



T 510.836.4200
F 510.836.4205

1939 Harrison Street, Ste. 150
Oakland, CA 94612

www.lozeaudrury.com
rebecca@lozeaudrury.com

Via Email

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Shawn Landres, Chair
Planning Commission
Community Development Dept.
City of Santa Monica
1685 Main Street, Room 212
Santa Monica, CA 90401
shawn.landres@smgov.net

Jing Yeo, Planning Manager
Community Development Dept.
City of Santa Monica
1685 Main Street, Room 212
Santa Monica, CA 90401
jing.yeo@smgov.net

Rachel Kwok, Environmental Planner
Community Development Dept.
City of Santa Monica
1685 Main Street, Room 212
Santa Monica, CA 90401
rachel.kwok@smgov.net

Denise Anderson-Warren, CMC
City Clerk's Office
City of Santa Monica
1685 Main Street, Room 102
Santa Monica, CA 90407
clerk@smgov.net

**Re: Comment on Final Environmental Impact Report, 1242 20th Street
Wellness Center (SCH 2018011001)**

Dear Commissioner Landres, Honorable Members of the Planning Commission, Ms. Kwok, Ms. Yeo and Ms. Anderson-Warren:

I am writing on behalf of **Supporters Alliance for Environmental Responsibility ("SAFER")**, regarding the Final Environmental Impact Report; ("FEIR") prepared for the Project known as 1242 20th Street Wellness Center (SCH #2018011001), including all actions referring or related to the development of approximately 73,555 square feet (sf) of medical research and development (R&D) and clinical/medical office space with five levels of subterranean parking located at 1925 Arizona Avenue and 1242 20th Street, on APNs 4276-013-033 and 4276-013-032 in the City of Santa Monica ("Project").

After reviewing the FEIR, we conclude that the FEIR fails as an informational document, fails to adequately analyze the Project's environmental impacts, and fails to impose all feasible mitigation measures to reduce the Project's impacts. SAFER

requests that the Community Development Department address these shortcomings in a revised environmental impact report ("REIR") and recirculate the REIR prior to considering approvals for the Project.

This comment has been prepared with the assistance of Certified Industrial Hygienist, Francis "Bud" Offermann, PE, CIH (Exhibit A), environmental consulting firm Soil/Water/Air Protection Enterprise ("SWAPE") (Exhibit B), and expert wildlife biologist Dr. Shawn Smallwood (Exhibit C). We incorporate the Offermann, SWAPE, and Smallwood comments herein by reference.

I. Project Description.

The applicant is proposing to demolish a 4-car garage, two two-story structures, and a surface parking lot to develop a 73,555 square foot medical research and development and clinical/medical office space within a "Wellness Center" located at 1925 Arizona Avenue and 1242 20th Street in the City of Santa Monica. This would include construction of a 3-story building and construction of "support areas" including terraces and utility support/elevator spaces, and five levels of subterranean parking. The parking garage would include 275 parking spaces and a mix of operational and storage spaces for R&D uses, trash and recycling rooms, bicycle parking and storage, EV charging spaces, employee locker and shower facilities, and maintenance functions.

II. Legal Background.

CEQA requires that an agency analyze the potential environmental impacts of its proposed actions in an environmental impact report ("EIR") (except in certain limited circumstances). See, e.g. Pub. Res. Code § 21100. The EIR is the very heart of CEQA. *Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652. "The 'foremost principle' in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." *Communities for a Better Environment v. Calif. Resources Agency* (2002) 103 Cal. App. 4th 98, 109.

CEQA has two primary purposes. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project. 14 Cal. Code Regs. ("CEQA Guidelines") § 15002(a)(1). "Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR 'protects not only the environment but also informed self-government.'" *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564. The EIR has been described as "an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return." *Berkeley Keep Jets Over the*

Bay v. Bd. of Port Comm'rs. (2001) 91 Cal. App. 4th 1344, 1354 (“*Berkeley Jets*”);
County of Inyo v. Yorty (1973) 32 Cal.App.3d 795, 810.

