

## Letter A2



T 510.836.4200  
F 510.836.4205

410 12th Street, Suite 250  
Oakland, Ca 94607

www.lozeaudrury.com  
michael@lozeaudrury.com

May 27, 2019

Via E-mail

William Chui, Associate Planner  
Community Development Department, Planning and Housing Division  
1017 Middlefield Road  
Redwood City, CA 94063  
Phone: (650) 780-5916  
Email: wchui@redwoodcity.org

Re: **1180 Main Street Office Project**  
(Mitigated Negative Declaration, Planning Commission, June 4, 2019))

Dear Mr. Chui:

A2-45 I am writing on behalf of the Laborers International Union of North America, Local Union 261 ("LIUNA") and its members living in and around the City of Redwood City regarding the Initial Study and Mitigated Negative Declaration ("IS/MND") prepared for the 1180 Main Street Office Project ("Project") (File No: AP2017-091, UP2018-006, TM2018-006). After reviewing the IS/MND, and with the assistance of expert review by environmental consulting firm SWAPE, wildlife biologist Shawn Smallwood, Ph.D., and industrial hygienist and professional engineer Francis Offermann, PE, CIH, the evidence indicates that there is a "fair argument" that the Project may have unmitigated adverse environmental impacts or, alternatively, the IS/MND is not supported by substantial evidence. Mr. Offermann identifies the likelihood that the Project will emit carcinogenic formaldehyde at levels that will cause significant health risks to future residents of the Project. Mr. Offermann's comments are attached as Exhibit A. Dr. Smallwood identifies flaws in the wildlife baseline information relied on by the IS/MND and the likelihood that the Project will have significant impacts on birds colliding with the new structures. His comments are attached as Exhibit B. Lastly, SWAPE's comments (attached hereto as Exhibit C) as well as the comments below identify substantial evidence of a fair argument that the Project may have significant air quality, health risk and GHG impacts. Accordingly, an environmental impact report ("EIR") is required to analyze these impacts and to propose all feasible mitigation measures to reduce the Project's impacts. We urge the Planning Commission to decline to approve the IS/MND, and to instruct staff to prepare an EIR for the Project prior to any Project approvals.

## I. PROJECT BACKGROUND

A2-46 The Project proposes to construct a three-story office building approximately 40 feet in height with a gross floor area of 109,375 square feet. The project includes an underground two-level, 75,653 square foot garage. A channelized portion of Redwood Creek flows through a projected green space that would be adjacent to the west side of the proposed building. The Project includes constructing a 64-foot wide bridge over the tidal creek providing access to the building's main entrance. The building design includes extensive areas of glass along all sides of the building.

## II. LEGAL STANDARD

A2-47 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 Management 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. Resources 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; *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*, 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 University of California* (1988) 47 Cal.3d 376, 392. The EIR process “protects not only the environment but also informed self-government.” *Pocket Protectors*, 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*, 124 Cal.App.4th at 927. In very limited circumstances, an agency may avoid preparing an EIR by issuing a

## Letter A2

1180 Main Street Office Project  
May 27, 2019  
Page 3 of 12

↑ 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 Resources v. City of Oakland* (1997) 52 Cal.App.4th 896, 904–905.

A2-47  
(Cont.) 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*, 124 Cal.App.4th at 931; *Stanislaus Audubon Society v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-15; *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*, 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*, 124 Cal.App.4th at 928.

A2-47  
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In addition, a negative declaration must accurately describe the proposed project and its environmental setting. *Christward Ministry v. Superior Court* (1986) 184 Cal.App.3d 180; CEQA Guidelines §15071(a). The initial study must “provide documentation of the factual basis for the finding in a Negative Declaration that a project will not have a significant effect on the environment.” CEQA Guidelines § 15063(c)(5).

**III. THERE IS A FAIR ARGUMENT THAT THE PROJECT MAY HAVE UNMITIGATED ADVERSE ENVIRONMENTAL IMPACTS.**

**A. An EIR Is Required Because There is a Fair Argument that the Project Will Have Significant Indoor Air Quality Impacts**

Certified Industrial Hygienist, Francis Offermann, PE, CIH has reviewed the IS/MND and concludes that it is likely that the Project will expose future residents and workers at the Project to significant impacts related to indoor air quality, and in particular, emissions for the cancer-causing chemical formaldehyde. Comments of Indoor Environmental Engineering, Francis J. Offermann, PE, CIH (May 26, 2019) (attached as Exhibit A). Mr. Offermann is one of the world’s leading experts on indoor air quality and has published extensively on the topic.

