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Via E-Mail

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Current Planning Division
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**Re: 11469 Jefferson Boulevard Project MND
P2019-0194-SPR; P2019-0194-CUP; P2019-0194-AUP**

Dear Ms. Edwards and the Current Planning Division of Culver City:

I am writing on behalf of the **Supporters Alliance for Environmental Responsibility ("SAFER")** regarding the Mitigated Negative Declaration ("MND") prepared for the 11469 Jefferson Boulevard Project ("Project") (P2019-0194-SPR; P2019-0194-CUP; P2019-0194-AUP) in the City of Culver City ("City"). SAFER is a California nonprofit public benefit corporation whose purposes include contributing to the preservation and enhancement of the environment and advocating for programs, policies, and development projects that promote not only good jobs but also a healthy natural environment and working environment.

After reviewing the MND, it is clear that there is a "fair argument" that the Project may have unmitigated adverse environmental impacts. The written expert comments of Francis Offermann, Certified Industrial Hygienist, and SWAPE (attached hereto as Exhibit A and Exhibit B, respectively), as well as the comments below, identify substantial evidence of a fair argument that the Project may have significant environmental impacts. Accordingly, an environmental impact report ("EIR") is required to analyze these impacts and to propose all feasible mitigation measures to reduce those impacts. We urge the City to refrain from approving the MND, and instead to prepare an EIR for the Project prior to any Project approvals as required by CEQA.

I. PROJECT BACKGROUND

The Project would redevelop a 33,813 square foot (sf) (0.78-acre) property located in the northwest corner of the intersection at Jefferson Boulevard and Slauson Avenue. The existing single-story commercial (retail/restaurant) building and associated asphalt-paved surface parking lot would be removed as part of the Project.

The Project Site is currently improved with an approximately 13,000 sf main single-story, wood-framed commercial shopping center which includes both retail and restaurant uses. The remainder of the site consists of an asphalt-paved surface parking lot and ornamental landscaped areas. Ingress/egress to the Project Site is available via a driveway from Jefferson Boulevard and a driveway from Slauson Avenue.

The Project includes the development of a new, five-story, 175-room boutique hotel building with food and beverage amenities and a two level, below-grade parking garage. A pool and roof top bar would be located on the fifth floor. The 111,000 sf building would be up to 56 feet in height (with the elevator shaft reaching 69 feet and 6 inches in height) and surrounded by landscaped areas located on site and within the public right of way. Parking for the proposed uses would be provided on site within a subterranean parking structure that would accommodate a minimum of 138 parking spaces.

The Project Site is located at the south-end of the commercial corridor that runs along Jefferson Boulevard perpendicular to Interstate 405 (I-405) freeway within the Fox Hills area of Culver City. Downtown Los Angeles is approximately eight (8) miles east of the Project Site. The Project Site is bounded by the intersection at Jefferson Boulevard and Slauson Avenue with commercial uses directly north of the Project Site and a public alley adjacent to the western Project boundary with residential uses just beyond the alley. Commercial uses are also located east and south of the Project Site across Jefferson Boulevard and Slauson Avenue. Both the I-405 and State Route 90 (SR-90) freeways are located less than 400 feet west and south of the Project Site.

II. LEGAL STANDARD

As the California Supreme Court held, “[i]f no EIR has been prepared for a nonexempt project, but substantial evidence in the record supports a fair argument that the project may result in significant adverse impacts, the proper remedy is to order preparation of an EIR.” (*Communities for a Better Env’t v. South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 319-320 (*CBE v. SCAQMD*) [citing *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 88; *Brentwood Assn. for No Drilling, Inc. v. City of Los Angeles* (1982) 134 Cal.App.3d 491, 504–505.].) “Significant environmental effect” is defined very broadly as “a substantial or potentially substantial adverse change in the environment.” (Pub. Res. Code [“PRC”] § 21068; see also 14 CCR § 15382.) An effect on the environment need not be “momentous” to meet the CEQA test for significance; it is enough that the impacts are “not trivial.” (*No Oil, Inc., supra*, 13 Cal.3d at 83.) “The ‘foremost principle’ in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.” (*Communities for a Better Env’t v. Cal. Res. Agency* (2002) 103 Cal.App.4th 98, 109 (*CBE v. CRA*).)

