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VIA EMAIL

December 20, 2024

Letter 2

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Marilynne Wilander, Chair
And Honorable Commissioners
Arcadia City Planning Commission
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Re: Comment on the Mitigated Negative Declaration for the Arcadia Town Center Project (SCH No. 2024110749)

Dear Mr. Arreola, Ms. Flores, and Honorable Members of the Arcadia City Planning Commission:

This comment is submitted on behalf of **Supporters Alliance for Environmental Responsibility ("SAFER")** regarding the Mitigated Negative Declaration ("MND") prepared for the Arcadia Town Center Project (SCH No. 2024110749) ("Project"), located on the cross-streets of West Huntington Drive and North Santa Anita Avenue in downtown Arcadia, CA. The Project involves the development of a five-story, 181-unit, mixed-use residential and commercial building with one level of above-ground parking and one level of underground parking.

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As discussed below, there is a fair argument that the Project may result in significant adverse impacts on biological resources, noise, air quality, and indoor air quality. Therefore, SAFER respectfully requests that the City of Arcadia ("City") prepare an environmental impact report ("EIR") before approving the Project to analyze and mitigate these impacts in accordance with the California Environmental Quality Act ("CEQA").

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SAFER's review of the MND was assisted by expert wildlife biologist Dr. Shawn

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Smallwood, Ph.D; noise expert Ani Toncheva from the acoustical consulting firm Wilson Ihrig; air quality experts Matt Hagemann, P.G., C.Hg., and Dr. Paul Rosenfeld, Ph.D., from the environmental consulting firm Soil/Water/Air Protection Enterprise (“SWAPE”); and indoor air quality expert and certified industrial hygienist Francis Offermann, P.E., C.I.H. Dr. Smallwood’s written comments and CV are attached hereto as Exhibit A and are incorporated herein by reference in their entirety. Ms. Toncheva’s written comments and CV are attached hereto as Exhibit B and are incorporated herein by reference in their entirety. SWAPE’s written comments and CV are attached hereto as Exhibit C and are incorporated herein by reference in their entirety. Mr. Offermann’s written comments and CV are attached hereto as Exhibit D and are incorporated herein by reference in their entirety.

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PROJECT DESCRIPTION

The Project involves the construction of a new five-story, mixed-use residential and commercial building with a total combined floor area of 440,938 square feet. The building includes 13,130 square feet of commercial space on the ground floor. It will also have 181 multifamily residential units, including 41 one-bedroom units, 108 two-bedroom units, and 32 three-bedroom units. The Project has 3,890 square feet of residential amenity space and 38,713 square feet of public and private open space. Additionally, the Project will have one level of ground-floor parking and one level of subterranean parking, for 378 parking spaces total. The Project requires the grading of approximately 44,520 cubic yards of earth as well.

The Project involves the consolidation of five existing contiguous parcels encompassing 2.27 acres into a single lot occupying 2.19 net acres (95,396.4 square feet) of buildable lot area. The Project site’s Assessor Parcel Numbers are 5775-025-032, -033, -034, -037, and -038. All parcels on the site have a land use designation of Downtown Mixed-Use and are zoned as Downtown Mixed-Use.

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The site is located at 5-19 West Huntington Drive and 25-75 North Santa Anita Avenue, in a fully developed portion of the downtown area of the City of Arcadia. The site is bounded by West Huntington Drive to the south, North Santa Anita Avenue to the east, Morlan Place to the north, and an Elks Lodge to the west. The site is surrounded to the north, east, and west by existing urban development, including retail, eateries, offices, a car dealership, and associated surface parking. Single-family residences are located about 410 feet northwest of the site across, and multifamily residences are located about 280 feet southeast of the site along Santa Anita Avenue. Arcadia County Park is located immediately south of the site, across West Huntington Drive.

The Project site currently contains eleven total commercial buildings, including ten one-story buildings and one two-story building, and associated surface parking lots. All existing development on the site would be demolished for the Project. The Project will also remove 26 existing trees on the Project site, including six trees protected by the City.

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LEGAL STANDARD

As the California Supreme Court held, “[i]f 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 Env’t v. South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 319-20.) “Significant environmental effect” is defined very broadly as “a substantial or potentially substantial adverse change in the environment.” (Pub. Res. Code [“PRC”] § 21068; see also 14 California Code of Regulations [“CCR”] § 15382.) An effect on the environment need not be “momentous” to meet the CEQA test for significance; it is enough that the impacts are “not trivial.” (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 83.) “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 Env’t v. Cal. Res. 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 1184, 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, supra*, 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 Univ. of Cal.* (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 903, 927.)

