



T 510.836.4200
F 510.836.4205

1939 Harrison Street, Ste. 150
Oakland, CA 94612

www.lozeaudrury.com
rebecca@lozeaudrury.com

Via Email and Hand Delivery

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Commissioner Linda Mason, Chair
Commissioner Sophie Lagace, Vice Chair
Commissioner Rick Biasotti
Commissioner Tom Hamilton
Commissioner Mary Lou Johnson
Commissioner Kelly Lethin
Commissioner Valentine Morgan
c/o Darcy Smith, Secretary
Planning Commission
City of San Bruno
567 El Camino Real
San Bruno, CA 94066
dsmith@sanbruno.ca.gov

Michael Smith, Senior Planner
Community Development Department
City of San Bruno
567 El Camino Real
San Bruno, CA 94066
msmith@sanbruno.ca.gov

Re: Comment on CEQA Conformity Determination for Mills Park Project
(Application Nos. PD10-001, PDP19-001, AR19-002, TM19-001, DA19-001)

Dear Chair, Honorable Members of the Planning Commission and Mr. Smith:

I am writing on behalf of the Laborers International Union of North America, Local Union 276 and its members living in and around the City of San Bruno ("LIUNA") regarding the CEQA Consistency Determination for the Mills Park Project, located at 643-799 El Camino Real, 701-751 Camino Plaza, 711-777 Kains Ave., and 601-611 El Camino Real in San Bruno (the "Project").

The Project is located within the Transit Corridors Plan ("TCP") area of San Bruno. A program EIR and mitigation monitoring and reporting program were prepared for the TCP and adopted by the San Bruno City Council on February 12, 2013 (the "TCP EIR"). An Initial Study ("IS") was prepared for the Mills Park Project to determine if the Project would result in any new or substantially more severe environmental impacts than what was analyzed in the TCP EIR. The IS concludes that the Project would not result in any new or more significant impacts. After reviewing the TCP EIR, the IS, and supporting documents, we conclude that the Project will have new or more significant environmental impacts than what was analyzed in the TCP EIR. Accordingly, LIUNA respectfully requests that the City of San Bruno (the "City") prepare an EIR in order to incorporate our concerns discussed below.

This comment has been prepared with the assistance of Shawn Smallwood, Ph.D., an expert wildlife biologist who has expertise in the areas relevant to analyzing the Project's biological impacts. Dr. Smallwood's comment and curriculum vitae are attached hereto as Exhibit A and are incorporated herein by reference in their entirety. This comment has also been prepared with the assistance of Certified Industrial Hygienist, Francis "Bud" Offermann, PE, CIH. Mr. Offermann's comment and curriculum vitae are attached as Exhibit B hereto and is incorporated herein by reference in its entirety.

I. PROJECT DESCRIPTION

The Project is a 5.38-acre site, adjacent to El Camino Real, which runs along the eastern side of the site. The site is divided into two parcels, separated in the middle by Kains Avenue, running east-west. The Project site currently contains commercial buildings and surface parking lots, all of which would be demolished as part of the Project.

In place of the existing structures and parking lots, the Project includes construction of a new mixed-use project comprised of 425 residential units, commercial space, and parking in two buildings. Building "A" would be in the northern part of the Project site, while Building "B" would be in the southern part of the Project site. Building A would include a 41,893 square-foot grocery store on the basement level, and 182 residential units on floors 2 through 5. Parking would be located on three levels. Building B would include approximately 4,000 square feet of ground-level commercial space, and 243 residential units on floors 1 through 5. Parking would be located on two levels.

II. LEGAL BACKGROUND

CEQA requires that an agency analyze the potential environmental impacts of its proposed actions in an environmental impact report ("EIR") (except in certain limited circumstances). See, e.g., Pub. Resources Code, § 21100. The EIR is the very heart of CEQA. *Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652. "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 Environment v. Cal. Resources Agency* (2002) 103 Cal.App.4th 98, 109. An EIR shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. Pub. Res. Code § 15125.6.

