LOZEAU DRURY LLP
T 510 836 4200
F 510 836 4205
1939 Harrison Street Ste 150
Oakland, CA 94612
www.lozeaudrury.com
michael@lozeaudrury.com

Via Email

April 24, 2023

Alvin DeJohnette, Chairperson
JoAnn Stephan, Commissioner
Ray Baker, Commissioner
Omar Cobian, Vice Chair
Moreno Valley Planning Commission
City of Moreno Valley
14177 Frederick Street
Moreno Valley, CA 92553
PlanningEmail@moval.org

Julia Descoteaux, Senior Planner
Community Development Department
City of Moreno Valley
14177 Frederick Street
Moreno Valley, CA 92553
juliad@moval.org

Jane Halstead, City Clerk
City of Moreno Valley
14177 Frederick Street
Moreno Valley, CA 92553
dept_cityclerk@moval.org

Re: Moreno Valley Planning Commission, Regular Meeting of April 27, 2023, Agenda Item No. 1; Planning Commission Review of the Subsequent Environmental Impact Report for the Moreno Valley Mall Redevelopment Project (PEN21-0168, PEN22-0061, PEN22-0075; SCH 2022040136)

Dear Honorable Planning Commissioners:

I am writing on behalf of Supporters Alliance for Environmental Responsibility ("SAFER") regarding the Final Subsequent Environmental Impact Report ("FSEIR" or "SEIR") prepared for the Moreno Valley Mall Redevelopment Project (PEN21-0168, PEN22-0061, PEN22-0075; SCH 2022040136), including all actions related or referring to the proposed redevelopment of a portion of the existing Moreno Valley Mall site with four multi-family residential communities totaling 1,627 dwelling units, two hotels totaling approximately 270 keys, a three-story office building, parking structures, and other commercial and transit uses, (the "Project"), located on a project site bounded by Town Circle on all sides, south of State Route 60, and east of Interstate 215 in the City of Moreno Valley, California (the "City").

After reviewing the SEIR, we conclude that it fails as an informational document and that it fails to implement all feasible mitigation measures to reduce the Project's significant adverse environmental impacts. SAFER therefore respectfully requests that you deny approval of the SEIR, and instead, direct the City's Planning Department to address these shortcomings in a revised subsequent environmental impact report ("RSEIR"), to be recirculated in accordance

with the public review provisions of the California Environmental Quality Act ("CEQA"), Public Resources Code, section 21000 et. seq.

SAFER's review of the SEIR has been assisted by environmental engineers Patrick Sutton, P.E. and Jing Qian, Ph.D., of the Baseline Environmental Consulting ("Baseline") (CVs and comments attached as **Exhibit A**); and indoor air quality expert and Certified Industrial Hygienist, Francis "Bud" Offermann, PE, CIH (CV and comments attached as **Exhibit B**).

LEGAL STANDARD

CEQA requires that an agency analyze the potential environmental impacts of a project's proposed actions in an environmental impact report ("EIR"), except in certain limited circumstances. The EIR is the very heart of CEQA. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1214 ("*Bakersfield Citizens*"); *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 927 ("*Pocket Protectors*").) The EIR is an "environmental 'alarm bell' whose purpose is to alert the public and its responsible officials to environmental changes before they have reached the ecological points of no return." (*Bakersfield Citizens*, 124 Cal.App.4th at 1220.) The EIR also functions as a "document of accountability," intended to "demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action." (*Laurel Heights Improvements Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 392.) The EIR process "protects not only the environment but also informed self-government." (*Pocket Protectors*, 124 Cal.App.4th at 927.)

CEQA has two primary purposes. First, it is designed to inform decision makers and the public about the potentially significant environmental effects of a project. (14 CCR § 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.'" Second, CEQA requires public agencies to avoid or reduce environmental damage when "feasible" by requiring "environmentally superior" alternatives and all feasible mitigation measures. (14 CCR § 15002(a)(2) and (3); *see also*, *Berkeley Keep Jets Over the Bay Com. v. Board of Port Cmrs.* (2001) 91 Cal.App.4th 1344, 1354 ("*Berkeley Jets*"); *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564 ("*Citizens of Goleta Valley*").

