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VIA EMAIL AND HAND DELIVERY

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**RE: Final EIR for Proposed Beach Cities Media Campus Project
SCN 2017121035**

Mayor Boyles and Members of the City Council:

I am writing on behalf of **Supporters Alliance For Environmental Responsibility ("SAFER")** regarding the Final Environmental Impact Report ("FEIR") prepared for the Project known as Beach Cities Media Center Project aka EA-1201 and State Clearinghouse #2017121035, including all actions related or referring to the proposed development of an approximately five-story, 240,000 square foot office building, a one-story, 66,000 square foot studio and production facilities building, and 7,000 square foot of retail uses in two, one-story structures with parking provided in a seven story parking structure with above grade and below grade parking containing 980 parking spaces, one level below grade parking in the office building containing 120 parking spaces, in addition to a limited amount of surface parking located at 2021 Rosecrans Avenue on Assessor Parcel Number (APN) 4138-015-064.

This letter supplements our July 12, 2019 letter, and responds to the "Errata to Final Environmental Impact Report" dated August 2, 2019 ("Errata"). After reviewing the

Project, the FEIR, and the Errata, it is evident that the FEIR still contains numerous errors and omissions that preclude accurate analysis of the Project. As a result of these inadequacies, the FEIR fails as an informational document and fails to impose all feasible mitigation measures and alternatives to reduce the Project's impacts. Commenters request that the City of El Segundo ("City") address these shortcomings in a revised draft environmental impact report ("RDEIR") and recirculate the document prior to considering approvals for the Project.

I. LEGAL STANDARDS

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." *Comm. for a Better Env't 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 ("PRC") § 21081; CEQA Guidelines § 15092(b)(2)(A) & (B).

The lead agency must evaluate comment on the draft EIR and prepare written responses in the final EIR. (PRC §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. (14 CCR §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. (14 CCR §15088(b, c); *Cleary v. County of Stanislaus* (1981) 118 Cal.App.3rd 348) The need for substantive, detailed response is particularly appropriate when comments have been raised by experts or other agencies. (*Berkeley Keep Jets v. Bd. of Port Comm’rs* (2001) 91 Cal.App.4th 1344, 1367; *People v. Kern* (1976) 72 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)

The FEIR abjectly fails to meet these legal standards, as it is riddled with conclusory statements lacking any factual support or analysis.

II. THE CITY FAILED TO PROVIDE FULL AND ACCURATE RESPONSES TO PUBLIC, EXPERT, AND AGENCY COMMENTS.

“Where comments from responsible experts or sister agencies disclose new or conflicting data or opinions that cause concern that the agency may not have fully evaluated the project and its alternatives, these comments may not simply be ignored. There must be good faith, reasoned analysis in response.” *Berkeley Keep Jets Over the Bay Com. v. Board of Port Cmr’s.*, (2001) 91 Cal.App.4th 1344, 1367 (“*Berkeley Jets*”) (EIR inadequate due to failure to respond to expert evidence on toxic air contaminants).

Public participation is an essential part of the CEQA process. Public review of environmental documents serves the following purposes: (a) sharing expertise; (b) disclosing agency analyses; (c) checking for accuracy; (d) detecting omissions; (e) discovering public concerns; and (f) soliciting counter proposals. (CEQA Guidelines, §

15200.) “[T]he ‘privileged position’ that members of the public hold in the CEQA process . . . is based on a belief that citizens can make important contributions to environmental protection and on notions of democratic decision making. . . .” (*Concerned Citizens of Costa Mesa, supra*, 42 Cal.3d at 936.)

Evaluation and response to public comments is also essential. 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 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’s response to public, expert, and agency comments are cursory, inadequate, inaccurate, and not supported by substantial evidence.

III. THE FEIR FAILS TO ADEQUATELY RESPOND TO COMMENTS ON THE DEIR.

A. INDOOR AIR QUALITY.

The City’s response to our July 12, 2019 comments, including the expert comments of Francis “Bud” Offermann, PE, C.I.H, are not supported by substantial evidence. Mr. Offermann, one of the world’s leading experts on indoor air quality, details the inadequacy and inaccuracy of the City’s response to his comments in a supplemental expert comment letter attached hereto as Exhibit A.

The City’s claims that the “Project does not represent a unique or special development that needs addressing in CEQA therefore no special analysis or mitigation is required.” Eratta, p. 107. But this is not consistent with CEQA.

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 the new project, a fair argument exists that such emissions from the Project may pose significant health risks.

The fact that the Project will be compliant with existing codes and regulations does not negate the City's obligation to investigate the Project's impacts on human health and the environment.

