

Letter 4



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Via E-Mail

Tom Buford, Principal Planner
Ron Bess, Assistant Planner
Community Development Department
City of Sacramento
300 Richards Boulevard, 3rd Floor
Sacramento, CA 95811
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rbess@cityofsacramento.org

Re: The Retreat at Sacramento aka The Redding Avenue Project (P18-063)

Dear Mr. Buford and Mr. Bess:

I am writing on behalf of the Laborers International Union of North America, Local Union 185 and its members living in and around the City of Sacramento ("LIUNA") regarding the Initial Study and Mitigated Negative Declaration ("IS/MND") and the proposed Conditional Use Permit ("CUP") prepared for The Retreat at Sacramento ("Project") (Project File No. P18-063). The IS/MND also refers to the Project as The Redding Avenue Project. After reviewing the IS/MND, and with the assistance of expert reviews by wildlife biologist Dr. Shawn Smallwood, and environmental consulting firm SWAPE, it is clear that there is a "fair argument" that the Project may have unmitigated adverse environmental impacts. The written expert comments of Dr. Smallwood and of SWAPE (attached hereto as Exhibit A and Exhibit B, respectively), as well as the comments below, identify substantial evidence of a fair argument that the Project may have significant environmental impacts. Accordingly, an environmental impact report ("EIR") is required to analyze these impacts and to propose all feasible mitigation measures to reduce those impacts. We urge the Community Development Department to decline to approve the IS/MND, and to prepare an EIR for the Project prior to any Project approvals.

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I. PROJECT BACKGROUND

LCD Acquisitions, LLC proposes to construct a 224-unit multi-family residential development including a club house, maintenance building, and recreational spaces and amenities. The Project would include a total of 31 buildings ranging from 2- to 3-stories high. The Project intends to provide an opportunity for student housing for students attending

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California State University Sacramento ("CSUS"). The Project would provide on-site parking for 525 cars. The Project would extend over a 12.25 acre site currently occupied by the Dorris Lumber & Moulding Company, including warehouse structures, office buildings, and storage facilities. Approximately 77 percent of the site is paved with concrete and asphalt. The project site is currently designated Urban Neighborhood Low Density under the City's 2035 General Plan and zoned Mixed Use/Transit Overlay (RMX-TO). The Project will be bounded by Route 50 to the north, the Union Pacific railroad tracks to the east, Redding Avenue to the west, and a yet-to-be-built new residential development to the south.

II. LEGAL STANDARD

As the California Supreme Court held, "[i]f no EIR has been prepared for a nonexempt project, but substantial evidence in the record supports a fair argument that the project may result in significant adverse impacts, the proper remedy is to order preparation of an EIR." (*Communities for a Better Env't v. South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 319-320 (*CBE v. SCAQMD*) [citing *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 88; *Brentwood Assn. for No Drilling, Inc. v. City of Los Angeles* (1982) 134 Cal.App.3d 491, 504-505.] "Significant environmental effect" is defined very broadly as "a substantial or potentially substantial adverse change in the environment." (Pub. Res. Code ["PRC"] § 21068; see also 14 CCR § 15382.) An effect on the environment need not be "momentous" to meet the CEQA test for significance; it is enough that the impacts are "not trivial." (*No Oil, Inc., supra*, 13 Cal.3d at 83.) "The 'foremost principle' in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." (*Communities for a Better Env't v. Cal. Res. Agency* (2002) 103 Cal.App.4th 98, 109 (*CBE v. CRA*)).

The EIR is the very heart of CEQA. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1214 (*Bakersfield Citizens*); *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 927.) The EIR is an "environmental 'alarm bell' whose purpose is to alert the public and its responsible officials to environmental changes before they have reached the ecological points of no return." (*Bakersfield Citizens, supra*, 124 Cal.App.4th at 1220.) The EIR also functions as a "document of accountability," intended to "demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action." (*Laurel Heights Improvements Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 392.) The EIR process "protects not only the environment but also informed self-government." (*Pocket Protectors, supra*, 124 Cal.App.4th at 927.)

