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Re: 127 Pomona Specific Plan and Mixed-Use Development Initial Study/MND (ZA2018-0004, SP2019-0001, GPC2019-0002, TPM 82520, CUP2018-0016)

Dear Honorable Members of the Monrovia Planning Commission:

I am writing on behalf of the Supporters Alliance for Environmental Responsibility ("SAFER") regarding the Initial Study and Mitigated Negative Declaration ("IS/MND") prepared for the 127 Pomona Specific Plan and Mixed-Use Development Project ("Project") (ZA2018-0004, SP2019-0001, GPC2019-0002, TPM 82520, CUP2018-0016) in the City of Monrovia ("City"). SAFER is a California nonprofit public benefit corporation whose purposes include contributing to the preservation and enhancement of the environment and advocating for programs, policies, and development projects that promote not only good jobs but also a healthy natural environment and working environment.

After reviewing the IS/MND with the assistance of expert reviews by Certified Industrial Hygienist Francis Offermann, PE, CIH, and environmental consulting firm SWAPE, it is clear that there is a "fair argument" that the Project may have unmitigated adverse environmental impacts. The written expert comments of Mr. Offermann and of SWAPE (attached hereto as Exhibit A and Exhibit B, respectively), as well as the comments below, identify substantial evidence of a fair argument that the Project may have significant environmental impacts. Accordingly, an environmental impact report ("EIR") is required to analyze these impacts and to propose all feasible mitigation measures to reduce those impacts. We urge the Planning Commission to decline to approve the IS/MND, and to prepare an EIR for the Project prior to

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any Project approvals.

I. PROJECT BACKGROUND

The Applicant, Fifield Realty Corporation, is proposing a Specific Plan for the development of a transit-oriented, infill, mixed-use project with residential and commercial uses at the northeast corner of Pomona and Primrose Avenues. Seven parcels of land would be consolidated into a single 1.83-acre parcel. The proposed development would involve the demolition of two industrial structure and surface parking areas. The residential component consists of 310 apartment units, 25 of which are affordable units. Thirteen (13) of the affordable units would be reserved for households at the "very-low income" level and twelve (12) would be reserved for households at the "moderate-income level". The residential density is 172.2 dwelling units per acre with a total Floor Area Ratio of 3.8:1. The building would be seven stories tall; the height above street level ranges from 95 feet to 101 feet.

The development consists of a seven-story structure with a two-level subterranean parking garage below the project site. The subterranean garage holds 384 spaces and accommodates storage for bike parking and building support equipment. The project accommodates a total of 479 vehicles (366 spaces for residents, 50 spaces for the commercial component, 50 spaces for public parking, and 13 spaces for guests). The ground level of the project includes: a 6,250 square foot outdoor public plaza at the corner of Primrose and Pomona Avenues, 10,000 square feet of street-facing commercial space, an entrance plaza (facing Pomona Avenue) providing access to a 3,600 square foot lobby/apartment leasing office, and a 95-space parking area for public parking and customers. The upper floors of the project (levels two through seven) include: 310 apartment units (278,774 square feet), residential amenity rooms, a swimming pool, and a courtyard (Second Floor).

II. LEGAL STANDARD

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., supra*, 13 Cal.3d at 83.) "The 'foremost principle' in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." (*Communities for a Better Env't v. Cal. Res. Agency* (2002) 103 Cal.App.4th 98, 109 (*CBE v. CRA*).)

The EIR is the very heart of CEQA. (*Bakersfield Citizens for Local Control v. City of*

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Bakersfield (2004) 124 Cal.App.4th 1184, 1214 (*Bakersfield Citizens*); *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, supra*, 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 Univ. of Cal.* (1988) 47 Cal.3d 376, 392.) The EIR process "protects not only the environment but also informed self-government." (*Pocket Protectors*, *supra*, 124 Cal.App.4th at 927.)

