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**Re: Comment on Final Environmental Impact Report, Times Mirror Square Project (Case No: VTT-74761, ENV-2016-4676-EIR, CPC-2016-4675-TDR-VCU-MCUP, and SCH No. 2017061083)**

Dear Honorable Members of the Los Angeles City Planning Commission and Mr. Lamborn:

I am writing on behalf of the **Supporters Alliance for Environmental Responsibility ("SAFER")** and its members living and/or working in or around the City of Los Angeles ("City") regarding the Final Environmental Impact Report ("FEIR") prepared for the Times Mirror Square Project (VTT-74761, ENV-2016-4676-EIR, CPC-2016-4675-TDR-VCU-MCUP, and SCH No. 2017061083) (the "Project").

After reviewing the FEIR, SAFER is concerned that the FEIR fails to adequately respond to comments, fails to adequately analyze significant environmental impacts, and fails to mitigate significant impacts that will occur as a result of the Project. Accordingly, SAFER respectfully requests the City to address these shortcomings in a revised draft environmental impact report ("RDEIR") and recirculate the RDEIR prior to considering approvals for the Project. We hereby incorporate by reference in their entirety all of our prior comments that have been filed

concerning this matter.

## I. PROJECT DESCRIPTION

The Project proposes to rehabilitate the Times, Plant, and Mirror Buildings and build a mixed-use development on 3.6 acres of land bounded by W. 1st Street, S. Spring Street, W. 2nd Street, and S. Broadway Street in the Central City Plan Area of the City of Los Angeles. The Project would demolish the existing Executive Building at the corner of W. 1st Street and S. Broadway and parking garage at the corner of W. 2nd Street and S. Broadway to allow for the development of the Project's mixed-use component. The Project will contain up to 1,127 residential units, and approximately 34,572 square feet of commercial space among the 37-story "North Tower" and 53-story "South Tower" constructed above a five-story parking podium. The space below the podium would contain an additional nine levels of subterranean parking. In total, the Project proposes up to 1,511,908 square feet of floor area.

## II. LEGAL BACKGROUND

CEQA requires that an agency analyze the potential environmental impacts of its proposed actions in an environmental impact report ("EIR") (except in certain limited circumstances). See, e.g., Pub. Res. Code § 21100. The EIR is the very heart of CEQA. *Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652. "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 Environment v. Calif. Resources Agency* (2002) 103 Cal. App. 4th 98, 109.

CEQA has two primary purposes. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project. 14 Cal. Code Regs. ("CEQA Guidelines") § 15002(a)(1). "Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR 'protects not only the environment but also informed self-government.'" *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 564. The EIR has been described as "an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return." *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm'rs.* (2001) 91 Cal. App. 4th 1344, 1354 ("*Berkeley Jets*"); *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

Second, CEQA requires public agencies to avoid or reduce environmental damage when

“feasible” by requiring “environmentally superior” alternatives and all feasible mitigation measures. CEQA Guidelines § 15002(a)(2) and (3); see also, *Berkeley Jets*, 91 Cal. App. 4th 1344, 1354; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564. The EIR serves to provide agencies and the public with information about the environmental impacts of a proposed project and to “identify ways that environmental damage can be avoided or significantly reduced.” CEQA Guidelines § 15002(a)(2). If the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has “eliminated or substantially lessened all significant effects on the environment where feasible” and that any unavoidable significant effects on the environment are “acceptable due to overriding concerns.” Pub. Res. Code § 21081; CEQA Guidelines § 15092(b)(2)(A) & (B). The lead agency may deem a particular impact to be insignificant only if it produces rigorous analysis and concrete substantial evidence justifying the finding. *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 732 (1990).

The EIR is the very heart of CEQA “and the integrity of the process is dependent on the adequacy of the EIR.” *Berkeley Jets*, 91 Cal. App. 4th 1109, 1355. CEQA requires that a lead agency analyze all potentially significant environmental impacts of its proposed actions in an EIR. Pub. Res. Code § 21100(b)(1); Guidelines § 15126(a); *Berkeley Jets*, 91 Cal.App.4th 1344, 1354. The EIR must not only identify the impacts, but must also provide “information about how adverse the impacts will be.” *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 831. The lead agency may deem a particular impact to be insignificant only if it produces rigorous analysis and concrete substantial evidence justifying the finding. *Kings County Farm Bureau*, 221 Cal.App.3d 692, 732. “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*, 103 Cal.App.4th 98, 109.

While the courts review an EIR using an “abuse of discretion” standard, “the reviewing court is not to ‘uncritically rely on every study or analysis presented by a project proponent in support of its position. A ‘clearly inadequate or unsupported study is entitled to no judicial deference.’” *Berkeley Jets*, 91 Cal. App. 4th 1344, 1355 (emphasis added), quoting, *Laurel Heights Improvement Assn. v. Regents of University of California*, 47 Cal. 3d 376, 391 409, fn. 12 (1988). A prejudicial abuse of discretion occurs “if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process.” *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal. App. 4th 713, 722; *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal. App. 4th 1109, 1117; *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal. App. 4th 931, 946. As discussed below, and in the attached expert

comment letters of expert wildlife biologist Dr. Shawn Smallwood, expert consulting firm SWAPE, and traffic engineer Mr. Daniel T. Smith, PE, the EIR for this Project fails to adequately analyze and mitigate the Project's impacts.

The lead agency must evaluate comments on the draft EIR and prepare written responses in the final EIR ("FEIR"). Pub. Res. Code § 21091(d). The FEIR must include a "detailed" written response to all "significant environmental issues" raised by commenters. As the court stated in *City of Long Beach v. LA USD* (2009) 176 Cal.App.4th 889, 904:

The requirement of a detailed written response to comments helps to ensure that the lead agency will fully consider the environmental consequences of a decision before it is made, that the decision is well informed and open to public scrutiny, and that public participation in the environmental review process is meaningful.

The FEIR's responses to comments must be detailed and must provide a reasoned, good faith analysis. CEQA Guidelines § 15088(c). Failure to provide a substantive response to a comment renders the EIR legally inadequate. *Rural Land Owners Assoc. v. City Council* (1983) 143 Cal.App.3d 1013, 1020.

The responses to comments on a draft EIR must state reasons for rejecting suggested mitigation measures and comments on significant environmental issues. "Conclusory statements unsupported by factual information" are not an adequate response. CEQA Guidelines §§ 15088(b), (c); *Cleary v. County of Stanislaus* (1981) 118 Cal.App.3d 348. The need for a substantive, detailed response is particularly appropriate when comments have been raised by experts or other agencies. *Berkeley Keep Jets*, 91 Cal.App.4th at 1367; *People v. County of Kern* (1976) 62 Cal.App.3d 761. A reasoned analysis of the issue and references to supporting evidence are required for substantive comments raised. *Calif. Oak Found. v. Santa Clarita* (2005) 133 Cal.App.4th 1219.

