T 510.836.4200
F 510.836.4205
1939 Harrison Street, Ste. 150
Oakland, CA 94612
www.lozeaudrury.com
brian@lozeaudrury.com

VIA EMAIL ONLY

July 20, 2021

William Hofman, Chair
James Whalen, Vice-Chair
Douglas Austin
Dennis Otsuji
Ken Malbrough
Matthew Boomhower
Kelly Moden
Planning Commission
City of San Diego
1222 First Ave., Fifth floor,
San Diego, CA 92101
planningcommission@sandiego.gov

Denice Vo
Development Project Manager
Development Services Department
City of San Diego
1222 1st Ave.
San Diego, CA 92101
VoD@sandiego.gov

Re: Addendum No. 400127 to Environmental Impact Report No. 80-5-35 (SCH No. 80072117) for Costa Azul Mixed-Use Project (Project No. 400127); PLANNING COMMISSION AGENDA ITEM 1 (Thurs., July 22, 2021)

Dear Chair Hofman, Honorable Planning Commissioners of San Diego, and Ms. Vo:

I am writing on behalf of the Supporters Alliance for Environmental Responsibility ("SAFER") and its members living or working in and around the City of San Diego in opposition to the Costa Azul Mixed-Use Project (Project No. 400127) ("Project") and Addendum No. 400127 to Environmental Impact Report No. 80-5-35 (SCH No. 80072117) ("Addendum") prepared for the Project to be heard as Agenda Item 1 at the Planning Commission's July 22, 2021 meeting.

SAFER's review of the Project and Addendum has been assisted by of indoor air quality expert Francis Offerman, CIH, and air quality experts Matt Hagemann, P.G., C.Hg., and Paul E. Rosenfeld, Ph.D., of the Soil/Water/Air Protection Enterprise ("SWAPE"). SAFER's review of the Project has found that the Project will result in new significant impacts that have not been previously analyzed. Additionally, there are new mitigation measures to reduce significant impacts identified in the prior North City West Employment Center Precise Plan Environmental Impact Report ("Precise Plan EIR"), as modified, that the City has not adopted for this Project. Under the California Environmental Quality Act ("CEQA"), an addendum is not an appropriate under these circumstances. Therefore, SAFER respectfully request that the Commission refrain

from recommending approval of the Project at this time and, instead, direct staff to prepare an environmental impact report ("EIR") for the Project prior to any recommendation for approval.

PROJECT DESCRIPTION AND BACKGROUND

The Project proposes the development of a 77,652-square-foot, 7-story hotel and 96,040-square-foot, 5-story office building with restaurant on an undeveloped 3 3.06-acre site is located at 3501 Valley Centre Drive in San Diego. The Project requires a Vesting Tentative Map, Easement Vacation, Coastal Development Permit, Planned Development Permit and Site Development.

The site is designated by the Carmel Valley (North City West) Community Plan as Visitor Commercial and the North City West Employment Center Precise Plan (Precise Plan) as Neighborhood 2. The Visitor Commercial designation is intended to provide motel/hotel, restaurant, office uses, and related services to the adjacent industrial /office park in the Carmel Valley Employment Center as well as for nearby industrial uses in Sorrento Valley. The parking for the development will include 71 surface parking spaces and a two-level subterranean parking garage with 383 parking spaces, for a total of 454 spaces.

The proposed Vesting Tentative Map will consolidate and subdivide a 9.89-acre property into two Parcels; Parcel One will be 3.2-acres and Parcel Two, 6.7-acres. The Project within Parcel One will include three commercial condominiums, a seven-story hotel, a five-story office building, and subterranean parking (i.e the Project). Parcel Two is currently developed with an office building and parking structure and there is no proposed construction on this site.

The Project site is subject to the 2008 Citywide General Plan, the 1975 Carmel Valley (North City West) Community Plan, and the 1981 North City West Employment Center Precise Plan (1981), which are the adopted land use plans for the site. The subject site is conceptually identified as Visitor Commercial by the Carmel Valley Community Plan (Community Plan) and the Precise Plan. The Community Plan provides a general framework for future planning and development of the commercial visitor area. It states the need for the visitor commercial uses to serve the office and industrial development in Carmel Valley as well as to the
south of the community.