A2-48

Mr. Offermann explains that many composite wood products typically used in modern office construction as well as office furnishings contain formaldehyde-based glues which off-gas formaldehyde over a very long time period. He states, “[t]he primary source of formaldehyde indoors is composite wood products manufactured with urea-formaldehyde resins, such as plywood, medium density fiberboard, and particleboard. These materials are commonly used in building construction for flooring, cabinetry, baseboards, window shades, interior doors, and window and door trims.” Offermann Comments, pp. 2-3.

Formaldehyde is a known human carcinogen. Mr. Offermann states that there is a fair argument that full-time workers using the Project will be exposed to a cancer risk from formaldehyde of approximately 18 per million. Offermann Comments, p. 4. This is well above the Bay Area Air Quality Management District (“BAAQMD”) CEQA significance threshold for airborne cancer risk of 10 per million. Mr. Offermann states:

Because these office buildings will be constructed with CARB Phase 2 Formaldehyde ATCM materials, and be ventilated with the minimum code required amount of outdoor air, the indoor retail building formaldehyde concentrations are likely similar to those concentrations observed in residences built with CARB Phase 2 Formaldehyde ATCM materials,



# Letter A2

which is a median of 25 µg/m<sup>3</sup>.

Assuming that the employees work 8 hours per day and inhale 20 m<sup>3</sup> of air per day, the formaldehyde dose per work-day at the building is 167 µg/day.

Assuming that the employees work 5 days per week and 50 weeks per year for 45 years (start at age 20 and retire at age 65) the average 70-year lifetime formaldehyde daily dose is 73.6 µg/day.

This is 1.84 times the NSRL (OEHHA, 2017a) of 40 µg/day and represents a cancer risk of 18.4 per million, which exceeds the CEQA cancer risk of 10 per million.

Offermann Comments, pp. 3-4. Mr. Offermann concludes that this significant environmental impact should be analyzed in an EIR and mitigation measures should be imposed to reduce the risk of formaldehyde exposure.

A2-48  
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When a project exceeds a duly adopted CEQA significance threshold, as here, this alone establishes a fair argument that the project will have a significant adverse environmental impact and an EIR is required. Indeed, in many instances, such air quality and health risk thresholds are the only criteria reviewed and treated as dispositive in evaluating the significance of a project's air quality impacts. 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 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 NOx is 55 pounds per day, these estimates [of NOx emissions of 201 to 456 pounds per day] constitute substantial evidence supporting a fair argument for a significant adverse impact"). Since expert evidence demonstrates that the Project will exceed the BAAQMD's CEQA significance threshold, there is a fair argument that the Project will have significant adverse and an EIR is required.

A2-49

The failure of the CEQA Analysis to address the Project's formaldehyde emissions is contrary to the California Supreme Court decision in *California Building Industry Ass'n v. Bay Area Air Quality Mgmt. Dist.* (2015) 62 Cal.4th 369, 386 ("CBIA"). In that case, the Supreme Court expressly holds that potential adverse impacts to future users and residents from pollution generated by a proposed project must be addressed under CEQA. At issue in CBIA was whether the Air District could enact CEQA



## Letter A2

1180 Main Street Office Project  
May 27, 2019  
Page 6 of 12

↑ guidelines that advised lead agencies that they must analyze the impacts of adjacent environmental conditions on a project. The Supreme Court held that CEQA does not generally require lead agencies to consider the environment's effects on a project. *CBIA*, 62 Cal.4th at 386-87. However, to the extent a project may exacerbate existing environmental conditions at or near a project site, those would still have to be considered pursuant to CEQA. *Id.* at 388. In so holding, the Court expressly held that CEQA's statutory language required lead agencies to disclose and analyze "impacts on a project's users or residents that arise from the project's effects on the environment." (*Id.* at 387 (emphasis added).) *See also Berkeley Keep Jets*, 91 Cal.App.4th at 1371 (CEQA requires analysis "of the project's impact on the health of the Airport's employees and nearby residents...").