The EIR is the very heart of CEQA. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1214 (*Bakersfield Citizens*); *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 927.) The EIR is an “environmental ‘alarm bell’ whose purpose is to alert the public and its responsible officials to environmental changes before

they have reached the ecological points of no return.” (*Bakersfield Citizens, supra*, 124 Cal.App.4th at 1220.) The EIR also functions as a “document of accountability,” intended to “demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action.” (*Laurel Heights Improvements Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 392.) The EIR process “protects not only the environment but also informed self-government.” (*Pocket Protectors, supra*, 124 Cal.App.4th at 927.)

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

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

The “fair argument” standard is virtually the opposite of the typical deferential standard accorded to agencies. As a leading CEQA treatise explains:

This ‘fair argument’ standard is very different from the standard normally followed by public agencies in making administrative determinations. Ordinarily, 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. 273-74.) The Courts have explained that "it is a question of law, not fact, whether a fair argument exists, and the courts owe no deference to the lead agency's determination. Review is de novo, with a preference for resolving doubts in favor of environmental review." (*Pocket Protectors*, *supra*, 124 Cal.App.4th at 928.)

III. DISCUSSION

A. Substantial Expert Evidence Establishes a Fair Argument that the Project's Indoor Air Quality Will Have a Significant Impact on Human Health Due to Formaldehyde Emissions.

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

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

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

Mr. Offermann states that future employees of the hotel will be exposed to a cancer risk from formaldehyde of approximately 17.7 per million, *even assuming that* all materials are compliant with the California Air Resources Board's formaldehyde airborne toxics control measure. (Ex. A, p. 4.) This exceeds SCAQMD's CEQA significance thresholds for airborne cancer risk of 10 per million. (*Id.*)

Mr. Offermann concludes that these significant environmental impacts must be analyzed in an EIR and mitigation measures should be imposed to reduce the risk of formaldehyde exposure. (Ex. A, pp. 5, 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. 5-9.) Mr. Offermann also suggests several feasible mitigation measures, such as requiring the use of no-added-formaldehyde composite wood products, which are readily available. (*Id.*, pp. 11-13.) Mr. Offermann also suggests requiring air ventilation systems which would reduce formaldehyde levels. (*Id.*) Since the MND does not analyze this impact at all, none of these or other mitigation measures have been considered.

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

The failure of the MND to address the Project's formaldehyde emissions is contrary to the California Supreme Court's decision in *California Building Industry Ass'n v. Bay Area Air Quality Mgmt. Dist.* (2015) 62 Cal.4th 369, 386 ("*CBLA*"). 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 *CBLA* 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 an EIR which discloses and analyzes the health risks that the Project's formaldehyde emissions may have on future residents and identifies appropriate mitigation measures.

B. The MND Relies on Unsubstantiated Input Parameters to Estimate Project Emissions and Thus Fails to Provide Substantial Evidence of the Project's Air Quality Impacts.

Matt Hagemann, P.G., C.Hg., and Paul E. Rosenfeld, Ph.D., of the Soil/Water/Air Protection Enterprise ("SWAPE") reviewed the air quality analysis in the MND. SWAPE's comment letter and CVs are attached as Exhibit B and their findings are summarized below.

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

1. The MND's air quality model improperly reduced the default CO₂ intensity factor.

SWAPE's review of the Project's CalEEMod output files found that the CO₂ intensity factor was manually reduced by approximately 28%, from the default value of 702.44 pounds per megawatt hour ("lbs/MWh") to 509.22 lbs/MWh. (Ex. B, p. 3.) The "User Entered Comments & Non-Default Data" section attempted to justify these changes by stating: "CO₂e intensity factor was linearly projected for year 2022 anticipated RPS based on SB 100 target of 44% RPS by 12/31/2024 projected and from SCE contract with the CPUC to have 41.4% RPS by 2020" (MND, Appendix A, pp. 489, 539).

