



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

May 11, 2022

Robert Jense, Chair
Jonathan Martin, Vice Chair
Erich Brashears
Justin Caporusso
Tracy Covington
Clifford Haggenjos, Jr.
John Prior
Planning Commission
City of Roseville
311 Vernon Street
Roseville, CA 95678
plamingdivision@roseville.ca.us

Escarlet Mar, Associate Planner
Planning Division
City of Roseville
311 Vernon Street
Roseville, CA 95678
emar@roseville.ca.us

**Re: Sutter Parking Garage Expansion and Medical Office Building 7
Negative Declaration (File Nos. PL22-0024, PL22-0061)
Planning Commission Agenda Item 6.2 (May 12, 2022)**

Dear Chair Jense, Vice Chair Martin, Honorable Planning Commissioners, and Ms. Mar,

I am writing on behalf of the **Laborers International Union of North America, Local Union 185** and its members ("LIUNA") living in and around the City of Roseville ("City") regarding the Negative Declaration ("ND") prepared for the Sutter Parking Garage Expansion and Medical Office Building 7 Project ("Project") (File Nos. PL22-0024, PL22-0061) to be heard as Agenda Item 6.2 at the Planning Commission's May 12, 2022 meeting.

LIUNA's review of the ND was assisted by indoor air quality expert Francis Offermann, PE, CIH, noise expert Deborah Jue of Wildon Ihrig, and air quality experts Matt Hagemann, P.G., C.Hg., and Paul E. Rosenfeld, Ph.D., of the Soil/Water/Air Protection Enterprise ("SWAPE"). The written comments of Mr. Offermann, Ms. Jue, and SWAPE are attached hereto as Exhibit A, Exhibit B and Exhibit C, respectively. Based on their review, it appears that several of the MND's conclusions are not supported by substantial evidence and, moreover, there is a "fair argument" that the Project may have unmitigated adverse environmental impacts. As required by CEQA, LIUNA requests that the City prepare an environmental impact report ("EIR") rather than a ND prior to approving the Project.

PROJECT DESCRIPTION

The Project consists of two components: (1) the expansion of an existing five-story parking garage with a six-story parking addition (“Garage Expansion”) and (2) a new medical office building (“MOB”). Both components are located within the existing 49-acre Sutter Roseville Medical Center campus, specifically on the northeastern area of the campus. The Garage Expansion is proposed to be located immediately to the east of the existing five-story parking garage and be connected to the future parking garage at each level. The MOB would be located along the east edge of the campus, north of the existing five-story parking garage and east of the existing MOB4.

The Garage Expansion site is approximately 0.94 acres in size and contains an existing surface parking lot with lighting and landscaping. The MOB site is approximately 1.64 acres in size and is developed with surface parking, lighting, and landscaping. The MOB site is surrounded by an existing private dental clinic to the south and an apartment complex to the east. The MOB is proposed to be constructed in two-phases: Phase 1 would consist of the four-story building and Phase 2 would consist of a two-story addition on the front of the building.

LEGAL STANDARD FOR NEGATIVE DECLARATIONS

As the California Supreme Court 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, 319-20.) “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. v. City of Los Angeles* (1974) 13 Cal.3d 68, 83.) “The ‘foremost principle’ in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.” (*Communities for a Better Env’t v. Cal. Res. Agency* (2002) 103 Cal.App.4th 98, 109.)

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, supra*, 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, supra*, 124 Cal.App.4th at 927.)

An EIR is required if “there is substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment.” (PRC § 21080(d); see also *Pocket Protectors*, *supra*, 124 Cal.App.4th at 927.) In very limited circumstances, an agency may avoid preparing an EIR by issuing a negative declaration unless there is a “fair argument” that the project will have a significant environmental effect. (PRC, §§ 21100, 21064.) Since “[t]he adoption of a negative declaration . . . has a terminal effect on the environmental review process,” by allowing the agency “to dispense with the duty [to prepare an EIR],” negative declarations are allowed only in cases where “the proposed project will not affect the environment at all.” (*Citizens of Lake Murray v. San Diego* (1989) 129 Cal.App.3d 436, 440.) 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.” (*Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 331 [quoting PRC §§ 21064.5, 21080(c)(2)].) In that context, “may” means a reasonable possibility of a significant effect on the environment. (PRC §§ 21082.2(a), 21100, 21151(a); *Pocket Protectors*, *supra*, 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*, *supra*, 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*, *supra*, 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 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, supra*, 124 Cal.App.4th at 928.)

