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*Via Email*

February 2, 2022

Mayor Sue Himmelrich and  
Honorable Members of the City  
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**Re: Appeal of Planning Commission Approval of Final Environmental  
Impact Report, 1242 20th Street Wellness Center (SCH 2018011001)  
March 8<sup>th</sup>, 2022 City Council Meeting**

Dear Mayor Himmelrich and Honorable Members of the City Council:

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 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").

The City has prepared a Final Environmental Impact Report ("FEIR") for the Project and the Planning Commission approved it on November 3, 2021. Along with the report for the Planning Commission meeting, the City prepared a Response to Comments ("RTC") which purported to address the issues raised in our November 3 comment letter. We timely filed an appeal to the Commission's decision, and we are sending this rebuttal letter for the City Council's consideration. We request that the City reject the Planning Commission's approval of the FEIR and issue a Revised EIR because the project has significant environmental impacts that have not been fully addressed or mitigated.

This comment is supported by the comments of expert environmental consulting firm Soil/Water/Air Protection Enterprise (“SWAPE”) (Exhibit A), and expert wildlife biologist Dr. Shawn Smallwood (Exhibit B). We incorporate the SWAPE and Smallwood comments herein by reference.

## I. DISCUSSION

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

In our November 3, 2021 comment letter to the City regarding the Project, we stated that it was improper for the City to have rejected Alternative 4 in its FEIR only on the grounds that it did not meet economic objectives. In its RTC, the City first stated that because the Project’s mitigation measures made it so that the Project would not result in significant environmental impacts, no alternative was necessary. (RTC, p.1). The RTC went on to say that despite this, the Project proponents did in fact consider numerous alternatives which served to inform the decision-making process. (*Id.*).

The City is correct in stating that the feasibility of alternatives need not be considered if there are no Project impacts to mitigate. However, while the FEIR prepared by the City did not find significant and unmitigated impacts, our evidence from experts shows that there are significant environmental impacts that have not been mitigated. Specifically, the evidence presented by our experts in our November 3<sup>rd</sup> letter identified air quality, health risk, greenhouse gas, biological resource, and indoor air quality impacts that were not mitigated in the FEIR. While the RTC responded to some of these impacts, the expert rebuttals below demonstrate that the FEIR and RTC still fail to properly mitigate or address these impacts.

The City therefore needed to consider alternatives that would reduce or eliminate these significant environmental impacts. CEQA Guidelines, § 15126.6(b). The EIR found the environmentally superior alternative to be Alternative 3, but then dismissed that alternative on the grounds that it did not meet the project objectives. (DEIR, 6-76). The EIR also found that Alternative 4 would lessen the Project’s environmental impacts, although to a lesser extent than Alternative 3. (*Id.*). Alternative 4, which would adaptively reuse a vacant portion of the existing GKGM building on-site and develop about 33,000 new square feet, would reduce many of the Project’s impacts that experts identified as potentially significant. (FEIR, p. 6-39-6-55). Reduced construction activities associated with Alternative 4 would mean a shorter construction period, leading to less air quality impacts, less construction-generated noise impacts, fewer daily truck trips and less greenhouse gas emissions, and a reduced quantity of hazardous substances. (*Id.* at 6-43-6-46). However, according to the FEIR, Alternative 4 does not “fully meet the economic objectives of the proposed project,” and it was therefore rejected.

This conclusion of infeasibility does not provide the requisite level of detail necessary for an FEIR to adequately fulfill CEQA alternatives requirements. In *Preservation Action Council v. City of San Jose*, the court held that a developer's reasoning for why one of its alternatives was infeasible was overly ambiguous and not based on substantial evidence. ((2006) 141 Cal. App. 4th 1336, 1357). The court found that "[n]either the FEIR nor the administrative record contains any meaningful detail or independent analysis of the validity of [developer's] claim that the reduced-size alternative is infeasible, and the City Council made no specific finding validating that claim." (*Id.*). Similarly, here, the FEIR does not provide any specific information as to why Alternative 4 is economically infeasible, and its rejection of this alternative is therefore inappropriate.

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

SWAPE reviewed the FEIR's analysis of the Project's air quality, health risk, and greenhouse gas impacts and provided comments on November 2, 2021, which were summarized and attached to Lozeau Drury's FEIR comment letter from November 3, 2021. The City responded to SWAPE's comments ahead of its hearing on November 3, 2021. SWAPE reviewed the City's response and provided a rebuttal, which is attached as Exhibit A and summarized here.

**1. SWAPE maintains that the FEIR's CalEEMod model is flawed and fails to adequately evaluate the Project's air quality impacts.**

In its letter from November 2, SWAPE found that "the FEIR's air model . . . artificially reduced the Project's construction and operational emissions." (Ex. A, p. 1). After having reviewed the RTC, SWAPE finds that it fails to address this issue, and therefore maintains that a revised EIR should be prepared. (*Id.*). The revised EIR must correct the FEIR's unsubstantiated input parameters for emissions, which led to an improper analysis of the Project's air quality impacts. (*Id.*).