An EIR is required if "there is substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment." (PRC § 21080(d); see also *Pocket Protectors*, *supra*, 124 Cal.App.4th at 927.) In very limited circumstances, an agency may avoid preparing an EIR by issuing a negative declaration, a written statement briefly indicating that a project will have no significant impact thus requiring no EIR (14 Cal. Code Regs. § 15371), only if there is not even a "fair argument" that the project will have a significant environmental effect. (PRC, §§ 21100, 21064.) Since "[t]he adoption of a negative declaration . . . has a terminal effect on the environmental review process," by allowing the agency "to dispense with the duty [to prepare an EIR]," negative declarations are allowed only in cases where "the proposed project will not affect the environment at all." (*Citizens of Lake Murray v. San Diego* (1989) 129 Cal.App.3d 436, 440.) A mitigated negative declaration is proper only if the project revisions would avoid or mitigate the potentially significant effects identified in the initial study "to a point where clearly no significant effect on the environment would occur, and…there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment." (PRC §§ 21064.5 and 21080(c)(2); *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 331.) In that context, "may" means a reasonable possibility of a significant effect on the environment. (PRC §§ 21082.2(a), 21100, 21151(a); *Pocket Protectors, supra*, 124 Cal.App.4th at 927; *League for Protection of Oakland's etc. Historic Res. v. City of Oakland* (1997) 52 Cal.App.4th 896, 904–905.)

Under the "fair argument" standard, an EIR is required if any substantial evidence in the record indicates that a project may have an adverse environmental effect—even if contrary evidence exists to support the agency's decision. (14 CCR § 15064(f)(1); *Pocket Protectors*, *supra*, 124 Cal.App.4th at 931; *Stanislaus Audubon Society v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-51; *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602.) The "fair argument" standard creates a "low threshold" favoring environmental review through an EIR rather than through issuance of negative declarations or notices of exemption from CEQA. (*Pocket Protectors*, *supra*, 124 Cal.App.4th at 928.)

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,

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> 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 & Zischke, *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*, *supra*, 124 Cal.App.4th at 928.)

III. DISCUSSION

A. The MND Fails to Address the Potential Adverse Indoor Air Quality Impacts on the Health of Future Residents of the Project..

The MND fails to address the significant health risks posed by the Project from formaldehyde, a toxic air contaminant ("TAC"). Certified Industrial Hygienist, Francis Offermann, PE, CIH, has conducted a review of the Project, the MND, and relevant documents regarding the Project's indoor air emissions. Mr. Offermann is one of the world's leading experts on indoor air quality, in particular emissions of formaldehyde, and has published extensively on the topic. As discussed below and set forth in Mr. Offermann's comments, the Project's emissions of formaldehyde to air will result in very significant cancer risks to future residents at the Project's apartments. Mr. Offermann's expert opinion and calculation present a "fair argument" that the Project may have significant health risk impacts as a result of these indoor air pollution emissions, which were not discussed, disclosed, or analyzed in the MND. These impacts must be addressed in n EIR. Mr. Offermann's comment is attached as Exhibit A. L4.2

Formaldehyde is a known human carcinogen and listed by the State as a TAC. As noted above, SCAQMD has established a significance threshold of health risks for carcinogenic TACs of 10 in a million and a cumulative health risk threshold of 100 in a million. The MND fails to acknowledge the significant indoor air emissions that will result from the Project. Specifically, there is no discussion of impacts or health risks, no analysis, and no identification of mitigations for significant emissions of formaldehyde to air from the Project.

Mr. Offermann explains that many composite wood products typically used in home and apartment building construction contain formaldehyde-based glues which off-gas formaldehyde over a very long time period. He states, "The primary source of formaldehyde indoors is composite wood products manufactured with urea-formaldehyde resins, such as plywood, medium density fiberboard, and particle board. These materials are commonly used in residential, office, and retail building construction for flooring, cabinetry, baseboards, window shades, interior doors, and window and door trims." (Ex. A, pp. 2-3.)

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Mr. Offermann states that future residents of the Project will be exposed to a cancer risk from formaldehyde of approximately 125 per million, assuming all materials are compliant with the California Air Resources Board's formaldehyde airborne toxics control measure. (Ex. A, p. 3.) This is more than 12 times the SCAQMD's CEQA significance thresholds for airborne cancer risk of 10 per million and 100 in a million for cumulative risks. (*Id.*) Mr. Offermann concludes that these significant environmental impacts must be analyzed in an EIR and mitigation measures should be imposed to reduce the risk of formaldehyde exposure. (Ex. A, pp. 5, 11-12.) He prescribes a methodology for estimating the Project's formaldehyde emissions in order to do a more project-specific health risk assessment. (*Id.*, pp. 5-9.). Mr. Offermann also suggests several feasible mitigation measures, such as requiring the use of no-added-formaldehyde composite wood products, which are readily available. (*Id.*, pp. 11-12.) Mr. Offermann also suggests requiring air ventilation systems which would reduce formaldehyde levels. (*Id.*) Since the MND does not analyze this impact at all, none of these or other mitigation measures have been considered.

