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September 9, 2019

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**Re: 1375 St. Andrews Apartments Project Environmental Impact Report Appeal;
Case No. ZA-2015-4629-ZAA-ZAI-WDI-SPR-1A,
CEQA No. ENV-2015-4630-EIR, SCH No. 2016051068**

Honorable Members of the Central Los Angeles Area Planning Commission:

This letter is submitted on behalf of **Supporters Alliance for Environmental Responsibility** and its members living in and near the City of Los Angeles (collectively "SAFER") regarding the appeal of the Zoning Administrator's June 27, 2019 decision certifying the Environmental Impact Report ("EIR") and adopting the related Findings, Statement of Overriding Considerations, and Mitigation Monitoring Program for the 1375 St. Andrews Apartments Project (Case No. ZA-2015-4629-ZAA-ZAI-WDI-SPR-1A; CEQA No. ENV-2015-4630-EIR; SCH No. 2016051068) (the "Project").

After reviewing the EIR, which includes the Draft EIR ("DEIR") dated August 23, 2018 and the Final EIR ("FEIR") dated December 12, 2018, SAFER is concerned that the EIR fails to adequately analyze significant environmental impacts and fails to mitigate significant impacts that will occur as a result of the Project. SAFER requests that the Central Area Planning Commission set aside the Zoning Administrator's June 27, 2019 decision at this time and request staff to prepare a revised draft EIR ("RDEIR") to reconsider the analyses and require additional mitigation measures in order to address the Project's significant impacts.

This correspondence has been prepared with the assistance of the environmental consulting firm SWAPE and Certified Industrial Hygienist Francis Offermann, PE, CIH. The comments of SWAPE and Mr. Offermann are attached as Exhibits A and B, respectively.

I. PROJECT BACKGROUND

The Project proposes the demolition of two vacant buildings which comprise 35,057 square feet, and construction of a new 226,160 square-foot residential building with 185 residential units and 294 on-site parking spaces. The building would be an eight (8) story, 95-foot high residential building providing six levels of residential units above a concrete parking structure with two levels above grade and one subterranean level. The first two stories would be wrapped with habitable space along De Longpre Avenue and St. Andrews Place in front of parking and would contain an entry lobby on the ground floor on De Longpre Avenue. The existing theater building located on the Project Site at 5605–5607 Fernwood Avenue would be maintained on the site and continue operations as part of the Project. No changes are proposed to the interior or exterior of the existing theater building. Once completed, the Project would total approximately 235,841 square feet, including the existing theater.

The Project Site consists of an irregularly shaped area comprising approximately 1.7 acres at the southwest corner of the intersection of St. Andrews Place and W. De Longpre Avenue in Hollywood. The Project Site is relatively flat and is currently occupied by three buildings: the theater, which will remain, and two buildings which would be demolished. These existing buildings total approximately 44,738 square feet of floor area.

The Project proposes a total of 185 residential units, including 5 studio apartments, 75 one-bedroom apartments, 70 two-bedroom, and 35 three-bedroom apartments. The units range in size from 464 square feet (studio) to 2,162 square feet (three-bedroom apartment). The Project would include public and private open space including a garden courtyard on the ground floor, a fitness facility, community room, two courtyards, and pool on the third floor, and a roof deck on the eighth floor.

The Project requires approval of a Site Plan Review; Zoning Administrator's Adjustment to allow a non-conforming front yard of 0 feet and non-conforming side yard of 7 feet for the existing theater building to remain, a reduction in one required side yard along De Longpre Avenue from 11 feet to 8 feet 10 inches, and a reduction in required building separation from 22 feet to 17 feet 7 inches; a Zoning Administrator's Interpretation to determine that St. Andrews Place shall be the front yard, De Longpre Avenue and Fernwood Avenue shall be the side yards, and the western property line separating Lots 7 and 8 shall be the rear yard; and a Waiver of Dedications and Improvements (WDI) to seek relief from a 10-foot by 10-foot corner cut otherwise required at St. Andrews Place and Fernwood Avenue.

