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Re: Comment on Final Environmental Impact Report, Times Mirror Square Project (aka VTT-74761, ENV-2016-4676-EIR, CPC-2016-4675-TDR-VCU-MCUP, and SCH No. 2017061083)

Dear Mr. Lamborn, Mr. Bertoni, and Ms. Wolcott:

This letter is submitted on behalf of **Supporters Alliance For Environmental Responsibility ("SAFER")**, a California nonprofit public benefit corporation, regarding the Draft Environmental Impact Report ("DEIR") and Final Environmental Impact Report ("FEIR") prepared for Times Mirror Square, Project No. ENV-2016-4676-EIR (SCH No. 2017061083) (the "Project"). After reviewing the DEIR and FEIR (collectively, "EIR"), we conclude that the EIR fails as an informational document and fails to impose all feasible mitigation measures to reduce the Project's impacts. SAFER requests that the Hearing Officer and Advisory Agency refrain from recommending certification of the EIR at this time and instead request the City of Los Angeles ("City") to address these shortcomings in a revised draft environmental impact report ("RDEIR") and recirculate the RDEIR prior to considering approvals for the Project.

I. PROJECT DESCRIPTION

The Project proposes to rehabilitate the Times, Plant, and Mirror Buildings and build a mixed-use development on 3.6 acres of land bounded by W. 1st Street, S. Spring Street, W. 2nd Street, and S. Broadway Street in the Central City Plan Area of the City of Los Angeles. The Project would demolish the existing Executive Building at the corner of W. 1st Street and S. Broadway and parking garage at the corner of W. 2nd Street and S. Broadway to allow for the development of the Project's mixed-use component. The Project will contain up to 1,127 residential units, and approximately 34,572 square feet of commercial space among the 37-story "North Tower" and 53-story "South Tower" constructed above a five-story parking podium. The space below the podium would contain an additional nine levels of subterranean parking. In total, the Project proposes up to 1,511,908 square feet of floor area.

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. Res. 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. Calif. Resources Agency* (2002) 103 Cal. App. 4th 98, 109.

CEQA has two primary purposes. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project. 14 Cal. Code Regs. ("CEQA Guidelines") § 15002(a)(1). "Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR 'protects not only the environment but also informed self-government.'" *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 564. The EIR has been described as "an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return." *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm'rs.* (2001) 91 Cal. App. 4th 1344, 1354 ("Berkeley Jets"); *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

Second, CEQA requires public agencies to avoid or reduce environmental damage when "feasible" by requiring "environmentally superior" alternatives and all feasible mitigation measures. CEQA Guidelines § 15002(a)(2) and (3); *see also, Berkeley Jets*, 91 Cal. App. 4th 1344, 1354; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564. The EIR serves to provide agencies and the public with information about the environmental impacts of a proposed project and to "identify ways that environmental damage can be avoided or significantly reduced." CEQA Guidelines § 15002(a)(2). If the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has

“eliminated or substantially lessened all significant effects on the environment where feasible” and that any unavoidable significant effects on the environment are “acceptable due to overriding concerns.” Pub. Res. Code § 21081; CEQA Guidelines § 15092(b)(2)(A) & (B). The lead agency may deem a particular impact to be insignificant only if it produces rigorous analysis and concrete substantial evidence justifying the finding. *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 732 (Cal. App. 5th Dist. 1990).

The EIR is the very heart of CEQA “and the integrity of the process is dependent on the adequacy of the EIR.” *Berkeley Jets*, 91 Cal. App. 4th 1109, 1355. CEQA requires that a lead agency analyze all potentially significant environmental impacts of its proposed actions in an EIR. Pub. Res. Code § 21100(b)(1); Guidelines § 15126(a); *Berkeley Jets*, 91 Cal.App.4th 1344, 1354. The EIR must not only identify the impacts, but must also provide “information about how adverse the impacts will be.” *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 831. The lead agency may deem a particular impact to be insignificant only if it produces rigorous analysis and concrete substantial evidence justifying the finding. *Kings County Farm Bureau*, 221 Cal.App.3d 692, 732. “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*, 103 Cal.App.4th 98, 109.