### **III. DISCUSSION**

#### **A. The EIR Unduly Restrains the Project's Alternatives and Their Implementation.**

An overly narrow definition of project objectives renders the alternatives analysis inadequate. To narrowly define the primary "objective" of the proposed project itself constitutes a violation of CEQA since such a restrictive formulation would improperly foreclose consideration of alternatives. See, *City of Santee v. County of San Diego* (1989) 214 Cal.App.3d

1438, holding that when project objectives are defined too narrowly an EIR's treatment of analysis may also be inadequate. As a leading treatise on CEQA compliance cautions, "[t]he case law makes clear that...overly narrow objectives may unduly circumscribe the agency's consideration of project alternatives." Remy, Thomas, Moose & Manley, *Guide to CEQA* (Solano Books, 2007), p. 589.

CEQA prohibits a project sponsor from limiting its ability to implement the project in a way that precludes it from implementing reasonable alternatives to the project. *See Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 736 (alternatives may not be artificially limited by applicant's prior contractual commitments that would prevent sponsor from implementing reasonable alternative). The fact that a proposed alternative does not meet all of the Project Objectives is not an appropriate basis to eliminate impact-reducing project alternatives from analysis in an EIR. (14 Cal. Code Regs § 15126.6(c), (f)).

The EIR identifies several significant environmental impacts the Project will have, as well as the project alternatives that alleviate these impacts. Yet the City failed to impose a project alternative that would reduce environmental impacts because they do not meet all of the Project's stringent objectives. For example, Alternative 5 would avoid the Project's significant and unavoidable impacts to historical resources, associated with air quality standards, and related to construction noise. DEIR, p. V-205. However, this alternative was not selected in part because it did not meet all of the uses identified in the Project's objectives, and would not meet the objective to restore portions of the existing buildings "to the same extent as under the Project." DEIR, p. V-206. Additionally, Alternative 4 was not selected, although it would lessen or reduce the significant and unavoidable impacts to historical resources, air quality standards, and construction noise, because while it "would meet the Project's underlying purpose and primary objective . . . it would not *fully meet* the Objective's intent to provide publicly accessible open space and amenities *to the same extent* as the Project . . . ." DEIR, p. V-166–V-167.

By refusing to select a Project alternative that mitigates or reduces the Project's significant environmental impacts simply because the alternative does not entirely meet the narrowly defined Project objectives, the City has violated CEQA.

## **B. The EIR Fails to Adequately Analyze Historic and Cultural Aesthetic Impacts.**

The site of the proposed Project includes five historical resources, including the Times, Plant, Mirror, and Executive buildings, as well as the parking structure. Despite these resources, the City asserts Senate Bill (SB) 743 applies to the Project and therefore the Project's aesthetic

impacts are not considered significant impacts on the environment. DEIR, p. II-13–14. It makes this finding despite a subsection of SB 743 that excludes impacts to historical resources from this aesthetic exemption.

Codified within CEQA section 21099 et seq., SB 743 states “[a]esthetic . . . impacts of a residential, mixed-use residential, or employment center project on an infill site within a transit priority area shall not be considered significant impacts on the environment.” Pub. Res. Code § 21099(d)(1). However, the City is incorrect in concluding it is exempt from analyzing all aesthetic impacts caused by the Project because SB 743 goes on to state that for the purposes of this section, “aesthetic impacts do not include impacts on historical or cultural resources.” Pub. Res. Code § 21099(d)(2)(B). Therefore, the impacts on historical and cultural resources must be considered separately from aesthetic impacts. In relying on SB 743, the City incorrectly assumes that since aesthetic impacts in a transit priority area are not considered significant as a matter of law, there will be no impacts on historical or cultural resources. However, the City cannot use SB 743 as an excuse to not mitigate aesthetic impacts to historical resources that are significant.

CEQA gives historic resources special recognition. *See Friends of Sierra Madre v. City of Sierra Madre* (2001) 25 C4th 165, 186; *Citizens for a Sustainable Treasure Island v. City & County of San Francisco* (2014) 227 Cal. App. 4th 1036, 1065. Objects of historical significance fall within CEQA’s definition of “environment.” Pub. Res. Code § 21060.5. Therefore, if a project has significant impacts on a historical resource, it has significant environmental impacts.

A substantial adverse change of a historical resource is considered a significant impact on the environment. CEQA Guidelines § 15064.5(b). Substantial adverse changes include “physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings” resulting in the significance of the resource being “materially impaired.” CEQA Guidelines § 15064.5(b)(1). Material impairments of historical resources occur when the project demolishes or adversely materially alters the physical characteristics of the historical resource that either conveys its historical significance and that justify its inclusion in or eligibility for inclusion in the California Register of Historical Resources or the local register of historical resources. *Id.* §§ 15064.5(b)(2)(A)–(C). These material impairments clearly include aesthetic changes to historical resources because physical characteristics of historical resources encompass the façade and structural design of these resources.

Here, the Project proposes to demolish the Executive Building and the accompanying parking structure. Since both structures are eligible for inclusion in the California Register of Historic Resources and their physical characteristics that make them eligible for such listing will be demolished, the Project will result in a material impairment of these historical resources.

Additionally the Times, Plant, and Mirror Buildings are included in the local register of historic resources and are in the immediate surroundings of the Executive Building and parking structure. If the Project moves forward as planned, the impacts on the aesthetic quality of these buildings will be significant because the demolition of the Executive Building and parking structure will make room for two very large apartment buildings that will dwarf the Times, Plant, and Mirror Buildings and minimize the visibility of these historic resources. Although the aesthetic impacts to a mixed-use project in a transit priority area are not significant as a matter of law, impacts to historic resources are not considered aesthetic impacts under SB 743. Therefore, while the Project will have aesthetic impacts on historical resources, those historical impacts are significant and the City must analyze these impacts separately from merely aesthetic impacts and mitigate these significant impacts.