II. LEGAL STANDARD

CEQA requires that an agency analyze the potential environmental impacts of its proposed actions in an EIR (except in certain limited circumstances). (See, e.g., Pub. Resources Code, § 21100.) The EIR is the very heart of CEQA. (*Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652.) “The ‘foremost principle’ in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment

within the reasonable scope of the statutory language.” (*Communities for a Better Environment v. Cal. Resources Agency* (2002) 103 Cal.App.4th 98, 109 (“*CBE v. CRA*”).)

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 at 1354; *Citizens of Goleta Valley*, 52 Cal.3d at 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. Resources Code, § 21081; CEQA Guidelines, § 15092(b)(2)(A) & (B).)

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 at 1355 (emphasis added), quoting, *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal. 3d 376, 391 409, n. 12.) As the court stated in *Berkeley Jets*, 91 Cal.App.4th at 1355:

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.)

More recently, the California Supreme Court has emphasized that:

When reviewing whether a discussion is sufficient to satisfy CEQA, a court must be satisfied that the EIR (1) includes sufficient detail to enable those who did not

participate in its preparation to understand and to consider meaningfully the issues the proposed project raises [citation omitted]....

(*Sierra Club v. Cty. of Fresno* (2018) 6 Cal.5th 502, 510 (2018), citing *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 405.) The Court in *Sierra Club v. Cty. of Fresno* also emphasized at another primary consideration of sufficiency is whether the EIR “makes a reasonable effort to substantively connect a project’s air quality impacts to likely health consequences.” (6 Cal.5th at 510.) “Whether or not the alleged inadequacy is the complete omission of a required discussion or a patently inadequate one-paragraph discussion devoid of analysis, the reviewing court must decide whether the EIR serves its purpose as an informational document.” (*Id.* at 516.) Although an agency has discretion to decide the manner of discussing potentially significant effects in an EIR, “a reviewing court must determine whether the discussion of a potentially significant effect is sufficient or insufficient, i.e., whether the EIR comports with its intended function of including ‘detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.’” (6 Cal.5th at 516, citing *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1197.) “The determination whether a discussion is sufficient is not solely a matter of discerning whether there is substantial evidence to support the agency’s factual conclusions.” (6 Cal.5th at 516.) As the Court emphasized:

[W]hether a description of an environmental impact is insufficient because it lacks analysis or omits the magnitude of the impact is not a substantial evidence question. A conclusory discussion of an environmental impact that an EIR deems significant can be determined by a court to be inadequate as an informational document without reference to substantial evidence.

(*Sierra Club v. Cty. of Fresno*, 6 Cal.5th at 514.)

In general, mitigation measures must be designed to minimize, reduce or avoid an identified environmental impact or to rectify or compensate for that impact. (CEQA Guidelines § 15370.) Where several mitigation measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified. (*Id.* at § 15126.4(a)(1)(B).) A lead agency may not make the required CEQA findings unless the administrative record clearly shows that all uncertainties regarding the mitigation of significant environmental impacts have been resolved.

III. DISCUSSION

A. The EIR Relies on Unsubstantiated Input Parameters to Estimate Project Emissions and Thus Fails to Provide Substantial Evidence of 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 A 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 EIR. This results in an underestimation of the Project’s emissions. As a result, the EIR fails to provide substantial evidence that the Project will not have significant air quality impacts and an RDEIR is required to properly analyze these potential impacts.