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." (PRC § 21081; 14 CCR § 15092(b)(2)(A) & (B)). The lead agency may deem a particular impact to be insignificant only if it produces rigorous analysis and concrete substantial evidence justifying the finding. (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 732).

DISCUSSION

I. The SEIR Fails to Adequately Mitigate the Project's Significant and Unavoidable Air Quality and Greenhouse Gas Impacts.

Environmental engineers Patrick Sutton, P.E. and Jing Qian, Ph.D. of Baseline Environmental Consulting ("Baseline") reviewed the SEIR and concluded that the Project will have significant impacts to air quality, greenhouse gas emissions, and energy use. Baseline's comments and expert CVs are attached as Exhibit A.

a. The SEIR Fails to Address the Project's Human Health Impacts Related to Its Significant and Unavoidable Air Quality Impacts.

The Draft SEIR concedes that the Project will have a significant and unavoidable air quality impact (Draft SEIR, p. 1-2). However, the SEIR fails to address the potential health impacts related to the Project's significant and unavoidable air quality impacts. This is problematic because operation of construction equipment during construction of the proposed Project, as well as planned diesel generator use during future operations, will release diesel particulate matter ("DPM") emissions into the air, affecting air quality and residents' health. (Ex. A., pp. 1-2.) DPM is a known human carcinogen which poses unique health risks to nearby sensitive receptors.

DPM has been listed as a known human carcinogen by the California Office of Health Hazard Assessment ("OEHHA"). DPM contains 40 toxic chemicals, including benzene, arsenic and lead.[1] DPM is listed separately by the State of California as a toxic air contaminant known to cause cancer in humans.[2] According to the U.S. Environmental Protection Agency, "Exposure to diesel exhaust can lead to serious health conditions like asthma and respiratory illnesses and can worsen existing heart and lung disease, especially in children and the elderly. These conditions can result in increased numbers of emergency room visits, hospital admissions, absences from work and school, and premature deaths."[3]

The SEIR fails to provide a health risk assessment ("HRA") evaluating impacts resulting from exposure to DPM emissions during Project construction or future operations. Rather, it asserts – without any evidence – that "sensitive receptors would not be exposed to substantial concentrations of construction-related TAC emissions." (*Id*., p. 2.) The Office of Environmental Health Hazard Assessment (OEHHA), which provides guidance for evaluation of health impacts under CEQA, recommends that an HRA be prepared for any project lasting longer than two months. (*Id*.) The SEIR estimates that Project construction will last 44 months, which is well in excess of the OEHHA threshold. Furthermore, the SEIR's suggestion that short-term exposure to DPM emissions is less harmful than long-term exposure is patently false. In fact, OEHHA advises that "a higher exposure to a carcinogen over a short period of time may be a greater risk than the same total exposure spread over a much longer time period." (*Id*.)

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[1] www.p65warnings.ca.gov/fact-sheets/diesel-engine-exhaust.
[2] https://oehha.ca.gov/media/downloads/proposition-65//p65chemicalslistsinglelisttable2021p.pdf
[3] https://www.epa.gov/dera/learn-about-impacts-diesel-exhaust-and-diesel-emissions-reduction-act-dera

By failing to prepare a quantified HRA, the SEIR fails to uphold CEQA's requirement to make "a reasonable effort to substantively connect a project's air quality impacts to likely health consequences." (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 510.) Therefore, a "health risk assessment should be prepared to evaluate the long-term health effects on nearby sensitive receptors that could be exposed to DPM emissions from annual maintenance and testing of the emergency generators." (Ex. A., p. 2.)

b. The SEIR Fails to Adequately Analyze or Mitigate the Project's Significant and Unavoidable Greenhouse Gas Impacts.

