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Via Email

October 31, 2022

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Re: City of Huntington Beach, City Council Meeting of November 1, 2022, Public Hearing Items Nos. 20-21; Bella Terra Residential Project; Appeal of Planning Commission Approval; Resolution No. 2022-57, Approving Addendum to Environmental Impact Report No. 21-002 (Addendum No. 2) to the Village at Bella Terra Specific Plan EIR No. 07-03 ("Bella Terra Residential Project"); Resolution No. 2022-58, Approving General Plan Amendment (GPA) No 21-001 and Introducing Ordinance No. 4267 for Approval of Zoning Text Amendment (ZTA) No 21-003

Dear Mayor Delgleize, Honorable City Council Members, Mr. Beckman, and Ms. Estanislau:

I am writing on behalf of Supporters Alliance for Environmental Responsibility ("SAFER") regarding the proposed Addendum to the 2008 Final Program Environmental Impact Report ("FPEIR") and the 2010 EIR Addendum (hereinafter, "Addendum No. 2" or the "Addendum"), prepared for the Bella Terra Residential Project (File No. 22-843, General Plan Amendment No. 21-001, Zoning Text Amendment No. 21-003, and Resolution Nos. 2022-57 and 2022-58).

Addendum No. 2 purports to analyze the environmental impacts of all actions related or referring to the proposed plans submitted by the Applicant, Bella Terra Associates, LLC (the "Applicant"), to demolish an existing 149,000-square-foot Burlington department store and

30,000 square feet of adjacent retail space, and to construct a seven-story mixed-use infill project consisting of 300 apartment units, 40,000 square feet of retail and restaurant space, an above-ground three-level podium parking garage with 404 spaces, and associated hardscape and landscape improvements, to be located at 7777 Edinger Avenue, in the City of Huntington Beach, California, as well as all associated General Plan and Zoning amendments (the "Project").

On November 17, 2008, the City approved the Village at Bella Terra Environmental Impact Report (SCH No. 2008031066) ("2008 Project"). On September 27, 2010, the City approved the Revised Village at Bella Terra/Costco, Addendum to the Village at Bella Terra Environmental Impact Report (SCH No. 2008031066) ("2010 Project"). The City now proposes adoption of the Addendum for approval of a "Revised Project" which would include 300 additional apartment units as well as the addition of 25,000 square feet of new retail space. Both of the earlier projects, as well as the Revised Project, have included various General Plan and zoning amendments to accommodate the Project's consistently changing scope and scale.

After reviewing the Addendum, we conclude that it fails as an informational document and that there is substantial evidence that the Project will have adverse environmental impacts. SAFER's review of the Addendum has been assisted by indoor air quality expert and Certified Industrial Hygienist, Francis "Bud" Offermann, PE, CIH (comments attached as Exhibit A), and noise expert Deborah Jue of the acoustics consulting firm Wilson Ihrig (comments attached as Exhibit B).

SAFER respectfully requests that the City of Huntington Beach ("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. Please note that this letter supplements and adopts in its entirety SAFER's prior written comments submitted to the City's Planning Commission on September 27, 2022 (attached as Exhibit C).

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, which requires the lead agency to 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.)

I. Preparation of an Addendum Under CEQA

The City has prepared an Addendum to the previously certified 2008 FPEIR and 2010 Addendum. In order to comply with CEQA, an addendum must adhere to the CEQA Guidelines and the courts' prior decisions outlining the limited circumstances under which an addendum may be adopted. The proposed Addendum fails to comply with either of these requirements and, if adopted, would directly violate CEQA. Instead, in order to comply with CEQA, the City must

prepare an EIR which adequately considers and mitigates the Project's new significant environmental effects.

a. The Addendum Involves New Significant Environmental Effects and is Thus Inappropriate Under CEQA.

Pursuant to the CEQA Guidelines, an addendum to a previously certified EIR may be prepared only if "none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred." (CEQA Guidelines § 15164(b).) Notably, CEQA Guidelines § 15162(a) provides that **an addendum to an EIR is not appropriate** where:

(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.

The significant changes proposed by Addendum No. 2 cannot plausibly be described as "minor technical changes." The Addendum proposes the addition of ***25,000 square feet of new commercial space and 300 new residential units***. If approved, these developments will result in significant environmental impacts that were not considered by the Project's previous CEQA approvals.

For instance, the proposed development of 300 **new** residential units is a significant increase beyond the 468 units that were approved by the 2010 Addendum. In fact, if Addendum No. 2 is approved, the total number of units on the Project site would rise to 768, which is **55**

units greater than the originally approved maximum of 713 units under the 2008 FPEIR.

