



VIA E-MAIL AND HAND DELIVERY

June 4, 2019

Mayor Miguel Pulido
Councilmember Juan Villegas
Councilmember Vicente Sarmiento
Councilmember David Penaloza
Councilmember Jose Solorio
Councilmember Cecilia Iglesias
City Council
City of Santa Ana
20 Civic Center Plaza
P.O. Box 1988, M31
Santa Ana, CA 92701
citycouncil@santa-ana.org

Minh Thai, Executive Director
City of Santa Ana
Planning and Building Agency | M20
20 Civic Center Plaza
Santa Ana, CA 92702
mthai@santa-ana.org

Ali Pezeshkpour, AICP
Project Manager
Planning and Building Agency
City of Santa Ana
20 Civic Center Plaza
Santa Ana, CA 92702
APezeshkpour@santa-ana.org

Re: Comment on EIR Addendum for MainPlace Transformation Project Specific Plan Located at 2800 North Main Street (SCH NO. 1983021103); Environmental Review No. 2018-72, Amendment Application No. 2018-04

Honorable Mayor and City Council Members:

I am writing on behalf of the **Supporters' Alliance for Environmental Responsibility** ("SAFER"), a California non-profit organization with members living in and around the City of Santa Ana, regarding the MainPlace Transformation Project Specific Plan located at 2800 North Main Street in Santa Ana, California ("Project"). The proposed project includes the full buildout of 1,400,000 square feet of commercial, 750,000 square feet of office, 400 hotel rooms, and 1,900 residential units. Staff claims that the potential environmental effects of the Project have been fully addressed by the 1983 Fashion Square Commercial Center Subsequent Final Environmental Impact Report ("1983 EIR"). Fundamentally, the proposed Project is an entirely different project than what was analyzed in 1983 EIR (the "1983 Project"). The 1983 EIR

contained no residential element, yet the Project proposes 1,900 residential units that have never been analyzed under CEQA. The 1983 EIR has no informational value to the residential element of the Project and is irrelevant to analyzing its environmental impacts. In addition, the circumstances surrounding the Project site have changed dramatically since 1983. For example, traffic has increased nearly 50% in some nearby locations. The 1983 EIR fails to address any of these changed circumstances. As a result, additional environmental review of the Project must occur pursuant to the California Environmental Quality Act ("CEQA").

A number of highly qualified experts have reviewed the proposed hotel project and its environmental effects. Traffic engineer Daniel Smith, Jr., P.E., and Certified Industrial Hygienist, Francis "Bud" Offermann, PE, CIH, and environmental consulting firm SWAPE have identified a number of significant impacts from the proposed Project including traffic, and air quality impacts, as well as omissions and flaws in the documents relied upon by staff. These comments are attached as Exhibits A through C.

By opting to proceed with an Addendum instead of the required EIR or SEIR, the City of Santa Ana ("City") has deprived the members of the public of the public review and circulation requirement available for EIRs. SAFER urges the Commission not to adopt the Addendum or approve the Project, and instead to direct staff to prepare a Draft EIR for the Project, and to circulate the Draft EIR for public review and comment prior to Project approval.

PROJECT DESCRIPTION

The Project involves adoption of a specific plan to facilitate the redevelopment of the existing MainPlace Mall into a regional, mixed-use village with additional commercial, office, residential, and hotel projects. The Project involves 1,400,000 square feet of commercial, 750,000 square feet of office, 400 rooms of hotel, and 1,900 residential units. In contrast, the 1983 EIR analyzed a mixed-use commercial center with 1,600,000 square feet of commercial space, 1,500,000 square feet of office space, and 1,200 hotel rooms.

The Project site currently contains the 1,130,000 MainPlace Mall regional shopping center, three parking structures, and surface parking lots. The site is approximately 49 acres and is located northeast of the corner of Main Street and Main Place Drive. It is surrounded by the Santa Ana (I-5) Freeway to the west, the Garden Grove (SR-22) Freeway to the north, Main Street and commercial and mixed-use land uses to the east, and Main Place Drive and commercial-office land uses to the south. A midrise office building is located adjacent to the site at 2700 North Main Street.

