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Re: Comment on the Initial Study/Mitigated Negative Declaration for the 3440 Wilshire Project; CPC-2016-3692-VZC-MCUP-SPR; VTT-74602

Dear Honorable Members of the Los Angeles City Planning Commission and Ms. Wan:

I am writing on behalf of **Supporters Alliance for Environmental Responsibility** and its members living in and around the City of Los Angeles (“SAFER”). These comments support SAFER’s appeal of the Initial Study/Mitigated Negative Declaration (“IS/MND”) for the 3440 Wilshire Project, a mixed use development proposed for a 7.3-acre lot area located at 3432-3470 Wilshire Boulevard in Los Angeles, and the related project approvals (the “Project”). After reviewing the IS/MND, we conclude that it fails to analyze all environmental impacts and to implement all necessary mitigation measures. SAFER respectfully requests that the City Planning Commission grant SAFER’s appeal and send the Project back to staff to prepare an EIR in order to incorporate our concerns discussed below.

This comment has been prepared with the assistance of Certified Industrial Hygienist, Francis “Bud” Offermann, PE, CIH. Mr. Offermann’s comment and curriculum vitae are attached as Exhibit A hereto and is incorporated herein by reference in its entirety. This comment was also prepared with assistance from Ecologist Shawn Smallwood, Ph.D. Dr. Smallwood’s comments and curriculum vitae are attached as Exhibit B hereto and is incorporated herein by reference in its entirety. Finally, this comment has been prepared with the assistance of the

environmental consulting firm Soil/Water/Air Protection Enterprise (“SWAPE”). SWAPE’s comment the consultants’ curriculum vitae are attached as Exhibit C hereto and are incorporated herein by reference in their entirety.

I. PROJECT DESCRIPTION

The Project proposes to develop a mixed-use project on a 7.3-acre site consisting: 1) 640 apartment units; 2) 10,738 square feet (“sq. ft.”) of commercial floor area; and 2) 1,921 vehicle parking spaces. The Project site is currently developed with four commercial office buildings with ground floor retail uses that front West Wilshire Boulevard and South Irolo Street (the “Existing Office Buildings”), a three-story parking garage, a five-story parking structure, two vehicle driveways, and internal private roadways. The Project involves demolishing the existing three-story parking structure, constructing two commercial kiosks, and constructing a 23-story mixed-use building and a 28-story mixed-use building on top of a podium that is four stories above grade and two stories subterranean. The commercial space will consist of 5,538 sq. ft. of retail area and 5,200 sq. ft. of restaurant area. The restaurant area will consist of 3,700 sq. ft. with 138 indoor and outdoor patio seats of high-turnover restaurant and 1,500 sq. ft. with 68 indoor and outdoor patio seats of fast-food restaurant.

II. LEGAL STANDARD

As the California Supreme Court has 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.*, 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 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*, 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*, 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*, 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 CCR § 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.

Where an initial study shows that the project may have a significant effect on the environment, a mitigated negative declaration may be appropriate. However, 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*, 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, 904–05.

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*, 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*, 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, 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 & Zishcke, 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*, 124 Cal.App.4th at 928 (emphasis in original).

CEQA requires that an environmental document include a description of the project’s environmental setting or “baseline.” CEQA Guidelines § 15063(d)(2). The CEQA “baseline” is the set of environmental conditions against which to compare a project’s anticipated impacts. *CBE v. SCAQMD*, 48 Cal.4th at 321. CEQA Guidelines section 15125(a) states, in pertinent part, that a lead agency’s environmental review under CEQA:

... must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time [environmental analysis] is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a Lead Agency determines whether an impact is significant.

See Save Our Peninsula Committee v. County of Monterey (2001) 87 Cal.App.4th 99, 124–25 (“*Save Our Peninsula*”).) As the court of appeal has explained, “the impacts of the project must be measured against the ‘real conditions on the ground,’” and not against hypothetical permitted levels. *Id.* at 121–23.

III. DISCUSSION

A. There is Substantial Evidence of a Fair Argument that the Project Will Have a Significant Health Risk Impact from its Indoor Air Quality Impacts.

Certified Industrial Hygienist, Francis “Bud” Offermann, PE, CIH, has conducted a review of the proposed Project and relevant documents regarding the Project’s indoor air emissions. Indoor Environmental Engineering Comments (April 10, 2020) (Exhibit A). Mr. Offermann concludes that it is likely that the Project will expose residents of the Project to significant impacts related to indoor air quality, and in particular, emissions of the cancer-causing chemical formaldehyde. Mr. Offermann is a leading expert on indoor air quality and has published extensively on the topic. *See* attached CV.

Mr. Offermann explains that many composite wood products used in modern apartment home 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 particleboard. These materials are commonly used in building construction for

flooring, cabinetry, baseboards, window shades, interior doors, and window and door trims.” Offermann, pp. 2-3.

Formaldehyde is a known human carcinogen. Mr. Offermann states that there is a fair argument that future residents of the Project will be exposed to a cancer risk from formaldehyde of approximately 112 per million, assuming all materials are compliant with the California Air Resources Board’s formaldehyde airborne toxics control measure. *Id.*, p. 3. This more than 11 times the SCAQMD’s CEQA significance threshold for airborne cancer risk of 10 per million. In addition, Mr. Offermann concludes that people working the commercial spaces of the Project will be exposed to an increased cancer risk from formaldehyde of 16.4 per million, which also exceeds the threshold of significance. *Id.* at 5. 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. *Id.*, p. 45.