**C. The EIR Failed to Make Full and Accurate Responses to Comments Concerning Aesthetic Impacts to Historical Resources.**

While public participation is an essential part of the CEQA process, so is an agency's evaluation and response to public comments. Failure to comply with the requirement can lead to disapproval of a project. CEQA Guidelines Discussion, § 15088. An agency's responses to comments must specifically explain the reasons for rejecting suggestions received in comments and for proceeding with a project despite its environmental impacts. Such explanations must be fully supported with specific references to empirical information, scientific authority, and/or explanatory information. *Cleary v. County of Stanislaus* (1981) 118 Cal.App.3d 348, 357. The responses, moreover, must manifest a good faith, reasoned analysis; conclusory statements unsupported by factual information will not suffice. *People v. County of Kern* (1974) 39 Cal.App.3d 830, 841.

Here, the City continued to hide behind SB 743 when it responded in a cursory and inadequate way to a comment regarding the inadequacy of the EIR's analysis of aesthetic impacts on historical resources. *See* FEIR, p. 2-80–2-81. The City again pointed to SB 743 to assert that “the Project would result in the removal of the existing Executive Building and the parking structure, which are historic resources and, as such, may be considered to contribute to the aesthetic character under the [Los Angeles CEQA] Thresholds Guide. However, per ZI No. 2452 [which adopted SB 743], aesthetic impacts shall not be considered a significant impact for a qualifying mixed-use project in a Transit Priority Area, such as the Project.” FEIR, p. 2-81. This response, as identified in the section above, is incorrect and erroneous because the City's reliance on SB 743 is inappropriate given the reading of the entire section, which requires agency's to still consider aesthetic impacts to historical resources.

The City's response is legally inadequate because its analysis is based on an erroneous reading of SB 743 and ignores the rest of the statute excluding historical resources from the aesthetic impact exemption. This inadequate and conclusory response to a comment fails to meet CEQA's requirements. Responses such as this require the City to revise its EIR so that it fully evaluates and responds to public comments.

**D. The EIR Fails to Adequately Analyze Impacts on Biological Resources.**

SAFER previously submitted comments on the City's failure to adequately analyze the Project's impacts on biological resources and the potential significant impact on birds resulting from collisions with the Project's windows. *See* SAFER Comment dated October 16, 2019 ("SAFER FEIR Comment").

SAFER's concerns regarding the Project's impacts on biological resources are based on the expert analysis and opinions of ecologist Dr. Shawn Smallwood. *See* Biological Resources Comment dated October 13, 2019 (October 2019 Smallwood Comment). Based on project-specific information, Dr. Smallwood predicted the Project would result in significant impacts to birds colliding with the Project's clear glass windows. *See* October 2019 Smallwood Comment, p. 8. Specifically, Dr. Smallwood predicted there would be 2,310 bird deaths per year due to the Project. *Id.* In order to assess the Project's impacts on biological resources, Dr. Smallwood determined that, based on eBird records, "43 special-status species of birds occur near the site of the [Project], 14 of which were seen on property immediately adjacent to the site. Fifteen species have been known to collide with windows." *Id.*, p. 2. Dr. Smallwood also noted that the EIR was not prepared with the benefit of survey visits by wildlife biologists, so it inadequately informed the public about the avian use of the area. *Id.* Dr. Smallwood cited many sources in making his scientific prediction of the Project's impacts to birds from window collisions, as well as to identify bird-window collision factors. *See id.*, pp. 2–12.

Despite the City's duty to investigate issues relating to a project's potential environmental impacts, the City and the EIR have, thus far, attempted to deny Dr. Smallwood's expert analysis and refuse to consider with any informed expertise the likely impacts of window collisions on birds posed by the Project. *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 the burden to investigate potential environmental impacts."). Rather than objectively study this serious impact to birds, staff attempted to critique Dr. Smallwood's expert analysis without itself bringing any expertise to bear on the Project's impacts to biological resources from window collisions. *See City of Los Angeles Responses to Lozeau Drury LLP Letter, March 2020, pp. 2-21–2-36.* Dr.



Smallwood has reviewed the City's comments and prepared a response, which is attached as Exhibit A to these comments.

The City first attempts to fault Dr. Smallwood's eBird record search to identify the species of birds that occur near the site of the Project. *See* City of Los Angeles Responses to Lozeau Drury LLP Letter, March 2020, p. 2-22. The City claims that Dr. Smallwood failed to identify a radius for the eBird record search, and that a 1-mile radius is typically applied because it includes the immediate vicinity of the Project site and the surrounding area that supports the same habitat type. *Id.* The City further asserts that the Project site and immediate vicinity are not known to be wildlife or migratory corridors or within a special-status species critical habitat in order to claim that Dr. Smallwood has failed to provide credible evidence to support the assertion that special-status avian species identified by his eBird record search are dying as a result of window collisions in downtown Los Angeles. However, Dr. Smallwood notes that eBird is a volunteer reporting system, with some birds more detectable by volunteer observers than others, and that the number of records detected of each species near the Project site is of no more value than the simple fact of detection. Ex. A, p. 1. Dr. Smallwood goes on to state that the City's eBird review in fact revealed a very long list of bird species within 1 mile, most of which are unlikely to spend time on the ground or on a perch in the area, which would be put at risk of collision by the Project. *Id.* Half of these species have been documented as window collision victims in scientific literature. *Id.* Further, the City's 1-mile search radius is not a standard measurement for assessing avian occurrence likelihood or for analyzing collision risk with a proposed building as volant wildlife species cover great distances. *Id.*, p. 4. Lastly, Dr. Smallwood points out that the City's claim that special-status species are only those listed by state or federal governments as Candidate, Threatened, or Endangered species is incorrect because it is at odds with earlier standards adopted by both ESA and the City. *See id.*, p. 6. The City's claim that Dr. Smallwood has failed to provide credible evidence to support his assertions is meritless.

The City next attempts to fault Dr. Smallwood's expert comments by critiquing the studies Dr. Smallwood relied upon to analyze the Project's window collision impacts on birds, and focused on one study cited by Dr. Smallwood that less than 1% of bird fatalities are attributed to high-rise buildings. *See* City of Los Angeles Responses to Lozeau Drury LLP Letter, March 2020, p. 2-27. In response, Dr. Smallwood states that the City does not understand the significance of the percentages of bird fatalities attributed to high rises versus low-rise buildings from that study. *See* Ex. A, p. 10.

There are about 140 million homes in the USA . . . , about 15 million low-rise buildings, and about 21,000 high-rises (Loss et al. 2014). High-rises therefore

compose 0.0135% of building structures in the USA, and yet Loss et al. (2014) credited them for 0.14% of USA's bird-window collision mortality. One can divide 0.14% of fatalities attributed to high-rises by the 0.0135% of structures that are high-rises to reveal that high-rises pose 10.4 times more collision hazard to birds than do other structures.

