



T 510.836.4200  
F 510.836.4205

1939 Harrison Street, Ste. 150  
Oakland, CA 94612

www.lozeaudrury.com  
brian@lozeaudrury.com

April 11, 2022

*Via E-mail*

Ilissa Gold, President  
Maleena Lawrence, Vice President  
Oliver DelGado, Commissioner  
Steve Kang, Commissioner  
Adrienne Lindgren, Commissioner  
Etta Armstrong, Commission Executive Assistant  
Central Los Angeles Area Planning Commission  
200 North Spring St.  
Los Angeles, CA 90012  
apccentral@lacity.org

William Lamborn, City Planner  
221 N. Figueroa St., Room 1350  
Los Angeles, CA 90012  
william.lamborn@lacity.org

**Re: 3rd and Fairfax Mixed-Use Project Appeal;  
Case No. DIR-2018-2770-SPR-WDI-1A;  
CEQA No. ENV-2018-2771-EIR;  
Central Area Planning Commission AGENDA ITEM 8 (April 12, 2022)**

To the Honorable Central Los Angeles Area Planning Commissioners:

This letter is submitted on behalf of **Supporters Alliance for Environmental Responsibility** and its members living in and near the City of Los Angeles (“SAFER”) regarding SAFER’s appeal of the Planning Director’s February 8, 2022 decision regarding the environmental impact report (“EIR”) and site plan review for the 3rd and Fairfax Mixed-Use project (Case No. DIR-2018-2770-SPR-WDI-1A; CEQA No. ENV-2018-2771-EIR) (“Project”) to be heard as Agenda Item 8 at the Central Area Planning Commission meeting on April 12, 2022.

After reviewing the EIR, which includes the Draft EIR (“DEIR”) dated February 11, 2021 and the Final EIR (“FEIR”) dated December 2021, SAFER is concerned that the EIR fails to adequately analyze significant environmental impacts and fails to mitigate significant impacts that will occur as a results of the Project. SAFER requests that the Central Area Planning Commission set aside the Planning Director’s February 8, 2022 decision at this time and direct staff to prepare a revised draft EIR (“RDEIR”) to reconsider the analyses and require additional mitigation measures in order to address the Project’s significant impacts.

This correspondence has been prepared with the assistance of the indoor air quality expert Francis Offermann, PE, CIH and noise expert Deborah Jue of the consulting firm Wilson

Ihrig. The comments of Mr. Offermann and Ms. Jue are attached as Exhibits A and B, respectively. SAFER incorporates by reference all comments raising issues regarding the EIR submitted prior to certification of the EIR for the Project. (*Citizens for Clean Energy v. City of Woodland* (2014) 225 Cal.App.4th 173, 191.)

## PROJECT DESCRIPTION

The Project proposes the construction and operation of a new mixed-use development within the eastern portion of the existing Town & Country Shopping Center (Center or Project Site) that is currently developed with retail and commercial uses. The proposed development activities would be limited to the eastern portion of the Center and would include the demolition of 151,048 square feet of existing retail uses and the construction of a mid-rise, eight-story mixed-use structure with two levels of subterranean parking, for a maximum height of 100 feet. The Project Site includes approximately 327,121 square feet of area (7.51 acres) and is generally bounded by W. 3rd Street to the north, S. Ogden Drive to the east, the Hancock Park Elementary School to the south, and S. Fairfax Avenue to the west.

The residential component of the Project would include up to 331 multi-family dwelling units comprised of 70 studio units, 162 one-bedroom units, 66 two-bedroom units, and 33 three-bedroom units of varying sizes and configurations. The residential units would be located on Level 4 through Level 8, above the proposed commercial/retail spaces and parking podium. The Project would also include residential amenities including, but not limited to, a lobby, mail and parcel area, leasing office, outdoor courtyards, pool deck, and amenity rooms. The Project also includes 83,994 square feet of new commercial space, which would occupy two stories within the mixed-use development located on the portion of the Development Site fronting W. 3rd Street.

## LEGAL STANDARD

CEQA requires that an agency analyze the potential environmental impacts of its proposed actions in an EIR (except in certain limited circumstances). (See, e.g., Pub. Resources 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. Cal. Resources Agency* (2002) 103 Cal.App.4th 98, 109 (*CBE v. CRA*).