1. The EIR’s air quality analysis failed to include all operational land uses.

SWAPE’s review of the Project’s operational CalEEMod output files found that not all of the operational land uses proposed by the DEIR were included in the Project’s operational CalEEMod model. (Ex. A, p. 2.) As a result, SWAPE concluded that the Project’s operational emissions are underestimated. (*Id.*)

According to the DEIR, “[t]he children’s playhouse/theater building would be retained as part of the Project, and no changes are proposed to the theater. Consistent with the Project’s Traffic Study, this analysis assumes that the existing school is operational at the time of this analysis.” (DEIR, p. IV.B-12.) However, SWAPE’s review of the Project’s operational CalEEMod output files demonstrates that the existing 9,681 square foot children’s theater was entirely omitted from the Project’s air model. (Ex. A, p. 2.) As the building already exists, the EIR does not need to include the building in an air model for the Project’s construction; however, since it will be a part of the project’s operation, the EIR must include the building in an operational air model. By completely omitting the children’s theater, the DEIR fails to account for all emissions that would be produced during Project operation and, as a result, the Project’s operational emissions are underestimated. (Ex. A, p. 3.) Because the EIR’s air quality analysis underestimates the Project’s operational emissions, the EIR fails to provide substantial evidence that the Project’s air quality impacts would be less-than-significant.

2. The EIR’s air quality analysis failed to use the correct land use size.

SWAPE’s review of the Project’s CalEEMod output files also demonstrates that the size of the proposed residential land use was underestimated in the model. (Ex. A, p. 3.) According to the DEIR, the Project will include “a new 226,160 square-foot residential building with 185 residential units” (DEIR, p. I-4.) However, SWAPE’s review of the Project’s CalEEMod output files found that the EIR’s air quality analysis inputted a size of only 223,100 square feet. By underestimating the size of the residential land use within the air model, the emissions generated by the proposed Project for construction and operation are underestimated and should not be relied upon to determine Project significance. (Ex. A, p. 3.)

3. The EIR's air quality analysis improperly reduced default construction pieces and usage hours without justification.

SWAPE's review of the Project's CalEEMod output files found that the EIR artificially reduced the number of pieces of off-road construction equipment, as well as the usage hours for several pieces of equipment, without providing proper justification for doing so. The CalEEMod user guide requires that any non-default values inputted must be justified by the Applicant. (Ex. A, p. 4.) However, SWAPE found that in the "User Entered Comments & Non-Default Data" section, the Applicant simply stated that they "[a]dded 1 excavator" and "[a]ssumed one roller and paver for paving." (*Id.*) Without a Project-specific equipment list provided by the Applicant—or any explanation of how the necessary equipment amount and usage hours were determined—it is impossible to evaluate whether the substantial reductions in pieces of construction equipment and usage hours are accurate and justified. As such, the air model inputs utilized to calculate emissions cannot be verified, the resultant emissions may be underestimated, and the EIR's air quality analysis fails as an informational document as required by CEQA.

B. The EIR Fails to Adequately Evaluate Health Risks from Diesel Particulate Matter Emissions

With hardly more than a couple sentences of explanation, the EIR concludes that the impact of substantial pollutant concentrations to sensitive receptors would be less than significant. (DEIR, p. IV/B-31.) No effort is made by the applicant to justify this conclusion with a quantitative health risk assessment ("HRA"). The IS/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.

First, simply stating that the Project has a "short-term construction schedule of approximately 24 months" and "would not result in a long-term (i.e., 70-year) source of TAC emissions" does not justify the omission of a construction HRA. (Ex. A, p. 5.) The South Coast Air Quality Management District ("SCAQMD") recommends that health risk impacts from short-term projects also be assessed. The 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

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

Therefore, SWAPE concluded that the DEIR should have conducted an assessment that compared the Project's construction and operational health risks to the SCAQMD's threshold of 10 in one million in order to determine the significance of the Project's health risk impacts. (Ex. A, p. 5.) By failing to prepare an HRA, the DEIR fails to provide a comprehensive analysis of the sensitive receptor impacts that may occur as a result of exposure to substantial air pollutants.

