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Via E-mail

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Re: Comment on the Mitigated Negative Declaration for the 740-790 E. Green Street Project

Dear Chair Sepulveda, Vice Chair Delgado, and Honorable Members of the Design Commission:

I am writing on behalf of **Supporters Alliance for Environmental Responsibility** and its members living in and around the City of Pasadena (“SAFER”) regarding the Mitigated Negative Declaration (“MND”) for the 740-790 East Green Street Mixed-Use Project proposed in the City of Pasadena (the “Project”). After reviewing the MND, SAFER concludes that it fails to adequately analyze all environmental impacts and mitigate all of the Project’s significant environmental impacts. SAFER respectfully requests that the City of Pasadena prepare an EIR in order to incorporate our concerns discussed below.

This comment has been prepared with the assistance of Certified Industrial Hygienist, Francis “Bud” Offermann, PE, CIH. Mr. Offermann’s comment and curriculum vitae are attached as Exhibit A hereto and is incorporated herein by reference in its entirety.

I. PROJECT DESCRIPTION

The Project involves the demolition of five existing commercial buildings, and the construction and operation of a new mixed-use project within the City of Pasadena Playhouse District. The mixed-use project would include one 4-story mixed-use building and one 5-story residential building. The two buildings would be located on top of a two-level subterranean parking garage

that encompasses the majority of the 2.33-acre property, and would include 416 parking spaces. The Project would include 14,346 square feet of office use and 263 for-rent residential units, 41 of which would be designated as affordable units. The Project relies on the State's Density Bonus Law and the City's Concessions Menu.

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 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.)

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*, 124 Cal.App.4th at 927.) In very limited circumstances, an agency may avoid preparing an EIR by issuing a negative declaration, a written statement briefly indicating that a project will have no significant impact thus requiring no EIR (14 CCR § 15371), only if there is not even 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.)

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.)

III. DISCUSSION

A. There is Substantial Evidence that the Project will have a Significant Health Risk Impact from Indoor Air Emissions.

One component of an air quality impact analysis under CEQA is evaluating the health risk impacts of toxic air contaminant (“TACs”) emissions contributed by a proposed project as well as cumulatively with other nearby TAC sources. Certified Industrial Hygienist, Francis “Bud” Offermann, PE, CIH, has conducted a review of the Project, the CEQA Analysis, and relevant appendices regarding the Project’s indoor air emissions. Indoor Environmental Engineering Comments (Jan. 13, 2021) (“Offermann Comment”) (attached hereto as Exhibit A). Mr. Offermann is one of the world’s leading experts on indoor air quality and has published extensively on the topic. As discussed below and set forth in Mr. Offermann’s comments, the Project’s emissions of formaldehyde to air will result in very significant cancer risks to future residents. As a result of this significant effect, the Project requires preparation of an EIR to analyze and mitigate this significant impact.

The MND’s analysis includes a discussion of the Project’s anticipated TAC emissions. *Id.* at 39. The MND concludes that while TACs will be generated during Project construction, “the duration of the proposed construction activities would only constitute a small percentage of the total 30-year exposures period,” and therefore TACs from construction “would not result in concentrations causing significant health risks.” *Id.* The MND also concludes that “the proposed Project would not involve operational activities that would generate TAC emissions.” *Id.*

The MND identifies the significance thresholds established by the South Coast Air Quality Management District (“SCAQMD”) for a project’s TAC emissions as “an incremental cancer risk threshold of 10 in 1 million. ‘Incremental cancer risk’ is the net increased likelihood that a person continuously exposed to concentrations of TACs resulting from a Project over a 9-, 30-, and 70-year exposure period will contract cancer based on the use of standard Office of Environmental Health Hazard Assessment (OEHHA) risk-assessment methodology (OEHHA 2015).” *Id.* at 39.

Although the MND identifies TAC emissions associated with the Project’s construction equipment, the analysis fails to acknowledge the significant indoor air emissions that also will

result from the Project. Specifically, there is no discussion, analysis, or identification of mitigation measures to reduce significant emissions of formaldehyde to the air from the Project.

Mr. Offermann explains that many composite wood products typically used in home and apartment building construction contain formaldehyde-based glues which off-gas formaldehyde over a very long time period. He states, “The primary source of formaldehyde indoors is composite wood products manufactured with urea-formaldehyde resins, such as plywood, medium density fiberboard, and particle board. These materials are commonly used in residential building construction for flooring, cabinetry, baseboards, window shades, interior doors, and window and door trims.” Offermann Comment, pp. 2-3.

