

COMMENTS & RESPONSES TO COMMENTS
INITIAL STUDY AND MITIGATED NEGATIVE DECLARATION
4304 TEMPLE CITY BOULEVARD WAREHOUSE • DR 05-19 • TTM 082738



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Via Email

June 28, 2022

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Alfredo Nuño, Vice-Chairperson
Cesar Peralta, Commissioner
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Re: MND for 4304 Temple City Boulevard Warehouse (Tentative Tract Map No. 082738, Design Review No. 05-19)

Dear Chairperson Wong, Vice-Chairperson Nuño, and Honorable Members of the Planning Commission:

I am writing on behalf of **Supporters Alliance for Environmental Responsibility ("SAFER")** regarding the 4304 Temple City Boulevard Warehouse Project (Tentative Tract Map No. 082738, Design Review No. 05-19), including all actions related or referring to the proposed construction of a multi-tenant industrial warehouse development consisting of two buildings with a total floor area of 63,428 square feet, located at 4304 Temple City Boulevard in the City of El Monte ("Project").

After reviewing the IS/MND, we conclude the IS/ND fails as an informational document, and that there is a fair argument that the Project may have adverse environmental impacts. Therefore, we request that the City of El Monte ("City") prepare an environmental impact report ("EIR") for the Project pursuant to the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000, et seq.

This comment has been prepared with the assistance of environmental consulting firm Soil/Water/Air Protection Enterprise ("SWAPE"). SWAPE's comment and

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the consultants' curriculum vitae are attached as Exhibit A hereto and are incorporated herein by reference in their entirety.

I. PROJECT DESCRIPTION

The proposed project involves construction and operation of a multi-tenant industrial warehouse development. The project would consist of two new buildings with a total floor area of 63,428 square feet within a 2.89-acre lot. There would be a total of four units in two separate buildings.

Building 1 would contain Units 1 and 2 and would have a total floor area of 44,207 square feet and would consist of 33,825 square feet of warehouse space, 3,490 sf of office space, and 5,976 sf of mezzanine office space. Building 2 would contain Units 3 and 4 and would have a total floor area of 19,221 sf and would consist of 14,219 sf of warehouse space, 2,179 sf of office space, and 2,565 sf of mezzanine office space. There would be a total of 69 parking spaces. The project would also include 4,077 sf of landscaping.

The project will require demolition of the foundation and other existing on-site improvements, followed by grading, construction, paving, landscaping and finishing. The project site is zoned M-2 (General Manufacturing), and has a General Plan designation of Industrial/Business Park.

The Project requires the following discretionary approvals: (1) Design Review to review the design of a new multi-tenant industrial warehouse development; (2) Tentative Tract Map to allow for the subdivision of the project site for the ownership of the individual units and a shared driveway/comment lot; and (3) Approval of the Mitigated Negative Declaration and Mitigation Monitoring and Reporting Program.

The properties surrounding the Project Site include a mix of industrial, commercial, and residential uses in the form of single-family homes.

II. LEGAL STANDARD

As the California Supreme Court has held “[i]f no EIR has been prepared for a nonexempt project, but substantial evidence in the record supports a fair argument that the project may result in significant adverse impacts, the proper remedy is to order preparation of an EIR.” *Communities for a Better Env’t v. South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 319-320 (*CBE v. SCAQMD*) (citing *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 88; *Brentwood Assn. for No Drilling, Inc. v. City of Los Angeles* (1982) 134 Cal.App.3d 491, 504-505). “Significant environmental effect” is defined very broadly as “a substantial or potentially substantial adverse change in the environment.” Pub. Res. Code (“PRC”) § 21068; see also 14 CCR § 15382. An effect on the environment need not be “momentous” to meet the CEQA test for significance; it is enough that the impacts are “not trivial.” *No Oil, Inc.*, 13 Cal.3d at 83. “The ‘foremost principle’ in interpreting CEQA is that the Legislature intended the act to be read so as

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to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.” *Communities for a Better Env’t v. Cal. Res. Agency* (2002) 103 Cal.App.4th 98, 109 (*CBE v. CRA*).

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. 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.

Where an initial study shows that the project may have a significant effect on the environment, a mitigated negative declaration may be appropriate. However, a mitigated negative declaration is proper *only* if the project revisions would avoid or mitigate the potentially significant effects identified in the initial study “to a point where clearly no significant effect on the environment would occur, and...there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.” PRC §§ 21064.5 and 21080(c)(2); *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 331. In that context, “may” means a reasonable possibility of a significant effect on the environment. PRC §§ 21082.2(a), 21100, 21151(a); *Pocket Protectors*, 124 Cal.App.4th at 927; *League for Protection of Oakland’s etc. Historic Res. v. City of Oakland* (1997) 52 Cal.App.4th 896, 904–05.