It is the City's duty to investigate potential environmental impacts associated with the Project. *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." Mr. Offermann's comments provide a proper analysis describing the information that should have been gathered by the City to evaluate the Project's formaldehyde emissions to indoor air and health risks to future residents. Offermann Comments, pp. 5-9. Because the City has made no effort to investigate this significant health risk, if the MND is adopted as is, the City will be in violation of CEQA.

The Supreme Court's reasoning in *CBIA* is well-grounded in CEQA's statutory language. CEQA expressly includes a project's effects on human beings as an effect on the environment that must be addressed in an environmental review. "Section 21083(b)(3)'s express language, for example, requires a finding of a 'significant effect on the environment' (§ 21083(b)) whenever the 'environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.'" *CBIA*, 62 Cal.4th at 386 (emphasis in original). Likewise, "the Legislature has made clear—in declarations accompanying CEQA's enactment—that public health and safety are of great importance in the statutory scheme." *Id.*, citing e.g., §§ 21000, subds. (b), (c), (d), (g), 21001, subds. (b), (d). Of course, future office and building workers are as much human beings as nearby residents. There is no meaningful distinction suggesting CEQA should ignore a Project's emissions to air within the Project site that may result in adverse health impacts to future workers. Until such an assessment is completed, the MND's failure to address health impacts to future workers and users fails to proceed in the manner required by law and is not supported by substantial evidence.

Mr. Offermann also notes that the high cancer risk that may be posed by the project indoor air emissions is exacerbated by the additional cancer risk that will occur at the project from emissions from nearby railroad tracks and roadways. Offermann Comments, pp. 10-11. Mr. Offermann suggests several feasible mitigation measures, such as requiring the use of no-added-formaldehyde composite wood products, which are readily available. *Id.*, pp. 11-12. Mr. Offermann also suggests requiring air ventilation systems which would reduce formaldehyde levels. *Id.* The MND does not

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A2-49  
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analyze this impact at all and none of these or other mitigation measures have been considered.

**B. The MND Fails to Establish an Accurate Baseline for Sensitive Biological Resources and Fails to Disclose and Mitigate Impacts of the Project On Numerous Sensitive Species.**

A2-50

Expert biologist Shawn Smallwood, Ph.D., has reviewed the MND’s discussion of biological resources. Drawing on his familiarity with the project area and decades of studying and surveying species in the Bay area, Dr. Smallwood has prepared a critique of the MND, pointing out numerous shortcomings in the baseline assessment of the presence of species at the site, failures to evaluate impacts that will result from the Project, and numerous instances where the MND’s assertions are insufficient or not supported by substantial evidence.

**1. The MND fails to identify the likely presence of sensitive and other wildlife species at the Project site.**

Dr. Smallwood points out that the one reconnaissance level survey conducted for the site and the cavalier approach taken to consider actual species that likely are present at times at the site, entirely undermines the environmental baseline employed by the MND to assess impacts. As Dr. Smallwood states:

A2-51

For all but one species – peregrine falcon – Stantec (2019) restricted its assessment of occurrence potential to those special-status species of wildlife most unlikely to be found within an urban setting. For a place such as the site of the proposed project, it was absurd to assess the likelihood of occurrence of marbled murrelet or yellow rail, as examples. Why did Stantec assess the occurrence likelihood of yellow-billed cuckoo, California red-legged frog, or salt-marsh harvest mouse? By selecting the wrong species for assessment, a false impression was given that something meaningful was accomplished. Many special-status species of wildlife actually have potential to occur on the project site, but were not addressed by Stantec (2019), including 26 species of birds and 7 species of bats

Smallwood Comments, p. 2. Although the Project’s consultant states there is no likelihood that peregrine falcons, a special status species, would use the site, Dr. Smallwood points out that, “[m]ultiple peregrine falcon records can be found on eBird, including one record only 100 m from the project site.” *Id.* Dr. Smallwood’s review also discloses siting of 26 other special status bird species within 100 meters of the Project’s site, including Cooper’s hawk, sharp-shinned hawk, oak titmouse, and multiple other special-status species. *Id.*, pp. 2-4. Dr. Smallwood notes that, although “species listed in Table 1 should not be expected to occur on the project site at any given time, [they]

can be expected to occasionally forage on the site and more often to use the site as stop-over habitat or staging habitat during migration or local movement....” *Id.*, p. 2.

