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*Via Email*

August 8, 2022

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**Re: Comment on Mitigated Negative Declaration, Planned Development #40 – 444 N. Fair Oaks Avenue  
Planning Commission Hearing, August 10, 2022, Item #6**

Dear Senior Planner Yu:

I am writing on behalf of **Supporters Alliance for Environmental Responsibility ("SAFER")**, regarding the Mitigated Negative Declaration for the Project known as Planned Development #40 – 444 N. Fair Oaks Ave, including all actions referring or related to the development of a 90,888 square foot multi-family residential development with 206 units and a two-level underground parking garage located at 444 N. Fair Oaks Avenue and 425 N. Raymond Avenue in the City of Pasadena ("Project").

After reviewing the MND, we conclude that the MND fails as an informational document, fails to adequately analyze the Project's environmental impacts, and fails to impose all feasible mitigation measures to reduce the Project's impacts. SAFER requests that the Planning and Community Development department address these shortcomings in an environmental impact report ("EIR") and circulate the EIR prior to considering approvals for the Project.

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 vibration consulting firm Wilson Ihrig (Exhibit C). We incorporate the Offermann, SWAPE, and Wilson Ihrig comments herein by reference.

## **I. Project Description.**

The applicant is proposing to create a Planned Development zoning district including two parcels served by a two-level underground parking garage. One parcel, Parcel A, would consist of two, three- to five-story buildings with 195 units, and the other, Parcel B, would consist of three, two- to three-story buildings with a total of seven courtyard dwelling units. The Project would require demolition of current on-site structures including a commercial hardware center and building materials supply and a three-story multi-family residential building. Construction is estimated to last 30 months, including 7 weeks of demolition and 19 weeks of site preparation.

## **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, 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 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 Substantial Evidence that the Project Will 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 (November 21, 2021) (Exhibit A). 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 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 residential occupants would be exposed to a cancer risk of 120 in one million. (Ex. A, p. 4.) This calculation assumes that all materials will be compliant with the California Air

Resources Board's formaldehyde airborne toxics control measure. (*Id.* at 4-5.) These potential exposure levels exceed the South Coast Air Quality Management District's ("SCAQMD") CEQA significance threshold for airborne cancer risk of 10 per million. (*Id.*)

Mr. Offermann concludes that these significant environmental impacts should be analyzed in an appropriate CEQA document and mitigation measures should be imposed to reduce the risk of formaldehyde exposure. (*Id.* at 5.) 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 11-12.)

Mr. Offermann's comments are substantial evidence of a fair argument that the Project may cause significant impacts on indoor air quality. The City must prepare an EIR to disclose and mitigate the potential environmental impacts to future users of the building.

**B. There is Substantial Evidence that the Project Will Have Significant Adverse Hazards, Air Quality, Health Risk, and Greenhouse Gas Impacts.**

**1. The MND's Mitigation Measures for Dust Emissions are Inadequate.**

Matt Hagemann, P.G., C.Hg., and Dr. Paul E. Rosenfeld, Ph.D., of the environmental consulting firm SWAPE reviewed the MND'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.

A Phase II Environmental Site Assessment was conducted for the Project site, and several mitigation measures were proposed to protect workers from potential hazards. However, SWAPE found that these measures failed to provide for "provisions to monitor dust emissions at the fenceline of the adjacent residences." (Ex. B, p.1.) SWAPE deems this monitoring necessary to protect the health and safety of nearby residences, and that an EIR should be prepared which includes mitigation in the form of a monitoring program. (*Id.*) Additionally, SWAPE believes mitigation should include a communications plan with neighbors to warn them about construction activities and associated potential for contaminated dust. (*Id.*)

**2. The MND Failed to Provide Complete CalEEMod Output Files and Thus the Project May Result in Significant Air Quality Impacts**

SWAPE found that the MND failed to include the complete CalEEMod output files that were used to estimate air quality and greenhouse gas emissions, therefore precluding SWAPE's ability to analyze the adequacy of the analysis. (Ex. B, p. 2.) For example, SWAPE found that the "User Entered Comments & Non-Default Data" table was manually removed, meaning the exact parameters used to calculate Project emissions were not included in the MND. (*Id.*) SWAPE concludes that the Project "should not be approved until a complete air quality analysis, including the associated air modeling, is prepared and disclosed." (*Id.*)

### **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 diesel particulate matter ("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.<sup>1</sup>

The MND concluded that the Project would have a less-than-significant health risk impact, but did not conduct a quantified construction or operational health risk analysis ("HRA"). (Ex. B, p. 2.) As far as construction-related health risk impacts, the MND concluded that the short-term nature of the construction schedule and minimal particular emissions would not generate substantial toxic air contaminant ("TAC") emissions. (*Id.* at 3.) The MND also stated that operational health risk impacts would be less-than-significant because the Project will not include use of diesel backup generators or result in increased diesel fueled delivery trips. (*Id.*) SWAPE identifies three main reasons for why the MND's evaluation of health risk impacts and less-than-significant conclusions are incorrect.

First, the MND fails to quantitatively evaluate operational toxic air contaminants ("TACs"), and therefore failed to connect TAC emissions to potential health risks to nearby receptors. (Ex. B, p. 3.) SWAPE finds that this is incorrect because the Project would produce DPM from emissions from exhaust stacks from construction equipment,

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

and from daily vehicle trips. (*Id.*) The Project fails to meet the CEQA requirement that projects correlate increases in project-generated emissions to adverse impacts on human health caused by those emissions. (Ex. B, p. 3; *See Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 510.)

