

455 Capitol Mall, Suite 300 Sacramento, CA 95814 916.444.7301

Subject:	Response to the Laborers' International Union of North America Comment to the 1150-1170 Kifer Road Checklist Dated October 17, 2023
From:	Pat Angel, Kari Zajac, and Julia Wilson, Ascent
To:	George Schroeder, City of Sunnyvale
Date:	November 16, 2023

This memorandum documents Ascent Environmental's (Ascent's) response to correspondence submitted on the Checklist for the 1150-1170 Kifer Road Project (project) located in the City of Sunnyvale (city). The correspondence was submitted on October 17, 2023, by the Laborers' International Union of North America (referred to below as comment letter or commenter). The correspondence critiques the analyses of the following resource areas contained in the Environmental Checklist. In summary, the commenter speculates that the project could have an effect on the project residents, which is not considered to be an impact under CEQA and need not be analyzed in the project's EIR (see, e.g., *Parker Shattuck Neighbors v. Berkeley City Council* (2013) 222 Cal.App.4th 768, 782).

As further discussed below, the comment letter includes input from consultants that have technical experience in the areas of air quality resources that argue the impact analysis fails to address significant issues. The Environmental Checklist demonstrating the consistency with the Lawrence Station Area Plan (LSAP) EIR and LSAP Update Subsequent EIR (SEIR) impact conclusions were prepared by technical experts at Ascent that have between 5 to over 25 years of experience in the areas of air quality and CEQA compliance. Disagreement amongst experts is not a sufficient reason to require an environmental document to be updated and recirculated pursuant to State CEQA Guidelines Section 15151. Under established CEQA precedent, the lead agency may properly accept the determinations and conclusions reached by the experts that prepared the EIR, even though other conclusions could also be reached (see Eureka Citizens v. City of Eureka, (2007) 147 Cal. App. 4th 357, 371-372 (accepting findings on noise impacts despite experts' disagreement over methodology); Ctr. for Biological Diversity v. Dep't of Fish & Wildlife, (2014) 224 Cal. App. 4th 1105, 1179-80 (2014) reversed on other grounds, 62 Cal. 4th 204 (2015) (one scientist's disagreement with a conservation plan is "not pertinent to the issue of whether the environmental impact report's conclusions are supported by substantial evidence"). Since the function of review of the EIR is limited to determining whether the EIR is supported by substantial evidence, it is not an "abuse of discretion" for a public agency "to give more weight to one set of 'experts' than to another." (see Greenebaum v. City of Los Angeles (1984) 153 Cal. App. 3d 391, 412).

Thus, the City is properly allowed to reject the opinions and beliefs of commenter's experts and instead rely on its experts' and their expert opinions and analysis regarding the project and its environmental impacts.

Memo

INDOOR AIR QUALITY

The commenter states that the Lawrence Station Area Plan Environmental Impact Report, which was certified in 2016, did not evaluate the indoor emissions of off-gassed formaldehyde on future project residents. The comment states that since 2016, new information has become available and cites the results of an analysis prepared resulted in cancer risk of 120 in one million within the indoor spaces of the project. The comment indicates that these high volumes are a result of inadequacy of implementing the California Air Resources Board's (CARB's) Airborne Toxics Control Measure for formaldehyde in composite wood products.

The commenter appends its document with a separate comment from a Certified Industrial Hygienist who states that the project's air quality analysis is flawed because there is no discussion of indoor air quality. The commenter asserts that residents of buildings are exposed to high levels of off-gassed formaldehyde from the decomposition of composite wood products used to construct buildings, which would be the case for residents occupying the project site. The commenter also states that residents of the project site would be exposed to adverse levels of PM_{2.5} from ambient concentrations of PM_{2.5} within the project site.