SWAPE found that the alteration to the CO₂ intensity factor was unjustified for two reasons: "First, the IS/MND cannot simply interpolate its own CO₂ intensity factor based on estimates of future increases in renewable energy use. Second, simply because the state has renewable energy goals for 2024 does not ensure that these goals will be achieved locally on the Project site or by the Project's specific utility company. As a result, we cannot verify the revised CO₂ intensity factor." (Ex. B, p. 3.) SWAPE concluded that the unsubstantiated reduction to the default CO₂ intensity factor may underestimate the Project's GHG emissions and, therefore, cannot be relied upon to determine Project's impacts. (Ex. B, p. 4.)

2. The MND's air quality model underestimated the Project's land use size for parking.

SWAPE's review of the Project's CalEEMod output files found that the air model underestimated the proposed parking space by 22,483 sf. (Ex. B, p. 4.) According to the MND, the Project proposes to provide 56,300 sf of subterranean parking but the air model includes only

33,817 sf of parking space. (*Id.*) SWAPE concluded that the model may therefore underestimate the Project's construction-related and operational emissions and cannot be relied upon to determine Project significance. (*Id.*)

3. The MND's air quality model failed to model all proposed land uses.

SWAPE's review of the Project's CalEEMod output files found that the air model failed to model the Project's 3,313 sf of restaurant space and 700 sf of fitness space. (Ex. B, pp. 4-5.) SWAPE found that the model failed to distinguish between the Project's hotel land use and restaurant/fitness land use (*Id.* at p. 5.) SWAPE explained that "CalEEMod includes 63 different land use types that are each assigned a distinctive set of energy usage emission factors" and that "each land use type includes a specific trip rate that CalEEMod uses to calculate mobile-source emissions." (*Id.*) SWAPE concluded that the model may therefore underestimate the Project's construction-related and operational emissions and cannot not be relied upon to determine Project impacts. (*Id.* at pp. 5-6.)

4. The MND's air quality model made unsubstantiated changes to individual construction phase lengths.

SWAPE's review of the Project's CalEEMod output files found that the air model made unsubstantiated changes to individual construction phase lengths. (Ex. B, p. 6.) The specific changes made were:

- the demolition phase was increased by approximately 430%, from the default of 10 to 53 days;
- the grading phase was increased by approximately 3,650%, from the default of 2 to 75 days;
- the building construction phases were collectively increased by approximately 84%, from the cumulative default value of 300 to 553 days;
- the paving phase was increased by approximately 120%, from the default value of 5 to 11 days; and
- the architectural coating phase was increased by 1,440%, from the default value of 5 to 77 days.

(*Id.*)

According to the "User Entered Comments and Non-Default Data" table, the justification provided for these changes is: "see construction assumptions" (MND, Appendix A, pp. 82, 115). However, as noted by SWAPE, the MND and associated documents provide no "construction assumptions," as purported by the "User Entered Comments and Non-Default Data" table. (Ex. B, p. 7.)

Additionally, for the changes to construction-related inputs, the MND's Air Quality Technical Report ("AQ Technical Report") explained that "[t]he input values used in this analysis were adjusted to be Project-specific based on equipment types and the construction schedule" and that "[d]etailed construction equipment lists, construction scheduling, and emissions calculations are provided in Appendix A." (AQ Technical Report, pp. 41-42.)

However, as noted by SWAPE, Appendix A of the AQ Technical Report does not include fail a detailed construction schedule, as purported by the AQ Technical Report. (Ex. B, p. 7.)

Lastly, regarding the construction schedule, the AQ Technical Report states, “This analysis assumes construction of the Project is estimated to require up to 26 months, starting as early as the second quarter of 2020.” (AQ Technical Report, p. 42.) However, as noted by SWAPE, the AQ Technical Report only indicates that the total construction period is estimated as 26 months but says nothing about the individual construction phase lengths. (Ex. B, p. 7.)