Here, the City is tiering its environmental review of the Project from the 2013 TCP EIR. CEQA permits agencies to "tier" EIRs, in which general matters and environmental effects are considered in an EIR "prepared for a policy, plan, program or ordinance followed by narrower or site-specific [EIRs] which incorporate by reference the discussion in any prior [EIR] and which concentrate on the environmental effects which (a) are capable of being mitigated, or (b) were not analyzed as significant effects on the environment in the prior [EIR]." Pub. Res. Code §

21068.5. “[T]iering is appropriate when it helps a public agency to focus upon the issues ripe for decision at each level of environmental review and in order to exclude duplicative analysis of environmental effects examined in previous [EIRs].” Pub Res. Code § 21093. The initial general policy-oriented EIR is called a programmatic EIR (“PEIR”) and offers the advantage of allowing “the lead agency to consider broad policy alternatives and program wide mitigation measures at an early time when the agency has greater flexibility to deal with basic problems or cumulative impacts.” 14 CCR § 15168. CEQA regulations strongly promote tiering of EIRs, stating that “[EIRs] shall be tiered whenever feasible, as determined by the lead agency.” Pub Res. Code § 21093.

When a program EIR has been prepared, “[l]ater activities in the program must be examined in the light of the program EIR to determine whether an additional environmental document must be prepared.” 14 CCR § 15168(c). The CEQA Guidelines specify that “If a later activity would have effects that were not examined in the program EIR, a new initial study would need to be prepared leading to either an EIR or a negative declaration.” *Id.* at § 15168(c)(1). When tiering from an EIR, the:

[L]ead agency ...should limit the EIR or negative declaration on the later project to effects which:

- (1) Were not examined as significant effects on the environment in the prior EIR; or
- (2) Are susceptible to substantial reduction or avoidance by the choice of specific revisions in the project, by the imposition of conditions, or other means.

14 C.C.R. § 15152(d). When tiering from a programmatic EIR, the City must employ the fair argument standard. 14 C.C.R. § 15152(f) (“a later EIR shall be required when the initial study or other analysis finds that the later project *may cause significant effects* on the environment that were not adequately addressed in the prior EIR”); 15070.

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 § 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*).

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.)

III. DISCUSSION

A. The Record Contains Substantial Evidence of Several Fair Arguments That the Project May Have Significant Environmental Impacts Not Examined in the TCP Program EIR, Requiring the Preparation of an EIR.

1. The Project will have a significant impact on indoor air quality that was not analyzed in the TCP EIR.

Certified Industrial Hygienist, Francis “Bud” Offermann, PE, CIH concludes that it is likely that the Project will expose future residents to significant impacts related to indoor air quality, and in particular, emissions for the cancer-causing chemical formaldehyde. Mr. Offermann is one of the world’s leading experts on indoor air quality and has published extensively on the topic. *See* CV attached to Offermann comments, Exhibit B.

Mr. Offermann explains that many composite wood products typically used in modern home construction contain formaldehyde-based glues which off-gas formaldehyde over a very long time period. He states, “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 building construction for flooring, cabinetry, baseboards, window shades, interior doors, and window and door trims.” Offermann, pp. 2-3.

Formaldehyde is a known human carcinogen. Mr. Offermann states that there is a fair argument that residents of the Project will be exposed to a cancer risk from formaldehyde of approximately 125 per million. Offermann, p. 4. Workers in the commercial elements of the Project will be exposed to a cancer risk from formaldehyde of approximately 18.4 per million. Offermann, p. 5. This is far above the Bay Area Air Quality Management District (BAAQMD) CEQA significance threshold for airborne cancer risk of 10 per million. Mr. Offermann states:

With respect to this project, the proposed buildings at Mills Park Center, San Bruno, CA include multi-family residential buildings and commercial retail spaces. The residential occupants will potentially have continuous exposure (e.g. 24 hours per day, 52 weeks per year). These exposures are anticipated to result in significant cancer risks resulting from exposures to formaldehyde released by the building materials and furnishing commonly

found in residential construction.