The Draft SEIR admits that the Project will have a significant and unavoidable greenhouse gas emissions ("GHG") impact (Draft SEIR, p. 1-2). However, the SEIR fails to adequately evaluate or mitigate this impact. In accordance with the Supreme Court's decision in *Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 62 Cal.4th 204, a project's GHG emissions should be evaluated based on its effect on California's efforts to meet the State's long-term climate goals. Pursuant to Executive Order B-55-18, California is committed to achieving carbon neutrality by 2045.[4] However, the SEIR failed to adequately evaluate to what extent, if any, the Project will contribute its "fair share" in GHG reductions that will be necessary to meet this ambitious goal. (Ex. A., p. 3.)

First, the SEIR improperly relied on a GHG threshold of 3,000 metric tons of carbon monoxide equivalents (MTCO2e) to determine whether the project would help achieve the State's long-term climate goals. (*Id*.) This threshold was proposed by the South Coast Air Quality Management ("SCAQMD") in 2008. However, SCAQMD never formally adopted the threshold because its scientific experts could not agree that it was supported by substantial evidence. More importantly, the 3,000 MTCO2e threshold used in the SEIR has no correlation to the State's carbon neutrality goal for 2045. (*Id*.)

The SEIR also fails to discuss the Project's consistency with the California Air Resources Board ("CARB") 2022 Scoping Plan for Achieving Carbon Neutrality. (*Id*., p. 2.) Instead, it only evaluates consistency with the 2017 Scoping Plan Update. This is improper. The 2022 Scoping Plan advises that "decarbonization of California's buildings is a key strategy for achieving California's climate change mitigation and air quality goals." (*Id*.) "Building decarbonization refers to an umbrella of strategies to reduce residential and commercial building emissions. All-electric new construction is one of the most cost-effective near-term applications for building decarbonization efforts." (*Id*.) In fact, several studies estimate that the cost of constructing all-electric homes is lower than the cost of constructing mixed-fuel new homes, with cost savings ranging from $2,000 to $10,000 per unit. (*Id*., pp. 2-3.)

Importantly, CEQA requires public agencies to avoid or reduce adverse environmental impacts whenever "feasible" by requiring "environmentally superior" alternatives and all feasible mitigation measures. (14 CCR § 15002(a)(2) and (3); *see also*, *Berkeley Keep Jets Over the Bay Com. v. Board of Port Cmrs.* (2001) 91 Cal.App.4th 1344, 1354; *Citizens of Goleta*

[4] https://www.ca.gov/archive/gov39/wp-content/uploads/2018/09/9.10.18-Executive-Order.pdf.

Valley v. Board of Supervisors (1990) 52 Cal.3d 553, 565). Furthermore, an EIR "must respond to specific suggestions for mitigating a significant environmental impact unless the suggested mitigation is facially infeasible. [Citations.] While the response need not be exhaustive, it should evince good faith and a reasoned analysis." (*Covington v. Great Basin Unified Air Pollution Control District* (2019) 43 Cal.App.5th 867, 879.)

Therefore, the SEIR must either adopt additional proposed mitigation measures to reduce this significant and unavoidable impact or provide substantial evidence to demonstrate that implementation would be infeasible. The SEIR estimates that implementation of existing mitigation measures would reduce the Project's GHG emissions to 10,615 MTCO2e per year but asserts, without evidence, that "[a]dditional mitigation to further reduce these emissions is not feasible." (Ex. A., p. 5.)

Mitigation Measure GHG-1 (SEIR, p. 4.4-23) requires a 20-percent reduction in building energy use by implementing measures such as installing solar photovoltaic panels or acquiring energy from renewable sources. However, the SEIR provides no justification for why the reduction in building energy use is limited to just 20 percent. In fact, according to Baseline, the "project could reduce GHG emissions from building energy use by 100 percent (instead of 20 percent) by replacing natural gas with electric power and acquiring all electricity from a local utility that has been generated by renewable sources. (Ex. A., p. 4.) "In addition, the project could require the installation of on-site solar photovoltaic panels to further reduce GHG emissions. With respect to transportation, the project could be designed to provide electric vehicle (EV) charging infrastructure beyond the current CALGreen standards to support the shift to zero-emission vehicles."