*Id.* The City also critiqued Dr. Smallwood's collision fatality analysis by stating that none of the sources referenced by Dr. Smallwood contain specific information regarding the Project or its vicinity. *See* City of Los Angeles Responses to Lozeau Drury LLP Letter, March 2020, p. 2-26. However, as Dr. Smallwood notes, "an impact prediction does not require specific information regarding a site or project to which scientific inference is being extended." Ex. A, p. 9. Dr. Smallwood cited many sources involving 181 buildings or facades in order to use all the variation in collision rates that was available and this variation contributed to a robust bird-window collision rate represented by a wide 95% confidence interval. *Id.* However, the City continues to assert that since the Project site is urbanized, there is less likelihood for special-status avian species to be present. *See* City of Los Angeles Responses to Lozeau Drury LLP Letter, March 2020, p. 2-27. Dr. Smallwood again points out that his comments do not apply to ground conditions but rather to the airspace that birds use and into which the Project's glass facades are proposed to intrude upwards of 53 stories. Ex. A, p. 9. Birds moving east and west and north and south use the Project's airspace, and is habitat for many special-status species and for all birds now protected under California's version of the Migratory Bird Treaty Act. *Id.* The City's own eBird review supports Dr. Smallwood's argument that many species of birds are seen within the vicinity of the Project site.

The City once again attempts to fault Dr. Smallwood's prediction of the Project's impact on birds from window collisions by claiming it is anecdotal, speculative, and uncertain. City of Los Angeles Responses to Lozeau Drury LLP Letter, March 2020, p. 2-29. Dr. Smallwood admits his prediction is uncertain, as it is "characterized by a wide confidence interval, the lower bound of which would still predict a great many bird fatalities caused by collisions with the buildings. Contrary to the responder's implication that uncertainty connotes ignorance or confusion, scientific uncertainty is managed error, where error expresses variation in the data." Ex. A, p. 10. Nor is Dr. Smallwood's prediction speculative or anecdotal because it is empirically founded from all of the available source data across the North American continent and Dr. Smallwood used all of the available data in a scientific process to make a careful prediction that is likely biased low. Nowhere in Dr. Smallwood's scientific process was there any use of anecdotes or speculation.

Dr. Smallwood has provided ample evidence that the Project will result in significant impacts to birds due to window collisions and the City has a duty to investigate these impacts, which they have thus far failed to do. Additionally, the EIR provides no analysis of cumulative impacts on birds caused by window collisions in the City, nor any analysis of the proposed project's contribution to cumulative impacts of window collisions. An RDEIR is required to fully analyze and mitigate these impacts.

**E. The EIR Fails to Impose All Feasible Mitigation Measures to Reduce the Project's Impacts on Biological Resources.**

In Dr. Smallwood's previous comments on the Project, he compiled a list of bird-window collision factors from scientific literature and his own experience for the City to consider in addressing the Project's potentially significant impact to birds he identified. *See* October 2019 Smallwood Comment, pp. 8–12. Dr. Smallwood also included a comprehensive list of mitigation measures the City could implement to bring the Project's impacts on birds to a less than significant level. *Id.*, pp. 12–14. However, the City does not consider these comments or mitigation measures because the Final EIR alleges that Dr. Smallwood “provides no credible evidence to support his assertion that the Project could cause collision fatalities of birds” and “there would be less-than-significant impacts on special-status avian species, mitigation beyond what was provided in the Initial Study is not warranted.” City of Los Angeles Responses to Lozeau Drury LLP Letter, March 2020, pp. 2-34, 2-35.

As addressed above, Dr. Smallwood has provided credible evidence of the Project's significant impacts on birds. Dr. Smallwood specifically identified available guidelines on building design intended to minimize collision hazards to birds, including the American Bird Conservancy, City of San Francisco, and New York City Audubon Society building guidance documents. *See* October 2019 Smallwood Comment, pp. 13–14; American Bird Conservancy, Bird-Friendly Building Design, available at: [https://abcbirds.org/wp-content/uploads/2015/05/Bird-friendly-Building-Guide\\_2015.pdf](https://abcbirds.org/wp-content/uploads/2015/05/Bird-friendly-Building-Guide_2015.pdf); Standards for Bird-Safe Buildings, San Francisco Planning Department, July 14, 2011, available at: [https://sfplanning.org/sites/default/files/documents/reports/bird\\_safe\\_bldgs/Standards%20for%200Bird%20Safe%20Buildings%20-%2011-30-11.pdf](https://sfplanning.org/sites/default/files/documents/reports/bird_safe_bldgs/Standards%20for%200Bird%20Safe%20Buildings%20-%2011-30-11.pdf); New York City Audubon, Bird-Safe Building Guidelines, available at: <http://www.nycaudubon.org/pdf/BirdSafeBuildingGuidelines.pdf>.

CEQA requires the City to implement all feasible mitigation measures that would avoid or reduce the Project's environmental impacts. *See* Pub. Res. Code § 21002. The City may only

reject a mitigation measure if it finds it is infeasible. *Id.*, § 21081. Dr. Smallwood identified several feasible mitigation measures the City could adopt to lessen the Project’s significant impacts on birds, including the American Bird Conservancy, City of San Francisco, and New York City Audubon bird-safe building guidelines, yet the City made no attempt to show that these guidance documents and the additional mitigation measures Dr. Smallwood identified would not be feasible. While Los Angeles has not adopted bird-safe building standards like San Francisco, the City cannot claim the San Francisco standards are not applicable to the Project simply because they were not designed for Los Angeles. *Covington v. Great Basin Unified Air Pollution Control Dist.*, 43 Cal. App. 5th 867 (2019) (The court rejected the District’s argument that the Bay Area Air Quality Management District’s requirements for equipment leaks are not applicable because those requirements are for petroleum refineries and chemical plants, not geothermal plants like the one at issue, because the equipment leak requirements were equally feasible for geothermal plants.). San Francisco’s bird-safe buildings standards are equally feasible for a high-rise building in Los Angeles, and the City has failed to show otherwise. By failing to adopt the feasible mitigation measures Dr. Smallwood identified that would lessen the Project’s significant impacts on birds, the City violates CEQA’s requirements.

#### **F. The EIR Fails to Adequately Analyze the Project’s Air Quality Impacts.**

SAFER previously submitted comments on the Project’s potential air quality impacts. *See* SAFER FEIR Comment. SAFER’s concerns regarding the Project’s air quality impacts are based on the expert analysis and opinions of environmental consulting firm SWAPE. SWAPE’s comments identified errors in the City’s air quality modeling, the City’s failure to implement all feasible mitigation measures to reduce the Project’s emissions, the City’s failure to adequately evaluate the Project’s diesel particulate matter health risk emissions, and a potentially significant health risk impact to nearby sensitive receptors. *See* environmental consultant SWAPE Comment dated October 15, 2019 (“October 15 SWAPE Comment”). SWAPE has reviewed the City’s responses to their comments and prepared a response, which is attached as Exhibit B to these comments.

