



T 510.836.4200
F 510.836.4205

1939 Harrison Street, Ste. 50
Oakland, CA 94612

www.lozeaudrury.com
Amalia@lozeaudrury.com

Via Email

April 11, 2022

Alexander Truong
City Planning Associate
Los Angeles City Planning
200 N. Spring St., Room 763
Los Angeles, CA 90012
alexander.truong@lacity.org

Re: Comment on Negative Declaration, 6445 Sunset Blvd. Project

Dear Mr. Truong:

I am writing on behalf of **Supporters Alliance for Environmental Responsibility ("SAFER")**, regarding the Negative Declaration ("ND") prepared for the Project known as 6445 Sunset Blvd. Project (ENV-2020-5408-ND), including all actions referring or related to the construction of a new 59,655 square foot, 13-story hotel with 175 rooms and up to 11,400 square feet of restaurant, bar, and lounge area located at 6445 Sunset Boulevard in the City of Los Angeles ("Project"). We request that the City prepare an environmental impact report ("EIR") for the Project because there is a fair argument that the Project may have adverse environmental impacts.

This comment has been prepared with the assistance of Certified Industrial Hygienist, Francis "Bud" Offermann, PE, CIH (Exhibit A), environmental consulting firm Soil/Water/Air Protection Enterprise ("SWAPE") (Exhibit B), and acoustics, noise and vibration consulting firm Wilson Ihrig (Exhibit C). We incorporate the Offermann, SWAPE, and Wilson Ihrig comments herein by reference. As explained below and in the expert comments, there is a fair argument that the proposed Project may have significant adverse environmental impacts, and an EIR is therefore required.

In particular, Mr. Offermann finds that the Project has the potential to cause significant health risks from indoor air quality. Additionally, SWAPE demonstrates that the ND relies on improper and unsubstantiated input parameters for its air quality analysis which result in a significant underestimation of the Project's air impacts. SWAPE also concludes that the Project will create significant cancer risks exceeding CEQA significance thresholds of the South Coast Air Quality Management District

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(“SCAQMD”). Lastly, Wilson Ihrig shows that the ND fails to address all potential adverse noise impacts.

I. Project Description.

The applicant is proposing to demolish existing retail and office uses onsite to develop a 59,655 square foot hotel and restaurant, bar, and lounge area. The Project would include 4 parking spaces on the ground level and 68 parking spaces in three aboveground levels. The Project will be located at 6437, 6443, 6445, and 6439 West Sunset Boulevard. The City has prepared a Negative Declaration for the Project.

II. Legal Background.

As the Supreme Court held, “If 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 Environment v. South Coast Air Quality Management Dist. (ConocoPhillips)* (2010) 48 Cal. 4th 310, 319-320 (“CBE v. SCAQMD”), citing, *No Oil, Inc. v. City of Los Angeles*, 13 Cal.3d at pp. 75, 88; *Brentwood Assn. for No Drilling, Inc. v. City of Los Angeles* (1982) 134 Cal. App. 3d 491, 504–505) “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.)

The EIR is the very heart of CEQA. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1214; *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 University of California* (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 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.” (Pub. Res. Code § 21080(d) (emphasis added); 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 (CEQA Guidelines § 15371), only if there is not even a “fair argument” that the project will have

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a significant environmental effect. (Pub. Res. Code §§ 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*, 129 Cal.App.3d 436, 440 (1989).) CEQA contains a “**preference for resolving doubts in favor of environmental review.**” (*Pocket Protectors*, 124 Cal.App.4th at 927 (emphasis in original).)

III. DISCUSSION

A. There is a Fair Argument that the Project May Have a Significant Health Risk Impact from its 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 (April 9, 2022) (Exhibit A). Mr. Offermann concludes that it is likely that the Project will expose 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 A.

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. A, p. 2-3.

Formaldehyde is a known human carcinogen. Mr. Offermann states that future 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 South Coast Air Quality Management District’s (“SCAQMD”) CEQA significance threshold for airborne cancer risk of 10 per million.

Mr. Offermann concludes that these significant environmental impacts should be analyzed in an EIR and mitigation measures should be imposed to reduce the risk of formaldehyde exposure. *Id.* at 4. Mr. Offermann identifies mitigation measures that are available to reduce these significant health risks, including the installation of air filters

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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 11-12.