The City has prepared an Addendum to the 1981 Precise Plan EIR, as amended by a previous addendum in 1983 ("1983 Precise Plan Addendum"). The Precise Plan EIR evaluated the development of 1,542,000 sq. ft. of industrial floor area. (Precise Plan EIR, p. 1.) The Precise Plan EIR found that significant impacts to the following issue areas would be substantially lessened or avoided if all the proposed mitigation measures recommended in the Final EIR were implemented: climate and air quality, archaeological resources, geology/soils and urban support services (i.e., energy). The Precise Plan EIR concluded there would be significant and unavoidable impacts to traffic, biological resources, growth inducement, visual quality, and growth inducement. (*Id.*) The Precise Plan EIR concluded that air quality impacts would be less-than-significant by relying on two mitigation measures, bicycle paths and "employment for

planned residential communities. (*Id*. at p. 3.)

In 1983, the City Council approved and adopted an amendment to the Precise Plan and the 1983 Precise Plan Addendum. That amendment added 47.9 acres into the Precise Plan for Neighborhood 2, including the Project site. The project site was rezoned from A-1 -1 to VC (Visitor Commercial) through a Planned District Ordinance amendment and designated for Visitor Commercial, consistent with the Community Plan. The 1983 Precise Plan Addendum addressed the changes in land use and increase in the Precise Plan area described above. However, the 14-page 1983 Precise Plan Addendum only discussed potential impacts to traffic circulation and archaeological resources. No other impacts were addressed.

The 1983 Addendum also referenced an EIR prepared in the 1982 for a precise plan ("Neighborhood 4, 5, 6 Plan"), adjacent to the Precise Plan at issue. The 1982 Neighborhood 4, 5, 6 Plan EIR concluded that cumulative impacts to air quality and traffic would be significant and unavoidable.

LEGAL STANDARD

CEQA contains a strong presumption in favor of requiring a lead agency to prepare an EIR. This presumption is reflected in the fair argument standard. Under that standard, a lead agency must prepare an EIR whenever substantial evidence in the whole record before the agency supports a fair argument that a project may have a significant effect on the environment. (Pub. Res. Code § 21082.2; *Laurel Heights Improvement Ass'n v. Regents of the University of California* (1993) ("*Laurel Heights II*") 6 Cal.4th 1112, 1123; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 82; *Quail Botanical Gardens v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602.)

Preparation of an Addendum Under CEQA

Here, the City has prepared an Addendum to the previously certified 1981 Precise Plan EIR, as modified by the 193 Precise Plan Addendum. Pursuant to the CEQA Guidelines, an addendum to a previous EIR is proper only where "some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred." (14 CCR § 15164(a).) Looking to Guidelines Section 1512, **an addendum is not appropriate when:**

(1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to **the involvement of new significant environmental effects or a substantial increase** in the severity of previously identified significant effects;
(2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant

effects; or

(3) **New information of substantial importance**, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:
   (A) The project will have **one or more significant effects not discussed in the previous EIR or negative declaration**;
   (B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;
   (C) Mitigation measures or alternatives previously found not to be feasible would, in fact, be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
   (D) **Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment**, but the project proponents decline to adopt the mitigation measure or alternative.

(14 CCR § 15162.)

<u>Tiering Under CEQA</u>

CEQA permits agencies to 'tier' CEQA documents, in which general matters and environmental effects are considered in a document "prepared for a policy, plan, program or ordinance followed by narrower or site-specific [environmental review] which incorporate by reference the discussion in any prior [environmental review] and which concentrate on the environmental effects which (a) are capable of being mitigated, or (b) were not analyzed as significant effects on the environment in the prior [EIR]." (Cal. Pub. Res. Code ("PRC") § 21068.5.) "[T]iering is appropriate when it helps a public agency to focus upon the issues ripe for decision at each level of environmental review and in order to exclude duplicative analysis of environmental effects examined in previous [environmental reviews]." (*Id.* § 21093.) CEQA regulations strongly promote tiering of environmental review.