While the courts review an EIR using an “abuse of discretion” standard, “the reviewing court is not to ‘uncritically rely on every study or analysis presented by a project proponent in support of its position. A ‘clearly inadequate or unsupported study is entitled to no judicial deference.’” *Berkeley Jets*, 91 Cal. App. 4th 1344, 1355 (emphasis added), quoting, *Laurel Heights Improvement Assn. v. Regents of University of California*, 47 Cal. 3d 376, 391 409, fn. 12 (1988). A prejudicial abuse of discretion occurs “if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process.” *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal. App. 4th 713, 722; *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal. App. 4th 1109, 1117; *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal. App. 4th 931, 946. As discussed below, and in the attached expert comment letters of expert Dr. Smallwood, expert consulting firm SWAPE, and Mr. Smith, the EIR for this Project fails to adequately analyze and mitigate the Project’s impacts.

The lead agency must evaluate comments on the draft EIR and prepare written responses in the final EIR (“FEIR”). Pub. Res. Code § 21091(d). The FEIR must include a “detailed” written response to all “significant environmental issues” raised by commenters. As the court stated in *City of Long Beach v. LA USD* (2009) 176 Cal.App.4th 889, 904:

The requirement of a detailed written response to comments helps to ensure that the lead agency will fully consider the environmental consequences of a decision before it is made, that the decision is well informed and open to public scrutiny, and that public participation in the environmental review process is meaningful.

The FEIR's responses to comments must be detailed and must provide a reasoned, good faith analysis. CEQA Guidelines § 15088(c). Failure to provide a substantive response to comment render the EIR legally inadequate. *Rural Land Owners Assoc. v. City Council* (1983) 143 Cal.App.3d 1013, 1020.

The responses to comments on a draft EIR must state reasons for rejecting suggested mitigation measures and comments on significant environmental issues. "Conclusory statements unsupported by factual information" are not an adequate response. CEQA Guidelines §§ 15088(b), (c); *Cleary v. County of Stanislaus* (1981) 118 Cal.App.3d 348. The need for a substantive, detailed response is particularly appropriate when comments have been raised by experts or other agencies. *Berkeley Keep Jets*, 91 Cal.App.4th at 1367; *People v. County of Kern* (1976) 62 Cal.App.3d 761. A reasoned analysis of the issue and references to supporting evidence are required for substantive comments raised. *Calif. Oak Found. v. Santa Clarita* (2005) 133 Cal.App.4th 1219.

III. DISCUSSION

A. The City Unduly Restrains the Project's Alternatives and Their Implementation.

An overly narrow definition of project objectives renders the alternatives analysis inadequate. To narrowly define the primary "objective" of the proposed project itself constitutes a violation of CEQA since such a restrictive formulation would improperly foreclose consideration of alternatives. See, *City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, holding that when project objectives are defined too narrowly an EIR's treatment of analysis may also be inadequate. As a leading treatise on CEQA compliance cautions, "[t]he case law makes clear that...overly narrow objectives may unduly circumscribe the agency's consideration of project alternatives." Remy, Thomas, Moose & Manley, Guide to CEQA (Solano Books, 2007), p. 589.

CEQA prohibits a project sponsor from limiting its ability to implement the project in a way that precludes it from implementing reasonable alternatives to the project. See *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 736 (alternatives may not be artificially limited by applicant's prior contractual commitments that would prevent sponsor from implementing reasonable alternative). The fact that a proposed alternative does not meet all of the Project Objectives is not an appropriate basis to eliminate impact-reducing project alternatives from analysis in an EIR. (14 Cal. Code Regs § 15126.6(c), (f)).