This project will also include commercial retail buildings, and the employees in these buildings are expected to experience work-day exposures (e.g. 40 hours per week, 50 weeks per year). This exposure for employees is anticipated to result in significant cancer risks resulting from exposures to formaldehyde released by the building materials and furnishing commonly found in commercial retail buildings.

Offermann, pp. 4-5.

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. Mr. Offermann identifies mitigation measures that are available to reduce these significant health risks, including the installation of air filters and a requirement that the applicant use only composite wood materials (e.g. hardwood plywood, medium density fiberboard, particleboard) for all interior finish systems that are made with CARB approved no-added formaldehyde (NAF) resins or ultra-low emitting formaldehyde (ULEF) resins in the buildings' interiors. Offermann Comments, pp. 11-12.

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 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 impacts and an EIR is required.

The City has a duty to investigate issues relating to a project's potential environmental impacts, especially those issues raised by an expert's comments. See *Cty. Sanitation Dist. No. 2 v. Cty. of Kern*, (2005) 127 Cal.App.4th 1544, 1597-98 ("under CEQA, the lead agency bears a burden to investigate potential environmental impacts"). In addition to assessing the Project's potential health impacts to future residents, Mr. Offermann identifies the investigatory path that the City should be following in developing an EIR to more precisely evaluate the Project's future

formaldehyde emissions and establishing mitigation measures that reduce the cancer risk below the BAAQMD level. Offermann Comments, pp. 5-9. Such an analysis would be similar in form to the air quality modeling and traffic modeling typically conducted as part of a CEQA review.

The failure to address the project's formaldehyde emissions is contrary to the California Supreme Court's decision in *California Building Industry Ass'n v. Bay Area Air Quality Mgmt. Dist.* (2015) 62 Cal.4th 369, 386 ("*CBIA*"). At issue in *CBIA* was whether the Air District could enact CEQA 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 800-801. However, to the extent a project may exacerbate existing adverse environmental conditions at or near a project site, those would still have to be considered pursuant to CEQA. *Id.* at 801 ("CEQA calls upon an agency to evaluate existing conditions in order to assess whether a project could exacerbate hazards that are already present"). 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 800 (emphasis added).

The carcinogenic formaldehyde emissions identified by Mr. Offermann are not an existing environmental condition. Those emissions to the air will be from the hotel project. Residents will be users of the Project. Currently, there is presumably little if any formaldehyde emissions at the site. Once the project is built, emissions will begin at levels that pose significant health risks. Rather than excusing the City from addressing the impacts of carcinogens emitted into the indoor air from the project, the Supreme Court in *CBIA* expressly finds that this type of effect by the project on the environment and a "project's users and residents" must be addressed in the CEQA process.

The Supreme Court's reasoning 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 800 (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). It goes without saying that the hundreds of future residents at the Project are human beings and the health and safety of those residents is as important to CEQA's safeguards as nearby residents currently living adjacent to the project site.

Because Mr. Offermann's expert review is substantial evidence of a fair argument of a significant environmental impact to future users of the project, an EIR must be prepared to disclose and mitigate those impacts.

2. The City improperly dismisses the potential for the Project to impact special-status species.

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 City has failed to provide any baseline from which to analyze the Project’s impacts on birds.

The TCP EIR includes only one paragraph analyzing the potential project impacts on biological resources. It was prepared without any biological surveys being conducted by wildlife biologists, and there have been no surveys conducted specific to the Mills Park Project. Instead, the TCP EIR made the general claim that special-status species will not exist at the project site because the site is already built up, and does not occur within a wildlife movement corridor. The IS relies on this same reasoning to determine the Project will have no biological impact.

Dr. Shawn Smallwood explains that these conclusions are wrong. Smallwood, p. 2. He explains that “special-status species often move across anthropogenic landscapes during migration, dispersal and for other reasons, and wildlife often move diffusely outside the confines of some human-defined ‘corridor.’” *Id.* Evidence that special-status species of birds can and do occur in built-out portions of San Bruno can be found on the eBird website. *Id.* For example, the image below depicts where a sharp-shinned hawk (a special-status species) was observed on a built-up location, just across the street from the Project.