SWAPE concluded that the MND may underestimate the Project’s construction-related emissions because of unsubstantiated changes to the default individual construction phase lengths and, therefore, cannot be relied upon to determine Project impacts. (Ex. B, p. 8.)

5. The MND’s air quality model improperly altered the number of construction days per week without justification.

SWAPE’s review of the Project’s CalEEMod output files found that the Project’s number of construction days per week was manually changed from the CalEEMod default. (Ex. B, p. 8.) SWAPE found that the “User Entered Comments & Non-Default Data” table (located in Appendix A of the MND) states “see construction assumptions” (MND, Appendix A, pp. 82, 115). However, the MND and associated documents fail to provide any “construction assumptions” pertaining to the number of days a week for construction (*Id.*) As such, SWAPE concludes that the MND may underestimate the Project’s construction-related emissions and should not be relied upon to determine Project’s impacts. (Ex. B, p. 9.)

6. The MND’s air quality model made unsubstantiated changes to off-road equipment unit amounts and usage hours.

SWAPE’s review of the Project’s CalEEMod output files found that the Project’s off-road equipment unit amounts and usage hours were manually changed from the CalEEMod defaults. (Ex. B, p. 9.)

According to the “User Entered Comments and Non-Default Data” table, the justification provided for these changes is: “see construction assumptions” (MND, Appendix A, pp. 82, 115). However, as noted by SWAPE, the MND and associated documents provide no “construction assumptions,” as purported by the “User Entered Comments and Non-Default Data” table. (Ex. B, p. 10.)

Furthermore, for the changes to construction-related inputs, the MND’s Air Quality Technical Report (“AQ Technical Report”) explained that “[t]he input values used in this analysis were adjusted to be Project-specific based on equipment types and the construction schedule” and that “[d]etailed construction equipment lists, construction scheduling, and emissions calculations are provided in Appendix A.” (AQ Technical Report, pp. 41-42.)

However, as noted by SWAPE, Appendix A of the AQ Technical Report does not include fail a detailed construction schedule, as purported by the AQ Technical Report. (Ex. B, p. 10.)

SWAPE concluded that the MND may underestimate the Project's emissions because of unsubstantiated changes to the Project's off-road construction equipment unit amounts and usage hours and, therefore, cannot be relied upon to determine Project impacts. (Ex. B, p. 8.)

7. The MND's air quality model failed to model all required material export.

SWAPE's review of the Project's CalEEMod output files found that the MND's air model underestimated the amount of required material export by 12,524 cubic yards (cy). (Ex. B, p. 10. According to the AQ Technical Report, "[t]he Project would export approximately 43,836 cubic yards of soil during grading and excavation activities" (AQ Technical Report, p. 42.) However, as SWAPE notes, the model included only 31,312 cy of material export rather than 43,836 cy. (Ex. B, p. 10.) SWAPE concluded that the MND may underestimate the Project's emissions by failing to model all the required material export and, therefore, cannot be relied upon to determine Project impacts. (Ex. B, p. 10.)

8. The MND's air quality model made unsubstantiated reductions to hauling, worker, and vendor trip numbers.

SWAPE's review of the Project's CalEEMod output files found that the MND's air model made unsubstantiated reductions to hauling, worker, and vendor trip numbers. (Ex. B, p. 10.) Specifically, the hauling, worker, and vendor trip numbers were reduced to zero. (*Id.* at p. 11.)

SWAPE found that the MND and associated documents failed to provide a source or any calculations explaining how the trip numbers were derived. (Ex. B, p. 11-12.) By failing to provide this information, the MND fails to provide substantial evidence to justify the modifications to the CalEEMod defaults. (*Id.* at 12.) SWAPE also found that the MND and associated documents failed to provide the total on-road construction-related emissions for hauling, vendor, and worker trips, or demonstrate how the on-road construction-related emissions were summed with the construction-related emissions estimated in CalEEMod. (*Id.*)

SWAPE concluded that the MND may underestimate the Project's emissions by including unsubstantiated changes to the default hauling, vendor, and worker construction trips, and, therefore, cannot be relied upon to determine Project impacts. (Ex. B, p. 10.)

