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Via Email

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**Re: Comment on Final Environmental Impact Report, 1360 N. Vine Street
Project (SCH 2017061063; ENV-2016-3778-EIR)**

Dear Mr. Fukuda and the Advisory Agency:

I am writing on behalf of **Supporters Alliance for Environmental Responsibility ("SAFER")** regarding the Final Environmental Impact Report ("FEIR") prepared for the 1360 N. Vine Street Project (SCH 2017061063; ENV-2016-3778-EIR), including all actions related or referring to the proposed construction of a 361-foot high-rise building with four levels of subterranean parking consisting of up to 429 residential units or 303-foot high rise office building with eight levels of subterranean parking and associated bungalows located at 1360 North Vine Street in the City of Los Angeles ("Project").

SAFER previously comments on the DEIR on July 25, 2023 stating that the DEIR failed as an informational document and failed to impose all feasible mitigation measures to reduce the Project's impacts. The purpose of this comment is to clarify the deficiencies previously noted that remain in the FEIR and raise additional issues presented in the FEIR.

SAFER's review of the EIR has been assisted by air quality experts Matt Hagemann, P.G., C.Hg. and Paul E. Rosenfeld, Ph.D., of the environmental consulting firm, Soil/Water/Air Protection Enterprise ("SWAPE") (CV and comments attached as Exhibit A). The expert comments further reveal that the FEIR fails to adequately evaluate the Project's air quality, health, risk, and greenhouse gas impacts and fails to implement all feasible mitigation measures regarding significant and unavoidable noise and vibration impacts.

A revised EIR must be prepared with a finite and stable project description, adequate evaluation of air, health risk, and greenhouse gas impacts, and implements all feasible mitigation measures where risks are significant.

PROJECT DESCRIPTION

The Project proposed to develop a mixed-use building on a 81,050 square-foot site at 1360 North Vine Street located within the Hollywood Community of City of Los Angeles with one of two options: a Residential Option and an Office Option. Both options would demolish 32,844 square feet of commercial and vacant residential uses while retaining and rehabilitating six existing bungalows, which are protected as part of the Afton Square Historic District. That is where the similarities end.

The Residential Option would develop a new 33-story high-rise building with four levels of subterranean parking consisting of up to 429 new residential units, including 36 low income unites, a 55,000 square feet (“SF”) grocery store, approximately 5,000 SF of retail uses in addition to the bungalows, which would be stored off-site, relocated, rehabilitated and adapted for restaurant use or as 12 residential units. The Residential Option would provide approximately 484,421 square feet of floor area within the Project Site.

The Office Option would develop a new 17-story high-rise building with eight levels of subterranean parking with approximately 463,521 SF of office uses and 11,914 SF of restaurant uses, as well as the bungalows, which would be stored off-site, relocated, rehabilitated and adapted for restaurant use or as 9 residential units. The Office Option would provide approximately 484,423 square feet of floor area within the Project Site.

Thus, while the Project description lists 2 options, there are in fact four distinct scenarios, each with unique characteristics, uses, and associated project impacts:

- Residential Option with Residential Bungalows
- Residential Option with Restaurant Bungalows
- Office Option with Residential Bungalows
- Office Option with Restaurant Bungalows

LEGAL STANDARD

I. CEQA and Environmental Impact Report

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 CCR § 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.) Second, CEQA requires public agencies to avoid or reduce environmental damage when “feasible” by requiring “environmentally superior” alternatives and all feasible mitigation measures. (14 CCR § 15002(a)(2) and (3); see also *Berkeley Jets Over the Bay Com. v. Board of Port Cmrs.* (2001) 91 Cal.App.4th

1349,1354; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.)

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. Resources Code, § 21100.) The EIR is the very heart of CEQA. (*Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652. 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 for Local Control v. City of Bakersfield* (2004), 124 Cal.App.4th 1184, 1220.) The EIR also functions as a “document of accountability,” intended to “demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action.” (*Laurel Heights Improvements Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 392.)

