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August 17, 2016

AGENDA ITEM NO. 1

VIA OVERNIGHT AND ELECTRONIC MAIL

Planning Commissioner Chair Carlyn Obringer
and Planning Commissioners
Planning Commission
City of Concord
1950 Parkside Drive
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Re: **Comment on Resolution No. 16-22PC Concord Village
(PL15438 – UP, MP, DR)**

Dear Chair Obringer and Commissioners:

We are writing on behalf of **Concord Residents for Responsible Development** to comment on Resolution No. 16-22PC, which is on the agenda for the August 17, 2016 City of Concord Planning Commission public hearing.¹ The resolution includes approvals for a use permit, minor use permit, and design review related to a 230-unit apartment complex known as Concord Village (“the Project.”) The resolution also contains a determination that the Project qualifies for a density bonus and an exemption from environmental review under the California Environmental Review Act² (“CEQA”) as an infill development project pursuant to CEQA Guidelines section 15332 (the “Infill Categorical Exemption”).

¹ August 17, 2016 Planning Commission Hearing Agenda,
<http://www.cityofconcord.org/citygov/agendas/bc/plc/2016/08172016.pdf>

² Pub. Resources Code § 21000 et seq.

We request that the Commission deny all approvals sought in Resolution No. 16-22PC on the grounds that 1) the Project is not exempt from CEQA, 2) the Project fails to comply with the Downtown Concord Specific Plan (“Specific Plan”), and 3) the Project would be detrimental to construction workers and residents.

The Project is not exempt from CEQA because 1) it is a hazardous waste site, 2) requires mitigation to reduce its significant impacts, 3) would have significant impacts on water and air quality, and 4) may result in significant impacts to public health due to high levels of contamination on the site.

In addition, the Project, particularly its parking garage design, directly interferes with the Specific Plan’s vision of an integrated pedestrian network in downtown Concord. The Project’s scale defies the Specific Plan’s instruction that new development should conform to the scale of surrounding buildings. Furthermore, the current design of the Project prevents the Project from qualifying for the requested density bonus.

Finally, the Project is inconsistent with the Development Code’s prohibition on granting use and minor use permits where the use will be detrimental to public health of persons residing or working in the neighborhood.³

We prepared these comments with the assistance of hazardous materials expert Matt Hagemann, P.G., C.Hg. former Senior Science Policy Advisor for U.S. EPA Region 9’s hazardous materials program, and air quality expert Jessie Jaeger of Soil / Water / Air Protection Enterprise (“SWAPE”). SWAPE’s technical comments and curriculum vitae are attached hereto as Exhibit A and are fully incorporated herein.⁴

We request that the Planning Commission deny the use permit, minor use permit, and design review approval because the Project is not exempt from CEQA, the Project is inconsistent with the Specific Plan and the Development Code, and the City failed to conduct environmental review, as required by CEQA.

³ City of Concord Development Code (“Development Code”) 18.435.060 (5).

⁴ See generally **Exhibit A: SWAPE Comments**.

I. Statement of Interest

Concord Residents for Responsible Development (“Concord Residents”) is an unincorporated association of individuals and labor organizations that may be adversely affected by the potential impacts associated with Project development. Coalition Residents includes Eric Haynes, Raul Tiffer, Vincent Copeletti, **International Brotherhood of Electrical Workers Local 302, Plumbers & Steamfitters Local 159, Sprinkler Fitters Local 483, and Sheet Metal Workers Local 104,** and their members and their families who live and/or work in the City of Concord and Contra Costa County.

The individual members of Concord Residents live, work, and raise their families in the City of Concord. They would be directly affected by the Project’s impacts. Individual members may also work on the Project itself. They will therefore be first in line to be exposed to any health and safety hazards that may exist on the Project site.

The organizational members of Concord Residents also have an interest in enforcing the City’s planning and zoning laws and the State’s environmental laws that encourage sustainable development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for business and industry to expand in the region, and by making it less desirable for businesses to locate and people to live there. Indeed, continued degradation can, and has, caused restrictions on growth that reduce future employment opportunities. Finally, Concord Residents’ members are concerned about projects that present environmental and land use impacts without providing countervailing economic and community benefits.

