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BY E-MAIL

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**Re: Comment on Agenda Item G1 – Appeal of Site Plan and Design Review,
Foothill Center Mixed-Use/Island View Ventures, LLC (DRC2019-00850)**

Dear Mayor Michael, Mayor Pro Tem Kennedy, and Honorable Members of the City Council:

I am writing on behalf of **Supporters Alliance for Environmental Responsibility** (“SAFER”), a California nonprofit corporation, regarding the proposed Foothill Center Mixed-Use development proposed for the southeast corner of Foothill Boulevard and Haven Avenue, located in the City of Rancho Cucamonga (“Project”).

On November 9, 2022, the Planning Commission adopted Resolution No. 22-29 approving design review DRC2021-00200 and finding the Project will have no significant effects on the environment and does not require an environmental impact report (“EIR”) to comply with California Environmental Quality Act (“CEQA”). The Planning Commission’s findings relied in part on a CEQA streamlining provision set forth at 14 C.C.R. [“CEQA Guidelines”] § 15183, which implements Pub. Res. Code § 21083.3 (“Streamlining Provision”). According to the City’s “CEQA Guidelines Section 15183 Compliance Memorandum for the Foothill Center Mixed-Use Project,” (“Compliance Memorandum”) the Streamlining Provision is applicable because the Project is consistent with the development density analyzed for the Project site in the City of Rancho Cucamonga 2021 Genreal Plan Update EIR. While applicable, the Streamlining Provision does not exempt the Project from CEQA, but rather limits the scope of environmental review and the need for an EIR.

Here, the General Plan EIR does not acknowledge or analyze the significant impacts the Project will have on biological resources, including habitat loss, loss of reproductive capacity, impacts on wildlife movement, and impacts on special-status birds as a result of window collisions. In addition, the General Plan EIR does not acknowledge the significant indoor air emissions that will result from the Project. As a result, the City cannot rely on Section 15183 to avoid addressing these potential impacts.

We have reviewed the Project, the General Plan EIR, and the Compliance Memorandum with the assistance of expert ecologist Shawn Smallwood, Ph.D. and Certified Industrial Hygienist Francis Offermann, PE, CIH. Dr. Smallwood's comments and CV are attached hereto as Exhibit A and are incorporated herein by reference. Mr. Offermann's comments and CV are attached hereto as Exhibit B and incorporated herein by reference.

Since the Project will have significant environmental impacts that were not addressed in the 2021 General Plan EIR, SAFER respectfully requests that the City prepare a mitigated negative declaration or an EIR for the Project as required by CEQA.

I. PROJECT DESCRIPTION

The Project is a proposed mixed-used development located on 7.94-acres, including 311 residential units and 16,000 square feet of ground floor retail uses, divided among four buildings, along with associated parking lots, landscaping, and ancillary improvements at 10575 Foothill Boulevard.

II. LEGAL BACKGROUND

When a project is "consistent with the development density established by existing zoning, community plan, or general plan policies for which an EIR was certified..." (14 CCR § 15183), CEQA Guidelines section 15183 applies and permits a lead agency to streamline the environmental review required by CEQA.

If CEQA Guidelines section 15183 is applicable, a lead agency only needs to analyze environmental effects that the agency determines:

- (a) Are peculiar to the project or the parcel on which the project would be located,
- (b) Were not analyzed as significant effects in a prior EIR on the zoning action, general plan, or community plan with which the project is consistent,
- (c) Are potentially significant off-site impacts and cumulative impacts which were not discussed in the prior EIR prepared for the general plan, community plan, or zoning action, or
- (d) Are previously identified significant effects which, as a result of substantial new information which was not known at the time the EIR was certified, are determined to have a more severe adverse impact than discussed in the prior EIR.

(14 CCR § 15183(b).)

The phrase “peculiar to the project” as used in CEQA Guidelines section 15183(a) is a term of art specifically defined by the regulation:

An effect of a project on the environment shall not be considered peculiar to the project or the parcel for the purposes of this section if uniformly applied development policies or standards have been previously adopted by the city or county with a finding that the development policies or standards will substantially mitigate that environmental effect when applied to future projects, unless substantial new information shows that the policies or standards will not substantially mitigate the environmental effect.

(14 CCR § 15183(f).)

III. DISCUSSION

A. The Project Will Have Significant Impacts on Biological Resources Not Analyzed as Significant in the General Plan EIR.