Mr. Offermann also notes that the high cancer risk that may be posed by the Project’s indoor air emissions likely will be exacerbated by the additional cancer risk that exists as a result of the Project’s location near roadways with moderate to high traffic (i.e. Wilshire Boulevard, S. Mariposa Boulevard, Sm. Normandy Ave., and W. 7th Street) and the high levels of PM 2.5 already present in the ambient air. Offermann, pp. 10-11. No analysis has been conducted of the significant cumulative health impacts that will result to future residents of the Project.

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. *Id.* Mr. Offermann identifies mitigation measures that are available to reduce these significant health risks, including the installation of air filters and a requirement that the applicant use only composite wood materials (e.g. hardwood plywood, medium density fiberboard, particleboard) for all interior finish systems that are made with CARB approved no-added formaldehyde (NAF) resins or ultra-low emitting formaldehyde (ULEF) resins in the buildings’ interiors. *Id.* at 12-13.

The City has a duty to investigate issues relating to a project’s potential environmental impacts, especially those issues raised by an expert’s comments. *See Cty. Sanitation Dist. No. 2 v. Cty. of Kern*, (2005) 127 Cal.App.4th 1544, 1597–98 (“under CEQA, the lead agency bears a burden to investigate potential environmental impacts”). In addition to assessing the Project’s potential health impacts to residents, Mr. Offermann identifies the investigatory path that the City should be following in developing an EIR to more precisely evaluate the Projects’ future formaldehyde emissions and establishing mitigation measures that reduce the cancer risk below the SCAQMD level. *Id.*, pp. 5-10. Such an analysis would be similar in form to the air quality modeling and traffic modeling typically conducted as part of a CEQA review.

The failure 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*”). 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 800-801. However, to the extent a project may exacerbate existing adverse environmental conditions at or near a project site, those would still have to be considered pursuant to CEQA. *Id.* at 801 (“CEQA calls upon an agency to evaluate existing conditions in order to assess whether a project could exacerbate hazards that are already present”). 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. Residents and workers will be users of the Project. Currently, there is presumably little if any formaldehyde emissions at the site. Once the project is built, emissions will begin at levels that pose significant health risks. Rather than excusing the City from addressing the impacts of carcinogens emitted into the indoor air from the project, the Supreme Court in *CBIA* expressly finds that this type of effect by the project on the environment and a “project’s users and residents” must be addressed in the CEQA process.

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 hundreds of future residents of the Project are human beings and the health and safety of those workers is as important to CEQA’s safeguards as nearby residents currently living near the project site.

Because Mr. Offermann’s expert review is substantial evidence of a fair argument of a significant environmental impact to future users of the project, an EIR must be prepared to disclose and mitigate those impacts.

B. The IS/MND Failed to Adequately Analyze and Mitigate the Potential Adverse Impacts of the Project on Wildlife.

The comment of Dr. Shawn Smallwood is attached as Exhibit B. Dr. Smallwood has identified several issues with the IS/MND for the Project. His concerns are summarized below.

1. There is substantial evidence that Project may have a significant impact on bird species from window collisions.

According to wildlife expert Dr. Shawn Smallwood, the Project will have a significant impact on birds as a result of window collisions. The City has not analyzed or mitigated these

potential impacts to special-species birds. Analyzing the potential impact on wildlife of window collisions is especially important because “[w]indow collisions are often characterized as either the second or third largest source of human-caused bird mortality.” Smallwood, p. 6.

The wildlife database eBirds lists 44 special-status species of birds have been document right around the Project site. Smallwood, p. 2. Of these 44 species, Dr. Smallwood determined that 15 have been known to collide with windows. *Id.* “Many of these species are undoubtedly already experiencing annual mortality caused by window collisions in Los Angeles, but the proposed new project would substantially add window-collision hazards to birds flying over Los Angeles. A fair argument can be made for the need to prepare an EIR to assess project impacts from bird-window collisions, and to formulate appropriate mitigation.” *Id.*

Dr. Smallwood reviewed a number of studies in order to calculate the number of bird collisions that would occur annually as a result of the Project. Smallwood, p. 7-8. According to his calculations, each m² of glass would result in 0.077 bird deaths per year. *Id.* at 8. Dr. Smallwood then looked at the building design for the Project and estimated that the Project would include approximately at least 24,000 m² of glass windows. *Id.* Based on the estimated 24,000 m² of glass windows and the 0.077 bird deaths per m² of glass windows, Dr. Smallwood estimates that the project could result in 1,848 bird deaths per year. *Id.* Over 50 years, this will amount to 92,400 bird deaths. *Id.* Most of these deaths would be of birds protected under Fish & Game Code section 3513. *Id.*

These bird deaths constitute a significant impact that must be analyzed. *Id.* The City must prepare an EIR to disclose, analyze, and mitigate the full scope of the Project’s impact resulting from window collisions.

2. There is no evidence to support the IS/MND’s conclusion that the Project will not have a significant impact on biological species.

No wildlife surveys were conducted by biologist in preparation of the IS/MND. As a result, the IS/MND fails to inform the public and decisionmakers about avian use of the area. Dr. Smallwood explains that “[s]urveys are needed to learn how many of each bird species fly through the area and at what times of day (and night).” Smallwood, p. 2. Conducting these types of surveys could then inform an analysis of collision risk and mitigation measures to reduce that risk. *Id.* Mitigation measures may include things like interior light management and design modifications to facades facing the prevailing approach directions of migrating birds. *Id.* Without conducting surveys, there is no substantial evidence to support the IS/MND’s conclusion that the Project will not have a significant impact on biological resources.