The EIR 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.” (14 CCR § 15002(a)(2).) Critical to this purpose, the EIR must contain an “accurate and stable project description.” (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185 at 192-93 (“An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR.”) The project description must contain (a) the precise location and boundaries of the proposed project, (b) a statement of the project objectives, and (c) a general description of the project's technical, economic, and environmental characteristics. (Cal. Code Regs., tit. 14, (“CEQA Guidelines”) § 15124.)

II. Standard of Review

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 1355 [quoting, *Laurel Heights Improvement Assn.*, 47 Cal. 3d at 391, 409, n. 12.]) As the court stated in *Berkeley Jets*, 91 Cal.App.4th at 1355:

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]....

(*Sierra Club v. Cty. of Fresno* (2018) 6 Cal.5th 502, 510 (2018) [citing *Laurel Heights Improvement Assn.*, 47 Cal.3d at 405].) The Court in *Sierra Club v. Cty. of Fresno* also emphasized at another primary consideration of sufficiency is whether the EIR “makes a reasonable effort to substantively connect a project’s air quality impacts to likely health consequences.” (*Id.* at 510.) “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.” (*Id.* 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.’” (*Sierra Club*, 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.” (*Id.* 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.

(*Id.* at 514.)

III. Mitigation Measures

In general, mitigation measures must be designed to minimize, reduce or avoid an identified environmental impact or to rectify or compensate for that impact. (14 CCR § 15370.) Where several mitigation measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified. (14 CCR § 15126.4(a)(1)(B).) A lead agency may not make the required CEQA findings unless the administrative record clearly shows that all uncertainties regarding the mitigation of significant environmental impacts have been resolved.

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 CCR § 15092(b)(2)(A) and (B).)

IV. Response to comments

When a significant environmental issue is raised in comments that object to the draft EIR's analysis, the response must be detailed and must provide a reasoned, good faith analysis. (14 CCR §15088(c); *Banning Ranch Conservancy v. City of Newport Beach* (2017) 2 Cal.5th 918, 940; *Covington v. Great Basin Unified Air Pollution Control Dist.* (2019) 43 Cal.App.5th 867, 878 [rejecting adequacy of response that did not explain why suggested mitigation was infeasible].) The failure of a lead agency to respond to comments raising significant environmental issues before approving a project frustrates CEQA's informational purpose and may render the EIR legally inadequate. (See *Flanders Found. v. City of Carmel-by-the-Sea* (2012) 202 Cal.App.4th 603, 615; *Rural Landowners Ass'n v. City Council* (1983) 143 Cal.App.3d 1013, 1020.)

DISCUSSION

I. The FEIR Fails to Provide a Stable and Accurate Project Description and is thus Legally Inadequate.

For over forty years the courts have consistently held that an accurate and stable project description is a bedrock requirement of an adequate CEQA document:

Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the “no project” alternative) and weigh other alternatives in the balance. An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR.

(*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185 at 192-93. See also, *id.* at 192 (“A curtailed or distorted project description may stultify the objectives of the [CEQA] process.”))

The project description must contain (a) the precise location and boundaries of the proposed project, (b) a statement of the project objectives, and (c) a general description of the project's technical, economic, and environmental characteristics. (CEQA Guidelines, § 15124.) Courts have repeatedly recognized that “that a project description that gives conflicting signals to decision makers and the public about the nature and scope of the project is fundamentally inadequate and misleading.” (*Washoe Meadows*, 17 Cal.App.5th at 285.)

In order to provide an accurate and stable project description that allows for meaningful public participation, the City must select a preferred project rather than a range of distinct proposed projects. (*See id.* at 290 (DEIR analyzing a range of significantly different alternatives for a golf course reconfiguration project “without the designation of a stable project was an obstacle to informed public participation” rendering the document legally inadequate.) The FEIR, as with the DEIR, fails to provide a stable project description by proposing two alternatives, each with additional alternatives concerning the use of bungalows, amounting to four distinct scenarios. The Residential Option would develop a new 33-story high-rise building of up to 429 new residential units with four levels of subterranean parking, a 55,000 sf grocery store, and only approximately 5,000 sf of retail uses. The Office Option on the other hand is a 17-story high-rise building with eight levels of subterranean parking, 463,521 sf of office uses and 11,914 sf of restaurant uses. The only potential residential uses would be the bungalows, which may be used as restaurants in which case there would be no residential use whatsoever. Aside from the maintenance of the six pre-existing bungalows, these options are completely different in every way. One structure is twice the size and half the subterranean footprint from the other. Beyond the generalized attribute of being “mixed-use,” the designated uses are completely distinct.