When a Project exceeds a duly adopted CEQA significance threshold, as here, this alone establishes substantial evidence that the project will have a significant adverse environmental impact. Indeed, in many instances, such air quality thresholds are the only criteria reviewed and treated as dispositive in evaluating the significance of a project's air quality impacts. (*See, e.g. Schenck v. County of Sonoma* (2011) 198 Cal.App.4th 949, 960 [County applies Air District's "published CEQA quantitative criteria" and "threshold level of cumulative significance"]; *see also Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 110-111 ["A 'threshold of significance' for a given environmental effect is simply that level at which the lead agency finds the effects of the project to be significant"].) The California Supreme Court made clear the substantial importance that an air district significance threshold plays in providing substantial evidence of a significant adverse impact. (*Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 327 ["As the [South Coast Air Quality Management] District's established significance threshold for NOx is 55 pounds per day, these estimates [of NOx emissions of 201 to 456 pounds per day] constitute substantial evidence supporting a fair argument for a significant adverse impact."].) Since expert evidence demonstrates that the Project will exceed the SCAQMD's CEQA significance threshold, there is substantial evidence that an "unstudied, ***potentially significant environmental effect[]***" exists. (*See Friends of Coll. of San Mateo Gardens v. San Mateo Cty. Cmty. Coll. Dist.* (2016) 1 Cal.5th 937, 958 [emphasis added].) As a result, the City must prepare an EIR for the Project to address this impact and identify enforceable mitigation measures.

L4.2 Cont.

The failure of the MND 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*"). In that case, the Supreme Court expressly holds that potential adverse impacts to future users and residents from pollution generated by a proposed project ***must be addressed*** under CEQA. At issue in *CBIA* was whether the Air District could enact CEQA 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

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project. (*CBIA*, 62 Cal.4th at 800-01.) However, to the extent a project may exacerbate existing environmental conditions at or near a project site, those would still have to be considered pursuant to CEQA. (*Id.* at 801.) 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. People will be residing in and using the Project once it is built and begins emitting formaldehyde. Once built, the Project will begin to emit formaldehyde at levels that pose significant direct and cumulative health risks. The Supreme Court in *CBIA* expressly finds that this type of air emission and health impact by the project on the environment and a "project's users and residents" must be addressed in the CEQA process. The existing TAC sources near the Project site would have to be considered in evaluating the cumulative effect on future residents of both the Project's TAC emissions as well as those existing off-site emissions.

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 at the Project are human beings and the health and safety of those residents must be subjected to CEQA's safeguards.

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."].) The proposed office buildings will have significant impacts on air quality and health risks by emitting cancer-causing levels of formaldehyde into the air that will expose future residents to cancer risks potentially in excess of SCAQMD's threshold of significance for cancer health risks of 10 in a million. Likewise, when combined with the risks posed by the nearby TAC sources, the health risks inside the project may exceed SCAQMD's cumulative health risk threshold of 100 cancers in a million. Currently, outside of Mr. Offermann's comments, the City does not have any idea what risks will be posed by formaldehyde emissions from the Project or the residences. As a result, the City must include an analysis and discussion in an EIR which discloses and analyzes the health risks that the Project's formaldehyde emissions may have on future residents and identifies appropriate mitigation measures.

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B. The IS/MND Relies on Unsubstantiated Input Parameters to Estimate Project Emissions and Thus Fails to Adequately Analyze the Project's Air Quality Impacts.

SWAPE, an environmental consulting firm, reviewed the air quality analysis in the EIR. SWAPE's comment letter is attached as Exhibit B and their findings are summarized below.

The EIR for the Project relies on emissions calculated from the California Emissions Estimator Model Version CalEEMod.2016.3.2 ("CalEEMod"). This model relies on recommended default values based on site specific information related to a number of factors. The model is used to generate a project's construction and operational emissions. SWAPE reviewed the Project's CalEEMod output files and found that the values input into the model were inconsistent with information provided in the MND. This results in an underestimation of the Project's emissions. As a result, the MND's air quality analysis cannot be relied upon to determine the Project's air quality impacts. Instead, the City must prepare an EIR to adequately evaluate the impacts that construction and operation of the Project will have on local and regional air quality.