Second, CEQA requires public agencies to avoid or reduce environmental damage when “feasible” by requiring “environmentally superior” alternatives and all feasible mitigation measures. CEQA Guidelines § 15002(a)(2) and (3); *see also*, *Berkeley Jets*, 91 Cal.App.4th at pp. 1344, 1354; *Citizens of Goleta Valley*, 52 Cal.3d at 564. The EIR serves to provide agencies and the public with information about the environmental impacts of a proposed project and to “identify ways that environmental damage can be avoided or significantly reduced.” CEQA Guidelines §15002(a)(2). If the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has “eliminated or substantially lessened all significant effects on the environment where feasible” and that any unavoidable significant effects on the environment are “acceptable due to overriding concerns.” Pub. Res. Code § 21081; 14 Cal.Code Regs. § 15092(b)(2)(A) & (B). The lead agency may deem a particular impact to be insignificant only if it produces rigorous analysis and concrete substantial evidence justifying the finding. *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 732.

While the courts review an EIR using an “abuse of discretion” standard, “the reviewing court is not to ‘uncritically rely on every study or analysis presented by a project proponent in support of its position. A ‘clearly inadequate or unsupported study is entitled to no judicial deference.’” *Berkeley Jets*, 91 Cal. App. 4th at p. 1355 (emphasis added) (quoting *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal. 3d 376, 391 409, fn. 12). As the court stated in *Berkeley Jets*:

A prejudicial abuse of discretion occurs “if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process.” (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 722; *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal. App. 4th 1109, 1117; *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal. App. 4th 931, 946.)

More recently, the California Supreme Court has emphasized that:

When reviewing whether a discussion is sufficient to satisfy CEQA, a court must be satisfied that the EIR (1) includes sufficient detail to enable those who did not participate in its preparation to understand and to consider meaningfully the issues the proposed project raises [citation omitted], and (2) makes a reasonable effort to substantively connect a project's air quality impacts to likely health consequences.

Sierra Club v. Cty. of Fresno (2018) 6 Cal.5th 502, 510 (2018), citing *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 405.

“Whether or not the alleged inadequacy is the complete omission of a required discussion or a patently inadequate one-paragraph discussion devoid of analysis, the reviewing court must decide whether the EIR serves its purpose as an informational document.” *Sierra Club v. Cty. of Fresno*, 6 Cal.5th at 516. Although an agency has discretion to decide the manner of discussing potentially significant effects in an EIR, “a reviewing court must determine whether the discussion of a potentially significant effect is sufficient or insufficient, i.e., whether the EIR comports with its intended function of including ‘detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.’” 6 Cal.5th at 516, citing *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1197. “The determination whether a discussion is sufficient is not solely a matter of discerning whether there is substantial evidence to support the agency’s factual conclusions.” 6 Cal.5th at 516. Whether a discussion of a potential impact is sufficient “presents a mixed question of law and fact. As such, it is generally subject to independent review. However, underlying factual determinations—including, for example, an agency’s decision as to which methodologies to employ for analyzing an environmental effect—may warrant deference.” *Sierra Club v. Cty. of Fresno*, 6 Cal.5th at 516. As the Court emphasized:

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

Sierra Club v. Cty. of Fresno, 6 Cal.5th at 514. We find that the FEIR prepared by the City here is inadequate for the reasons set forth below.

III. DISCUSSION

A. The FEIR Fails to Provide Comparative Data to Support Its Rejection of one of the Project Alternatives.

An EIR must describe a range of reasonable alternatives to the Project, or to the location of the Project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. Section 15126.6(b) of the CEQA Guidelines states:

Because an EIR must identify ways to mitigate or avoid the significant effects that a project may have on the environment, the discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or

substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of project objectives, or would be more costly.