##### **i. Unsubstantiated Input Parameters Used to Estimate Emissions.**

SWAPE previously identified several issues with the City’s air model, which artificially reduced the Project’s construction and operational emissions. *See* October 15 SWAPE Comment, pp. 1–10. After reviewing the City’s responses to SWAPE’s previous comments, SWAPE maintains that the analysis fails to address their concerns regarding the Project’s flawed California Emissions Estimator Model “CalEEMod” air model and fails to accurately estimate the Project’s criteria air pollutant emissions. *See* Ex. B, p. 1.

a. Unsubstantiated application of fuel type mitigation measure.

The EIR's CalEEMod model included an unsubstantiated change to the fuel type of two pieces of off-road construction equipment, from diesel to electrical. SWAPE's review of the City's responses regarding SWAPE's October comment demonstrates that the City again failed to justify these fuel type changes. *See id.*, p. 2. SWAPE finds the City's responses to their comments regarding this mitigation measure insufficient for three reasons.

First, while MM-AQ-1 requires tower cranes and signal boards to use electricity, MM-AQ-1 fails to specify how many pieces of off-road construction equipment would utilize electricity instead of diesel. *Id.* Appendix C-2 demonstrates that construction assumptions indicate that 11 pieces of off-road construction equipment would be electric, but it does not provide adequate justification. *Id.* The City and Project documents need to substantiate the construction assumptions inputted into the model because an assumption by the model that 11 pieces of off-road construction equipment would be electric, it does not demonstrate that the Project has committed to the implementation and enforcement of the measure. *Id.*

Second, the CalEEMod output files demonstrate that the fuel type for 16 pieces of construction, instead of 11 as indicated by the City's responses, were manually changed from diesel to electric. *Id.*

Third, the City's response claims that "[e]lectric tower cranes and signal boards are available and are commonly used types of construction equipment," but fails to provide a citation for this claim. *Id.*, p. 3; *see* City of Los Angeles Responses to Lozeau Drury LLP Letter, March 2020, p. 2-50. Simply stating that these pieces of equipment are available and commonly used does not demonstrate feasibility. Ex. B, p. 3. Therefore, the City's response is insufficient and SWAPE maintains that the fuel type changes are unjustified.

b. Unsubstantiated changes to indoor and outdoor water use rates.

The EIR's CalEEMod model included several unsubstantiated changes to the Project's indoor and outdoor water use rates. SWAPE's review of the City's responses to this comment demonstrates that the City again failed to justify these changes.

In SWAPE's October comment, they revealed that the Project's CalEEMod output files demonstrate that numerous indoor water use rates were manually changed from their default values, for a total of 78,679,733.31 gallons per year. *Id.*, p. 4. Review of the WSA's Estimated

Project Water Demand demonstrates this value is underestimated. *Id.* The total demand for the Project is 256,069 gallons per day, or 93,465,185 gallons per year. *Id.* The 78,679,733.31 gallons per year included in the model is underestimated by 14,785,452 gallons per year. *Id.* Also to note, the WSA calculations already included a reduction to the Project's water use to account for conservation, contrary to the City's claim otherwise. *Id.*

Additionally, the City's calculations in response to SWAPE's comments are incorrect for two reasons. First, the WSA's estimated Project Water Demand already included a conservation reduction. *Id.* Second, a daily water demand of 116,446 gallons per day correlates to a yearly demand of 42,502,790 gallons per year. *Id.* Therefore, the residential water demand in the model is underestimated by approximately 1,131,971 gallons per year, contrary to the City's claims made in response to SWAPE's comments.

Since the Project's CalEEMod underestimates the anticipated Project's water demand by over 14 million gallons per year, the model should not be relied upon to determine the Project's significance.

ii. Diesel Particulate Matter Health Risk Emissions Inadequately Evaluated.

SWAPE previously commented on the EIR's incorrect conclusion that the Project would have a less than significant health risk impact without conducting a quantified construction and operational health risk assessment ("HRA"). *See* October 15 SWAPE Comment, pp. 12–14. SWAPE prepared a screening level HRA in an effort to demonstrate the potential risk posed by the Project construction and operation to nearby sensitive receptors, finding substantial evidence that the Project's construction and operational DPM emissions may result in a potentially significant health risk impact not previously identified in the EIR. *See id.*, pp. 14–18; *see* Ex. B. In response to SWAPE's comments, the City prepared construction and operational HRAs, and the City's responses to SWAPE's comments conclude that the maximum combined construction and operational cancer risk would be 0.47 in one million. *See* City of Los Angeles Responses to Lozeau Drury LLP Letter, March 2020, p. 2-74. However, SWAPE finds the City's construction and operational HRAs for the Project to be incorrect for three reasons.

First, the construction and operational HRAs both rely on an incorrect and underestimated daily breathing rates. Ex. B, p. 5. The Project's construction and operational HRAs demonstrate that the excess cancer risk posed to nearby receptors was calculated assuming a daily breathing rate of 302 L/kg per day for all age groups. *See* Appendix A, p. 7. However, this is inconsistent with SCAQMD guidance, which states that:

For residential exposures, the breathing rates are determined for specific age groups (i.e., third trimester, 0-2, 2-16, and 16-30 years). CARB is developing an updated Risk Management Policy (RMP) that includes recommendations for inhalation exposures. Information regarding CARB's RMP can be located at: <http://www.arb.ca.gov/toxics/toxics.htm>. For residential exposures, CARB's RMP recommends using the high end DBR (e.g., 95th percentile) for children from the third trimester through age 2, and 80th percentile DBR for all other ages.

Risk Assessment Procedures for Rules 1401, 1401.1 and 212, SCAQMD, September 2017, available at: <http://www.aqmd.gov/docs/default-source/permitting/rule-1401-risk-assessment/riskassessproc-v8-1.pdf?sfvrsn=12>, p. 6. Thus, the Project's construction and operational HRA should have used 361 L/kg per day for the third trimester of pregnancy, 1,090 L/kg per day for the infantile stages of life, 572 L/kg per day for the child stages of life, and 261 L/kg per day and 233 L/kg per day for the adult stages of life. Ex. B, pp. 5–6. By failing to use the correct breathing rates, the EIR is inconsistent with SCAQMD guidance and underestimates the Project's health risk impact, and the Project's construction and operational HRAs should not be relied upon to determine the significance of the Project's health risk impact. *Id.*, p. 6.