Under the “fair argument” standard, an EIR is required if any substantial evidence in the record indicates that a project may have an adverse environmental effect—even if contrary evidence exists to support the agency’s decision. 14 CCR § 15064(f)(1); *Pocket Protectors*, 124 Cal.App.4th at 931; *Stanislaus Audubon Society v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-51; *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602. The “fair argument” standard creates a “low threshold” favoring environmental review through an EIR rather than through issuance of negative declarations or notices of exemption from CEQA. *Pocket Protectors*, 124 Cal.App.4th at 928. The “fair argument” standard is virtually the opposite of the typical deferential standard accorded to agencies. As a leading CEQA treatise explains:

This ‘fair argument’ standard is very different from the standard normally followed by public agencies in making administrative determinations. Ordinarily, public agencies weigh the evidence in the record before them and reach a decision based on a preponderance of the evidence. [Citations]. The fair argument standard, by contrast, prevents the lead agency from weighing competing

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evidence to determine who has a better argument concerning the likelihood or extent of a potential environmental impact. The lead agency's decision is thus largely legal rather than factual; it does not resolve conflicts in the evidence but determines only whether substantial evidence exists in the record to support the prescribed fair argument.

Kostka & Zishcke, *Practice Under CEQA*, §6.29, pp. 273–74. The Courts have explained that “it is a question of law, not fact, whether a fair argument exists, and the courts owe no deference to the lead agency’s determination. Review is de novo, with a preference for resolving doubts in favor of environmental review.” *Pocket Protectors*, 124 Cal.App.4th at 928 (emphasis in original).

III. DISCUSSION

A. The MND Fails to Adequately Disclose the Project’s Potential Hazards and Hazardous Materials Impacts.

Matt Hagemann, P.G., C.Hg., and Dr. Paul E. Rosenfeld, Ph.D., of the environmental consulting firm SWAPE reviewed the IS/MND’s analysis of the Project’s impacts on hazards and hazardous materials, air quality, health risk, and greenhouse gases. SWAPE’s comment letter and CVs are attached as Exhibit A and their comments are briefly summarized here.

It is well-established that CEQA requires analysis of toxic soil contamination that may be disturbed by a Project, and that the effects of this disturbance on human health and the environment must be analyzed. CEQA requires a finding that a project has a “significant effect on the environment” if “the environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.” PRC §21083(b)(3). As the Court of Appeal recently stated, “[a] new project located in an area that will expose its occupants to preexisting dangerous pollutants can be said to have substantial adverse effect on human beings.” *Cal. Building Industry Assn. v. Bay Area Air Quality Mgm’t Dist.* (“*CBIA v. BAAQMD*”), 2013 Cal. App. LEXIS 644, *46 (Cal. Ct. App. 2013). The existence of toxic soil contamination at a project site is a significant impact requiring review and mitigation in the EIR. (*McQueen v. Bd. of Dirs.* (1988) 202 Cal.App.3d 1136, 1149; *Assoc. For A Cleaner Env’t v. Yosemite Comm. College Dist.* (“*ACE v. Yosemite*”) (2004) 116 Cal.App.4th 629.)

Here, the MND violates CEQA because it failed to disclose hazardous conditions at the Project site, which precluded accurate analysis and mitigation of the Project’s impacts.

The MND found that there would be a less-than-significant impact from hazards and hazardous materials. However, the Project site is a Cortese List site under active investigation by the California Department of Toxic Substances Control (“DTSC”) as part of the Crown City Plating Company due to the site’s historical use as “drum storage.” Ex. A, p. 2. The MND fails to disclose this vital information. *Id.*

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A Phase II Environmental Site Assessment (“ESA”) was completed for the Project Site in 2012 which found soil vapor concentrations of perchloroethylene (PCE), trichloroethylene (TCE), and 1,2-dichloroethane (1,2-DCA) which were above industrial-use scenario screening levels. *Id.* According to the U.S. Environmental Protection Agency (“EPA”), PCE and TCE are human carcinogens, and 1,2-DCA is a probable human carcinogen. *Id.* at 2-3. These toxic concentrations of PCE, TCE, and 1,2-DCA have the potential to affect humans by introducing contaminated vapors into the indoor air of buildings overlying the vapor plume. *Id.* at 3. However, the MND fails to address this potential human exposure, even despite explicit recommendations of further investigation in the Phase II ESA. *Id.* Additionally, the MND does not provide for mitigation of the Volatile Organic Compounds of PCE, TCE, and 1,2-DCA, instead addressing only methane in the form of a vapor barrier. *Id.*

An EIR must be prepared for the Project which discloses the Project site’s status as being on the Cortese list, especially due to the fact that there are ongoing investigations into the site which may require access to the site and cleanup activities. *Id.* Further, DTSC must be notified of the proposed development on the Project site so that DTSC can ensure that the land use is appropriate for the site and that adequate mitigation measures have been put in place. *Id.*

B. The IS/MND Relied on Unsubstantiated Input Parameters to Estimate Project Emissions and Thus the Project May Result in Significant Air Quality Impacts.