An EIR is required if "there is substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment." (PRC § 21080(d); see also *Pocket Protectors, supra*, 124 Cal.App.4th at 927.) In very limited circumstances, an agency may avoid preparing an EIR by issuing a negative declaration, a written statement briefly indicating that a project will have no significant impact thus requiring no EIR (14 Cal. Code Regs. § 15371), only if there is not even a "fair argument" that the project will have a significant environmental effect. (PRC, §§ 21100, 21064.) Since "[t]he adoption of a negative declaration . . . has a terminal effect on the environmental review process," by allowing

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the agency “to dispense with the duty [to prepare an EIR],” negative declarations are allowed only in cases where “the proposed project will not affect the environment at all.” (*Citizens of Lake Murray v. San Diego* (1989) 129 Cal.App.3d 436, 440.) A mitigated negative declaration is proper only if the project revisions would avoid or mitigate the potentially significant effects identified in the initial study “to a point where clearly no significant effect on the environment would occur, and... there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.” (PRC §§ 21064.5 and 21080(c)(2); *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 331.) In that context, “may” means a reasonable possibility of a significant effect on the environment. (PRC §§ 21082.2(a), 21100, 21151(a); *Pocket Protectors, supra*, 124 Cal.App.4th at 927; *League for Protection of Oakland's etc. Historic Res. v. City of Oakland* (1997) 52 Cal.App.4th 896, 904–905.)

Under the “fair argument” standard, an EIR is required if any substantial evidence in the record indicates that a project may have an adverse environmental effect—even if contrary evidence exists to support the agency’s decision. (14 CCR § 15064(f)(1); *Pocket Protectors, supra*, 124 Cal.App.4th at 931; *Stanislaus Audubon Society v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-51; *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602.) The “fair argument” standard creates a “low threshold” favoring environmental review through an EIR rather than through issuance of negative declarations or notices of exemption from CEQA. (*Pocket Protectors, supra*, 124 Cal.App.4th at 928.)

The “fair argument” standard is virtually the opposite of the typical deferential standard accorded to agencies. As a leading CEQA treatise explains:

This ‘fair argument’ standard is very different from the standard normally followed by public agencies in making administrative determinations. Ordinarily, public agencies weigh the evidence in the record before them and reach a decision based on a preponderance of the evidence. [Citations]. The fair argument standard, by contrast, prevents the lead agency from weighing competing evidence to determine who has a better argument concerning the likelihood or extent of a potential environmental impact. The lead agency’s decision is thus largely legal rather than factual; it does not resolve conflicts in the evidence but determines only whether substantial evidence exists in the record to support the prescribed fair argument.

(*Kostka & Zishcke, Practice Under CEQA*, §6.29, pp. 273-274.) The Courts have explained that “it is a question of law, not fact, whether a fair argument exists, and the courts owe no deference to the lead agency’s determination. Review is de novo, with a preference for resolving doubts in favor of environmental review.” (*Pocket Protectors, supra*, 124 Cal.App.4th at 928.)

III. DISCUSSION

A. The IS/MND Fails to Adequately Analyze and Mitigate the Potential Adverse Impacts of the Project on Wildlife.

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The comment of Dr. Shawn Smallwood is attached as Exhibit A. Dr. Smallwood has identified several issues with the IS/MND for the Project. His concerns are summarized below.

1. The wildlife baseline relied upon by the IS/MND is woefully inadequate because the IS/MND underestimates the number of special-status species that may be impacted by the Project.

The IS/MND describes the Project site as within a developed area and therefore devoid of habitat for most special-status species (IS/MND, p. 30.) However, as Dr. Smallwood points out, "Multiple species of wildlife find ways to adapt to urban environments, including for foraging, nesting, cover, and as stop-over refuge during dispersal or migration." (Ex. A, pp. 1-2.) By looking at occurrence records and geographic range maps, Dr. Smallwood identified 43 special-status species and an additional 12 species of bats in the area around the Project site. (Ex. A, p. 2.) The occurrence of these species at or near the Project site warrants discussion and analysis in an EIR to ensure that any impacts are mitigated to a less than significant level.

