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## Via Email

December 13, 2023

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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 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) ("Project"). SAFER filed a comment letter on October 2, 2023 ("October 2 Letter"), supported by comments from 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"), and a supplemental comment letter on October 3, 2023 ("October 3 Letter"), supported by comments from acoustical engineering firm Wilson Ihrig. The Deputy Advisory Agency issued a letter of determination on October 11, 2023 approving the VTTM for the Project. SAFER filed its appeal on October 19, 2023.

The Department of City Planning December Appeal Report provides only a cursory response to SAFER's comments and fails to respond directly to either expert's comments. The City's failure to substantively respond to SAFER's comments renders the EIR legally inadequate.

## LEGAL STANDARD

Public participation is an essential part of the CEQA process. Public review of environmental documents serves the following purposes: (a) sharing expertise; (b) disclosing agency analyses; (c) checking for accuracy; (d) detecting omissions; (e) discovering public concerns; and (f) soliciting counter proposals. (CEQA Guidelines, § 15200.) "[T]he 'privileged position' that members of the public hold in the CEQA process . . . is based on a

belief that citizens can make important contributions to environmental protection and on notions of democratic decision making. . . .” (*Concerned Citizens of Costa Mesa, supra*, 42 Cal.3d at 936.)

Evaluation and response to public comments is also essential. An FEIR must include a “detailed” written response to all “significant environmental issues” raised by commenters. As the court stated in *City of Long Beach v. LA USD* (2009) 176 Cal.App.4<sup>th</sup> 889, 904:

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

The agency’s responses to comments must be detailed and must provide a reasoned, good faith analysis. (14 CCR §15088(c.)) In addition, an agency’s responses to comments must specifically explain the reasons for rejecting suggestions received in comments and for proceeding with a project despite its environmental impacts. Such explanations must be supported with specific references to empirical information, scientific authority, and/or explanatory information. (*Cleary v. County of Stanislaus* (1981) 118 Cal.App.3d 348, 357.) The responses, moreover, must manifest a good faith, reasoned analysis; conclusory statements unsupported by factual information will not suffice. (*People v. County of Kern* (1974) 39 Cal.App.3d 830, 841; *see also Berkeley Keep Jets Over the Bay Com. v. Board of Port Cmrs.*, (2001) 91 Cal.App.4th 1344, 1367 (“*Berkeley Jets*”) (EIR inadequate due to failure to respond to expert evidence on toxic air contaminants).

Failure to provide a substantive response to comments render the EIR legally inadequate. (*Rural Land Owners Assoc. v. City Council* (1983) 143 Cal.App.3d 1013, 1020.)

## **DISCUSSION**

### **I. The City Failed to Adequately Respond to Comments.**

The City has failed to provide a substantive response to SAFER’s comments and the expert comments of SWAPE and Wilson Ihrig. The Appeal Report only refers to one comment letter and states that the letter was responded to by City Planning Staff during the public hearing and in the Final EIR. Since the October 2 and October 3 Letters were submitted after the FEIR was published, it is impossible for the FEIR to have responded to them. Further, even if it were realistic for the City Planning Staff to have responded specifically to each point of the comments in detail at the public hearing (which it is not), any oral responses would be inadequate as response to comments must be written.

The Appeal Report failed outright to address several air quality impacts issues raised in SAFER’s October 2 Letter including (1) unsubstantiated adjustment of the Carbon Intensity Factors in the FEIR; (2) failure of the FEIR to adequately estimate demolition

impacts; and (3) failure of the FEIR to account for any hearths. (*See* October 2 Letter II.b.) The Appeal Report also failed to address several additional unsubstantiated input adjustments in the FEIR raised by SWAPE in its comments included in the October 2 Letter. (*Id.*) The Appeal Report also fails to address the FEIR's underestimation of truck trips. (*Id.* III. A).

Air quality experts Matt Hagemann, P.G., C.Hg. and Paul E. Rosenfeld, Ph.D., of SWAPE reviewed the Appeal Report and found that the document was insufficient in addressing their concerns regarding the Project's air quality and health risk impacts. They have detailed their concerns in Exhibit A.

## **II. The City Improperly Discounted Comments Demonstrating the Lack of Substantial Evidence Supporting the FEIR.**

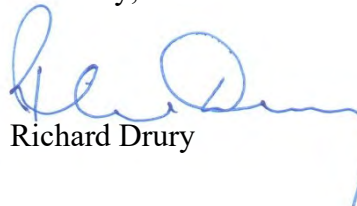
SAFER's October 2 Letter provides detailed comments demonstrating that the FEIR's findings that air quality, health risk, and GHG emissions would remain less than significant were not supported by substantial evidence. In response, the staff response states "The Appellant has not provided substantial evidence to contradict the Draft EIR's finding that air quality, health risk, and GHG emissions would remain less than significant." Appeal Report, A-3. It is incontrovertible that the findings of an FEIR must be supported by substantial evidence. (Ca. Pub. Res. Code § 21168.5; *Sierra Club v. Contra Costa County* (1992) 10 Cal.App.4th 1212, 1222-1224.) The burden is not on the commentor to provide evidence to the contrary. The failure of the agency to support its determination by substantial evidence is a prejudicial abuse of discretion. (*Id.*)

Further, the staff response is patently false. SAFER's comments *do* provide substantial evidence demonstrating potentially significant air quality, health risk and GHG emissions impacts. *See* October 2 Safer Comment II.c, III.b, IV.b. These comments are supported by qualified experts. By definition, expert opinion *is* substantial evidence under CEQA. (CEQA Guidelines, § 15064(f)(5).) The City failed to adequately respond to these points.

## **CONCLUSION**

SAFER respectfully requests that the City Planning Commission grant the appeal and set aside all Project approvals and circulate a revised EIR prior to considering approvals for the Project to ensure compliance with CEQA.

Sincerely,



Richard Drury