



Chatten-Brown, Carstens & Minter LLP

Hermosa Beach Office
Phone: (310) 798-2400

San Diego Office
Phone: (858) 999-0070
Phone: (619) 940-4522

2200 Pacific Coast Highway, Suite 318
Hermosa Beach, CA 90254
www.cbcearthlaw.com

Michelle Black
Email Address:
mnb@cbcearthlaw.com
Direct Dial:
310-798-2400 Ext. 5

Via email JBurns@westcovina.org

Ms. Jo-Anne Burns
Planning Manager
Planning Commission
City of West Covina
1444 W. Garvey Avenue 2nd Floor, Room 208
West Covina, CA 91790

Re: Walnut Grove Specific Plan; Initial Study and Mitigated Negative Declaration for Walnut Grove Residential Project located at 1651 East Rowland Avenue; Precise Plan No. 20-01; Zone Change No. 20-02; General Plan Amendment No. 20-01; Tree Removal Permit No. 20-14

Dear Commissioners and Ms. Burns,

We submit these comments on behalf of the Community Coalition Against Walnut Grove Project. The Walnut Grove Specific Plan and Residential Project (“Project”) would authorize demolition of the existing school site and construction of 158 residential units on 9 acres currently zoned for single-family residential uses. The Project is entirely inconsistent with the City’s current zoning, the West Covina General Plan, and portions of the City’s municipal code. Accordingly, the Project cannot be built unless the City grants a zone change to allow the Specific Plan and to remove the single-family designation; a General Plan amendment to remove the civic/schools land use designation and replace it with Residential Medium to allow up to 20 dwelling units per acre; and a tree removal permit to allow the removal of nine (9) significant trees, including native oak species. CBCM-1

As currently proposed, the Project is inconsistent with the City’s General Plan, the City’s environmental review fails to satisfy the California Environmental Quality Act, and the underlying land transfer appears to violate the Surplus Lands Act.

I. The Project is Inconsistent with the City of West Covina’s General Plan.

California Planning and Zoning Law requires the City to have a general plan, which serves as “a constitution for all future developments.” (*Concerned Citizens of Calaveras County v. Calaveras Board of Supervisors* (1985) 166 Cal.App.3d 90, 97; Gov. Code § 65300.) All of a City’s land use decisions must be consistent with the CBCM-2

general plan. (*Pfeiffer v. City of Sunnyvale City Council* (2011) 200 Cal.App.4th 1552, 1562–63; *Families Unafraid to Uphold Rural etc. County v. Board of Supervisors* (1998) 62 Cal.App.4th 1332, 1341-1342; *California Native Plant Soc’y v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 636.) A project is inconsistent with a general plan when it conflicts with a policy that is “fundamental, mandatory, and clear;” this cannot be overcome by the project’s “general” consistency with the plan. (*Spring Valley Lake, supra*, 248 Cal.App.4th at 101.) Courts do not give deference to an agency’s unreasonable determination of consistency. (*California Native Plant Soc’y v. City of Rancho Cordova, supra*, 172 Cal.App.4th at 642; *Pfeiffer, supra*, 200 Cal.App.4th at 1563.)

The Project is inconsistent with the following General Plan Goals and Policies:

General Plan Inconsistency Analysis		
General Plan Goals/Policy/Action	Inconsistency Analysis	
Goal – Our Natural Community		
Air- P1.1	Promote alternative transportation modes like walking, biking, and transit that reduce emissions related to vehicular travel.	The project doesn’t propose any improvements that promote transportation modes like walking, biking, and transit that reduce emissions to vehicular travel. The project includes more parking than required, which is contrary to promote walking and biking.
Policy 1.3 A1.3	Minimize the adverse impacts of growth and development on air quality and climate.	Providing more parking than required, as this project does, encourages driving, which will generate more vehicle emissions.
Water A 1.4	Where appropriate, new development shall minimize impervious area, minimize runoff and pollution, and	The project lot coverage is 80 percent. The parking lot in the front of the development measures approximately 7,350 square feet of pavement – a large impermeable surface. The Project contains insufficient landscaping areas to

CBCM-2
(cont.)

<p>P.4.4</p> <p>Policy 4.8</p>	<p>safety through the design and maintenance of streets, sidewalks, intersections and crosswalks.</p> <p>Allocate street space equitably among all modes</p> <p>Implement “green” streetscape elements for purposes of beautification, carbon reduction and stormwater runoff management.</p>	<p>Same as above</p> <p>The minimal landscaping is requiring that storage capacity be installed underground to collect runoff. The lack of landscape areas and proper setbacks for trees to thrive through the years will not offset the heat island effects generated by the project. Additionally, the Project trees will be removed as they mature because the 7.5 feet provided is inadequate to accommodate growth. Thus, Project trees will not reduce the operational impacts of the Project related to carbon reduction and stormwater runoff.</p>
<p>Our Active Community</p>		
<p>Walk or Bike to Parks—Policy 8.4</p>	<p>Small and frequent open spaces should be dispersed throughout the neighborhood.</p>	<p>The project proposes an 80 percent lot coverage, which leaves for limited opportunities for well-designed internal paseo walkways with proper shade.</p>
<p>Walk or Bike to Parks—Action 8.4</p>	<p>Develop new neighborhood parks, pocket parks, and community gardens as feasible and appropriate to meet citizen needs and require them in new development.</p>	<p>The open space is less than 11,000 square feet.</p>

CBCM-2
(cont.)

Housing Element		
Goal 2	Provide a variety of housing types to accommodate all economic segments.	The project includes a mix of housing typology that doesn't include a single unit of affordable housing. The project is requesting a Specific Plan to deviate from the City's regulations in terms of setbacks, height, floor area ratio (FAR), lot coverage, and density through a Specific Plan. The project offers no affordable units as a community benefit.
Goal 4	Promote equal housing opportunity for all residents.	The Project excludes residents in the very-low, low- and moderate-income levels of the population.

CBCM-2
(cont.)

The Project may not be legally approved until it is brought into conformity with the General Plan.

II. The Project Requires an EIR.

The California Environmental Quality Act (CEQA) serves two basic, interrelated functions: ensuring environmental protection and encouraging governmental transparency. (*Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal. 3d 553, 564.) In connection with the Project's review under CEQA, the City has prepared an initial study and mitigated negative declaration. A lead agency prepares an initial study in order to determine whether an EIR, a negative declaration, or an MND is the appropriate environmental review document. (14 CCR § 15365, herein "CEQA Guidelines".) The initial study must consider whether any aspect of a project, either individually or cumulatively, may cause a significant adverse impact. (CEQA Guidelines § 15063(b)(1).) The purpose of the initial study is to provide the lead agency with adequate information regarding a project to determine the appropriate environmental review document and "documentation of the factual basis for the finding in a negative declaration that a project will not have a significant effect on the environment." (*Ctr. for Sierra Nevada Conservation v. County of El Dorado* (2012) 202 Cal. App. 4th 1156, 1170, citations omitted.) There must be a basis within the record to support the conclusions reached by the initial study. (*Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170, 1201.) "Where an agency. . . fails to gather information and undertake an adequate environmental analysis in its initial study, a negative declaration is inappropriate." (*El Dorado County Taxpayers for Quality Growth*

CBCM-3

v. County of El Dorado (2004) 122 Cal. App. 4th 1591, 1597, citations omitted.) Failure to adequately analyze all of a project’s potentially significant impacts or provide evidence to support conclusions reached in the initial study is a failure to comply with the law. When a fair argument exists that a Project will have a significant environmental impact, an environmental impact report (EIR) must be prepared. Here, the MND for the Project fails to adequately analyze the Project’s vehicle miles traveled and potential land use impacts. An EIR is required.

CBCM-3
(cont.)

A. The Mitigated Negative Declaration Fails to Analyze the Project’s Vehicle Miles Traveled, as Required.

In 2018, the Legislature enacted Senate Bill 743 (SB 743), which changed how the transportation impacts of development projects must be evaluated for significance. Pursuant to SB 743, the Natural Resources Agency issued a new CEQA Guideline (based on work done by the Office of Planning and Research), section 15064.3, that established a new default method for determining whether a project’s transportation impacts will be considered “significant” for CEQA purposes

CEQA Guidelines section 15064.3, subd. (a) establishes that “[g]enerally, vehicle miles traveled is the most appropriate measure of transportation impacts” of a project. Vehicle miles traveled refers to the amount and distance of automobile travel attributable to the project.” CEQA Guideline section 15064.3, subd. (b) provides that “[v]ehicle miles traveled exceeding an applicable threshold of significance may indicate a significant impact.” This CEQA Guideline section adopting vehicle miles traveled (VMT) became applicable statewide on July 1, 2020 and is applicable to the Project. (CEQA Guideline section 15064.3(c).) The City adopted VMT as its metric for evaluating traffic impacts under CEQA, replacing the level of service (LOS) metric that evaluated traffic delay. (Resolution 20-57.)