The City’s presentation of two completely distinct alternatives without designation of a stable project description or objectives gives “conflicting signals to decision makers and the public about the nature and scope of the project” rendering the FEIR fundamentally inadequate and misleading. (*Citizens for a Sustainable Treasure Island v. City and County of San Francisco* (2014) 227 Cal.App.4th 1036, 1045, (“*Treasure Island*”). While there may be instances where the basic characteristics of a project are provided and certain specifics are left for further review, it does not relieve the lead agency’s responsibility to identify the project being proposed. *See Washoe Meadows*, 17 Cal.App.5th at 289 (discussing *Treasure Island*, 227 Cal.App.4th 1036.) Indeed, the Court of Appeal found in *Washoe Meadows*, that is did not matter that the alternative ultimately selected had been thoroughly analyzed in the final EIR. “[T]he problem with an agency’s failure to propose a stable project is not confined to ‘the informative quality of the EIR’s environmental forecasts.’” (*Washoe Meadows*, 17 Cal.App.5th at 288.) Rather, a failure to identify or select a project at all “impairs the public’s right and ability to participate in the environmental review process.” (*Id.*) The failure of the City to identify a preferred alternative has precluded informed decision-making and informed public participation.

This issue was raised in the DEIR comments in two instances. (See FEIR Sec. II Response to Comments, Comment No. 4-13 and Comment 8-42). In the first instance, the City, without any supporting authority, responded that “CEQA does not require identification of a preferred option.” (*Id.* at Response to Comments No. 4-13). For the reasons discussed above, this blanket statement is without merit.

Further, the City explained that “Throughout the Draft EIR, the more severe impacts are analyzed to present the most conservative analysis possible.” (*Id.* at Response to Comments No. 4-13). The City previously made this argument related to another

development on Vine Street in *Stothenmillenniumhollywood.com v. City of Los Angeles*, 39 Cal.App.5th 1 (2019) to no avail. In finding that the City had failed to meet CEQA's basic Guidelines requirement, the Court of Appeal emphasized that courts have "roundly rejected" the assertion that so long as the worst-case-scenario environmental effects have been assessed and mitigated, CEQA's purpose has been satisfied. *Stothenmillenniumhollywood.com v. City of Los Angeles*, 39 Cal.App.5th 1, 18 (2019) (Citing *County of Inyo*, and *Washoe Meadows*).

In the second instance that this issue was raised by commenters, the City only responded by discussing requirements pertaining to "environmental superior alternatives." The City failed to respond to the issue raised of the lack a stable and accurate project description under *Washoe Meadows*. (FEIR Sec. II at Response to Comments No. 8-42).

The fact remains that a 33-story high rise, with 5 levels of subterranean parking, a grocery and only 5,000 sf of retail create distinct impacts in type and severity from a 17-story office park with no grocery store. As stated in the comments to the DEIR, the failure to select a preferred alternative presents a "moving target" and prejudicially impairs informed decision-making, in addition to meaningful public participation required by CEQA.

The project options are also distinct, that the EIR provides unique Project Objectives for each option. For example, among other objectives, the Residential option is supporting the demand for housing and affordable housing and locating residential uses close to transit stations; locating residential uses in close proximity to transit stations. (FEIR Project, Page II-12.) The Office Option's objectives on the other hand include locating commercial uses close to transit stations. (*Id.*) Providing alternative Project Objectives with unique objectives pertaining to distinct uses fail to conform with CEQA Guidelines Section 15124.

The FEIR must be set aside and Revised DEIR must be prepared outlining one preferred project to allow for meaningful and informed evaluation among decision makers and adequate public participation.

II. The EIR's Findings on Significance of Air Quality Impacts are Not Supported by Substantial Evidence.

Air quality experts Matt Hagemann, P.G., C.Hg. and Dr. Paul E. Rosenfeld, Ph.D. of the environmental consulting firm SWAPE reviewed the EIR and concluded that the Project will likely have significant air quality, human health, and greenhouse gas impacts. SWAPE's comments and expert CVs are attached as Exhibit A.

a. The City Failed to Provide Complete Output Files Supporting Air Quality Findings.