DISCUSSION

I. The proposed Conditions of Approval contain environmental mitigation measures that are not discussed or incorporated in the ND's analysis of the Project.

According to Staff's proposed Conditions of Approval, "The project shall comply with all required environmental mitigation identified in Sutter Roseville MOB 6 and Parking Garage Mitigated Negative Declaration." (Staff Report, p. 8.) However, there is no mention of the Sutter Roseville MOB 6 and Parking Garage Mitigated Negative Declaration ("MOB 6 MND") or its mitigation measures in the ND. The ND lists three "environmental documents relied upon" for its analysis of the Project: (1) 2035 General Plan Update Final Environmental Impact Report; (2) Northeast Roseville Specific Plan Environmental Impact Report; and (3) Sutter Roseville Medical Center Master Plan Environmental Impact Report. The ND makes no mention of mitigation measures from those environmental documents or any other environmental document, including the MOB 6 MND.

Rather than discuss mitigation measures that may be applied to the Project from other EIRs and MNDs, the ND simply concluded that every single environmental impact of the Project would be less than significant without mitigation. (See, e.g., Initial Study, pp. 13 [Air Quality], 20 [Energy], 24 [Greenhouse gases], 26 [Hazards], 33 [Noise].) If the Project requires mitigation measures from the MOB 6 MND to ensure less-than-significant impacts, then those mitigation measures must be discussed and incorporated into the ND. Because the ND does not mention the MOB 6 MND at all, the ND's conclusions are not supported by substantial evidence and it should be revised prior to further consideration of the Project.

II. An EIR is required to disclose and the Project's significant indoor air quality impacts from emissions of formaldehyde.

The ND fails to address the significant health risks posed by the Project from formaldehyde, a toxic air contaminant ("TAC"). Certified Industrial Hygienist, Francis Offermann, PE, CIH, has conducted a review of the Project, the ND, and relevant documents regarding the Project's indoor air emissions. Mr. Offermann is one of the world's leading experts on indoor air quality, in particular emissions of formaldehyde, and has published extensively on the topic. As discussed below and set forth in Mr. Offermann's comments, the Project's emissions of formaldehyde to air in the MOB will result in very significant cancer risks to future employees. Mr. Offermann's expert opinion and calculation present a "fair argument" that the Project may have significant health risk impacts as a result of these indoor air pollution emissions, which were not discussed, disclosed, or analyzed in the ND. These impacts must be addressed in an EIR. Mr. Offermann's comment and CV are attached as Exhibit A.

Formaldehyde is a known human carcinogen and listed by the State as a TAC. The Placer County Air Pollution Control District (“PCAPCD”) has established a significance threshold of health risks for carcinogenic TACs of 10 in a million. (Ex. A, p. 2.) The ND fails to acknowledge the significant indoor air emissions that will result from the Project. Specifically, there is no discussion of impacts or health risks, no analysis, and no identification of mitigations for significant emissions of formaldehyde to air from the Project.

Mr. Offermann explains that many composite wood products typically used 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 states that future employees of the MOB will be exposed to a cancer risk from formaldehyde of approximately 17.7 per million, even assuming that all materials are compliant with the California Air Resources Board’s formaldehyde airborne toxics control measure. (Ex. A, p. 4.) This exceeds PCAPCD’s CEQA significance thresholds for airborne cancer risk of 10 per million. (*Id.*) Mr. Offermann concludes that these significant environmental impacts must be analyzed in an EIR and mitigation measures should be imposed to reduce the risk of formaldehyde exposure. (*Id.* at pp. 4, 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.* at pp. 5-9.) Mr. Offermann also suggests several feasible mitigation measures, such as requiring the use of no-added-formaldehyde composite wood products, which are readily available. (*Id.* at pp. 11-12.) Mr. Offermann also suggests requiring air ventilation systems which would reduce formaldehyde levels. (*Id.* at p. 12.) Since the ND does not analyze this impact at all, none of these or other mitigation measures have been considered.