CBCM-4

Despite this clear adoption, however, the MND fails to evaluate the Project’s impacts with regard to VMT. Instead, the MND claims:

The Project is located within a Transit Priority Area (TPA) and is exempt from a full VMT analysis by the City. Although there have been some changes to transit service due to the COVID-19 pandemic, it was confirmed that the Foothill Transit bus lines in the Project area are still operating as usual. Therefore, the TPA exemption is still valid. The proposed Project would have a less than significant impact on VMT, and no mitigation is required.

(MND p. 4-98.) The City’s claimed exemption, however, relies on a misreading of Office of Planning and Research’s Technical Advisory. While projects within a TPA may be exempt from conducting a full VMT analysis if they provide affordable or supportive housing, house seniors, or would result in fewer than 110 daily vehicle trips, this is not that type of Project. The presumption of a less-than-significant impact on traffic was not meant to apply to a Project that includes more parking than required. This Project will provide far more parking than would be required under the municipal code anywhere outside of this new Specific Plan. Thus, the TPA exemption does not apply. The Project cannot be adopted without a full VMT analysis. In the absence of an analysis finding the Project’s impacts to be less than significant, or any mitigation to that effect, an EIR is required.

CBCM-4
(cont.)

B. Land Use Impacts

CEQA requires an environmental review document to discuss any inconsistencies with existing land use plans, not just whether it is generally consistent with these plans. (Guidelines § 15125, subd. (d); *Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 356; *Spring Valley Lake Assn. v. City of Victorville* (2016) 248 Cal.App.4th 91, 100.) Failure to disclose any such inconsistencies violates CEQA’s information disclosure mandate, constitutes a failure to “proceed in ‘a manner required by law’.” (*Napa, supra*, 91 Cal.App.4th at 386; *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 514–16.) The MND prepared for this Project fails to analyze the Project’s inconsistencies with the General Plan goals and policies described above. An EIR is required.

CBCM-5

The Project is also very clearly an example of spot-zoning. “Case-by-case reconsideration of regional land-use policies, in the context of a project-specific EIR, is the very antithesis of that goal.” (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 572 -573.)

As detailed in other comments received on the Project, the MND also failed to adequately support its claim that the Project’s construction emissions would remain below applicable South Coast Air Quality Management District thresholds and to provide enforceable mitigation for these claims. CEQA requires that construction impacts be analyzed, even though they are temporary. (*City of Arcadia v. State Water Resources Control Bd.* (2006) 135 Cal.App.4th 1392, 1425.)

III. The City Cannot Make the Required Findings for Issuing a Precise Plan Permit or a Tentative Tract Map.

A. Precise Plan Findings.

The City may not adopt the Project’s permit for the Precise Plan unless it finds:

- a. The proposed development plans and the uses proposed are consistent with the General Plan and any applicable specific plan.
- b. The proposed development is consistent with adopted development standards for the zone and complies with all other applicable provisions of the Municipal Code.
- c. Granting the permit would not be detrimental to the public interest, health, safety, and welfare and would not unreasonably interfere with the use or enjoyment of property in the vicinity of the subject property.
- d. The site is physically suitable for the type, density and intensity of the development being proposed, including vehicle access and circulation, utilities, and the absence of physical constraints.
- e. The architecture, site layout, location, shape, bulk and physical characteristics of the proposed development are compatible with the existing and future land uses, and do not interfere with orderly development in the vicinity.

CBCM-6

These findings must be supported by substantial evidence that “bridges the analytical gap” between the facts and the findings. (*Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515.) However, as discussed above, the City cannot support a finding that the Project is consistent with the General Plan because the Project is inconsistent with various General Plan goals and policies relating to providing affordable housing, reducing impermeable surfaces, and promoting bikeable, walkable communities. The Project also fails to comply with all adopted development standards and applicable provisions of the municipal code. As described further in the December 21, 2020 letter of Fabiola Zelaya Melicher, the Project fails to provide sufficiently wide landscaping barriers along Project boundaries; fails to match the front yard setback required of nearby homes; and places a large, unsightly parking lot in front of the development. As documented by letters of neighboring residents, granting the Project’s permit would unreasonably interfere with the use or enjoyment of neighboring

property, particularly those whose privacy would be impacted by new residential buildings that would overlook their yards and homes. While privacy for some homes would be maintained by special, higher-level windows, these windows would not protect all nearby homeowners. Neighbors have submitted detailed comments concerning the Project's deficiencies with regard to vehicle access and circulation. Finally, the Project will tower over the adjoining single-family home neighborhood of which it is allegedly a part, with mismatched setbacks, and insufficient landscaping.

CBCM-6
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B. Tentative Tract Map Findings.

Similarly, the Municipal Code and State Planning and Zoning Law also require the City to support the findings necessary to issue a tentative tract map. The City must find:

- a. The proposed map is consistent with the general plan and any applicable adopted specific plans.
- b. The design or improvement of the proposed subdivision is consistent with the general plan and applicable adopted specific plans.
- c. The site is physically suitable for the type of development.
- d. The site is physically suitable for the proposed density of development.
- e. The design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage or substantially and avoidably injure fish, wildlife or their habitat.
- f. Neither the design of the subdivision nor the type of improvements are likely to cause serious public health problems.
- g. The design of the subdivision or the type of improvements will either (i) not conflict with recorded or adjudged easements, acquired by the public at large, for access through or use of, property within the proposed subdivision; or (ii) alternate easements, for access or for use, will be provided, and these will be substantially equivalent to ones previously acquired by the public.

CBCM-7

Again, the City cannot make all of the required findings because the Project is inconsistent with General Plan policies and goals.

IV. Covina-Valley Unified School District's Transfer of the Pioneer School Property May Violate the Surplus Land Act.

CBCM-8

The Project would transfer school district land to a private developer, and then to individual homeowners, prior to compliance with the Surplus Land Act. The Surplus Land Act requires:

Any local agency disposing of surplus land shall send, *prior to disposing of that property*, a written offer to sell or lease the property as follows:

(a) A written offer to sell or lease for the purpose of developing low- and moderate-income housing shall be sent to any local public entity, as defined in Section 50079 of the Health and Safety Code, within whose jurisdiction the surplus land is located. Housing sponsors, as defined by Section 50074 of the Health and Safety Code, shall be sent, upon written request, a written offer to sell or lease surplus land for the purpose of developing low- and moderate-income housing. All notices shall be sent by first-class mail and shall include the location and a description of the property. With respect to any offer to purchase or lease pursuant to this subdivision, priority shall be given to development of the land to provide affordable housing for lower income elderly or disabled persons or households, and other lower income households.

(b) A written offer to sell or lease for park and recreational purposes or open-space purposes shall be sent:

CBCM-8
(cont.)

(1) To any park or recreation department of any city within which the land may be situated.

(2) To any park or recreation department of the county within which the land is situated.

(3) To any regional park authority having jurisdiction within the area in which the land is situated.

(4) To the State Resources Agency or any agency that may succeed to its powers.

(c) A written offer to sell or lease land suitable for school facilities construction or use by a school district for open-space purposes shall be sent to any school district in whose jurisdiction the land is located.

(d) A written offer to sell or lease for enterprise zone purposes any surplus property in an area designated as an enterprise zone pursuant to Section 7073 shall

be sent to the nonprofit neighborhood enterprise association corporation in that zone.

(e) A written offer to sell or lease for the purpose of developing property located within an infill opportunity zone designated pursuant to Section 65088.4 or within an area covered by a transit village plan adopted pursuant to the Transit Village Development Planning Act of 1994 (Article 8.5 (commencing with Section 65460) of Chapter 3 of Division 1 of Title 7) shall be sent to any county, city, city and county, community redevelopment agency, public transportation agency, or housing authority within whose jurisdiction the surplus land is located.

(f) The entity or association desiring to purchase or lease the surplus land for any of the purposes authorized by this section shall notify in writing the disposing agency of its intent to purchase or lease the land within 60 days after receipt of the agency's notification of intent to sell the land.

CBCM-8
(cont.)

(Government Code, § 54222, emphasis added.) It is our understanding that Covina-Valley Unified School District has not yet offered the Pioneer School for the purposes of developing affordable housing, park or recreational uses, school construction, or the other purposes contained in Government Code section 54222 and required by the Surplus Land Act. If so, progression of the Project would occur in violation of the Act.

The District claims that it has not sold the property and is instead conducting an “exchange” that renders the property “exempt surplus land.” However, no exchange properties have been identified. The District has stated in the past that its agreements with the developer permit exchange of the property for cash. The exchange of property for cash is typically considered a “sale” which would trigger the Surplus Land Act.