One of CEQA's fundamental requirements is that the DEIR must identify the "environmentally superior alternative," and require implementation of that alternative unless it is infeasible. 14 Cal.Code Regs. §1526.6(e)(2); Kostka & Zischke, *Practice Under the California Environmental Quality Act* §15.37 (Cont. Educ. Of the Bar, 2008). As explained by the Supreme Court, an environmentally superior alternative may not be rejected simply because it is more expensive or less profitable:

The fact that an alternative may be more expensive or less profitable is not sufficient to show that the alternative is financially infeasible. What is required is evidence that the additional costs or lost profitability are sufficiently severe as to render it impractical to proceed with the project.

Citizens of Goleta Valley v. Bd. of Supervisors (1988) 197 Cal.App.3d 1167, 1180-81; see also, *Burger v. County of Mendocino* (1975) 45 Cal.App.3d 322 (county's approval of 80 unit hotel over smaller 64 unit alternative was not supported by substantial evidence).

The FEIR's conclusion that Alternative 4 is infeasible simply because it does not meet economic objectives falls short of CEQA requirements. In *Save Round Valley Alliance v. County of Inyo*, the County asserted three reasons in its FEIR for its rejection of an environmentally superior alternative. Relevant here, one of the reasons was that the project proponent "could not expect to achieve the same economic objectives" with the alternative. (2007) 157 Cal.App.4th 1437, 1459. The Court found that this explanation fell short of CEQA requirements because it reflected a "misunderstanding regarding the economic feasibility of an alternative." *Id.* at 1461. The Court went on to state:

Although the "economic viability" of an alternative is a relevant consideration in evaluating the feasibility of the alternative (see Guidelines, § 15126.6, subd. (f)(1)), the fact that Walters cannot achieve the *same* economic objective from developing the BLM property is not determinative. The issue is not whether the alternative is less profitable than the project as proposed, but whether the reduced profitability of the alternative is "sufficiently severe as to render it impractical to proceed with the project." []

Id. Further, the Court stated that "there is no evidence or analysis whatsoever of the comparative costs or profitability of developing the two parcels." *Id.* at 1462. The EIR "include[d] only the barest of facts regarding the BLM parcel, vague and unsupported conclusions about aesthetics, views, and economic objectives, and no independent

analysis whatsoever of relevant considerations. In this respect, the County failed to proceed in the manner required by law.” *Id.* at 1465.

Here, the FEIR states only that Alternative 4 “would not fully meet the economic objectives of the proposed project.” FEIR, p. 6-55. Under the standard set forth by *Save Round Valley*, this is an inadequate analysis of the alternative, and does not constitute substantial evidence that Alternative 4 is infeasible.

B. There is Substantial Evidence 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 (October 14, 2021) (Exhibit A). Mr. Offermann concludes that it is likely that the Project will expose commercial employees 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. Mr. Offermann’s expert comments and curriculum vitae are attached as Exhibit A.

Mr. Offermann explains that many composite wood products used in building materials and furnishings commonly found in offices, warehouses, residences, and hotels contain formaldehyde-based glues which off-gas formaldehyde over a very long time period. He states, “[t]he 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.” Ex. A, p. 2-3.

Formaldehyde is a known human carcinogen. Mr. Offermann states that future commercial employees of the Project would be exposed to a 17.7 in one million risk, assuming all materials are compliant with the California Air Resources Board’s formaldehyde airborne toxics control measure. *Id.* at 4. This potential exposure level exceeds the South Coast Air Quality Management District’s (“SCAQMD”) CEQA significance threshold for airborne cancer risk of 10 per million. *Id.*

Mr. Offermann concludes that these significant environmental impacts should be analyzed in the 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 11.

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 employees, Mr. Offermann identifies the investigatory path that the City should be following in developing an EIR to more precisely evaluate the Project's future formaldehyde emissions and establishing mitigation measures that reduce the cancer risk below the BAAQMD level. *Id.* at 5-9. 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. Commercial employees will be users of the Project. 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” 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 future employees of the

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

The City's EIR must disclose and mitigate the potential environmental impacts to future users of the building.