The EIR identifies several significant environmental impacts the Project will have, as well as the project alternatives that alleviate these impacts. Yet the City failed to impose a project alternative that would reduce environmental impacts because they do not meet all of the Project's stringent objectives. For example, Alternative 5 would avoid the Project's significant

and unavoidable impacts to historical resources, associated with air quality standards, and related to construction noise. DEIR, p. V-205. However, this alternative was not selected in part because it did not meet all of the uses identified in the Project's objectives, and would not meet the objective to restore portions of the existing buildings "to the same extent as under the Project." DEIR, p. V-206. Additionally, Alternative 4 was not selected, although it would lessen or reduce the significant and unavoidable impacts to historical resources, air quality standards, and construction noise, because while it "would meet the Project's underlying purpose and primary objective . . . it would not *fully meet* the Objective's intent to provide publicly accessible open space and amenities *to the same extent* as the Project" DEIR, p. V-166–V-167.

By refusing to select a Project alternative that mitigates or reduces the Project's significant environmental impacts simply because the alternative does not entirely meet the narrowly defined Project objectives, the City has violated CEQA.

B. The EIR Fails to Adequately Analyze Historic and Cultural Aesthetic Impacts.

The site of the proposed Project includes five historical resources, including the Times, Plant, Mirror, and Executive buildings, as well as the parking structure. Despite these resources, the City asserts Senate Bill (SB) 743 applies to the Project and therefore the Project's aesthetic impacts are not considered significant impacts on the environment. DEIR, p. II-13–14. It makes this finding despite a subsection of SB 743 that excludes impacts to historical resources from this aesthetic exemption.

Codified within CEQA section 21099 et seq., SB 743 states "[a]esthetic . . . impacts of a residential, mixed-use residential, or employment center project on an infill site within a transit priority area shall not be considered significant impacts on the environment." Pub. Res. Code § 21099(d)(1). However, the City is incorrect in concluding it is exempt from analyzing all aesthetic impacts caused by the Project because SB 743 goes on to state that for the purposes of this section, "aesthetic impacts do not include impacts on historical or cultural resources." Pub. Res. Code § 21099(d)(2)(B). The City therefore cannot use SB 743 as an excuse to not mitigate aesthetic impacts to historical resources that are significant.

CEQA gives historic resources special recognition. *See Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 C4th 165, 186; *Citizens for a Sustainable Treasure Island v. City & County of San Francisco* (2014) 227 Cal. App. 4th 1036, 1065. Objects of historical significance fall within CEQA's definition of "environment." Pub. Res. Code § 21060.5. Therefore, if a project has significant impacts on a historical resource, it has significant environmental impacts.

A substantial adverse change of a historical resource is considered a significant impact on the environment. CEQA Guidelines § 15064.5(b). Substantial adverse changes include "physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings" resulting in the significance of the resource being "materially impaired." CEQA Guidelines §

15064.5(b)(1). Material impairments of historical resources occur when the project demolishes or adversely materially alters the physical characteristics of the historical resource that either conveys its historical significance and that justify its inclusion in or eligibility for inclusion in the California Register of Historical Resources or the local register of historical resources. *Id.* §§ 15064.5(b)(2)(A)–(C). These material impairments clearly include aesthetic changes to historical resources because physical characteristics of historical resources encompass the façade and structural design of these resources.

Here, the Project proposes to demolish the Executive Building and the accompanying parking structure. Since both structures are eligible for inclusion in the California Register of Historic Resources and their physical characteristics that make them eligible for such listing will be demolished, the Project will result in a material impairment of these historical resources. Additionally the Times, Plant, and Mirror Buildings are included in the local register of historic resources and are in the immediate surroundings of the Executive Building and parking structure. If the Project moves forward as planned, the impacts on the aesthetic quality of these buildings will be significant because the demolition of the Executive Building and parking structure will make room for two very large apartment buildings that will dwarf the Times, Plant, and Mirror Buildings and minimize the visibility of these historic resources.