SAFER has presented substantial evidence that **new significant environmental effects** will result from the Project, including air quality and noise impacts that were not adequately addressed or mitigated by the Addendum. Furthermore, these comments provide **new information of substantial importance** that make clear that the use of an Addendum is inappropriate. Therefore, SAFER respectfully requests that the City pursue the necessary efforts to prepare an EIR in compliance with state law.

If approved, Addendum No. 2 would significantly expand the scope of the CEQA approvals granted by the 2008 FPEIR and the 2010 Addendum while failing to conduct a legally sufficient environmental review and proposing insufficient mitigation to address the Project's new significant environmental effects. SAFER presents substantial evidence that the Project will have significant environmental effects which the Addendum fails to address. Therefore, to comply with CEQA, the City should deny the Addendum and undertake the necessary efforts to prepare an EIR in compliance with CEQA.

b. The Proposed Addendum Would Violate CEQA's Standards for "Tiering" of Environmental Analysis Under Program EIRs.

Another key legal consideration at issue with the Addendum is "tiering." 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.

The 2008 EIR approved for The Village at Bella Terra is a *program* EIR. As explained by the 2008 DEIR: "Since the Village at Bella Terra consists of a GPA/ZTA as opposed to a specific development proposal, this EIR provides a **programmatic analysis** of the proposed project. As defined by the CEQA Guidelines Section 15168(c), a **Program EIR** can be used specifically for later activities, as would likely be the case for future development on the project site" [emph. added]. (*See*, 2008 DEIR, p. 15).

The CEQA Guidelines define a "program EIR" as an EIR "prepared on a series of actions that can be characterized as one large project and are related either: (1) Geographically,(2) As logical parts in the chain of contemplated actions, (3) In connection with issuance of rules, regulations, plans, or other general criteria to govern the conduct of a continuing program, or (4) As individual activities carried out under the same authorizing statutory or regulatory authority and having generally similar environmental effects which can be mitigated in similar ways. (14 CCR § 15168.)

The California Supreme Court has explained the differing standards of review that apply where a lead agency relies on a previous *program* EIR versus a previous *project* EIR:

> 'The standard for determining whether to engage in additional CEQA review for subsequent projects under a tiered EIR is more relaxed than the prohibition against additional review imposed by Public Resources Code section 21166 for project EIR's.' (*Friends of Mammoth v. Town of Mammoth Lakes Redevelopment Agency* (2000) 82 Cal.App.4th 511, 528, 98 Cal.Rptr.2d 334.) For project EIRs, of course, a subsequent or supplemental impact report is required in the event there are substantial changes to the project or its circumstances, or in the event of material new and previously unavailable information. (*Ibid.*, citing § 21166.) In contrast, when a tiered EIR has been prepared, review of a subsequent project proposal is more searching. If the subsequent project is consistent with the program or plan for which the EIR was certified, then 'CEQA requires a lead agency to prepare an initial study to determine if the later project may cause significant environmental effects not examined in the first tier EIR.' (*Ibid.* citing Pub. Resources Code, § 21094, subds. (a), (c).) 'If the subsequent project is not consistent with the program or plan, it is treated as a new project and must be fully analyzed in a project—or another tiered EIR if it may have a significant effect on the environment.' (*Friends of Mammoth*, at pp. 528–529, 98 Cal.Rptr.2d 334.)

(*Friends of College of San Mateo Gardens v. San Mateo County Community College Dist.* (2016) 1 Cal.5th 937, 960 (*San Mateo Gardens*).)

The Supreme Court further explained that, if a subsequent proposal is not "either the same as or within the scope of the project . . . described in the program EIR," the use of an addendum under the more deferential substantial evidence standard is not appropriate. (*San Mateo Gardens*, *supra*, 1 Cal.5th at 960 [citing *Sierra Club*, *supra*, 6 Cal.App.4th at 1321].) Instead, "the agency is required to apply a more exacting standard to determine whether the later project might cause significant environmental effects that were not fully examined in the initial program EIR." (*Id.* [citing *Sierra Club*, *supra*, 6 Cal.App.4th at 1321; Pub. Res. Code § 21094(c).)

Therefore, where a subsequent proposal falls outside the scope of the original program EIR, as is the case here, the more exacting "fair argument" standard 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 standard, 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;

emphasis added].) 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.)