When a Project exceeds a duly adopted CEQA significance threshold, as here, this alone establishes substantial evidence that the project will have a significant adverse environmental impact. Indeed, in many instances, such air quality thresholds are the only criteria reviewed and treated as dispositive in evaluating the significance of a project’s air quality impacts. (See, e.g. *Schenck v. County of Sonoma* (2011) 198 Cal.App.4th 949, 960 [County applies Air District’s “published CEQA quantitative criteria” and “threshold level of cumulative significance”]; *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 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 PCAPCD's CEQA significance threshold, there is substantial evidence that an "unstudied, potentially significant environmental effect[]" exists. (See *Friends of Coll. of San Mateo Gardens v. San Mateo Cty. Cmty. Coll. Dist.* (2016) 1 Cal.5th 937, 958 [emphasis added].) As a result, the City must prepare an EIR for the Project to address this impact and identify enforceable mitigation measures.

The failure of the ND to address the Project's formaldehyde emissions is contrary to the California Supreme Court's decision in *California Building Industry Ass'n v. Bay Area Air Quality Mgmt. Dist.* (2015) 62 Cal.4th 369, 386 (*CBIA*). In that case, the Supreme Court expressly holds that potential adverse impacts to future users and residents from pollution generated by a proposed project must be addressed under CEQA. At issue in *CBIA* was whether the Air District could enact CEQA guidelines that advised lead agencies that they must analyze the impacts of adjacent environmental conditions on a project. The Supreme Court held that CEQA does not generally require lead agencies to consider the environment's effects on a project. (*CBIA, supra*, 62 Cal.4th at 800-01.) However, to the extent a project may exacerbate existing environmental conditions at or near a project site, those would still have to be considered pursuant to CEQA. (*Id.* at 801.) In so holding, the Court expressly held that CEQA's statutory language required lead agencies to disclose and analyze "impacts on a project's users or residents that arise from the project's effects on the environment." (*Id.* at 800.)

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

The Supreme Court's reasoning is well-grounded in CEQA's statutory language. CEQA expressly includes a project's effects on human beings as an effect on the environment that must be addressed in an environmental review. "Section 21083(b)(3)'s express language, for example, requires a finding of a 'significant effect on the environment' (§ 21083(b)) whenever the 'environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.'" (*CBIA, supra*, 62 Cal.4th at 800 [emphasis in original].) Likewise, "the Legislature has made clear—in declarations accompanying CEQA's enactment—that public health and safety are of great importance in the statutory scheme." (*Id.*, citing e.g., §§ 21000, subds. (b), (c), (d), (g), 21001, subds. (b), (d).) It goes without saying that the thousands of future residents at the Project are human beings and the health and safety of those residents must be subjected to CEQA's safeguards.

The City has a duty to investigate issues relating to a project's potential environmental impacts. (See *County Sanitation Dist. No. 2 v. County of Kern*, (2005) 127 Cal.App.4th 1544,

1597–98. [“[U]nder CEQA, the lead agency bears a burden to investigate potential environmental impacts.”.] The proposed office buildings will have significant impacts on air quality and health risks by emitting cancer-causing levels of formaldehyde into the air that will expose future residents to cancer risks potentially in excess of PCAPCD’s threshold of significance for cancer health risks of 10 in a million. Currently, outside of Mr. Offermann’s comments, the City does not have any idea what risks will be posed by formaldehyde emissions from the Project or the residences. As a result, the City must include an analysis and discussion in an EIR which discloses and analyzes the health risks that the Project’s formaldehyde emissions may have on future residents and identifies appropriate mitigation measures.