LEGAL STANDARD

CEQA contains a strong presumption in favor of requiring a lead agency to prepare an EIR. This presumption is reflected in the fair argument standard. Under that standard, a lead agency must prepare an EIR whenever substantial evidence in the whole record before the agency supports a fair argument that a project may have a significant effect on the environment.

Pub. Res. Code § 21082.2; *Laurel Heights Improvement Ass'n v. Regents of the University of California* (1993) (“Laurel Heights II”) 6 Cal. 4th 1112, 1123; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 82; *Quail Botanical Gardens v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602.

The City relies on CEQA Guidelines § 15162 and 15164 to claim that no CEQA review is required. The court of appeal recently stated, “The addendum is the other side of the coin from the supplement to an EIR. This section provides an interpretation with a label and an explanation of the kind of document that does not need additional public review.” “It must be remembered that an addendum is prepared where ‘(2) **Only minor technical changes or additions are necessary to make the EIR under consideration adequate under CEQA; and (3) The changes to the EIR made by the addendum do not raise important new issues about the significant effects on the environment.**’ ([Guideline] 15164, subd. (a).)” *Save Our Heritage Org. v. City of San Diego*, 28 Cal. App. 5th 656, 664–65 (2018) (emphasis added).

Section 15164(a) of the State CEQA Guidelines states that “the lead agency or a responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary, but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred.” Pursuant to Section 15162(a) of the State CEQA Guidelines, a subsequent EIR or Negative Declaration is only required when:

- (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.

DISCUSSION

I. THE 1983 EIR HAS NO INFORMATIONAL VALUE TO THE RESIDENTIAL ASPECT OF THE PROJECT.

As the California Supreme Court explained in *San Mateo Gardens*, subsequent CEQA review provisions “can apply only if the project has been subject to initial review; they can have no application if the agency has proposed a new project that has not previously been subject to review.” *Friends of College of San Mateo Gardens v. San Mateo* (2016) 1 Cal.5th 937, 950 (“*San Mateo Gardens*”). As the Supreme Court explains, “[a] decision to proceed under CEQA’s subsequent review provisions must thus necessarily rest on a determination — whether implicit or explicit — that the *original environmental document* retains some informational value.” *Id.* at 951 (emph. added). Only if the original environmental document retains some informational value despite the proposed changes, changes in circumstances or new substantial information does the agency proceed to decide under CEQA’s subsequent review provisions whether such changes or substantial new information will require major revisions to the original environmental document because of the involvement of new, previously unconsidered significant environmental effects. 1 Cal.5th at 952. Reviewing the 1983 EIR, the City cannot reasonably claim that it addresses, *i.e.*, provides some informational value regarding the potential environmental impacts of the 1,900 residential units proposed as part of the Project.

The Project includes 1,900 units of residential housing that have never been analyzed in any previous CEQA document. **A thorough review of the 1983 EIR confirms that no mention is made of any residential aspect of the redevelopment project.** Instead, the 1983 EIR evaluated the environmental impacts of the rehabilitation and redevelopment of the Santa Ana Fashion Square site as a mixed-used commercial center with 1,600 square feet of retail space, 1,500,000 square feet of office space, and 1,200 hotel rooms. Since the 1983 Project contained no residential element, none of the 1983 EIR’s discussion provides any information that would assist the City in determining the potential environmental impacts of the proposed 1,900 residential units. The project considered in the 1983 EIR simply has no relevance to the environmental impact of the construction and occupancy of 1,900 residential housing units.

Since the residential element of the Project has never undergone CEQA review, it is a new project, and the City must start from the beginning of the CEQA process under section 21151, conduct an initial study, and determine whether there is substantial evidence of a fair argument that the project will have a significant environmental impact. *Friends of College of San Mateo Gardens v. San Mateo*, 1 Cal.5th at 951. The City Council should require CEQA review for the Project, and not approve the Project until CEQA review is completed.

II. AN EIR MUST BE PREPARED FOR THE PROPOSED PROJECT BECAUSE THERE IS SUBSTANTIAL EVIDENCE OF A FAIR ARGUMENT THAT THE PROJECT MAY HAVE ONE OR MORE SIGNIFICANT ENVIRONMENTAL IMPACTS.