3. The City fails to mitigate the Project’s adverse impact on bird species from window collisions.

In order to mitigate the impact of the window collisions on bird species, Dr. Smallwood has suggested several mitigation measures. As a starting point, before construction, “[a]ny new

project should be informed by preconstruction surveys of daytime and nocturnal flight activity.” Smallwood, p. 13. Dr. Smallwood explains:

[Pre-construction] surveys can reveal the one or more façades facing the prevailing approach direction of birds, and these revelations can help prioritize where certain types of mitigation can be targeted. It is critical to formulate effective measures prior to construction, because post-construction options will be limited, likely more expensive, and probably less effective.

Id.

Dr. Smallwood also notes the importance of post-construction fatality monitoring, which he says “should be an essential feature of any new building project.” Smallwood, p. 12. These surveys should be combined with threshold fatality rates that would trigger additional mitigation. *Id.* at 15. The City should identify candidate impact-reduction measures that can be implemented in case the original measure(s) proves ineffective or inadequate, including compensatory mitigation.

In addition, for mitigation measures involving the siting and design of the Project, Dr. Smallwood suggests: (1) deciding on the location of structures; (2) deciding on the façade and orientation of structures; (3) selecting types and sizes of windows; (4) minimizing transparency through two parallel façades; (5) minimizing views of interior plants; (6) landscaping so as to increase distance between windows and vegetation; (7) monitoring for fatalities to identify seasonal and spatial patterns; and (8) adjusted light management, window markings, and other measures as needed based on survey results. Smallwood, p. 14. Dr. Smallwood also suggests that the City also look to the guidelines developed by the American Bird Conservancy and the City of San Francisco to minimize injuries and fatalities to bird species. *Id.*

Finally, Dr. Smallwood recommends compensatory mitigation including contributions to wildlife rehabilitation facilities to cover the costs of injured animals that may be delivered to these facilities for care from this Project or other projects. Smallwood, p. 15. These and other feasible mitigation measures must be considered in an EIR.

4. The IS/MND fails to adequately analyze the Project’s impact on wildlife movement.

The IS/MND improperly dismisses the Project’s potential to impact wildlife movement based on the urbanized location of the Project, which, the IS/MND claims, does not support a wildlife corridor. These conclusions rely on a false CEQA standard. A project will have a significant biological impact if it would “[i]nterfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites.” CEQA Guidelines, App. G. As Dr. Smallwood explains:

[W]hether a site supports a wildlife movement corridor is not the standard at issue with Initial Study question 4d; rather, it is whether the project would interfere with wildlife movement. City of Los Angeles apparently neglected to consider that birds fly. Birds fly to forage, defend territories, disperse, and migrate. Birds, including special-status species of birds, inhabit the airspaces of Los Angeles, some as residents of Los Angeles and others as dispersers or migrants. Inserting two high-rises into the airspaces used by birds would interfere with wildlife movement while also killing many birds. Collision mortality would be worsened by constructing two high-rises as planned – high-rises composed of glass façades.

Smallwood, p. 2.

Because of its reliance on a false CEQA standard for determining impacts on wildlife movement, the IS/MND contains no evidence to support the conclusion that the Project will not have a significant impact on wildlife movement. In contrast, Dr. Smallwood's comments constitute substantial evidence that the Project will have a significant impact on wildlife movement. As a result, an EIR must be prepared to analyze the Project's impacts on wildlife movement.

5. The IS/MND fails to analyze the Project's cumulative biological impacts.

The IS/MND does not include an analysis of the Project's potential cumulative biological impacts on the grounds that no wildlife habitat occurs in the City of Los Angeles. Smallwood, p. 14. As a result, the IS/MND provides no analysis of the Project's cumulative contribution to window collisions. *Id.* Dr. Smallwood explains that “[t]his missing analysis is a critical shortfall, because bird abundance across North America has declined 29% over the last 48 years (Rosenberg et al. 2019). The proposed project alone is predicted to kill 1,848 bird deaths per year (95% CI: 960-2,640), which would add to many thousands more killed by windows in Los Angeles.” *Id.* The City violates CEQA by not conducting an analysis of the Project's cumulative impact to biological resources as a result of window collisions.

C. The IS/MND's Traffic Analysis is Not Supported by Substantial Evidence and Greatly Underestimates Project-Generated Traffic.

A significant transportation impact would occur if roadways and intersections that would carry project-generated traffic would exceed adopted City of Los Angeles Department of Transportation thresholds of significance. IS/MND, B-215. The IS/MND's conclusion that the Project will not result in significant transportation impacts is not supported by substantial evidence. As described below, and in the expert comments of traffic engineer Dan Smith (attached hereto as Exhibit B), the IS/MND greatly underestimates the vehicle trips generated by the Project. Mr. Smith concludes that there is “overwhelming evidence that there is fair argument that demonstrates that the Project's impacts are not fully disclosed and mitigated in the IS/MND. Consequently, the Project cannot be approved under a mitigated negative declaration and a full EIR must be prepared.” Smith, p. 5.

1. The IS/MND underestimates traffic generated from the retail component of the Project.

The Project includes 5,538 square feet of commercial retail space. The IS/MND estimates the gross number of trips generated from this retail space based on *Trip Generation, 10th Edition*'s average rates for Land Use Category 820, which is the land use category for "Shopping Center." Smith, p. 2. But Traffic Engineer Dan Smith explains in his expert comments, that this land use is inapplicable to the Project because 5,538 square feet of retail space is not a shopping center. *Id.* To generate the average trip rates used for the Shopping Center land use category requires approximately 400,000 square feet of floor area. *Id.* Mr. Smith determined that a convenience market would be a much more accurate land use category to use. *Id.* Using the *Trip Generation, 10th Edition*, shopping centers generate daily vehicle trips at an average rate of 37.75 trips per thousand square feet of floor area, where as convenience markets generate 762.28 trips per thousand square feet. *Id.* This amounts to 20 times more traffic generated from the retail space than was disclosed in the IS/MND. The same flaw is reflected in the IS/MND's peak hour trip analysis.

