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*Via Email*

June 8, 2022

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**Re: Comment on Final Environmental Impact Report, Affinity Project  
(SCH 2021080103) (aka Planned Development #39)  
Planning Commission, June 8, 2022, Agenda Item 7**

Dear Chair Olivas and Honorable Members of the Planning Commission:

I am writing on behalf of **Supporters Alliance for Environmental Responsibility ("SAFER")** regarding the Final Environmental Impact Report ("FEIR") prepared for the Affinity Project (SCH 2021080103), including all actions related or referring to the proposed construction of a 154,000 square foot, seven-story medical office building with ground-floor commercial uses, and a 184,376 square foot, seven-story assisted living building with 85,800 square feet of assisted living uses and 98,576 square feet of independent living uses, with five subterranean parking levels providing up to 850 parking spaces, located on an approximately 3.3 acre site between 465 and 577 South Arroyo Parkway in the City of Pasadena ("Project").

After reviewing the FEIR, we conclude that the FEIR fails as an informational document and fails to impose all feasible mitigation measures to reduce the Project's impacts. SAFER requests that the Planning Commission address these

shortcomings in a revised environmental impact report (“REIR”) and recirculate the REIR prior to considering approvals for the Project.

This comment has been prepared with the assistance of environmental consulting firm Soil/Water/Air Protection Enterprise (“SWAPE”) (Exhibit A) and indoor air quality expert Francis “Bud” Offermann (Exhibit B). We incorporate the SWAPE and Offermann comments herein by reference.

### **I. Project Description.**

The Project is located on an approximately 3.3-acre site located between 465 and 577 South Arroyo Parkway, bound by East Bellevue Drive on the north, South Arroyo Parkway on the east, East California Boulevard on the south, and the Metro Gold Line on the west. The Project will require demolition of six existing buildings totaling 45,912 sf and will include construction of two new buildings:

- Building A: a 154,000 sf, 7-story medical office building with ground-floor commercial uses; and
- Building B: a 184,376 sf, 7-story assisted living building with 85,800 sf of assisted living uses and 98,576 sf of independent living uses including up to 95 one- and two-bedroom senior housing units.

The Project will also include a total of five levels of subterranean parking spanning both proposed buildings. The site is currently zoned as “High Mixed-Use” in the general plan, and the Project will require rezoning from CD-6 to a Planned Development Zone.

### **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 at pp. 1344, 1354; *Citizens of Goleta Valley*, 52 Cal.3d at 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; 14 Cal.Code Regs. § 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.

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 at p. 1355 (emphasis added) (quoting *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal. 3d 376, 391 409, fn. 12). As the court stated in *Berkeley Jets*:

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.)

More recently, the California Supreme Court has emphasized that:

When reviewing whether a discussion is sufficient to satisfy CEQA, a court must be satisfied that the EIR (1) includes sufficient detail to enable those who did not participate in its preparation to understand and to consider meaningfully the issues the proposed project raises [citation omitted], and (2) makes a reasonable effort to substantively connect a project's air quality impacts to likely health consequences.

*Sierra Club v. Cty. of Fresno* (2018) 6 Cal.5th 502, 510 (2018), citing *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 405. “Whether or not the alleged inadequacy is the complete omission of a required discussion or a patently inadequate one-paragraph discussion devoid of analysis, the reviewing court must decide whether the EIR serves its purpose as an informational document.” *Sierra Club v. Cty. of Fresno*, 6 Cal.5th at 516. Although an agency has discretion to decide the manner of discussing potentially significant effects in an EIR, “a reviewing court must determine whether the discussion of a potentially significant effect is sufficient or insufficient, i.e., whether the EIR comports with its intended function of including ‘detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.’” 6 Cal.5th at 516, citing *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1197. “The determination whether a discussion is sufficient is not solely a matter of discerning whether there is substantial evidence to support the agency’s factual conclusions.” 6 Cal.5th at 516. Whether a discussion of a potential impact is sufficient “presents a mixed question of law and fact. As such, it is generally subject to independent review. However, underlying factual determinations—including, for example, an agency’s decision as to which methodologies to employ for analyzing an environmental effect—may warrant deference.” *Sierra Club v. Cty. of Fresno*, 6 Cal.5th at 516. As the Court emphasized:

[W]hether a description of an environmental impact is insufficient because it lacks analysis or omits the magnitude of the impact is not a substantial evidence question. A conclusory discussion of an environmental impact that an EIR deems significant can be determined by a court to be inadequate as an informational document without reference to substantial evidence.