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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.” (PRC § 21080(d); see also *Pocket Protectors, supra*, 124 Cal.App.4th at 927.) An MND instead of an EIR is proper only if project revisions would avoid or mitigate the potentially significant effects identified in the initial study “to a point where clearly no significant effect on the environment would occur, and . . . there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.” (*Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 331 [quoting PRC §§ 21064.5, 21080(c)(2)].) In that context, “may” means a reasonable possibility of a significant effect on the environment. (PRC §§ 21082.2(a), 21100, 21151(a); *Pocket Protectors, supra*, 124 Cal.App.4th at 927; *League for Protection of Oakland’s etc. Historic Res. v. City of Oakland* (1997) 52 Cal.App.4th 896, 904-05.)

An EIR must be prepared rather than an MND “whenever it can be fairly argued on the basis of substantial evidence that the project may have a significant environmental impact.” (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75.) Under this “fair argument” standard, an EIR is required if any substantial evidence in the record indicates that a project may have an

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adverse environmental effect—even if contrary evidence exists to support the agency’s decision. (14 CCR § 15064(f)(1); *Pocket Protectors*, *supra*, 124 Cal.App.4th at 931; *Stanislaus Audubon Society v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-51; *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602.) The “fair argument” standard creates a “low threshold” favoring environmental review through an EIR rather than through issuance of negative declarations or notices of exemption from CEQA. (*Pocket Protectors*, *supra*, 124 Cal.App.4th at 928.)

The “fair argument” standard is virtually the opposite of the typical deferential standard accorded to agencies. As a leading CEQA treatise explains:

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This ‘fair argument’ standard is very different from the standard normally followed by public agencies in making administrative determinations. Ordinarily, public agencies weigh the evidence in the record before them and reach a decision based on a preponderance of the evidence. [Citations]. The fair argument standard, by contrast, prevents the lead agency from weighing competing evidence to determine who has a better argument concerning the likelihood or extent of a potential environmental impact. The lead agency’s decision is thus largely legal rather than factual; it does not resolve conflicts in the evidence but determines only whether substantial evidence exists in the record to support the prescribed fair argument.

(Kostka & Zishcke, *Practice Under CEQA*, § 6.29, pp. 273-74.) The Courts have explained that “it is a question of law, not fact, whether a fair argument exists, and the courts owe no deference to the lead agency’s determination. Review is de novo, with a preference for resolving doubts in favor of environmental review.” (*Pocket Protectors*, *supra*, 124 Cal.App.4th at 928.)

DISCUSSION

I. There is a fair argument that the Project may have significant adverse impacts on biological resources.

Expert wildlife biologist, Dr. Shawn Smallwood, Ph.D., has reviewed the Project’s MND, its biological technical report, and other relevant documents regarding the Project’s biological impacts. As discussed below, Dr. Smallwood found that the Project will adversely affect biological resources because (1) the MND failed to account for the diversity of species present on the Project site, including several special-status species; (2) the MND inadequately analyzed the Project’s adverse impacts on wildlife; and (3) the MND’s proposed mitigation measures are insufficient to reduce the Project’s biological impacts.

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A. The MND failed to account for the diversity of species present on the Project site, including several special-status species.

Dr. Smallwood’s associate, biologist Noriko Smallwood, M.S., conducted a Project site visit on December 6, 2024, for 2.8 hours. (Ex. A at 1.) During her visit, Ms. Smallwood detected

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25 species of vertebrate wildlife at or adjacent to the Project site, including six species with special status: the Allen’s hummingbird, the California gull, and the Nuttall’s woodpecker, which are all listed as Birds of Conservation Concern by the U.S. Fish & Wildlife Service; and the Cooper’s hawk, red-tailed hawk, and peregrine falcon, which are all Birds of Prey under the California Fish & Game Code. (*Id.* at 2, 8.)

Using a nonlinear regression model, Dr. Smallwood predicted that about 50 total species of vertebrate wildlife were available to be detected at the site during Ms. Smallwood’s December 6, 2024 visit, twice the number of species she actually detected. (*Id.* at 9.) Although Ms. Smallwood’s site visit only lasted 2.8 hours, Dr. Smallwood also calculated that continued and more extensive surveys would reveal an even greater diversity of wildlife at the site, up to 118 species of vertebrate wildlife, including 28 special-status species. (*Id.* at 10-11.)

To achieve the CEQA’s primary objective to disclose potential environmental impacts of a proposed project, the biological analysis should identify which wildlife species are known to occur at the proposed project site, which special-status species are likely to occur, and the limitations of the survey efforts directed to the site. Analysts need this information to characterize the environmental setting as a basis for predicting potential project impacts to biological resources. (Ex. A at 12.)