As the California Supreme Court held, “[i]f no EIR has been prepared for a nonexempt project, but substantial evidence in the record supports a fair argument that the project may result in significant adverse impacts, the proper remedy is to order preparation of an EIR.”

Communities for a Better Env’t v. South Coast Air Quality Mgmt. Dist. (2010) 48 Cal.4th 310, 319-320 [“CBE v. SCAQMD”], citing, *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 88; *Brentwood Assn. for No Drilling, Inc. v. City of Los Angeles* (1982) 134 Cal.App.3d 491, 504–505. “Significant environmental effect” is defined very broadly as “a substantial or potentially substantial adverse change in the environment.” Pub. Res. Code [“PRC”] § 21068; see also 14 CCR § 15382. An effect on the environment need not be “momentous” to meet the CEQA test for significance; it is enough that the impacts are “not trivial.” *No Oil, Inc.*, 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.

Under the “fair argument” standard applicable to environmental review under Pub. Res. Code § 21151, 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. 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. v. City of Los Angeles* (1974) 13 Cal.3d 68, 83.

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 & Zisheke, *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. As a matter of law, “substantial evidence includes . . . expert opinion.” Pub.Res.Code § 21080(e)(1); 14 Cal. Code Regs. § 15064(f)(5). CEQA Guidelines demand that where experts have presented conflicting evidence on the extent of the environmental effects of a project, the agency must consider the environmental effects to be significant and prepare an EIR. 14 Cal. Code Regs. § 15064(f)(5); Pub. Res. Code § 21080(e)(1); *Pocket Protectors*, 124 Cal.App.4th at 935.

A. There is Substantial Evidence Supporting a Fair Argument that the Project Will Result in a Significant Air Quality Impact.

Certified Industrial Hygienist, Francis “Bud” Offermann, PE, CIH, has conducted a review of the proposed Project and relevant documents regarding the Project’s indoor air emissions. Indoor Environmental Engineering Comments (May 31, 2019) (Exhibit A). Mr. Offerman concludes that it is likely that the Project will expose future residents of the Project’s residential units to significant impacts related to indoor air quality, and in particular, emissions of 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* attached CV.

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 building construction for flooring, cabinetry, baseboards, window shades, interior doors, and window and door trims.” Offermann Comment, pp. 2-3.

Mr. Offermann states:

Indoor air quality in homes is particularly important because occupants, on average, spend approximately ninety percent of their time indoors with the majority of this time spent at home (EPA, 2011). Some segments of the population that are most susceptible to the effects of poor IAQ, such as the very young and the elderly, occupy their homes almost continuously. Additionally, an increasing number of adults are working from home at least some of the time during the workweek.

Offermann Comment, p. 1.

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 between 125 and 180 per million. (Offermann Comment, pp. 2-3.) This is far above the South Coast Air Quality Management District (SCAQMD) CEQA significance threshold for airborne cancer risk of 10 per million. Even if the Project uses modern “CARB-compliant” materials, Mr. Offermann concludes that formaldehyde will create a cancer risk more than ten times above the CEQA significance threshold. Offermann Comment, p. 3. 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.

In addition to residential exposure, the employees of the hotel and commercial and office buildings are also expected to experience work-day exposures. Offermann Comment, p. 4. This exposure for employees would result in “significant cancer risks resulting from exposures to formaldehyde released by the building materials and furnishing commonly found in hotels and commercial and office buildings.” *Id.* Assuming work eight hour days, five days per week, an employee would be exposed to a cancer risk of 18.4 per million, which is nearly double the 10 per million CEQA threshold. *Id.* at 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. *Id.*, pp. 4. 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

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 residents and workers, 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 SCAQMD 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 Project. Residents will be users of the residential units, and employees will be users of the hotel and offices. 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 thousands of future residents and employees at the Project are human beings and the health and safety of those workers is as important to CEQA's safeguards as nearby residents currently living near the project site.

Mr. Offermann also notes that the high cancer risk that may be posed by the Project's indoor air emissions likely will be exacerbated by the additional cancer risk that exists as a result of the Project being surrounded by roads with moderate to high traffic (i.e. I-5, Garden Grove

Freeway, Main Street) and the high levels of PM2.5 already present in the ambient air. Offermann Comments, pp. 10-11. No analysis has been conducted of the significant cumulative health impacts that will result to residents and employees living and working at the Project.