C. There is Substantial Evidence that the Project Will Have Significant Adverse Air Quality, Health Risk, and Greenhouse Gas Impacts.

1. The FEIR Relied on Unsubstantiated Input Parameters to Estimate Project Emissions and Thus the Project May Result in Significant Air Quality Impacts.

Matt Hagemann, P.G., C.Hg., and Dr. Paul E. Rosenfeld, Ph.D., of the environmental consulting firm SWAPE reviewed the FEIR's analysis of the Project's impacts on air quality, health risk, and greenhouse gases. SWAPE's comment letter and CVs are attached as Exhibit B and their comments are briefly summarized here.

SWAPE found that the FEIR incorrectly estimated the Project's construction and operational emissions and therefore cannot be relied upon to determine the significance of the Project's impacts on local and regional air quality. The FEIR relies on emissions calculated from the California Emissions Estimator Version CalEEMod.2016.3.2 ("CalEEMod"). FEIR, p. 4.2-30. This model, which is used to generate a project's construction and operational emissions, relies on recommended default values based on site specific information related to a number of factors. Ex. B, p. 1. CEQA requires any changes to the default values to be justified by substantial evidence. *Id.* at 1-2.

SWAPE reviewed the FEIR's CalEEMod output files and found that the values input into the model were inconsistent with information provided in the FEIR. Ex. B, p. 2. As a result, the FEIR's air quality analysis cannot be relied upon to determine the Project's emissions.

Specifically, SWAPE found that the following values used in the FEIR's air quality analysis were either inconsistent with information provided in the FEIR or otherwise unjustified:

1. Unsubstantiated Reduction to Acres of Grading Value. Ex. B, p. 2.
2. Unsubstantiated Off-Road Construction Equipment Usage Hours. Ex. B, p. 3.
3. Failure to Substantiate Demolition and Reduction to Number of Demolition Hauling Trips. Ex. B, p. 5.
4. Unsubstantiated Worker and Vendor Trip Numbers. Ex. B, p. 6.
5. Failure to Model Material Export. Ex. B, p. 8.

As a result of these errors in the FEIR, the Project's construction and operational emissions were underestimated and cannot be relied upon to determine the significance of the Project's air quality impacts.

2. There is Substantial Evidence that the Project May Have a Significant Health Impact as a Result of Diesel Particulate Emissions.

One of the primary emissions of concern regarding health effects for land development projects is diesel particulate matter ("DPM"), which can be released during Project construction and operation. DPM consists of fine particles with a diameter less than 2.5 micrometers including a subgroup of ultrafine particles (with a diameter less than 0.1 micrometers). Diesel exhaust also contains a variety of harmful gases and cancer-causing substances. Exposure to DPM is a recognized health hazard, particularly to children whose lungs are still developing and the elderly who may have other serious health problems. According to the California Air Resources Board ("CARB"), DPM exposure may lead to the following adverse health effects: aggravated asthma; chronic bronchitis; increased respiratory and cardiovascular hospitalizations; decreased lung function in children; lung cancer; and premature deaths for those with heart or lung disease.¹

The FEIR concluded that the mitigated excess cancer risk posed by the Project to nearby sensitive receptors would not exceed the SCAQMD significance threshold of 10 in one million, and that the Project would result in a less-than-significant operational health risk impact because of a low number of daily truck trips and compliance with CARB regulations. Ex. B, p. 9; FEIR, p. 4.2-48. SWAPE identifies four main reasons for why the FEIR's evaluation of health risk impacts and less-than-significant conclusion is incorrect.

First, the FEIR's construction HRA is incorrect due to the inputting of several incorrect values into the CalEEMod output files. Ex. B, p. 9. The FEIR's HRA uses an underestimated DPM concentration, and therefore underestimates the Project's cancer risk and cannot be relied upon to determine impacts of the Project. *Id.*

Second, because the FEIR did not prepare a quantified operational HRA, it fails to quantitatively evaluate operational toxic air contaminants ("TACs"). Ex. B, p. 9. In failing to connect TAC emissions to potential health risks to nearby receptors, the Project fails to meet the CEQA requirement that projects correlate increases in project-generated emissions to adverse impacts on human health caused by those emissions. Ex. B, p. 10; *See Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 510.

