



T 510.836.4200
F 510.836.4205

410 12th Street, Suite 250
Oakland, Ca 94607

www.lozeaudrury.com
richard@lozeaudrury.com

Via Email and Overnight Mail

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President Samantha Millman, and
Honorable Members of the
City of Los Angeles Planning Commission
c/o Commission Executive Assistant
200 North Spring Street, Room 532
Los Angeles, CA 90012
cpc@lacity.org

Monique Acosta, Planning Associate
Department of City Planning
City of Los Angeles
200 N. Spring Street, Room 621
Los Angeles, CA 90012
Monique.acosta@lacity.org

Lisa M. Webber, AICP Deputy Director of
Planning
City of Los Angeles
200 N. Spring Street, Room 525
Los Angeles, CA 90012-4801
lisa.webber@lacity.org

Holly L. Wolcott, City Clerk
City of Los Angeles
200 North Spring Street, Room 360
Los Angeles, CA 90012
cityclerk@lacity.org

Planning Commission Secretary
Planning Commission
200 North Spring Street, Room 532
Los Angeles, CA 90012-4801
cpc@lacity.org

Darlene Navarrete, Senior Admin. Clerk
Department of City Planning
City of Los Angeles
200 N. Spring Street
Los Angeles, CA 90012
darlene.navarrete@lacity.org

**Re: Comment on Mitigated Negative Declaration for 3170 West Olympic Blvd,
aka MND--NG-18-063-PL, Case Number ENV-2016-3663**

Dear President Millman, Honorable Members of the Planning Commission, et al:

I am writing on behalf of **Supporters Alliance for Environmental Responsibility** ("SAFER") and its members living in and near the City of Los Angeles, regarding the Initial Study and Mitigated Negative Declaration ("IS/MND") prepared for the Project known as 3170 West Olympic Blvd, aka MND--NG-18-063-PL, Case Number ENV-2016-3663 ("Project").

After reviewing the IS/MND, we conclude that it fails as an informational document, and that there is a fair argument that the Project may have adverse environmental impacts. Therefore, we request that the Los Angeles prepare an

environmental impact report for the Project pursuant to the California Environmental Quality Act, Public Resources Code section 21000, et seq. An EIR would analyze all of the Project's significant environmental impacts and propose feasible mitigation measures to reduce those impacts.

I. PROJECT BACKGROUND

The Project would involve the demolition of an existing 1-story commercial retail building, related surface parking, and 5 residential buildings (a 1-story single-family dwelling, a 2-story single-family dwelling & 3 multi-family rental units that are 1-story) for the construction of a new 7-story mixed-use structure above 2 levels of subterranean parking. The Project would contain 252 dwelling units, and 32,100 sf of retail space. The Project would include approx. 311 parking spaces using Parking Option 3 & would be located at-grade behind the commercial, on a mezzanine level & within 2 subterranean levels. The Project would be located at: 3170 & 3188 W. Olympic Blvd.; 1006, 1010, 1012, 1014, 1020 S. Serrano Ave.; 1007, 1011, 1015, 1017, 1019, 1021 S. Hobart Blvd.

II. LEGAL STANDARD

The California Supreme Court has 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 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 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. (IS p. 4.0-11). No effort is made 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").

OEHHA guidance makes clear that all short-term projects lasting at least two months be evaluated for cancer risks to nearby sensitive receptors. 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. 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. 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.

Environmental consulting firm, Soil Water Air Protection Enterprise ("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. A) SWAPE analyzed impacts to individuals at different stages of life based on OEHHA and SMAQMD guidance. (Ex. A, pp. 6-7.)

SWAPE found that the excess cancer risk to adults, children, infants, and during the 3rd trimester of pregnancy at a sensitive receptor located approximately 1 meter away, over the course of Project construction and operation, are approximately 18, 160, 170, and 7.8 in one million, respectively. Furthermore, the excess cancer risk over the course of a residential lifetime (30 years) is approximately **360 in one million**. (Ex. B, p. 7.) These values appreciably exceed the SMAQMD's threshold of **10 in one million**. This is a potentially significant impact not addressed in the IS/MND.