The Addendum fails to disclose, analyze, or mitigate these new significant impacts. 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.

B. There is Substantial Evidence Supporting a Fair Argument that the Project Will Result in a Significant Climate Change Impact.

The Addendum relies on an efficiency-based greenhouse gas emission analysis to determine the significance of the Project's climate change impact. The Addendum concludes that the Project would have a GHG efficiency of 2.84 MT CO₂e/year/service population. Addendum, p. 119. Since this falls below the 3.0 MT CO₂e/year/service population South Coast Air Quality Management District ("SCAQMD") threshold of significance, the Addendum concludes that the Project will not have a significant GHG impact. *Id.* As explained in the expert comments of environmental consulting firm SWAPE, this conclusion is incorrect because the Addendum relies on a flawed methodology. SWAPE Comment, p. 7.

The Addendum calculates the Project's "net emissions" by subtracting the GHG emissions associated with the existing land uses from the GHG emissions associated with the currently proposed Project. Based on this analysis, the Addendum concludes that the Project would not result in a new significant or more severe GHG impact than was analyzed in the 1983 EIR. Addendum, p. 119.

The Addendum errs by making its determination of the significance of the Project's climate change impact based on the Addendum's "net emissions" calculations. The question is not whether the additional impact the Project will have is significant. The question is whether the Project's total emissions will result in a new or more significant impact, where there was not previously one. Without an analysis of the GHG impact of the Project as a whole, there is no substantial evidence to support the Addendum's conclusion that the Project will not have a new or substantially greater significant climate change impact as a result of the significant changes the Project proposes.

While the Addendum does not include this analysis, SWAPE conducted the analysis in order to accurately evaluate the Project's GHG impacts. SWAPE Comments, p. 9. Relying on the Project's total emissions, rather than net emissions, SWAPE found that the Project's emissions will actually be 7.35 MT CO₂e/year/service population, which is more than double the 3.0 MT CO₂e/year threshold of significance. *Id.* SWAPE's expert opinion constitutes substantial evidence that the Project will have a significant new or more significant impact that was not previously analyzed in the 1983 EIR. An EIR is needed to fully disclose, analyze, and mitigate this significant impact.

C. There is Substantial Evidence Supporting a Fair Argument that the Project Will Result in a Significant Construction-Related Air Quality Impact.

As discussed below, the Addendum is inadequate because it does not calculate the Project's construction-related criteria air pollutant emissions. As a result, it makes it impossible to accurately determine whether or not the Project will have a significant impact from construction-related criteria air pollutant emissions. The Addendum does, however, include a California Emissions Estimator Model Version CalEEMod.2016.3.2 ("CalEEMod") air model for the Project's construction GHG emissions. But even this data is incomplete because the Addendum only provides the **annual** CalEEMod modeling, and does not include the summer or winter output files. SWAPE, p. 4. The summer and winter output files are necessary because the annual output files calculate emissions as **total tons per year**. In contrast, the summer and winter output files estimate emissions as the **maximum pounds per day**, which is the same metric used for SCAQMD's significance threshold. SWAPE, p. 4. These files are necessary to compare the Project's maximum daily construction emissions to the SCAQMD's maximum daily thresholds. *Id.*

Reviewing the annual CalEEMod output files., SWAPE determined that the Project's unmitigated construction-related NOx emissions would be 17.83 tons per year. SWAPE, p. 4. Based on this number, SWAPE was able to determine that the Project's would have an **average** daily emission of 97.7 lbs/day, or just under the 100 lb/day threshold of significance. *Id.* Since the threshold of significance is based on **maximum** daily emissions, and the **average** would be 97.7 lbs/day, SWAPE concludes that there is a fair argument that the Project's **maximum** daily NOx emissions would exceed the SCAQMD threshold of significance of 100 lbs/day. SWAPE, p. 5.

SWAPE's comments constitute substantial evidence supporting a fair argument that the Project will have a significant air quality impact. An EIR is needed to fully analyze and mitigate this potentially significant impact.