SAFER has presented substantial evidence that feasible mitigation measures exist to further reduce the Project's significant and unavoidable GHG impacts. Therefore, a revised SEIR must be developed to comply with CEQA by further analyzing the Project's significant GHG impacts and considering implementation of each of the above-proposed measures.

c. The SEIR Fails to Adequately Analyze or Mitigate the Project's Significant Energy Impacts.

The SEIR incorrectly concludes that the Project's energy impacts would be less-than-significant because the Project would comply with Title 24 of the California Building Standards Code. (Draft SEIR, p. 298.) However, the SEIR "fails to adequately consider feasible design features or mitigation measures to reduce the project's fossil fuel consumption, such as requiring the eliminating natural gas heating and appliances, requiring the installation of solar photovoltaic panels, and requiring the installation EV charging infrastructure that exceeds the minimum Title 24 requirements." (Ex. A., p. 5.)

Mere compliance with the California Building Energy Efficiency Standards (Cal. Code Regs., tit. 24, part 6 ("Title 24") does not constitute an adequate analysis of energy. *League to Save Lake Tahoe*, 75 Cal. App. 5th at 165; *Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 Cal. App. 4th 256, 264-65. Notably, in *California Clean Energy v. City of Woodland*, the court held unlawful an EIR's energy analysis which relied solely upon compliance with Title 24

to conclude that energy impacts would be less than significant. *California Clean Energy Committee v. City of Woodland* (2014) 225 Cal. App. 4th 173, 209-13 (*City of Woodland*).

The courts have recently affirmed *City of Woodland*, explaining that even where "[an] EIR [has] determined the project's impacts on energy resources would be less than significant," a lead agency must still analyze implementation of all "renewable energy options that might have been available or appropriate for [a] project," including to achieve 100 percent on-site renewable power generation. (*League to Save Lake Tahoe Mountain Area Preservation Foundation v. County of Placer* (2022) 75 Cal.App.5th 63, 166-67.) Furthermore, the court explained, a lead agency's failure to consider implementation of all feasible renewable energy proposals raised during the environmental review process constitutes a "prejudicial error." (*Id*. at 168.) Therefore, a revised SEIR must be prepared to further analyze the Project's energy impacts and consider implementation of feasible renewable energy alternatives.

II. Substantial Evidence Shows That the Project Will Likely Have Significant Adverse Indoor Air Quality and Health Impacts.

Certified Industrial Hygienist, Francis "Bud" Offermann, PE, CIH, has reviewed the SEIR and all relevant documents regarding the Project's indoor air emissions. Based on this review, Mr. Offermann concludes that the Project will likely expose future residents living and employees working at the Project site to significant impacts related to indoor air quality, and in particular, emissions of the cancer-causing chemical formaldehyde. Mr. Offermann is a leading expert on indoor air quality and has published extensively on the topic. Mr. Offermann's CV and expert comments are attached as Exhibit B.

A. Future Residents and Employees Will Face Elevated Cancer Risks from Indoor Formaldehyde Emissions.

Formaldehyde is a known human carcinogen and is listed by the State of California as a Toxic Air Contaminant ("TAC"). The South Coast Air Quality Management District ("SCAQMD") has established a cancer risk significance threshold from human exposure to carcinogenic TACs of 10 per million. (Ex. B., p. 2.)

Mr. Offermann explains that many composite wood products routinely used in indoor building materials and furnishings commonly found in offices, residences, and hotels contain formaldehyde-based glues which off-gas formaldehyde over long periods of time. He states that "[t]he primary source of formaldehyde indoors is composite wood products manufactured with urea-formaldehyde resins, such as plywood, medium density fiberboard, and particleboard. These materials are commonly used in building construction for flooring, cabinetry, baseboards, window shades, interior doors, and window and door trims." (*Id*., pp. 2-3.)