The commenter alleges that its expert, Mr. Offermann has determined that the Project's indoor emissions of formaldehyde constitute a significant CEQA impact. Mr. Offermann claims that, assuming this project will be built using typical materials and construction methods used in California, future residents will experience a cancer risk from formaldehyde of approximately 120 per million. Mr. Offermann sites his own 2009 study—the California New Home Study (2009 study), and a 2020 study—Indoor Air Quality in new California Homes with Code-Required Mechanical Ventilation by Singer et al—and appears to rely on both of these studies to derive his 120 in one million value.

Mr. Offermann calculates a 180 in one million figure based on the 2009 study. He then lowers this by 33 percent based on the second study to derive a 120 in one million figure. However, there are many distinguishing factors between these studies and the project.

First, the project would comply with mandatory and applicable regulatory requirements, many of which were not in place when the homes in the 2009 and 2020 studies were built. The 2019 study used data collected from homes built between 2011–2017, many of which would have been constructed in the absence of applicable regulatory mechanisms currently in place which would be applied to development under the project. These applicable requirements include the following:

- The Composite Wood Products Regulation is a CARB regulation that reduces public exposure to formaldehyde through the establishment of strict emission performance standards on particleboard, medium density fiberboard and hardwood plywood (collectively known as composite wood products). The regulation, adopted in 2007, established two phases of emissions standards: an initial Phase I, and later, a more stringent Phase 2 that requires all finished goods, such as flooring, destined for sale or use in California to be made using complying composite wood products. As of January 2014, only Phase 2 products are legal for sale in California. Moreover, the ASHRAE 62.2 ventilation and air filtration requirements in the state's Title 24 Building Code improves indoor air quality, and these standards are scheduled to become more stringent with the adoption of the 2022 Title 24 Building Code that the project would be required to comply (Codes and Standards Enhancement Initiative 2018).
- On December 12, 2016, EPA published in the Federal Register a final rule to reduce exposure to formaldehyde emissions from certain wood products produced domestically or imported into the United States. EPA worked with CARB to help ensure the final national rule was consistent with California's requirements for similar composite wood products.



While the second study cited by Mr. Offermann was published in 2020, it assessed homes built between 2011 and 2017, before the newest CARB formaldehyde standards (Phase 2 standards) were put into place (2014). Thus, these studies do not provide evidence that the project, which will be built in phases out between 2027 through 2028, will have significant impacts from formaldehyde emissions.

In addition, the 2020 study cited by Mr. Offermann, required participants to keep their windows closed for the duration of the study (one week) and rely on mechanical ventilation. In reality, residents would open their windows and use their patios for hours at a time during spring, summer, and fall. This ventilation would greatly reduce formaldehyde concentrations in indoor air and thus the studies do not accurately capture real-world scenarios. In addition, the studies assume a continuous 24-hour exposure and 100 percent absorption by the respiratory system, further unrealistic assumption unsupported by substantial evidence. For these reasons, the project can be distinguished from the homes studied in the 2009 and 2020 studies.

Mr. Offermann also asserts that it is foreseeable that residential occupants will have continuous exposure (e.g., 24 hours per day, 52 weeks per year); however, this is an unrealistic assumption as most individuals leave their homes to run errands; visit family, friends, and acquaintances; take vacations; and travel to work, among many other reasons. Therefore, the assertion that future residents will likely be exposed to truly continual levels of off-gassed formaldehyde is not a true or realistic condition.

Second, Mr. Offermann's claim that the project would result in significant impacts is based on speculation and associated assumptions, regarding project construction and materials, regarding health risk modeling of formaldehyde, regarding how much ventilation there would be in project residential units, and regarding application of a significance threshold that is not formaldehyde specific. CEQA does not require speculation. CEQA Guidelines Section 15145; *Laurel Heights Improvement Association v. Regents of the University of California* (1988) 47 Cal. 3d 376 (where future development is unspecified and uncertain, no purpose can be served by requiring an EIR to engage in sheer speculation as to future environmental consequences).