III. EVEN IF THE 1983 EIR WAS STILL RELEVANT TO THE PROJECT, A SUPPLEMENTAL OR SUBSEQUENT EIR IS NECESSARY BECAUSE SUBSTANTIAL CHANGES WILL RESULT IN NEW AND MORE SIGNIFICANT ENVIRONMENTAL IMPACTS.

Even assuming that the 1983 EIR has some relevance to evaluating the environmental impacts of this Project, numerous substantial changes in the development plans have occurred such as the inclusion of 1,900 new residential units, new information of substantial importance has arisen, and substantial changes in circumstances have taken place that require a wholesale revision of the dated 1983 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.

All of the evidence indicates that the project considered by the 1983 EIR has undergone significant changes to the project and its circumstances requiring substantial revisions to that 35-year old EIR.

A. A New EIR is Required Because the Addition of 1,900 Residential Units is a Substantial Change from the 1983 Project and there is Substantial Evidence that the Residential Element of the Project Will Result in Emissions of Formaldehyde to the Air that Will Have a Significant Health Impact on Future Residents.

Even if the 1983 EIR was somehow relevant to the current Project, the City would still be required to prepare an SEIR. The inclusion of 1,900 new residential units as part of the Project is a substantial change from the 1983 project. “The purpose behind the requirement of a subsequent or supplemental EIR or negative declaration is to explore environmental impacts not considered in the original environmental document.” *Friends of College of San Mateo Gardens v. San Mateo* (2016) 1 Cal.5th 937, 949 (quoting *Save Our Neighborhood v. Lishman* (2006) 140 Cal.App.4th 1288, 1296).

As discussed above, the expert opinion of Mr. Offermann constitutes substantial evidence that the residential component of the Project will result in a significant air quality impact to residential occupants of the Project. This impact is significant and new. It could not have been known in 1983 because there was no residential element of the Project at that time. Accordingly, the City violated CEQA by not preparing an SEIR to analyze and mitigate this new significant impact.

There is no substantial evidence in the record to support a conclusion that the Project will not have a new significant indoor air quality impact as a result of significant changes to the Project when compared to the project analyzed in the 1983 EIR. Accordingly, the City’s decision to prepare an Addendum rather than an SEIR is not supported by substantial evidence, and approval of the Project based on the Addendum would constitute an abuse of discretion.

IV. THE ADDENDUM'S CONCLUSIONS ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.

A. There is no Evidence that the Project Will Not Result in a New Significant Construction-Related Air Quality Impact.

The Addendum concludes that the Project will not have a significant new air quality impact caused by Project construction. This conclusion is not supported by substantial evidence because the Addendum never evaluates the Project's construction-related criteria air pollutant emissions. SWAPE Comments, p. 3.

The Addendum's Air Quality Analysis states:

The implementation of the improved off-road equipment emissions standards that have occurred since the time of the Final EIR would result in Project construction emissions that are substantially lower than what was anticipated in the Final EIR. The MainPlace Specific Plan also identified sustainability features to enhance sustainability of the Project. These sustainability features include the compliance with all SCAQMD standards for construction equipment and the use of Tier 4 equipment where available during grading. Additionally, construction of the Proposed Project would be required to comply with various SCAQMD rules, including Rule 402 (Nuisance) and Rule 403 (Fugitive Dust). SCAQMD Rules 402 and 403 identify measures to be implemented for the control fugitive dust generated during ground-disturbance activities. As such, construction emissions would be lower than what was anticipated for the Approved Project. No new construction impacts would occur.

Addendum, Appendix F, p. 29.

The Addendum concludes that the Project's construction-related air emissions would be lower than those anticipated in the 1983 EIR, and therefore the Project would not result in new or more significant impacts. But there is no evidence to support this conclusion. Neither the Addendum nor the 1983 EIR quantified or evaluated the level of criteria air pollutants generated by project construction. Without determining what the actual emissions would be, there is no evidence on which the Addendum can base its conclusion on that the Project will result in lower emissions than the 1983 Project.