Second, while the City conducted an HRA for the increased cancer risk due to operational diesel mobile-source emissions, the HRA failed to include the Project's entire operational emissions. *Id.* According to the CalEEMod User's Guide, a Project's operational emissions include the following sources: on-road mobile vehicle traffic, off-road equipment used during operation, landscaping equipment, emergency generators, fire pumps, process boilers, consumer products, parking lot degreasers, fertilizers/pesticides, cleaning supplies, wood stoves and hearth usage, electricity usage in buildings, electricity usage from lighting in parking lots and lighting, ventilation and elevators for parking, water usage, and solid waste disposal. *Id.*; see Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments, OEHHA, February 2015, available at: <https://oehha.ca.gov/media/downloads/crn/2015guidancemanual.pdf>. By only conducting an HRA for the Project's operational mobile emissions, the model underestimates the Project's operational emissions and excess cancer risk to nearby receptors. Ex. B, p. 6. Therefore, the EIR cannot conclude less than significant health risk impacts resulting from the Project without quantifying emissions and the excess cancer risk to nearby sensitive receptors resulting from the Project's entire operational emissions. *Id.*

Third, the operational HRA relies on an unsubstantiated and underestimated number of diesel motor vehicle trips. SWAPE's review of the operational HRA reveals that the emission rates were calculated assuming 294 daily one-way trips. See Appendix A, p. 12. However, this is

incorrect. The Project's Vehicle Trip Generation Estimate demonstrates that the Project is expected to generate 10,817 daily trips. *See* DEIR, p. IV.P-48-49, Table IV.P-8. Assuming a truck fleet mix of 44%, consistent with the fleet mix utilized in the Project's CalEEMod model, the Project would be expected to generate 4,759.48 daily truck trips, which is 4,465.8 more trips than the 294 trips assumed by the City's operational HRA. Ex. B, pp. 7–8. Since the City fails to provide a citation or explain how the value of 294 daily one-way trips was calculated, SWAPE finds that the operational HRA may significantly underestimate the Project's mobile-related operational health risk. *Id.*, p. 8.

For these reasons, SWAPE finds the Project's construction and operational HRAs insufficient and maintain that the Project's health risk impact has not been adequately evaluated.

#### **G. The EIR Fails to Adequately Analyze the Project's Greenhouse Gas Impacts.**

SAFER previously submitted comments on the Project's potential greenhouse gas ("GHG") impacts. SAFER's concerns regarding the Project's GHG impacts are also based on the expert analysis and opinions of environmental consulting firm SWAPE. *See* October 15 SWAPE Comment, pp. 23–33. In reviewing the EIR, SWAPE found that the EIR incorrectly relied upon CARB's 2017 Scoping Plan, SCAG's 2016 RTP/SCS, the City's *LA Green Plan*, and Sustainable City pLAN to determine Project significance. SWAPE also found that while the City quantified the Project's GHG emissions, it failed to compare the Project's emissions to the appropriate SCAQMD bright-line and service population efficiency thresholds. SWAPE conducted an updated GHG analysis, which demonstrated that the Project's emissions significantly exceeded the applicable SCAQMD bright-line and efficiency thresholds. *See* October 15 SWAPE Comment, pp. 30–33. Thus, SWAPE's analysis provided substantial evidence that the Project's GHG emissions would result in a potentially significant impact, but the City's responses to SWAPE's prior comments continue to claim that the Project's GHG impact will be less than significant without providing an adequate analysis to make that claim.

SWAPE claims that the City's responses regarding the Project's GHG emissions and continued insistence that the Project will have less than significant GHG impacts is incorrect for several reasons. First, the City's *LA Green Plan* and Sustainable City pLAN fail to qualify as plans for the reduction of GHG emissions. Ex. B, p. 9. As previously stated by SWAPE, the Project documents fail to prove that the City's *LA Green Plan* and Sustainable City pLAN contain the features as required by CEQA to qualify as GHG reduction plans. *Id.* As such, the City again leaves an analytical gap in the EIR showing that compliance with these plans can be used for use in project-level GHG analysis. *Id.* Therefore, consistency with these plans should not be used to determine the significance of the Project's GHG impact.



Second, the City relies on the Project's consistency with the City's LA Green Plan, Sustainable City pLAN, CARB's 2017 Scoping Plan, and SCAG's 2016-2040 RTP/SCS to determine the significance of the Project's GHG impact. However, review of these different plans demonstrates that the measures discussed are predominantly city-level, state-level or program-level actions or measures and not project-level measures, and all fail to include performance standards to be implemented on a project-by-project basis. *Id.*, pp. 9–12. Further, several of these plans are outdated or have been superseded and should not be relied upon for those reasons as well. *Id.*

Third, the City fails to demonstrate that the Project is consistent with CARB's Climate Change Scoping Plan and SCAG's 2016-2040 RTP/SCS in order to demonstrate the Project will result in less than significant GHG impacts. *Id.*, p. 12. However, SWAPE's review of these plans also reveals that the Project is inconsistent with several of the plans' goals and policies. *Id.* Despite the fact that these plans are not project-level plans, the City claims the Project to be consistent with the measures outlined in them. However, SWAPE identifies many measures that the Project is not consistent with. *See id.*, pp. 12–21. As a result of these inconsistencies, the City cannot rely on these plans to claim the Project will have less than significant GHG impacts.

Fourth, the City fails to apply the SCAQMD bright-line and efficiency thresholds to the Project's emissions. Although the City is correct in stating that the SCAQMD's Interim Thresholds were never adopted, this does not mean that they are inapplicable to the Project or otherwise can be ignored. *Id.*, p. 22. SWAPE asserts that consistent with CEQA Guidelines, the SCAQMD's interim thresholds should have been used. *Id.* Given the cumulative nature of GHG emissions and consistent with CEQA Guidelines section 15064.7(c), these recommended thresholds are appropriate for projects in the SCAQMD regions. *See id.*, pp. 23–24. Even though the SCAQMD's interim thresholds may be outdated and may not be adopted, they are consistent with the methods of analysis that is regularly practiced by other air districts and furthers CEQA's demand for conservative analysis to afford the fullest possible protection of the environment. *Id.*, p. 25. Therefore, the City's GHG analysis is not consistent with evolving standards, nor is the conclusion that the Project has a less than significant GHG impact supported by substantial evidence.