Lastly, where there is no evidence that a later project was contemplated at the time of the program EIR or that any site-specific environmental issues related to the later project were addressed in the program EIR, that later project is not within the scope of the program EIR. (See *NRDC v. City of Los Angeles* (2002) 103 Cal.App.4th 268, 284-85.) When a later project is not within the scope of the program EIR, an initial study followed by "either an EIR or a negative declaration" must be prepared. (14 CCR § 15168(c)(1).)

There can be no doubt that the effects of 300 additional units (for a total of 768 units) were not contemplated in the 2008 EIR, which only analyzed a *maximum* of 713 units. Because there is no detail or analysis in the 2008 EIR of the construction and operation of 768 units, there is no substantial evidence that this Project is within the scope of the 2008 EIR. As such, CEQA Guidelines section 15168 requires that the City prepare at initial study followed by an EIR or MND. As explained below, however, even though a negative declaration is permissible under CEQA Guidelines 15168, expert evidence submitted by SAFER establishes a fair argument that a supplemental EIR, rather than a negative declaration, is required for the Project. Furthermore, the Project's remaining significant and unavoidable impacts also require the City to prepare an EIR and a statement of overriding considerations.

c. A Subsequent EIR and a Statement of Overriding Considerations Are Required Due to the Project's Significant and Unavoidable Environmental Impacts.

The Addendum concedes that the earlier 2008 FPEIR and the 2010 Addendum concluded that the Project would result in significant and unavoidable impacts to air quality, noise, and traffic. Although these impacts were previously identified as significant and unavoidable, CEQA requires an EIR to evaluate and mitigate these impacts, as well as a Statement of Overriding Consideration, prior to the issuance of any subsequent approvals.

In *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, the agency must prepare second tier EIRs for later projects to ensure that those unmitigated impacts are "mitigated or avoided." (*Id.* [citing 14 CCR §15152(f.)) The court reasoned that the unmitigated impacts were not "adequately addressed" in the first tier EIR since it was 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.*)

A second tier EIR is required especially where the impact still cannot be fully mitigated. Such situations also require the preparation of a statement of overriding considerations. Here, 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 124-25.)

Since the 2008 Program FPEIR and the 2010 Addendum identified multiple significant and unavoidable impacts, a second tier EIR is now required to determine if additional mitigation measures can now be imposed to reduce or eliminate those impacts. If those impacts remain significant and unavoidable, a Statement of Overriding Considerations is required in addition to the EIR. "[T]he responsible public officials must still go on the record and explain specifically why they are approving the later project despite its significant unavoidable impacts." (*Communities for a Better Environment*, 103 Cal.App.4th at 124–25.) Therefore, approval of the Addendum would be improper and an EIR is required for the Project's significant and unavoidable impacts.

DISCUSSION

I. The Project Will Have Significant Indoor Air Quality and Adverse Health Impacts.

Certified Industrial Hygienist, Francis "Bud" Offermann, PE, CIH, has reviewed the Addendum 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 of the Project to significant impacts related to indoor air quality, and in particular, emissions of the cancer-causing chemicals benzene and formaldehyde. Mr. Offermann is a leading expert on indoor air quality and has published extensively on the topic. Mr. Offermann's expert comments are attached as Exhibit A.

Importantly, neither the 2008 FPEIR nor the 2010 Addendum addressed indoor air quality impacts from formaldehyde or benzene emissions. Because these impacts were not previously analyzed, the fair argument standard applies and an EIR is required to address and mitigate these impacts.

A. Future Residents 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"), the agency responsible for regulating air quality within the South Coast Air Basin—which includes the City of Huntington Beach—has established a cancer risk significance threshold from human exposure to carcinogenic TACs of 10 per million. (Ex. A, p. 2.)

Mr. Offermann explains that many composite wood products typically used in building materials and furnishings commonly found in offices, warehouses, residences, and hotels contain formaldehyde-based glues which off-gas formaldehyde over a very long period 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 of the Project will be exposed to a cancer risk from formaldehyde of approximately 120 per million, ***even assuming*** that all materials are compliant with the California Air Resources Board's formaldehyde airborne toxics control measure. (*Id.*, p. 4.) This risk level is **12 times greater** than SCAQMD's CEQA significance threshold for airborne cancer risk of 10 per million. Importantly, Mr. Offermann's conclusions are based on studies that were conducted in 2019 and which were therefore not available for review when the 2008 FPEIR and 2010 Addendum were approved.

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 *San Mateo Gardens, supra*, 1 Cal.5th at 958.)