9. The MND's air quality model made unsubstantiated changes to the Project's operational vehicle fleet mix.

SWAPE's review of the Project's CalEEMod output files found that the MND's air model made several changes to the default operational vehicle fleet mix percentages. (Ex. B, 13.) However, no justification for the modifications was given and the MND and associated documents do not mention any revised operational vehicle fleet mix percentages. (*Id.* at 14.)

SWAPE concluded that the model may underestimate the Project's mobile-source operational emissions and cannot be relied upon to determine Project significance. (*Id.*)

10. The MND's air quality model made unsubstantiated changes to operational vehicle emission factors.

SWAPE's review of the Project's CalEEMod output files found that the MND's air model made several changes to the default operational vehicle emission factors. (Ex. B, 15.) According to the "User Entered Comments and Non-Default Data" table, the justification provided for these changes is: "Updated to EMFAC2017 EFs" (MND, Appendix A, pp. 489, 539). As explained by SWAPE, EMFAC refers to an entire database, not a specific set of vehicle emission factors. (Ex. B, p. 15.) The MND did not specify which input parameters were used to obtain the vehicle emission factors nor provide the revised vehicle emission factors themselves. (*Id.*) Because the vehicle emission factors are used to calculate the Project's operational emissions associated with on-road vehicles, the model may underestimate the Project's mobile-source operational emissions by including several unsubstantiated changes to the default operational vehicle emission factors and, therefore, cannot be relied upon to determine Project significance. (*Id.*)

11. The MND's air quality model improperly included construction-related mitigation measures.

SWAPE's review of the Project's CalEEMod output files found that the MND assumed that the Project will implement construction-related mitigation measures, including a 15 miles per hour (mph) vehicle speed. (Ex. B, p. 15.) However, as explained by SWAPE, with the exception of Tier 4 Final engines, the "User Entered Comments & Non-Default Data" fails to justify the inclusion of the other construction-related mitigation measures. (*Id.* at p. 16.)

For the 15 mph speed limit, SWAPE noted that although the MND claimed that the Project would comply with SCAQMD regulations for controlling fugitive dust pursuant to SCAQMD Rule 403, SCAQMD Rule 403 does not require a 15 mph speed limit. (Ex. B, p. 16.) Pursuant to SCAQMD Rule 403, the Project may either water unpaved roads 3 times per day, water unpaved roads 1 time per day and limit vehicle speeds to 15 mph, *or* apply a chemical stabilizer. (*Id.* at p. 17.) Therefore, SCAQMD Rule 403 does not explicitly require any of the measures included in the CalEEMod model. (*Id.*)

SWAPE concluded that the MND may underestimate the Project's emissions by including several construction-related mitigation measures without properly committing to their implementation and enforcement, and, therefore, cannot be relied upon to determine Project impacts. (Ex. B, p. 17.)

C. Substantial Expert Evidence Establishes a Fair Argument That the Project Will Have Significant Emissions of ROG/VOC and NOx.

In an effort to accurately determine the proposed Project's construction and operational

emissions, SWAPE prepared an updated CalEEMod model that includes more site-specific information and correct input parameters, as provided by the MND. (Ex. B, p. 17.) SWAPE's model included all proposed land use types and sizes as described by the MND; corrected the amount of material export; omitted the unsubstantiated changes to the individual construction phase lengths, off-road construction equipment unit amounts and usage hours, construction trip numbers, operational vehicle emission factors, and operational vehicle fleet mix percentages; and excluded the unsubstantiated construction-related mitigation measures. (*Id.*)

SWAPE's updated model found that the ROG/VOC and NO_x emissions associated with Project construction exceed the 75- and 100-pounds per day ("lbs/day") thresholds set by the SCAQMD, respectively. (Ex. B, p. 17.)