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 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.” (14 CCR § 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 CCR § 15092(b)(2)(A) and (B).)

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 1355 [quoting, *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal. 3d 376, 391, 409, n. 12.]) As the court stated in *Berkeley Jets*, 91 Cal.App.4th at 1355:

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]....

(*Sierra Club v. Cty. of Fresno* (2018) 6 Cal.5th 502, 510 (2018) [citing *Laurel Heights Improvement Assn.*, 47 Cal.3d at 405].) The Court in *Sierra Club v. Cty. of Fresno* also emphasized another primary consideration of sufficiency is whether the EIR “makes a reasonable effort to substantively connect a project’s air quality impacts to likely health consequences.” (6 Cal.5th at 510.) “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.” (*Id.* 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.) 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.)

In general, mitigation measures must be designed to minimize, reduce or avoid an identified environmental impact or to rectify or compensate for that impact. (14 CCR § 15370.) Where several mitigation measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified. (14 CCR § 15126.4(a)(1)(B).) A lead agency may not make the required CEQA findings unless the administrative record clearly shows that all uncertainties regarding the mitigation of significant environmental impacts have been resolved.

## DISCUSSION

### **I. The EIR Fails to Address Significant Indoor Air Quality Impacts to Future Residents and Employees.**

The EIR fails to address the significant health risks from emissions of formaldehyde. Certified Industrial Hygienist, Francis Offermann, PE, CIH, has conducted a review of the Project, the EIR, 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 comment, the Project’s emissions of formaldehyde to air will result in very significant cancer risks to future residents of the Project’s residential component and to future employees of the Project’s commercial component. Mr. Offermann’s expert opinion and calculation is substantial evidence 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 EIR. These impacts must be addressed in a RDEIR. Mr. Offermann’s comment is attached as Exhibit A.

Formaldehyde is a known human carcinogen and listed by the State as a TAC. The South Coast Air Quality Management District (“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 EIR 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 found that future residents of the Project’s residential units will be exposed to a cancer risk from formaldehyde of approximately 120 per million, ***even assuming that*** all materials are compliant with the California Air Resources Board’s formaldehyde airborne toxics control measure. (Ex. A, pp. 3-4.) This is more than 12 times SCAQMD’s CEQA significance threshold of 10 per million. (*Id.* at p. 4.)

Mr. Offermann found that future employees of the Project’s commercial spaces 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, pp. 4-5.) This exceeds SCAQMD’s CEQA significance thresholds 10 per million. (*Id.* at p. 5.)

Mr. Offermann concludes that these significant environmental impacts should be analyzed in an EIR and mitigation measures should be imposed to reduce the risk of formaldehyde exposure. (Ex. A, pp. 5, 10-13.) He prescribes a methodology for estimating the Project’s formaldehyde emissions in order to do a more project-specific health risk assessment. (*Id.* at pp. 6-10.). 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.* at pp. 10-13.) Mr. Offermann also suggests requiring air ventilation systems which would reduce formaldehyde levels. (*Id.*) Since the EIR 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 EIR for the Project must address this impact and identify enforceable mitigation measures.

The failure of the EIR 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*). 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 *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, supra*, 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.’” (*CBLA*, 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.*) 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 a RDEIR which discloses and analyzes the health risks that the Project’s formaldehyde emissions may have on future residents and identifies appropriate mitigation measures. Until that occurs, the EIR is insufficient in disclosing this significant impact.

## **II. The EIR Fails to Adequately Disclose and Mitigate the Project’s Significant Noise Impacts.**

Noise expert Deborah Jue of the consulting firm Wilson Ihrig reviewed the EIR’s analysis of the Project’s noise impacts. Ms. Jue’s comment letter is attached as Exhibit B. As discussed below, Ms. Jue concluded that the EIR failed to properly analyze and mitigate the Project’s noise impacts, which the City should address in a RDEIR.