1. The Project will have significant impacts on habitat loss and reproductive capacity of special-status birds that were not analyzed as significant effects in the 2021 General Plan EIR.

The Project area is undergoing severe habitat fragmentation, “which is a process widely believed to pose the greatest threat to wildlife conservation.” (Smallwood, p. 8.) The project site is one of the very last patches of open space in the region. As a result, Dr. Smallwood explains, “its loss to wildlife would likely cause much greater harm to wildlife than would the loss of the same-sized area in another less-urbanized setting.” (*Id.*) This Project “would further fragment habitat in an environmental setting in which wildlife persisting within the region cannot tolerate furtherance of this process.” (*Id.*)

While habitat loss results in the immediate decline in birds and other animals, it also results in a permanent loss of reproductive capacity. (*Id.*) Loss of reproductive capacity to birds as a result of Project-related habitat loss can be predicted. (*Id.*) Dr. Smallwood cites two studies in his comments showing total bird nesting densities on similar sites between 32.8 and 35.8 nests per acre, for an average of 34.3 nests per acre. (*Id.*) When multiplied by the Project’s 4.09 acres of habitat that would be lost, Dr. Smallwood predicts a loss of 47 bird nests per year. (*Id.*) This loss would repeat each year. (*Id.*) Based on an average of 2.9 fledglings per nest, the Project would prevent generating 181 new birds per year. (*Id.*) This significant impact was not analyzed in the General Plan EIR, and therefore the City cannot avoid analyzing it by relying on the Streamlining Provision. An MND or an EIR must be prepared to analyze and mitigate this significant impact.

2. The Project will have a significant impact on wildlife movement that was not analyzed as a significant effect in the 2021 General Plan EIR.

The General Plan EIR and the Compliance Memorandum improperly dismiss the Project's potential to impact wildlife movement by focusing solely on the linear terrain features that are often assumed to serve as wildlife movement corridors. (Smallwood, p. 9.) According to the Compliance Memorandum, "The GPU EIR determined that the majority of the City is developed. These areas have little natural open space and therefore provide few wildlife movement corridors. Existing corridors include creeks and open drainage canals, which connect wildlife to the mountains to the north." (Compliance Memorandum, p. 4-26.) The Compliance Memorandum then concludes that "the project would not impact regional wildlife corridors/linkages because none exist within the area." (*Id.*)

These conclusions are based on the flawed premise that only disruption of the function of a habitat linkage of wildlife corridor can interfere with wildlife movement in the region. (Smallwood, p. 9.) The conclusions are also at odds with the threshold of significance found in CEQA Guidelines Appendix G. Under that standard, a project will have a significant biological impact if it would "[i]nterfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites." (CEQA Guidelines, App. G.) "The primary phrase of the CEQA standard goes to wildlife movement regardless of whether the movement is channeled by a corridor." (Smallwood, p. 9.)

Because of its reliance on a false CEQA standard for determining impacts on wildlife movement, the EIR contains no evidence to support the conclusion that the Project will not have a significant impact on wildlife movement. In contrast, Dr. Smallwood concludes that the Project will significantly impact wildlife movement. (Smallwood, p. 9.) According to Dr. Smallwood:

A site such as the proposed project site is critically important for wildlife movement because it composes an increasingly diminishing area of open space within a growing expanse of anthropogenic uses, forcing more species of volant wildlife to use the site for stopover and staging during migration, dispersal, and home range patrol (Warnock 2010, Taylor et al. 2011, Runge et al. 2014). The project would cut wildlife off from stopover and staging opportunities, forcing volant wildlife to travel even farther between remaining stopover sites. Traveling farther risks exhaustion, disorientation and starvation, all outcomes of which certainly contribute to interference with wildlife movement in the region.

(Smallwood, p. 9.)

Dr. Smallwood's comments are substantial evidence that the Project will have a significant impact on wildlife movement. Because the 2021 General Plan EIR did not analyze this impact as significant and mitigate it, the City may not rely upon Section 15183 to forego the preparation of a supplemental EIR or at least a mitigated negative declaration for the Project.

3. The Project will have a significant impact on special-status birds as a result of window collisions that was not analyzed as a significant effect in the 2021 General Plan EIR.