4-2

Every CEQA document must start from a "baseline" assumption. The CEQA "baseline" is the set of environmental conditions against which to compare a project's anticipated impacts. (*Communities for a Better Env't. v. So. Coast Air Qual. Mgmt. Dist.* (2010) 48 Cal. 4th 310, 321.) Section 15125(a) of the CEQA Guidelines (14 C.C.R., § 15125(a)) states in pertinent part that a lead agency's environmental review under CEQA:

"...must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time [environmental analysis] is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a Lead Agency determines whether an impact is significant."

(See, *Save Our Peninsula Committee v. County of Monterey* (2001) 87 Cal.App.4th 99, 124-125 ("Save Our Peninsula.") By failing to assess the presence of wildlife at or flying through the site, the IS/MND fails to provide any baseline from which to analyze the Project's impacts on birds.

2. The IS/MND fails to address the potential adverse impact on bird species from window collisions.

4-3

The IS/MND makes no mention of the potential impacts to birds caused from collisions with the glass windows of the Project. Analyzing the potential impact on wildlife of window collisions is especially important because such collisions are "one of the greatest anthropogenic sources of bird mortality across North America." (Ex. A, p. 7.) As a preliminary matter, an EIR should be prepared to include "specific details of window placements, window extent, types of glass, and anticipated interior and exterior landscaping and lighting. (*Id.*)

Dr. Smallwood reviewed a number of studies in order to calculate the number of bird

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collisions per m² of glass windows per year. (Ex. A, p. 11.) According to his calculations, each m² of glass would result in 0.077 bird deaths per year. (*Id.*) Dr. Smallwood then looked at the building design for the Project and estimated that the Project would include approximately 3,526 m² of glass windows. (*Id.*) Based on the estimated 3,400 m² of glass windows and the 0.077 bird deaths per m² of glass windows, Dr. Smallwood estimates that the project could result in 272 bird deaths per year. (*Id.*)

4-3
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In order to mitigate the impact of the window collisions on bird species, Dr. Smallwood has suggested several possible mitigation measures. For mitigation measures involving retrofitting the existing project, Dr. Smallwood suggests: (1) marking the windows (e.g. decals, film, fritted glass); (2) managing outdoor landscape to reduce reflection of vegetation; (3) managing indoor landscape; and (4) managing nocturnal lighting. (Ex. A, p. 15.) For mitigation measures involving the siting and design of the Project, Dr. Smallwood suggests: (1) deciding on the location of structures; (2) deciding on the façade and orientation of structures; (3) selecting types and sizes of windows; (4) minimizing transparency through two parallel façades; (5) minimizing views of interior plants; and (6) landscaping so as to increase distance between windows and vegetation. (Ex. A, p. 16.) Dr. Smallwood also suggests that the City also look to the guidelines developed by the American Bird Conservancy and the City of San Francisco to minimize injuries and fatalities to bird species. (*Id.* at p. 16-17.)

3. The IS/MND fails to address the potential adverse impact on wildlife from vehicle collisions due to increased traffic from the Project.

4-4

According to the IS/MND, the Project would generate 3,042 daily vehicle trips. (IS/MND, p. 75.) The increase in vehicle trips are likely to result in increased wildlife fatalities because vehicle collisions “crush and kill wildlife” and “the impacts have often been found to be significant at the population level.” (Ex. A, p. 17.) In terms of avian mortality, it is estimated that vehicle collisions result in the death of 89 million to 340 million birds per year. (*Id.*) Because the impact of vehicle collisions on wildlife was not addressed at all in the IS/MND and Dr. Smallwood has provided substantial evidence of a fair argument that this impact from the Project’s traffic may be significant, the City must analyze such impacts in an EIR.

Factors that affect the rate of vehicle collision with wildlife include: the type of roadway, human population density, temperature, extent of vegetation cover, and intersections with streams and riparian vegetation. (Ex. A, p. 17-18.) The City should formulate mitigation measures based on those factors in an EIR.