Exceedance of an Air District threshold is dispositive in establishing a significant environmental impact. See, e.g. *Schenck v. County of Sonoma* (2011) 198 Cal.App.4th 949, 960 (County applies BAAQMD's "published CEQA quantitative criteria" and "threshold level of cumulative significance"). See also *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 110-111 ("A 'threshold of significance' for a given environmental effect is simply that level at which the lead agency finds the effects of the project to be significant"). The California Supreme Court recently made clear the substantial importance that an air district significance threshold plays in providing substantial evidence of a significant adverse impact. *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 327 ("As the [South Coast Air Quality Management] District's established significance threshold for NO_x is 55 pounds per day, these estimates [of NO_x emissions of 201 to 456 pounds per day] constitute substantial evidence supporting a fair argument for a significant adverse impact").

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.

B. The Project Will Have Significant Greenhouse Gas Impacts.

The IS/MND essentially punts on the issue of greenhouse gases (GHGs), arguing that GHG significance should be determined on a "case-by-case" basis because there are allegedly no CEQA significance thresholds. (IS p. 4.0-25).

However, the claim that the SCAQMD does not provide quantitative GHG significance thresholds is incorrect. In December 2008, the SCAQMD released its *Interim CEQA GHG Significance Threshold for Stationary Sources, Rules, and Plans* report ("*Interim Thresholds*") that proposed a multi-tiered approach for evaluating the GHG impacts of a project.¹ As subsequently clarified, SCAQMD recommended that for

¹ SCAQMD (Dec. 5, 2008) *Interim CEQA GHG Significance Threshold for Stationary Sources*,

projects not exempt from CEQA (Tier 1) or consistent with a qualified GHG reduction plan (Tier 2), lead agencies should compare a project's GHG emissions to numeric screening thresholds (Tier 3).² Under Tier 3, the lead agencies may choose between two options: Option 1 proposes the use of a 1,400 MT CO₂e/yr threshold for commercial developments, 3,000 MT CO₂e/yr threshold for mixed-use developments, a 3,500 MT CO₂e/yr threshold for residential developments, and a 10,000 MT CO₂e/yr threshold for industrial projects; whereas Option 2 proposes a single numerical threshold of 3,000 MT CO₂e/yr for non-industrial projects. Furthermore, according to SCAQMD's *GHG CEQA Significance Threshold Stakeholder Working Group #15*, the working group determined that while either the separate numerical thresholds (Option 1) or a single numerical threshold (Option 2) could be used, a lead agency "must consistently use that same option for all projects where it is lead agency."³ Here, the City has utilized Option 1 in lieu of the Option 2 numerous times.⁴

The IS/MND quantifies the Project's annual GHG emissions and determines that "construction activities would be 991.38 metric tons in 2018 while the net increase in GHG emissions generated by the Project would be 3,007.33 MTCO₂e per year" (IS p. 4.0-25). Comparing the Project's annual GHG emissions to the applicable SCAQMD interim threshold of 3,000 MT CO₂e/yr for mixed-use projects demonstrates that the proposed Project exceeds this threshold (see table below).⁵

Rules and Plans, [http://www.aqmd.gov/docs/default-source/ceqa/handbook/greenhouse-gases-\(ghg\)-ceqa-significance-thresholds/ghgboardsynopsis.pdf?sfvrsn=2](http://www.aqmd.gov/docs/default-source/ceqa/handbook/greenhouse-gases-(ghg)-ceqa-significance-thresholds/ghgboardsynopsis.pdf?sfvrsn=2); see also SCAQMD (Oct. 2008) Draft Guidance Document – Interim CEQA Greenhouse Gas (GHG) Significance Threshold, [http://www.aqmd.gov/docs/default-source/ceqa/handbook/greenhouse-gases-\(ghg\)-ceqa-significance-thresholds/ghgattachmente.pdf](http://www.aqmd.gov/docs/default-source/ceqa/handbook/greenhouse-gases-(ghg)-ceqa-significance-thresholds/ghgattachmente.pdf).