The California Emissions Estimator Model ("CalEEMOD"), which was used by the City to calculate air quality impacts, provides recommended default values. While these

values can be changed based on project-specific values, the basis for such changes must be justified such that the inputs are supported by substantial evidence as required by CEQA. *See* CalEEMod User's Guide p.13-14.¹ The "Output files" disclose to the reader what parameters were utilized and provide the justification where alternative values are selected. (Ex. A, p. 2.)

The version of CalEEMod used by the City, CalEEMod Version 2022.1, does not provide complete output files, as it fails to provide quantitative counterparts to changes to default values, only providing the characteristic and justification; therefore, the FEIR fails to disclose the exact parameters used to calculate Project emissions. (Ex. A, p.2.) Consequently, neither the assumptions underling the models or the justification for such changes can be verified.

Because the FEIR fails to disclose exact parameters prevents verification of modeling and justification for specific parameters utilized, the FEIR is not supported by substantial evidence. A revised EIR must be prepared to include complete output files to allow for meaningful public participation and comment.

b. Modeling Inputs Utilized to Determine the Project's Air Quality are Not Supported by Substantial Evidence and May Underestimate Significance of Project Impacts.

In the instances where SWAPE was able to identify model inputs despite the failure to provide complete output files, SWAPE found several model inputs that are inconsistent with the information in the DEIR and FEIR such that the FEIR may underestimate air and climate impacts.²

First, the Carbon Intensity factors were adjusted based on State renewable energy goals. (Ex. A, p. 4.) However, the City fails to substantiate this change with any evidence that these goals will be achieved locally on the Project site or the Project's utility company. Without substantial evidence supporting this aspirational figure, the Carbon Intensity Factor should have remained based on currently achieved power mixes. (*Id.*) The unsubstantiated reduction of the Carbon Intensity Factor may result in the model underestimating greenhouse gas impacts and may not be relied upon to determine Project significance.

Second, the model includes substantial changes to the default construction schedule to extend construction time over four years. (*Id.* at 5.) However, the individual construction phases were not extended proportionately to match the total duration intended by the EIR. Thus, there is not substantial evidence supporting the *individual* construction phase lengths used in the models. (*Id.*) By improperly spreading out construction emissions over a longer period of time for some phases disproportionately, the model assumes there are greater

¹ Available at https://www.aqmd.gov/docs/default-source/caleemod/user-guide-2021/01_user-39-s-guide2020-4-0.pdf?sfvrsn=6

² In the interest of simplicity, SWAPE only reviewed the Residential Detailed Report in its comment, but notes that all models have similar errors and require revision and recirculation of the EIR.

number of days to complete construction activities, thereby assuming less pollution each day. (*Id.*) Without a complete construction schedule, the accuracy of the model is not supported by substantial evidence and may underestimate Project impacts.

Third, the model underestimates demolition required for Project completion. It only includes 29,569 SF of building demolition, while the FEIR states that 32,844 SF of existing buildings would be demolished for the Project. Therefore, demolition is underestimated by 3,275 SF (*Id.* at 9.) Failure to include full demolition figures means that the model underestimate emissions associated with fugitive dust, debris removal, and exhaust from hauling truck traveling to and from the site thereby underestimating the Projects' air quality impacts. (*Id.*)

Fourth, the model reduces default values to account for zero hearths on the Project site without adequate justification. The basis for this change is that hearths are not permitted as part of the Project Design Features ("PDF"). (FEIR Sec. IV, E-47.) It is best practice for design features that are important to environmental impact be included as mitigation measures, as mitigation measures sometimes are the only information accompanying building and construction plans throughout the permit process. (Ex. A, p.10, *citing* Association of Environmental Professionals, *CEQA Portal Topic Paper on Mitigation Measures*.) However, this PDF is not included as a formal mitigation measure and thus may not be guaranteed to be enforced on the Project Site.