Formaldehyde is a known human carcinogen. Mr. Offermann states that there is a fair argument that future residents of the Project will be exposed to a cancer risk from formaldehyde of approximately 120 per million, assuming all materials are compliant with the California Air Resources Board’s formaldehyde airborne toxics control measure. *Id.*, p. 3. This is 12 times the SCAQMD’s CEQA significance threshold for airborne cancer risk of 10 per million. Mr. Offermann concludes that this significant environmental impact should be analyzed in an EIR and mitigation measures should be imposed to reduce the risk of formaldehyde exposure. *Id.*, p. 2. Mr. Offermann suggests several feasible mitigation measures, such as requiring the use of no-added-formaldehyde composite wood products, which are readily available. Offermann Comments, pp. 12-13. Mr. Offermann also suggests requiring air ventilation systems which would reduce formaldehyde levels. *Id.* Since the CEQA Analysis does not analyze this impact at all, none of these or other mitigation measures are considered.

When a Project exceeds a duly adopted CEQA significance threshold, as here, this alone establishes a fair argument that the project will have a significant adverse environmental impact and an EIR is required. 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 BAAQMD’s “published CEQA quantitative criteria” and “threshold level of cumulative significance”). See also *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 110-111 (“A ‘threshold of significance’ for a given environmental effect is simply that level at which the lead agency finds the effects of the project to be significant”). The California Supreme Court made clear the substantial importance that an air district significance threshold plays in providing substantial evidence of a significant adverse impact. *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 327 (“As the [South Coast Air Quality Management] District’s established significance threshold for NO_x is 55 pounds per day, these estimates [of NO_x 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 a fair argument that the Project will have significant adverse impacts and an EIR is required.

Mr. Offermann also notes that the high cancer risk that may be posed by the Project’s

indoor air emissions will be exacerbated by the additional cancer risk that exists from vehicle emissions from the adjacent and nearby roadways such as I-210, E Green Street, Hudson Street, Colorado Boulevard, S. Lake Avenue, and Oak Knoll Avenue. *Id.* at 10.

He observes that the Project is located in south Coast Air Basin, which is a State and Federal non-attainment area for PM_{2.5}, and that “[a]n air quality analyses should be conducted to determine the concentrations of PM_{2.5} in the outdoor and indoor air that people inhale each day. *Id.* at 11. Because the City’s analysis of the cumulative health risk impacts of the Project fails to include these sources as well as the TAC emissions to air from the Project itself, the cumulative impact analysis and conclusion is not supported by substantial evidence. Mr. Offermann concludes that:

It is my experience that based on the projected high traffic noise levels, the concentration of PM_{2.5} will exceed the California and National PM_{2.5} annual and 24-hour standards and warrant installation of high efficiency air filters (i.e. MERV 13 or higher) in all mechanically supplied outdoor air ventilation systems

Id.

The failure of the CEQA Analysis to address the Project’s formaldehyde emissions is contrary to California Supreme Court decision in *California Building Industry Ass’n v. Bay Area Air Quality Mgmt. Dist.* (2015) 62 Cal.4th 369, 386 (“*CBIA*”). In that case, the Supreme Court expressly holds that potential adverse impacts to future users and residents from pollution generated by a proposed project **must be addressed** under CEQA. At issue in *CBIA* was whether the Air District could enact CEQA guidelines that advised lead agencies that they must analyze the impacts of adjacent environmental conditions on a project. The Supreme Court held that CEQA does not generally require lead agencies to consider the environment’s effects on a project. *CBIA*, 62 Cal.4th at 800-801. 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 (emphasis added).)

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 residing in and using the Project once it is built and begins emitting formaldehyde. Once built, the Project will begin to emit formaldehyde at levels that pose significant 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 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.’” (*CBLA*, 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, subs. (b), (c), (d), (g), 21001, subs. (b), (d).) It goes without saying that the hundreds of future residents at the Project are human beings and the health and safety of those residents is as important to CEQA’s safeguards as nearby residents currently living adjacent to the Project site.

In its Response to Comments, the City provides a number of responses to Mr. Offerman’s comments, but none avoid the need for an EIR. First, the City claims that “[d]iscussion of impacts on indoor air quality is not specified or required by the State CEQA Guidelines or California’s air district guidelines.” (Response to Comments, p. 59.) Whether or not “indoor air quality” is mentioned in CEQA is irrelevant. CEQA requires an analysis of both air quality impacts and impacts to human health. (See Pub. Res. Code §21083(b)(3) [project has a “significant effect on the environment” if “the environmental effects of a project will cause substantial adverse effects on human beings”].)