II. The Project Is Not Exempt from CEQA Review

The City improperly determined that the Project is exempt from environmental review under CEQA. CEQA is “an integral part of any public agency’s decision making process.”⁵ CEQA was enacted to require public agencies and decision makers to document and consider the environmental implications of their actions before formal decisions are made.⁶ CEQA requires an agency to conduct adequate environmental review prior to taking any discretionary action that may significantly affect the environment unless an exemption applies.⁷ Thus,

⁵ *Id.*, § 21006.

⁶ *Id.*, §§ 21000, 21001.

⁷ *Id.*, § 21100(a); *see also* CEQA Guidelines § 15004(a).

exemptions must be narrowly construed and are not to be expanded beyond the scope of their plain language.⁸

1. The Project Is Not Exempt from CEQA Because it is on a Hazardous Waste Site.

CEQA Guidelines section 15300.2(e) prohibits the application of a categorical exemption to a project that is located on a hazardous waste site designated in any list compiled pursuant to Government Code section 65962.5 (the “Cortese list”).⁹ The Cortese list is compiled by the Department of Toxic Substances Control (“DTSC”) and includes sites containing hazardous waste.¹⁰ Here, the Project is located on a site that is included on a list of hazardous waste sites compiled pursuant to Government Code section 65962.5. The Project location at 2482 Salvio Street appears on the Cortese List.¹¹ This address is unmistakably part of the Project site.¹² Thus, the Project is not eligible for an exemption from environmental review under CEQA Guidelines section 15332.

2. The Project is Not Exempt from CEQA Because It Requires Mitigation Measures to Reduce Potentially Significant Impacts.

A Project may not rely on mitigation measures to qualify for a CEQA categorical exemption.¹³ A Project that “may have a significant effect on the environment cannot be categorically exempt.”¹⁴ Mitigation measures are only relevant during CEQA review, not during an exemption determination preceding CEQA review.¹⁵ Agencies are prohibited from considering mitigation measures during an exemption determination because, unlike a CEQA review, CEQA provides no guidelines for evaluating mitigation measures during an exemption determination.¹⁶ Thus, to rely on mitigation measures during an exemption

⁸ *Castaic Lake Water Agency v. City of Santa Clarita*, 41 Cal.App.4th 1257 (1995).

⁹ CEQA Guidelines § 15300.2 (e).

¹⁰ Government Code §65962.5(a).

¹¹ Cortese List, http://www.envirostor.dtsc.ca.gov/public/mapfull.asp?global_id=80000061 (Envirostar is the mapping program that depicts the list of hazardous waste and substance sites compiled by DTSC.)

¹² See Staff Report, Location Map, p. 1 and Staff Report, p. 13 (“A phase I Environmental Site Assessment (ESA) that identified three potential environmental concerns at the site: A dry cleaning facility on the north side of the site at 2482-2488 Salvio Street.”).

¹³ *Salmon Protection and Watershed Network v. County of Marin*, 125 Cal.App.4th (2004) 1098, 1107.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

determination is to make a “premature” and “unauthorized” environmental evaluation.¹⁷

As set forth below, SWAPE provided substantial evidence that the Project may result in significant water quality impacts due to on-site contamination. The City recognizes this impact by describing petroleum hydrocarbons and chlorinated solvents that pose a threat to potential environmental receptors, including construction workers and residents of the Project.¹⁸ The City proposes “mitigation for the planned multi-tenant residential development.”¹⁹ Specifically, the City proposes a Remedial Action Plan (“RAP”), which has been conditionally approved by San Francisco Bay Regional Water Quality Control Board (“RWQCB”), but is yet to be submitted for public comment.

Even if relying on the RAP as mitigation would be adequate to reduce significant impacts, which it is not, the City’s reliance on mitigation itself renders the exemption inapplicable. The fact that the contamination of the site necessitates mitigation measures to reduce its impact to a less-than-significant level means that the Project does not qualify for a CEQA categorical exemption.