Finally, SWAPE identified that the CalEEMod inputs included changes to several additional inputs, including off-road construction equipment parameters, construction trips, and Vehicles Miles Traveled ("VMT") without any explanation whatsoever. (Ex. A, p. 7-8.) Without the specific assumption utilized or any justification for such changes, the modeling parameters are not supported by substantial evidence and prejudicially impair meaningful public comment and informed decision-making.

c. Substantial Evidence Shows That the Project May Have Significant Air Quality Impacts.

SWAPE prepared an updated CalEEMod model using the Project-specific information provided by the FEIR and the DEIR, proportionally altering individual construction phase lengths, including the correct amount of demolition, and omitting unsubstantiated changes to the Carbon Intensity Factor, off-road construction equipment input parameters, trips and VMT, and number of hearths. (Ex. A, p.10.) This updated analysis found that the Project's construction-related VOC and NO_x emissions were 127% and 365% greater than estimated by the EIR, respectively. (*Id.* at 11.) Counter to the findings of the DEIR, the updated estimates revealed that the Project's construction-related VOC and NO_x emissions would substantially exceed the South Coast Air Quality Management District's ("SCAQMD") threshold of 75- and 100- pounds per day respectively. (*Id.*) Thus, the updated model demonstrates that the Project would result in potentially significant air quality and climate impacts not identified by the FEIR or DEIR. A revised EIR must be

circulated to account for potentially significant impacts and incorporate feasible mitigation measures (*See Ex. A, Air Quality Project Level Mitigation Measures p.25-28.*)

III. The EIR's Finding that the Project's Impact on Human Health is Less Than Significant Is Not Supported by Substantial Evidence.

a. The EIR's Basis for Its Finding Pertaining to the Project's Impact on Human Health is Flawed and Not Based on Adequate Analysis.

The FEIR fails to address potential health-related impacts resulting from the Project's likely air emissions. Operation of construction equipment during construction of the proposed Project, as well as vehicle trips during future operations, will release diesel particulate matter ("DPM") emissions into the air, affecting local and regional air quality. DPM is a known human carcinogen which poses unique health risks to nearby sensitive receptors.

The FEIR made no changes or additions to the DEIR with respect to health risk assessment. (FEIR p.III-25.) The DEIR concluded the project would have less than significant health risk impacts without the prepareate of a quantified a health risk analysis ("HRA") evaluating impacts resulting from exposure to DPM emissions during Project construction or operation.

SWAPE found that the DEIR's evaluation and finding of no significant impacts is flawed for four reasons. First, the DEIR incorrectly asserts that the Project Site would not exceed 100 trucks per day. (Ex. A, p.12.) The Residential Option with Restaurant Bungalows is expected to generate 5,371 daily vehicle trips and the model's fleet mix is comprised of 7.38% trucks. Therefore, there would be approximately 397 trucks per day, which exceeds SCAQMD's 100 truck per day threshold by almost 4X. (*Id.* at 13.) The Office Option similarly exceeds 100 trucks per day. (*Id.*)

Second, failing to prepare a quantified construction or operational HRA is inconsistent with CEQA's requirement to make "a reasonable effort to substantively connect a project's air quality impacts to likely health consequences." (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 510.) The DEIR acknowledges the Project would produce DPM emissions through construction operations over a four-year period, but fails to connect toxic air contaminant ("TAC") emissions to nearby receptors. As such, the EIR fails to comply with CEQA's requirement to correlate Project-generated emissions with potential adverse impacts on human health. (Ex. A, p.14.)

Third, current guidance by the Office of Environmental Health Hazard Assessment ("OEHHA"), the agency responsible for setting statewide standards to measure health risks under CEQA, recommends that a quantified Health Risk Assessment ("HRA") be prepared to evaluate potential cancer risks for any short-term construction project lasting more than two months, and for the lifetime of any long-term project lasting more than six months. OEHHA

guidance also recommends that an exposure duration of 30 years should be used to estimate the individual cancer risk affecting the maximally exposed individual resident (“MEIR”) near a proposed Project site. (*Id.* at 14.) A project’s creation of health risks for impacted MEIRs must be further evaluated according to various sensitive receptors’ age and pregnancy status. (*Id.*)