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CEQA requires government agencies to describe the “environmental setting” of the Project. (CEQA Guidelines § 15063(d)(2); *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322.) The “environmental setting” is defined as “the physical conditions which exist within the area which will be affected by a proposed project including land, air, water, minerals, flora, fauna, ambient noise, and objects of historic or aesthetic significance.” (Guidelines § 15360; see Guidelines § 21060.5; *Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170, 1192.)

Here, the MND did not provide the results of any field surveys conducted to detect birds or other wildlife on the Project site. (Ex. A at 12.) Regarding the lack of bird surveys in particular, Dr. Smallwood stated that the “lack of surveys leaves the City of Arcadia blind to any potential impacts to birds, because without a survey, there is no sound basis for characterizing the existing environmental setting.” (*Id.*) Proceeding with the project without completing avian surveys could also result in high bird mortality rates from window collisions and costs to the building’s owner if the windows require bird-safe glass. He further notes that the MND fails to report the importance of the site’s trees to birds, which is important because the site’s trees effectively create open space and vertical habitat for birds. (*Id.*)

Additionally, the MND does not provide the results of any desktop review of available literature and databases to identify occurrence records of special-status species or assess the occurrence rates of avian species in the Project area. (*Id.* at 12.) Dr. Smallwood stated that desktop review is important to inform field surveys and supplement interpretation of their findings. (*Id.* at 13.) Based on his review of available databases, such as eBird and iNaturalist, Dr. Smallwood estimates that 77 special-status bird species are known to occur close enough to

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the Project site to warrant analysis of their occurrence potential. (*Id.* at 13-14.)

Thus, by failing to accurately characterize the biological species using the Project site, including the fact that the site supports at least six special-status species, the MND inadequately describes the Project's "environmental setting" and thereby insufficiently analyzes the Project's biological impacts. (*Id.* at 11.) Dr. Smallwood therefore concludes that "there is at least a fair argument to be made for the need to prepare an EIR to accurately characterize the wildlife community on the project site." (*Id.* at 18.)

B. There is substantial evidence that the Project will have significant impacts on biological resources that the MND fails to analyze and mitigate.

Dr. Smallwood concluded that the MND inadequately addressed the Project's various significant impacts on biological resources, including: (1) interference with wildlife movement; (2) bird-window collision mortality; (3) traffic mortality; and (4) cumulative impacts.

1. Interference with Wildlife Movement

The MND includes no analysis of whether the Project would interfere with local wildlife movement. (*Id.*) Dr. Smallwood found that the Project would clearly interfere with wildlife movement in the area because the Project would insert a midrise building into the airspace that has long been used by birds for migration, dispersal, home range patrol, and foraging. (*Id.*) Dr. Smallwood thus concluded that "a fair argument can be made for the need to prepare an EIR to appropriately analyze the project's potential impacts to volant wildlife and how those impacts to movement can be mitigated." (*Id.*)

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2. Bird-Window Collisions

According to Dr. Shawn Smallwood, the Project will have a significant impact on birds as a result of window collisions. The City has not analyzed or mitigated these potential impacts on special-status bird species. Analyzing the potential impact on wildlife from window collisions is especially important because "[w]indow collisions are often characterized as either the second or third largest source of human-caused bird mortality." (*Id.*)

The Project would construct a five-story building, which would expose local birds to many windows composing the building's facades, but the MND does not report the full extent of exterior glass windows on the proposed building. (*Id.* at 21.) However, Dr. Smallwood predicts 2,966 square meters of exterior glass on the project building. (*Id.*) Based on this amount of exterior glass, Dr. Smallwood estimates that the Project will cause 217 annual bird deaths from window collisions. (*Id.*) Dr. Smallwood's database review and Ms. Smallwood's site visit indicate that there are at least 77 special-status bird species with the potential to use the airspace around the Project site. (*Id.* at 17.) Most of the predicted bird-window collision deaths would be of birds protected under the federal Migratory Bird Treaty Act and the California Migratory Bird Protection Act, "thus causing significant unmitigated impacts." (*Id.* at 21.) Given the estimated

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level of bird-window collision mortality and the MND's lack of proposed mitigation, Dr. Smallwood concluded that "the proposed project would result in potentially significant adverse biological impacts." (*Id.*) The City thus must prepare an EIR to analyze and mitigate the Project's potential impacts from bird-window collisions.