First, the FEIR failed to adequately respond to concerns about the Project’s noise impacts at the adjacent school. (Ex. B, pp. 1-2.) The EIR used a significance threshold of a 5 dBA increase over existing noise for the Project’s construction noise impacts. (DEIR, pp. IV.F-22 through F-23.) However, as noted by Ms. Jue, the 5 dBA increase should be measured against an appropriate standard for school environments rather than general existing sound. (Ex. B, p. 1.) As such, the increase in noise should be measured against the existing exterior noise at the classrooms, which is 39 dBA. (*Id.* at p. 2.) Utilizing a significance threshold of 5 dBA above the existing 39 dBA at the classrooms “would ensure that the construction activities would not cause a significant noise increase within the classroom and cause interference to instructional activities.” (*Id.*) The EIR should be revised to employ this significant threshold to evaluate the Project’s noise impacts on the school.

Second, the EIR failed to disclose the actual distance of the Project’s noise sources to the

nearby school and residences. (Ex. B, p. 2) As Ms. Jue notes, “The distances from the construction activity to the noise sensitive receptors (school and residences) are based on a ‘typical’ distance to each receptor that lies in the center of the project.” (*Id.*) By relying on a “typical” distance, the EIR’s noise analysis overlooks the fact that construction and demolition activities actually occur much closer to the sensitive receptors. Indeed, the EIR’s vibration analysis stated that equipment could operate as close as 15 feet from the school buildings and 280 feet from the nearest residences. (*Id.*) Without updating the EIR’s noise analysis to account for construction noise impacts at those shorter distances, the EIR’s conclusions as to the Project’s impacts are not supported by substantial evidence.

Lastly, the EIR overestimates the efficacy of mitigation measures MM-NOI-1 and MM-NOI-2, which require the construction of 10-foot noise barriers for the school and Ogden Drive. (Ex. B, pp. 2-4; DEIR, p. IV.F-43.) The EIR assumes that the barriers would reduce construction noise by 20 dBA for the school and by 2 -3 dBA for the residences. However, as Ms. Jue explains,

Sound barrier effectiveness is based on how geometry: how close the source and receiver are to the barrier, and how the source and receiver are above the ground. For construction activities close to the barrier the reduction does approach 20 dBA, but where activities are located farther from the barrier and where the receptor is on the second floor, the barrier reduction diminishes noticeably. Since the school includes 2-story structures, in particular Classroom, a 20 ft barrier would have limited effectiveness, especially as the project construction rises to upper floors. (Ex. B, pp. 2-3.)

Taking factors such as distance and height into consideration, Ms. Jue recalculated the Project’s construction noise impacts to the school and La Brea Apartments. (Ex. B, pp. 3-4.) Her analysis demonstrates that when height and distance factors are properly accounted for, the Project’s noise impacts to Classroom 21 (on the second floor of Hancock Park Elementary) and the Park La Brea Apartments remain significant. (*Id.*) As such, the EIR has failed to adequately mitigate the Project’s construction noise impacts and it must be revised to ensure that these impacts are reduced to a less-than-significant level.

### **III. The EIR’s Energy Analysis Is Deficient Because It Fails to Consider Renewable Energy Alternatives.**

When analyzing a project's energy use to determine if it creates significant effects, CEQA requires a discussion of whether any renewable energy features could be incorporated into the project. (*League to Save Lake Tahoe Mountain Area Preservation Foundation v. County of Placer* (2022) 75 Cal.App.5th 63, 167 (*League to Save Lake Tahoe*)). As explained by the CEQA Guidelines, an EIR's analysis of a project's energy use “should include the project's energy use for all project phases and components, including transportation-related energy, during construction and operation. In addition to building code compliance, other relevant considerations may include, among others, the project's size, location, orientation, equipment use



**and any renewable energy features that could be incorporated into the project.”** (14 CCR § 15126.2(b) [emphasis added].) As the Court of Appeal recently explained,

Guidelines section 15126.2, subdivision (b), and Appendix F to the Guidelines thus indicate an EIR should address the project's potential to increase its use of renewable energy sources for at least two purposes. **First, when the EIR analyzes the project's energy use to determine if it creates significant effects, it should discuss whether any renewable energy features could be incorporated into the project.** (Guidelines, § 15126.2, subdivision (b).) The EIR's determination of whether the potential impact is significant is to be based on this discussion. Second, if the EIR concludes the project's impact on energy resources is significant, it should consider mitigating the impact by requiring uses of alternate fuels, particularly renewable ones, if applicable. (Guidelines, Appendix F., II. D. 4.)