"Later activities in the program must be examined in light of the program [document] to determine whether an additional environmental document must be prepared." (14 CCR § 15168(c).) The first consideration is whether the activity proposed is covered by the program. (*Id.* § 15168(c)(2).) If a later project is outside the scope of the program, then it is treated as a separate project and the previous environmental review may not be relied upon in further review. (*See Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1320–21.) The second consideration is whether the "later activity would have effects that were not examined in the program." (14 CCR § 15168(c)(1).) A program environmental review may only serve "to the extent that it contemplates and adequately analyzes the potential environmental impacts of the project . . . ." (*Sierra Nevada Conservation v. County of El Dorado* (2012) 202 Cal.App.4th 1156, 1171 [quoting *Citizens for Responsible Equitable Envtl. Dev. v. City of San Diego*

Redevelopment Agency (2005) 134 Cal.App.4th 598, 615].) If the program environmental review does not evaluate the environmental impacts of the project, a tiered [CEQA document] must be completed before the project is approved. (*Id.* at 1184.)

For these inquiries, the "fair argument test" applies. (*Sierra Club*, 6 Cal.App.4th at 1318; *see also Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152, 1164 ("when a prior EIR has been prepared and certified for a program or plan, the question for a court reviewing an agency's decision not to use a tiered EIR for a later project 'is one of law, i.e., 'the sufficiency of the evidence to support a fair argument.'" [quoting *Sierra Club*, 6 Cal.App.4th at 1318]).) Under the fair argument test, a new EIR must be prepared "whenever it can be fairly argued on the basis of substantial evidence that the project may have significant environmental impact. (*Sierra Club*, 6 Cal.App.4th at 1316 [quotations and citations omitted].) When applying the fair argument test, "deference to the agency's determination is not appropriate and its decision not to require an EIR can be upheld only when there is no credible evidence to the contrary." (*Id*. at 1318.) "[I]f there is substantial evidence in the record that the later project may arguably have a significant adverse effect on the environment which was not examined in the prior program EIR, doubts must be resolved in favor of environmental review and the agency must prepare a new tiered EIR, notwithstanding the existence of contrary evidence." (*Id.* at 1319.)

DISCUSSION

I. Under CEQA's tiering provisions, the Project requires an EIR—not an Addendum—because the Project may result in significant environmental impacts that were not previously analyzed in the Precise Plan EIR or 1983 Addendum.

As a preliminary matter, the City has improperly relied upon CEQA's subsequent review provisions (PRC § 21166; 14 CCR §§ 15162, 15164.) Where a previous EIR has been certified for a project, CEQA's subsequent review provisions determine when "[a]subsequent EIR shall be prepared for ***that*** project." (14 CCR 15162 [emphasis added].) Here, no specific project has ever been proposed for the Project site. The 1981 Precise Plan EIR analyzed the full 118-acre plan area for industrial development on 24 lots. (Precise Plan EIR, p. 1.) The 1983 Addendum analyzed the addition of 47.9 acres to the plan area (but only analyzed impacts to traffic and archeological resources). (1983 Addendum, pp. 2, 7-10.) These previous documents are not project-specific documents. Rather, the 1981 Specific Plan EIR and 1983 Addendum are better described as a programmatic EIR ("PEIR"), which is subject to CEQA's tiering standards rather than subsequent review.