Second, the City claims Mr. Offermann’s comments are wrong because “the Project will need to comply with the 2019 CalGreen Code, which specifies that composite wood products (such as hardwood plywood and particleboard) meet the requirements for formaldehyde as specified in CARB’s Air Toxic Control Measures.” (Response to Comments, p. 60.) However, as explained by Mr. Offermann, his calculations *assume compliance* with all applicable regulations, and are based on studies that analyzed emissions from CARB-compliant materials.

Third, the City dismisses Mr. Offermann’s comments on the grounds that “the commenter is speculating in the assertion that composite wood materials would be used in the interior of the building. Indoor building materials will not be known until the building permit stage.” (Response to Comments, p. 60.) This comment ignores the City’s obligation to investigate the Project’s environmental impacts. For permitting purposes, the City may not require an applicant to submit information about its building materials until the building permit stage, but that does not relieve the City of its obligation to investigate the Project’s potential impacts *now*, during the CEQA process. If the City has not *asked* the applicant for information on building materials, it must do so. Otherwise, the City has no grounds to oppose Mr. Offermann’s comments based on the limited facts in the record. (See *County Sanitation Dist. No. 2 v County of Kern* (2005) 127 CA4th 1544, 1597 (failure of lead agency to evaluate issue enlarged the scope of the fair argument).)

Finally, the City ignores the potential cumulative impact of indoor and outdoor emissions on human health, merely reiterating the MND’s conclusions that the “Project’s PM2.5 emissions are not expected to cause any increase in related regional health effects for these pollutants” and that the “Project would not result in a potentially significant contribution to regional concentrations of non-attainment pollutants and would not result in a significant contribution to the adverse health effects associated with those pollutants.” (Response to Comments, p. 60.) These conclusions do not amount

to an analysis of the Project's cumulative impacts to human health and ignores the California Supreme Court's interpretation that "CEQA calls upon an agency to evaluate existing conditions in order to assess whether a project could exacerbate hazards that are already present." (*California Bldg. Indus. Assn. v. Bay Area Air Quality Mgmt. Dist.*, 62 Cal. 4th 369, 388 (2015).)

Because Mr. Offermann's expert comments constitute substantial evidence of a fair argument of a significant environmental impact to future users of the project, an EIR must be prepared to disclose and mitigate those impacts.

B. The MND Fails to Establish a Baseline for Hazardous Substances and its Conclusion that the Project will not have a Significant Impact on Related to Hazardous Substances is not Supported by Substantial Evidence.

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. (*California Bldg. Indus. Assn. v. BAAQMD.*, 62 Cal. 4th at 389; see Pub. Res. Code §21083(b)(3).) Yet the MND fails to fully analyze and mitigate the existing soil conditions and the project's potential to exacerbate those conditions.

The existence of toxic soil contamination at a project site is a significant impact requiring review and mitigation in an EIR. (*Id.*; *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.) This analysis and formulation of mitigation may not be deferred until a future time after Project approval. (*Sundstrom v. County of Mendocino* (1988) 202 Cal. App. 3d 296, 306; *Citizens for Responsible Equitable Env't'l Dev. v. City of Chula Vista* ("CREED") (2011) 197 Cal.App.4th 327, 330-31.)

The Project site has the potential to be significantly impacted with hazardous substances as a result of past land use. A Phase I Environmental Site Assessment ("ESA") was conducted and found numerous recognized environmental conditions ("RECs") including, according to the MND:

- The eastern portion of the Project site was formerly used as a gasoline service station from some times prior to 1931 to at least 1952. Car and battery repair and greasing also took place on site. There is no regulatory agency documentation of tank removal or soil sampling and analysis.
- The adjacent properties to the north of the Project site were used historically for auto repair since 1932. Based on the close proximity to new residential units (within 100-feet) and the long-term utilization of the property for auto repair purposes, the north adjacent property poses a potential vapor encroachment concerns.

MND, p. 70.