Dr. Smallwood also noted the absence of any effort to discuss the Project’s possible impacts to bats. Dr. Smallwood’s review discloses the presence of 7 special-status species of bats that might forage, roost, or stop-over on the project site. *Id.*, pp. 2-3.

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. By failing to realistically assess based on any substantial evidence the presence of wildlife at or flying through the site, the MND fails to provide any baseline from which to analyze the Project’s impacts on birds and bats. The City must prepare an EIR for the Project which starts with an appropriate baseline from which to determine the impacts of the Project on wildlife.

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

The 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 “[w]indow collisions are often characterized as either the second or third largest source of human-caused bird mortality.” Ex. B, p. 6. As Dr. Smallwood explains:

Thousands of birds of many species migrate over Redwood City every year, during both day and night. These birds are familiar with low buildings, but are highly vulnerable to collisions with glass façades. Six of the species in Table 1 have been documented as window collision fatalities nearby, but any of these or other bird species could collide with glass windows reflecting nearby trees or casting out interior light or, due to transparency, revealing false flight paths. Peril to these birds increases

A2-51  
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A2-52



when building façades consist of glass that would cast internal lighting and reflect the external lights of moon, stars and other buildings – conditions that confuse birds navigating an otherwise dark airspace at night. Overhangs, trellises, and awnings add to collision risk, as do recessed glass façades as proposed in the project. The building design includes multiple known or suspected causal factors of bird-window collisions, none of which are analyzed or mitigated in the MND.

Smallwood Comments, p. 5.

Dr. Smallwood reviewed a number of studies in order to calculate the number of bird collisions per m<sup>2</sup> of glass windows per year. (Ex. B, pp. 8-9.) According to his calculations, each m<sup>2</sup> of glass would result in 0.077 bird deaths per year. *Id.* at p. 9. Dr. Smallwood then looked at the building design for the Project and estimated that the Project would include approximately 1,652 m<sup>2</sup> of glass windows. *Id.* Based on the estimated 1,652 m<sup>2</sup> of glass windows and the 0.077 bird deaths per m<sup>2</sup> of glass windows, Dr. Smallwood estimates that the project could result in 126 bird deaths per year. *Id.* As Dr. Smallwood also points out, the species present in that area which are prone to collisions with buildings would include a number of species listed as Bird Species of Conservation Concern, California Species of Special Concern, Taxa to Watch List or by Section 3503.5. These would include, for example, Allen's hummingbird, Yellow warbler, San Francisco common yellowthroat, Cooper's hawk, and Red-tailed hawk. *Id.*, pp. 3-4. Because this impact was not addressed in the MND, the City must prepare an EIR to analyze the impact of window collision on bird species.

In order to mitigate the impact of the window collisions on bird species, Dr. Smallwood has suggested several possible mitigation measures. 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. B, pp. 13-14. 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. (*Id.*) 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. 14.

Even with Dr. Smallwood's proposed mitigations, however, it is not likely that the Project can fully mitigate this potentially significant impact. Only a robust discussion in a draft EIR subjected to public review and comment would indicate the extent of the impact and the necessary mitigation measures.

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**3. The DEIR fails to address the Project’s impacts on wildlife movement.**

The DEIR’s cursory discussion of potential impacts to wildlife movement is insufficient. As Dr. Smallwood explains:

A2-53

A site such as the proposed project site is critically important for wildlife movement because it composes an island of open space an anthropogenic landscape, forcing more volant wildlife to use the site as stop-over and staging habitat during migration, dispersal, and home range patrol (Warnock 2010, Taylor et al. 2011, Runge et al. 2014). The project would cut wildlife off from stop-over and staging habitat, and would therefore interfere with wildlife movement in the region.

(Smallwood Comments, p. 9.) The MND’s non-substantive discussion of this potential impact identified by Dr. Smallwood is inconsistent with CEQA as a matter of law.