SWAPE's updated model demonstrates that when the Project's construction and operational emissions are estimated based on site-specific information provided in the MND, the Project would result in a potentially significant air quality impact that was not previously identified or addressed in the MND. As such, the City must prepare an EIR to include an updated air pollution model to properly estimate the Project's construction and operational emissions and incorporate mitigation to reduce these emissions to a less than significant level.

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

Based on based on a quantified construction health risk assessment ("HRA") and a localized significance ("LST") analysis, the MND concluded that the Project would have a less-than-significant health risk impact. (Ex. B, p. 18.) However, SWAPE's review of the MND found that MND's evaluation of the Project's potential health risk impacts and the less-than-significant impact conclusion were improper. (*Id.*)

First, SWAPE notes that, as discussed above, the MND's HRA relied on a flawed air model and therefore underestimated PM₁₀ emissions. (Ex. B, p. 18.) By using an inaccurate PM₁₀ value, the HRA underestimated the diesel particulate matter ("DPM") concentration to calculate the cancer risk associated with Project construction. (*Id.* at p. 19.) Therefore, the MND underestimated the Project's construction-related cancer risk and cannot be relied upon to determine Project impacts. (*Id.*)

Second, SWAPE disputes the MND's conclusion that operational health risks would be less-than-significant because the Project would not "generate a substantial number of daily truck trips." (Ex. B, p. 19.) However, the MND stated that Project operation would generate 1,463 new daily vehicle trips, which, according to SWAPE, would result in additional exhaust emissions and continue to expose nearby sensitive receptors to DPM emissions. (*Id.*) The MND makes no effort to connect the Project's operational TAC emissions to the potential health risks posed to nearby receptors, and, therefore, should not conclude that the Project's operational health risk impact would be less than significant. (*Id.*)

Third, SWAPE found that the MND's omission of a quantified operational HRA is

inconsistent with the most recent guidance published by the Office of Environmental Health Hazard Assessment (“OEHHA”). (Ex. B, p. 19.) OEHHA recommends that exposure from projects lasting more than 6 months be evaluated for the duration of the project and recommends that an exposure duration of 30 years be used to estimate individual cancer risk. (*Id.*) SWAPE concluded that the MND should include an operational HRA to evaluate health risk impacts with a 30-year exposure duration. (*Id.*)

Fourth, SWAPE found that the MND failed to evaluate the cumulative lifetime cancer risk to nearby, existing receptors as a result of Project construction *and* operation together. (Ex. B, p. 19.) SWAPE concluded that, per OEHHA Guidance, the Project’s combined construction and operational cancer risks must be quantified and compared to the SCAQMD threshold 10 in one million. (*Id.*)

Lastly, SWAPE found that the MND improperly concluded that the Project’s PM_{2.5} and PM₁₀ emissions would not exceed LSTs. (Ex. B, p. 20.) SWAPE’s review of the CalEEMod output files demonstrates that the PM₁₀ and PM_{2.5} emissions associated with Project construction exceed the 1- and 2-lbs/day LSTs set by the SCAQMD, respectively. (*Id.*) Therefore, the MND’s claim that emissions associated with Project construction would not exceed the applicable SCAQMD LSTs is incorrect and cannot be relied upon.

E. Substantial Expert Evidence Establishes a Fair Argument that the Project May Have a Significant Impact on Human Health from Diesel Particulate Matter

SWAPE prepared a screening-level HRA to evaluate potential impacts from the construction and operation of the Project. (Ex. B, p. 21.) SWAPE used AERSCREEN, the leading screening-level air quality dispersion model. (*Id.*) SWAPE used a sensitive receptor distance of 25 meters and analyzed impacts to individuals at different stages of life based on OEHHA and SCAQMD guidance. (Ex. B, pp. 22-13.)

SWAPE found that the excess cancer risk for adults, children, and infants, at the closest sensitive receptor located approximately 25 meters away, over the course of Project construction and operation, are approximately 16, 150, and 17 in one million, respectively. (Ex. B, p. 23.) SWAPE found that the excess cancer risk over the course of a residential lifetime is approximately **180 in one million**. (*Id.*)

These values appreciably exceed the SCAQMD’s threshold of 10 in one million. SWAPE’s HRA constitutes a “fair argument” that the Project will have significant impacts on human health. As such, the City must prepare an EIR to properly evaluate the Project’s health risk impact.