The City has a duty to investigate issues relating to a project’s potential environmental impacts, especially those issues raised by an expert’s comments. See *Cty. Sanitation Dist. No. 2 v. Cty. of Kern*, (2005) 127 Cal.App.4th 1544, 1597–98 (“under CEQA, the lead agency bears a burden to investigate potential environmental impacts”).

The failure to address the project’s formaldehyde emissions is contrary to the California Supreme Court’s decision in *California Building Industry Ass’n v. Bay Area Air Quality Mgmt. Dist.* (2015) 62 Cal.4th 369, 386 (“*CBIA*”). 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 adverse environmental conditions at or near a project site, those would still have to be considered pursuant to CEQA. *Id.* at 801 (“CEQA calls upon an agency to evaluate existing conditions in order to assess whether a project could exacerbate hazards that are already present”). 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).

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The carcinogenic formaldehyde emissions identified by Mr. Offermann are not an existing environmental condition. Those emissions to the air will be from the Project. Commercial employees will be users of the Project. Rather than excusing the City from addressing the impacts of carcinogens emitted into the indoor air from the project, the Supreme Court in *CBIA* expressly finds that this type of effect by the project on the environment and a “project’s users” 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.” *CBIA*, 62 Cal.4th at 800 (emphasis in original). Likewise, “the Legislature has made clear—in declarations accompanying CEQA’s enactment—that public health and safety are of great importance in the statutory scheme.” *Id.*, citing e.g., §§ 21000, subds. (b), (c), (d), (g), 21001, subds. (b), (d). It goes without saying that the future employees of the

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Project are human beings and the health and safety of those workers is as important to CEQA’s safeguards as that of nearby residents currently living near the project site.

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The City must prepare an EIR which discloses and mitigates the potential environmental impacts to future users of the building.

B. There is a Fair Argument that the Project May Have Significant Adverse Hazardous Material, Air Quality, Health Risk, and Greenhouse Gas Impacts.

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

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1. The ND Fails to Prepare a Phase 1 Environmental Site Assessment and Therefore its Determination Regarding Hazards Lacks Basis.

Phase 1 Environmental Site Assessments (“ESAs”) are used in CEQA review to “identify hazardous waste issues that may pose a risk to the public, workers, or the environment, and which may require further investigation, including environmental sampling and cleanup.” Ex. B, p. 1. Here, the City failed to prepare a Phase 1 ESA for the Project, therefore failing to provide a basis for its conclusion that potential impacts from hazards and hazardous materials would be less than significant. *Id.* An EIR must be prepared to properly assess these impacts.

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

SWAPE found that the ND incorrectly estimated the Project’s construction and operational emissions and therefore cannot be relied upon to determine the significance of the Project’s impacts on local and regional air quality. Ex. B, p. 2. The ND relies on emissions calculated from the California Emissions Estimator Version CalEEMod.2016.3.2 (“CalEEMod”). ND, p. 28. 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. B, p. 2-3. CEQA requires any changes to the default values to be justified by substantial evidence. *Id.*

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SWAPE reviewed the ND’s CalEEMod output files and found that the values input into the model were inconsistent with information provided in the ND. Ex. B, p. 3.

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As a result, the ND’s air quality analysis cannot be relied upon to determine the Project’s emissions.

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

1. Unsubstantiated Changes to Individual Construction Phase Lengths. Ex. B, p.3-4.
2. Unsubstantiated Reduction to Number of Worker Trips. Ex. B, p. 5.
3. Incorrect Application of Tier 3 Mitigation. Ex. B, p. 5-7.
4. Incorrect Application of Construction-Related Mitigation Measures. Ex. B, p. 7-8.
5. Incorrect Application of Area-Related Operational Mitigation Measures. Ex. B, p. 8-9.

In addition to the incorrect values listed above, SWAPE noted that the Project’s annual CalEEMod output files were not included in Appendix A, as required by the CalEEMod User’s guide. *Id.* at 9. SWAPE was therefore unable to evaluate the annual diesel particulate matter (“DPM”) or GHG emissions associated with the Project’s construction and operation. *Id.* The ND’s analysis of these impacts can therefore not be relied upon to determine the significance of impacts and an EIR must be prepared.

3. There is Substantial Evidence that the Project May Have a Significant Health Impact as a Result of Diesel Particulate Emissions.