¹ See CARB Resources - Overview: Diesel Exhaust & Health, available at <https://ww2.arb.ca.gov/resources/overview-diesel-exhaust-and-health>).

Third, the California Department of Justice recommends the preparation of a quantitative HRA pursuant to the Office of Environmental Health Hazard Assessment ("OEHHA"), the organization responsible for providing guidance on conducting HRAs in California, as well as local air district guidelines. OEHHA released its most recent guidance document in 2015 describing which types of projects warrant preparation of an HRA. See "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, *available at*: http://oehha.ca.gov/air/hot_spots/hotspots2015.html. The OEHHA document recommends that if a project is expected to last over 6 months, the exposure should be evaluated throughout the project using a 30-year exposure duration to estimate individual cancer risks. Ex. B, p. 10. Based on its extensive experience, SWAPE reasonably assumes that the Project will last at least 30 years, and therefore recommends that health risk impacts from the project be evaluated. *Id.* A Revised EIR is therefore required to analyze these impacts.

Fourth, the FEIR fails to evaluate the "cumulative lifetime cancer risk to nearby, existing receptors as a result of Project construction and operation *together*." Ex. B, p. 10 (emphasis in original). A Revised EIR should be prepared to quantify the cumulative excess cancer risk posed by the Project's construction and operation to nearby, existing receptors, and compare it to the SCAQMD threshold of 10 in one million. *Id.*

SWAPE prepared a screening-level HRA to evaluate potential impacts from Project construction using AERSCREEN, a screening-level air quality dispersion model. Ex. B, p. 11. SWAPE applied a sensitive receptor distance of 50 meters and analyzed impacts to individuals at different stages of life based on OEHHA and SCAQMD guidance utilizing age sensitivity factors. *Id.* at 11-14.

SWAPE found that the excess cancer risks at a sensitive receptor located approximately 50 meters away over the course of Project construction are approximately 12.5 in one million for infants and 69.1 in one million for children. *Id.* at 13. Moreover, **the excess lifetime cancer risk over the course of Project construction and operation of 30 years is approximately 96.5 in one million.** *Id.* The risks to infants, children, and lifetime residents exceed SCAQMD's threshold of 10 in one million.

SWAPE's analysis constitutes substantial evidence that the Project may have a significant health impact as a result of diesel particulate emissions. SWAPE recommends that "an updated EIR [] be prepared and include an updated, quantified air pollution model as well as an updated, quantified refined HRA which adequately and accurately evaluates health risk impacts associate with both Project construction and operation." Ex. B, p. 13-14.

3. The FEIR Failed to Adequately Analyze the Project's Greenhouse Gas Impacts and Thus the Project May Result in Significant Greenhouse Gas Emissions.

The FEIR estimates that the Project would generate net annual GHG emissions of 1,147.12 metric tons of carbon dioxide equivalent per year ("MT CO₂e/year"). However, it does not compare those emissions to a threshold, instead relying on the Project's consistency with CARB's Climate Change Scoping Plan, SCAG's 2020-2045 RTP/SCS, and the City of Santa Monica's LUCE, Sustainable City Plan, Green Building and Energy Code, and Climate Action and Adaptation Plan. Ex. B, p. 14. However, SWAPE states that the FEIR's conclusion about a less-than-significant greenhouse gas impact is incorrect for several reasons:

- The FEIR's quantitative GHG analysis relies upon an incorrect and unsubstantiated air model;
- The FEIR's unsubstantiated air model indicates a potentially significant impact;
- The FEIR fails to consider the performance-based standards under CARB's *Scoping Plan*; and
- The FEIR fails to consider the performance-based standards under SCAG's RTP/SCS.