3. Traffic Impacts

Dr. Smallwood found that the MND does not analyze the Project's potential impacts to wildlife from road collision mortality as a result of increased traffic generated by the Project. (*Id.*) As Dr. Smallwood explains, vehicle collisions have accounted for the deaths of many thousands of amphibian, reptile, mammal, bird, and arthropod fauna, and the impacts have often been found to be significant at the population level. (*Id.*) Dr. Smallwood provides several studies demonstrating significant animal deaths due to collisions in the thousands per 100 kilometers of road per year. (*Id.* at 23.) The MND fails to analyze whether increased traffic generated by the Project would result in significant impacts to wildlife.

The MND estimates 1,302,015 annual vehicle miles traveled ("VMTs") for employees. (*Id.*) Based on this estimate, Dr. Smallwood calculated that the Project would cause approximately 554 vertebrate wildlife fatalities per year due to collisions with project-generated traffic. (*Id.*) He therefore concluded that "the project-generated traffic would cause substantial, significant impacts to wildlife," a potential impact that the MND does not analyze. (*Id.* at 24.) Dr. Smallwood's comments thus constitute substantial evidence supporting a fair argument that the Project's traffic will have a significant impact on special-status species of wildlife. An EIR is required to analyze and mitigate this impact.

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4. Cumulative Impacts

CEQA documents, such as the MND, must discuss cumulative impacts and mitigate significant cumulative impacts. (14 CCR § 15130(a).) This requirement flows from CEQA Section 21083, which requires a finding that a project may have a significant effect on the environment if:

The possible effects of a project are individually limited but cumulatively considerable. . . . 'Cumulatively considerable' means that the incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.

A legally adequate cumulative impacts analysis views a particular project over time and in conjunction with other related past, present, and reasonably foreseeable probable future projects whose impacts might compound or interrelate with those of the project at hand.

While acknowledging new Project-related biological impacts, the MND fails to analyze the Project's potentially significant cumulative biological impacts. Instead, the MND dismisses,

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without evidence, the potential for cumulative impacts stemming from the Project by claiming that compliance with applicable land use and environmental regulations would ensure that “environmental effects associated with the Project would not combine with effects from reasonably foreseeable future development in the City to cause cumulatively considerable significant impacts.” (MND at 3-114.) The problem with this analysis as it applies to biological resources is that the MND cites no specific requirements that would substantially lessen cumulative impacts to wildlife in the area.

The question that CEQA requires the City to address, and that the MND fails to address, is whether the Project’s impacts will be significant when combined with other past, current, and probable future projects. By failing to provide this basic information, the MND’s cumulative biological impact analysis is not supported by substantial evidence.

Dr. Smallwood found that the “[MND’s] analysis of potential project contributions to cumulative impacts is flawed,” stating that the MND “provides no explanation of how implementing particular requirements of the City’s General Plan would minimize, avoid or offset the project’s contributions to cumulative impacts on wildlife.” (Ex. A at 24.) Dr. Smallwood calculated that the Project’s incremental effects would include 217 annual bird fatalities from window collisions, as well as 166 to 554 annual vertebrate wildlife fatalities due to collisions with project-generated traffic. (*Id.* at 25.) Likewise, the Project would fragment the aerial habitat of volant wildlife by inserting a glass-covered, midrise building into airspace historically used by volant wildlife. (*Id.*)

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C. The MND’s proposed mitigation measures are insufficient to reduce the Project’s adverse biological impacts.

The MND offers mitigation measures to reduce the Project’s adverse impacts on biological resources. One proposed mitigation measure, Mitigation Measure RR BIO-3, is the delayed development of landscape plans. (*Id.* at 26.) However, this constitutes deferred mitigation, which CEQA prohibits.

CEQA disallows deferring the formulation of mitigation measures to post-approval studies. (CEQA Guidelines § 15126.4(a)(1)(B); *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 308-309.) An agency may only defer the formulation of mitigation measures when it possesses “‘meaningful information’ reasonably justifying an expectation of compliance.” (*Sundstrom* at 308; *see also Sacramento Old City Association v. City Council of Sacramento* (1991) 229 Cal.App.3d 1011, 1028-29 (mitigation measures may be deferred only “for kinds of impacts for which mitigation is known to be feasible”).) A lead agency is precluded from making the required CEQA findings unless the record shows that all uncertainties regarding the mitigation of impacts have been resolved; an agency may not rely on mitigation measures of uncertain efficacy or feasibility (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727 (finding groundwater purchase agreement inadequate mitigation because there was no evidence that replacement water was available).) This approach helps “insure the integrity of the process of decisionmaking by precluding stubborn problems or serious criticism

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from being swept under the rug.” (*Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 935.)