Second, once operational, the Project's residential land use will result in vehicle trips and truck deliveries, generating diesel exhaust over the duration of Project operation. As such, SWAPE concluded that the DEIR should have conducted a construction and operational HRA, as long-term exposure to DPM and other TACs may result in a significant health risk impact, which must be properly assessed. (Ex. A, p. 5.)

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. A, p. 5.) 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 24-month period (DEIR, p. IV.B-31.), an HRA for the Project's construction should have been included in the EIR. (Ex. A, p. 5.)

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. A, p. 5.) 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. A, p. 5.) Without conducting an HRA for the Project's construction and operation, the EIR fails to provide substantial evidence that the Project's health risks would be less-than-significant.

C. 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. A, p. 6.) 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. A, pp. 6-8.)

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 11, 98, 140, and 6 in one million in one million, respectively. (Ex. A, p. 10.) Moreover, SWAPE found that the excess cancer risk over the course of a residential lifetime is approximately **250 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 12, 110, 160, and 6.7 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 **280 in one million**.

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. 10-11.) 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 11, 33, 14, and 0.6 in one million, respectively. (Ex. A, p. 11.) The excess cancer risk over the course of a residential lifetime (30 years) at the closest receptor is approximately **58 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 12, 37, 16, and 0.67 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 **65 in one million**.

These values appreciably exceed the SCAQMD's threshold of 10 in one million by over twenty times. Because the EIR omitted any HRA, the EIR failed to disclose, discuss, or mitigate this potentially significant impact. As such, the City must prepare an RDEIR with a more refined HRA that is representative of site conditions in order to properly evaluate the Project's health risk impact. Without conducting such an analysis, the EIR fails to provide substantial evidence that the health risk impacts of the Project would be less-than-significant. In order to mitigate this impact to human health, SWAPE has recommended numerous mitigation measures to reduce the health risks of the Project to less-than-significant levels. (Ex. A, pp. 12-21.)

D. The EIR Fails to Provide Substantial Evidence that the Project's Greenhouse Gas Impacts Are Less-Than-Significant

SWAPE reviewed the EIR's greenhouse gas (GHG) analysis and found: (1) the EIR failed to make a significant attempt to evaluate or reduce GHG emissions beyond compliance with basic GHG reduction measures that all projects are required to implement; (2) the EIR failed to adequately evaluate the Project's GHG impact according to applicable SCAQMD guidance and current, applicable scientific knowledge and regulatory schemes regarding GHG emissions reductions; and (3) the EIR relied on a flawed CalEEMod model to determine net emissions. (Ex. A, p. 21.)

First, the Project relies upon compliance with select local, state, and regional objectives, namely the AB 32 Scoping Plan, SB 375, SCAG's 2016 RTP/SCS, and the LA Green Building Code to claim a less than significant GHG impact (DEIR, p. IV.F-34.) However, 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, it is improper for the City to rely solely on regulatory compliance to conclude that the Project’s GHG impacts would be less-than-significant.

Second, the EIR failed to adequately compare the Project’s annual GHG emissions to the relevant SCAQMD thresholds. (Ex A, p. 21.) The EIR stated that the SCAQMD’s *Interim Thresholds* for GHG emissions were provided in the EIR for “informational purposes” but not as thresholds of significance because SCAQMD has not formally adopted the *Interim Thresholds*. (DEIR, p. IV.F-21.) While the EIR is correct in stating that SCAQMD has not formally adopted the *Interim Thresholds*, this does not mean that they are inapplicable to the proposed Project or otherwise can be ignored. (Ex. A, p. 23.) In addition, CEQA Guidelines section 15064.7(c) permits the use of thresholds developed by other public agencies.

SCAQMD developed its current thresholds when AB 32 was the governing statute for GHG reductions in California. AB 32 requires California to reduce GHG emissions to 1990 levels by 2020. Health & Saf. Code § 38500 *et seq.* However, in September 2016, well before the release of the DEIR, SB 32 was enacted. SB 32 requires California to achieve a new, more aggressive 40 percent reduction in GHG emissions over the 1990 level by the end of 2030. As a result, the Project must comply with Senate Bill 32 (SB 32), which would include a more aggressive GHG threshold. (Ex. A, p. 24.)