Therefore, the Project will have significant adverse impacts on the aesthetics of historical resources and the City cannot use SB 743 as an excuse to not analyze these impacts. The City is required to analyze and mitigate these significant impacts.

C. The City Failed to Make Full and Accurate Responses to Comments Concerning Aesthetic Impacts to Historical Resources.

While public participation is an essential part of the CEQA process, so is an agency's evaluation and response to public comments. Failure to comply with the requirement can lead to disapproval of a project. CEQA Guidelines Discussion, § 15088. An agency's responses to comments must specifically explain the reasons for rejecting suggestions received in comments and for proceeding with a project despite its environmental impacts. Such explanations must be fully supported with specific references to empirical information, scientific authority, and/or explanatory information. *Cleary v. County of Stanislaus* (1981) 118 Cal.App.3d 348, 357. The responses, moreover, must manifest a good faith, reasoned analysis; conclusory statements unsupported by factual information will not suffice. *People v. County of Kern* (1974) 39 Cal.App.3d 830, 841.

Here, the City continued to hide behind SB 743 when it responded in a cursory and inadequate way to a comment regarding the inadequacy of the EIR's analysis of aesthetic impacts on historical resources. *See* FEIR, p. 2-80–2-81. The City again pointed to SB 743 to assert that "the Project would result in the removal of the existing Executive Building and the parking structure, which are historic resources and, as such, may be considered to contribute to the aesthetic character under the [Los Angeles CEQA] Thresholds Guide. However, per ZI No.

2452 [which adopted SB 743], aesthetic impacts shall not be considered a significant impact for a qualifying mixed-use project in a Transit Priority Area, such as the Project.” FEIR, p. 2-81. This response, as identified in the section above, is incorrect and erroneous because the City’s reliance on SB 743 is inappropriate given the reading of the entire section, which requires agency’s to still consider aesthetic impacts to historical resources.

The City’s response is legally inadequate because its analysis is based on a select reading of SB 743 and ignores the rest of the statute excluding historical resources from the aesthetic impact exemption. This inadequate and conclusory response to a comment fails to meet CEQA’s requirements. Responses such as this require the City to revise its EIR so that it fully evaluates and responds to public comments.

D. The Project May Have Significant Impacts on Special-Status Birds as a Result of Window Collisions.

Dr. Smallwood indicates that the Project, as proposed, will result in significant impacts on birds colliding with the Project’s clear glass windows. Ex. A, p. 8. Specifically, Dr. Smallwood predicts “2,310 bird deaths per year” due to the Project. *Id.* Project illustrations show extensive use of glass in the facades of the Project’s buildings. “[T]he project’s façades would support at least 30,000 m² of glass windows” Ex. A, p. 1. “Adding to collision hazards would be the abundant use of window recessing, over-window balconies, between-building interior spaces, and as depicted in the EIR, use of transparent glass and abundant interior lighting at night.” *Id.* Making matters worse, the Project, with these potentially harmful features, is proposed to be constructed where eBird records indicate “43 special-status species of birds occur near the site . . . 14 of which were seen on property immediately adjacent to the site.” Ex. A, p. 2.

Despite emerging scientific literature about window collisions as one of the largest sources of avian mortality worldwide, the City and the EIR do not assess this potential impact. Additionally, the EIR “provides no analysis of cumulative impacts on birds caused by window collisions in the City, nor any analysis of the proposed project’s contribution to cumulative impacts of window collisions. An RDEIR is required to fully analyze and mitigate these impacts.

In order to mitigate these potential impacts to birds, Dr. Smallwood recommends the following mitigation measures:

- Marking windows
- Managing outdoor landscape vegetation
- Managing indoor landscape vegetation
- Managing nocturnal lighting
- Designing to minimize transparency through two parallel facades
- Designing to minimize views of interior plants
- Landscaping to increase distances between windows and trees and shrubs

Ex. A, p. 12–13.