**2. SWAPE maintains that the FEIR failed to adequately evaluate potential health risk impacts of the Project.**

SWAPE stated in its November 2 letter that the FEIR's less-than-significant conclusions regarding the Project's health risk impact should not be relied upon. (Ex. A, p. 5-6). The RTC responded by stating that the FEIR's construction health risk impact ("HRA") was adequate as presented, and that according to an e-mail from a Planning and Rule Manager with SCAQMD, a project's construction and operational health risks need to be evaluated separately. (*Id.* at 6). In its response letter, SWAPE first states that the RTC fails to justify or correct its initial modeling error for its construction HRA, and that it therefore remains inadequate. (*Id.*). As for the e-mail referenced, as the RTC

did not provide access to the e-mail, SWAPE was unable to verify the RTC's claim and therefore maintains its comment as to how health risks should be quantified. (*Id.*)

**3. The FEIR's and RTC's analyses of greenhouse gas impacts, and subsequent less-than-significant conclusion, are incorrect.**

In its letter from November 2, SWAPE found that the FEIR's analysis of greenhouse gas impacts was inadequate because it failed to compare the Project's estimated emissions to a quantitative threshold. (Ex. A, p. 6). After reviewing the RTC, SWAPE found that the FEIR's and RTC's greenhouse gas analyses and conclusions were still incorrect for two reasons. (*Id.* at 7-8). First, SWAPE states that the FEIR and RTC still did not consider performance-based standards under CARB's 2017 Scoping Plan. (*Id.* at 7). Even if the Project would have a less-than-significant VMT impact, this does not mean that the Project's GHG emissions from per capita VMT can be assumed less than significant, as the RTC claims. (*Id.*). Second, SWAPE finds that the RTC fails to adjust the FEIR's analysis with regard to consistency with SCAG's RTP/SCS, and the GHG analysis therefore remains inadequate. (*Id.* at 7-8).

Because the Project's potential air quality, health risk, and greenhouse gas impacts as identified by SWAPE were not addressed or rebutted in the FEIR nor by the RTC, SWAPE has presented substantial evidence of a fair argument that the Project will cause significant adverse environmental impacts. The City must prepare a Revised EIR to analyze and mitigate these impacts.

**C. 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 and provided comments on October 29, 2021, which were summarized and attached to Lozeau Drury's FEIR comment letter from November 3, 2021. The City responded to Dr. Smallwood's comments ahead of its hearing on November 3, 2021. Dr. Smallwood reviewed the City's response and provided a rebuttal, which is attached as Exhibit B and summarized here.

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

Dr. Smallwood begins by noting that in its response, the City did not dispute his detection of wildlife at the Project site, which included detection of 18 species, two of which were special-status. (Ex. B, p. 1). The City mischaracterized the importance of the presence of these species, writing them off as transient and therefore insignificant. However, Dr. Smallwood found that the City's explanation relied on pseudoscientific characterizations of wildlife habitat, and that species occurring in the City were using urbanized Santa Monica for survival. (*Id.*).

In his comment from October 29, 2021 Dr. Smallwood also noted the many occurrences of species that had arisen on the databases eBird and iNaturalist. In its RTC, the City stated that these occurrences do not establish presence of suitable breeding and foraging habitat, and merely show single, transient occurrences. Dr. Smallwood responds that the City cannot know whether or not these occurrences are important without further study, and it cannot simply determine that they are meaningless based on assumptions and speculation. (Ex. B, p. 2). He also notes that even if a site is not in an animal's territory, it may serve as an important stopover location. (*Id.*).

When evaluating a Project under CEQA, a City must address the questions in Appendix G and determine whether impacts will be significant. Under its biological resources section, Appendix G asks project proponents to identify whether the Project would "[h]ave a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species . . ." Dr. Smallwood's comments constitute substantial evidence that the Project may have a substantial effect on special status species, and this impact must therefore be analyzed in the EIR. The City's failure to analyze this impact at all leaves it without any evidence supporting its conclusion to the contrary. The City must prepare a Revised EIR to analyze and potentially mitigate these impacts.

## **2. The FEIR still 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. In its RTC, the City stated that the Project is in a highly urbanized area and that there are buildings greater in height and surface area than that of the Project. It also stated that the Project would comply with SMMC Section 9.21.120, which prohibits use of highly reflective materials. The City concludes that the bird collision rate estimated by Dr. Smallwood is speculative, and that the construction of a single 3-story structure would not be expected to change flying patterns of bird species in the area such that it would cause increased bird-window collisions.

In response, Dr. Smallwood first notes that the height of a building is not determinative of its impact on birds, and further study is required by the City to assess the way in which birds move through the area in which the Project is proposed to be located. (Ex. B, p. 2). According to his observations, many birds appeared to be targeting the Project site for flying through and stopping over. Next, he stated that even if a quarter of the windows were reflective, as would be allowed under SMMC Section 9.21.120, there would still be a risk of many bird collision fatalities. As for his estimates regarding bird collision rates, Dr. Smallwood explains that they are not speculative, but empirical. His predictions were based on a review of scientific studies published in peer-reviewed scientific journals. (*Id.*).

Because these impacts were not addressed or rebutted in the FEIR nor by the subsequent response from November 3<sup>rd</sup> and Dr. Smallwood has presented substantial evidence of a fair argument that the Project will cause significant adverse biological impacts, the City must prepare a Revised EIR to analyze and mitigate these impacts.

## II. CONCLUSION

For the foregoing reasons, SAFER believes that the EIR is wholly inadequate. SAFER urges the City Council 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 in a Revised EIR. Thank you for considering our comments in this appeal.

Sincerely,

A handwritten signature in black ink, appearing to read "Amalia Bowley Fuentes". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Amalia Bowley Fuentes  
LOZEAU DRURY LLP