(*League to Save Lake Tahoe, supra*, 75 Cal.App.5th at 167 [emphasis added].) Thus, if an EIR does not address whether any renewable energy features can be incorporated into the Project, it did not comply with CEQA. (*Id.*)

The EIR analyzed the Project's energy impacts by evaluating the Project's consistency with adopted energy conservation plans and policies such as Title 24 energy efficiency requirements, CalGreen Code, the L.A. Green Building Code, and the SCAG 2016-2040 RTP/SCS. (DEIR, p. IV.B-17.) However, compliance with state and local regulatory programs is not sufficient to determine that a project will not result in a wasteful or inefficient use of energy. (*League to Save Lake Tahoe, supra*, 75 Cal.App.5th at 165.) The EIR makes no attempt to evaluate how renewable energy features, such as solar panels, could be incorporated into the Project to reduce energy impacts. Without such an analysis, the EIR is legally deficient and must be revised prior to further consideration of the Project.

## CONCLUSION

For the foregoing reasons, SAFER and its members respectfully request that the City take no further action on this Project until a revised EIR addressing the above shortcomings has been prepared and circulated for review. Please include this letter and all attachments hereto in the record of proceedings for this project. Thank you for your attention to this comment.

Sincerely,



Brian Flynn  
Lozeau | Drury LLP

## **Justification/Reason for Appeal**

3rd and Fairfax Mixed-Use Project

DIR-2018-2770-SPR-WDI; ENV-2018-2771-EIR

### **I. REASON FOR THE APPEAL**

The Environmental Impact Report (“EIR”) prepared for the 3rd and Fairfax Mixed-Use Project (DIR-2018-2770-SPR-WDI; ENV-2018-2771-EIR) (“Project”) fails to comply with the California Environmental Quality Act (“CEQA”). Furthermore, the Site Plan Review entitlements (DIR-2018-2770-SPR-WDI) was in error because (1) the City of Los Angeles (“City”) must fully comply with CEQA prior to any approvals in furtherance of the Project and (2) the findings are not supported by substantial evidence. Therefore, the City of Los Angeles (“City”) must set aside the Site Plan Review entitlements and circulate a revised EIR prior to considering approvals for the Project.

### **II. SPECIFICALLY THE POINTS AT ISSUE**

The specific points at issue are set forth in the attached comment letter dated April 11, 2022, and in the expert comment letters attached thereto.

### **III. HOW YOU ARE AGGRIEVED BY THE DECISION**

Members of appellant Supporters Alliance for Environmental Responsibility (“SAFER”) live and/or work in the vicinity of the proposed Project. They breathe the air, suffer traffic congestion, and will suffer other environmental impacts of the Project unless it is properly mitigated.

### **IV. WHY YOU BELIEVE THE DECISION-MAKER ERRED OR ABUSED THEIR DISCRETION**

The Central Los Angeles Area Planning Commission sustained the Planning Director’s determination for the Project dated February 8, 2022, adopted the EIR, and approved a Site Plan Review for the Project despite evidence in the record establishing substantial evidence that the EIR fails to adequately analyze the Project’s environmental impacts and fails to impose all feasible mitigation measures to reduce the Project’s impacts. The Department of City Planning should therefore have prepared a revised EIR and recirculated the revised document prior to consideration of approvals for the Project. The City is not permitted to approve the Project’s Site Plan Review entitlements until the EIR’s deficiencies are remedied.



**APPLICATIONS:**

**APPEAL APPLICATION  
CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)**

**Instructions and Checklist**

**Related Code Section:** The Los Angeles Municipal Code (LAMC) Section 11.5.13 (Ord. No. 186,338) established the appeal procedure to the City Council for California Environmental Quality Act (CEQA) determinations.

**Purpose:** *The Appeal* - A CEQA clearance can only be appealed if a non-elected decision-making body (ZA, APC, CPC, DIR) makes a determination for a project that is not further appealable. To initiate appeal of a CEQA document this form must be completely filled out with the required materials attached and filed within 15 calendar days from the final administrative decision, of the entitlement application.