While specific details of mitigation measure may be deferred, an agency is required to (1) commit itself to mitigation, (2) adopt specific performance standards the mitigation will achieve, and (3) identify the types of potential actions that can feasibly achieve that performance standard and that will be considered, analyzed, and potentially incorporated in the mitigation measure. See *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 281; *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 671.

Moreover, “mitigation measure[s] [that do] no more than require a report be prepared and followed” do not provide adequate information for informed decisionmaking under CEQA. (*Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 794; Guidelines § 15126.4(a)(1)(B).) By deferring the development of specific mitigation measures, the City has effectively precluded public input into the development of those measures. CEQA prohibits this approach. As explained by the court in *Communities for a Better Env’t v. Richmond* (2010) 184 Cal.App.4th 70, 92:

[R]eliance on tentative plans for future mitigation after completion of the CEQA process significantly undermines CEQA’s goals of full disclosure and informed decisionmaking; and[,] consequently, these mitigation plans have been overturned on judicial review as constituting improper deferral of environmental assessment.

Mitigation Measure RR BIO-3 constitutes deferred mitigation because it entails formulating landscape plans at an unspecified future date. (Ex. A at 26-27.) The City has not committed itself to mitigation, adopted specific performance standards the mitigation will achieve, or identified the types of potential actions that can feasibly achieve the performance standards.

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The City cannot rely on the development of mitigation measures in the future because there is no way to ensure that the mitigation will be adequate. For example, here, before Project approval, the public has no way to ensure that the landscape plans will benefit wildlife. (*Id.* at 26.) This deferred mitigation is invalid under CEQA, and the Project’s impacts on biological resources remain significant. An EIR is required to develop clear, enforceable mitigation measures to address the Project’s significant adverse biological impacts.

Additionally, the MND proposes other mitigation measures, such as preconstruction nesting bird surveys and procurement of necessary permits. (*Id.*) However, Dr. Smallwood concludes that these measures would not avoid the long-term significant biological impacts caused by permanent habitat destruction, loss of reproductive capacity at the Project site, and increased wildlife mortality from project-generated traffic and window collisions. (*Id.* at 25-26.) Dr. Smallwood’s comments thus constitute substantial evidence that the Project’s impacts on biological resources would remain significant, necessitating preparation of an EIR.

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Dr. Smallwood instead offers numerous other mitigation measures that the City should implement to reduce the Project's significant adverse impacts on biological resources, should the Project proceed. Potential mitigation measures include use of bird-safe glass and window treatments, compensatory mitigation for road mortality, funding of wildlife rehabilitation facilities, and native plant landscaping. (*Id.* at 27-28.) 5 cont

II. There is a fair argument that the Project may have significant adverse impacts on noise and vibration.

Noise expert Ani Toncheva from the acoustical consulting firm Wilson Ihrig has reviewed the Project's MND, its noise and vibration technical reports in Appendix G, and other relevant documents regarding the Project's noise and vibration impacts. As discussed below, Ms. Toncheva concluded that the Project will adversely affect noise and vibration levels because (1) the MND's noise analysis relies on an inadequate noise baseline; (2) the Project will result in potentially significant construction noise impacts; and (3) the MND's operational noise analysis is insufficient. Thus, her expert comments constitute substantial evidence of a fair argument that the Project will have significant impacts on noise and vibration.

A. The MND's noise analysis relies on an inadequately established noise baseline.

Ms. Toncheva concluded that the manner in which the MND determined the existing noise baseline was flawed. For example, she found that the MND's ambient noise measurements were taken at the Project boundaries rather than at sensitive receptors, such as nearby residences located 280 feet from the site on South Santa Anita Avenue and 410 feet from the site on Santa Clara Street. (Ex. B at 3; MND at 3-71.) She also found that the short-term ambient noise level measurements captured neither the fluctuation of noise levels over the day nor the adjustment of noise with distance from the sources measured. (Ex. B at 3; MND at 3-79.) As the MND itself acknowledged, "the ambient would fluctuate over the course of each workday as well as based on distance and relative location from the site." (MND at 3-79.) Moreover, the noise measurements close to the Santa Clara residences were dominated by HVAC noise directly next to the Project site. (Ex. B at 3.) 6

Ms. Toncheva thus concluded that the Project must perform properly documented ambient measurements near sensitive receptors that capture the current baseline conditions during quiet periods of the day and night to determine the impact of construction and operational noise. (*Id.*) The City therefore must prepare an EIR to analyze these potential impacts.