Dr. Smallwood also suggests adherence to available guidelines on building design intended to minimize collision hazards to birds, such as those by the American Bird Conservancy (“ABC”). Ex., p. 13. ABC recommends: (1) minimizing use of glass; (2) placing glass behind some type of screening (grilles, shutters, exterior shades); (3) using glass with inherent properties to reduce collisions, such as patterns, window films, decals or tape; and (4) turning off lights during migration seasons. *Id.*

Here, there is ample evidence to support a fair argument that the Project will result in many collision fatalities of birds, and that this may result in a significant impact. Yet the EIR makes no attempt to analyze this potentially significant impact. An RDEIR is required to fully analyze and mitigate this impact.

E. The Project’s Emissions Were Improperly Analyzed Because the EIR Uses Incorrect and Unsubstantiated Input Parameters.

Environmental consulting firm SWAPE reviewed the EIR. SWAPE found that the EIR’s air quality model contained incorrect and unsubstantiated input parameters. As a result, the EIR’s air model may have underestimated emissions and cannot be relied upon as substantial evidence to determine that the Project’s impacts will be less than significant. SWAPE’s analysis can be found in Exhibit B, pages 1-10.

F. The FEIR Fails to Adequately Respond to Comments Concerning Mitigation Measures for Construction Air Quality Impacts.

The Project will have significant impacts on air quality. However, the FEIR refuses to impose feasible mitigation measures that would reduce these impacts.

Expert agency South Coast Air Quality Management District (“SCAQMD”) submitted a letter requesting that the City require the use of zero-emission (“ZE”) or near-zero emission (“NZE”) on-road haul trucks and require that construction vendors, contractors, and/or haul truck operators commit to using 2010 model year or newer engines that meet the California Air Resources Board’s (“CARB”) 2010 engine emissions standards. FEIR, p. 2-10–2-11. The FEIR refuses to require these mitigation measures, rejecting them for impracticality and unfeasibility reasons, and because it already has to comply with CARB’s 2008 Truck and Bus Regulation. FEIR, p. 2-20–2-21.

First, the FEIR references a handful of reports to conclude that the use of ZE and NZE trucks is not feasible at this time. *Id.* However, the FEIR does not mention how many ZE or NZE trucks are in fact available, just that there are barriers to widespread availability of them and their required infrastructure at this time, and that a fleet wouldn’t likely be available during the project. *Id.* SCAQMD also suggested the City require this mitigation measure as part of the bid or contract specification. FEIR, p. 2-18. The City fails to respond to this suggestion, despite the

contractors' likely greater knowledge of the availability of these vehicles than the City. The FEIR is also quick to note that the Project would exceed NOx emissions during construction for up to four days when a continuous pour would be used for the two foundations. FEIR, p. 2-21. The FEIR cannot rely on this limited time frame in which NOx emissions will be significant. It must adopt feasible mitigation measures that will bring the impacts below a significance level no matter how short the impact will last. The City's excuses for failing to adopt this mitigation measure are conclusory and cannot be used to support a finding of infeasibility.

Second, the FEIR states that it already requires compliance with CARB's 2008 Truck and Bus Regulation, which reduces NOx, PM10, and PM2.5 emissions from existing diesel vehicles operating in California so it does not believe that a mitigation measure requiring the use of CARB's 2010 engine emission standards. FEIR, p. 2-21. Requiring this additional mitigation measure could likely assist in reducing significant air quality impacts, and just because another mitigation measure would similarly reduce significant air quality impacts, does not make the additional mitigation measure infeasible. Therefore, the City's excuse for failing to adopt this mitigation measure is also conclusory and it must adopt the mitigation measure if feasible.

The FEIR's failure to implement SCAQMD's suggested mitigation measures to reduce the significant impacts on air quality fails to meet CEQA's requirements and the City must implement them.