3. The Project is Not Exempt From CEQA Because It Would Result In Significant Air and Water Quality Impacts.

In-fill projects are not exempt from CEQA if approval of the project would result in any significant effects relating to traffic, noise, air quality, or water quality.²⁰ Agencies must support a categorical exemption with substantial evidence.²¹ Here, the City’s determination that the infill exemption applies is not supported by substantial evidence. The staff report merely repeats, verbatim, the language of the Infill Categorical Exemption contained in the CEQA Guidelines.²² The City cannot exempt the Project from CEQA as an infill development because the Project would result in significant air quality and water quality impacts. The City’s own evidence shows that the Project would result in significant air quality

¹⁷ *Id.* at 1108.

¹⁸ Staff Report, p. 13 – 14. *See also*, **Exhibit B**: Laura Simpson, Letter to San Francisco Bay Regional Water Quality Control Board, July 27, 2016 (“RWQCB Letter”).

¹⁹ *Id.*, p. 14.

²⁰ CEQA Guidelines § 15332(d).

²¹ *Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372); *see People v. County of Kern* (1974) 39 Cal.App.3d 830, 841-842 (conclusory statements unsupported by empirical or experimental data, scientific authorities, or explanatory information of any kind are insufficient to support a finding of insignificance).

²² Staff Report, p. 3.

and water quality impacts. In addition, SWAPE explains that additional substantial evidence shows that the Project may result in significant air quality and water quality impacts.²³ Thus, the Project fails to qualify for the Infill Categorical Exemption.

a. The Fair Argument Standard Should Apply In Determining Whether the Project Would Have Significant Air and Water Quality Impacts Under the Infill Exemption.

As a preliminary matter, the fair argument standard should apply in this case. Under the fair argument standard, if an agency is confronted by substantial evidence supporting a fair argument that a project may lead to a potentially significant environmental impact, then the agency must prepare an EIR.²⁴ Significant environmental impacts that would otherwise compel an EIR do not *entirely evade* CEQA review simply by virtue of being cloaked in an analysis of whether the Infill Categorical Exemption applies. To allow significant environmental impacts to escape CEQA review based on a lower standard than that which is used to compel an EIR, would be to swallow the cornerstone of CEQA itself: public disclosure of potentially significant environmental impacts and mitigation measures in an EIR, which is subject to public review and comment.

b. Even under the Substantial Evidence Standard, The City Lacks Substantial Evidence that the Project Would Not Result In Significant Air Quality Impacts; Instead, Substantial Evidence Shows the Project Would Result in Significant Impacts on Air Quality

The Infill Categorical Exemption only applies if “[a]pproval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.”²⁵ The City failed to provide any substantial evidence that the Project will not result in any significant effects on air quality.

In contrast, SWAPE found and disclosed substantial evidence that the Project may lead to significant impacts on air quality.²⁶ Though the staff report fails to set forth the Project’s emissions quantities, SWAPE compared the Project to screening criteria established by the Bay Area Air Quality Management District

²³ See generally **Exhibit A**: SWAPE Comments.

²⁴ CEQA Guidelines §15064(f)(1).

²⁵ CEQA Guidelines §15332(d).

²⁶ See generally **Exhibit A**: SWAPE comments.

(“BAAQMD”).²⁷ BAAQMD provides screening criteria that allows for significant impact determinations without quantifying a Project’s emissions. Instead of emissions quantities, the screening criteria are based on land uses and Project scale.²⁸ The screening criteria provide a “conservative” estimate of air quality impacts.²⁹

SWAPE compared the Project, which contains 230 dwelling units, to BAAQMD screening criteria for low-rise, mid-rise, and high-rise apartment complexes. As shown in the chart below, SWAPE’s analysis shows that the Project may have a potentially significant operational greenhouse gas (“GHG”) impact because the Project’s size is *double* the significance thresholds for low-rise, mid-rise, and high-rise apartment complexes.