SWAPE's analysis demonstrates potentially significant health risk and GHG impacts from the project that necessitate mitigation, and it proposes that the Project's sustainability design features be implemented as formal mitigation measures. In addition to implementing these measures, the Revised EIR should include an updated air quality, health risk, and GHG analysis.

D. The Project Will Have Significant Adverse Biological Impacts That the FEIR Fails to Adequately Analyze and Mitigate.

Shawn Smallwood, Ph.D. reviewed the FEIR's analysis of the Project's biological impacts. Dr. Smallwood's comment letter and CV are attached as Exhibit C and his comments are briefly summarized here.

1. The FEIR is inadequate in its characterization of the existing environmental setting as it relates to wildlife.

Dr. Smallwood visited the site of the Project on October 18, 2021 and performed a reconnaissance level survey of wildlife utilizing the area of the Project. He was accompanied by Noriko Smallwood, a wildlife biologist with an M.S. degree from California State University Los Angeles. Ex. C, p. 1. Dr. Smallwood reconnoitered the area for 114 minutes. *Id.* During that visit, he observed the presence of 18 species of vertebrate wildlife at the Project site, two of which are special-status species. *Id.*, see

Table 1, Ex. C, p. 2. Most of the species he observed relevant to the Project's impacts were bird species. *Id.*

Every CEQA document must start from a "baseline" assumption. The CEQA "baseline" is the set of environmental conditions against which to compare a project's anticipated impacts. *Communities for a Better Env't. v. So. Coast Air Qual. Mgmt. Dist.* (2010) 48 Cal. 4th 310, 321. Unfortunately, the FEIR proponents did not perform a survey for wildlife at the Project site because they claimed that suitable habitat for sensitive species or special-status species did not occur within the city. Ex. C at 6, DEIR at 5-7. Dr. Smallwood states that this erroneous conclusion is based on the FEIR's incorrect determination that "(1) disturbance precludes the occurrence of special-status species, and (2) all special-status species depend solely on natural communities." Ex. C at 6. Contrary to these incorrect assumptions, Dr. Smallwood explains that "many assignments of special status have been to species that occur only in California or whose geographic ranges are small or diminishing," and "many special-status species occur in anthropogenic environments." *Id.* A skewed baseline such as the one used by the City here ultimately "mislead(s) the public" by engendering inaccurate analyses of environmental impacts, mitigation measures and cumulative impacts for biological resources. See *San Joaquin Raptor Rescue Center*, 149 Cal.App.4th 645, 656; *Woodward Park Homeowners*, 150 Cal.App.4th 683, 708-711.

Dr. Smallwood notes that there are multiple databases that would have been useful to determine presence and likelihood of presence, such as eBird and iNaturalist. *Id.* Dr. Smallwood reviewed these databases and found that the Project site "either occurs within the geographic ranges or [] occurs near where others have reported sightings of at least 67 special-status species of wildlife." *Id.* at 6; see Table 2, Ex. C, p. 7-9. Of those species, 33 have been reportedly seen within 1 mile of the Project site. *Id.* The occurrence of special-status species at or near the Project site warrants discussion and analysis in an EIR to ensure that any impacts are mitigated to a less than significant level.

In addition to this failure to fully assess species occurrences, Dr. Smallwood found that the FEIR also relied on the erroneous presumption that impacts to biological resources occurred only to terrestrial habitats, thus overlooking an entire category of species that rely primarily on the aerosphere. Ex. C, p. 6-7. The FEIR neglected to consider this portion of habitat, and as a result, no attention was paid to the impacts the Project will have on avian species from collisions with the building's windows and other structures. A Revised EIR is necessary to consider the species present in the aerosphere at the Project site.

2. The FEIR fails to account for the increased possibility of bird-window collision mortality that will be caused by the project.

According to Dr. Smallwood, the Project will most likely have a significant impact

on birds as a result of window collisions. The City has not analyzed or mitigated these potential impacts to special-status birds.