Making matters worse, the IS/MND then discounts 90 percent of the gross trip generation of this small retail space. *Id.* This 90 percent reduction is based on 15 percent for trips internal to the Project, 25 percent as transit trips, and 50 percent as trips attached to passerby traffic. *Id.* As Mr. Smith explains, these reductions do not hold up to scrutiny. "[T]he notion that the convenience retail would attract 50 percent of its patronage from existing passerby vehicle traffic is absurd." *Id.* Mr. Smith explains that these types of passerby attraction rates are normally attained by convenience markets on busy urban or suburban streets and where the retail store has its own surface parking lot. *Id.* Here, in contrast, the retail space is contained within a larger building, where the passerby is forced to enter and leave a large parking garage. *Id.* Moreover, the retail space is not visible from either Wilshire Boulevard or Irolo. It is only visible from S. Mariposa Avenue and/or W. 7th Street. *Id.* The IS/MND discloses that S. Mariposa carries only 680 vehicles past the Project site in the A.M. peak hour and 672 in the P.M. peak hour, while W. 7th Street carries only 349 vehicles past the Project site in the A.M. peak hour and 542 in the P.M. peak hour. IS/MND Appendix K-1, Figure 1. Mr. Smith concludes that "These totals are insufficient to support the claimed passerby attraction discount, particularly where the on-street parking spaces are usually occupied and passers-by would be forced to enter and leave a parking garage." *Id.* "The notion that 25 percent of the people visiting a convenience market would make purposeful transit trips to reach that market is similarly implausible. This is likely to be true only of a handful of employees of the market." *Id.*

2. The IS/MND underestimates traffic generated from the fast-casual restaurant component of the Project.

Like the retail space, the IS/MND assumes again that 90 percent of the fast-casual restaurant's gross trip generation will not add to traffic except at Project driveways. Just as with the retail space, the IS/MND reduces traffic by 90 percent, with 50 percent attracted from passerby traffic, 25 percent from transit, and 15 percent internal. Smith, p. 3. Mr. Smith concludes that "[a]ll of the discussion above with respect to the discounting of trips to a convenience

market is similarly applicable to the fast-causal restaurant.” *Id.*

3. The IS/MND underestimates traffic generated from the high-turnover sit-down restaurant component of the Project.

The Project also includes a high-turnover sit-down restaurant. For this component of the Project, the IS/MND discounts 60 percent of the trip generation, made up of 25 percent transit, 20 percent passer-by attraction, and 15 percent internal. *Id.* But Mr. Smith points out that “[e]xcept for negligible numbers of restaurant employees, few if any people would take transit in a purposeful trip to reach or depart from a restaurant of this type. Certainly, patrons of the restaurant will include persons who arrived and will depart the area via transit but these comprise part if not most of the attracted passer-by category.” *Id.* The need for drivers to park inside a parking garage and the fact that the restaurant will only be visible from the lightly trafficked S. Mariposa and W. 7th street further minimizes the patrons that will be attracted from street traffic. *Id.*

4. The IS/MND underestimates traffic generated from the residential component of the Project.

For the residential portion of the Project, the IS/MND analysis assumes a 15 percent internalization deduction. It does not, however apply a 25 percent transit deduction to the peak hour trip generation because, the IS/MND says, the basin trip generation rate was derived from surveys of similar local area residential high rises, where the transit utilization was already reflected in the observed vehicle trip generation rate. Mr. Smith raises the question of “whether or not those surveyed buildings had comparable trip internalization that would have already been reflected in the observed vehicle trip rates.” Smith, p. 4. The IS/MND must be revised to make this clarification.

Mr. Smith’s comments constitute substantial evidence that the Project’s traffic impact have been significantly underestimated. The IS/MND must be revised to address these inaccuracies.

5. The IS/MND fails to account for trips by transportation network company services.

Mr. Smith explains that the rise of transportation network companies (“TNCs”) (also known as ride hailing services) like Uber and Lyft, has substantially changed the nature of transportation in urban areas. Smith, p. 4. Recent research has shown that TNCs are problematic because: “a) a large part of the transportation demand they serve is drawn from trips that would otherwise been carried out by walking, bicycling or transit, b) a large share of the trips they serve are induced trips – trips that would not be made at all were the service not available or trips to distant destinations that would have been satisfied locally by walking absent the service and c) each passenger service trip actually involves 2 vehicle trips – the trip from where the vehicle is circulating or waiting to the point of call and the trip from the point of call to the actual destination.” *Id.* Despite the major impact of TNCs on transportation in Los Angeles and

elsewhere, the IS/MND makes no effort to estimate the transportation impacts of TNC services related to the Project. Without counting any trips generated by TNCs, the IS/MND underestimates the Project's transportation impact.

D. The IS/MND Fails to Establish a Baseline for Hazardous Substances.

SWAPE, an environmental consulting firm, reviewed the IS/MND. SWAPE's comment letter is attached as Exhibit C and their findings are summarized in the following sections.

SWAPE notes that the Phase I Environmental Site Assessment ("Phase I Assessment") prepared for the Project site in 2014 identified an 8,000 gallon oil underground storage tank ("UST"), and three USTs associated with a gas station formerly located at the site. SWAPE, p. 1. According to the Phase I, the 8,000-gallon UST was removed in 1988.