B. There is a fair argument that the Project will result in potentially significant construction noise impacts.

Ms. Toncheva also found that the MND failed to disclose and mitigate the Project's potentially significant noise impacts from construction. The MND claims that there are no sensitive receptors near the Project site, but it earlier identified residences as close as 280 feet

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from the site on Santa Anita Avenue and does not predict construction noise impacts at these residences. (MND at 3-72, 3-78.) Ms. Toncheva estimates that the Project's construction noise levels would range from 60 to 69 decibels at the Santa Anita residences and 56 to 65 decibels at the Santa Clara residences. (Ex. B at 3.)

Furthermore, Ms. Toncheva found that the MND failed to explicitly establish any construction noise criteria. It referenced the noise limits of the City of Arcadia Noise Ordinance ("Ordinance") but omitted the Ordinance's adjustments to noise limits for impulsive sounds. (City of Arcadia Noise Ordinance § 5610.3(b); MND at 3-75; Ex. B at 4.) The Ordinance's daytime noise limit for residential land is 55 decibels. Thus, at the Santa Anita residences, the predicted noise levels would exceed the Ordinance limit by 5 to 9 decibels, excluding any extra noise impacts from impulsive noise sources, like jackhammers. (*Id.* at 4.)

The CEQA Guidelines cited in the MND state that noise impacts are significant if the proposed project would result in "generation of a substantial temporary or permanent increase in ambient noise levels." (MND at 3-70.) However, the MND lacks a significance threshold for a "substantial increase" for Project noise. (Ex. B at 4.) The MND uses short-term ambient noise levels of 54 to 66 dBA for daytime hours, but as discussed above, these measurements were not taken sensitive receptors and were inadequate to accurately characterize local ambient noise levels (Ex. B at 4; MND at 3-71). Ms. Toncheva found that the predicted noise level for demolition at the Santa Clara residences is 65 decibels, 11 decibels over the ambient noise level at the western Project boundary. This 10-decibel increase is subjectively heard as an approximate doubling in loudness. (*Id.* at 4.)

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Additionally, the MND does not discuss any mitigation measures for the Project's potentially significant construction noise impacts. (*Id.* at 4.) Ms. Toncheva estimates that noise barriers at the perimeter of the site could reduce noise by 10 to 15 decibels, but notes that contractors can be reluctant to use barriers because they slow production. (*Id.* at 4-5.)

Overall, the City must prepare an EIR to properly evaluate the Project's construction noise impacts, including the noise increase over ambient levels at sensitive receptor locations. As Ms. Toncheva states, "if the increase is significant the Project must properly evaluate mitigation measures to reduce the impacts to less than significant." (*Id.* at 5.)

C. The MND's operational noise analysis is incomplete.

The MND claims, without evidence, that the Project will have no operational noise impact. However, Ms. Toncheva found that MND identified HVAC noise as a potential operational noise source but lacked any quantitative analysis to predict the expected levels of mechanical noise (*Id.* at 5; MND at 3-79.) Ms. Toncheva also found that the MND failed to address potential noise impacts from the Project's parking garage entrance or ventilation system. (Ex. B at 5.)

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III. There is a fair argument that the Project may have significant air quality impacts.

Air quality experts Matt Hagemann, P.G., C.Hg., and Dr. Paul Rosenfeld, Ph.D., from the environmental consulting firm Soil/Water/Air Protection Enterprise (“SWAPE”) have reviewed the Project’s MND, its air quality and greenhouse gas technical reports in Appendix A, and other relevant documents regarding the Project’s air quality impacts. As discussed below, SWAPE concluded that there is a fair argument that the Project will adversely affect air quality because (1) the MND relied on an inadequate air quality analysis; (2) the Project will have significant impacts related to air pollutant health risks that the MND failed to adequately address; (3) the MND inadequately evaluated the Project’s greenhouse gas (“GHG”) impacts; and (4) the MND does not include all feasible mitigation measures to address the Project’s air quality impacts. SWAPE recommends that “[a]n Environmental Impact Report . . . should be prepared to adequately assess and mitigate the potential air quality, health risk, and GHG impacts that the project may have on the environment.” (Ex. C at 1.)

A. The MND relied on an inadequate air quality analysis.

Land use development projects under CEQA typically evaluate air quality impacts and calculate potential criteria air pollutant emissions using the California Emissions Estimator Model (“CalEEMod”). Using site-specific input details, the model calculates a project’s construction and operational emissions, generating “output files.” The output files describe what parameters were used in calculating the project’s air pollutant emissions and show where default values were changed. (*Id.* at 1-2.)

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Here, SWAPE found that the MND and its air quality technical reports in Appendix A failed to provide complete CalEEMod output files. Its files included land use inputs but omitted all other qualitative outputs regarding the Project’s construction and operational emissions, and they also omitted details on changes to the model’s default values. (*Id.* at 2; Appendix A at 38-39.) Without access to this data, SWAPE was unable to verify the potential significance and accuracy of the MND air quality modeling. (Ex. C at 2-3.) SWAPE concluded that “[a]n EIR should be prepared to disclose the Project’s complete CalEEMod output files and adhere to CEQA’s formal guidelines.” (*Id.* at 3.)