Second, 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](http://oehha.ca.gov/air/hot_spots/hotspots2015.html). The OEHHA document recommends that if a project is expected to last at least two months, which this Project does, it should be evaluated for cancer risks to nearby sensitive receptors. (Ex. B, p. 3.) 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.*) An EIR is therefore required to analyze these impacts.

Third, SWAPE found that the MND failed to compare excess health risk impacts to the applicable SCAQMD threshold of 10 in one million, and that an analysis of the health risk posed to nearby, existing receptors from Project construction and operation should have been conducted. (Ex. B, p. 4.)

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. 4.) SWAPE applied a sensitive receptor distance of 50 meters and analyzed impacts to individuals at different stages of life based on OEHHA and SCAQMD guidance utilizing age sensitivity factors. (*Id.* at 4-8.)

SWAPE found that the excess cancer risks at a sensitive receptor located approximately 50 meters away over the course of Project construction are approximately 30.1 in one million for children and 10.1 in one million for adults. (*Id.* at 7.) Moreover, **the excess lifetime cancer risk over the course of Project construction and operation of 30 years is approximately 48.2 in one million.** (*Id.*) The risks to children, adults, and lifetime residents exceed SCAQMD’s threshold of 10 in one million.

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 the City prepare “an updated, quantified air pollution model as well as

an updated, quantified refined health risk analysis which adequately and accurately evaluates health risk impacts associated with both Project construction and operation.” (Ex. B, p. 8.)

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

The MND estimates that the Project would generate net annual GHG emissions of 1,613 metric tons of carbon dioxide equivalent per year (“MT CO<sub>2</sub>e/year”). It also relies on the Project’s consistency with CARB’s Scoping Plan and SCAG’s 2020-2045 RTP/SCS to conclude that the project would have a less-than-significant GHG impact. (Ex. B, p.8-9.) However, SWAPE states that the MND’s analysis of GHG impacts and conclusion that they would be less than significant are incorrect for several reasons:

- The MND’s quantitative GHG analysis relies upon an unsubstantiated air model;
- The MND fails to consider the performance-based standards under CARB’s *Scoping Plan*; and
- The MND fails to consider the performance-based standards under SCAG’s *RTP/SCS*.

SWAPE’s analysis demonstrates potentially significant hazard, air quality, health risk and GHG impacts from the project that necessitate mitigation. An EIR should be prepared which includes updated hazard impact mitigation measures, and updated air quality, health risk, and GHG analyses.

#### **C. There is Substantial Evidence that the Project Will Have Adverse Noise Impacts that the IS/MND Failed to Address.**

Derek Watry, Principal of Acoustics, Noise, and Vibration consulting firm Wilson Ihrig reviewed the IS/MND for the Project and found that the IS/MND lacks quantitative thresholds to evaluate the suitability of its proposed mitigation measures. Derek Watry’s comment letter and CV are attached as Exhibit C and his comments are summarized here.

##### **1. The IS/MND’s construction noise analysis is inadequate.**

Mr. Watry found that the IS/MND’s construction noise analysis failed to use an appropriate threshold, and therefore did not adequately assess whether the Project would have a significant impact from noise. (Ex. C, p. 3-5.) The IS/MND used a requirement from the City of Pasadena’s Noise Restrictions Ordinance as the “single threshold of significance” for noise. (*Id.* at 3.) This requirement states that no individual piece of construction may produce a noise level greater than 85 dBA at 100 feet. (*Id.*) However, Mr. Watry points out the clear flaw with this approach, which is that rather

than considering the noise impact of all the machinery as a whole, this threshold only measures individual pieces, and “effectively means there is no limit to the amount of noise construction may cause.” (*Id.*)

Using detailed information about construction equipment provided in the IS/MND, and guidance from the Federal Transit Administration (“FTA”) *Transit Noise and Vibration Impact Assessment* manual, Mr. Watry calculated noise levels for residences neighboring the Project site. (*Id.* at 3-4, Table 1; appendix at Ex. C, p. 7.) Mr. Watry’s calculation demonstrated that noise levels at surrounding residences would be “very high, exceeding the FTA daytime criterion by as much as 10 dB.” (*Id.* at 5.) He also found that in addition to exceeding FTA’s absolute noise criterion, Project construction noise levels would also “exceed the existing ambient noise levels by a significant amount.” (*Id.*) These impacts represent substantial evidence of a significant noise impact, and must be addressed in an EIR.

## **2. The IS/MND failed to consider adequate noise mitigation measures.**

As a result of its less-than-significant conclusion regarding construction noise impacts, the IS/MND also failed to consider or incorporate any noise mitigation measures. (Ex. C, p. 5.) Mr. Watry states that because of the high levels of noise expected from the Project, it is unlikely that they could be completely mitigated. (*Id.*) He does, however, state that noise levels could be reduced to below the FTA threshold if “sufficiently high temporary noise barriers are erected prior to heavy demolition and construction work.” (*Id.*) Mr. Watry gives an example of this barrier on page 6 of his comment and states that when installed correctly, it could “realistically provide on the order of 15 dB of attenuation at the upper floors of the neighboring residences,” which would reduce noise levels to below the FTA standard. (*Id.* at 5-6.)

## **IV. CONCLUSION**

For the foregoing reasons, SAFER believes that the MND is wholly inadequate. SAFER urges the Planning Commission to refrain from recommending certification of the MND 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,



Amalia Bowley Fuentes  
Lozeau Drury LLP