However, SWAPE points out that there is no record of removal of the three gas station USTs cite in the Phase I. SWAPE, pp. 1-2. Instead, there is only a vague statement that:

An Application for Permit; Abandonment by Removal Fire Department-City of Los Angeles, was also reviewed as part of our previous assessment, which discussed the removal of one waste oil UST and two gasoline USTs, dated June 8, 1988.

While the application for removal is cited in the Phase I, there is no documentation of the actual removal of the three USTs. References to the gas station USTs in the Phase I use uncertain language. For example:

It is suspected that these USTs were related to the gas & oil station noted on the 1961 Sanborn Map.

It should also be noted that based on our regulatory review, the Subject [Project site] was identified as a registered storage tank site featuring a "inactive" regulatory status for two previous onsite "regulated unleaded" USTs. These gasoline USTs are suspected to be associated with the removal of the aforementioned gasoline USTs noted in the permit.

Without documentation of removal of the USTs, the Phase I fails to confirm the presence or absence of the USTs at the Project site. *Id.* SWAPE concludes that a Phase II is necessary to identify the presence or absence of the USTs and to conduct soil and soil vapor sampling. Without this information, the IS/MND fails to establish a baseline set of environmental conditions against which environmental impact can be evaluated.

It is well-established that CEQA requires analysis of toxic soil contamination that may be disturbed by a Project, and that the effects of this disturbance on human health and the environment must be analyzed. CEQA requires a finding that a project has a "significant effect on the environment" if "the environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly." (PRC §21083(b)(3).) As the Court of Appeal has stated, "[a] new project located in an area that will expose its occupants to preexisting dangerous pollutants can be said to have substantial adverse effect on human beings."

(*Cal. Building Industry Assn. v. Bay Area Air Quality Mgm't Dist.* (2013) 218 Cal.App.4th 1171 (*CBIA v. BAAQMD*)). The existence of toxic soil contamination at a project site is a significant impact requiring review and mitigation in an EIR. (*McQueen v. Bd. of Dirs.* (1988) 202 Cal.App.3d 1136, 1149; *Assoc. For A Cleaner Env't v. Yosemite Comm. College Dist.* (2004) 116 Cal.App.4th 629 (*ACE v. Yosemite*)). This mitigation may not be deferred until a future time after Project approval. (*Sundstrom v. County of Mendocino* (1988) 202 Cal. App. 3d 296, 306; *Citizens for Responsible Equitable Env't'l Dev. v. City of Chula Vista* (2011) 197 Cal.App.4th 327, 330-31 (*CREED*)).

The City must thoroughly investigate the site and prepare an EIR to adequately analyze and mitigate the potential impact of USTs at the Project site.

E. The IS/MND Relied on Unsubstantiated Input Parameters to Estimate Project Emissions and Thus Failed to Adequately Analyze the Project's Air Quality Impacts.

The IS/MND 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 for 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 unsubstantiated or inconsistent with information provided in the IS/MND. This results in an underestimation of the Project's emissions. As a result, the Project may have a significant air quality impacts and an EIR is required to properly analyze these potential impacts.

1. The IS/MND uses an incorrect construction schedule.

According to the IS/MND, the Project's building construction period for Tower 1 and 2 would each be 19 months, with Tower 1 construction starting in June 2022, and Tower 2 construction starting in June 2024. IS/MND, p. A-15, Table A-8. When combined with 2 months of site prep and 3 months of grading, this amounts to a total of 43-months of active construction. However, the CalEEMod output files show that the model included a construction schedule that lasted 48 months, rather than 43 months, and failed to include the five-month break between construction of Tower 1 and Tower 2. SWAPE, p. 4. According to the "User Entered Comments & Non-Default Data" table, the justification for this was "consultant assumptions." IS/MND, App. C, pp. 1, 31, 66. This does not justify the inconsistency between the model and the information provided in the IS/MND. SWAPE, p. 5.

SWAPE explains that "[b]y spreading out construction emissions over a 48-month period, rather than the 43-month period indicated by the IS/MND, maximum daily emissions associated with construction are artificially reduced." *Id.* Because the construction schedule used in the CalEEMod model is incorrect, the model underestimates the Project's construction-related emissions.

2. The IS/MND underestimated the number of hauling trips during site preparation and grading.

The CalEEMod output files indicate that several of the hauling, vendor, and worker trips were manually altered from their default values. SWAPE, p. 5. According to the “User Entered Comments & Non-Default Data” table, the justification for this was “Developer information.” IS/MND, App. C, pp. 2, 32, 67. No information is provided to justify these changes. The Traffic Study provides an estimate of *peak daily* trips for each construction phase, but does not provide the *total* number of hauling, vendor, and worker trips for each phase, which is what was changed in the model.

In addition, the Traffic Study estimates a maximum daily number of hauling trips of one. As a result, the CalEEMod model should have included *at least* one hauling trip for construction. Yet the CalEEMod output files demonstrate that the model failed to include any hauling trips for construction. SWAPE, p. 6. The model is therefore inconsistent with the model. *Id.*

The number of worker, hauling, and vendor trips and the associated vehicle miles traveled (“VMT”) are used by CalEEMod to determine the exhaust emissions associated with the vehicle use and fugitive dust emissions. SWAPE, p. 6. “[B]y failing to include the correct number of hauling, vendor, and worker trips, the model underestimates the Project’s construction-related emissions and should not be relied upon to determine Project significance.” *Id.*

3. The IS/MND made unsubstantiated changes to acres of grading in the CalEEMod model.

The amount of grading included in the CalEEMod model was manually reduced for different phases from 33 to 2.33 acres and from 30 to zero acres. SWAPE, p. 7. According to the “User Entered Comments & Non-Default Data” table, the justification for this was “Developer information.” But nothing in the IS/MND provides evidence to justify these reductions. The number of acres to be graded in the CalEEMod model is used to calculate fugitive dust emissions associated with dozers, graders, scrapers, and haul trucks. *Id.* By under reporting the acres of grading required as part of construction, the model underestimates construction-related emissions.