L4.3 Cont.

1. <u>The MND's air quality analysis utilized an incorrect land use size.</u>

SWAPE's review of the Project's operational CalEEMod output files found that an incorrect land use size was input for the 310 residential units. (Ex. B, p. 4.) As a result, SWAPE concluded that the Project's operational emissions are underestimated. (*Id.*)

According to the MND, the Project proposes the construction of 278,774 square feet of residential units. (MND, p. 1.) However, SWAPE's review of the Project's CalEEMod output files found that the MND only inputted a total of 223,294 square feet for the residential land use. (MND Appendix A, pp. 166, 199, 232.) SWAPE explains that the square footage of a land use is used for certain calculations such as determining the wall space to be painted (i.e., VOC emissions from architectural coatings) and volume that is heated or cooled (i.e., energy impacts). (Ex. B, p. 4.) Thus, because the MND's emission model underestimates the size of residential land use, the construction and operational emissions generated by the proposed Project are underestimated and cannot be relied upon to determine the Project's air quality impacts.

L4.4

2. <u>The MND's air quality analysis failed to include accurate impacts from demolition.</u>

SWAPE's review of the Project's CalEEMod output files also found that the demolition of existing structures was not accurately modeled in the MND's air quality analysis. (Ex. B, p. 4.) According to the MND, the Project would result in the "[d]emolition of approximately 39,500 square feet of existing building space and associated debris hauling activities" (MND, p. 38.) However, SWAPE's review of the Project's CalEEMod output files found that MND failed to input the correct amount of demolition in its air quality model. By underestimating the amount of

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demolition in the air model, the emissions generated by the proposed Project during construction are underestimated and should not be relied upon to determine Project significance. (Ex. B, p. 4.)

SWAPE found that when the correct value of 39,500 square feet of demolition was inputted into the emissions model, then the default number of demolition hauling trips would have been 180 rather than 91. (Ex. B, p. 5.) Such a failure to account for the proposed demolition of the existing structures presents a significant issue because the total amount of demolition material is used by CalEEMod to determine emissions associated with this phase of construction. (*Id.*) By utilizing the incorrect parameters for demolition, fugitive dust emissions, emissions from site removal, and exhaust emissions from hauling trucks traveling to and from the site are greatly underestimated and cannot be relied upon to determine the Project's impacts on air quality. (*Id.*)

L4.5 Cont.

3. The MND's air quality analysis improperly reduced the solid waste generation rate without justification.

SWAPE's review of the Project's CalEEMod output files found that the MND artificially altered the Project's solid waste generation rate, which is used to estimate the proposed Project's operational greenhouse gas ("GHG") emissions associated with disposal of solid waste into landfills, without justification. (Ex. B, p. 5.) The MND manually reduced the solid waste generation rate by 75% (Ex. B, p. 6) and justified this reduction based on the 75% waste diversion rate implemented by AB341. However, simply because the State has adopted AB341 and the proposed Project "does not have any unusual waste production characteristics" (MND, p. 133) does not guarantee that the proposed Project will achieve a 75% reduction. The body of the MND itself makes no mention of the 75% diversion rate nor does it attempt to demonstrate how the PRoject would achieve a 75% diversion rate. (Ex. B, p. 6.) Based on the information provided in the MND, SWAPE was unable to verify whether the reduction is justified. (*Id.*) Because the MND does not provide substantial evidence as to why the waste generation rate should have been altered, SWAPE determined that the MND's air quality model was incorrect and unreliable for determining the Project's significance on air quality.

L4.6

4. The MND's air quality analysis improperly reduced architectural coatings emission factors without justification.

SWAPE found that the MND's CalEEMod output files manually altered the architectural coatings emission factors for the residential, parking, and nonresidential land uses without proper justification, thereby underestimating the Project's construction and operational emissions (Ex. B, p. 6.) According to MND's CalEEMod output files, the area coating emission factors associated with the both the interior and exterior of the proposed nonresidential land use, as well as the proposed parking land use, were reduced from 100 grams per liter (g/L) to 0 g/L. (Ex. B, p. 6.) These emission factors are used by CalEEMod to determine the amount of volatile organic compound (VOC) evaporative emissions resulting from the application of surface coatings. (Ex. B, pp. 6-7.) Therefore, because the MND manually reduced the emission factors for area coatings to 0 g/L, the CalEEMod model estimates emissions assuming that the nonresidential, parking, and residential land uses will not emit any amount of VOCs. (Ex. B, p. 7.)