Land Use Type	Operational Criteria Pollutant Screening Size	Operational GHG Screening Size	Construction Criteria Pollutant Screening Size
Single-family	325 du (NOX)	56 du	114 du (ROG)
Apartment, low-rise	451 du (ROG)	78 du	240 du (ROG)
Apartment, mid-rise	494 du (ROG)	87 du	240 du (ROG)
Apartment, high-rise	510 du (ROG)	91 du	249 du (ROG)
Condo/townhouse, general	451 du (ROG)	78 du	240 du (ROG)
Condo/townhouse, high-rise	511 du (ROG)	92 du	252 du (ROG)

SWAPE’s conclusion that the Project may lead to significant air quality impacts is not altered by the fact the Project is an infill development rather than a greenfield project.³⁰ The Project’s dramatic exceeding of BAAQMD significance thresholds overwhelms any reduction in projected emissions due to the Project’s infill setting.³¹

Thus, the Infill Categorical Exemption does not apply to the Project because the Project may result in potentially significant impacts to air quality.

²⁷ *Id.*, p. 3.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.*, p. 4.

³¹ *Id.*

- c. Even under the Substantial Evidence Standard, The City Lacks Substantial Evidence that the Project Would Not Result In Significant Water Quality Impacts; Instead, Substantial Evidence Shows that the Project Would Result in Significant Impacts on Water Quality

The Infill Categorical Exemption only applies if “[a]pproval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality.”³² The City failed to provide any substantial evidence that the Project will not result in any significant effects on water quality.

In fact, the City’s own evidence and requirement for mitigation show that the Project *will* result in significant impacts on water quality. In addition, SWAPE provides additional substantial evidence that the Project may lead to significant impacts on water quality.³³ In 2009, investigations of the Project site indicated extremely high levels of volatile organic compounds (“VOCs”) in soil vapor samples. The VOCs found on-site include tetrachloroethene (“PCE”). PCE was found in concentrations up to 25,000 micrograms per cubic meter. The severity of the contamination is apparent when considering the environmental screening level for PCE, which is a mere 240 micrograms per cubic meter. Benzene was also found on site. Exposure to benzene and PCE is known to cause cancer.

A proposed conditional RAP to clean-up the site is currently pending before the RWQCB. However, the proposed RAP is currently undergoing public review and is not complete. Furthermore, the RWQCB is confined to evaluating impacts on water quality and is not the appropriate agency to oversee cleanup of the site to worker and residential health standards. The RWQCB lacks the toxicologists who are able to review a site-specific health risk assessment.³⁴ Finally, the proposed RAP shows that the Project would result in significant impacts on water quality, air quality, and public health.³⁵

First, the RAP has not yet been executed. The comment period on the RAP intended to cleanup the contamination has not yet begun and thus RWQCB has not evaluated public comment on the RAP.³⁶ The RWQCB has not yet prepared its promised “response to comments.”³⁷ If the Planning Commission approves the

³² CEQA Guidelines §15332(d).

³³ **Exhibit A:** SWAPE comments, p. 1 – 3.

³⁴ *Id.*, p. 2

³⁵ SWAPE Comments, p. 2.

³⁶ **Exhibit B:** RWQCB Letter.

³⁷ *Id.* (“Once our public comment period closes, a response to comments will be prepared.”)

Project on August 17, 2016, it will do so without any public input on the RAP intended to mitigate severe contamination impacts at the Project site.³⁸

Second, SWAPE comments that the Planning Commission should not approve the Project until a step-wise cleanup has been approved by the DTSC, an agency that does have toxicologists on staff, and the revised cleanup plan has actually been completed.³⁹

Finally, SWAPE points to the extremely high levels of PCE soil vapor contamination at the site, the unknown source of these vapors, lax regulatory oversight, and the inappropriateness of the presiding regulatory agency, as substantial evidence that the Project will pose ongoing significant health risks unless properly mitigated.⁴⁰ Because the on-site contamination includes contamination of groundwater and air, the Project may lead to potentially significant impacts on water and air quality.

