "improperly impose[d its] own significance threshold." (Respondents' Suppl. Brief, 7:13.) In reaching this conclusion, Respondents lifted certain statements from this court's tentative order, and attributed it to the court using its own "significance threshold." (Id. at 7:8-11.) The court did no such thing.

In fact, as this court noted above, "**The MND states** that a 'significant impact would occur if the proposed project would increase traffic above the existing traffic load of the street system' (AR 285), and the 'proposed project would generate... a net increase of 1,946 daily trips over existing conditions' – '973 inbound trips and 973 outbound trips' (AR 286, 791.) With mitigation, the 'impacts related to traffic circulation would be less than significant.' (AR 289.)" The citations to the administrative record were taken directly from City's own MND.

With respect to significance thresholds, a traffic impact analysis requires an agency to evaluate seven different transportation/traffic considerations. (AR 285.) Here, City contends it used vehicle delay and level of service ("LOS") to determine traffic impacts. It concluded that with mitigation, the "impacts related to traffic circulation would be less than significant." (AR 289.)

The mitigation proposal included "restriping" Jefferson Boulevard/Westlawn Avenue, Grosvenor Boulevard/Jefferson Boulevard, and Campus Center Drive-Centinela Avenue/Jefferson Boulevard. (AR 813.) However, the MND does not

explain how restriping these other adjacent streets would mitigate the net increase of 1,946 daily trips along Beatrice Street and Jandy Place, both of which are streets that end in cul-de-sacs. If, as the MND states, the Project would generate a net increase of 1,946 daily trips (inbound and outbound from the project), how would restriping adjacent streets decrease the increased traffic to and from the Project? The Project is located on the corner of two cul-de-sacs, which end essentially in dead end streets. If the Project will generate increased traffic to this location, with only one way out, then this court is still confused how restriping adjacent streets will lessen the inbound and outbound traffic circulation to less than significant levels. The MND does not adequately explain how this mitigation plan achieves its "less than significant" conclusion.

Further, Petitioner has submitted evidence of the very residents who will be impacted by the Project. These residents live or work in the area, and object to the increased traffic created by the Project. The personal observations of residents on nontechnical subjects such as traffic/transportation qualify as substantial evidence in support of a fair agreement. (Taxpayers for accountable School Bond Spending v. San Diego Unified School Dist. (2013) 215 Cal.App.4th 1013, 1054.) See AR 2346, 2362-3, 4255-56

Finally, Petitioner also submitted its own traffic consultant's analysis, who concluded that "the traffic associated with the proposed office building will create a significant number of trips, impacting the intersections of Jandy Place with Beatrice Street... and Westlawn Avenue with Beatrice Street... These are small two lane streets, and intersections, where the project's traffic will create potentially hazardous conditions, associated with the type of traffic control, visibility, speed limit. The additional traffic associated with the next door building

will worsen the hazardous conditions that already will result from the major increase in traffic." (AR 4353.)

Because Respondents did not prepare an EIR, and based on all of the evidence submitted by Petitioner, this court finds that substantial evidence supports a fair argument of a significant impact on traffic. The public would benefit from an EIR, informing them of the "environmental consequences of [City's] decisions before they are made." (Protect Niles, supra 25 Cal.App.5th 1138.)

The supplemental briefing does not change the court's analysis regarding noise. It is hornbook that a public agency must prepare an EIR whenever substantial evidence supports a fair argument that a proposed project may have a significant effect on the environment. (No Oil, supra, 13 Cal.3d 75.) Citation to the City's own thresholds for noise, etc. does not automatically determine whether an effect is significant. (Protect the Historic Amador Waterways v. Amador Water Agency (2004) 116 Cal.App.4th 1109-1110.)

City and Real Parties point out that the two sound structures were created after the MND was issued, and therefore, should not be considered. When significant new information is disclosed during public comments, the agency must pursue an additional round of consultation and analysis. (Vineyard Area for Responsible Growth, Inc. v. City of Rancho Cordova (2007) 40 Cal.4th 412, 447-449.) City and Real Parties were made aware of the existence of ATN Stages and Vista Studios in comments to the MND. (AR 4033-4034, 4338.) Under CEQA, impacts identified during the comment period (prior to certification) must be incorporated into the environmental document. (Pub. Res. Code 21092.1.)

"If there is substantial evidence in the whole record supporting a fair argument that a project may have a significant nonmitigable effect on the environment, the lead agency shall prepare an environmental impact report, even though it may also be presented with other substantial evidence that the project will not have a significant effect." (Protect Niles v. City of Fremont (2018) 25 Cal.App.5th 1129, 1139.)

As there are substantial evidence supporting a fair argument that the project may have a significant effect on traffic, aesthetics, and noise, an EIR must be prepared.

Accordingly, Petitioner's writ of mandate in Karney I is GRANTED as to the 1st cause of action, and DENIED as to the 2nd – 3rd causes of action.

Petitioner's petition for writ of mandate in Karney II is DENIED.

IT IS SO ORDERED.

Dated: SEP 03 2019

JOHN A. TORRIBIO
JUDGE OF THE SUPERIOR COURT

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Downey Brand LLP, 455 Market Street, Suite 1500, San Francisco, California 94105. On December 11, 2019, I served the within document(s):

[PROPOSED] JUDGMENT

☐ **BY FAX:** by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.

☒ **BY E-MAIL:** by transmitting via my electronic service address (cwindsor@downeybrand.com) the document(s) listed above to the person(s) at the e-mail address(es) set forth below.

☒ **BY MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below.

☐ **BY OVERNIGHT MAIL:** by causing document(s) to be picked up by an overnight delivery service company for delivery to the addressee(s) on the next business day.

☐ **BY PERSONAL DELIVERY:** by causing personal delivery of the document(s) listed above to the person(s) at the address(es) set forth below.

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I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on December 11, 2019, at San Francisco, California.

Candy G. Windsor