G. Updated Air Quality Model Demonstrates That the Project Will Have Significant Air Quality Impacts From Greenhouse Gas Emissions.

SWAPE found that there would be significant greenhouse gas emissions despite the EIR's finding that the Project's greenhouse gas emissions would be less than significant. As a result, the City must prepare a RDEIR which takes into account SWAPE's findings and analyze and mitigate this significant impact. SWAPE's analysis and mitigation measures can be found in Exhibit B, pages 23-33.

H. The Project Will Have a Significant Construction-Related Health Risk Impact That Has Not Been Adequately Analyzed or Mitigated.

SWAPE found that the EIR failed to conduct both a construction and operational health risk assessment. Without such an analysis, the EIR fails to include substantial evidence that the Project's emissions will be less than significant. Additionally, SWAPE has suggested several mitigation measures to reduce emission impacts to less than significant levels. SWAPE's analysis and mitigation measures can be found in Exhibit B, pages 12-23.

I. The EIR Fails to Accurately Disclose and Analyze Traffic Impacts.

Traffic expert found multiple deficiencies in the EIR's traffic analysis. As such, the EIR has failed to adequately disclose, discuss, and analyze the Project's impacts on traffic. Mr. Smith's analysis can be found in Exhibit C.

J. The EIR Fails to Address the Potential Significant Indoor Air Quality Impacts on the Health of Future Residents of the Project.

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

The residential buildings will have significant impacts on air quality and health risks by emitting cancer-causing levels of formaldehyde into the air that will expose workers and residents to cancer risks well in excess of SCAQMD's threshold of significance. A 2018 study by Chan et al. (attached as Exhibit D) measured formaldehyde levels in new structures constructed after the 2009 CARB rules went into effect. Even though new buildings conforming to CARB's ATCM had a 30% lower median indoor formaldehyde concentration and cancer risk than buildings built prior to the enactment of the ATCM, the levels of formaldehyde will still pose cancer risks greater than 100 in a million, well above the 10 in one million significance threshold established by the SCAQMD.

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

The City has a duty to investigate issues relating to a project's potential environmental impacts. *See County Sanitation Dist. No. 2 v. County of Kern*, (2005) 127 Cal.App.4th 1544, 1597–98. “[U]nder CEQA, the lead agency bears a burden to investigate potential environmental impacts.” “If the local agency has failed to study an area of possible environmental impact, a fair argument may be based on the limited facts in the record.

Deficiencies in the record may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences.” *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311. Given the lack of study conducted by the City on the health risks posed by emissions of formaldehyde from new residential projects, a fair argument exists that such emissions from the Project may pose significant health risks. As a result, the City must prepare a RDEIR which calculates the health risks that the formaldehyde emissions may have on future residents and workers and identifies appropriate mitigation measures.

IV. THE CITY SHOULD PREPARE AND RECIRCULATE A REVISED DEIR

A revised draft environmental impact report (“RDEIR”) should be prepared and circulated for full public review to address the impacts identified above and to propose feasible mitigation measures. CEQA requires re-circulation of an EIR when significant new information is added to the EIR following public review but before certification. (Pub. Res. Code § 21092.1.) The CEQA Guidelines clarify that new information is significant if “the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project” including, for example, “a disclosure showing that . . . [a] new significant environmental impact would result from the project.” (14 CCR § 15088.5.) The above significant environmental impacts have not been analyzed in the EIR and must be addressed in an RDEIR that is re-circulated for public review.

V. CONCLUSION

For the foregoing reasons, SAFER believes that the Times Mirror Square DEIR and FEIR are wholly inadequate. SAFER urges the Hearing Officer and Advisory Agency to refrain from certifying the FEIR or recommending approval of the Times Mirror Square Project in order to allow staff additional time to address the concerns raised herein. Thank you for considering our comments and please include this letter in the record of proceedings for this project.

Sincerely,



Richard Toshiyuki Drury
LOZEAU DRURY LLP