Lastly, as discussed in SWAPE's previous comment, the Project's GHG emissions exceed the SCAQMD bright-line and service population efficiency thresholds, which indicates a potentially significant GHG impact not previously addressed by the EIR. *Id.* The City refuses to rely on the SCAQMD's bright-line and efficiency thresholds despite SWAPE's assertion that it should. As a result, SWAPE maintains that the EIR's GHG impact significant determination is

unsubstantiated based on its October 15th analysis, which utilizes the EIR’s air modeling. *Id.* When the Project’s mitigated GHG emissions are compared to the 3,000 MT CO<sub>2e</sub>/year threshold, SWAPE finds that the Project’s GHG emissions exceed the SCAQMD’s mixed-use threshold. *Id.*, p. 26.

DEIR Annual Greenhouse Gas Emissions	
Project Phase	Proposed Project (MT CO <sub>2e</sub> /year)
On-Road Mobile Sources	11,800
Stationary (Emergency Generators)	27
Area	20
Electricity	6,862
Natural Gas	1,846
Water Conveyance and Wastewater	
Treatment	505
Solid Waste	242
Construction (Amortized)	745
Proposed Subtotal	22,047
Percent Reduction (Project Only)	28%
<b>Net Operational (Proposed – Existing)</b>	<b>14,922</b>
SCAQMD Significance Threshold	3,000
<b>Exceed?</b>	<b>Yes</b>

The Project will generate approximately 14,922 MT CO<sub>2e</sub>/year, which significantly exceeds the 3,000 MT CO<sub>2e</sub>/year mixed-use project screening threshold. *Id.* When emissions exceed the screening level threshold, SCAQMD guidance states a more details review of the project’s GHG emissions is warranted. *Id.* SCAQMD proposed a 2020 efficiency target of 4.8 MTCO<sub>2e</sub>/SP/year for project-level analyses, but since this threshold was developed almost ten years ago, SWAPE relies on the SCAQMD’s 2035 efficiency threshold of 3.0 MT CO<sub>2e</sub>/SP/year. *Id.* Since the Project exceeds the 3,000 MT CO<sub>2e</sub>/year mixed-use project screening threshold, SWAPE compared the Project’s emissions to the 2035 efficiency target of 3.0 MT CO<sub>2e</sub>/SP/year and concluded the Project would emit approximately 5.1 MT CO<sub>2e</sub>/SP/year, exceeding the target. *Id.*, pp. 26–27. This results in a potentially significant impact that was not previously identified or addressed in the EIR.

## **H. The EIR Fails to Accurately Disclose and Analyze Traffic Impacts.**

SAFER previously submitted comments on the EIR's failure to adequately disclose and analyze the Project's traffic impacts. *See* SAFER FEIR Comment. SAFER's concerns regarding the Project's traffic impacts are based on the expert analysis and opinions of civil and traffic engineer Daniel T. Smith Jr., P.E. *See* Dan Smith's Comment dated October 11, 2019 ("October 11 Smith Comment"). Mr. Smith has reviewed the City's responses to their comments and prepared a response, which is attached as Exhibit C to these comments.

Mr. Smith first critiqued the EIR's failure to disclose the queuing impacts to other locations beyond the queues at the Project's driveways. The City's response to Mr. Smith's comment indicates that since "the Critical Movement Analysis methodology that the City relies on estimates volume to capacity ratios and levels of service (LOS), and because LOS definitions include reference to queues, by implication the analysis the DEIR did perform already considers queues. This response is a preposterous evasion and misrepresentation." Ex. C, p. 2. As Mr. Smith notes, the LOS definitions are non-specific to queue length and provide limited crude information regarding the actual consequences of queue formation and queue length, and the Critical Movement Analysis procedure was devised 40 years ago as an interim procedure only to be used until the next edition of the Highway Capacity Manual ("HCM") was completed. *Id.* The City is among the decreasing number of jurisdictions that still rely on it. *Id.* However, it fails to give any indication of queue length, and for that, other commonly used and more modern methods of analysis are required. *Id.*, p. 3.

Second, the City rejected Mr. Smith's argument that the streetcar operation needs to be included in the traffic and circulation analysis by claiming it is not fully funded and a distant priority for regional transportation funding. Despite this, Mr. Smith notes that the streetcar project is an adopted plan of the City, and as such, under CEQA, the EIR must consider the consequences of the Project's access and circulation on that plan and the consequences of that plan on the Project's access and circulation. *Id.* The streetcar operations and/or lane reservations for it would "inevitably have deleterious effects on traffic that could only intensify the severity of the Project's traffic impacts that have been disclosed." *Id.*

Third, the City responded to Mr. Smith's comment that the Project's trip distribution understates traffic at critical locations by asserting the City's transportation model on which the short-trip assumption is based is a person trip model and the 35 percent short trip statistic represents almost entirely walk, bike, local transit, taxi and TNC trips, not private auto trips. *Id.*, pp. 3–4. Mr. Smith claims this does not reflect the true situation and is completely misleading,

resulting in an understatement of the amount of the Project and concurrent development traffic that would reach and impact the gateway intersections to downtown and the freeway system. *See id.*, p. 4.

Fourth, Mr. Smith rejects the City's use of a 25 percent peak hour transit credit on the trips of the Project's non-residential components based on the assumed 2023 completion of a transit station immediately adjacent to the Project. *Id.*, p. 5. The City conducted its 2017 Existing + Project analysis with a trip discount for a transit station that did not exist in 2017. *Id.* CEQA Guidelines section 15125(a) provides that the ordinary baseline for measurement of environmental impacts is the environment that existed at the time of issuance of the NOP, so it is wholly improper for the EIR to apply the Project in the Existing + Project analysis a trip discount for a transit station that did not exist in 2017. *Id.*, pp. 5–6.

Lastly, Mr. Smith notes that the City continues to reject analyzing the extra traffic and traffic congestion generated by the increased use of TNC services like Uber and Lyft. *Id.*, p. 6. The City claims that research is limited and that LADOT has not established a methodology for considering their use, yet opines that TNCs are used more for occasional discretionary trips rather than for daily trips without substantiation. The City's failure to analyze this impact on traffic and its response to Mr. Smith's comment on it are inadequate.

As Mr. Smith concludes, the City continues to fail to adequately analyze the Project's traffic and circulation impacts.

**I. The EIR Fails to Address or Adequately Analyze the Potential Significant Indoor Air Quality Impacts on the Health of Future Residents and Employees of the Project.**

SAFER previously submitted comments on the Project's potential significant health impacts on future residents and employees from formaldehyde emissions that will be emitted by finishing materials used to construct interiors of the residential units and office buildings as well as the reasonably foreseeable emissions of formaldehyde from furniture and other materials that will be brought into the residences and office buildings. *See* SAFER FEIR Comment.