4. The IS/MND fails to address the potential adverse impact on bird species from artificial lighting from the Project.

4-5

Artificial lighting can cause substantial impacts on wildlife including displacement or altered activity patterns. (Ex. A, p. 18.) The City should analyze the effect of the Project’s artificial lighting on wildlife and incorporate mitigation measures for lighting design in an EIR.

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4-6

5. The IS/MND fails to address the potential adverse impact on wildlife movement due to the Project.

Even though the Project is located in an urban setting, the City should have analyzed the impact of the project on wildlife movement. Wildlife uses open spaces and trees as stop-over habitat during migrations or dispersal from natal territories. (Ex. A, p. 18.) Any mature trees on the Project site likely provide stop-over and staging habitat for wildlife moving across Sacramento. (*Id.*) Urban and commercial sprawl has already eliminated natural surfaces from much of the landscape and the project would only further cut off wildlife from their movement patterns. (*Id.*) The City should prepare an EIR which analyzes the impact of the Project on wildlife movement and incorporates mitigation measures as needed.

4-7

6. The Project should include additional mitigation measures to lessen the potential adverse impacts of the Project on wildlife.

The IS/MND relies on preconstruction surveys and worker training to mitigate the potentially significant impacts of the Project on wildlife. (IS/MND, p. 33-36.) However, as Dr. Smallwood points out, preconstruction surveys on their own are not sufficient to mitigate the impact of the Project on wildlife. "Preconstruction surveys cannot prevent, minimize, or reduce the effect of habitat loss. Their sole purpose is to detect the readily detectable individuals for temporary buffering from construction or for salvage relocation just prior to destruction by the tractor blade." (Ex. A, p. 20.)

Preconstruction surveys should be used in conjunction with other mitigation measures to ensure that the impacts on the Project on wildlife are less than significant. In addition to preconstruction surveys, Dr. Smallwood recommends performing detection surveys, which "have been developed for most special-status species of wildlife." (Ex. A, p. 20.) Such detection surveys are necessary to support any conclusion that wildlife is absent from the Project site. (*Id.*) The City should also adopt compensatory mitigation measures to offset the impact of the project on wildlife movement because "[t]he proposed project site supports mature trees needed by bats and birds as stop-over habitat during long-distance dispersal or migration." (*Id.*) The impact on wildlife could be further reduced by requiring minimizing nighttime light pollution. (Ex. A, p. 21.) As mentioned above, drawing from the guidelines of the American Bird Conservancy and the City of San Francisco would help to mitigate the impact of window collision on avian wildlife. (*Id.*) Lastly, compensatory mitigation measures such as funding contributions to wildlife rehabilitation facilities would further reduce the impacts of the project on wildlife. (*Id.*) Because Dr. Smallwood has presented a fair argument that the Project will have a significant impact on wildlife, the City must prepare and circulate an EIR to incorporate the above concerns and suggested mitigation measures.

4-8

B. The IS/MND Relies on Unsubstantiated Input Parameters to Estimate Project Emissions and Thus Fails to Adequately Analyze the Project's Air Quality Impacts.

The IS/MND for the Project relies on emissions calculated from the California

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Emissions Estimator Model Version CalEEMod.2016.3.2 ("CalEEMod"). This model relies on recommended default values based on site specific information related to a number of factors. The model is used to generate a project's construction and operational emissions. SWAPE reviewed the Project's CalEEMod output files and found that several of the values input into the model were inconsistent with information provided in the IS/MND. This results in an underestimation of the Project's emissions. As a result, the Project may have a significant air quality impacts and an EIR is required to properly analyze these potential impacts. The following sections highlight SWAPE's findings.

1. The air quality model in the IS/MND fails to include all proposed land uses.

4-9

SWAPE shows that the Project's construction emissions are underestimated because the IS/MND's CalEEMod model failed to include the proposed 525-space parking land use even though the IS/MND states that Project includes "a 224-unit, 736-bed, student housing facility with 525 parking spaces on a 12.3-acre property." (IS/MND, p. 1; Ex. B., p. 2.) As SWAPE noted, "By completely omitting the proposed parking land use, the IS/MND fails to account for all the emissions that would be produced during construction and operation of the Project." (Ex. B, p. 2).