SWAPE found that the IS/MND incorrectly estimated the Project’s construction and operational emissions and therefore cannot be relied upon to determine the significance of the Project’s impacts on local and regional air quality. The MND relies on emissions calculated from the California Emissions Estimator Version 2020.4.0 (“CalEEMod”). IS/MND, p. 33. This model, which is used to generate a project’s construction and operational emissions, relies on recommended default values based on site specific information related to a number of factors. Ex. A, p. 3. CEQA requires any changes to the default values to be justified by substantial evidence. *Id.*

SWAPE reviewed the IS/MND’s CalEEMod output files and found that the values input into the model were inconsistent with information provided in the MND. Ex. A, p. 4. As a result, the IS/MND’s air quality analysis cannot be relied upon to determine the Project’s emissions.

Specifically, SWAPE found that the following values used in the IS/MND’s air quality analysis were either inconsistent with information provided in the IS/MND or otherwise unjustified:

1. Failure to Consider Potential Cold Storage Requirements. Ex. A, p. 4-5.
2. Failure to Substantiate Amount of Material Import or Export. Ex. A, p. 5.
3. Failure to Include Any Amount of Demolition. Ex. A, p. 6-7.

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Significantly, SWAPE points out that the IS/MND failed to provide the CalEEMod annual output file, which the CalEEMod User Guide points out is used to calculate construction emissions and operational emissions of a Project, as well as greenhouse gas emissions. Ex. A, p. 7. Without this file, SWAPE is unable to evaluate the accuracy of the Project's annual Diesel Particulate Matter ("DPM") or greenhouse gas emissions. *Id.* This omission represents a significant gap in the information provided in the MND, and the MND should therefore not be relied upon to determine the significance of the Project's impacts. An EIR should be prepared which corrects the values pointed out by SWAPE and which includes the CalEEMod output files.

C. The Project Would Have a Disproportionate Health Risk Impact on Surrounding Communities.

Next, SWAPE determined in its review that the Project would result in "disproportionate health risk impacts on community members living, working, and going to school within the immediate area of the Project site." Ex. A, p. 7. The Southern California Air Quality Management District ("SCAQMD") has found that "[t]hose living within a half mile of warehouses are more likely to include communities of color, have health impacts such as higher rates of asthma and heart attacks, and a greater environmental burden." *Id.*, quoting "South Coast AQMD Governing Board Adopts Warehouse Indirect Source Rule." SCAQMD, May 2021, available at: <http://www.aqmd.gov/docs/default-source/news-archive/2021/board-adopts-waisr-may7-2021.pdf?sfvrsn=9>. Other expert reports from Metro Freight Center of Excellence and the University of Redlands have made similar findings, concluding that neighborhoods of color and which are lower-income are more likely to contain warehouse facilities. Ex. A at 8.

With regard to the City of El Monte in particular, SWAPE found that the City has "long borne a disproportionately high pollution burden compared to the rest of California." *Id.* SWAPE consulted the California Environmental Protection Agency's CalEnviroScreen screening tool, which ranks each census tract in the State for pollution and socioeconomic vulnerability. *Id.* According to CalEnviroScreen 4.0, the Project site is in the 92nd percentile of the most polluted census tracts in the State. *Id.*, see image on p. 9. SWAPE also consulted SCAQMD's Data Visualization Tool for Mates V and found that the City exhibits a heightened residential carcinogenic risk from exposure to air toxics. *Id.* at 9, see image on p. 10. SWAPE therefore concludes that development of the Project would "disproportionately contribute to and exacerbate the health conditions of residents in El Monte." *Id.* at 10.

As for Los Angeles County more generally, the American Lung Association ranked the County as the third worst for ozone pollution in the nation. *Id.* at 10. This is due in large part to ground-level ozone, which is the main component of smog and which the U.S. EPA states can aggravate lung diseases and increase the frequency of asthma attacks, particularly in children. *Id.* Similarly, the California Air Resources Board has found that children are at greater risk from inhaled pollutants due to factors

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including tendency to play on the ground with dirt which contains toxicants, and children's less-developed natural biological defenses. *Id.* at 10-11.