III. The ND inadequately analyzes and mitigates the Project’s noise impacts.

Noise expert Deborah Jue of the consulting firm Wilson Ihrig reviewed the MND’s analysis of the Project’s noise impacts. Ms. Jue’s comment letter is attached as Exhibit B. As discussed below, Ms. Jue concluded that the MND failed to properly analyze and mitigate the Project’s noise impacts and, as a result, the Project may cause significant impacts.

A. The ND fails to provide any context or analysis from the Sutter Roseville Medical Center Master Plan EIR.

Although the ND claims to incorporate prior environmental documents, including the Sutter Roseville Medical Center Master Plan EIR (Initial Study, pp. 7-8), there is no discussion of the information potentially used from the prior EIRs to evaluate the Project’s impacts, such as significance thresholds, impacts, and mitigation measures. (Ex. B, p. 1.) Furthermore, the prior EIRs are not all available from CEQANet or the City’s website. (Id.) Without making the prior documentation available or discussing how the information contained in those EIRs applies to this Project, the ND lacks the context and analysis necessary to determine that the Project’s impacts would be less than significant.

B. The ND fails to properly establish thresholds of significance for the Project’s noise impacts.

The ND failed to establish and apply proper significance thresholds for the Project’s noise impacts. (Ex. B, pp. 1-2.) Although the ND claims that the City’s CEQA Implementing Procedures determined that compliance with the City’s Noise Ordinance would be sufficient to find that the Project’s noise impacts would be less than significant, Ms. Jue notes that the City’s CEQA Implementing Procedures “include[] no discussion about CEQA thresholds to use in CEQA analysis.” (Ex. B, p. 2.) As such, “there is no evidence to substantiate that the noise ordinance is sufficient to determine potential significance.” (Id.)

Ms. Jue suggests a number of possible significance thresholds that the City could apply to this Project’s noise impacts. (Ex. B, pp. 2-3.) These thresholds include sleep disturbance (Ex. B, pp. 2-3), speech disturbance (Ex. B, p. 3), noise and vibration thresholds for construction (Ex. B, p. 3), and actual compliance with the Noise Ordinance (Ex. B, p. 3). Because the ND did not

provide any quantitative analysis of the Project's noise impacts, there is no evidence that the Project's noise levels will not exceed these thresholds or any other thresholds the City may adopt.

C. The ND's analysis of the Project's noise impacts is incomplete.

Ms. Jue notes that the ND provided incomplete analyses of the noise impacts from mechanical equipment on the roof of the MOB and from construction noise. (Ex. B, p. 3-4.)

For the mechanical equipment, "[t]he ND provides no evidence that the rooftop equipment for the MOB would comply with the Municipal code, and provides no evidence that the addition of such equipment would be less than significant at the nearest residential structure, which is only 120 ft away.) (Ex. B, p. 3.) The ND's failure to provide any substantive information about the mechanical equipment obscures a potentially significant impact. If two commercial-use air handling cooling systems are in operation, "the resulting noise level at the nearest residence would be 49 to 65 dBA, exceeding the City's daytime and nighttime noise limits. (Id.) In addition to the potentially significant impact from cooling systems, the ND also fails to discuss emergency/backup generators, which would only add to the Project's significant noise levels. (Id.) By failing to fully analyze these impacts, the ND omits potentially significant impacts and fails to provide substantial evidence that the Project's noise impacts will be less than significant without mitigation.

D. An EIR is required due to a fair argument that the Project's construction noise may result in a significant impact.

Ms. Jue calculated sample noise levels for five pieces of construction equipment: hoe ram, excavator/dozer, crane, front end loader, and pneumatic tools. (Ex. B, Table 1, p. 4.) According to her calculations of noise levels during demolition and site preparation, "noise from a hoe ram, excavator, or dozer could generate noise as high as 72 to 86 dBA Lmax at the nearest residence, with on-going noise over several hours each day ranging from 68 to 79 dBA Leq." (Ex. B, p. 4.) For construction, "the noise from a crane, front end loader or pneumatic tools would range from 67 to 77 dBA Lmax, with on-going noise levels of 63 to 74 dBA Leq. (Id.) Her calculations assumed that the equipment was not being used at the same time. If equipment use of different types overlapped, the noise impact would be even greater. According to Ms. Jue, these exterior noise levels would all cause speech interference at interior locations based on guidance from the World Health Organization. Due to Ms. Jue's a fair argument that the Project may result in significant noise impacts, the ND is inappropriate and an EIR must be prepared.