SAFER's concerns regarding health risks posed by the Project's formaldehyde emissions are based on a 2019 study conducted by Chan et al. which measured formaldehyde levels in new structures constructed after the 2009 California Air Resources Board's rules went into effect. The study found that new homes with CARB Phase 2 Formaldehyde ATCM materials had elevated indoor formaldehyde concentrations, with a median concentration of 22.4  $\mu\text{g}/\text{m}^3$  (18.2 ppb). This

study showed that formaldehyde concentrations in new California homes built with CARB Phase 2 composite wood products posed cancer risks greater than 100 in one million. Given the prominence of materials with formaldehyde-based resins that will be used in constructing the Project and the residential buildings, there is a significant likelihood that the Project's emissions of formaldehyde to air will result in very significant cancer risks to future residents and workers in the buildings.

Despite the City's duty to investigate issues relating to a project's potential environmental impacts, the City and the EIR have, thus far, attempted to deny the indoor air quality analysis and refuse to consider with any informed expertise the likely impacts of indoor formaldehyde emissions posed by the Project to future residents and employees. The City asserts that SAFER provided "no credible evidence that the Project will be constructed with building materials with significant amounts of formaldehyde, citing only an unsubstantiated, general article," and that "[t]here are no requirements or guidance from SCAQMD or relevant agencies to evaluate such a risk." City of Los Angeles Responses to Lozeau Drury LLP Letter, March 2020, p. 2-18. The City claims that the Project will comply with existing codes and regulations in California, which will adequately address the potential emissions and risks from building materials. *Id.*

Certified Industrial Hygienist Francis Offermann, PE CIH, reviewed the City's comments and Project documents and prepared a response, which is attached as Exhibit D to these comments. In response to the City's comments, Mr. Offermann first notes that the Chan et al. study "unequivocally shows that formaldehyde concentrations in new California homes built with CARB Phase 2 composite wood products posed cancer risks greater than 100 in one million." Ex. D, p. 2. Mr. Offermann explains that the Project's buildings will consist of residential and commercial retail spaces, and residential occupants of the Project will potentially have continuous exposure, which is anticipated to result in significant cancer risks resulting from exposures to formaldehyde released by the building materials and furnishings commonly found in residential construction. *Id.*

Since these residences will be constructed with CARB Phase 2 Formaldehyde ATCM materials, and will be ventilated with the minimum code required amount of outdoor air, "the indoor residential formaldehyde concentrations are likely similar to those concentrations observed in residences built with CARB Phase 2 Formaldehyde ATCM materials, which has a median of 22.4  $\mu\text{g}/\text{m}^3$  (Chan et. al., 2019)." *Id.* Based on this information, Mr. Offermann calculates that residents' continuous exposure represents a cancer risk of 112 per million, which is more than 11 times greater than the South Coast Air Quality Management District's CEQA cancer risk threshold of 10 per million. *Id.*, p. 3. For occupants that do not have continuous

exposure, the cancer risk will be less but still substantially over the CEQA cancer risk threshold of 10 per million. *Id.* For employees of the commercial spaces, the expected exposure represents a cancer risk of 16.4 per million, which is more than 1.64 times the SCAQMD's CEQA cancer risk threshold of 10 per million. These are significant impacts that the City has failed and refused to analyze.

Mr. Offermann next responds to the City's claim that since the Project will comply with the existing codes and regulations in California, the Project's potential emissions and risks from building materials are adequately addressed. Mr. Offermann notes that Title 24, to which the City cites to, does not speak at all about formaldehyde emissions from composite wood products so it cannot ensure safe practices and healthy indoor as the City claims with respect to formaldehyde emissions from composite wood materials. *Id.*, p. 4. The City also cites to CAL Green and the CARB ATCM as codes and regulations that the Project will comply with which adequately address potential emissions and risks from building materials. However, with respect to formaldehyde emissions from composite wood products, "CAL Green simply requires compliance with the CARB ATCM." *Id.* With respect to the CARB ATCM regulations of formaldehyde emission from composite wood products, the City's states "The control measure assures that all building materials and furnishings manufactured, distributed, imported and used in new construction in California meet the maximum allowable concentrations that assure healthful indoor air quality." City of Los Angeles Responses to Lozeau Drury LLP Letter, March 2020, p. 2-19. However, Mr. Offermann states this is not true, "[t]his response more accurately states the intent of the control measure when they quote the stated purpose of the CARB ATCM regulation." Ex. D, p. 4. The CARB ATCM regulations do not assure healthful indoor air quality as the City claims, but rather reduces formaldehyde emissions from composite wood products. *Id.* As shown in the Chan et al. study referred to in SAFER's October 2019 comment, the median indoor formaldehyde concentration when CARB Phase 2 formaldehyde products are used was 22.4  $\mu\text{g}/\text{m}^3$  (18.2 ppb), which corresponds to a cancer risk of 112 per million for occupants with continuous exposure, which is more than 11 times the SCAQMD's CEQA cancer risk of 10 per million. *Id.*, pp. 4-5.

The City's efforts to invalidate the evidence SAFER provided in its October 2019 comment do not stand-in as a sufficient analysis in the EIR of this potentially significant environmental impact of the Project. It is now up to the City to correct its EIR to sufficiently disclose and analyze this impact, and identify and adopt appropriate and feasible mitigation measures.

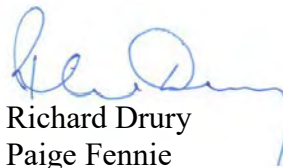
## **II. THE CITY SHOULD PREPARE AND RECIRCULATE A REVISED DEIR**

A revised draft environmental impact report (“RDEIR”) should be prepared and circulated for full public review to address the impacts identified above and to propose feasible mitigation measures. CEQA requires re-circulation of an EIR when significant new information is added to the EIR following public review but before certification. Pub. Res. Code § 21092.1. The CEQA Guidelines clarify that new information is significant if “the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project” including, for example, “a disclosure showing that . . . [a] new significant environmental impact would result from the project.” CEQA Guidelines § 15088.5. The above significant environmental impacts have not been analyzed in the EIR and must be addressed in an RDEIR that is re-circulated for public review.

## **III. CONCLUSION**

In light of the above comments, SAFER respectfully requests that the City address these shortcomings in a revised draft environmental impact report (“RDEIR”) and recirculate the RDEIR prior to considering approvals for the Project. Thank you for considering these comments.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Richard Drury', is written over a light blue circular stamp.

Richard Drury  
Paige Fennie  
Lozeau | Drury LLP