A lead agency may tier EIRs where multiple individual projects or phased (or "tiered") projects are to be undertaken, and the individual projects are linked geographically, temporally, or in an otherwise logical manner. (14 CCR §§ 15165, 15168.) Here, there is no doubt that the project areas within the Precise Plan are linked in a "logical manner" and that the 1981 Precise Plan EIR, as modified, is a PEIR subject to CEQA Guidelines section 15168. Under Section 15168, ***"[i]f a later activity would have effects that were not examined in the program EIR, a new initial study would need to be prepared leading to either an EIR or a negative***

declaration." (14 CCR § 15168(c)(1) [emphasis added].) Importantly, in reviewing an agency's decision whether to prepare a tiered EIR, the "fair argument" test applies. (*Sierra Club v. Cnty. of Sonoma* (1992) 6 Cal.App.4th 1307, 1318.) Under the fair argument test, a new EIR must be prepared "whenever it can be fairly argued on the basis of substantial evidence that the project may have a significant environmental impact." (*Id*. at 1316; see *Friends of Coll. of San Mateo Gardens v. San Mateo Cnty. Comm. College Dist*. (2016) 1 Cal.5th 937, 960.) A PEIR may only serve for subsequent actions "to the extent that it ***contemplates and adequately analyzes*** the potential environmental impacts of the project. . . ." (*Center for Sierra Nevada Conservation v. County of El Dorado* (2012) 202 Cal.App.4th 1156, 1171[emphasis added] [citations omitted].) Here, because there is a fair argument that the Project will result in impacts not analyzed in the 1981 Precise Plan EIR and 1983 Addendum, an EIR is required.

A. An EIR is required because the Project will have significant impacts on indoor air quality from formaldehyde emissions that were not previously analyzed in the Precise Plan EIR or 1983 Addendum.

Certified Industrial Hygienist, Francis Offermann, PE, CIH, has conducted a review of the Project. Mr. Offermann is one of the world's leading experts on indoor air quality, in particular emissions of formaldehyde, and has published extensively on the topic. As discussed below and set forth in Mr. Offermann's comments, the Project's emissions of formaldehyde to air will result in very significant cancer risks to future residents and employees of the Project. Mr. Offermann's comment and CV is attached as Exhibit A.

Importantly, Mr. Offermann highlights that the previous 1981 Precise Plan EIR and 1983 Addendum did not address indoor air quality impacts or formaldehyde emissions. Because these impacts were not previously analyzed at all, the fair argument standard applies and an EIR is required to address and mitigate this impact.

Formaldehyde is a known human carcinogen and listed by the State of California as a Toxic Air Contaminant ("TAC"). The South Diego County Air Pollution Control District ("SDCAPCD") has established a significance threshold of health risks for carcinogenic TACs of 10 in a million.

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 concludes that future employees of the hotel and office building spaces of the Project will be exposed to a cancer risk from formaldehyde of approximately 17.7 per million, assuming all materials are compliant with the California Air Resources Board's

formaldehyde airborne toxics control measure. (Ex. A, p. 4.) This exceeds SDCAPCD's CEQA significance thresholds for airborne cancer risk of 10 per million. Importantly, Mr. Offermann's conclusions are based on studies conducted in 2019 and therefore were not available at the time when the 1981 Precise Plan EIR or 1983 Addendum were approved.

Mr. Offermann concludes that these significant environmental impacts must be analyzed and mitigation measures should be imposed to reduce the risk of formaldehyde exposure. (Ex. A, pp. 4-5, 11-12.) He prescribes a methodology for estimating the Project's formaldehyde emissions in order to do a more project-specific health risk assessment. (*Id*., pp. 5-9.). Mr. Offermann also suggests several feasible mitigation measures, such as requiring the use of composite wood products manufactured with CARB approved no-added formaldehyde (NAF) resins, which are readily available. (*Id*., pp. 11-12.)

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 SDCAPCD'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].)

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"). 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*, 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.)

The carcinogenic formaldehyde emissions identified by Mr. Offermann are not an existing environmental condition. Those emissions to the air will be from the Project. Once built, the Project will begin to emit formaldehyde at levels that pose significant direct and cumulative health risks to employees of the Project. The Supreme Court in *CBIA* expressly finds that this type of air emission and health impact by the project on the environment and a "project's users and residents" must be addressed in the CEQA process. The existing TAC sources near the Project site would have to be considered in evaluating the cumulative effect on future residents of both the Project's TAC emissions as well as those existing off-site emissions.