B. There is a fair argument that the Project may have significant impacts related to air pollutant health risks that the MND failed to adequately address.

The MND determined that the Project would result in a negligible health risk impact without performing a construction health risk analysis (“HRA”), even though CEQA requires all proposed projects to connect their air pollutant emissions to potential adverse impacts on human health. (*Id.*) The MND therefore violates CEQA because it does not connect the Project’s construction-related emissions of diesel particulate matter (“DPM”), a known human carcinogen, to potential health risks to nearby sensitive receptors. (*Id.*) Moreover, the MND does not compare the Project’s excess cancer risk to the CEQA significance threshold of the South Coast Air Quality Management District (“SCAQMD”). (*Id.*)

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SWAPE's own CalEEMod calculations showed that the Project's construction activities will produce about 380 pounds of DPM over the 29-month construction period. (*Id.*) SWAPE then conducted an HRA to measure the health risks from these DPM emissions using AERSCREEN, a screening-level air quality dispersion model that measures the maximum potential concentrations of air contaminants affecting nearby sensitive receptors, such as infants. (*Id.*) SWAPE noted that if "AERSCREEN indicates a potential air quality hazard, a detailed modeling analysis is required before Project approval." (*Id.*)

From its HRA, SWAPE found that the excess cancer risk from the Project's DPM emissions at the nearest sensitive receptor would be 76.7 per million for infants over the 29-month construction period. (*Id.* at 6.) This far exceeds the SCAQMD's significance threshold of 10 per million. (*Id.* at 6-7.) SWAPE thus concluded that "this results in a potentially significant impact not previously addressed or identified in the IS/MND," and "an EIR should be prepared to include a comprehensive HRA that properly evaluates impacts from construction." (*Id.* at 7.)

C. The MND failed to adequately assess the Project's impacts on greenhouse gas emissions.

The MND estimates that the Project will produce net annual GHG emissions of 2,181 metric tons of carbon dioxide equivalents per year. (*Id.*) However, because the MND's CalEEMod output files did not provide the emission estimates or any relevant inputs aside from land uses, SWAPE was unable to verify the legitimacy of the GHG emission estimates the MND provides. (*Id.*) As a result, the Project's GHG emissions could be underestimated. (*Id.*) SWAPE concludes that "until an EIR is prepared to include complete CalEEMod output files we cannot ensure the Project's GHG emissions are accurately calculated and the IS/MND's GHG analysis should not be relied upon . . ." (*Id.*)

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D. The MND does not include all feasible mitigation measures to address the Project's air quality impacts.

Because the Project would result in significant health risks to individuals in the community around the Project site, "the IS/MND must include all feasible mitigation to address the Project's potential air quality and health risks." (Ex. C at 7; Guidelines § 15096(g)(2).) SWAPE offers various mitigation measures that the City could evaluate to reduce the DPM emissions from Project construction. Such measures include, among other things, minimization of unnecessary vehicular and machinery, utilization of clean fuel generators and existing power sources, use of alternative fuel and electric equipment, and required implementation of Tier 4 equipment or better for all engines above 50 horsepower. (Ex. C at 8-9.) These measures would effectively reduce Project-related DPM emissions by integrating lower-emitting design features into the Project, in turn minimizing emissions during construction. (*Id.* at 9.) SWAPE concludes that "an EIR should be prepared to include all feasible mitigation measures. . ." (*Id.*)

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IV. There is a fair argument that the Project may have significant adverse impacts on indoor air quality.

Certified industrial hygienist, Francis Offermann, P.E., C.I.H., has reviewed the Project, the Director’s Determination, and other documents regarding the Project’s indoor air emissions. These documents provide no analysis of the Project’s indoor air quality impacts. Mr. Offermann concludes that the Project will expose its future residents to significant health impacts related to indoor air quality, particularly 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 explains that many composite wood products used in building materials commonly found in residences contain formaldehyde-based glues which release formaldehyde gas over a very long period of time. He states, “The primary source of formaldehyde indoors is composite wood products manufactured with urea-formaldehyde resins, such as plywood, medium density fiberboard, and particle board. These materials are commonly used in residential, office, and retail building construction for flooring, cabinetry, baseboards, window shades, interior doors, and window and door trims.” (Ex. D at 2-3.)