The Addendum'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 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 the future residents of the Project are human beings. It is axiomatic that the health and safety of those residents is subject to CEQA's environmental safeguards.

B. Hazardous Soil Vapors from the Costco Gas Station Will Negatively Impact Indoor Air Quality and Impact the Health of Future Residents.

Next, Mr. Offermann observes: "Another indoor air quality impact **that was not addressed** in the Addendum to the Final Program Environmental Impact Report [nor by the] 2010 EIR Addendum for the Village at Bella Terra (LSA, 2022), is the potential impact of ground contaminants from the Costco gas station, which is located within 100 feet of the Project." (*Id.*, p. 12.)

In regard to this significant impact, Mr. Offermann explains: "Gasoline stations frequently cause contamination of the ground from spills and leaks of gasoline and other petroleum products, **which results in vapors containing benzene, a known human carcinogen**, to permeate and migrate through the surrounding ground soil and enter the air of nearby buildings." (Ex. A., p. 12.) The Addendum fails to address or offer any mitigation for this significant indoor air quality and health impact.

The failure to address the gas station's impact on human health is once again contrary to the California Supreme Court's holding in *CBIA,* discussed above.[1] Here, the elevated cancer risk that may result from the Project's indoor air emissions will be exacerbated by the additional cancer risk that exists due to the Project's location immediately adjacent to a Costco gas station. Therefore, these indoor air quality and human health impacts must be analyzed by an EIR.

C. An EIR Must Be Prepared to Disclose and Mitigate the Project's Significant Indoor Air Quality and Adverse Health Impacts.

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,

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[1] Interestingly, the Supreme Court specifically discussed the adverse environmental impacts of ground soil contaminants from gasoline stations – and the required procedures under CEQA for disclosure and mitigation of these impacts – in the *CBIA* decision. "Suppose that an agency wants to locate a project next to the site of a long-abandoned gas station. For years, that station pumped gasoline containing methyl tertiary-butyl ether (MTBE), an additive -- now banned by California -- that can seep into soil and groundwater. (See *Western States Petroleum Assn. v. State Dept. of Health Services* (2002) 99 Cal.App.4th 999, 1003; Cal. Code Regs., tit. 13, § 2262.6, subd. (a) [prohibiting the addition of MTBE to gasoline starting Dec. 31, 2003].) Without any additional development in the area, the MTBE might well remain locked in place, an existing condition whose risks -- most notably the contamination of the drinking water supply -- are limited to the gas station site and its immediate environs. But by virtue of its proposed location, the project threatens to disperse the settled MTBE and thus exacerbate the existing contamination. The agency would have to evaluate the existing condition -- here, the presence of MTBE in the soil -- as part of its environmental review. Because this type of inquiry still focuses on the *project's impacts on the environment* -- how a project might worsen existing conditions -- directing an agency to evaluate how such worsened conditions could affect a project's future users or residents is entirely consistent with this focus and with CEQA as a whole. (*CBIA,* 62 Cal. 4th, *supra,* at 389.)

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 residents 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 residents. 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, an EIR must be prepared to identify existing levels of TAC emissions near the Project site – such as those resulting from the operation of the adjacent Costco gas station – and the impact that those will have on the health of future residents. Moreover, an EIR must evaluate the *cumulative effect* on future residents resulting from both the Project's indoor formaldehyde emissions *and* existing off-site TAC emissions.

Mr. Offermann concludes that these significant impacts should be analyzed in an EIR and that additional mitigation measures should be imposed to reduce the significant health risks that will result from indoor emissions of formaldehyde and benzene. (*Id.*, pp. 12-14.) Mr. Offermann proposes various feasible mitigation measures to reduce these impacts, including by imposing a requirement that the Project applicant install air filters throughout the building and 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.

Additionally, Mr. Offermann observes that further "environmental assessment is needed to ascertain if mitigation measures such as a sub-slab ventilation system will be required to [e]nsure that the concentrations of gasoline ground contaminants [from the Costco gas station], including benzene, are maintained at acceptable concentrations in the indoor air of the Project (e.g., occupant indoor exposures are less than the NSRL of 13 μg/day for benzene)." (*Id.*)

Mr. Offermann's observations constitute substantial evidence that the Project will produce potentially significant air quality and health impacts which the Addendum and the previous CEQA documents have failed to address. Therefore, the City must therefore prepare an EIR to fully evaluate and mitigate these adverse impacts to future Project residents.