*Sierra Club v. Cty. of Fresno*, 6 Cal.5th at 514. We find that the FEIR prepared by the City here is inadequate for the reasons set forth below.

## I. DISCUSSION

### A. There is Substantial Evidence that the Project Will Have Significant Adverse Impacts Regarding Air Quality and Greenhouse Gases.

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

**1. The DEIR Relied on Unsubstantiated Input Parameters to Estimate Project Emissions and Thus the Project May Result in Significant Air Quality Impacts.**

SWAPE found that the EIR incorrectly estimated the Project's constructional and operational emissions and therefore cannot be relied upon to determine the significance of the Project's impacts on local and regional air quality. The EIR relies on emissions calculated from the California Emissions Estimator Version CalEEMod 2020.4.0 ("CalEEMod"). DEIR, p. 3.1-12. This model, which is used to generate a project's construction and operational emissions, relies on recommended default values based on site specific information related to a number of factors. Ex. A, p. 1. CEQA requires any changes to the default values to be justified by substantial evidence. *Id.*

SWAPE reviewed the EIR's CalEEMod output files and found that several of the values input into the model were inconsistent with information provided in the EIR. Ex. A at 2. Specifically, SWAPE found that the following values used in the EIR's air quality analysis were either inconsistent with information provided in the EIR or otherwise unjustified:

1. Unsubstantiated change to architectural coating phase length. Ex. A, p.2-4;
2. Unsubstantiated changes to CH<sub>4</sub>, CO<sub>2</sub>, and N<sub>2</sub>O intensity factors. Ex. A, p. 4-6;
3. Underestimated number of building construction hauling trips. Ex. A, p. 6-7;
4. Unsubstantiated reduction to operational vehicle trip lengths. Ex. A, p. 7-9;
5. Underestimated number of Saturday and Sunday vehicle trips. Ex. A, p. 9-10;
6. Unsubstantiated changes to operational vehicle fleet mix percentages. Ex. A, p. 10-11.

Based on the issues listed above, the EIR's analysis of air quality cannot be relied upon to determine the significance of impacts and a Revised EIR must be prepared.

**2. An Updated Air Model Analysis Found that the Project Will have a Significant Air Quality Impact.**

To more accurately determine the Project's construction and operational emissions, SWAPE prepared an updated CalEEMod model using more site-specific

information and corrected input parameters. See Ex. A, p. 11. SWAPE's updated analysis demonstrates that the Project's construction-related VOC emissions increased by approximately 423% and therefore significantly exceed the applicable SCAQMD significance thresholds. *Id.* Thus, SWAPE's model demonstrates that the Project would result in a potentially significant air quality impact that was not previously identified or addressed in the EIR. A Revised EIR should be prepared to adequately assess and mitigate the potential air quality impacts that the Project may have on the surrounding environment.

### **3. The EIR Failed to Adequately Analyze the Project's Greenhouse Gas Impacts and Thus the Project May Result in Significant Greenhouse Gas Emissions.**

The EIR estimates that the Project would generate net annual GHG emissions of 3,380 metric tons of carbon dioxide equivalent per year ("MT CO<sub>2</sub>e/year"). DEIR, p. 3.4-16. The EIR also states that the Project would have a service population efficiency value of 3.52 metric tons of carbon dioxide equivalents per service population per year ("MTCO<sub>2</sub>e/SP/year") and would therefore not exceed the City's threshold of 3.57 MTCO<sub>2</sub>e/SP/year. *Id.*, Table 3.4-6. However, SWAPE found that the EIR's conclusion about a less-than-significant greenhouse gas impact is incorrect for two reasons:

- (1) The EIR's quantitative GHG analysis relies upon an incorrect and unsubstantiated air model.