One of the primary emissions of concern regarding health effects for land development projects is DPM, which can be released during Project construction and operation. DPM consists of fine particles with a diameter less than 2.5 micrometers including a subgroup of ultrafine particles (with a diameter less than 0.1 micrometers). Diesel exhaust also contains a variety of harmful gases and cancer-causing substances. Exposure to DPM is a recognized health hazard, particularly to children whose lungs are still developing and the elderly who may have other serious health problems. According to the California Air Resources Board (“CARB”), DPM exposure may lead to the following adverse health effects: aggravated asthma; chronic bronchitis; increased respiratory and cardiovascular hospitalizations; decreased lung function in children; lung cancer; and premature deaths for those with heart or lung disease.¹

The ND concluded that the Project would have a less-than-significant construction-related health risk impact due to what it characterized as short-term and

¹ See CARB Resources - Overview: Diesel Exhaust & Health, available at <https://ww2.arb.ca.gov/resources/overview-diesel-exhaust-and-health>).



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minimal emissions. ND, p. 32. The ND also stated that the Project would not involve frequent truck trips or include land uses that generate substantial amounts of toxic air contaminant (“TAC”) emissions, therefore making its operational health risk impact less-than-significant. *Id.* SWAPE identifies four main reasons for why the ND’s evaluation of health risk impacts and less-than-significant conclusion is incorrect.

First, the City’s claims about diesel emissions are unfounded because they only relied on an LST analysis. Ex. B, p. 10. An LST only evaluates impacts from criteria air pollutants, and therefore “cannot be used to determine whether emissions from TACs, specifically DPM, a known human carcinogen, would result in a significant health risk impact to nearby sensitive receptors.” *Id.* at 10-11.

Second, because the ND did not prepare a quantified construction and operational Health Risk Assessment (“HRA”), it failed to correlate increased emissions from the Project to adverse impacts on human health caused by those emissions. *Id.* at 11. In failing to connect TAC emissions to potential health risks to nearby receptors, the Project fails to meet CEQA requirements. *Id.*; See *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 510.

Third, the California Department of Justice recommends the preparation of a quantitative HRA pursuant to the Office of Environmental Health Hazard Assessment (“OEHHA”), the organization responsible for providing guidance on conducting HRAs in California, as well as local air district guidelines. OEHHA released its most recent guidance document in 2015 describing which types of projects warrant preparation of an HRA. See “Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, *available at:* http://oehha.ca.gov/air/hot_spots/hotspots2015.html. The OEHHA document recommends that if a project’s construction is expected to exceed 2 months, as this one will, an HRA must be prepared. Ex. B, p. 11. Additionally, if a Project is expected to last over 6 months, the exposure should be evaluated throughout the project using a 30-year exposure duration to estimate individual cancer risks. *Id.* Based on its extensive experience, SWAPE reasonably assumes that the Project will last at least 30 years, and therefore recommends that health risk impacts from the project be evaluated. *Id.*

Fourth, in failing to prepare any HRA’s, the ND also fails to compare excess health risk impacts to SCAQMD’s threshold of 10 in one million. *Id.* at 12. SWAPE states that “an assessment of the health risk posed to nearby, existing receptors from Project construction and operation should have been conducted.” *Id.*

SWAPE prepared a screening-level HRA to evaluate potential impacts from Project construction using AERSCREEN, a screening-level air quality dispersion model. Ex. B, p. 12. SWAPE applied a sensitive receptor distance of 75 meters and analyzed impacts to individuals at different stages of life based on OEHHA and SCAQMD guidance utilizing age sensitivity factors. *Id.* at 12-16.



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SWAPE found that the excess cancer risks at a sensitive receptor located approximately 75 meters away over the course of Project construction and operation are approximately 18 in one million for children. *Id.* at 15. Moreover, **the excess residential lifetime cancer risk is approximately 31.2 in one million.** *Id.* The risks to children and lifetime residents exceed SCAQMD’s threshold of 10 in one million.



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SWAPE’s analysis constitutes substantial evidence that the Project may have a significant health impact as a result of diesel particulate emissions. SWAPE recommends that “an EIR [] be prepared, including a quantified air pollution model as well as an updated, quantified refined health risk assessment which adequately and accurately evaluates and mitigates health risk impacts associated with both Project construction and operation.” *Id.* at 16.