**4. No meaningful discussion of the Project’s cumulative effects on wildlife is included in the MND.**

A2-54

Recognizing that several projects may together have a considerable impact, CEQA requires an agency to consider the “cumulative impacts” of a project along with other projects in the area. § 21083(b); CEQA Guidelines §15355(b). If a project may have cumulative impacts, the agency must prepare an EIR, since “a project may have a significant effect on the environment if ‘[t]he possible effects of a project are individually limited but cumulatively considerable.’” *CBE*, 103 Cal.App.4th at 98, 114; *Kings County Farm Bur.*, 221 Cal.App.3d at 721. It is vital that an agency assess “the environmental damage [that] often occurs incrementally from a variety of small sources . . .” *Bakersfield Citizens For Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1214.

The MND does not address the cumulative wildlife impacts of the Project. As a result, the MND fails to address at all the Project’s cumulative wildlife impacts.

**C. There Is Substantial Evidence of a Fair Argument That the Project May Have Significant Air Pollution and Health Risk Impacts From Its Emissions of Air Contaminants.**

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The environmental consulting firm, Soil, Water, Air Protection Enterprise (SWAPE), has reviewed the air modeling conducted for the Project as well as the MND’s discussion of health risks. SWAPE concludes that the air modeling is not supported by substantial evidence because it applies a number of key inputs that are inconsistent with the project description set forth in the MND. As for health risks, SWAPE points out the absence of any quantitative health risk assessment in support of the MND’s conclusion that the Project’s operation would not have any significant health

A2-55  
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risk impacts on nearby residents. As a result, the MND’s analysis is not supported by substantial evidence and SWAPE’s analysis is substantial evidence that the Project may have significant air quality and health risk impacts.

**1. The MND’s air quality analysis is not based on substantial evidence because it relies upon incorrect inputs regarding key characteristics of the Project.**

SWAPE has reviewed the air modeling conducted in support of the MND and concludes that the air modeling conducted for the Project is not supported by substantial evidence because it relies upon inputs that understate several components of the Project. As a result, the projected air emissions relied upon by the MND are underestimated and unreliable.

First, the air modeling understates the size of the parking garage proposed for the Project. SWAPE Comment, p. 2. By understating the size of the parking garage, the air modeling underestimates air emissions from the Project.

A2-56

Second, missing from the air emission analysis is the proposed café land use. SWAPE Comment, p. 3. This leads to further underestimate of emissions.

Third, the air modeling assumes that only *final* Tier 4 measures will be used for the Project’s construction equipment. *Id.*, pp. 3-5. However, the mitigation measure requiring Tier 4 does not preclude the use of *interim* Tier 4 measures which are less stringent than the final Tier 4 emission levels. MM AIR-2 states:

The applicant shall require the following construction equipment to meet CARB Tier 4 emission standards: Cranes, Excavators, Forklifts, Generator Sets, Graders, Rubber Tired Dozers, Tractors/Loaders/Backhoes, Trenchers, and Welders

MND, p. 3.14. The modeling should be based on the use of interim Tier 4 equipment. SWAPE Comments, pp. 3-5.

Because of these inaccuracies, the air pollution modeling result is not supported by substantial evidence. The applicant should rerun the modeling in order to ascertain the actual anticipated emissions from the Project’s construction and operation.

**2. The MND’s discussion of health risks to nearby residents is incomplete and not based on substantial evidence.**

A2-57

People sensitive to toxic air contaminants live within 200 feet of the proposed site. Despite the proximity to the Project, the MND does not address any health risks to those nearby residents from operation of the Project. SWAPE Comments, pp. 6-7. The MND should be based on an analysis of the Project’s operational health risks and

A2-57  
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discuss whether the Project’s operation and construction exceed the BAAQMD’s significance threshold for cancer risk of 10.0 in one million.

**3. The MND’s discussion of GHG emissions is not based on substantial evidence.**

A2-58

Based on the flawed modeling described above, the MND estimates the Project’s GHG emissions at just shy of the BAAQMD’s numeric GHG significance threshold – 1,076 MT CO<sub>2</sub>e/year versus the significance threshold of 1,100 MT CO<sub>2</sub>e/year. Given how close the Project’s emissions are to the threshold even with underestimated embedded in the air modeling, the MND does not have substantial evidence based on the flawed modeling to conclude that the Project will not exceed the GHG threshold.

**4. CONCLUSION**

For the foregoing reasons, the 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.

A2-59

Sincerely,



Michael R. Lozeau  
Lozeau | Drury LLP