The South Coast Air Quality Management District ("SCAQMD") is the air pollution control agency for the region in which the Project is located. SWAPE, p. 3. SCAQMD provides quantitative maximum daily significance thresholds significance for emissions of several criteria air pollutants during construction and operational activities. SWAPE, pp. 3-4.

South Coast Air Quality Management District Construction-Related Significance Thresholds	
NOx	100 lbs/day
VOC	75 lbs/day
PM10	150 lbs/day
PM 2.5	55 lbs/day
SOx	150 lbs/day
CO	550 lbs/day
Lead	3 lbs/day

Development projects must use these thresholds of significance to determine the significance of emissions associated with project construction. SWAPE, p. 4. As SWAPE points out, “absent the quantification of construction air pollutant emissions and comparison to applicable thresholds, the 2019 Addendum cannot make any significance conclusions regarding the Project’s air quality impacts.” *Id.* The Project’s construction-related emissions must be quantified, compared to the applicable significance thresholds, and mitigated where necessary.

Without any evidence of how much the current Project or the 1983 Project will emit, the Addendum’s conclusion that the substantial changes to the Project will not result in a new or more significant impact than was analyzed in the 1983 EIR.

B. There is no Evidence that the Project Will not Result in a New Significant Health Risk to Nearby Sensitive Receptors.

The Addendum includes a health risk assessment (“HRA”). But it looks at the health risk posed by the Project to **new, on-site** residential receptors as a result of proximity to I-5 and SR-22. Addendum, p. 117. But the Addendum fails to conduct an HRA to determine the health risk posed to **existing, nearby** sensitive receptors as a result of Project construction and operation.

The Addendum tries to justify this omission by stating:

Construction is temporary, would be transient throughout the site (i.e., move from location to location), and would not generate emissions in a fixed location for extended periods of time. Construction would be subject to and would comply with California regulations limiting the idling of heavy-duty construction equipment to no more than 5 minutes to further reduce nearby sensitive receptors’ exposure to temporary and variable diesel particulate matter emissions. For these reasons, diesel particulate matter emissions generated by construction activities, in and of itself, would not be expected to expose sensitive receptors to substantial amount of air toxics and the Project would have a less than significant impact.

Addendum, p. 114. It goes on to say:

Although the closest sensitive receptors are located approximately 300 feet from the property line of the Project, construction would not occur at the property line, but would be setback approximately 300 feet the property line that is closest to the sensitive receptors... According to the CARB Air Quality and Land Use Handbook (2005), pollutant concentrations drop off drastically with distance (i.e., a 70 percent drop off in pollutant concentrations at 500 feet from the source). Additionally, construction equipment and vehicles in general have become cleaner and release less emissions than when the 1983 EIR was certified and when the 1996 Addendum was adopted. As a result, construction emissions would be lower than what was anticipated in both the 1983 EIR and the 1996 EIR, and no new impacts would occur.

Addendum, p. 114.

The Addendum concludes that the Project's health risk impact to nearby sensitive receptors would be lower than those anticipated in the 1983 EIR, and therefore the Project would not result in new or more significant impacts. But there is no evidence to support this conclusion. Neither the Addendum nor the 1983 EIR evaluated the health risk impact to nearby sensitive receptors. Without determining what the actual health risk will be, there is no evidence on which the Addendum can base its conclusion on that the Project not result in a new or more significant health risk impact compared to the 1983 Project.

C. There is no Evidence to Support the Addendum's Conclusion that the Project Will Result in Trip Generation No Worse Than the 1983 Project.

The Addendum concludes that the Project will have no new traffic impact compared to the project analyzed in the 1983 EIR. Addendum, p. 70. This conclusion is not supported by substantial evidence because the analysis relies on an inconsistent method of comparing impacts in the 1983 EIR and the Addendum.

The Addendum calculates trip generation numbers for the proposed Project + existing baseline and for the full buildout of the project analyzed in the 1983 EIR using the current edition of the Institute of Transportation Engineers Trip Generation 10th Edition, which was released in 2017, as well as current understandings of trip internalization at mixed-use developments and the capture of passerby traffic. Smith Comments, p. 2.