E. The MND Fails to Adequately Assess Greenhouse Gas Impacts

SWAPE concluded that the MND failed to adequately analyze the Project’s greenhouse gas (“GHG”) impacts. (Ex. B, p. 24.) Although the MND calculated the Project’s annual GHG

emissions as 1,537 metric tons of carbon dioxide equivalents per year (“MT CO₂e/yr”), the MND failed to compare the Project’s emissions to any objective threshold. (*Id.* at pp. 24, 27.) Furthermore, the MND’s calculation for 1,537 MT CO₂e/yr was based on an inaccurate air model, as discussed above, and likely underestimated. (*Id.* at p. 26.) However, assuming that the Project’s 1,537 MT CO₂e/yr is accurate, the Project exceeds the proper threshold of 2.6 MT CO₂e/SP/year. (*Id.* at pp. 27-28.) SWAPE concluded that the exceedance of this threshold results in a significant GHG impact not previously identified or addressed by the MND. (*Id.* at p. 28.) Therefore, an EIR must be prepared and mitigation must be implemented where necessary. SWAPE provided several mitigation measures that could be implemented to mitigate the Project’s significant GHG impact. (*Id.* at pp. 32-39.)

Additionally, the MND relied upon the Project’s consistency with the CARB’s Scoping Plan, SCAG’s RTP/SCS, the City’s energy efficiency policies, and the City’s Green Building Code in order to conclude that the Project would have a less-than-significant GHG impact. (Ex. B, p. 25.)

However, these regulatory plans do not 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. (Ex. B, p. 26.) 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 MND fails to demonstrate that the CARB’s Scoping Plan, SCAG’s RTP/SCS, the City’s energy efficiency policies, and the City’s Green Building Code include the above-listed requirements to be considered a qualified CAP for the City. Furthermore, the MND failed to consider performance-based standards under CARB’s Scoping Plan (Ex. B, pp. 28-30) and SCAG’s RTP/SCS (*id.* at pp. 30-32). As such, the MND leaves an analytical gap and fails to demonstrate that compliance with said plans can be used for project-level significance determination. (Ex. B, p. 27.)

F. The MND's Mitigation for Hazards and Hazardous Materials is Inadequate.

In order to mitigate the Project's significant impacts related to hazardous materials, the MND required MM-HAZ-1. MM-HAZ-1 requires a qualified environmental consultant to prepare a Soil Management and Remediation Plan and "[u]pon completion of the Soil Management and Remediation Plan, the Applicant shall contact the LARWQCB to obtain a closure letter that states no further soils testing or remediation is required on the Project Site." (MND, p. B-50.) However, the MND fails to disclose that MND the recent status of the site in Geotracker, which concludes there are two impediments to closure: (1) free product in groundwater; and (2) threat for vapor intrusion. (Ex. B, p. 2.) Without disclosing and accounting for these impediments to closure, the MND fails to provide substantial evidence that MM-HAZ-1 would reduce the Project's impacts to a less-than-significant level.

SWAPE also noted that MND failed to disclose contamination on the Project site because the extent of contamination is not known. (Ex. B, p. 2.) As a result, the MND failed to identify impacts of remediation because: "(1) an informed estimate of the amount of soil to be excavated has not been made, therefore construction impacts for excavation and truck trips for proper disposal have not been estimated; and (2) magnitude of groundwater plume and vapor intrusion impacts have not been determined – these will result in impacts including construction and operation emissions associated with groundwater investigations, well drilling, and groundwater pumping and treatment system installation and operation." (*Id.*) Without disclosing and accounting for the extent of contamination and the impacts of remediation, the MND fails to provide substantial evidence Project's impacts related to hazards and hazardous materials are less-than-significant.

IV. CONCLUSION

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

Sincerely,



Brian Flynn
Lozeau | Drury LLP