4. The IS/MND relied on unsubstantiated construction mitigation measures.

The CalEEMod output files show that the model included the following construction-related mitigation measures: “Replace Ground Cover,” “Water Exposed Area,” and “Clean Paved Roads.” SWAPE, p. 7 (citing Appendix C, pp. 8-9, 39, 73-74). The model also included a 46% reduction in particulate matter emissions as a result of cleaning paved roads. *Id.* (citing Appendix C, pp. 2, 32, 67). The “User Entered Comments & Non-Default Data” provided the following justification: “Assumes SCAQMD Rule 403 control efficiencies.” *Id.*

The IS/MND explains:

[I]t is mandatory for all construction projects in the Basin to comply with SCAQMD Rule 403 for Fugitive Dust. Rule 403 control requirements include measures to prevent the generation of visible dust plumes. Measures include, but are not limited to, applying water and/or soil binders to uncovered areas, reestablishing ground cover as quickly as possible, utilizing a wheel washing system or other control measures to remove bulk material from tires and vehicle undercarriages before vehicles exit the Project Site, and maintaining effective cover over exposed areas. Compliance with Rule 403 would reduce regional PM_{2.5} and PM₁₀ emissions associated with construction activities by approximately 61 percent.

IS/MND, p. B-41(emphasis added).

Accordingly, the Project has the option to either apply water and/or soil binders but has not committed to either or both. Moreover, Rule 403 fails to justify the 46% reduction in particulate matter as a result of “clean paved roads.” Without evidence that this equates to a mitigation measure that is mandatory and enforceable, the reduction is not supported by substantial evidence and should not be included in the model.

5. The IS/MND relied on an unsubstantiated number of daily trips.

The IS/MND includes a 25% “transit credit” for both retail and multifamily housing trip generation. IS/MND, App. K-1, pp. 24, Table 4. According to the Traffic Study, this reduction credit was based on the 2016 Los Angeles Department of Transportation’s (“LADOT”) “Traffic Study Policies and Procedures.” *Id.* Reliance on this document is misplaced. As SWAPE points out, this document was replaced by the City in 2019 with the LADOT’s “Transportation Assessment Guidelines (“TAG”). SWAPE, p. 3. The TAG now provides that “LADOT, **at its discretion, may allow up to** a 25% transit/walk trip generation reduction” applied “**on a case by case basis.**” *Id.* SWAPE reviewed the Traffic Study and found no verification of or permission to rely on the 25% reduction by LADOT. *Id.* Without this information, the IS/MND errs in relying on the 25% transit reduction credit, and the Project’s traffic counts may be underestimated.

F. The IS/MND Failed to Adequately Evaluate Health Risks from Diesel Particulate Matter Emissions

1. The IS/MND lacks substantial evidence to support its finding that the Project’s emissions will not cause a significant health impact.

The IS/MND concludes that the health risk impact from diesel particulate matter related to Project construction and operation will be less than significant. In making this finding, the IS/MND does not conduct a quantified a health risk assessment (“HRA”) for Project construction or operation. SWAPE, p. 8. The IS/MND attempts to justify this by stating:

Because there is such a short-term exposure period, construction TAC emissions would result in a less-than significant impact. Therefore, construction of the Project would not expose sensitive receptors to substantial diesel PM concentrations, and this impact would be less than significant.

IS/MND, p. B-46. The IS/MND explains the omission of an operational HRA as follows:

[T]he SCAQMD recommends that health risk assessments be conducted for substantial sources of diesel particulate emissions (e.g., truck stops and warehouse distribution facilities) and has provided guidance for analyzing mobile source diesel emissions.[48] The Project would not generate a substantial number of truck trips since it would not be a truck stop or distribution center. Based on the limited activity of TAC sources, the Project would not warrant the need for a health risk assessment associated with on-site activities. Therefore, Project impacts would be less than significant.

IS/MND p. B-48.

The IS/MND's failure to conduct an operational HRA is inconsistent with the approach recommended by the California Office of Environmental Health Hazard Assessment ("OEHHA"). SWAPE, p. 10. OEHHA 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. These recommendations reflect the most recent health risk assessment policy.

Rather than preparing an HRA, the IS/MND relies on a Localized Significance Threshold ("LST") methodology to support its finding that the Project will not have a significant health risk impact. Reliance on the LST methodology is incorrect. As the SCAQMD guidance on the LST explains, the LST methodology only evaluates impact from criteria pollutants (NO_x, CO, PM₁₀, and PM_{2.5}). SWAPE, p. 9. Toxic air contaminants ("TACs") such as diesel particulate matter ("DPM") are not criteria pollutants. *Id.* By relying on the LST analysis, the IS/MND failed to analyze TAC exposure as a result Project construction and operation. Without this information, the City lacks substantial evidence to support the IS/MND's conclusion that the Project will not have a significant health risk impact.