4. The Project is Not Exempt From CEQA Because The Project Fails to Comply with the City of Concord General Plan 2030

The Infill Categorical Exemption only applies if “the project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations.”⁴¹ The City of Concord’s General Plan 2030 (the “General Plan”) sets forth numerous policies aimed at promoting an integrated pedestrian network. Among other policies directed an integrated pedestrian network, the General Plan seeks to “incorporate urban design measures in commercial and mixed use districts which accommodate pedestrians and support walking” and promote “innovative and effective walkway features to enhance the pedestrian environment.”⁴² A specific plan is a means by which a General Plan is implemented.⁴³ As described in Section III below, the Specific Plan’s standards and goals seek to establish an integrated pedestrian network and thus the Specific Plan is implementing the General Plan’s policies aimed at accommodating pedestrians.

³⁸ *Id.*

³⁹ **Exhibit A:** SWAPE Comments, p. 2.

⁴⁰ *Id.*, p. 2.

⁴¹ CEQA Guidelines §15332(a).

⁴² Policy T-1.5.6, p. 5-26 and Policy T-1.5.2, p. 5-25.

⁴³ California Government Code § 65450 (“After the legislative body has adopted a general plan, the planning agency may, or if so directed by the legislative body, shall, prepare specific plans for the systematic implementation of the general plan for all or part of the area covered by the general plan.”)

The Project, through defying the Specific Plan's efforts to establish an integrated pedestrian network as described in Section III, fails to comply with the General Plan's policies aimed at enhancing the pedestrian environment. The Project is inconsistent with the General Plan, as implemented by the Specific Plan, because the parking garage features 1) two entries rather than one entry, 2) an entrance on a major pedestrian street, and 3) entrances that are neither screened by landscaping techniques nor treated as opportunities for public art.

5. *The High Level of Contamination at the Project Site is an Unusual Circumstance which May Cause a Potentially Significant Impact to Public Health*

A project fails to qualify for a CEQA categorical exemption "where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances."⁴⁴ SWAPE concludes that the high PCE contamination on the Project site, which the City acknowledges, constitutes an unusual circumstance.⁴⁵ SWAPE indicates the Project high contamination is an unusual circumstance because "the Project site contains extremely high levels of PCE soil vapor contamination (which are well above residential ESLs), the contamination is unmitigated, and residential use is being planned for the site before the site has been cleaned up or assessed."⁴⁶ Furthermore, SWAPE indicates that the presence of this high contamination may lead to a potentially significant impact on public health, as described above.⁴⁷

Because the Project features an unusual circumstance—high contamination—and this circumstance may result in a potentially significant impact on human health, the Project is not exempt from CEQA.

III. The Project Fails to Comply with the Downtown Concord Specific Plan

The staff report in support of the resolution to approve the Project's permits claims that the Project is consistent with the Specific Plan. The staff report's focus on the Specific Plan's housing and transit policies cannot disguise clear inconsistencies with a major Project component: the parking garage.

⁴⁴ CEQA Guidelines, §15300.2(c)

⁴⁵ **Exhibit A:** SWAPE Comments, p. 2.

⁴⁶ *Id.*, p. 2.

⁴⁷ *Id.*

The primary vision of the Specific Plan is to “accommodate all travel modes, with an emphasis on pedestrians, bicyclists, and transit users.”⁴⁸ The Specific Plans seeks to realize this vision by creating an “integrated pedestrian network...with particular emphasis on streets within the pedestrian priority zone.”⁴⁹ The Project’s parking garage will contain six stories (one of which will be subterranean), and features blatant violations of the Specific Plan’s standards. By violating Specific Plan standards, the Project will directly frustrate the primary vision of the Specific Plan to accommodate all travel modes.⁵⁰ In addition, the Project’s five-story height is incongruous with the smaller scale of surrounding buildings, thus further thwarting the objectives of the Specific Plan.