As discussed above, construction is meant to far exceed 2 months. And, while the DEIR does not specify, it is reasonable to assume, in the absence of any contrary assertion by the EIR, that Project operations will last for at least 30 years. Therefore, as SWAPE observes, the Project should be evaluated for the entire 30-year exposure duration, as recommended by OEHHA guidance. “These recommendations reflect the most recent state health risk policies, and a revised EIR should be prepared to include an analysis of health risk impacts posed to nearby sensitive receptors from Project-generated DPM emissions.” (*Id.*)

Finally, by claiming a less-than-significant impact without conducting a quantified HRA for nearby, existing sensitive receptors, the EIR additionally “fails to compare the Project’s excess cancer risk” as it compares to the SCAQMD’s established significance threshold of 10 per million. (*Id.* at 14-15.)

b. Substantial Evidence Shows That the Project Will Likely Create a Significant Health Risk for Impacted Sensitive Receptors.

In order to analyze the potential for significant health risk impacts, SWAPE conducted a screening-level risk assessment using AERSCREEN, a modeling tool which is recommended by both OEHHA and the California Air Pollution Control Officers Association (“CAPCOA”) for the development of Level 2 Health Risk Screening Assessments (“Level 2 HRSA”). According to SWAPE, “A Level 2 HRSA utilizes a limited amount of site-specific information to generate maximum reasonable downwind concentrations of air contaminants to which nearby sensitive receptors may be exposed. If an unacceptable air quality hazard is determined to be possible using AERSCREEN, a more refined modeling approach is required prior to approval of the Project.” (Ex. A, p. 15.)

Following this recommended approach for modeling potential future health risks, SWAPE found excess cancer risks to 3rd trimester of pregnancy, infants, children, and adults at the MEIR located approximately 50 meters away, over the course of Project construction and operation are approximately 11.6, 280, 218, and 23.5 in on million, respectively. (*Id.*) The excess cancer risk over the course of a residential lifetime (30 years) is approximately 533 in one million, which exceeds the SCQMD threshold of 10 in one million and thus results in a potentially significant impact not previously identified or addressed by the FEIR or DEIR. (*Id.*)

The findings of potentially significant impacts in the screening-level HRA warrant further evaluation in a refined modeling approach. (*Id.* at 18-19.) A revised EIR including a more refined modeling approach should be circulated to accurately and adequately evaluate

health risk impacts associated with Project construction and operation. (*Id.* at 19.) Should the refined analysis reach similar conclusions of potential health risks as the screening-level HRA, the mitigation measures set forth by SWAPE should be incorporated. (*See Id.* at 25-30.)

IV. The EIR's Finding that the Project's Greenhouse Gas (GHG) Impacts are Less Than Significant Is Not Supported by Substantial Evidence.

a. Modeling Inputs Utilized to Determine the Project's Greenhouse Gas Impacts are Not Supported by Substantial Evidence and May Underestimate Significance of Project Impacts.

The FEIR recalculated the Project's GHG emissions. While the estimated emissions of metric carbon dioxide equivalent (MT CO₂e) from the Project under all four scenarios increased in the recalculation, the FEIR still found no significant GHG impacts. (FEIR II-119.) The finding of no significance is flawed and not supported by substantial evidence.

As discussed above in Section II, the FEIR relies on CalEEMod Version 2022.1, which does not provide complete output files. (Ex. A, p.21-22.) Consequently, neither the parameters or the justification for such changes can be verified.

Further, when reviewing the Projects' model, SWAPE found that several of the values input into the model were not consistent with information disclosed in the project documents and may result in underestimating the Project's GHG impacts. Without complete input files, the findings are not supported by substantial evidence and prevent meaningful public comment.

b. Substantial Evidence Shows That the Project May Have Significant Air Quality Impacts.