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In order to justify this reduction, the MND states:

> [The Project will] [c]omply with South Coast Air Quality Rule 1113 to reduce VOC emissions from architectural coating applications. Prior to the issuance of a building permit for the Project, the Applicant shall submit, to the satisfaction of the Planning Division, a Coating Restriction Plan (CRP)...the CRP shall include a requirement that all interior and exterior residential and non-residential architectural coatings used in Project construction meet the SCAQMD 'super compliant' coating VOC content standard of less than 10 grams of VOC per liter of coating.

L4.7 Cont.

(MND, p. 39.) However, the rule simply states that VOC content standard must be below 10 grams per liter of coating. Therefore, the change of the emission factors to 0 g/L is completely unsubstantiated, and as a result, the air model cannot be relied upon to determine Project's air quality impacts.

5. The MND's air quality analysis improperly reduced the Title-24 Electricity Energy Intensity value without justification.

SWAPE found that the MND's CalEEMod output files manually altered the Title-24 Electricity Energy Intensity value without proper justification, thereby underestimating the Project's operational emissions (Ex. B, p. 7.) The MND's CalEEMod output files revealed that the MND reduced the Title-24 Electricity Energy Intensity value by more than half. (*Id.*) The MND justified this reduction by stating, "2020 standards." (MND Appendix A, pp. 170, 203, 236.) However, the MND also states that "[t]he proposed project would adhere to the 2016 Building Energy Efficiency Standards for Residential and Non-Residential building also known as Title 24, Part 6." (MND, p. 63.)

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As SWAPE observed, adherence to the 2016 Title 24 Standards does not mean that the Project will comply with the 2020 standards. (Ex. B, p. 7.) Furthermore, because the CalEEMod values are based on the 2016 Title 24 update, if the Project will comply with the 2016 Building Energy Efficiency Standards as stated in the MND, then the default CalEEMod Title-24 Electricity Energy Intensity value should be used to calculate the proposed Project's energy use. (Ex. B, p. 8.) Thus, the reduction of the Title-24 Electricity Energy Intensity value in CalEEMod is unsubstantiated, and as a result, the MND cannot be relied upon to determine the Project's impacts on air quality.

6. The MND's air quality analysis improperly reduced mobile emissions.

According to the MND, the Project Applicant reduced transportation emissions associated with the Project based on the current Low Carbon Fuel Standard (LCFS) regulation. As a result, SWAPE found that the Project's operational emissions associated with transportation are underestimated. (Ex. B, p. 2.)

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The MND states,

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> Based on the latest estimate available from CARB, the LCFS regulation resulted in a 2.5% reduction in average carbon intensity content in 2016 and should result in a 5% reduction in average carbon intensity in 2018. The current LCFS regulation also requires a 10% reduction in average carbon intensity by 2023. Thus, CalEEMod transportation emissions were adjusted by multiplying by a factor of .925 (existing conditions) and 0.90 (proposed project) to account for the LCFS regulation (CARB 2018a, 2018b).

(MND, p. 78.) However, SWAPE's review of the provided references found that the CARB 2018a source only applies to transportation emissions reductions from 2000 through 2017 and the CARB 2018b source only applies to transportation emissions reductions from 2000 through 2016. (Ex. B, p. 3.) Additionally, any transportation emissions reductions that occurred through 2016 would be included in the most recent version of CalEEMod, which was most recently updated in 2016. (*Id.*) As such, SWAPE concluded that the transportation emissions reductions in the MND are unsubstantiated, and as a result, operational emissions are underestimated.

L4.9 Cont.