The Supreme Court's reasoning is well-grounded in CEQA's statutory language. CEQA expressly includes a project's effects on human beings as an effect on the environment that must be addressed in an environmental review. "Section 21083(b)(3)'s express language, for example, requires a finding of a 'significant effect on the environment' (§ 21083(b)) whenever the 'environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.'" (*CBIA*, 62 Cal.4th at 800.) 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 residents and employees of 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 Project will have significant impacts on air quality and health risks by emitting cancer-causing levels of formaldehyde into the air that will expose future employees to cancer risks potentially in excess of SDCAPCD's threshold of significance for cancer health risks of 10 in a million.

B. An EIR is required because the Project will have significant impacts on human health from diesel particulate matter that were not previously analyzed in the Precise Plan EIR or 1983 Addendum.

The environmental consulting firm SWAPE reviewed the Project and Addendum and found that air quality impacts from emissions of diesel particulate matter ("DPM"), a known human carcinogen, would result in significant health risks. SWAPE's comment letter is attached as Exhibit B and their findings are summarized below.

Importantly, the previous 1981 Precise Plan EIR and 1983 Addendum did not address DPM emissions and human health. Because the impact was not previously analyzed at all, the

fair argument standard applies and an EIR is required to address and mitigate this impact.

SWAPE prepared a screening-level health risk assessment ("HRA") to evaluate potential DPM impacts from the construction and operation of the Project. (Ex. B, pp. 6-10.) SWAPE used AERSCREEN, the leading screening-level air quality dispersion model. (*Id*., p. 6) SWAPE used a sensitive receptor distance of 250 meters and analyzed impacts to individuals at different stages of life based on OEHHA and SDCAPCD guidance. (*Id*., pp. 7-8.)

SWAPE found that the excess cancer risk for adults, children, infants, and third-trimester gestations at the closest sensitive receptor located approximately 250 meters away, over the course of Project construction and operation, are approximately 1.6, 14, 24, and 1.3 in one million in one million, respectively. (Ex. B, p. 10.) Moreover, SWAPE found that the excess cancer risk over the course of a residential lifetime is approximately 41 in one million. (*Id*.) SWAPE concludes, "The infant, child, and lifetime cancer risks exceed the SDAPCD threshold of 10 in one million, thus resulting in a potentially significant impact not previously addressed or identified by the Addendum." (*Id.*)

Because this impact was not disclosed, discussed, or mitigated by the previous Precise Plan EIR and 1983 Addendum, a tiered EIR must be prepared to address this impact.

C. An EIR is required because the Project will have significant air quality impacts that were not previously analyzed in the Precise Plan EIR or 1983 Addendum.

Neither the Precise Plan EIR nor the 1983 Addendum attempted to quantify emissions from construction and operation or to compare such emissions to applicable CEQA thresholds. For the first time yet, SWAPE quantified the Project's emissions using CalEEMod.2016.3.2. (Ex. B, p. 4.) SWAPE found that the Project's construction-related VOC emissions totaled 207.76 lbs/day, in excess of SDCAPCD's threshold of 137 lbs/day. Thus, the Project would result in a potentially significant air quality impact that was not previously addressed in the Precise Plan EIR or the 1983 Addendum and must be addressed in an EIR for the Project.

II. Under CEQA's subsequent review provisions, the Addendum is improper because of new information regarding significant impacts and new available mitigation measures since certification of the 1981 Precise Plan EIR and 1983 Addendum.

Under CEQA, an addendum is not allowed when "[n]ew information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified" shows that (1) the project will have one or more significant effects not discussed in the previous EIR or (2) mitigation measures considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment. (14 CCR §§15162, 15164.) Under that standard, the Addendum is improper because the indoor air quality impacts from formaldehyde could not have been known when the 1981 Precise Plan EIR was certified or when the 1983 Addendum was

approved. Furthermore, the Addendum is improper because of new mitigation measures available to mitigate the Project's indoor and outdoor air quality impacts.

A. The Project's significant impacts to human health from indoor emissions of formaldehyde as well as the mitigation measures available to reduce that impact are new information that could not have been known previous to 2019.