1. *The Project’s Parking Garage Contains Two Separate Entries*

The Specific Plan states that “multi-unit residential buildings should consolidate their parking entries and exits to a single entry.”⁵¹ More generally, “breaks in the [residential] ground floor for vehicular and service entries should be minimized.”⁵² The Specific Plan calls for minimal breakage in ground floors, especially when such breakage is caused by vehicular traffic, because the “character of the building’s ground floor determines the overall quality of street level pedestrian experience.”⁵³ The Specific Plan clearly views vehicular and service entries as a negative factor in the pedestrian experience.

Here, the Project contains two entries, one on East Street and one on Port Chicago Highway.⁵⁴ The staff report offers no explanation for this divergence from the Specific Plan, which calls for one consolidated entry to minimize curbside cuts.⁵⁵ By failing to consolidate the vehicular and service entries and exits into one entry, the Project interferes with the enhanced integrated pedestrian network that is envisioned by the Specific Plan.

⁴⁸ Downtown Concord Specific Plan, p. 87.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*, p. 87.

⁵² *Id.*, p. 85.

⁵³ *Id.*

⁵⁴ Staff Report, p. 4 – 5 and Project Plans, A-1 Conceptual Building Plan.

⁵⁵ Specific Plan, p. 87.

2. *The Parking Garage's East Street Driveway is on a Major Pedestrian Street*

The Specific Plan states that “parking garage driveways should not be placed on major pedestrian streets.”⁵⁶ The Specific Plan’s recommendation is based on the premise that “parking structures are often a disruptive element in the urban fabric.”⁵⁷ Furthermore, the Specific Plan declares that “it is important to locate and access parking structures and residential garages such that the overall pedestrian flow and experience on the public streets is not compromised.”⁵⁸

Here, the Project will interfere with the pedestrian experience because one of the Project’s parking garage driveways is placed on East Street⁵⁹ and East Street is considered a “key” pedestrian street.⁶⁰ Also, East Street is in the pedestrian priority zone, which renders the location of the East Street driveway even more unreasonable and counterproductive to the goals of the Specific Plan.⁶¹

3. *The Parking Garage's Entrances are Neither Screened by Landscaping Techniques nor Treated as Opportunities for Public Art*

In keeping with its vision of an integrated pedestrian network, the Specific Plan declares that “garage entrances adjacent to sidewalk should be screened with landscaping techniques or should be treated as an opportunity for public art.”⁶²

The Project’s plans show no effort to screen the garage entrances or treat them as opportunities for public art. Such a failure is particularly disruptive of the Specific Plan in regards to East Street, which is considered a key pedestrian street, as described above. Rather than fully integrating the garage driveways into a street frontage conducive of an integrated pedestrian network, the Project merely offers a few trees as consolation for the breaking curbsides and street frontages.⁶³ Simply

⁵⁶ *Id.*, p. 90.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ Staff Report, p. 4 – 5 and Project Plans, A-1 Conceptual Building Plan.

⁶⁰ See Specific Plan, Policy C-3.3: (“Reduce street crossing widths and increase pedestrian visibility by installing bulb-outs and crosswalk markings at intersections on key pedestrian streets where feasible. Installation of bulb-outs at intersections should be considered along the following streets within the pedestrian priority zone: [list of streets including East Street].” See also *id.*, Fig. 5.1 (showing East Street as a “Pedestrian Street.”)

⁶¹ *Id.*; Specific Plan, Policy C-3.3, p. 111.

⁶² *Id.*, p. 87.

⁶³ Project Plans, A-1 Conceptual Building Plan.

flanking the East Street entrance with a couple trees does not constitute “screening with landscaping techniques.” The Port Chicago Highway entrance is not even flanked by two trees. Instead, the Project’s plans only call for planting trees on one side of the Port Chicago Highway entrance, leaving it free to mar the view from the sidewalk and the Wisteria residential community across the street.⁶⁴

Aside from the inadequate screening of the entrances, the Project plans contain no mention of treating the two garage entrances as opportunities for public art.