Dr. Smallwood identifies the now widely-recognized impact of bird collisions with windows and other building structures:

Window collisions are often characterized as either the second or third largest source of human-caused bird mortality. The numbers behind these characterizations are often attributed to Klem's (1990) and Dunn's (1993) estimates of about 100 million to 1 billion bird fatalities in the USA, or more recently Loss et al.'s (2014) estimate of 365-988 million bird fatalities in the USA or Calvert et al.'s (2013) and Machtans et al.'s (2013) estimates of 22.4 million and 25 million bird fatalities in Canada, respectively . . .

Ex. C, p. 11. Dr. Smallwood's site visit confirmed the presence of many bird species that would travel through the Project site's air space. *Id.* He also notes that "many of the special-status species in Table 2 [of his comment] have been documented as window collision fatalities and are therefore susceptible to new structural glass installations." *Id.*

In an effort to assess the scope of the Project's impacts on bird species using the area, Dr. Smallwood has calculated an estimate of the number of bird fatalities that would result from collisions with the Project. Ex. C, p. 11-12. The FEIR provided renderings of the proposed Project's building's facades, which Dr. Smallwood used to estimate the extent of glass that would be used as 579 m². *Id.* at 12. Based on Dr. Smallwood's own data and review of a number of scientific studies, the mean fatality rate of bird deaths per m² of glass per year is 0.073. *Id.* He therefore estimates that the project could result in 42 bird deaths per year, a number which could be up to 3 times higher when accounting for fatalities removed by scavengers or missed by fatality searchers. *Id.* This death rate would continue every year until the structure were either renovated to reduce bird collisions, or was removed. *Id.* He concludes by stating that "[i]f the project moves forward as proposed, and annually kills 42 birds protected by state and federal laws, then the project would cause significant unmitigated impacts." *Id.*

Dr. Smallwood provides detailed information about the types of factors that would contribute to a Project's bird collision risks and available mitigation measures. Ex. C, p. 12-17. He recommends that these factors be used to draft "Bird-Safe Guidelines for City of Santa Monica and [] ought to be used to formulate a bird-safe plan for the proposed project." *Id.* at 12. As it stands, however, "the proposed project's design remains insufficiently described to determine the degree to which the project would contribute to relative collision risk." *Id.* at 15. Dr. Smallwood concludes that key additional information for impacts assessment and mitigation include "intensity and timing of bird traffic, heights above ground, travel trajectories, and specific behaviors of birds in flight." *Id.*

Because this impact was not addressed in the FEIR and Dr. Smallwood has presented substantial evidence of a fair argument that the Project's windows will impact birds, the City must prepare a Revised EIR to analyze and mitigate the impact of window collisions on bird species.

3. The FEIR failed to address the cumulative impacts of past, ongoing, and future projects on wildlife.

The FEIR failed to prepare an analysis of cumulative effects on wildlife, due to its erroneous conclusion that there was no suitable habitat for species on the Project site. Ex. C, p. 17. Based on his observations of the project site, Dr. Smallwood concludes that "bird collision mortality is likely ongoing and of large magnitude, but nobody would know about it in the absence of fatality monitoring." *Id.* He believes that the EIR should be revised "to not only include an analysis of the project's potential impacts to bird mortality, but also of its contribution to cumulative impacts of bird-window collision mortality in the City of Santa Monica," and that these impacts "should be addressed with the formulation of a city ordinance to guide building design, fatality monitoring, and compensatory mitigation." *Id.*

IV. CONCLUSION

For the foregoing reasons, SAFER believes that the EIR is wholly inadequate. SAFER urges the Community Development Department to refrain from recommending certification of the FEIR or recommending approval of the Project in order to allow staff additional time to address the concerns raised herein. Thank you for considering our comments and please include this letter in the record of proceedings for this project.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Rebecca L. Davis', with a long horizontal flourish extending to the right.

Rebecca L. Davis
LOZEAU DRURY LLP