The MND for the proposed Project states that the nearest sensitive receptors include residential units which are between 600-700 feet to the north, west, and south of the Project site. *Id.* at 11. SWAPE also consulted Google Earth and found that the Project site is approximately 0.66- and 0.48-miles from the Encinitas Elementary School and Shirpser Elementary School, respectively. *Id.*, see images on p. 12. SWAPE concludes that this poses a significant threat due to children's vulnerability to air pollution impacts. *Id.* at 12. SWAPE states: "the Project would have detrimental short-term and long-term health impacts on local residents and children if approved." *Id.*

These findings represent substantial evidence of a fair argument that the Project would have disproportionate and significant air quality impacts on local residents and children in the Project vicinity. The City must analyze this impact as part of its assessment of whether the Project would expose sensitive receptors to substantial pollutant concentrations. See, CEQA Appendix G. Further, SWAPE states that a Health Risk Assessment ("HRA") should be prepared to assess the cumulative air quality impacts from the "several warehouse projects proposed or built in a one-mile radius of the Project site." *Id.* at 13. An EIR must be prepared in order to adequately assess and mitigate these impacts.

D. The MND Failed to Evaluate Diesel Particulate Matter Emissions from the Project.

One of the primary emissions of concern regarding health effects for land development projects is diesel particulate matter ("DPM"), which can be released during Project construction and operation. DPM consists of fine particles with a diameter less than 2.5 micrometers including a subgroup of ultrafine particles (with a diameter less than 0.1 micrometers). Diesel exhaust also contains a variety of harmful gases and cancer-causing substances. Exposure to DPM is a recognized health hazard, particularly to children whose lungs are still developing and the elderly who may have other serious health problems. According to the California Air Resources Board ("CARB"), DPM exposure may lead to the following adverse health effects: aggravated asthma; chronic bronchitis; increased respiratory and cardiovascular hospitalizations; decreased lung function in children; lung cancer; and premature deaths for those with heart or lung disease.¹

The IS/MND failed to conduct a quantified construction or operational health risk analysis ("HRA"), and also failed to mention or evaluate Project-generated Toxic Air Contaminant ("TAC") emissions. SWAPE states that this is incorrect for the following three reasons.

¹ See CARB Resources - Overview: Diesel Exhaust & Health, available at <https://ww2.arb.ca.gov/resources/overview-diesel-exhaust-and-health>).

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First, in failing to prepare an HRA, the IS/MND also fails to make a reasonable effort to connect emissions to health impacts. Ex. A at 13. SWAPE identifies potential emissions from both the exhaust stacks of construction equipment and daily vehicle trips. *Id.* In failing to connect TAC emissions to potential health risks to nearby receptors, the Project fails to meet the CEQA requirement that projects correlate increases in project-generated emissions to adverse impacts on human health cause by those emissions. *Id.*; See *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 510.

Second, the California Department of Justice recommends the preparation of a quantitative HRA pursuant to the Office of Environmental Health Hazard Assessment ("OEHHA"), the organization responsible for providing guidance on conducting HRAs in California, as well as local air district guidelines. OEHHA released its most recent guidance document in 2015 describing which types of projects warrant preparation of an HRA. See "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, *available at*: http://oehha.ca.gov/air/hot_spots/hotspots2015.html. OEHHA recommends that projects lasting at least 2 months be evaluated for cancer risks to nearby sensitive receptors, a time period which this Project easily exceeds. Ex. A at 13. The OEHHA document also recommends that if a project is expected to last over 6 months, the exposure should be evaluated throughout the project using a 30-year exposure duration to estimate individual cancer risks. *Id.* at 13-14. Based on its extensive experience, SWAPE reasonably assumes that the Project will last at least 30 years, and therefore recommends that health risk impacts from the project be evaluated. *Id.* at 14. An EIR is therefore required to analyze these impacts. *Id.*

Third, the IS/MND's claim that there will be a less than significant impact without having conducted a qualified construction or operational HRA for nearby sensitive receptors also fails under CEQA requirements. An EIR or at least an MND should be prepared to quantify the cumulative excess cancer risk posed by the Project's construction and operation to nearby, existing receptors, and compare it to the SCAQMD threshold of 10 in one million. *Id.*

SWAPE prepared a screening-level HRA to evaluate potential impacts from Project construction and operation using air quality dispersion model AERSCREEN. *Id.* at 14-15. SWAPE applied a sensitive receptor distance of 200 meters and analyzed impacts to individuals at different stages of life based on OEHHA and SCAQMD guidance utilizing age sensitivity factors. *Id.* at 14-18.

SWAPE found that the excess lifetime cancer risk over the course of a Project operation of 30 years is approximately 10.7 in one million, which exceeds SCAQMD's threshold of 10 in one million. *Id.* at 17-18.

SWAPE's analysis constitutes substantial evidence that the Project may have a significant health impact as a result of diesel particulate emissions. A health risk assessment must be prepared disclosing the health risk impacts from toxic air contaminants.

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IV. CONCLUSION

For the foregoing reasons, SAFER believes that the MND prepared for the Project is wholly inadequate. SAFER requests that the City prepare an Environmental Impact Report ("EIR") to analyze and mitigate the Project's significant adverse environmental impacts. Thank you.

Sincerely,



Amalia Bowley Fuentes
LOZEAU DRURY LLP