4. *The Project Fails to Maintain the Scale of Adjacent Buildings*

The Project is within the Todos Santos District of the Specific Plan.⁶⁵ Todos Santos Plaza is located just two blocks from the Project site. “Tall buildings” in the area are mostly confined to the vicinity of the BART station and Clayton Road, both to the south of Todos Santos Plaza. Overall, the “urban form around Todos Santos is defined by buildings ranging from low rise/single story to three stories.”⁶⁶

According to the Specific Plan, “infill development within the Todos Santos Neighborhood [is] intended to provide density, *but at the scale of existing development* [italics added].”⁶⁷ Specifically regarding residential/mixed-use building design, the Specific Plan intends that new buildings “conform to key aspects of massing.”⁶⁸ Furthermore, multi-unit buildings “should depict a rhythm and scale that relates to the surrounding buildings.”⁶⁹

Here, not one building surrounding the Project site comes close to the five-story height of the Project.⁷⁰ Very few buildings between the Project site and Todos Santos Plaza equal the height of the Project. The five-storied Project easily exceeds the “urban form” of one to three-story buildings found in the Todos Santos District. The tall buildings in the area are mostly confined to the area south of Todos Santos Plaza, not the Project’s location east of the plaza.

⁶⁴ Project Plans, Tree Removal and Preservation Plan.

⁶⁵ Specific Plan, p. 38; Fig.3.5 P. 33

⁶⁶ *Id.*, p. 39.

⁶⁷ *Id.*, p. 33.

⁶⁸ *Id.* p. 88.

⁶⁹ *Id.*

⁷⁰ Staff Report, p. 4.

IV. The Project Fails to Qualify for a Density Bonus

The Applicant, based on the Project's location in the transit station overlay district, seeks a Density Bonus to be granted as a minor use permit.⁷¹ The Project, however, fails to comply with the City of Concord's Development Code ("Development Code") Chapter 18.105.040, which governs density bonuses in the transit station overlay district and includes the following requirement: "Continuity of building facades along the street with no interruptions in the progression of building and uses except for pedestrian access."

The staff report maintains that "vehicle entries" do not "interrupt" the building façade and the Project "reads as one building."⁷² The staff report, however, provides no foundation for concluding that the parking garage entries are not "interruptions" in the progression of the building. In fact, a plain reading of the requirement shows that "vehicle entries" would be considered "interruptions" to a building's progression. Specifically, the ordinance excepts "pedestrian access" from being considered an "interruption." Thus, non-pedestrian access, namely vehicle access, would not be excepted and is considered an "interruption" in the building façade pursuant to the Development Code. Because vehicle entries are considered "interruptions" under Development Code Chapter 18.105.040, the Planning Commission should deny the minor use permit for a density bonus.

V. The Project Will be Detrimental to Public Health in the Neighborhood and Thus Does Not Qualify for Use and Minor Use permits

Development Code Chapter 18.435.060 (5) permits issuance of use and minor use permits only when the use will "not be detrimental to the public health, safety, or welfare of the persons residing or working in the subject neighborhood." Here, as described in Section II above, the Project will cause Project residents to be exposed to PCE and benzene. SWAPE observes that the Project site is unsuitable for residential uses because of the contamination.⁷³

Thus, the Planning Commission must not grant the use and minor use permits because the Project will be detrimental to persons residing or working in the subject neighborhood, including the residents of the Project itself.

⁷¹ *Id.* at 21.

⁷² Staff Report, p. 8.

⁷³ Exhibit A: SWAPE Comments, p. 1 – 2.

VI. CONCLUSION

The Project does not qualify for a CEQA exemption, is inconsistent with the Specific Plan, General Plan and Development Code and would result in significant impacts. For the foregoing reasons, we respectfully request that the City of Concord Planning Commission deny the use permit, minor use permit, and design approval for Concord Village, until the City prepares an initial study and a mitigated negative declaration or environmental impact report, as required by CEQA, and modifies the Project to be consistent with all laws, regulations and policies.

Sincerely,



Tanya A. Gulesserian



Ned Thimmayya

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Exhibits