Figure 1. A sharp-shinned hawk location record (blue teardrop shape) on eBird, across the street from the proposed project site.

As sharp-shinned hawks and other birds protected by the Migratory Treaty Act and other environmental statutes move through the Project area, “they are vulnerable to window collisions, which is a mitigatable hazard that is not discussed in the TCP EIR. Smallwood, p. 2. In order to assess Project impacts, “Surveys are needed to learn how many of each bird species fly through the area and at what times of day (and night).” Smallwood, p. 6. Dr. Smallwood explains that “Such surveys would inform of collision risk, and could inform mitigation strategies involving interior light management and design modifications to facades facing the prevailing approach directions of migrating birds.” *Id.*

3. The Project will have a Significant Impact fails to address the potential adverse impact on bird species from window collisions.

According to wildlife expert Dr. Shawn Smallwood, the Project will have a significant impact on birds as a result of window collisions. The City has not analyzed or mitigated these potential impacts to special-species birds. 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.” Smallwood, p. 7.

Dr. Smallwood reviewed a number of studies in order to calculate the number of bird collisions that would occur annually as a result of the Project. Smallwood, p. 9-10. 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 8,200 m² of glass windows. *Id.* Based on the estimated 8,200 m² of glass windows and the 0.077 bird deaths per m² of glass windows, Dr. Smallwood estimates that the project could result in 623 bird deaths per year. *Id.*

Based on data available for bird collisions at the nearby California Academy of Sciences buildings, Dr. Smallwood was able to make species-specific predictions of window collision bird deaths for the Project. Smallwood, p. 10. As Dr. Smallwood points out, all of the species found as window collision victims at the nearby California Academy of Sciences buildings have been observed in the Project area, according to eBird. Smallwood, p. 10. This includes Anna's hummingbird and the yellow-rumped warbler. *Id.* Based on data from CAS, Dr. Smallwood predicts 94 Anna's hummingbird deaths per year from collisions with the Project's windows. *Id.* The yellow warbler is a special-status species, and Dr. Smallwood predicts 5 yellow warbler fatalities per year from collisions with the Project's windows. *Id.*

These bird deaths constitute a significant impact that must be analyzed *Id.* The City must prepare a project-level EIR to disclose, analyze, and mitigate the full scope of the Project's impact resulting from window collisions.

4. The City fails to mitigate the Project's adverse impact on bird species from window collisions.

In order to mitigate the impact of the window collisions on bird species, Dr. Smallwood has suggested a number of mitigation measures. As a starting point, before construction, "[a]ny new project should be informed by preconstruction surveys of daytime and nocturnal flight activity." Smallwood, p. 17. Dr. Smallwood explains:

[Pre-construction] surveys can reveal the one or more façades facing the prevailing approach direction of birds, and these revelations can help prioritize where certain types of mitigation can be targeted. It is critical to formulate effective measures prior to construction, because post-construction options will be limited, likely more expensive, and probably less effective.

Smallwood, p. 17

Dr. Smallwood also notes the importance of post-construction fatality monitoring, which he says "should be an essential feature of any new building project." Smallwood, p. 16. These surveys should be combined with threshold fatality rates that would trigger additional mitigation. Smallwood, p. 19. The City should identify candidate impact-reduction measures that can be implemented in case the original measure(s) proves ineffective or inadequate, including compensatory mitigation.

In addition, 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; (6) landscaping so as to

increase distance between windows and vegetation; (7) monitoring for fatalities to identify seasonal and spatial patterns; and (8) adjusted light management, window markings, and other measures as needed based on survey results. Smallwood, p. 18. 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.*

Finally, Dr. Smallwood recommends compensatory mitigation including contributions to wildlife rehabilitation facilities to cover the costs of injured animals that may be delivered to these facilities for care from this Project or other projects. Smallwood, p. 19.