According to Dr. Shawn Smallwood, the Project will have a significant impact on birds as a result of window collisions. (Smallwood, p. 9.) The 2021 General Plan EIR did not analyze or mitigate this impact to special-status birds. Analyzing the potential impact on wildlife of window collisions is especially important because “[w]indow collisions are often characterized as either the second or third largest source of human-caused bird mortality.” (*Id.*)

Dr. Smallwood has reviewed and processed results of bird collision monitoring at 213 buildings and facades for which bird collisions per m² of glass per year could be calculated and averaged. (Smallwood, p. 11.) According to his review and calculations, Dr. Smallwood determined that each m² of glass façade may result in 0.073 bird deaths per year. (*Id.*)

Dr. Smallwood then looked at the building design for the Project and estimated that the Project would include approximately 2,514 m² of new glass windows. (*Id.*) Based on the estimated 2,514² of glass windows and the 0.073 bird deaths per m² of glass windows, Dr. Smallwood estimates that the project could result in 184 bird deaths per year as a result of window collisions. (*Id.* at 12.) The vast majority of these bird deaths would be of birds protected under the Migratory Bird Treaty Act and under the California Migratory Bird Protection Act, thereby resulting in a significant impact to special status species. The 2021 General Plan EIR did not analyze this significant impact to special status birds resulting from window collisions. The Project therefore may not rely upon Section 15183 to forego the preparation of a supplemental EIR or at least an MND.

B. The Project May Have a Significant Human Health Impact That Was Not Analyzed as a Significant Impact in the General Plan EIR.

One component of an air quality impact analysis under CEQA is evaluating the health risk impacts of toxic air contaminant (“TACs”) emissions contributed by a proposed project as well as cumulatively with other nearby TAC sources.

Formaldehyde is a known human carcinogen. Many composite wood products typically used in residential building construction contain formaldehyde-based glues which off-gas formaldehyde over a very long time period. (Offermann, p. 2-3.) The primary source of formaldehyde indoors is composite wood products manufactured with urea-formaldehyde resins, such as plywood, medium density fiberboard, and particle board. (*Id.*) These materials are commonly used in residential and building construction for flooring, cabinetry, baseboards, window shades, interior doors, and window and door trims. (*Id.* at 3.)

Certified Industrial Hygienist, Francis “Bud” Offermann, PE, CIH, has conducted a review of the Project and relevant documents regarding the Project’s indoor air emissions. Mr.

Offermann is one of the world's leading experts on indoor air quality and has published extensively on the topic. (See CV attached as Exhibit B.) Mr. Offerman concludes that it is likely that the Project will expose future residents and workers in the commercial spaces to significant impacts related to indoor air quality, and in particular, emissions of the cancer-causing chemical formaldehyde. (*Id.* at 3-5.)

Given the prominence of materials with formaldehyde-based resins that will be used in constructing the Project, there is a significant likelihood that the Project's emissions of formaldehyde to air will result in very significant cancer risks to future residents and workers in the buildings. (*Id.*) Even if the materials used within the buildings comply with the Airborne Toxic Control Measures (ATCM) of the California Air Resources Board (CARB), significant emissions of formaldehyde may still occur. (*Id.*)

The Project's buildings will have significant impacts on air quality and health risks by emitting cancer-causing levels of formaldehyde into the air that will expose workers and residents to cancer risks well in excess of SCAQMD's threshold of significance. Based on Mr. Offermann's analysis, residents of the Project will be exposed to an excess cancer risk from formaldehyde of approximately 120 per million, which is 12 times the 10 in one million significance threshold established by the SCAQMD. (Offermann, p. 4.) Similarly, employees of the commercial spaces are expected to have in excess cancer risk from formaldehyde of 17.7 per million, which is 1.77 times the significance threshold. (*Id.* at pp. 4-5.)

Currently, the City does not have any idea what risk will be posed by formaldehyde emissions from the Project to future residents and employees. The General Plan EIR does not acknowledge this significant indoor air emissions that will result from the Project. Specifically, there is no discussion of impacts or health risks from the Project's formaldehyde emissions, no analysis, nor any identification of mitigations for significant emissions of formaldehyde to air from the Project. As a result of this significant effect to air quality that was not analyzed in the 2021 General Plan EIR, the Project may not rely upon Section 15183 to forego the preparation of a supplemental EIR or at least a negative declaration for the Project.

IV. CONCLUSION

SAFER requests the City Council grants its appeal, find the Project has not complied with CEQA, and remand the matter back to staff to prepare the appropriate CEQA document. Thank you for considering these comments.

Sincerely,



Rebecca L. Davis

LOZEAU DRURY LLP