Due to the EIR's inputting of several inconsistent or unjustified values into its CalEEMod analysis, the EIR underestimated Project emissions. The EIR's GHG analysis is therefore also flawed, and cannot be relied upon to determine the significance of Project impacts. Ex. A, p. 12.

- (2) SWAPE's updated analysis indicates a potentially significant GHG impact.

SWAPE prepared an updated air model which resulted in CalEEMod output files indicating that the Project would generate approximately 4,873.66 MT CO<sub>2</sub>e/year of total construction emissions and approximately 10,667.49 MT CO<sub>2</sub>e/year of net annual operational emissions. Ex. A, p. 12. Based on this information, SWAPE calculated that the Project would have a service population efficiency value of 11.29 MT CO<sub>2</sub>e/SP/year, thus exceeding the City's threshold. *Id.*

SWAPE's analysis demonstrates potentially significant air quality and GHG impacts from the project that necessitate mitigation. A Revised EIR should be prepared which includes an air quality and GHG analysis and should propose feasible measures to mitigate any significant impacts.

**B. There is a Fair Argument that the Project May Have a Significant Health Risk Impact from Indoor Air Quality Impacts.**

Certified Industrial Hygienist, Francis “Bud” Offermann, PE, CIH, has conducted a review of the proposed Project and relevant documents regarding the Project’s indoor air emissions. Indoor Environmental Engineering Comments (June 7, 2022). Mr. Offermann concludes that it is likely that the Project will expose residents and commercial employees of the Project to significant impacts related to indoor air quality, and in particular, emissions of the cancer-causing chemical formaldehyde. Mr. Offermann is a leading expert on indoor air quality and has published extensively on the topic. Mr. Offermann’s expert comments and curriculum vitae are attached as Exhibit B.

Mr. Offermann explains that many composite wood products used in building materials and furnishings commonly found in offices, warehouses, residences, and hotels contain formaldehyde-based glues which off-gas formaldehyde over a very long time period. He states, “[t]he primary source of formaldehyde indoors is composite wood products manufactured with urea-formaldehyde resins, such as plywood, medium density fiberboard, and particleboard. These materials are commonly used in building construction for flooring, cabinetry, baseboards, window shades, interior doors, and window and door trims.” Ex. B, p. 2-3.

Formaldehyde is a known human carcinogen. Mr. Offermann states that future residents of the Project would be exposed to a 17 in one million cancer risk, and commercial employees of the Project would be exposed to a 17.7 in one million risk, **even assuming** all materials are compliant with the California Air Resources Board’s formaldehyde airborne toxics control measure. *Id.* at 4-5. This potential exposure level exceeds the SCAQMD CEQA significance threshold for airborne cancer risk of 10 per million.

Mr. Offermann identifies mitigation measures that are available to reduce these significant health risks, including the installation of air filters and a requirement that the applicant use only composite wood materials (e.g. hardwood plywood, medium density fiberboard, particleboard) for all interior finish systems that are made with CARB approved no-added formaldehyde (NAF) resins or ultra-low emitting formaldehyde (ULEF) resins in the buildings’ interiors. *Id.* at 12-13. These significant environmental impacts should be analyzed in a Revised EIR and mitigation measures should be imposed to reduce the risk of formaldehyde exposure.

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### III. CONCLUSION

For the foregoing reasons, SAFER believes that the EIR is wholly inadequate. SAFER urges the Planning Commission to refrain from recommending certification of the FEIR or recommending approval of the Project in order to allow staff additional time to address the concerns raised herein. Thank you for considering our comments and please include this letter in the record of proceedings for this project.

Sincerely,

A handwritten signature in cursive script that reads "Amalia Bowley Fuentes".

Amalia Bowley Fuentes  
Lozeau Drury LLP