Conclusion

Thank you for your consideration of our comments. We also hereby incorporate the letter submitted to the City by Fabiola Zelaya Melicher, dated December 21, 2020, and all of the concerns raised therein. We urge the Commission not to recommend approval of this Project to City Council until it complies with the General Plan, CEQA, and all other applicable land use laws.

CBCM-9

Sincerely,



Michelle N. Black, on behalf of
Community Coalition Against Walnut Grove Project

Chatten-Brown, Carstens & Minter LLP
(Community Coalition Against Walnut Grove Project)

Comment Letter Dated March 23, 2021

Walnut Grove Residential Project

The general comment regarding the commenter's concerns about the proposed Walnut Grove Residential Project is noted and will be forwarded to the decision makers. It should be noted that in accordance with the State CEQA Guidelines, Section 15073, the Draft IS/MND was circulated for a 30-day public review beginning on November 19, 2020 and ending on December 21, 2020. During that time, the Draft IS/MND was available at the City of West Covina website. In light of this, it should be acknowledged that this comment letter was submitted three months past the end of the review period. Nevertheless, the following responses are prepared to address the comments.

CBCM-1 The comment letter is submitted on behalf of Community Coalition Against Walnut Grove Project. The comment briefly reiterates the Project description and adds that the Project is inconsistent with the General Plan and Zoning. The comment is noted, and it is acknowledged that as it stands the proposed land uses are not consistent with the current land use designations. As such and as indicated in the IS/MND on page 3-5 in Section 3.0, Project Description, a General Plan Amendment and Zone Change are required and are part of the Project.

The Project site has an existing General Plan Land Use designation of Civic: Schools. Approval of the Project and adoption of the Walnut Grove Specific Plan requires a concurrent adoption of a General Plan Land Use Amendment to the "Neighborhood Medium" land use designation, which allows densities between 9 and 20 dwelling units.

Additionally, the discussion of Zone Change and Specific Plan Adoption (Section 3.6.2) on the same page indicates that,

The Project site is currently zoned as Residential Single-Family (R-1). The R-1 zoning of the site is not consistent with its General Plan land use designation and requires a Zone Change to Specific Plan. Upon adoption by ordinance of the Walnut Grove Specific Plan, it would constitute as the zoning for the Project site, and therefore, the Project would be consistent with the Zoning Code.

The comment regarding a tree removal permit for removal of significant trees is also noted and is acknowledged in the IS/MND on page 3-6 in Section 3.0, Project Description, and on page 4-29 in Section 4.4, Biological Resources. The discussion indicates,

The significant trees onsite consist of trees 12 inches or greater in diameter, including: one mulberry tree (*Morus Spp.*), two maple trees (*Acer Spp.*), one carrotwood tree (*Cupaniopsis Anacardioides*), two bottle brush trees (*Callistemon Viminalis*), one (sick) California ash tree (*Fraxinus Dipetala*), one jacaranda tree (*Jacaranda Mimosifolia*), and 4 dead trees. These trees would be removed as part of the Project. The removal of these trees would require a permit to remove trees, as oak trees are native to California and are considered heritage trees. Therefore, the Project would be subject to Chapter 26, Article VI, Division 9, Preservation, Protection, and Removal of Trees, of the West Covina Municipal Code.

As discussed in the IS/MND, the removed trees and vegetation would be replaced by a variety of trees, vines, shrubs, and groundcover.

The comment also states that the City’s environmental review does not satisfy the California Environmental Quality Act (CEQA), and the underlying land transfer violates the Surplus Lands Act. The comment is noted and will be forwarded to the decision makers. The comment does not identify how the City’s review does not satisfy CEQA, and as such no further response is required. Regarding the land transfer and alleged violations of the Surplus Lands Act, it should be noted this is not a CEQA issue, and as such no further response is required.

I. The Project is Inconsistent with the City of West Covina’s General Plan

CBCM -2 The comment cites various case law to assert that a City’s land use decision must be consistent with the General Plan, and that a project is inconsistent with a General Plan if it conflicts with a policy that is “fundamental, mandatory, and clear”. The comment is noted and will be forwarded to the decision makers. Regarding the current designations and the proposed General Plan Amendment and Zone Change, please refer to Response CBCM-1, above.

The comment claims that the Project is inconsistent with various General Plan Goals and Policies. The commenter is incorrect. Each of the alleged inconsistencies are addressed in the table below.

General Plan Consistency Analysis		
General Plan Goals/Policy/Actions		Consistency Analysis
Goal - Our Natural Community		
Air-P1.1	Promote alternative transportation modes like walking, biking, and transit that reduce emissions related to vehicular travel.	The proposed Project would not conflict with adopted policies, plans, or programs regarding public transit, bike, or pedestrian facilities. As discussed in the IS/MND, Section 4.8, Greenhouse Gas Emissions and 4.17, Transportation of the IS/MND, the Project is an infill development and would result in trip reductions due to the Project site’s proximity to nearby commercial uses within walking distance of the Project site. As such, the Project would promote pedestrian

General Plan Consistency Analysis		
General Plan Goals/Policy/Actions		Consistency Analysis
		<p>activity in an area with complementary uses, which would reduce reliance on single-passenger vehicles.</p> <p>Additionally, sidewalks are present on East Rowland Avenue, which would be retained by the Project and would continue to accommodate pedestrians and bicyclists. Also, the Project will include bike racks on-site for use by future residents of the Project and their guests. The bike racks will be provided in two locations adjacent to the mailboxes and wood arbor trellis entries, around the perimeter of the park.</p> <p>Regarding providing more parking than required, please refer to Response CBCM-4, below.</p> <p>Thus, based on the above, the Project would not conflict with this policy.</p>
Policy 1.3 A1.3	Minimize the adverse impacts of growth and development on air quality and climate.	<p>As discussed in detail and supported by modeling and quantified analysis in Section 4.3, Air Quality and Section 4.8, Greenhouse Gas Emissions, of the MND, the Project would not result in significant air quality and greenhouse gas emissions impacts. Besides compliance with regulatory requirements, no mitigation measures were required for either topic, as none exceeded the significance thresholds.</p> <p>Regarding providing more parking than required, please refer to Response CBCM-4, below.</p> <p>Thus, the Project would not conflict with this policy.</p>
Water A 1.4 P 1.4 A 1.5	<p>Where appropriate, new development shall minimize impervious area, minimize runoff and pollution, and incorporate best management practices.</p> <p>Where appropriate, new development shall minimize impervious area, minimize runoff and pollution, and incorporate best management practices</p> <p>Develop Standards to increase pervious surfaces recharge groundwater basin, where appropriate.</p>	<p>Project implementation would result in an increase in impervious surfaces, as accurately disclosed in the IS/MND. A private storm drain system within the main drive aisles would convey the site's stormwater runoff to an underground detention system in the guest parking lot adjacent to East Rowland Avenue. Stormwater would infiltrate, be detained, and meter the runoff onto East Rowland Avenue to match historical drainage patterns and volumes at the Project site. In addition, stormwater from North Eileen Avenue would be intercepted and re-routed through the onsite storm drain system. This would allow for abandonment of the existing storm drain swale and easement along the westerly boundary of the site, and improved drainage for the area. These encroachments would occur in compliance with City regulations. The proposed changes would not substantially increase the rate or amount of surface runoff in a manner, which would result in flooding on- or offsite.</p> <p>Thus, the Project would not conflict with this policy.</p>

General Plan Consistency Analysis		
General Plan Goals/Policy/Actions		Consistency Analysis
Our Well Planned Community		
P 3.1 A 3.1	<p>Preserve existing housing stock</p> <p>Incorporate standards in the development code to preserve the existing form and character of stable residential areas and prevent encroachment of incompatible land uses and intensity.</p>	<p>Please refer to Response CBCM-6, below, regarding discussion of the Walnut Grove Specific Plan as the zoning for the proposed Project. The Project would be required to comply with Section 26-547, Specific Plan (S-P) zone, which includes guidelines and standard requirements for design elements, such as orientation of buildings and uses, building bulk and scale, building height and setback, parking, and landscaping. Therefore, this would ensure that the design of the Project uses would be compatible with the surrounding uses and the General Plan requirements. Thus, the Project would not conflict with this policy.</p>
Our Accessible Community		
Transit P 4.3	<p>Establish protection of human life and health as the highest transportation system priorities and seek to improve safety through the design and maintenance of streets, sidewalks, intersections and crosswalks.</p>	<p>This policy applies to circulation systems throughout the entire City, and the relevant elements of the Project would not conflict with this policy. Safety has been the central element in the design and planning of the proposed Project, and it should be noted that the City requirements have been integrated into the design. As stated in Section 4.17, Transportation, of the IS/MND, the on-site driveway, drive aisles, and cul-de-sacs would comply with City roadway standards for adequate sight distance (RR TRA-1). Also, to provide the two access points from East Rowland Avenue to the Project site, site visibility would be impaired if cars were to be parked along East Rowland Avenue. However, to address this issue, much of the curb on the north side of East Rowland Avenue along the Project frontage would be painted red to prohibit parking and to provide sufficient site distance (PDF TRA-2). This would provide site visibility for vehicles and other roadway users and reduce potential hazards from dangerous intersections. Therefore, with implementation of the said planned improvements, impacts from hazards due to a geometric design feature would be less than significant. Thus, the Project would not conflict with this policy.</p>
P 4.4	<p>Allocate street space equitably among all modes.</p>	<p>This policy applies to circulation systems throughout the entire City, and the relevant elements of the Project would not conflict with this policy. The Project is improving or constructing new public streets.</p>
Policy 4.8	<p>Implement “green” streetscape elements for purposes of beautification, carbon reduction and stormwater runoff management.</p>	<p>The conceptual landscape plan would include a hierarchy of plant materials including trees, vines, shrubs, and groundcover along the front yards of each unit, throughout the Project site, and in open space areas. Additionally, a 7'-6" wide HOA-maintained</p>