2. SWAPE conducted a screening-level health risk assessment that indicates a significant health risk impact.

SWAPE prepared a screening-level HRA to evaluate potential impacts from Project construction and operation. SWAPE used AERSCREEN, the leading screening-level air quality

dispersion model. SWAPE, p. 11. SWAPE used a sensitive receptor distance of 100 meters¹ and analyzed impacts to individuals at different stages of life based on OEHHA and SCAQMD guidance utilizing age sensitivity factors. SWAPE, pp. 11-14.

SWAPE found that the excess cancer risk for adults, children, and infants at a sensitive receptor located approximately 100 meters away over the course of Project construction and operation are approximately 12, 99, and 43 in one million, respectively. SWAPE, p. 14. Moreover, the excess lifetime cancer risk over the course of a Project operation is approximately 160 in one million. *Id.*) The risks to adults, children, infants, and lifetime residents appreciably exceed the SCAQMD's threshold of 10 in one million.² SWAPE's analysis constitutes substantial evidence that the Project may have a significant health impact as a result of diesel particulate emissions. The City must prepare an EIR with a more refined HRA that is representative of site conditions in order to evaluate the Project's health risk impact and to include suitable mitigation measures.

G. Contrary to the IS/MND's Conclusion, the Project Will Have a Significant GHG Impact.

1. The IS/MND's GHG analysis violates CEQA.

The IS/MND concludes that the Project's GHG impact would be less than significant as a result of consistency with CARB's Climate Change Scoping Plan., SCAG's 2016-2040 TRP/SCS, the City's LA Green Plan, and the City's Sustainable City pLAn. IS/MND, p. B-111. Specifically, the IS/MND states,

[G]iven the Project's consistency with State, SCAG, and City GHG emission reduction goals and objectives, the Project is consistent with applicable plans, policies, and regulations adopted for the purpose of reducing the emissions of GHGs. *In the absence of adopted standards and established significance thresholds*, and given this consistency, it is concluded that the Project's incremental contribution to greenhouse gas emissions and their effects on climate change would not be cumulatively considerable.

IS/MND, p. B-139 (emphasis added).

¹ The closest sensitive receptor is located 18 meters from the Project site. However, 100 meters was used in the HRA based on AERSCREEN output files which demonstrate that the maximally exposed receptor is located 100 meters from the Project site. SWAPE, p. 12.

² While OEHHA and SCAQMD recommend using age sensitivity factors in conducting an HRA, even without using age sensitivity factors, the SWAPE determined that the excess cancer risks would exceed the threshold of significance. SWAPE, p. 14. The excess cancer risk posed to adults and children would be 12 and 33 in one million, while the excess lifetime cancer risk over the course of a Project operation would be 49 in one million. *Id.*

The IS/MND's justifications and conclusion that the Project's GHG impacts are less-than-significant violate CEQA for several reasons.

First, none of these regulatory plans meet the criteria for an officially adopted GHG reduction program, commonly referred to as a Climate Action Plan ("CAP"), for use as a threshold of significance for GHG emissions. SWAPE, pp. 15-16. As CEQA Guideline section 15064.4(b)(3) makes clear, a qualified CAP "must be adopted by the relevant public agency through a public review process," and, as explained by CEQA Guideline section 15183.5(b)(1), the CAP should include:

- (1) **Inventory:** Quantify GHG emissions, both existing and projected over a specified time period, resulting from activities (e.g., projects) within a defined geographic area (e.g., lead agency jurisdiction);
- (2) **Establish GHG Reduction Goal:** Establish a level, based on substantial evidence, below which the contribution to GHG emissions from activities covered by the plan would not be cumulatively considerable;
- (3) **Analyze Project Types:** Identify and analyze the GHG emissions resulting from specific actions or categories of actions anticipated within the geographic area;
- (4) **Craft Performance Based Mitigation Measures:** Specify measures or a group of measures, including performance standards, that substantial evidence demonstrates, if implemented on a project-by-project basis, would collectively achieve the specified emissions level;
- (5) **Monitoring:** Establish a mechanism to monitor the CAP progress toward achieving said level and to require amendment if the plan is not achieving specified levels; and

Here, the IS/MND fails to demonstrate that CARB's Climate Change Scoping Plan., SCAG's 2016-2040 TRP/SCS, the City's LA Green Plan, or the City's Sustainable City pLAn include the above-listed requirements to be considered a qualified CAP for the City. As such, the IS/MND leaves an analytical gap and fails to demonstrate that compliance with said plans can be used for project-level significance determination. *Id.*

Second, reliance on these plans is misplaced because the plans are either not directly applicable to the Project, are outdated, or the Project is not consistent with the plan at all. For example, consistency with the LA Green Plan is misplaced because the LA Green Plan does not include project-level measures. Instead, the mitigation measures in the plan are primarily city-level actions. SWAPE, p. 16. Similarly, reliance on the Sustainable City pLAn cannot be relied on because it is out of date and has been superseded by the LA Green New Deal. SWAPE, p. 18. In addition, while the IS/MND claims that the Project is consistent with CARB's Scoping Plan or SCAG's 2016-2040 RTP/SCS, SWAPE found dozens of inconsistencies between the Project and the plans. SWAPE, pp. 19-32. These inconsistencies must be analyzed and remedies in an EIR.

Moreover, 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.)

2. The Project will have a significant GHG impact.

Since the IS/MND improperly relies entirely on consistency with CARB’s Climate Change Scoping Plan., SCAG’s 2016-2040 TRP/SCS, the City’s LA Green Plan, and the City’s Sustainable City pLAN to determine GHG impact significance, the IS/MND fails to compare the Project’s GHG emissions to the correct SCAQMD thresholds.