7. <u>The MND's air quality analysis utilized an incorrect operational year.</u>

SWAPE's review of the Project's CalEEMod output files found that the air pollution model assumes construction activity will last 26-months, beginning January 1, 2020 and concluding February 28, 2022, but that the Prohject would not become operational until 2023. (Ex. B, p. 3.) However, the MND fails to justify the 9-month difference between the Project's construction and operation. When conducting an air quality impact analysis and associated health risk assessment, it is standard practice to consider that Project construction and operation occur in quick succession. (Ex. B, p. 3.) Otherwise, emissions are diluted by the extra days and impacts are underestimated and, as a result, the Project's air quality analysis cannot be relied upon to determine project significance. (*Id.*)

L4.10

C. The MND Fails to Adequately Evaluate Health Risks from Diesel Particulate Matter Emissions

With hardly more than a couple sentences of explanation, the MND concludes that the impact of substantial pollutant concentrations to sensitive receptors would be less than significant. (MND, p. 46.) No effort is made to justify this conclusion with a quantitative health risk assessment ("HRA"). The MND's back-of-the envelope approach to evaluating a Project's health impacts to existing nearby residences is inconsistent with the approach recommended by the California Office of Environmental Health Hazard Assessment ("OEHHA") and the California Air Pollution Control Officers Association ("CAPCOA"). SWAPE concluded that the failure to evaluate the health risk posed to nearby sensitive receptors to the Project is inappropriate for several reasons.

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First, the MND makes several qualitative claims that in no way prove that nearby sensitive receptors will not be significantly impacted by the Project's construction and operation. Simply stating that "the proposed project includes BMPs to reduce DPM from equipment idling"

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and that "pollutants would quickly disperse over distance" (MND, p. 46) are not sufficient justifications for the omission of a quantified construction and operational HRA. Since the South Coast Air Management District (SCAQMD) provides a specific numerical threshold of 10 in one million for determining a project's health risk impact, the MND should have conducted a quantified HRA comparing the health risk impacts of the proposed Project's construction and operational emissions to this threshold. (Ex. B, pp. 8-9.) Without preparing such an HRA, the MND fails to provide substantial evidence that the Project poses less-than-significant health risk impacts to nearby sensitive receptors.

L4.12 Cont.

Second, simply stating that "construction activities would only generate DPM emissions on an intermittent, short-term basis" (MND, p. 46) does not justify the omission of a construction HRA. SCAQMD recommends that health risk impacts from short-term projects also be assessed. The SCAQMD Guidance document states,

> Since these short-term calculations are only meant for projects with limits on the operating duration, these short-term cancer risk assessments can be thought of as being the equivalent to a 30-year cancer risk estimate and the appropriate thresholds would still apply (i.e. for a 5-year project, the maximum emissions during the 5-year period would be assessed on the more sensitive population, from the third trimester to age 5, after which the project's emissions would drop to 0 for the remaining 25 years to get the 30-year equivalent cancer risk estimate).[1]

Based on SCAQMD's guidance, theMND should have conducted some sort of quantitative analysis and compared the results of this analysis to the applicable 10 in one million threshold. By failing to prepare a quantified HRA, the MND fails to provide a comprehensive analysis of the sensitive receptor impacts that may occur as a result of exposure to substantial air pollutants from Project construction and operation. (Ex. B, p. 9.)

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Third, the omission of a quantified HRA is inconsistent with the most recent guidance published by the Office of Environmental Health Hazard Assessment ("OEHHA"), the organization responsible for providing recommendations and guidance on how to conduct HRAs in California. (Ex. B, p. 9.) OEHHA recommends that all short-term projects lasting at least two months be evaluated for cancer risks to nearby sensitive receptors. Because construction will take place over a 26-month period (MND, p. 8), an HRA for the Project's construction should have been included in the MND. (Ex. A, p. 5.) Furthermore, OEHHA also recommends that exposure from projects lasting more than 6 months should be evaluated for the duration of the project and recommends that an exposure duration of 30 years be used to estimate individual cancer risk for the maximally exposed individual resident ("MEIR"). (Ex. B, p. 10.) Even though the EIR did not provide the expected lifetime of the Project, it is reasonable that the Project will operate for at least 30 years, if not more. Therefore, per OEHHA guidelines, health risk impacts from the operation of the Project should also have been evaluated in an HRA. (Ex. B, p. 10.)

L4.14

[1]. http://www.aqmd.gov/docs/default-source/planning/risk-assessment/riskassprocjune15.pdf, p. IX-2.

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Without conducting an HRA for the Project's construction and operation, the MND fails to provide substantial evidence that the Project's health risks would be less-than-significant. L4.14 Cont.