General Plan Consistency Analysis		
General Plan Goals/Policy/Actions		Consistency Analysis
		<p>landscape area would be along the northern and western perimeter of the site. The boundary to the south would include trees and a parkway along East Rowland Avenue. Also, the centrally-located park would include landscape berms and open turf. The comment speculates, with no evidence, that trees will be removed as they mature and that the Project will generate “heat island effects.”</p> <p>The Responses to Comments on the Draft IS/MND acknowledged that hard, dry surfaces such as roofs, sidewalks, roads, buildings, and parking lots provide less shade and moisture than natural landscapes and therefore contribute to higher temperatures. However, it should also be noted that heat island effect occurs as a result of several factors (e.g., urban materials properties, urban geometry, human activity, weather and geology, and more) and not just lack of higher percentage of landscaping (EPA 2021). Additionally, the Project is too small in the context of an urban metropolitan area that is the main generator of heat island effect. The Project site is currently developed, and more than half of the site is asphalt and includes structures, and other development in the area are of similar characteristics. Thus, the Project in and of itself would not significantly contribute to heat island effect in the area.</p> <p>Thus, with these elements in place, the Project would not conflict with this policy.</p>
Our Active Community		
Walk or Bike to Parks— Policy 8.4	Small and frequent open spaces should be dispersed throughout the neighborhood.	<p>The Project would have 100 sf of common open space per unit (including walking and the neighborhood park use). The single-family units would have a minimum of 150 sf of private open space per unit, and the multi-family units would have a minimum of 100 sf of private open space per unit. The common open space area of the Project would consist of 0.27 acre of neighborhood park use that would be publicly accessible for use. Open space amenities would include bench seating areas; picnic areas; children’s tot-lot area; open turf area; connecting walkways; and mailboxes.</p> <p>Thus, in light of the above, the Project would not conflict with this policy.</p>
Walk or Bike to Parks— Action 8.4	Develop new neighborhood parks, pocket parks, and community gardens as feasible and appropriate to meet citizen needs and require them in new development.	Please see discussion, above. Additionally, as stated in RR PS-2, in Section 4.15, Public Services, of the MND, the Project Applicant would be responsible for paying park facilities impact fees for the development of new or expanded park facilities in the City.

General Plan Consistency Analysis		
General Plan Goals/Policy/Actions		Consistency Analysis
		Thus, in light of the above, the Project would not conflict with this policy.
Housing Element		
Goal 2	Provide a variety of housing types to accommodate all economic segments.	The proposed Project includes multi-family attached and single-family detached units that will include a range of price points. The project is consistent with Policy 2.4, "Provide high quality housing for current and future residents at all income levels to achieve a 'balanced' community." There is no requirement that each individual housing project in the City provide units at less than market rates.
Goal 4	Promote equal housing opportunity for all residents.	This goal applies to the entire City, and the relevant elements of the Project would not conflict with this goal. The Project contributes to a mix of housing types and sizes available in the City and therefore promotes the goal of equal housing opportunity. There is no requirement that each individual housing project in the City provide units at less than market rates.

II. The Project Requires an EIR

CBCM -3 The comment’s CEQA background description is noted. The comment asserts that the MND for the proposed Project fails to adequately analyze the Project’s impacts pertaining to vehicle miles traveled (VMT) and land use. Therefore, the comment asserts, an EIR is required.

The City of West Covina appropriately determined that an MND is the appropriate CEQA document for the proposed Project. The MND appropriately and adequately provided accurate evaluations of potential environmental impacts associated with the Project’s construction and operation. To address the potential impacts, the MND proposed feasible mitigation measures to reduce the impacts to less than significant levels. Additionally, the detailed analysis contained in the MND disclosed that the Project would not result in significant impacts that could not be reduced to less than significant levels and would remain significant and unavoidable for which an Environmental Impact Report (EIR), and not an MND, would be required. In light of this determination, an MND prepared in accordance with Article 6, Negative Declaration Process (Section 15070 to 15071) of the State CEQA Guidelines was deemed to be the appropriate CEQA document for the proposed Project.

The responses pertaining to VMT and land use are provided, below.

A. The Mitigated Negative Declaration Fails to Analyze the Project’s Vehicle Miles Traveled, as Required

CBCM -4 The commenter provides a discussion of the Senate Bill (SB) 743 and points out that a VMT analysis is required by State law effective July 1, 2020. The comment correctly

notes that the City adopted VMT as its metric for evaluating transportation impacts under CEQA. The comment asserts that the MND failed to evaluate the Project's impacts related to VMT. It further asserts that the Transit Priority Area (TPA) presumption does not apply to the Project and without a full VMT analysis the Project cannot be adopted.

The discussion in Section 4.17, Transportation, of the IS/MND accurately describes SB 743 and states the following:

State CEQA Guidelines Section 15064.3, subdivision (b) provides the criteria for analyzing transportation impacts, and a project's effect on automobile delay shall not constitute a significant environmental impact. Generally, vehicle miles traveled is the most appropriate measure of transportation impacts. Vehicle miles traveled (VMT) refers to the amount and distance of automobile travel attributable to a project. According to the State of California's *Technical Advisory on Evaluating Transportation Impacts in CEQA*, "certain projects (including residential, retail, and office projects, as well as projects that are a mix of these uses) proposed within ½ mile of an existing major transit stop or an existing stop along a high quality transit corridor would have a less than significant impact on VMT" (OPR 2018). The City of West Covina recently adopted the use of Vehicle Miles Traveled (VMT) analysis methodology for evaluating potential traffic impacts for development projects. The Project is located within a Transit Priority Area (TPA) and is exempt from a full VMT analysis by the City. Although there have been some changes to transit service due to the COVID-19 pandemic, it was confirmed that the Foothill Transit bus lines in the Project area are still operating as usual. Therefore, the TPA exemption is still valid.

The Project is located less than ¼ mile from two major transit stops (Foothill Transit bus lines 280 and 488) and is therefore in a Transit Priority Area (TPA).

City guidelines, consistent with the OPR Guidance, state that the presumption that a project located within a TPA will have less-than-significant VMT impacts "would not apply... if project-specific information indicates that the project will still generate significant level of VMT" and states that "the presumption *might* not be appropriate" in four cases OPR provided as examples (emphasis added). In this case, there is no project-specific information indicating that the Project will still generate a significant level of VMT, and the TPA presumption is appropriate. Each of OPR's examples is addressed below:

- Has a Floor Area Ratio (FAR) of less than 0.75: Not applicable to the Project.
- Includes more parking for use by residents, customers, or employees of the project than required by the jurisdiction (if the jurisdiction requires the project to supply parking): The Project's provision of additional guest parking is appropriate, as explained in detail below.

- Is inconsistent with the applicable Sustainable Communities Strategy (as determined by the lead agency, with input from the Metropolitan Organization): This example is only applicable to projects of statewide, regional, or areawide significance so is inapplicable to the Project.
- Replaces affordable residential units with a smaller number of moderate- or high-income residential units: The Project provides new housing and does not replace affordable residential units, so this example is not applicable. The comment is incorrect that the TPA presumption is contingent on the provision of supportive or senior housing.

Specifically, regarding the Project’s provision of additional parking, as explained in the Responses to Comments on the Draft IS/MND, the additional parking provided for the Project is appropriate and does not conflict with the City’s determination that the TPA presumption applies. While the guest parking spaces provided exceed the typical City zoning requirement, the additional parking is not expected to be used on a daily basis. Further, the additional guest parking spaces are not expected to generate additional trips or increase the VMT per capita for the Project. There is limited parking in the area surrounding the proposed Project site. Neighbors in those areas have already expressed their concerns about overflow and visitor parking on their streets. In response to this concern, the Applicant modified the site plan to include a solid wall, without gate or access, around the perimeter of the cul-de-sac on North Eileen Street to prevent/discourage the future Project residents or their guests from using the adjacent neighborhood for parking and external access to their units. In light of this condition and to address the existing neighbors’ concerns, the Applicant provided additional guest parking spaces. Additionally, the Applicant will add a provision in the governing documents for the Homeowners’ Association that will require residents to utilize their garages for parking, reserving street parking and guest parking spaces for guests only. Owner vehicles in the guest spaces would be subject to violation. This will ensure that residents do not own more than two vehicles and will promote the use of public transit and ensure the guest parking spaces do not result in an increase in VMT. Therefore, consistent with OPR Guidance, providing additional guest parking spaces in this case does not disqualify the Project from the TPA exemption.