In contrast, the original trip generation estimates used to analyze the project's impacts in the 1983 EIR were calculated based on trip rates in the then-current traffic model in use in Santa Ana, which was known as the MMTS/SATC model, and verified by comparison to actual observe trip generation at 8 large office complexes in Southern California. *Id.* Unlike the Addendum, in the 1983 analysis, no adjustments were made for internalization of trips or passerby attraction.

Relying on current trip generation estimates for both the Project and the original 1083 project, the Addendum concludes that the current Project would generate 6,251 fewer daily trips

and 995 fewer PM peak hour trips that would the 1983 project. Smith, p. 2. However, Mr. Smith explains, if the Addendum had compared the Project's trip generation to the trip generation listed in the 1983 EIR, *an opposite conclusion would be reached*.

The 1983 EIR estimates a trip generation of 57,245 daily trips for the 1983 Project. This is 10,056 daily trips than the Addendum estimates the 1983 Project would generate. Moreover, using the 1983 EIR's estimate, the currently proposed *Project would result in 3,805 more PM peak hour trips than the 1983 Project*. Smith, p. 2.

The conclusion that the Project would result in no worse traffic impact than what was analyzed in the 1983 EIR is incorrect. The conclusion that the proposed Project would result in no worse traffic conditions than the 1983 Project is the result of introduction of new information that was not known and could not be known at the time of the 1983 EIR.

D. There is no Evidence to Support the Addendum's Conclusion that the Project Will Not Result in Impacts to Public Services Because the Addendum Does not Analyze the Need for New or Expanded Schools.

According to Appendix G of the CEQA Guidelines, a project may have a significant impact on public services if it would result in the need for new or expanded schools that may cause a significant environmental impact. CEQA Guidelines, App. G, section XV. The Project includes 1,900 residential units that were not previously analyzed. While the Addendum never discloses how many people are expected to occupy the residential portion of the Project, the climate change analysis uses the California Department of Finance population estimate of 2.9 people per household, which would amount to an additional 5,510 residents living at the Project site. *See Addendum, Appendix H, p. 32*. Some portion of these new residents will be children, and those children will attend schools. An analysis is needed to determine if the additional 5,510 residents will result in a significant impact because of the need for new or expanded schools. Instead, the Addendum ignores this issue entirely. Without any analysis of the Project's impacts on schools, the Addendum's conclusion that the Project will not have a significant new impact on schools is not supported by substantial evidence.

V. The Project Description is Inadequate to Evaluate Environmental Impacts.

The adequacy of an EIR's project description is closely linked to the adequacy of the EIR's analysis of the project's environmental effects. As a result, one of the important requirements of CEQA is that the project description not be confusing, shifting, or open-ended. This is to ensure that project impacts are analyzed properly and accurately. "An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR." *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193.

One aspect of the project description that is particularly important to determining a residential project's environmental impacts is the number of people expected to live in a new housing development. Many environmental impacts are dependent on the number of residents,

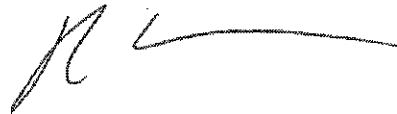
including GHG emissions, energy use, traffic, public services, among others. Here, neither the Addendum nor the Specific Plan itself disclose even an estimate of how many people will live in the 1,900 proposed units. Indeed the Addendum does not disclose how many bedrooms each unit will be. The number of bedrooms per unit will have a direct impact on the number of people inhabiting the 1,900 new units, and the environmental impacts of those units. Without even an estimate of the proposed residential population, the Project's description is incomplete

Moreover, CEQA requires an analysis of the full build out of a project, meaning the maximum size project that could be built under the entitlements sought. *Stanislaus Natural Heritage Project b. County of Stanislaus* (1996) 48 Cal.App.4th 182, 195-206. Without a limit on how many bedrooms each unit will be, the CEQA analysis must assume the units will all be built with the maximum number of bedrooms permitted. This was not what was analyzed in the Addendum.

CONCLUSION

For the above and other reasons, the Planning Commission should decline to recommend the City Council approve the Addendum, and instead direct Planning Staff to prepare and circulate an EIR for public review. The City may not rely on the nearly 40-year old 1983 EIR.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rebecca Davis', with a long horizontal flourish extending to the right.

Rebecca Davis