The Errata claims that "Most, if not all, formaldehyde residue in furniture can be expected to be off gassed and released shortly after manufacture (i.e. 30 days after manufacture), meaning the amount of formaldehyde residue in furniture and indoor air would be expected to approach zero within 30 days." Eratta, p. 109. The City does not support this statement with any evidence. Nor could it. As demonstrated in the six studies attached hereto as Exhibit B, as well as in the comments of Mr. Offermann, attached hereto as Exhibit A, formaldehyde emissions from Urea Formaldehyde composite wood products continue essentially indefinitely. Exhibits A and B. There is an initial sharp decay for the first 30 days after manufacture, but after that time, the emissions are essentially steady state from there on. *Id.* This pattern of off gassing was taken into account by Mr. Offermann in his analysis and conclusion that the Project is likely to expose future workers to a cancer risk from indoor air pollution of 18.4 per million. Offermann Comments, Exhibit C to SAFER July 12, 2019 Comments.

Accordingly, the City must prepare an RDEIR which calculates the health risks that the formaldehyde emissions may have on future workers and identifies appropriate mitigation measures.

B. HAZARDOUS MATERIALS

The SCAQMD and DTSC raised serious concerns about toxic chemical soil contamination at the Project site. Yet, these concerns are largely ignored in the FEIR. The DEIR largely ignores soil contamination and the SCAQMD Rules governing soil contamination, Rules 1166 and 1466. (DEIR, IV.A.10-12).

Due to the historical Air Products and Chemicals operations, Southern California Edison ("SCE") conducted a limited subsurface investigation in preparation for demolition and the sale of the Project Site. According to the Phase I ESA, several subsurface investigations were conducted to assess potential contaminants of concern in the soil and soil vapor at the Project Site. The majority of these site investigation activities were conducted between March 2015 and September 2016. Based on these investigations, soil was found to be impacted with total petroleum hydrocarbons ("TPH"), lead, and PCBs. In addition, volatile organic compounds ("VOCs") were detected in the shallow soil on the Project Site. An investigation report and remedial action workplan was prepared on behalf of Air Products and Chemicals and submitted to the Los Angeles Area Regional Water Quality Control Board ("RWQCB"). The RWQCB conditionally approved the workplan on June 29, 2017 with additional excavation areas and sampling requirements. In June 2017, 504 cubic yards of impacted soil was reportedly excavated and disposed off-site as non-hazardous waste at Azusa Land Reclamation, Azusa, California as documented in the Remedial Completion Report. Five sets of soil gas probes were then

installed in July 2017. Confirmation soil and soil vapor samples were collected after excavation activities were completed per the RWQCB requirements. These results were documented in the Remedial Completion Report and in the Additional Soil and Soil Vapor Sampling Report. The analytical results of the soil samples were non-detected for TPH, lead, and PCBs; and VOCs were detected in soil vapor. Based on the data collected and work performed by Air Products and Chemicals, the RWQCB issued a No Further Action (“NFA”). The NFA referenced a recorded Covenant and Environmental Restriction that restricted the future use of the Project Site to commercial and/or industrial and specifically did not restrict the Project Site use for commercial purposes. DEIR: (IV.E-3). Despite the known presence of toxic chemicals in the soil at the Project site, the DEIR and FEIR largely gloss over this issue.

SCAQMD submitted written comments on the DEIR, pointing out that the EIR fails entirely to mention compliance with SCAQMD Rule 1166 (Volatile Organic Compounds from soil) and SCAQMD Rule 1466 (Particulate Matter from soil with Toxic Air Contaminants). These rules are the primary way that SCAMQD protects construction workers and future users of the Project from exposure to toxic chemicals.

In response, the FEIR adds a new section on Rules 1166 and 1466. (FEIR, II-12). However, the City failed to recirculate the FEIR. Recirculation is require when new mitigation measures are added to a project so the public can assess the adequacy of the proposed mitigation measures. *Gentry v. Murrieta*, 36 Cal.App.4th 1359, 1392, 1411, 1417. As a leading treatise explains, “in *Perley v. Board of Supervisors* (1982) 137 Cal.App.3d 424, the court held that the public has a right to review a project described in a negative declaration in its final form and suggested that a negative declaration must be recirculated if mitigation measures are added.” Kostka & Zishcke, Guide to CEQA at §7.19.

DTSC filed written comments raising concerns about site contamination. DTSC recommended a preliminary endangerment assessment and voluntary clean-up plan, but FEIR rejects both mitigation measures without analysis. (FEIR, II-35). CEQA requires implementation of all feasible mitigation measures. These measures are clearly feasible, and the FEIR provides no reason that the measures would be infeasible.

A Recirculated DEIR is required to analyze soil contamination and propose all feasible mitigation measures to safeguard construction workers and future uses of the Project site.

IV. CONCLUSION

For the foregoing reasons, and as described in SAFER’s previous written comments, the EIR fails to meet the requirements of CEQA. We urge the City to require preparation of a Revised Draft EIR that addresses the deficiencies identified in this and

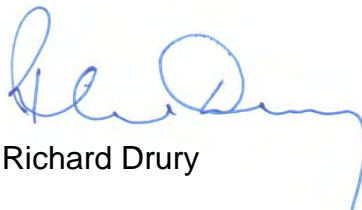
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other comment letters. Thank you for considering our comments and please include this letter in the administrative record for this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Richard Drury". The signature is fluid and cursive, with a long horizontal stroke at the end.

Richard Drury