D. A Screening-Level Health Risk Assessment for the Project Indicates a Significant Impact to Human Health from Diesel Particulate Matter

SWAPE prepared a screening-level HRA to evaluate potential impacts from the construction and operation of the Project. (Ex. B, p. 10.) SWAPE used AERSCREEN, the leading screening-level air quality dispersion model. (*Id.*) SWAPE used a sensitive receptor distance of 25 meters and analyzed impacts to individuals at different stages of life based on OEHHA and SCAQMD guidance. (Ex. B, p. 12.)

SWAPE found that the excess cancer risk for adults, children, infants, and third-trimester gestations at the closest sensitive receptor located approximately 25 meters away, over the course of Project construction and operation, are approximately 15, 140, 250, and 11 in one million in one million, respectively. (Ex. B, pp. 13-14.) Moreover, SWAPE found that the excess cancer risk over the course of a residential lifetime is approximately **410 in one million**. (Ex. B, p. 14) Furthermore, SWAPE found that the excess cancer risk posed to adults, children, infants, and during the third trimester of pregnancy at the maximally exposed receptor, located at 50 meters away over the course of Project construction and operation, are approximately 17, 160, 280, and 12 in one million, respectively. (*Id.*) SWAPE additionally found that the excess cancer risk over the course of a residential lifetime (30 years) at the maximally exposed receptor is approximately **470 in one million**. L4.15

Even under a less conservative HRA prepared under the standards of OEHHA's 2003 Guidance, SWAPE concluded that the Project would still have significant impacts on human health. (Ex. A, pp. 14-15.) Without adjusting for the heightened susceptibility of young children to the carcinogenic toxicity of air pollution, SWAPE found that the excess cancer risk posed to adults, children, infants, and during the third trimester of pregnancy at the closest receptor, located approximately 25 meters away, over the course of Project construction and operation, are approximately 15, 46, 25, and 1.1 in one million, respectively. (Ex. B, p. 15.) The excess cancer risk over the course of a residential lifetime (30 years) at the closest receptor is approximately **87 in one million**. (*Id.*) Furthermore, SWAPE found that the excess cancer risk posed to adults, children, infants, and during the third trimester of pregnancy at the maximally exposed receptor, located at 50 meters away over the course of Project construction and operation, are approximately 17, 52, 28, and 1.2 in one million, respectively. (*Id.*) The excess cancer risk over the course of a residential lifetime (30 years) at the maximally exposed receptor (MEIR) is approximately **99 in one million**.

These values appreciably exceed the SCAQMD's threshold of 10 in one million. Because the MND omitted any HRA, the MND failed to disclose, discuss, or mitigate this potentially significant impact. Furthermore, SWAPE's HRA constitutes a "fair argument" that the Project will have significant impacts on human health. As such, the City must prepare an EIR with an HRA that is representative of site conditions in order to properly evaluate the Project's health risk impact. Without conducting such an analysis, the City fails to provide substantial evidence

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that the health risk impacts of the Project would be less-than-significant. L4.15 Cont.

E. The MND Fails to Adequately Assess Greenhouse Gas Impacts

According to the MND, the Project would result in a net increase of 2,608.4 $MTCO_2e$ per year in greenhouse gas ("GHG") emissions, which does not exceed the SCAQMD's 2020 bright-line threshold of 3,000 $MTCO_2e$/year. (MND, p. 78.) However, the MND also acknowledges that the 3,000 $MTCO_2e$/year threshold may not be the most appropriate threshold because the Project will not be operational until 2023:

> Since the proposed Project would be operational in 2023 (i.e. after 2020), it may not be necessarily appropriate to evaluate the significance of the proposed Project's GHG emissions against the SCAQMD's 3,000 MTCO2e threshold, although this threshold does provide useful context for the City in determining the significance of the project's GHG emissions. For example, presuming a 40% reduction in the SCAQMD's existing CEQA thresholds is necessary to achieve the State's 2030 GHG reduction goal (which is a 40% reduction below 1990 GHG emissions levels), a threshold of 2,640 MTCO2e may be more appropriate for use in evaluating the project's long-term emissions in Year 2023.