SCAQMD has interim thresholds that the City should have compared the Project’s GHG emissions to. SWAPE, p. 32. When compared to the thresholds, even when relying on the IS/MND’s incorrect and unsubstantiated CalEEMod model, the Project would result in a significant GHG impact. The IS/MND’s CalEEMod output files demonstrate that the Project’s mitigated emissions include approximately 8,699 MT CO₂e/year (amortized construction and operational emissions). This far exceeds the SCAQMD 3,000 MT CO₂e/year mixed-use development threshold. SWAPE, p. 36. These exceedances are even greater when SWAPE updated the CalEEMod model to correct the above-identified deficiencies. *Id.* at 37. SWAPE’s updated model shows the Project will emit 9,502.4 MT CO₂e/year. *Id.*

SWAPE Annual Greenhouse Gas Emissions	
Project Phase	Proposed Project (MT CO ₂ e/year)
Construction (amortized over 30 years)	255.6
Area	11.1
Energy	4,530.7
Mobile	3,968.9
Waste	190.1
Water	546.0
Total	9,502.4
Threshold	3,000
Exceed?	Yes

Because the project threshold is exceeded, a service population analysis is warranted. *Id.* SWAPE found that, dividing the Project’s GHG emission by its service population of 1,88-people means that the Project would emit approximately 4.63 MT CO₂e/SP/year, which exceeds the SCAQMD 2035 efficiency target of 3.0 of MT CO₂e/SP/year. *Id.* at 36-37. SWAPE’s updated CalEEMod model reveals an even greater service population efficiency of 5.05 MT CO₂e/SP/year.

SWAPE Service Population Efficiency Analysis	
Project Phase	Proposed Project (MT CO₂e/yr)
Total	9502.37
Service Population	1880.00
Service Population Efficiency	5.05
Threshold	3.00
Exceed?	Yes

SWAPE’s comments constitute substantial evidence that the Project may have a significant greenhouse gas impact. This impact must be fully analyzed and mitigated in an EIR. SWAPE’s comments include a number of mitigation measures available to reduce the Project’s GHG emissions, and these should all be considered by the City.

H. The Project Lacks Sufficient Affordable Housing in Conflict with Ballot Measure JJJ.

Only 5% (32 units) of the Project’s 640 units will be set aside for affordable housing. IS/MND, p. B-174. All 32 of the affordable housing units will be considered Moderate Income housing, using the State’s level of affordability and Los Angeles Housing Community Investment Department’s schedule of rents. Not a single unit being made available for Low Income, Very Low Income, or Extremely Low-Income tenants. This lack of affordable housing units violates Measure JJJ.

Measure JJJ, as codified at Los Angeles Municipal Code (“LAMC”) section 11.5.11, was approved by Los Angeles voters on November 8, 2016 and became effective on December 13, 2016. The residential affordability requirements of Measure JJJ apply to projects with ten or more residential units which seek: (1) a discretionary General Plan Amendment; (2) any zone change or height-district change that results in increased allowable residential floor area, density, or height; or (3) a residential use where such use was not allowed previously. (LAMC § 11.5.11(a).)

Pursuant to Measure JJJ, “Rental Projects” which satisfy at least one of the above provisions must provide the following:

- (i) No less than the affordability percentage corresponding to the level of density increase as provided in California Government Code Section 65915(f), inclusive of any Replacement Units; or
- (ii) If the General Plan amendment, zone change or height district change results in a residential density increase greater than 35%, then the Project shall provide no less than 5% of the total units at rents affordable to Extremely Low Income households, and either 6% of the total units at

- rents affordable to Very Low Income households or 15% of the total units at rents affordable to Lower Income households, inclusive of any Replacement Units; or
- (iii) If the General Plan amendment, zone change or height district change allows a residential use where not previously allowed, then the Project shall provide no less than 5% of the total units at rents affordable to Extremely Low Income households, and either 11% of the total units at rents affordable to Very Low Income households or 20% of the total units at rents affordable to Lower Income households, inclusive of any Replacement Units. (LAMC § 11.5.11(a)(1).)

Measure JJJ also contains alternative compliance options under which a project can satisfy Measure JJJ's affordability provisions without providing affordable units on-site. These alternative compliance options are (1) construction of affordable units off-site, (2) acquiring property containing "At-Risk Affordable Units," or (3) payment of an in-lieu fee. (LAMC § 11.5.11(b).)

The Project site's General Plan land use designation is currently Regional Center Commercial. The lots that make up the Project site are zoned PB-2, and P-2, which are for parking buildings and surface or underground parking. Residential units are not permitted in PB-2 or P-2 zones. The Project proposes to rezone the entire Project site to C4, which is a commercial zone that may include R4 uses, which include multiple dwelling residential uses. Since the Project will have ten or more residential units and is seeking a zone change that results in increased allowable residential floor area, Measure JJJ applies. LAMC § 11.5.11(a). Specifically, the zone change will allow a residential use where not previously allowed. As a result, "the Project shall provide no less than 5% of the total units at rents affordable to Extremely Low Income households, and either 11% of the total units at rents affordable to Very Low Income households or 20% of the total units at rents affordable to Lower Income households, inclusive of any Replacement Units." LAMC § 11.5.11(a)(1). The Project does not meet the requirements of Measure JJJ because it will only provide 5% of total units at rents affordable to Moderate Income households. The Project must be revised to comply with the affordable housing requirements of Measure JJJ.

IV. CONCLUSION

In light of the above comments, the City must prepare an EIR for the Project and the draft EIR should be circulated for public review and comment in accordance with CEQA. Thank you for considering these comments.

Sincerely,



Rebecca L. Davis
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