Formaldehyde is a known human carcinogen, classified by the State as a Toxic Air Contaminant. The SCAQMD has established a CEQA significance threshold for airborne cancer risk of 10 per million. Mr. Offermann found that future Project occupants may be exposed to a cancer risk from formaldehyde emissions of about 120 per million for residents, and 17.7 per million for commercial employees, even assuming that all materials comply with the California Air Resources Board’s (“CARB”) formaldehyde airborne toxics control measure. (*Id.* at 4-5.) This exceeds the SCAQMD’s CEQA significance threshold for airborne cancer risk. (*Id.* at 2.)

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Mr. Offermann concludes that the Project will have significant environmental impacts that must be analyzed in an EIR or MND and mitigation measures must be imposed to reduce the raised cancer risk. (*Id.* at 12-13.) Mr. Offermann prescribes a methodology for estimating the Project’s formaldehyde emissions for a more project-specific health risk assessment. (*Id.* at 6-10.) He also identifies feasible several mitigation measures to decrease the significant health risks, like installing air ventilation systems and requiring the use of composite wood materials only for all interior finish systems that are made with CARB-approved no-added formaldehyde (“NAF”) resins or ultra-low emitting formaldehyde (“ULEF”) resins. (*Id.* at 12-14.)

When a project exceeds a duly adopted CEQA significance threshold, as here, this alone establishes substantial evidence that the project will have a significant adverse environmental impact. Indeed, in many instances, such air quality thresholds are the only criteria reviewed and treated as dispositive in evaluating the significance of a project’s air quality impacts. (*See, e.g. Schenck v. County of Sonoma* (2011) 198 Cal.App.4th 949, 960 [County applies Air District’s “published CEQA quantitative criteria” and “threshold level of cumulative significance”]; *see also Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 110-11 [“A ‘threshold of significance’ for a given environmental effect is simply that level at which the lead agency finds the effects of the project to be significant”].) The

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California Supreme Court has shown the importance an air district significance threshold has in providing substantial evidence of a significant adverse impact. (*Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 327 [estimated emissions in excess of air district’s significance thresholds “constitute substantial evidence supporting a fair argument for a significant adverse impact”].) Since expert evidence shows the Project will exceed the SCAQMD’s CEQA significance threshold, there is substantial evidence that an “unstudied, potentially significant environmental effect[]” exists. (*See Friends of Coll. of San Mateo Gardens v. San Mateo Cty. Cmty. Coll. Dist.* (2016) 1 Cal.5th 937, 958.)

The City’s 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 (“*CBLA*”). The Court held in *CBLA* that CEQA does not generally require lead agencies to analyze the impacts of adjacent environmental conditions on a project. (*Id.* at 800-01.) However, to the extent that a project may exacerbate existing environmental conditions at or near a project site, those effects 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 requires 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.)

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The carcinogenic formaldehyde emissions Mr. Offermann has identified are not an existing environmental condition. Those emissions will be from the Project. Residential tenants will be the Project’s users. Currently, there is presumably little to no formaldehyde emissions at the site. Once built, the Project will start emitting formaldehyde at levels posing significant direct and cumulative health risks to the Project’s users. The California Supreme Court in *CBLA* expressly found that this air emission and health impact from the Project on the environment and a “project’s users and residents” must be addressed under CEQA.

The California 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.’” (*CBLA*, 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, subs. (b), (c), (d), (g), 21001, subs. (b), (d).) It goes without saying that the Project’s future residents and commercial employees are human beings, and their health and safety must be subjected to CEQA’s safeguards.

The City has a duty to investigate issues relating to a project’s potential environmental impacts. (*See County Sanitation Dist. No. 2 v. County of Kern*, (2005) 127 Cal.App.4th 1544, 1597–98. [“[U]nder CEQA, the lead agency bears a burden to investigate potential

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environmental impacts.”].) The Project will have significant effects on indoor air quality and health risks by emitting formaldehyde that will expose future residents and commercial employees to cancer risks exceeding SCAQMD’s significance threshold for cancer risk of 10 per million. In light of this impact and the City’s lack of any evidence to the contrary, the City must prepare an EIR before approving the Project to analyze and mitigate these impacts.

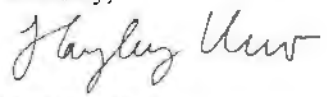
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CONCLUSION

As discussed above, there is a fair argument that the Project may have significant adverse impacts on biological resources, noise, air quality, and indoor air quality. An EIR is therefore required to analyze and mitigate the Project’s potentially significant effects. Thus, SAFER respectfully requests that the City not rely on the MND and instead prepare and circulate an EIR before further consideration of the Project.

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Sincerely,



Hayley Uno
LOZEAU DRURY LLP