Finally, note that the California Department of Transportation (Caltrans) reviewed the Project and stated that the Project “is in a Transit Priority Area (TPA) and is therefore exempt from a full VMT analysis.”

Thus, in light of the above discussion, the Project is located within a TPA, as determined by the City, and an exemption from VMT analysis is appropriate.

B. Land Use Impacts

CBCM-5 The comment’s citations to case law regarding CEQA’s requirement to analyze land use consistency are noted. The comment alleges that the MND for the Project does not

analyze the Project's inconsistencies with the General Plan goals and. Please refer to the table in Response CBCM-2, above, for responses to the specific inconsistencies alleged by the commenter.

The comment further alleges that the Project is an example of "spot-zoning," citing *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 572-3 ("*Citizens of Goleta Valley*"). The commenter loosely uses the term "spot zoning" without any definition and without any explanation of how the Project would constitute "spot zoning." *Citizens of Goleta Valley* did not involve spot zoning. "Spot zoning" generally refers to the creation of land use "islands," where a small area is zoned differently than the surrounding area and is illegal when the zoning "improperly limits" the use of the island. *Wilkins v. City of San Bernardino* (1946) 29 Cal.2d 332, 341. However, spot zoning describes a physical set of circumstances, and in and of itself is not illegal. "Spot zoning may or may not be impermissible, depending on the circumstances. The rezoning ordinance may be justified, however, if a substantial public need exists, and this is so even if the private owner of the tract will also benefit." *Foothill Communities Coalition v. County of Orange et al.*, (2014) 222 Cal. App. 4th 1302. There is no basis for the commenter's allegation.

The Project involves the adoption of a Specific Plan, which establishes zoning requirements for a specific area within the larger City of West Covina General Plan area. See Cal. Gov. Code §§65450-65457. The very purpose of a Specific Plan is to establish zoning that is specific to an area within a larger planning area. Under the commenter's logic, all Specific Plans in California would be impermissible spot zoning.

Lastly, the comment incorrectly states that the IS/MND failed to adequately support its claim that the Project's construction emissions would remain below applicable South Coast Air Quality Management District (SCAQMD) thresholds and to provide enforceable mitigation for these claims. The Responses to Comments on the Draft IS/MND already responded to the earlier comments referenced in the comment. The IS/MND provides a construction emissions analysis of the Project's regional and localized construction emissions in comparison with the applicable SCAQMD mass daily thresholds (Table 4-5 of the Draft IS/MND) and the SCAQMD localized significance thresholds (Table 4-7 of the Draft IS/MND), respectively. The Draft IS/MND states that "the SCAQMD recommends that projects be evaluated in terms of the quantitative thresholds established to assess both the regional and localized impacts of project-related air pollutant emissions". (Draft IS/MND at pp. 4-12 and 4-13). Table 4-1, SCAQMD Air Quality Significance Thresholds, provides the mass daily thresholds for volatile organic compounds (VOC), nitrogen oxides (NO_x), carbon monoxide (CO), respirable particulate matter 10 microns or less in diameters (PM₁₀), fine particulate matter 2.5 microns or less in diameter (PM_{2.5}), and sulfur oxides (SO_x). Under threshold 4.3(b) of the Draft IS/MND, it states that Project emissions were estimated using the California Emissions Estimator Model (CalEEMod) version 2016.3.2 computer program. The CalEEMod input for construction emissions was based on the Project's construction assumptions (as detailed in Section 3.5, Construction Activities of the Draft IS/MND) and default assumptions derived from CalEEMod. As stated in the Draft IS/MND, the outputs for CalEEMod quantification

outputs for construction emissions are included in Appendix A, Air Quality and Greenhouse Gas Emissions Modeling, of the Draft IS/MND. As detailed in Appendix A and Section 4.3, Air Quality, the entirety of construction activities for the Project were quantified. Table 4-5, Estimated Maximum Daily Construction Emissions, presents the estimated maximum daily emissions during construction of the proposed Project and compares the estimated emissions with the SCAQMD's daily regional emission thresholds. As shown in Table 4-5, all criteria pollutants are below the SCAQMD's respective thresholds (page 4-18 of the IS/MND), included here from the Draft IS/MND for ease of reference. In light of this findings no mitigation measures are required.

**TABLE ERROR! NO TEXT OF SPECIFIED STYLE IN DOCUMENT.-1
ESTIMATED MAXIMUM DAILY CONSTRUCTION EMISSIONS**

Year	Emissions (lbs/day)					
	VOC	NOx	CO	SOx	PM10	PM2.5
2021	15	67	37	<1	7	4
<i>Maximum Emissions</i>	15	67	37	<1	7	4
<i>SCAQMD Thresholds (Table 4-1)</i>	75	100	550	150	150	55
Exceeds SCAQMD Thresholds?	No	No	No	No	No	No
lbs/day: pounds per day; VOC: volatile organic compound; NOx: nitrogen oxides; CO: carbon monoxide; SOx: sulfur oxides; PM10: respirable particulate matter 10 microns or less in diameter; PM2.5: fine particulate matter 2.5 microns or less in diameter; SCAQMD: South Coast Air Quality Management District. Source: SCAQMD 2019 (thresholds); see Appendix A, Air Quality and Greenhouse Gas Emissions Modeling Data, for CalEEMod model outputs.						

Additionally, as detailed under Threshold 4.3(c) of the Draft IS/MND, localized criteria pollutants from on-site construction were also quantified and compared to the applicable SCAQMD localized significance thresholds. On page 4-22 of the Draft IS/MND, Table 4-7, Localized Significance Threshold Construction Emissions, shows the maximum daily on-site emissions for construction activities compared with the SCAQMD localized significance thresholds. As shown in Table 4-7, the localized emissions from the Project would be below the applicable thresholds, and no significant impacts would result to sensitive receptors. No mitigation is required.

**TABLE ERROR! NO TEXT OF SPECIFIED STYLE IN DOCUMENT.-2
LOCALIZED SIGNIFICANCE THRESHOLD CONSTRUCTION EMISSIONS**

Emissions and Thresholds	Emissions (lbs/day)			
	NOx	CO	PM10	PM2.5
Project maximum daily on-site emissions	56	34	6	4
SCAQMD Localized Significance Threshold^a	173	1,684	13	8
Exceed threshold?	No	No	No	No
lbs/day: pounds per day; NOx: nitrogen oxides; CO: carbon monoxide; PM10: respirable particulate matter 10 microns or less in diameter; PM2.5: fine particulate matter 2.5 microns or less in diameter. ^a Data is for SCAQMD Source Receptor Area 11, South San Gabriel Valley, 25-meter distance, 4.5 acres. Source: SCAQMD 2009 (thresholds); see Appendix A, Air Quality and Greenhouse Gas Emissions Modeling Data, for CalEEMod outputs.				

Furthermore, the Project addressed cumulatively considerable net increases of criteria pollutants for which the Project region is nonattainment under an applicable federal or state ambient air quality standards. As detailed on page 4-19 of the Draft IS/MND, because the Project's construction emissions are below the SCAQMD's regional and local significance thresholds, local construction emissions would not be cumulatively considerable, and the impact would be less than significant. As such, no mitigation measures are required. Because the Project's estimated construction emissions are below the SCAQMD's applicable construction emissions thresholds, no mitigation measures are required. Therefore, temporary construction emissions were adequately analyzed within the Draft IS/MND.

III. The City Cannot Make the Required Findings for Issuing a Precise Plan Permit or a Tentative Tract Map

A. Precise Plan Findings

CBCM-6 The comment asserts that the permit for the Precise Plan may not be adopted unless the Project complies with a list of conditions. It further states that the City cannot support several of the findings, including consistency with the General Plan goals and policies, compliance with all adopted development standards, provision of landscaping barriers (per Fabiola Zelaya Melicher's letter), and parking in front of the development. According to the commenter, granting the permit would allegedly interfere with neighbors' enjoyment and encroach on their privacy. The comment refers to the neighbors' comment letters.

The City has determined that the Project is required to obtain a Precise Plan permit, and as such will evaluate the conditions in light of what is proposed and make an informed decision based on their findings. It is speculative to assume that the permit may not be adopted. No further response is required.

Regarding the finding of inconsistency with the General Plan goals and policies, please refer to Response CBCM-2, above.