5. There is no evidence that the Project will not have a significant cumulative impact on biological resources.

EIR's must discuss a project's cumulative impacts. 14 CCR § 15130(a). This requirement flows from CEQA section 21083, which requires a finding that a project may have a significant effect on the environment if "the possible effects of a project are individually limited but cumulatively considerable. . . . 'Cumulatively considerable' means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects."

Here, neither the TCP EIR nor any other document analyzes the Project's cumulative biological impacts generally, or of window collisions on birds specifically. Smallwood, p. 18. As Dr. Smallwood explains, "[a] cumulative effects analysis is readily achievable by first listing the existing and planned extent of glass windows and curtainwalls and glass railings in San Bruno, and then applying the national average fatality rate to this glass window extent." Smallwood, p. 18. A project-level EIR should be prepared and a cumulative impacts analysis included in the EIR.

B. Even under 14 C.C.R. § 15162, an EIR is Required Because New Information is Available That Require Significant Revisions to the TCP EIR.

When changes to a project's circumstances or new substantial information comes to light subsequent to the certification of an EIR for a project, the agency must prepare a subsequent or supplemental EIR if the changes are "[s]ubstantial" and require "major revisions" of the previous EIR. *Friends of Coll. of San Mateo Gardens v. San Mateo Cty. Cmty. Coll. Dist.* (2016) 1 Cal.5th 937, 943. "[W]hen there is a change in plans, circumstances, or available information after a project has received initial approval, the agency's environmental review obligations "turn[] on the value of the new information to the still pending decisionmaking process." *Id.*, 1 Cal.5th at 951–52. The agency must "decide under CEQA's subsequent review provisions whether project changes will require major revisions to the original environmental document because of the involvement of new, previously unconsidered significant environmental effects." *Id.*, 1 Cal.5th at 952. Section 21166 and CEQA Guidelines § 15162 "do[] not permit agencies to avoid their obligation to prepare subsequent or supplemental EIRs to address new, and previously unstudied, potentially significant environmental effects." *Id.*, 1 Cal.5th at 958.

Section 15162 provides, in relevant part,

(a) When an EIR has been certified or a negative declaration adopted for a project, no subsequent EIR shall be prepared for that project unless the lead agency determines, on the basis of substantial evidence in the light of the whole record, one or more of the following:

(1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;

(2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or

(3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:

(A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;

(B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;

(C) Mitigation measures or alternatives previously found not to be feasible would in fact be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or

(D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

(b) If changes to a project or its circumstances occur or new information becomes available after adoption of a negative declaration, the lead agency shall prepare a subsequent EIR if required under subdivision (a).

14 Cal. Admin. Code § 15162(a)-(b). New information and circumstances have arisen since the 2013 TCP EIR was certified that must be considered in an EIR.

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1. New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence in 2013, shows that the project will have a significant impacts that was not previously considered.

As previously discussed, the residential units proposed 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 BAAQMD's threshold of significance. A 2018 study by Chan et al. (attached as Exhibit C) measured formaldehyde levels in new structures constructed after the after CARB's airborne toxics control measure (ATCM) to reduce formaldehyde emissions from composite wood products 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 will still pose cancer risks greater than 100 in a million, well above the 10 in one million significance threshold established by the BAAQMD.

The Chan, et al. study constitutes significant new information that was not available when the 2013 TCP EIR was certified, and demonstrates the Project will have a new significant impact that was not previously analyzed in the TCP EIR, even with the use of CARB compliance materials. CEQA requires the City to react to this new information, disclose it in an EIR, and determine the appropriate mitigations that should be implemented.

IV. CONCLUSION

In light of the above comments, the Planning Commission should find that additional environmental review is necessary decline to approve the Project. Instead, the Planning Commission should request staff prepare a project-specific EIR. Thank you for considering these comments.

Sincerely,



Rebecca L. Davis
Lozeau | Drury LLP

Attachments