² SCAQMD (Sep. 28, 2010) Minutes for the GHG CEQA Significance Threshold Stakeholder Working Group # 15, [http://www.aqmd.gov/docs/default-source/ceqa/handbook/greenhouse-gases-\(ghg\)-ceqa-significance-thresholds/year-2008-2009/ghg-meeting-15/ghg-meeting-15-minutes.pdf](http://www.aqmd.gov/docs/default-source/ceqa/handbook/greenhouse-gases-(ghg)-ceqa-significance-thresholds/year-2008-2009/ghg-meeting-15/ghg-meeting-15-minutes.pdf).

³ *Ibid.*, p. 1.

⁴ See e.g., 1209 6th Avenue Initial Study (DCP Case No. ENV-2014-1988-EIR), pp. 85-86 (applying the 3,500 MTCO₂e/yr threshold for residential project), https://planning.lacity.org/eir/nops/1209_6thAvenueInitialStudy/1209_InitialStudySigned_100716.pdf; 333 La Cienega Blvd. Project Initial Study (DCP Case No. ENV-2015-897-EIR), pp. 89-90 (applying the 3,000 MTCO₂e/yr threshold for mixed-use project), <http://planning.lacity.org/eir/nops/333LaCienega/is.pdf>; 15116 S. Vermont Avenue Staff Report (DCP Case No. ENV-2017-1015-MND) pp. 182, 220 (containing MND applying the 10,000 MTCO₂e/yr threshold for industrial project), <http://planning.lacity.org/StaffRpt/InitialRpts/CPC-2017-1014.PDF>.

⁵ SCAQMD (Dec. 5, 2008) Interim CEQA GHG Significance Threshold for Stationary Sources, Rules and Plans, [http://www.aqmd.gov/docs/default-source/ceqa/handbook/greenhouse-gases-\(ghg\)-ceqa-significance-thresholds/ghgboardsynopsis.pdf?sfvrsn=2](http://www.aqmd.gov/docs/default-source/ceqa/handbook/greenhouse-gases-(ghg)-ceqa-significance-thresholds/ghgboardsynopsis.pdf?sfvrsn=2).

Annual Project Greenhouse Gas Emissions	
Project Phase	Emissions (MT CO₂e/year)
Amortized Construction	33
Operation	3,007
Total	3,040
SCAQMD Threshold	3,000
Threshold Exceeded?	Yes

As the above table demonstrates, the Project exceeds the SCAQMD threshold. Therefore, the Project may result in a potentially significant GHG impact which was not previously identified or addressed by the IS/MND.

Furthermore, according to the SCAQMD, if a project's emissions exceed the screening-level threshold, a more detailed review of the Project's GHG emissions is warranted.⁶ SCAQMD proposed per capita efficiency targets to conduct the detailed review. SCAQMD proposed a 2020 efficiency target of 4.8 MT CO₂e per year per service population (MT CO₂e/sp/year) for project-level analyses and 6.6 MT CO₂e/sp/year for plan level projects (e.g., program-level projects such as general plans). Those per capita efficiency targets are based on the AB 32 GHG reduction target and the 2020 GHG emissions inventory prepared for ARB's 2008 Scoping Plan. SCAQMD also created a 2035 efficiency thresholds by reducing the 2020 thresholds by 40 percent, resulting in an efficiency threshold at the plan-level of 4.1 MT CO₂e/sp/year and an efficiency threshold at the project-level of 3.0 MT CO₂e/sp/year.⁷ Therefore, per SCAQMD guidance, because the Project's GHG emissions exceed the SCAQMD's 3,000 MT CO₂e/year screening-level threshold, the Project's emissions should be compared to the proposed 2020 efficiency target of 4.8 MT CO₂e/sp/year and the 2035 efficiency target of 3.0 MT CO₂e/sp/year, as the Project is not anticipated to be redeveloped prior to 2035.

According to the California Air Pollution Control Officers Association's (CAPCOA) CEQA & Climate Change report, service population is defined as "the sum of the number of residents and the number of jobs supported by the project".⁸ According to the IS/MND, the proposed Project is expected to accommodate approximately 370 residents (p. 4.0-49). Additionally, based on the Los Angeles Unified School District's *2018 Developer Fee Justification Study*, that lists an employee generation factor of 0.00153 employees per square foot for community shopping centers, SWAPE estimated

⁶ *Ibid.*, p. 6.