Regarding lack of compliance with development standards, it should be noted that the Walnut Grove Specific Plan is proposed as a planning tool that is established through the authority granted to the City of West Covina by California Government Code, Title 7, Division 1, Chapter 3, Article 8, Sections 65450 and 65457 (Specific Plans). As such, the Walnut Grove Specific Plan can set the parameters for the proposed development, including distribution, location, extent, intensity of land uses, building setbacks, building height, lot coverage, and landscape requirements. The purpose of the Specific Plan is to establish guidelines and standards specific to that Project to guide the development. These provisions would achieve the vision of the Project and are consistent with the requirements of the Government Code governing Specific Plans, cited above. Accordingly, the Project is required to and will comply with the development standards contained in the Walnut Grove Specific Plan, as the zoning document for the proposed Project.

Regarding neighbors' comments, it is acknowledged that the City received a number of comments from the surrounding property owners and provided responses to their comment letters on the Walnut Grove IS/MND. The issues of privacy and landscaping have been addressed in those responses.

B. Tentative Tract Map Findings

CBCM-7 Similar to the comment on Precise Plan, the commenter asserts that the tentative tract map may not be issued unless the Project complies with a list of conditions. The comment makes an assumption that the City will not be able to make the required findings due to the Project's alleged inconsistency with General Plan policies and goals.

The City will evaluate the conditions for a tentative tract map in light of what is proposed for the Project and will make an informed decision based on their findings. It is speculative to assume that a tentative tract map may not be issued. No further response is required.

IV. Covina-Valley Unified School District's Transfer of the Pioneer School Property May Violate the Surplus Land Act

CBCM-8 The comment states that the proposed Project would transfer school district land to a private developer and then to individual homeowners, prior to compliance with the Surplus Land Act. The comment is noted and will be forwarded to the decision makers. The commenter then provides a detailed description of the Surplus Land Act and its requirements.

The comment also asserts that the district has not offered the site for purposes stated in Government Code Section 54222. Additionally, it states that the district while claiming that they are conducting an "exchange" has not identified exchange properties.

First of all, it should be noted that the issue of transfer of the land violating the Surplus Land Act is not a CEQA issue, and as such no further response is required. Second, the district is a separate entity and comments pertaining to the actions of the district allegedly violating the Surplus Land Act cannot be addressed by the City. The City has received a letter from the Covina - Valley Unified School District addressing this comment and significantly, the exchange agreement between the District and Developer was validated by the Superior Court. Quoting from that letter "Specifically, the District sought and received a judgment from the Los Angeles Superior Court pursuant to California Code of Civil Procedure section 860 which allows public agencies to seek an order from the court "validating" specific actions that the public agency takes pursuant to applicable law. Through this validation action, the District obtained a "validation judgment" which explicitly finds and declares the Exchange Agreement with Lewis to be in compliance with all applicable laws, specifically, including Education Code section 17536." (see attached letter from Atkinson, Andelson, Loya, Ruud & Romo, dated April 15, 2021)

Conclusion

CBCM-9 The comment regarding incorporating the letter by Fabiola Zelaya Melicher, dated December 21, 2020, is noted and will be forwarded to the decision makers. The City prepared detailed responses to the said letter. No further response is required.

ATTACHMENT

**Exchange Agreement Between Covina-Valley Unified School District and
Lewis Land Developers, LLC**

Letter from Atkinson, Andelson, Loya, Ruud & Romo

April 15, 2021

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

A PROFESSIONAL LAW CORPORATION

ATTORNEYS AT LAW

12800 CENTER COURT DRIVE SOUTH, SUITE 300
CERRITOS, CALIFORNIA 90703-9364
(562) 653-3200 • (714) 826-5480

FAX (562) 653-3333
WWW.AALRR.COM

FRESNO
(559) 225-6700

IRVINE
(949) 453-4260

MARIN
(628) 234-6200

PASADENA
(626) 583-8600

PLEASANTON
(925) 227-9200

RIVERSIDE
(951) 683-1122

SACRAMENTO
(916) 923-1200

SAN DIEGO
(858) 485-9526

OUR FILE NUMBER:
005363.00229
32357328.1

April 15, 2021

VIA FIRST CLASS AND ELECTRONIC MAIL

Ms. Jo-Anne Burns
Planning Manager
City of West Covina
1444 W. Garvey Avenue,
2nd Floor, Room 208
West Covina, CA 91790
E-mail: jburns@westcovina.org

Re: Exchange Agreement between Covina-Valley Unified School District and Lewis Land Developers, LLC; Letter from Community Coalition Against Walnut Grove Project

Dear Ms. Burns:

As you know, our office serves as legal counsel for Covina Valley Unified School District (“District”) with respect to the Exchange Agreement between the District and Lewis Land Developers, LLC (“Lewis”) regarding the District’s property located at 1651 E. Rowland Avenue, West Covina, CA, 91791, known generally as the District’s former Pioneer School site (“Pioneer Site”). Our office received a copy of the letter from the Community Coalition Against Walnut Project (“CCAWP”) providing comments to the City of West Covina related to Lewis’ planned project on the Pioneer Site. The CCAWP letter discusses the City’s General Plan, the California Environmental Quality Act (“CEQA”), and the Surplus Lands Act. The District is not involved in the specifics of Lewis’ planned development of the Pioneer Site, and therefore, cannot comment on the general plan, zoning or CEQA issues. However, the CCAWP letter also claims that the Exchange Agreement “may violate the Surplus Land Act.” As explained below, the District hereby confirms that the Exchange Agreement is not in violation of the Surplus Land Act.

The Surplus Land Act is codified in Government Code section 54220 *et seq.*, through Assembly Bill 1486. In sum, the Surplus Land Act requires public agencies to provide notifications to certain entities listed in Government Code section 54222 (the “Notice Requirements”) before selling surplus property. However, the Surplus Land Act also provides a list of “exempt surplus

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land” that are not subject to the Notice Requirement. Specifically, Government Code section 54221(f)(1)(I) deems any property subject to Education Code section 17536 (which allows school districts to exchange its properties for other properties) exempt from the Notice Requirements.

As acknowledged in the CCAWP letter, the Exchange Agreement establishes an “exchange process” by which the District grants the Pioneer Site to Lewis in exchange for a different property pursuant to Education Code section 17536. Therefore, the Exchange Agreement is exempt from the Surplus Lands Act as discussed above. The District Board confirmed this through District Board Resolution 19-20-13, which made the required findings to declare the Pioneer Site exempt. We attached a copy of the Resolution as Exhibit A.

Furthermore, while the CCAWP letter acknowledges that the Exchange Agreement establishes an exchange process, CCAWP claims the exchange is actually a sale because “no exchange properties have been identified.” However, Section 17536 does not require the Exchange Agreement to identify specific property in order to be a valid exchange. Instead, the District is authorized to identify the exchange property at a later date so that it may search for properties that best meet its needs. Regarding the Pioneer Site, the Exchange Agreement establishes a process whereby Lewis deposits exchange proceeds funds in an escrow account, which may be used by the District once it identifies a satisfactory property to obtain in exchange for the Pioneer Site.

In fact, the process set forth in the Exchange Agreement, and the specific language in the Exchange Agreement, has already been validated by the California courts as a valid exchange process in accordance with Section 17536. Specifically, the District sought and received a judgment from the Los Angeles Superior Court pursuant to California Code of Civil Procedure section 860 which allows public agencies to seek an order from the court “validating” specific actions that the public agency takes pursuant to applicable law. Through this validation action, the District obtained a “validation judgment” which explicitly finds and declares the Exchange Agreement with Lewis to be in compliance with all applicable laws, specifically, including Education Code section 17536. A copy of the validation judgment is attached as Exhibit B.

The CCAWP letter also indicates “[t]he District has stated in the past that its agreements with the developer permit exchange of the property for cash.” CCAWP provides no support for this claim, nor any formal document approved by the District changing the Exchange Agreement to a sale agreement. Rather, the Exchange Agreement, which explicitly establishes the process by which the District will receive a property in exchange for the Pioneer Site, speaks for itself. We must presume that the “cash” to which CCAWP refers is simply the permissible exchange proceeds addressed in the Exchange Agreement.

Finally, the CCAWP letter focuses on comments regarding Lewis’ proposed Project on the Pioneer Site with respect to the City’s zoning, the West Covina General Plan, and the City’s municipal code. Again, the District is not involved with the specifics of Lewis’ Project, and

ATKINSON, ANDELSON, LOYA, RUUD & ROMO

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therefore, appropriately will defer to the City regarding these issues and will not involve itself with the remainder of CCAWP's contentions. The Surplus Land Act and exchange process are separate and distinct issues, which the District has clearly addressed through the attached Board Resolution and validation judgment.