Only limited steps were taken to investigate these potentially harmful RECs. A Vapor Intrusion Risk Assessment was performed, but it was far from sufficient. First, it only included

seven vapor probes for the entire 2.33-acre property. While six of the probes were taken to the rear of existing commercial structures to assess the former onsite auto repair and gas station, only one probe was taken in the northeastern corner of the Project site to assess the potential for soil contamination and vapor encroachment from the former gas station and auto repair operations just north of the Project site. EFI Global, Vapor Intrusion Assessment (Dec. 22, 2016), p. 2. Moreover, these probes were only taken to a depth of 5 feet below ground, while the two -story subterranean parking garage proposed for the majority of the site will require excavation far below this level. In addition, the vapor sampling was conducted more than seven years ago, and is therefore now long out of date. The sampling no longer tells the public or decision makers how a contamination plume may have migrated since the sampling. Also concerning is the City's failure to analyze the extent of soil condition and failure to determine if underground storage tanks are still on the Project site.

The MND notes that "Should construction occur in an area where a UST was/is located or contaminated soils are found, this could result in an upset or accident resulting in a release of hazardous materials." *Id.* at 72-73.

Failing to investigate the existing contamination means the City has not established the site's baseline conditions, has shirked its duty to investigate the Project's potential environmental impacts, and has no evidence to support the MND's finding that "a threat to human health was not identified as a result of the former gasoline and auto repair operations at the Project site and at the north adjacent property. Therefore, potential risks associated with the vapor encroachment REC are less than significant." MND, p. 72.

The MND does admit that "[t]here are still potential impacts associated with the presence of the former gasoline service station, including potential underground storage tanks and impacts to subsurface soils. Potential contaminants of concern associated with former automotive and gasoline service station activities include, but are not limited to, petroleum hydrocarbons (gasoline, diesel, heavy oil), and volatile organic compounds (VOCs)." MND, p. 72. Rather than investigate, analyze, disclose, and mitigate those potential impacts, the MND merely adopts Mitigation Measure HAZ-1, deferring both the analysis and formulation of mitigation until long after the CEQA process is complete. This is counter to the requirements of CEQA.

Mitigation Measure HAZ-1 is a classic example of deferred mitigation, but goes a step further by actually deferring the investigation and analysis of impacts until after the MND and Project are already approved. The Hazardous Materials Contingency Plan ("HMCP") required by MM HAZ-1 "shall describe the procedures for assessment, characterization, management, and disposal of contaminated soils," and the "assessment, characterization, and management of soil vapor." MND, p. 73. In other words, the City has included the entire CEQA analysis of potential impacts related to soil and soil vapor in the mitigation measure, and deferred it to a later time, when the public will have no opportunity to review or comment on the adequacy of the analysis.

The City's intent to defer impact analysis until after Project approval is also evidence from its Response to Comments, where the City claims that SAFER's concerns about the lack of

investigation and analysis of this potential impact “are addressed through the required implementation of Mitigation Measure (MM) HAZ-1.” (Response to Comments, p. 62.)

Without having disclosed the baseline, analyzed the impacts, or requiring specific measures to mitigate the identified impacts, the MND concludes that, with implementation of MM HAZ-1, the Project’s contaminated soil and soil vapor impacts will be less-than-significant. This conclusion is not supported by substantial evidence, and MM HAZ-1 does not constitute adequate mitigation under CEQA.

CEQA disallows deferring the formulation of mitigation measures to post- approval studies. 14 CCR § 15126.4(a)(1)(B); *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 308-309. An agency may only defer the formulation of mitigation measures when it possesses “‘meaningful information’ reasonably justifying an expectation of compliance.” *Sundstrom* at 308; *see also Sacramento Old City Association v. City Council of Sacramento* (1991) 229 Cal.App.3d 1011, 1028-29 (mitigation measures may be deferred only “for kinds of impacts for which mitigation is known to be feasible”). A lead agency is precluded from making the required CEQA findings unless the record shows that all uncertainties regarding the mitigation of impacts have been resolved; an agency may not rely on mitigation measures of uncertain efficacy or feasibility. *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727 This approach helps “insure the integrity of the process of decisionmaking by precluding stubborn problems or serious criticism from being swept under the rug.” *Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 935.

In addition to deferring the “assessment” and “characterization” of contaminated soil and soil vapor, and the impacts the project will have on those conditions, the MND also defers the development of concrete mitigation measures to address impacts that may be found as part of the later-conducted analysis.