Consistent with the requirements of SB 32, other air control districts have adopted more aggressive GHG thresholds for project-level analysis, including but not limited to the Sacramento Metropolitan Air Quality Management District (SMAQMD), the Bay Area Air Quality Management District (BAAQMD), and the San Luis Obispo Air Pollution Control District (SLOAPCD). (Ex. A, p. 24.) Although more demanding, the thresholds adopted by the other air districts are analogous to the application of SCAQMD’s *Interim Thresholds* for mixed-use developments (3,000 MT CO₂e/year) and SCAQMD’s Tier 4 efficiency target goals (4.8 MTCO₂e/SP/year for target year 2020 and 3.0 MTCO₂e/SP/year for target year 2035). (Ex. A, p. 26.)

The actions taken by other air districts to reduce the GHG emission through more stringent thresholds is the most persuasive rationale as to why the *Interim Thresholds* apply as the current standard set of evolving scientific knowledge and regulatory schemes. (Ex. A, p. 26.) The Project should use the SCAQMD’s mixed-use threshold to determine significance because the failure to do so may understate the severity of the Project to the public. (*Id.*) Because the EIR’s GHG analysis is not consistent with evolving standards, the conclusion that the Project has a less than significant GHG impact is not supported by substantial evidence.

Third, the EIR relies on a flawed CalEEMod model to determine net GHG emissions because, as discussed above, the model completely omitted the existing children’s theater in the operations of the project, relied on an incorrect land use size for the residential building, and included an unsubstantiated reduction in number of pieces and usage hours of construction

equipment. (Ex. A, p. 27.), As a result, the Applicant's CalEEMod model underestimates emissions and cannot be relied upon to determine significance. Due to the flaws in the EIR's CalEEMod model, the EIR lacks substantial evidence to determine that the Project's GHG emissions would be less-than-significant.

For the above reasons, the City must prepare an RDEIR which accurately models the Project's GHG emissions and compares those emissions to the relevant, applicable thresholds.

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

The EIR also fails to address the significant health risks from yet another TAC, formaldehyde, posed by the Project. Certified Industrial Hygienist, Francis Offermann, PE, CIH, has conducted a review of the Project, the EIR, 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 and townhomes. Mr. Offermann's expert opinion and calculation is substantial evidence 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 EIR. These impacts must be addressed in a RDEIR. Mr. Offermann's comment is attached as Exhibit B.

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 EIR 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. B, pp. 2-3.)

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. B, 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 should be analyzed in an EIR and mitigation measures should be imposed to reduce the risk of formaldehyde exposure. (Offermann

Comments, pp. 4, 10-12.) He prescribes a methodology for estimating the Project's formaldehyde emissions in order to do a more project-specific health risk assessment. (*Id.*, pp. 4-9.) 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. 10-12.) Mr. Offermann also suggests requiring air ventilation systems which would reduce formaldehyde levels. (*Id.*) Since the EIR 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 EIR for the Project must address this impact and identify enforceable mitigation measures.

The failure of the EIR 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 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 a RDEIR which discloses and analyzes the health risks that the Project’s formaldehyde emissions may have on future residents and identifies appropriate mitigation measures. Until that occurs, the EIR is insufficient in disclosing this important impact.

IV. CONCLUSION

For the foregoing reasons, SAFER and its members urge the City to prepare and recirculate a revised EIR addressing the above shortcomings. Thank you for your attention to these comments. Please include this letter and all attachments hereto in the record of proceedings for this project.

Sincerely,

A handwritten signature in blue ink that reads "Brian B. Flynn". The signature is written in a cursive style with a large initial "B".

Brian Flynn
Lozeau | Drury LLP