2. The air quality model in the IS/MND fails to account for all material export during construction.

4-10

SWAPE finds that the IS/MND's CalEEMod analysis failed to consider all of the construction debris that will be removed from the Project during site construction. According to the IS/MND, "Approximately 17,514 cubic yards (CY) of soil export associated with off-haul of contaminated soils would be required." (IS/MND, p. 23.) However, the value inputted into the CalEEMod in the IS/MND was only for 514 cubic yards of material export. (Ex. B, p. 3.) As a result, the Project's construction-level emissions are underestimated.

3. The air quality model in the IS/MND uses an incorrect land use population.

4-11

According to the IS/MND, the Project will consist of 224 residential units with 736 beds, generating approximately 736 new residents. (IS/MND, p. 70.) However, SWAPE found that the air model in the IS/MND assumed a population of only 598 residents. (Ex. B, p. 3.) By underestimating the resident population by 138 residents, the IS/MND underestimates the emissions associated with operation of the Project.

4. With more accurate input parameters, the air quality model results in emissions from the Project in excess of the SMAQMD threshold.

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In order to determine more accurate estimates of the emissions of the Project, SWAPE prepared an updated CalEEMod model which included 479 parking spaces, 46 garage parking spaces, the full 17,154 cubic yards of soil export, and a resident population of 736 people. (Ex.

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B, p. 4.) The updated model resulted in NOx emissions of 101.8 pounds per day, a twenty-nine percent increase over the IS/MND estimate of 78.9 pounds of NOx per day. (*Id.*) Importantly, the Sacramento Metropolitan Air Quality Management District (SMAQMD) has set a significance threshold for NOx of 85 pounds per day. Because the updated model exceeds the SMAQMD threshold for NOx, substantial evidence of a fair argument that the Project will have significant air quality impacts from NOx emissions and the City must prepare an EIR to address this impact and to incorporate appropriate mitigation measures.

C. The IS/MND Fails to Adequately Evaluate Health Risks from Diesel Particulate Matter Emissions

With hardly more than a couple sentences of explanation, the IS/MND inexplicably concludes that the health risk posed to nearby sensitive receptors from exposure to toxic air contaminant ("TAC") emissions and diesel particulate matter ("DPM") from the Project would be less than significant. No effort is made by the applicant to justify this conclusion with a quantitative health risk assessment ("HRA"). The IS/MND's back-of-the-envelope approach to evaluating a Project's health impacts to existing nearby residences is inconsistent with the approach recommended by the California Office of Environmental Health Hazard Assessment ("OEHHA") and the California Air Pollution Control Officers Association ("CAPCOA").

4-13

OEHHA guidance makes clear that all short-term projects lasting at least two months be evaluated for cancer risks to nearby sensitive receptors. (Ex. B, p. 6.) OEHHA also recommends a health risk assessment of a project's operational emissions for projects that will be in place for more than 6 months. (*Id.*) Projects lasting more than 6 months should be evaluated for the duration of the project, and an exposure duration of 30 years be used to estimate individual cancer risk for the maximally exposed individual resident. (*Id.*) The Project would last at least 30 years and certainly much longer than six months.

In order for the IS/MND to be reasonable under CEQA, the cavalier assertions regarding the Project's health impacts on nearby residences must be substantiated with a thorough health risk assessment. Based on all of the guidance available from the expert agencies, a health risk assessment should have been prepared for the Project. The City and IS/MND's conclusory assertions fail to rebut the expert guidance.

SWAPE prepared a screening-level HRA to evaluate potential impacts from the Project. SWAPE used AERSCREEN, the leading screening-level air quality dispersion model. (Ex. B, p. 6.) SWAPE analyzed impacts to individuals at different stages of life based on OEHHA and SMAQMD guidance. (Ex. B, pp. 7-8.)