E. The ND fails to adequately mitigate the Project's noise impacts.

As noted above, the Project's mechanical equipment and construction noise/vibrations could result in significant impacts to the nearby residences and offices. Ms. Jue suggests several mitigation measures to address these impacts, including (1) selection, siting and/or screening of the mechanical equipment, (2) sound barrier or blankets for construction noise, and (3) buffer

distances for noisy activities and stationary equipment. (Ex. B, p. 4.) The City should revise the ND to fully analyze the Project's noise impacts and apply the above mitigation measures (or others) as appropriate.

IV. An EIR is Required to Disclose and Mitigate the Project's Significant Air Quality Impacts from Emissions of ROG.

- A. The MND's analysis of the Project's air quality impacts is not supported by substantial evidence.

SWAPE found that the ND underestimated the Project's emissions and therefore cannot be relied upon to determine the significance of the Project's air quality impacts. (Ex. C, pp. 2-3.) The MND relies on emissions calculated from the California Emissions Estimator Model Version CalEEMod.2016.3.2 ("CalEEMod"). (*Id.* at p. 2.) 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 (*Id.*) CEQA requires that any changes to the default values must be justified by substantial evidence.

SWAPE reviewed the Project's CalEEMod output files and found that the values input into the model were inconsistent with information provided in the ND. (Ex. C, p. 2.) This results in an underestimation of the Project's emissions. (*Id.*) As a result, an EIR should be prepared that adequately evaluates the Project's air quality impacts. (*Id.* at pp. 2-3.)

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

1. Underestimated Land Use Size (Ex. C, p. 3.)
2. Underestimated Land Use Size (Ex. C, pp. 3-4.)

As a result of these errors, the ND underestimates the Project's construction and operational emissions and cannot be relied upon to determine the significance of the Project's air quality impacts.

- B. SWAPE's updated analysis of the Project's air quality impacts establishes a fair argument that the Project may result in significant emissions of ROG.

In an effort to accurately determine the proposed Project's construction and operational emissions, SWAPE prepared an updated CalEEMod model that includes more site-specific information and correct input parameters. (Ex. C, p. 4.) SWAPE's updated analysis accounted for the entire 100,000 square feet of the MOB. (*Id.*) SWAPE's updated analysis found that the Project's construction-related ROG emissions exceed the of 82 pounds per day ("lbs/day") significance threshold set by PCAPCD, as shown below. (*Id.*)

SWAPE Criteria Air Pollutant Emissions	
Construction	ROG (lbs/day)
IS/ND	17
SWAPE	98
% Increase	476%
PCAPCD Threshold	82
Exceeds?	Yes

SWAPE’s expert analysis of the Project’s construction emissions establishes that the Project may result in significant ROG. Under CEQA, SWAPE’s fair argument requires that the City prepare an EIR to disclose and mitigate this impact.

VI. An EIR is required for the Project’s potentially significant greenhouse gas impacts.

The ND improperly concludes that the Project’s greenhouse gas (“GHG”) impacts would be less than significant. The ND relies on the City’s General Plan Update (“GPU”) EIR, which concluded that, even with mitigation, GHG impacts would be significant and unavoidable. The ND then jumps to the conclusion that the Project’s GHG impacts would be less than significant because “[t]he project complies with General Plan policy related to GHG and the project does not result in any new GHG impacts not previously analyzed in the GPU EIR.” (Initial Study, p. 26.) However, even if the project complies with the City’s General Plan policies, it does not follow that the Project’s impacts are necessarily less than significant. The GPU EIR concluded that GHG impacts would be significant and unavoidable, so compliance with the General Plan in no way indicates less-than-significant GHG impacts. Instead, the City needs to evaluate *this* Project’s GHG impacts to see if they remain significant and unavoidable.