MM HAZ-1 requires that:

Should soil vapor contamination be identified above applicable regulatory levels...soil vapor instruction methods will e outlined in the final report based on the findings on site and in accordance with February 2023 DTSC Final Draft Supplemental Guidance for Screening ad Evaluating Vapor Intrusion. Proposed engineering methods for attenuation of vapor intrusion will be prepared and submitted with building plans and approved by the permitting agency prior to issuance of construction permits.

MND, p. 73. There are numerous problems with this mitigation measure.

First, an agency must have, and must articulate, a good reason for deferring the formulation of mitigation. *San Joaquin Raptor*, 149 Cal.App.4th at 670, 684. Absent such a reason, deferral is simply not acceptable. “[R]eliance on tentative plans for future mitigation after completion of the CEQA process significantly undermines CEQA’s goals of full disclosure

and informed decisionmaking; and[,] consequently, these mitigation plans have been overturned on judicial review as constituting improper deferral of environmental assessment.” *Comtys. for a Better Env’t v. City of Richmond* (2010) 184 Cal.App.4th 70, 92. The City has given no reason why it could not now analyze the Project’s impact from soil and soil vapor contamination, and devise and commit to mitigation measures. Deferral of mitigation without justification violates CEQA.

Second, deferral of mitigation is also impermissible if it removes the CEQA decision-making body from its decision-making role. The City may not delegate the formulation and approval of mitigation measures to address environmental impacts because an agency’s legislative body must ultimately review and vouch for all environmental analysis mandated by CEQA. *Sundstrom v County of Mendocino* (1988) 202 Cal.App.3d 296, 306-308. Thus, the MND may not rely on programs to be developed and implemented later without approval by the City Council. MM HAZ-1 claims the HMCP will be “approved by the permitting agency prior to issuance of construction permits.” While the MND makes unclear which permitting agency is being referred to, regardless, it will not be approved by the City’s decision making body, in violation of CEQA.

Moreover, in the limited circumstances where deferring mitigation is justified, the EIR must (1) commit itself to the mitigation, (2) adopt specific performance standards the mitigation will achieve, and (3) identify the types of potential actions that can feasibly achieve that performance standard. (Guidelines § 15126.4, subd. (a)(1)(B).) MM HAZ-1 includes no specific performance standards that the mitigation will achieve, and does not identify the types of potential actions that can feasibly achieve that performance standard. Without CEQA-compliant mitigation, the Project’s potential impacts related to soil and soil vapor contamination remain unmitigated.

Construction workers, such as the members of SAFER, will be at the highest risk from exposure to previously discharged contaminations because they will be directly disturbing and excavating potentially contaminated soil during Project construction. Rather than investigate these potentially dangerous conditions, the MND simply defers that analysis and mitigation.

The City may not approve the Project until it has analyzed and implemented mitigation measures to reduce the Project’s hazard impacts. Since the City admits there may be an impact but has not mitigated such impact, an EIR is required.

C. The MND’s Greenhouse Gas Analysis is Based on Unsupported Assumptions.

In support of its greenhouse gas analysis, the MND states:

CalEEMod default values for energy consumption assume compliance with the 2016 Title 24 Building Energy Efficiency Standards. However, since the Project would be required to comply with the more stringent 2019 Title 24 Building Energy Efficiency Standards that became effective January 1, 2020, a 30% reduction was applied in

CalEEMod based on the California Energy Commission's estimate that compared to the 2016 standards, "nonresidential buildings [built to 2019 standards] will use about 30% less energy due mainly to lighting upgrades" (CEC 2018).

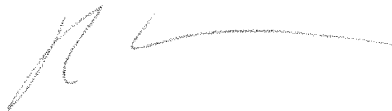
MND, p. 61.

The assumption that compliance with 2019 Title 24 Building Standards will result in a 30% reduction in GHG emissions compared to 2016 Building Standards is not supported by substantial evidence. The MND states that the 30% reduction is based on the California Energy Commission's estimate that compared to the 2016 standards, "nonresidential buildings [built to 2019 standards] will use about 30% less energy due mainly to lighting upgrades." *Id.* The problem with the assumption is that the CEC's determination was based on *non-residential* buildings, while the Project here consists mainly of residential uses. The MND provides no evidence that a 30% reduction is warranted in such a case. As a result, the City lacks evidence to support its finding that the Project's GHG impacts will be less than significant.

IV. CONCLUSION

In light of the above comments, the City must prepare an EIR for the Project and the draft EIR should be circulated for public review and comment in accordance with CEQA. Thank you for considering these comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rebecca L. Davis', with a long horizontal flourish extending to the right.

Rebecca L. Davis