(MND Appendix A, p. 6-4). However, as SWAPE notes, it would be more appropriate to compare GHG emissions to SCAQMD's service population efficiency target goal of 3.0 $MTCO_2e$/SP/year for target year 2035, rather than comparing it to a threshold based on a 40% reduction of the current 2020 threshold (Ex. B, p. 17.) L4.16

The MND also concluded that the Project's GHG impact would be less than significant as a result of compliance with CARB's Scoping Plan, the regional Sustainable Communities Strategy (SCS), the City of Monrovia's General Plan, and the City's Energy Action Plan. (MND, p. 78.) However, consistency with relevant policies cannot be used to determine a Project's significance, as projects must incorporate emission reductions measures beyond those that comprise basic requirements. The California Supreme Court has made clear that just because "a project is designed to meet high building efficiency and conservation standards … does not establish that its [GHG] emissions from transportation activities lack significant impacts." (*Center for Biological Diversity v. Cal. Dept. of Fish and Wildlife* ("*Newhall Ranch*") (2015) 62 Cal.4th 204, 229.) As such, newer developments must be more GHG-efficient. (*See Newhall Ranch*, 62 Cal.4th at 226.) L4.17

Lastly, as discussed above, the MND utilized a flawed CalEEMod model and, as such, it cannot be relied upon to determine the significance of the Project's GHG emissions. SWAPE has presented a "fair argument" that the emissions model in the MND is flawed and the City must make the necessary corrections before approving this Project. L4.18

F. SWAPE's Updated GHG Analysis Indicates a Significant Impact.

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Based on their updated CalEEMod analysis using updated input parameters, SWAPE compared the Project's GHG emissions to the SCAQMD's 2035 service population efficiency threshold of 3.0 $MTCO_2e$/SP/year. (Ex. B, p. 18.) According to SWAPE's calculations, the Project would emit approximately 4.8 MT CO_2e/SP/year, exceeding SCAQMD's 2035 service population efficiency threshold. (Ex. B, p. 19.) SWAPE's calculation constitute a "fair argument" that the Project will have significant GHG impacts. As such, the City must prepare an EIR to properly analyze GHG emissions and to mitigate those emissions to a less-than-significant level. L4.19

G. The MND's Analysis of Hazardous Materials is Inadequate.

The Phase I Environmental Site Assessment (Phase I ESA) for the Project (Appendix E) found that the site was used for agricultural purposes and a lumber yard from 1952 to 1995 (MND, p. 83). The Phase I concluded:

> ... it would be prudent for the owner of the subject property to determine whether sampling relating to the former agricultural use of the subject property is required by the local planning department or other applicable oversight agency prior to the commencement of redevelopment activities.

Despite this finding, the MND does not document that any effort was made in a subsequent Phase II ESA (Appendix F) to sample soil for the presence of pesticides. L4.20

The MND makes no mention of the potential for residual pesticides to be potentially present in Project site soils and makes no provisions for mitigation, such as soil testing. Only vague references are made, in mitigation measure HAZ-1, for a site management plan to "address plans for encountering, handling, and disposing of soil potentially impacted by hazardous materials (including pesticides)" (MND, p. 84). Without testing for pesticides in soil, mitigation measure HAZ-1 will be ineffective for addressing potential pesticide contamination because construction personnel will be unaware of any residual contamination since such contamination cannot be seen or smelled. (Ex. B, p. 2.) L4.21

According to SWAPE, an EIR is necessary to disclose the results of testing the soils, site-wide, for pesticides. (Ex. B, p. 2.) The sampling should adhere to guidance published by the DTSC, entitled "Interim Guidance for Sampling Agricultural Properties." (*Id.*) The results of the sampling should be evaluated for health risks and any mitigation that would be necessary to protect construction worker health and health of adjacent residents (some located as close as 115 feet from the Project) should be identified in a subsequent EIR.(*Id.*) Mitigation, for handling any soil that would contain concentrations of pesticides at hazardous waste levels, should also be identified in a subsequent EIR. (*Id.*) Without conducting this necessary analysis, the City has not provided substantial evidence that the Project's hazardous material impacts are less than significant. L4.22

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IV. CONCLUSION

For the foregoing reasons, the MND for the Project should be withdrawn, an EIR should be prepared, and the draft EIR should be circulated for public review and comment in accordance with CEQA. Thank you for considering these comments. L4.23

Sincerely,

Brian Flynn
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