II. The Project Will Have Significant Noise Impacts and Lacks Appropriate Mitigation.

Deborah Jue of the acoustics consulting firm Wilson Ihrig reviewed the Addendum and the associated Noise and Vibration Technical Report (Appendix F). Based on her review, Ms. Jue concluded that the Project will result in "substantial and significant" noise impacts which were not adequately considered or mitigated by the Addendum. Ms. Jue's expert comments are attached as Exhibit B.

A. The Addendum Obscures the Project's Likely Impacts Upon Sensitive Noise Receptors, Including School Children and Vulnerable Residents.

Ms. Jue notes that the Addendum lacks a quantified noise threshold to properly "assess the impact of construction noise at the nearby schools." (Ex. B., p. 1.) Instead, the Addendum refers to the City's 80 dBA construction noise threshold, without evaluating whether this is an appropriate threshold for determining whether the Project's construction noise will negatively impact neighboring schools. (*Id.*) This oversight is problematic because CEQA does not permit public agencies to apply significance thresholds "in a way that forecloses the consideration of any other substantial evidence showing there may be a significant effect." (*Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 105.)

Therefore, Ms. Jue writes, additional analysis must be performed to "show that on-going noise from Project construction activities, including increased truck activities off-site would not exceed 55 dBA exterior/40 dBA interior at nearby school buildings," which will be impacted by Project construction during two—and possibly even three—academic school years. (*Id.*, pp. 1-2.)

Furthermore, the Addendum improperly obscures the Project's likely noise impacts to impacted residents of the immediately adjacent building, The Residences at Bella Terra, by referring to the substantial noise increases it will produce as "temporary." As Ms. Jue explains, however, this characterization is contrary to the CEQA Guidelines. In fact, the Guidelines specifically ask whether a Project will result in a "substantial ***temporary or permanent*** increase in ambient noise levels in the vicinity of the project" to determine whether its noise impacts may be deemed significant. (*Id.*, pp. 3-4.) To characterize the planned 28 months of construction noise as "temporary" obscures the fact that the impact to residents will be "substantial and significant," and will require additional "mitigation measures such as sound barriers [and] buffer distances." (*Id.*, p. 4.)

B. The Addendum Fails to Adopt Legally Enforceable Mitigation Measures and Improperly Defers Mitigation.

CEQA requires that mitigation measures be fully enforceable through permit conditions, agreements, or other legally binding instruments. 14 CCR § 15126.4(a)(2). (*See* also, *Woodward Park Homeowners Assn., Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 730 [project proponent's agreement to a mitigation by itself is insufficient; mitigation measure must be an enforceable requirement].) furthermore, a CEQA lead agency may not rely on mitigation measures to reduce a Project's impacts if the proposed measures are not enforceable. (*Id.*)

The Addendum proposes several Project Design Features ("PDFs") to reduce the Project's noise impacts – but it lacks any legally enforceable mitigation measures. (Ex. B., p. 3.) As. Ms. Jue observes, these PDFs are insufficient because they lack any legally binding enforcement or reporting mechanism, and thus fail to comply with CEQA by leaving open the possibility that they will not be implemented.

In one PDF, for instance, the Addendum suggests that the "Project shall be reviewed by an acoustical consultant," and that it will be subject thereafter to review and approval by Planning Department staff. (*Id.*) But again, this PDF lacks any legally enforceable mechanism to ensure this independent review takes place.

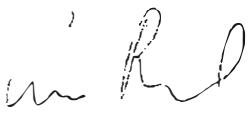
It also fails to disclose what criteria will be used to assess whether the proposed mitigation is adequate. CEQA does not allow this type of deferred mitigation because it limits the law's primary goal of providing broad public disclosure to inform decision making.

"Formulation of mitigation measures shall not be deferred until some future time." 14 CCR § 15126.4(a)(1)(B). Similarly, as the courts have explained, "Numerous cases illustrate that reliance on tentative plans for future mitigation after completion of the CEQA process ***significantly undermines CEQA's goals of full disclosure and informed decision making***; and consequently, these mitigation plans have been overturned on judicial review as constituting improper deferral of environmental assessment." (*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 92 [emph. added].)

III. CONCLUSION

In conclusion, SAFER believes that the Addendum fails as an informational document and that there is substantial evidence the Project will have significant noise and air quality impacts. Additionally, because the previous CEQA approvals determined that the Project would have significant and unavoidable environmental impacts, a second tier EIR and a statement of overriding considerations are required. Therefore, we respectfully request that the City deny approval of the Addendum and instead undertake the necessary efforts prepare an EIR for the Project.

Sincerely,



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