Based on the foregoing, the District has conclusively established that the Exchange Agreement is permissible and complies with the Surplus Land Act. Please feel free to share this letter and the attached Board Resolution and validation judgment with CCAWP, and any other party you see fit.

Sincerely,

ATKINSON, ANDELSON, LOYA, RUUD & ROMO



Andreas C. Chialtas

SMM/acc

Enclosures

cc: Brad Francke, Lewis Land Developers, LLC (e-mail: Brad.Francke@lewismc.com)
Russell Hildebrand, City Attorney (e-mail: rah@jones-mayer.com)
Elizabeth Eminhizer, Ed.D., Superintendent
Colleen Patterson, Interim Superintendent of Business Services
Stephen M. McLoughlin, Atkinson, Andelson, Loya, Ruud & Romo

EXHIBIT A

RESOLUTION NO. 19-20-13

**RESOLUTION OF THE COVINA-VALLEY UNIFIED SCHOOL DISTRICT
AUTHORIZING AND APPROVING THE EXCHANGE OF REAL PROPERTY
THROUGH AN EXCHANGE AGREEMENT AND JOINT ESCROW INSTRUCTIONS
AND DECLARATION OF PROPERTY AS EXEMPT SURPLUS LAND FOR THE
PIONEER SCHOOL SITE**

WHEREAS, the Covina-Valley Unified School District ("District") owns a fee simple interest in approximately 8.82 acres of property located at 1651 E. Rowland Avenue, West Covina, CA, 91791, known generally as the District's former Pioneer School site, and as more particularly described in the Exchange Agreement described below ("Pioneer Property");

WHEREAS, on June 22, 2018, the District's Board adopted Resolution 17-18-20 (the "2018 Resolution") in which the Board established that it did not need the Pioneer Property for classroom buildings or educational purposes and therefore, instructed District staff to enter into an exchange agreement with Lewis Land Developers, LLC ("Lewis") as authorized by Education Code Section 17536 *et seq.*,

WHEREAS, Education Code Section 17536 *et seq.* provides that the governing board of a school district or county office of education, upon a two-thirds vote of its members, may exchange any of its real property for real property of another person or private business firm upon such terms and conditions as the parties thereto may agree, without complying with any of the disposal of surplus property provisions set forth in the Education Code;

WHEREAS, pursuant to the 2018 Resolution, District staff engaged in negotiations with Lewis to establish the terms and conditions of the exchange agreement;

WHEREAS, the District and Lewis have negotiated the attached Exchange Agreement and Joint Escrow Instructions ("Exchange Agreement") whereby the District agrees to give the Pioneer Property to Lewis in exchange for a property and/or payment, pursuant to the terms and conditions;

WHEREAS, the Exchange Agreement is attached hereto as Exhibit "A" and presented to the Board for approval;

WHEREAS, Government Code section 54220 *et seq.*, as revised by Assembly Bill 1486, establishes certain notification requirements applicable to properties owned by public agencies, including school districts (the "Notification Requirements");

WHEREAS, Government Code section 54221(f)(I) establishes that property exchanged pursuant to the exchange process set forth in Education Code section 17536 is not subject to the Notice Requirement because such property is deemed "exempt surplus land;"

WHEREAS, the District has reaffirmed that the Pioneer Property is not needed by the District for classroom buildings or educational facility purposes as set forth in the 2018 Resolution;

NOW, THEREFORE, the Board hereby finds, determines, declares, orders and resolves as follows:

Section 1. That all of the recitals set forth above are true and correct.

Section 2. That the Pioneer Property is not or will not be needed by the District for classroom buildings or educational facility purposes.

Section 3. That the Pioneer Property shall be exchanged with Lewis pursuant to the terms of the Exchange Agreement.

Section 4. That the Board approves the Exchange Agreement set forth herein as Exhibit B, and authorizes the execution of the Exchange Agreement.

Section 5. That the exchange of the Pioneer Property shall be upon the following terms and conditions:

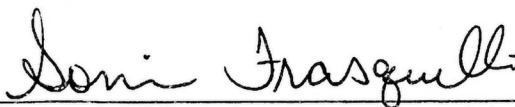
- A. Escrow shall be opened within five (5) business days following the execution of the Exchange Agreement and shall close on or prior to the earlier of the date upon which all appeal periods expire for the tentative tract map for the Pioneer Property or the date which is eighteen (18) months after the Opening of Escrow, unless mutually extended by both Parties or extended by Lewis through the Closing Extensions as defined in the Exchange Agreement.
- B. The Pioneer Property will be delivered in an "As-Is" condition.
- C. That each of the parties to the Exchange Agreement release the other for any and all claims whatsoever related to the Pioneer Property, including any prior negotiations or agreements related thereto.
- D. District's obligation to consummate the exchange is contingent upon Lewis not in default of any term or condition of the Exchange Agreement.
- E. Lewis' obligation to consummate the exchange is contingent upon the District not being in default of any term or condition of the Exchange Agreement, and approval of the Pioneer Property as stated in the Exchange Agreement.

Section 6. That the Board hereby finds and declares that the Property constitutes "exempt surplus land" as defined in Government Code section 54221(f)(I) because the Pioneer Property is being exchanged pursuant to Education Code section 17536 and therefore, is not subject to the Notice Requirements of Government Code section 54220 et seq.

Section 7. That the Board hereby delegates authority to the District Superintendent, or his designee, to do any and all things, including making minor revisions to the Exchange Agreement, and to execute and deliver any and all documents which, in consultation with legal counsel and District staff, they may deem necessary or advisable in order to effectuate the exchange of the Pioneer Property or to further the purpose and intent of this Resolution, and any such actions previously taken by such officers are hereby approved, ratified and confirmed.

Section 8. That this Resolution shall take effect upon adoption.

ADOPTED, SIGNED AND APPROVED this 16th day of December, 2019.



President of the Board of Education of the Covina-Valley Unified School District

I, Rachael Robles, Clerk of the Board of Education of the Covina-Valley Unified School District, do hereby certify that the foregoing Resolution was adopted by said Board at a meeting of the Board held on the 16th day of December, 2019, and that it was so adopted by the following vote:

AYES: 5

NOES: 0

ABSTAIN: 0

ABSENT: 0



Clerk of the Board of Education of the Covina-Valley Unified School District

EXHIBIT "A"

EXCHANGE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

[To Be Inserted]

EXHIBIT B

1 ATKINSON, ANDELSON, LOYA, RUUD & ROMO
A Professional Corporation
2 Andreas C. Chialtas, State Bar No. 204394
Stephen M. McLoughlin, State Bar No. 253572
3 12800 Center Court Drive, Suite 300
Cerritos, CA 90703-9364
4 Telephone: (562) 653-3200 • (714) 826-5480
Facsimile: (562) 653-3333

FILED
Superior Court of California
County of Los Angeles
12/19/2019

Sherril R. Carter, Executive Officer / Clerk of Court
By: Juanita Alfaro Deputy

5 Attorneys for Plaintiff
6 COVINA-VALLEY UNIFIED SCHOOL DISTRICT

7
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES, EAST DISTRICT (POMONA SOUTH)**

10
11 COVINA-VALLEY UNIFIED SCHOOL
DISTRICT,

12 Plaintiff,

13 v.

14 ALL PERSONS INTERESTED IN THE
15 MATTER OF THE proceedings approving
and confirming the form and execution of an
16 Exchange Agreement by and between
Covina-Valley Unified School District and
17 Lewis Land Developers, MLC Holdings, Inc.,
pursuant to Education Code section 17536,
18 for the exchange of real property, and
decreeing and adjudging said agreement to be
19 lawful, valid and binding on Covina-Valley
Unified School District and Lewis Land
20 Developers, MLC Holdings, Inc.,

21 Defendants.

CASE NO. 19PSCV00421

[PROPOSED] DEFAULT JUDGMENT

**[FEE EXEMPTION PURSUANT TO
GOVERNMENT CODE §6103]**

[FILED IN SUPPORT OF PREVIOUSLY
FILED DEFAULT JUDGMENT
APPLICATION FILED CONCURRENTLY
WITH:

- (1) MEMORANDUM OF POINTS AND
AUTHORITIES
- (2) DECLARATION OF ROBERT
MCENTIRE
- (3) DECLARATION OF STEPHEN M.
MCMCLOUGHLIN, ESQ.
- (4) PROOF OF PUBLICATION

1 Plaintiff, COVINA-VALLEY UNIFIED SCHOOL DISTRICT's ("District") Application
2 for Entry of Default Judgment came on Dec. 18, 2019. The Application was made by
3 declaration pursuant to Code of Civil Procedure Section 585(d). After considering the moving
4 papers and all arguments in favor and in opposition to the Application for Entry of Default and
5 Default Judgment, the Court enters judgment as follows:

6 a. That this action has been properly brought pursuant to chapter 9 of title 10
7 of part 2 of the Code of Civil Procedure (commencing with section 860) and chapter 3 of part 1 of
8 title 5 of the Government Code (sections 53510 & 53511);