Mr. Offermann also expresses concern about the outdoor air ventilation impact citing a 2017 study by the California Department of Public Health (CDPH). The study in question found that homeowners only opened their windows 32 percent of the 24-hour studied test day. The 2017 CDPH is representative of multiple samples throughout the state and does not account for specific locations, such as the City of Sunnyvale which supports a more moderate climate as compared to other climate zones throughout the state. Moreover, the 2017 study would not have accounted for the newest ventilation systems required by the 2022 Version of the Title 24 California Building Code, which has a mandatory provision requiring the use of air filtration systems meeting the efficiency of the MERV 13 system in accordance with ASHRAE Standard 52.2, or a particle size efficiency rating equal to or greater than 85 percent of the 1.0-3.0 micrometer range. Development of the project would be required to comply with most recent version of the California Building Code (likely the 2025 Version), which could include even more stringent air ventilation requirements.

Additionally, as determined by the California Supreme Court in the *California Building Industry Association v. BAAQMD*, CEQA reviews the impacts of a project on the environment rather than the effects of the environment on the residents or users of a project. The Court held that "agencies subject to CEQA generally are not required to analyze the impact of existing environmental conditions on a project's future users or residents. But when a proposed project risks exacerbating those environmental hazards or conditions that already exist, an agency must analyze the potential impact of such hazards on future residents or users. In those specific instances, it is the *project's* impact on the environment – and not the *environment's* impact on the project – that compels an evaluation of how future residents or users could be affected by exacerbated conditions."



As directed by the Court, a project would only need to evaluate the environments impact on a project if the project itself would exacerbate an existing adverse condition. The commenter asserts that due to the nonattainment designation of Santa Clara County and the SFBAAB, the Draft EIR should have evaluated the health impacts of PM_{2.5} to residents of the project site. As identified in Draft EIR Table 4.3-4 and 4.3-5 in the Draft Checklist, emissions of criteria air pollutants and precursors following mitigation would be below the Bay Area Air Quality Management District's (BAAQMD) recommended thresholds of significance. BAAQMD provides substantial evidence for the use of their thresholds in their CEQA Justification Report. Because project emissions would not exceed these thresholds, the existing nonattainment designation within the project site would not be exacerbated. No further analysis is required regarding the effects of the environment to residents of the project site.

Cumulative Air Pollution

The commenter states that the Environmental Checklist's conclusion that the project's construction-generated emissions would not be cumulative significant is incorrect. The Environmental Checklist is a consistency analysis prepared using the 2016 LSAP EIR and the LASP Update SEIR and based its conclusions on those found in that EIR. At the project level, construction emissions were found to be less than significant using the appropriate average daily mass emissions threshold developed by the BAAQMD. BAAQMD-adopted thresholds apply at the project level and are cumulative in nature; that is, they identify the level of project-generated emissions above which impacts would be cumulatively considerable. Thus, they represent the level at which emissions of a given project would impede the air basin from achieving ambient air quality standards, considering anticipated growth and associated emissions in that region and a quantitative emission analysis was conducted to disclose short-term construction and long-term operational emissions associated with projects developed in accordance with the project. Appropriate mitigation to reduce construction-generated emissions of criteria air pollutants was recommended as derived from the LSAP EIR (Mitigation Measure 3.5.3a) in accordance with BAAQMD's requirements to implement basic construction mitigation to reduce fugitive dust emissions. The Checklist found that there would be no substantial new information indicating that an impact would be more severe than discussed in the LSAP EIR and LSAP Update EIR and that the conclusions of the LSAP EIR and LSAP Update EIR regarding air quality impacts would remain valid.

References

California Air Resources Board. No Date. Frequently Asked Questions for Consumers: Composite Wood Products. Available: <u>https://www.arb.ca.gov/toxics/compwood/consumer_faq.pdf</u>. Accessed April 2019.

CARB. See California Air Resources Board.

Chan, W.R., Y-S Kim, B.D. Singer, and I.S. Walker. 2019 (February). Ventilation and Indoor Air Quality in new California Homes with Gas Appliances and Mechanical Ventilation. *Lawrence Berkeley National Lab*, <u>https://escholarship.org/uc/item/44g399sb</u>. Accessed April 2019.