4. The ND Failed to Adequately Analyze the Project’s Greenhouse Gas Impacts and Thus the Project May Result in Significant Greenhouse Gas Emissions.

The ND relies on consistency with SCAG’s 2020-2045 RTP/SCS to conclude that greenhouse gas impacts would be less than significant. ND, p. 47-48. However, SWAPE states that the ND’s conclusion about a less-than-significant greenhouse gas impact is incorrect for two reasons:



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- (1) SWAPE’s quantitative analysis indicates a potentially significant GHG impact;
- (2) The ND fails to consider the performance-based standards under SCAG’s RTP/SCS.

Ex. B, p. 17.

SWAPE’s analysis demonstrates potentially significant health risk and GHG impacts from the project that necessitate mitigation, and it identifies several feasible mitigation measures applicable to the Project. *Id.* at 19-24. In addition to implementing these measures, an EIR should be prepared for the Project which includes an updated hazards and hazardous materials, air quality, health risk, and GHG analysis.

C. There is a Fair Argument that the Project May Have Adverse Noise Impacts that the ND Failed to Address.

Derek Watry, Principal of Acoustics, Noise, and Vibration consulting firm Wilson Ihrig, reviewed the ND for the Project and found that the ND relies on incorrect thresholds of significance to measure the Project’s potential noise impacts. Mr. Watry’s comment letter and CV are attached as Exhibit C and his comments are summarized here.



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1. The ND relies on an incorrect threshold of significance to conclude that construction noise impacts would be less than significant.

Mr. Watry found that the ND’s construction noise analysis ignored standard Los Angeles CEQA thresholds, rendering the ND’s determination of significance incorrect. Ex. C, p. 3. Although the ND correctly states that construction noise must comply with Los Angeles Municipal Code (“LAMC”) Section 112.05, the ND uses that guideline as the *only* method to assess construction noise impacts. *Id.*, ND at 62. LAMC Section 112.05 “is necessary to limit the noise from any once piece of equipment,” however, does not address “the totality of noise emanating from a bustling construction site.” Ex. C, p. 3. The *L.A. CEQA Thresholds Guide* published by the City of Los Angeles provides the additional threshold that must be used: “construction noise that exceeds the existing ambient exterior noise levels by 5 dBA or more at noise-sensitive land use constitutes a significant noise impact.” Ex. C, p. 3; L.A. CEQA Thresholds Guide, p.I.1-3.

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Mr. Watry reviewed the ND’s noise analysis and found that when compared against the correct threshold, there was a significant impact. Ex. C, p. 3-4. At Site 1, the 15-minute average noise level was 65.5 dBA. ND, Appendix B – Noise Worksheets. The construction noise level estimated for Site 1 was 71.5 dBA, 6 dBA over the reported ambient level. ND, p. 63; Ex. C, p. 4. Additionally, a noise level of 66.7 dBA was reported for the nearby Thompson Hotel, but the hotel’s distance was incorrectly measured. *Id.* When measured correctly, the actual noise level would be 70.7 dBA, which also exceeds the 5 dBA threshold. *Id.* Mr. Watry therefore concludes that “[i]f no feasible mitigation measures are identified, construction noise would constitute a significant and unavoidable impact.” *Id.*

2. The ND’s assessment of vibration impacts from construction underestimates potential impacts on nearby buildings.

Mr. Watry next found that the ND failed to accurately measure the impacts of construction vibration on the properties surrounding the Project site. Ex. C, p. 4. Mr. Watry notes that all buildings should be treated equally with respect to assessing potential vibration impacts. *Id.* However, the ND “only considers damage to buildings with noise-sensitive uses as potentially significant,” which is “patently unfair to property owners of other buildings.” *Id.* Mr. Watry recalculated building vibration impacts and found that vibration from a large bulldozer would exceed significance thresholds 24% of the time. *Id.* at 5. This constitutes substantial evidence of a fair argument that the Project may cause construction vibration impacts. An EIR must be prepared to adequately assess these impacts.

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IV. CONCLUSION

For the foregoing reasons, SAFER believes that the ND is inadequate. SAFER requests that the City prepare an Environmental Impact Report (“EIR”) to analyze and mitigate the Project’s significant adverse environmental impacts. Thank you.

Sincerely,



Amalia Bowley Fuentes
LOZEAU DRURY LLP