9 b. That jurisdiction has been obtained properly over all interested persons
10 named as defendants in this action pursuant to Code of Civil Procedure section 861 and
11 Government Code section 6063;

12 c. That the Board action taken on June 22, 2018 which authorized and
13 approved the exchange of the real properties owned by the District pursuant to Education Code
14 section 17536, is and was in conformance with the California Constitution, all applicable laws,
15 and all requirements of all regulatory bodies, agencies or officials having authority over or
16 asserting authority over said proceedings or any part thereof;

17 d. That the following Exchange Agreements contain the information and
18 showings required by Education Code section 17536, the California Constitution, all other
19 applicable laws and all requirements of all regulatory bodies, agencies or officials having authority
20 over or asserting authority over said proceedings or any part thereof:

21 i. An Exchange Agreement by and between District and MLC Holdings, Inc.
22 (hereinafter "MLC") for the exchange of certain real property owned by the
23 District, identified as approximately 8.07 acres of property located at 1024
24 W. Workman Ave., West Covina, California 91790, known generally as the
25 District's Vincent Children's Center site;

26 ii. An Exchange Agreement by and between District and MLC for the
27 exchange of certain real property owned by the District, identified as
28 approximately 9.6 acres of property located at 16209 E. San Bernardino

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Rd., Covina, CA, known generally as the District's former Griswold School site; and

iii. An Exchange Agreement template (the "Template Exchange Agreement") including the same conditions and process set forth in the Exchange Agreements with MLC, to be used by the District for future properties that the District may exchange with Lewis or other entities.

e. Thus, the Exchange Agreements will be lawful, valid and binding on District upon execution.

f. That all proceedings by and for District with respect to the form and authorization to execute and deliver the Exchange Agreements, are in the best interests of District and all interested parties, and were and are made in conformity with the provisions of Education Code section 17536, the California Constitution, all other applicable laws and all requirements of all regulatory bodies, agencies or officials having authority over or asserting authority over said proceedings or any part thereof. Thus, the Exchange Agreements will be lawful, valid and binding on District upon their execution.

g. That Education Code section 17455 et seq., which establishes a "surplus property procedure" that school districts may use to sell or lease real property, does not apply to the Exchange Agreements since said agreements are entered into pursuant to Education Code section 17536 allows school districts to exchange real property "without complying with any provisions in this code."

DATED: 12/19/2019, 2019



Peter A. Hernandez / Judge
Judge of the Superior Court

From: Kristine Frey <freykristine@gmail.com>
Sent: Monday, April 26, 2021 10:38 AM
To: Jo-Anne Burns <JBurns@westcovina.org>
Subject: Re: Pioneer site -- EIR? Council Meeting Date?

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Thank you for this information, Jo-Anne.

I would like to request an EIR, per CEQA, SB 743, New Section 15064.3, and to review that data prior to approval of the lead agency (West Covina City).

Working with the Traffic Division, I have requested traffic data analysis. On Rowland a few weeks ago, they put out traffic speed recorders. I also requested a traffic study on Leaf and Rowland. This is data that qualifies for our review per SB 743, New Section 15064.3. Determining the Significance of Transportation Impacts, (b) (3) "Qualitative Analysis. If existing models or methods are not available to estimate the vehicle miles traveled for the particular project being considered, a lead agency may analyze the project's vehicle miles traveled qualitatively. Such a qualitative analysis would evaluate factors such as the availability of transit, proximity to other destinations, etc. For many projects, a qualitative analysis of construction traffic may be appropriate."

We should have the opportunity to review the data in an EIR, per CEQA, especially given that the IS/MND posted said the main culprit on air quality will be by cars on the road having an impact on air quality. I'm sure it's not just speed they tracked, but a traffic count, as well, giving us an idea of impact on air quality.

I look forward to your response. Thank you.

Kristinev

Kristine Frey

Comment Email Dated April 26, 2021

Walnut Grove Residential Project

The general comment regarding the commenter's concerns about the proposed Walnut Grove Residential Project is noted and will be forwarded to the decision makers. It should be noted that in accordance with the State CEQA Guidelines, Section 15073, the Draft IS/MND was circulated for a 30-day public review beginning on November 19, 2020 and ending on December 21, 2020. During that time, the Draft IS/MND was available at the City of West Covina website. In light of this, it should be acknowledged that this comment letter was submitted four months past the end of the review period. Nevertheless, the following responses are prepared to address the comments.

The comment primarily asserts that the impacts of the Project pertaining to transportation and air quality should be analyzed in an Environmental Impact Report (EIR). To determine the appropriate level of environmental review, the City prepared an initial study for the Project. The primary function of an initial study is to provide the lead agency with information to use as the basis for deciding whether to prepare an EIR or a negative declaration. 14 Cal Code Regs §15063(b)(1). The City then determines, based on its initial study, that the project may have a significant effect on the environment and that an EIR is therefore required. If the study shows no substantial evidence that the project may have a significant effect on the environment, the agency must prepare a proposed negative declaration, which is then circulated for public review and comment. 14 Cal Code Regs §§15070(a), 15072-15073

The City of West Covina, based on the initial study, detailed analysis and substantial evidence, determined that a Mitigated Negative Declaration (MND) is the appropriate CEQA document for the proposed Project. The MND conducted detailed analysis and adequately provided accurate evaluations of potential environmental impacts associated with the Project's construction and operation. To address the potential impacts, the MND proposed feasible mitigation measures to reduce the impacts to less than significant levels. Additionally, the detailed analysis contained in the MND disclosed that the Project would not result in significant impacts that could not be reduced to less than significant levels and would remain significant and unavoidable for which an Environmental Impact Report (EIR), and not an MND, would be required. In light of this determination and based on the initial study and analysis, an MND was deemed to be the appropriate CEQA document for the proposed Project, and the MND was prepared in accordance with Article 6, Negative Declaration Process (Section 15070 to 15071) of the State CEQA Guidelines..

Regarding compliance with SB 743 and Section 15064.3, Section 4.17, Transportation, of the IS/MND accurately describes SB 743 and states the following:

State CEQA Guidelines Section 15064.3, subdivision (b) provides the criteria for analyzing transportation impacts, and a project's effect on automobile delay shall not constitute a significant environmental impact. Generally,

vehicle miles traveled is the most appropriate measure of transportation impacts. Vehicle miles traveled (VMT) refers to the amount and distance of automobile travel attributable to a project. According to the State of California's *Technical Advisory on Evaluating Transportation Impacts in CEQA*, "certain projects (including residential, retail, and office projects, as well as projects that are a mix of these uses) proposed within ½ mile of an existing major transit stop or an existing stop along a high quality transit corridor would have a less than significant impact on VMT" (OPR 2018). The City of

West Covina recently adopted the use of Vehicle Miles Traveled (VMT) analysis methodology for evaluating potential traffic impacts for development projects. The Project is located within a Transit Priority Area (TPA) and is exempt from a full VMT analysis by the City. Although there have been some changes to transit service due to the COVID-19 pandemic, it was confirmed that the Foothill Transit bus lines in the Project area are still operating as usual. Therefore, the TPA exemption is still valid.

The Project is located less than ¼ mile from two major transit stops (Foothill Transit bus lines 280 and 488) and is therefore in a Transit Priority Area (TPA). Also, please note that the California Department of Transportation (Caltrans) reviewed the Project and stated that the Project “is in a Transit Priority Area (TPA) and is therefore exempt from a full VMT analysis.” Thus, in light this, the Project is located within a TPA, as determined by the City, and an exemption from VMT analysis is appropriate.

The comment also states that “*the main culprit on air quality will be by cars on the road having an impact on air quality.*” Section 4.3, Air Quality of the IS/MND acknowledged that,

Operational emissions associated with the Project are comprised of area, energy, and mobile source emissions. The principal source of VOC emissions associated with the Project would result from vehicle trips. . . Mobile source emissions are based on estimated Project-related trip generation forecasts, as contained in the Project traffic impact analysis. The Project would generate 1,124 daily trips (Psomas 2020). The peak day operational emissions for VOC, NOx, CO, SOx, PM10, and PM2.5 daily emissions that would be created from the Project’s long-term operation have been calculated . . . The data provided in Table 4-6 shows that none of the analyzed criteria pollutants would exceed the regional emissions operational thresholds. Therefore, a less than significant regional air quality impact would occur from operation of the Project [emphasis added]. No mitigation is required.

Thus, in light of the above, an MND appropriately analyzed the potential impacts pertaining to air quality, as no significant, unavoidable impacts would result that would require preparation of an EIR.

The comment regarding data analysis and traffic speed recorders on Rowland Avenue and a traffic study on Leaf and Rowland Avenue is not relevant to the proposed Walnut Grove Project, and as such no response is required.