Although the City may tier the Project’s GHG impacts from the GPU EIR, an ND is inappropriate where the Project will result in significant and unavoidable impacts. In the case *Communities for a Better Environment v. Cal. Resources Agency* (2002) 103 Cal.App.4th 98, 122-25, the court of appeal held that when a “first tier” EIR admits a significant, unavoidable environmental impact, then the agency must prepare second tier EIRs for later projects to ensure that those unmitigated impacts are “mitigated or avoided.” (*Id.*) The court reasoned that the unmitigated impacts were not “adequately addressed” in the first tier EIR since the impacts were not “mitigated or avoided.” (*Id.*) Thus, significant effects disclosed in first tier EIRs will trigger second tier EIRs unless such effects have been “adequately addressed,” in a way that ensures the effects will be “mitigated or avoided.” (*Id.*) When a project tiers from a prior EIR but still results in significant and unavoidable impacts, a second tier is required as well as a new Statement of Overriding Considerations. The court explained, “The requirement of a statement of overriding considerations is central to CEQA’s role as a public accountability statute; it requires public officials, in approving environmental detrimental projects, to justify their decisions based on

counterbalancing social, economic or other benefits, and to point to substantial evidence in support.” (*Id.* at pp. 124-25.)

Here, the ND made no attempt to determine whether the Project’s individual GHG impacts would actually be less than significant. In order to evaluate the Project’s GHG impacts, SWAPE quantified the Project’s GHG emissions and compared them to the PCAPCD’s De Minimis Level operational threshold of 1,100 metric tons of carbon dioxide equivalents per year (“MT CO₂e/year”). (Ex. C, p. 6.) As shown below, the Project’s GHG emissions exceed the PCAPCD threshold:

SWAPE Annual Greenhouse Gas Emissions	
Project Phase	Proposed Project (MT CO ₂ e/year)
Area	0.00
Energy	519.71
Mobile	1,837.00
Waste	543.13
Water	33.48
Total Annual Emissions	2,933.32
PCAPCD De Minimis Level	1,100
Exceeds?	Yes

SWAPE’s calculation establish a fair argument that the Project may result in significant GHG impacts. Unless the City can ensure that the GUP EIR reduces this impact to a less-than-significant level, an EIR and new Statement of Overriding Considerations is required under CEQA. SWAPE suggests numerous mitigation measures that could be applied to this Project to reduce the GHG impacts. (Ex. C, pp. 9-11.) The City should evaluate these feasible mitigation measures and incorporate them into a new EIR for the Project.

VII. The ND fails to consider renewable energy alternatives.

When analyzing a project's energy use to determine if it creates significant effects, CEQA requires a discussion of whether any renewable energy features could be incorporated into the project. (*League to Save Lake Tahoe Mountain Area Preservation Foundation v. County of Placer* (2022) 75 Cal.App.5th 63, 167 (*League to Save Lake Tahoe*.) Compliance with state and local regulatory programs is not sufficient to determine that a project will not result in a wasteful or inefficient use of energy. (*Id.* at p. 165.)

Although the ND discusses the Project’s consistency with the Northeast Roseville Specific Plan EIR (ND, pp. 21-22), there is no discussion of “whether any renewable energy features could be incorporated into the project as part of determining whether the project's impacts on energy resources were significant.” (See *League to Save Lake Tahoe, supra*, 75 Cal.App.5th at p. 168.) An updated energy analysis should be conducted and circulated in a revised ND or EIR in order to comply with CEQA.

LIUNA Comment

Sutter Parking Garage Expansion & MOB 7 (File Nos. PL22-0024, PL22-0061)

May 11, 2022

Page 12

CONCLUSION

LIUNA's experts have established a fair argument that the Project may have significant impacts on related to formaldehyde, ROGs, GHGs, and noise. Furthermore, the ND's analyses of these impacts as well as energy impacts, are not supported by substantial evidence. Therefore, LIUNA respectfully requests that the City prepare and circulate an EIR prior to further consideration of the Project.

Sincerely,



Brian B. Flynn
Lozeau Drury LLP