**General Information**

Appealable CEQA documents:

- Certified Environmental Impact Report (EIR)
- Sustainable Communities Environmental Assessment (SCEA)
- Mitigated Negative Declaration (MND)
- Negative Declaration (ND)
- Categorical Exemption (CE)
- Sustainable Exemption (SE)

**NOTE:**

- Actions not appealable include an addendum, findings made pursuant to CEQA Guidelines Section 15162, or an action in which the determination does not constitute a project under CEQA.
- All CEQA appeals are heard by the City Council.
- This form is only for the appeal of Department of City Planning determinations: All other CEQA appeals are filed with the City Clerk pursuant to the LAMC Section 197.01.
- A Certified Neighborhood Council (CNC) or a person identified as a member of a CNC or as representing the CNC may not file an appeal on behalf of the Neighborhood Council; persons affiliated with a CNC may only file as an individual on behalf of self.

**1. Case Information**

Environmental Case Number: ENV-2018-2771-EIR

Related Entitlement Case Number(s): DIR-2018-2770-SPR-WDI, DIR-2018-2770-SPR-WDI-1A

Project Address: 300-370 South Fairfax Avenue; 6300-6370 West 3rd Street; and 347 South Ogden Drive

Date of Final Entitlement Determination: 05/05/2022

The CEQA Clearance being appealed is a(n):

- EIR       SCEA       MND       ND       CE       SE

**2. Appellant Identity (check all that apply)**

- Representative       Property Owner       Other Person  
 Applicant       Operator of the Use/Site

**3. Appellant Information**

Appellant Name: Supporters Alliance for Environmental Responsibility

Company/Organization: \_\_\_\_\_

Mailing Address: 4399 Santa Anita Ave, Ste 2005

City: El Monte      State: CA      Zip: 91731

Telephone: (510) 836-4200      E-mail: richard@lozeaudrury.com

a. Is the appeal being filed on your behalf or on behalf of another party, organization or company?  
 Self       Other: \_\_\_\_\_

b. Is the appeal being filed to support the original applicant's position?       Yes       No

**4. Representative/Agent Information**


Representative/Agent name (if applicable): Brian Flynn  
 Company: Lozeau Drury LLP  
 Mailing Address: 1939 Harrison Street, Suite 150  
 City: Oakland State: CA Zip: 94612  
 Telephone: (510) 836-4200 E-mail: brian@lozeaudrury.com

**5. Appeal Justification**

Attach a separate sheet providing your specific reasons for the appeal. Your reasons must state how you believe CEQA was incorrectly applied, providing a legal basis for the appeal.

**6. Applicant 's Affidavit**

I certify that the statements contained in this application are complete and true:

Appellant Signature:  Date: May 10, 2022

**ENVIRONMENTAL APPEAL FILING REQUIREMENTS**

Note: City Clerk prepares mailing list for CEQA appeals per LAMC Section 11.5.13 E.

**1. Three (3) sets** - The following documents are required for each appeal filed (1 original and 2 duplicates) Each case being appealed is required to provide three (3) sets of the listed documents.

- Environmental Appeal Application (form CP-7840)
- Justification/Reason for Appeal
- Copies of the written Determination Letter, from the final appellate body, which must be a non-elected decision-making body

**2. Electronic Copy**

- Provide an electronic copy of your appeal documents on a flash drive (planning staff will upload materials during filing and return the flash drive to you) or a CD (which will remain in the file). The following items must be saved as individual PDFs and labeled accordingly (e.g. "Environmental Appeal Application.pdf", "Justification/Reason Statement.pdf", "Final Determination Letter.pdf"). No file should exceed 9.8 MB in size.

**3. Appeal Fee**

- Original Applicant - A fee equal to 85% of the original application fee of the Environmental case; provide a copy of the original application receipt(s) to calculate the fee per LAMC Section 19.01B 1.
- Other Persons - The fee charged shall be in accordance with the LAMC Section 19.01B 1.

This Section for City Planning Staff Use Only		
Base Fee:	Reviewed & Accepted by (DSC Planner):	Date:
Receipt No:	Deemed Complete by (Project Planner):	Date:
<input type="checkbox"/> Determination authority notified	<input type="checkbox"/> Original receipt and BTC receipt (if original applicant)	