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BY E-MAIL AND OVERNIGHT MAIL

May 21, 2019

Chairperson Ryan Baldino and Honorable Members of the
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**RE: Final EIR for Proposed Beach Cities Media Campus Project
SCN 2017121035**

Chairperson Baldino and Members of the Planning Commission:

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.

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After reviewing the Project and the FEIR, it is evident that the FEIR 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.

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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

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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.3d 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 HAS PROVIDED INADEQUATE TIME TO REVIEW THE FEIR.

On January 10, 2018, this firm requested written notice of all CEQA documents related to the Project, pursuant to CEQA section 21092.2. Despite this request, we did not receive the complete FEIR until May 20, 2019 – only three days prior to the Planning Commission hearing. We received an incomplete copy of the FEIR on Friday, May 17, 2019, but that document did not include the public comments or responses to comments which are the heart of the FEIR.

CEQA requires the lead agency to provide the FEIR to all public entities that commented on the Draft EIR at least 10 days before certifying the EIR. PRC §21092.5. Many public agencies, as well as SAFER, commented on the DEIR, including CalTrans, South Coast Air Quality Management District ("SCAQMD"), Department of Toxic Substances Control ("DTSC"), and others. The City was required to provide these entities with the FEIR at least 10 days prior to the May 23, 2019 Planning Commission hearing – May 13, 2019. When the City provided the FEIR to the public agencies, it became a public record. At that time, since this firm requested all CEQA documents pursuant to CEQA section 21092.2, we should have been provided with the FEIR. However, we did not receive the document until May 20, 2019 – one week later. Thus, SAFER had only three days to review the FEIR rather than the required ten days.

We request that the City continue the Planning Commission hearing by at least ten days to allow the required review period for the FEIR.

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

A. 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.

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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.

B. HEALTH RISK ASSESSMENT

Neither the Draft nor Final EIR contain any health risk assessment (HRA). The DEIR states that no HRA is required because construction will "only" take place over 18 months. (DEIR IV.A.21.)

California Office of Environmental Health Hazard Assessment ("OEHHA") guidance makes clear that all short-term projects lasting at least two months be evaluated for cancer risks to nearby sensitive receptors. OEHHA also recommends a health risk assessment of a project's operational emissions for projects that will be in place for more than 6 months. (Id.) Projects lasting more than 6 months should be evaluated for the duration of the project, and an exposure duration of 30 years be used to estimate individual cancer risk for the maximally exposed individual resident. (Id.) The Project would last at least 30 years and certainly much longer than six months. Therefore an HRA is required.

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Health risks can often be mitigated by requiring low-emission construction equipment, such as CARB Tier 4 equipment, limiting idling times, limiting opacity, and other measures. A RDEIR should be prepared to analyze HRA and to proposed feasible mitigation measures.

C. GREENHOUSE GAS.

The EIR admits that the Project will have significant greenhouse gas ("GHG") impacts. (FEIR I-17, 18). The DEIR states, "Proposed Project's unmitigated emissions are 6,007.71 metric tons of CO2 equivalents per year resulting in 5.82 MTCO2e/SP/year." (DEIR IV.D-31). This is far above the SCAQMD significance threshold for GHGs of 3,000 MT/year.

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Despite this admission, the EIR fails to propose all feasible mitigation measures to reduce GHGs. The only mitigation measures proposed are: (1) sidewalks, (2) energy Star appliances, (3) LED lighting, and (4) low-flow fixtures. Despite having hundreds of parking spaces, the EIR proposes only 1 electric vehicle charger. (DEIR IV.D-35). The EIR fails to propose clearly feasible GHG mitigation measures such as roof-top solar panels, large numbers of electric vehicle charging stations, exceedance of Title 24 energy requirements, LEED certification, and many other measures.

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The California Attorney General has published a list of feasible GHG mitigation measures. (Exhibit A). These measures are presumptively feasible. A Revised DEIR should be prepared to analyze these feasible mitigation measures.

D. TRAFFIC.

CalTrans submitted a comment concerning the Project's significant traffic impacts. In response the Final EIR proposes a Traffic Demand Management (TDM) plan, but provides no detail for the TDM plan. (FEIR III-2).

Feasible mitigation measures for significant environmental effects must be set forth in an EIR for consideration by the lead agency's decision makers and the public before certification of the EIR and approval of a project. The formulation of mitigation measures generally cannot be deferred until after certification of the EIR and approval of a project. Guidelines, section 15126.4(a)(1)(B) states: "Formulation of mitigation measures should not be deferred until some future time. However, measures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way." "A study conducted after approval of a project will inevitably have a diminished influence on decisionmaking. Even if the study is subject to administrative approval, it is analogous to the sort of post hoc rationalization of agency actions that has been repeatedly condemned in decisions construing CEQA." (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 307.) "[R]eliance on tentative plans for future mitigation after completion of the CEQA process significantly undermines CEQA's goals of full disclosure and informed decisionmaking; and[,] consequently, these mitigation plans have been overturned on judicial review as constituting improper deferral of environmental assessment." (*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 92 (Communities).)

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The FEIR's TDM plan is deferred mitigation prohibited by CEQA. A Revised DEIR is required to identify the particular measures that will be implemented as part of the TDM to reduce the Project's traffic impact, and to calculate the amount that those measures will reduce traffic impacts of the Project.

E. INDOOR AIR QUALITY.

The EIR fails entirely to analyze impacts related to indoor air quality. Such impacts may be related to soil-vapor intrusion that may result from toxic soil contamination. Indoor air quality may also be affected by formaldehyde emissions from composite wood products.

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

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

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Based on published studies, and assuming all the Project's building materials will be compliant with the California Air Resources Board's formaldehyde airborne toxics control measure, future employees using the Project may be exposed to a cancer risk from formaldehyde greater than the SCAQMD's CEQA significance threshold for airborne cancer risk of 10 per million.

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, a fair argument exists that such emissions from the Project may pose significant health risks. As a result, the City must prepare an EIR which calculates the health risks that the formaldehyde emissions may have on future workers and identifies appropriate mitigation measures.

IV. CONCLUSION

For the foregoing reasons, 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 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 black ink, appearing to read "Richard Drury".

Richard Drury