Mr. Offermann concludes that future residents living at the Project will be exposed to a cancer risk from formaldehyde of approximately 120 per million and that full-time employees working at the proposed Project will be exposed to a cancer risk from formaldehyde of approximately 17.7 per million (*Id*, pp. 4-5.) These calculations demonstrate a significant health risk ***even assuming*** that all furnishing materials are compliant with the California Air Resources

Board's formaldehyde airborne toxics control measure. (*Id*., p. 4.) Each of these risk levels exceeds the SCAQMD's CEQA significance threshold for airborne cancer risk of 10 per million.

The California Supreme Court has emphasized the importance of air district significance thresholds in providing substantial evidence of a significant adverse environmental impact under CEQA. (*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 College of San Mateo Gardens v. San Mateo County Community College Dist.* (2016) 1 Cal.5th 937, 958.)

The SEIR's failure to address the Project's formaldehyde emissions is also 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 held that potentially adverse impacts to future users and residents resulting from a Project's environmental impacts must be addressed by the CEQA review process. The issue before the Court in *CBIA* was whether an air district could enact CEQA guidelines that advised lead agencies that they must analyze the impacts of existing environmental conditions that occurred near a project site.

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 385-88). However, it ruled that agencies must still consider the extent to which a project may *exacerbate existing environmental conditions* at or near a project site, insofar as those conditions may adversely affect the project's future users or residents. (*Id*. at 388.) Specifically, the Supreme Court wrote, CEQA's statutory language requires 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 387 [emph. added].)

The Supreme Court's reasoning in *CBIA* is well-grounded in CEQA's statutory language. CEQA expressly identifies a project's effects on human beings as an effect that must be addressed as part of 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 386.) 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 future residents and employees of the Project are human beings. It is therefore axiomatic that any threat to the health and safety of those workers resulting from the Project's impact on the environment is subject to protection under CEQA.

B. The SEIR Must Be Revised to Analyze and Mitigate the Project's Significant Adverse Indoor Air Quality and Health Impacts.

The City has a duty to investigate issues related 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 health and air quality by emitting cancer-causing levels of formaldehyde into the air that will expose future employees and residents living and working at the Project site to cancer risks potentially in excess of SCAQMD's significance threshold of 10 per million.

The carcinogenic formaldehyde emissions which Mr. Offermann identified are not an existing environmental condition. To the contrary, those emissions will be caused *by the Project* and will result in adverse effects on the environment. If built without appropriate mitigation, the Project will slowly emit formaldehyde over long periods of time to levels that pose significant direct and cumulative health risks to Project users. As noted above, the Supreme Court in *CBIA* expressly found that a Project's environmental impacts, including those that affect a "project's users and residents," must be addressed by the CEQA review process. Therefore, a revised SEIR must be prepared to identify existing levels of TAC emissions near the Project site—and the impact that those will have on the health of future project employees and residents. Moreover, a revised SEIR must evaluate the *cumulative adverse health effects* that will affect future residents and employees as a result of the Project's indoor formaldehyde emissions *and* existing off-site TAC emissions.

Mr. Offermann concludes that these significant impacts should be analyzed in a revised SEIR and that additional mitigation measures should be imposed to reduce the significant health risks that will result from indoor formaldehyde emissions. (*Id*., pp. 12-14.) Mr. Offermann proposes various feasible mitigation measures to reduce these impacts, including by imposing a requirement that the Project applicant commit to using only composite wood materials that are made with CARB approved no-added formaldehyde (NAF) resins, or ultra-low emitting formaldehyde (ULEF) resins, for all of the buildings' interior spaces.

Mr. Offermann's observations constitute substantial evidence that the Project will produce potentially significant air quality and health impacts which the SEIR has failed to address. Therefore, the City must therefore prepare a revised SEIR to fully evaluate and mitigate these impacts to the Project's future residents and employees.

CONCLUSION

The SEIR is not supported by substantial evidence and fails to analyze and mitigate all of the Project's potentially significant environmental impacts. SAFER has presented substantial evidence of the SEIR's various shortcomings and its corresponding failure to adequately analyze and mitigate the Project's significant adverse impacts. Therefore, we respectfully request that the Planning Commission deny approval of the SEIR and instead direct City staff to prepare a revised SEIR.

Sincerely,

Adam Frankel
LOZEAU DRURY LLP