⁷ Working Group Meeting 15 Minutes, available at: [http://www.aqmd.gov/docs/default-source/ceqa/handbook/greenhouse-gases-\(ghg\)-ceqa-significance-thresholds/year-2008-2009/ghg-meeting-15/ghg-meeting-15-minutes.pdf?sfvrsn=2](http://www.aqmd.gov/docs/default-source/ceqa/handbook/greenhouse-gases-(ghg)-ceqa-significance-thresholds/year-2008-2009/ghg-meeting-15/ghg-meeting-15-minutes.pdf?sfvrsn=2)

⁸ "CEQA & Climate Change." & Climate Change." CAPCOA, January 2008, available at: <http://www.capcoa.org/wp-content/uploads/2012/03/CAPCOA-White-Paper.pdf>, p. 71-72.

that the proposed Project would generate approximately 49 employees.^{9, 10} Therefore, the Project would have a total service population of 419 people.¹¹ Dividing the Project's GHG emissions by a service population value of 419 people, SWAPE determined that the Project would emit approximately 7.26 MT CO₂e/sp/yr.¹² When SWAPE compared the Project's per service population GHG emissions to the SCAQMD 2020 efficiency threshold of 4.8 MT CO₂e/sp/yr and the 2035 efficiency threshold of 3.0 MT CO₂e/sp/yr, SWAPE found that the Project would result in a significant GHG impact (see excerpt below).

Annual Per Service Population Greenhouse Gas Emissions		
Source	Emissions	Unit
Total Annual Emissions	3,040	MT CO ₂ e/year
Maximum Service Population	419	Employees
Per Service Population Annual Emissions	7.6	MT CO₂e/sp/year
2020 SCAQMD Project Level Efficiency Threshold	4.8	MT CO ₂ e/sp/year
Exceed?	Yes	-
Per Service Population Annual Emissions	7.6	MT CO₂e/sp/year
2035 SCAQMD Project Level Efficiency Threshold	3.0	MT CO ₂ e/sp/year
Exceed?	Yes	-

As one can see in the table above, when we compare the per service population emissions estimated by SWAPE to the SCAQMD thresholds of 4.8 MT CO₂e/sp/yr for 2020 and 3.0 MT CO₂e/sp/yr for 2035, we find that the Project's emissions would greatly exceed this threshold, thus resulting in a potentially significant impact. Based on the results on this analysis, a DEIR must be prepared for the Project, and additional mitigation should be implemented where necessary, per CEQA Guidelines.

⁹ 2018 Developer Fee Justification Study, LAUSD, March 2018, available at: <https://achieve.lausd.net/cms/lib/CA01000043/Centricity/Domain/921/LAUSD%20Dev%20Fee%20Study%202018%20FINAL.pdf>, p. 22.

¹⁰ Calculate: (32,100 square feet of residential space) x (0.00153 employees/square foot) = 49 employees

¹¹ Calculate: 49 employees + 370 residents = 419 people

¹² Calculated: (3,040 annual MTCO₂e) / (419 service population [employees + residents]) = (7.255 MTCO₂e/sp/year).

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

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 cancer risks well in excess of SCAQMD's threshold of significance. A 2018 study by Chan et al. (attached as Exhibit B) 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 SCAQMD.

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 SCAQMD'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.

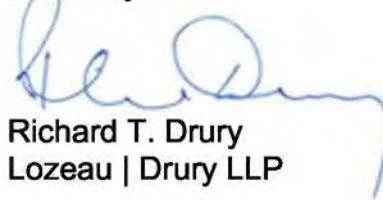
The City has a duty to investigate issues relating to a project's potential environmental impacts. (*See County Sanitation Dist. No. 2 v. County of Kern*, (2005) 127 Cal.App.4th 1544, 1597–98. [“[U]nder CEQA, the lead agency bears a burden to investigate potential environmental impacts.”].) “If the local 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.

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,



Richard T. Drury
Lozeau | Drury LLP