SWAPE found that the excess cancer risk for adults, children, infants, and third-trimester gestations at a sensitive receptor located approximately 25 meters away, over the course of Project construction and operation, are approximately 3.2, 29, 43, and 2.2 in one million, respectively. (Ex. B, p. 8.) Moreover, the excess cancer risk over the course of a residential lifetime is approximately 77 in one million. (*Id.*) These values appreciably exceed the SMAQMD's threshold of 10 in one million. This is a potentially significant impact not

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addressed in the IS/MND. An EIR with a more refined HRA that is representative of site conditions must be prepared in order to evaluate the Project's health risk impact and to include suitable mitigation measures.

D. The IS/MND Fails to Demonstrate Compliance with the City's Climate Action Plan.

According to the IS/MND, the Project would not result in significant greenhouse gas (GHG) emissions because the Project would be consistent with the goals and policies of the City's Climate Action Plan (CAP). The City's CAP requires that projects subject to CEQA review complete a "CAP Consistency Review Checklist." (Ex. B, p. 9.) However, the IS/MND does not contain the CAP Consistency Review Checklist. Instead, as noted by SWAPE:

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[T]he IS/MND attempts to demonstrate consistency with the CAP by simply stating the goals and policies that the Project will incorporate or be consistent with. For example, the IS/MND states that it will be consistent with Goal LU 2.5, Policy LU 2.5.1, and Policy LU 2.7.6 to increase the walkable areas and other policies that promote land use efficiency as well as pedestrian and bicycle traffic. Thus, while the IS/MND does reference the proposed Project's features related to pedestrian, bike, and transit accessibility, the Applicant fails to discuss compliance with the traffic calming, renewable energy, and water efficiency measures outlined in the Consistency Review Checklist

(Ex. B, p. 10.) Without evaluating all aspects of the Consistency Review Checklist, the Project cannot claim that it is consistent with the City's CAP. The City should prepare an EIR with an updated GHG analysis to ensure compliance with the City's CAP.

E. There is Substantial Evidence of a Fair Argument that the Project Will Have a Significant Health Risk Impact from its Indoor Air Quality Impacts.

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Formaldehyde is a known human carcinogen. Many composite wood products typically used in residential and office building construction contain formaldehyde-based glues which off-gas formaldehyde over a very long time period. The primary source of formaldehyde indoors is composite wood products manufactured with urea-formaldehyde resins, such as plywood, medium density fiberboard, and particle board. These materials are commonly used in residential and office building construction for flooring, cabinetry, baseboards, window shades, interior doors, and window and door trims. Given the prominence of materials with formaldehyde-based resins that will be used in constructing the Project and the residential buildings, there is a significant likelihood that the Project's emissions of formaldehyde to air will result in very significant cancer risks to future residents and workers in the buildings. Even if the materials used within the buildings comply with the Airborne Toxic Control Measures (ATCM) of the California Air Resources Board (CARB), significant emissions of formaldehyde may still occur.

The residential buildings will have significant impacts on air quality and health risks by emitting cancer-causing levels of formaldehyde into the air that will expose workers and residents to

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cancer risks well in excess of SMAQMD's threshold of significance. A 2018 study by Chan et al. (attached as Exhibit C) measured formaldehyde levels in new structures constructed after the 2009 CARB rules went into effect. Even though new buildings conforming to CARB's ATCM had a 30% lower median indoor formaldehyde concentration and cancer risk than buildings built prior to the enactment of the ATCM, the levels of formaldehyde still posed cancer risks greater than 100 in a million, well above the 10 in one million significance threshold established by the SMAQMD.

Based on expert comments submitted on other similar projects and assuming all the Project's and the residential building materials are compliant with the California Air Resources Board's formaldehyde airborne toxics control measure, future residents and employees using the Project will be exposed to a cancer risk from formaldehyde greater than the SMAQMD's CEQA significance threshold for airborne cancer risk of 10 per million. Currently, the City does not have any idea what risk will be posed by formaldehyde emissions from the Project or the residences.

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

4-16

IV. CONCLUSION

For the foregoing reasons, the IS/MND for the Project should be withdrawn, an EIR should be prepared, and the draft EIR should be circulated for public review and comment in accordance with CEQA. Thank you for considering these comments.

Sincerely,



Brian Flynn
Lozeau | Drury LLP