The GHG emissions estimates from both the DEIR and FEIR are potentially significant. SWAPE provided two meaningful thresholds for evaluation. First, SCAQMD's 2008 Interim CEQA Significance Threshold for Stationary Sources, Rules, and Plans report sets an interim bright-line threshold of 3,000 MT CO₂e/year for the year 2020. (*Id.* at 22.) The Project's GHG emissions for all scenarios exceed the SCAQMD interim threshold. (*Id.* at 23.) Even the option with the lowest GHG emissions, the Office Option with Residential Bungalows was estimated to generate net annual GHG emissions of 5,704 MT, exceeding this bright-line threshold by nearly 2Xs. (*Id.*) Thus, the Project's air models (even though they may underestimate impacts) indicate potentially significant GHG impacts.

SWAPE also compared the Project's estimated GHG emissions to the SCAQMD 2035 service population efficiency target of 3 MT CO₂e. (*Id.* at 23.) The service population efficiency values for both Residential Options and the Office Option with Restaurant Bungalows exceed the 2035 target. (*Id.* at 24.) By this standard too, the Project's models

indicate potentially significant GHG impacts. A revised EIR must be prepared with an updated GHG analysis incorporating mitigation measures and complete output files. (*See Ex. A, Greenhouse Gas Project Level Mitigation Measures p.28-30.*)

V. The City Lacks Substantial Evidence to Adopt a Statement of Overriding Considerations Because the EIR Fails to Adopt All Feasible Mitigation Measures for the Project’s Significant and Unavoidable Noise and Vibration Impacts.

CEQA requires that the City apply all feasible mitigation measures for the Project’s significant and unavoidable noise and vibration impacts. When approving a project with significant and unavoidable environmental impacts, the City Council will be required to make findings that additional mitigation measures or alternatives are infeasible. (Pub. Resources Code, § 21081(a); 14 CCR § 15043.) If all feasible mitigation measures have been applied and the City Council finds that “specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment,” the Council can adopt a Statement of Overriding Considerations and approve the Project. (Pub. Resources Code, § 21081(b); 14 CCR §§ 15091, 15093.)

The EIR concluded that the Project’s noise and vibration impacts would result in a significant and unavoidable impact. (DEIR, p. I-22; IV.H-27; IV.H-42.) The EIR requires mitigation measures NOI-MM-1. (DEIR, p. IV.H-45). However, noise impacts will remain significant and unmitigated. (*Id.* at 47). Construction noise will also remain significant and unmitigated despite imposition of mitigation measures NOI-MM-2. (*Id.* at 52).

Due to the significant and unavoidable cumulative noise and vibration impacts, the City Council is required to determine that “[t]here is no feasible way to lessen or avoid the significant effect.” (14 CCR § 15043.) However, there are additional feasible ways to further reduce the Project’s excess impacts prior to Project approval.

Regarding on-site construction noise sources, the City should require implementation of the following feasible mitigation measures that have been successfully implemented elsewhere:

- Scaffolding to support construction noise control blankets should be erected at the façades of those receptors which will still have a significant impact due to height limitations of traditional noise barriers, receptors R1 to R3. Clear panels should be implemented as needed to minimize impacts on light or views.
- For the older buildings in the project area, offer to upgrade the windows to acoustically rated insulated window assemblies.
- Offer to temporarily enclose balconies and breezeways of those receivers that still have a significant impact after implementation of NOM-MM-1. These enclosures can be made with clear panels to minimize impact on light or views.

Regarding vibration impacts associated with human annoyance:

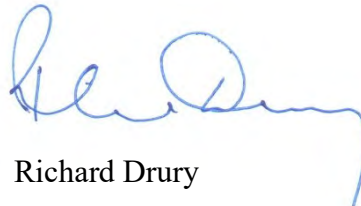
- Offer to relocate persons that either work from home or sleep during daytime hours due to night shift work hours to temporary office spaces or hotel rooms during high vibration activities during construction.

The measures discussed above are all feasible and would reduce the Project's significant noise and vibration impact. Without incorporating some or all of the above measures, the City lacks the substantial evidence needed to make the findings required by CEQA and to adopt a Statement of Overriding Considerations. (Pub. Resources Code, § 21081; 14 CCR §§ 15091, 15093.)

CONCLUSION

SAFER respectfully requests that the Hearing Officer recommend that the Hearing Officer deny the tract map until a revised EIR has been circulated to address the issues and deficiencies raised in this comment to ensure compliance with CEQA.

Sincerely,



Richard Drury