As discussed above, the Project will result in a significant impact to human health from indoor emissions of formaldehyde. This potential indoor air quality impact could not have been known until 2019 when the first study was published showing that homes using composite wood products that comply with California Air Resources Board ("CARB") standards vastly exceed CEQA significance thresholds for cancer risk. Therefore, this impact was not known and could not have been known in 1981 when the Precise Plan EIR was certified or in 1983 when the City approved the Precise Plan Addendum. When scientific information was not available at the time of prior CEQA review, more recent studies showing that a project may have more serious human health or environmental impacts constitute significant new information requiring a subsequent EIR rather than an addendum. (*Security Envt'l Sys. v South Coast Air Quality Mgmt. Dist.* (1991) 229 Cal.App.3d 110, 124; *Meridian Ocean Sys. v. State Lands Com.* (1990) 222 Cal.App.3d 153, 169). As such, the Addendum is improper under CEQA Guidelines sections 15162 and 15164 and an EIR is required. (*See* 14 CCR §§ 15162(a)(3), 15164(a).)

Additionally, Mr. Offermann suggests mitigating the Project's indoor air quality impacts by requiring all composite wood products used in construction of the Project to be manufactured with CARB-approved no-added formaldehyde (NAF) resins. (Ex. A, pp. 11-12.) Because indoor air quality impacts were not analyzed in the 1981 Precise Plan EIR or 1983 Addendum, the City has not considered NAF composite wood products. Furthermore, such NAF products have only become readily available recently and, thus, could not have been considered in 1981 and 1983. Because the Addendum does not adopt any measures to reduce indoor formaldehyde emissions, an EIR is required.

B. New mitigation measures exist to reduce the significant air quality impacts identified in the 1981 Precise Plan EIR.

The 1981 Precise Plan EIR concluded that the Project would result in significant impacts to air quality. The Precise Plan EIR only proposed two mitigation measures for this impact: (1) bike paths and (2) "provid[ing] employment for planned residential areas." (Precise Plan EIR, p. 3.) CEQA requires an EIR where an addendum fails to adopt "considerably different" mitigation measures that can substantially reduce the significant impacts identified in a previous EIR. (14 CCR§ 15162.) Because considerably different mitigation measures exist, which were not available in 1981 or 1983, to reduce the Project's air quality impacts (but the Addendum fails to include them), an EIR is required.

SWAPE provided a list of feasible mitigation measures to reduce the Project's impacts on air quality and climate. (Ex. B, pp. 11-19.) As one example, the Project could be required to utilize off-road construction equipment that meets the EPA's "Tier 4 Final" emissions standards to reduce the Project's impacts. Since 1994, the EPA has slowly adopted more stringent standards to lower the emissions from off-road construction equipment since 1994. Since that time, Tier 1, Tier 2, Tier 3, Tier 4 Interim, and Tier 4 Final construction equipment have been phased in over time. Tier 4 Final represents the cleanest burning equipment and therefore has the lowest emissions compared to other tiers. Notably, these EPA standards only commenced in 1994, which means that at the time of the 1981 Precise Plan EIR and 1983 Addendum, the City simply could not have considered this method of mitigation. As such, this mitigation is new information that could not have been known in 1981 or 1983. (*See* 14 CCR 15162(3).) Because the Addendum has failed to adopt such mitigation, an EIR is required.

CONCLUSION

The Addendum is not appropriate under CEQA because CEQA's tiering provisions require an EIR where there is a fair argument that the Project may result in significant impacts that were not analyzed in the 1981 Precise Plan EIR or 1983 Addendum. Furthermore, even if the City were allowed to proceed under CEQA's subsequent review provisions rather than its tiering provisions, the Addendum is still improper because of new information showing new significant impacts and new feasible mitigation measures.

As such, SAFER respectfully requests that the Planning Commission refrain from recommending approval of the Project and Addendum to the City Council at this time. Rather, SAFER respectfully requests that the Project be sent back to staff to prepare and EIR prior to approval of the Project.

Sincerely,

Brian B. Flynn
Lozeau Drury LLP