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Via Email and Overnight Mail
City of Redland, Planning Division
Attn: Sean Reilly, Principal Planner
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Re: **Comments on Initial Study/Mitigated Negative Declaration for The Commons at California Project, 913 California Street (CUP Nos. 1200, 1203; TPM No. 20854; Commission Review & Approval No. 0973; SCH No. 2025060163)**

Dear Mr. Reilly:

On behalf of Californians Allied for a Responsible Economy ("CARE CA"), we submit these comments on the Initial Study/Mitigated Negative Declaration ("MND") for the Commons at California Project, 913 California Street (CUP Nos. 1200, 1203; TPM No. 20854; Commission Review & Approval No. 0973; SCH No. 2025060163), proposed by Heimann Development Group, LLC ("Applicant"). O-2-1

The proposed Project includes the subdivision of the Project site into three parcels.[1] A four story, 55,186-square-foot business hotel containing 90 rooms would be constructed on Parcel 1.[2] An approximately 1,450-square-foot drive-through coffee shop would be constructed on Parcel 2.[3] Lastly, a 3,588-square-foot semi-automated car wash would be constructed on Parcel 3.[4] The Project would also include associated circulation, parking, infrastructure, a 7,471-square-foot infiltration basin at the northwest corner of the site, and landscaping improvements on the undeveloped, 5.1-acre project site.[5] The 5.1-acre project site is at 913

[1] MND, p. 2-9.
[2] *Id.*
[3] *Id.*
[4] *Id.*
[5] *Id.*

California Street in Redlands, San Bernardino County, California (APNs 292-034-10 and -17).[6] O-2-1 cont.

We reviewed the MND with the assistance of CARE CA's expert consultants, including air quality expert, James Clark, PhD, and noise expert, Jack Meighan of Wilson Ihrig. Dr. Clark's technical comments and curriculum vitae are attached hereto as Exhibit A.[7] Mr. Meighan's technical comments and curriculum vitae are attached hereto as Exhibit B.[8] These comment letters and all attachments thereto are incorporated by reference as if fully set forth herein.

Based on our review of the MND, the MND fails to comply with the California Environmental Quality Act ("CEQA").[9] It fails as an informational document and lacks substantial evidence to support its conclusions that the Project's significant impacts will be mitigated to less than significant levels. There is also substantial evidence supporting a fair argument that the Project will have potentially significant, unmitigated environmental impacts on air quality, public health, noise, and from hazards. O-2-2

In particular, CARE CA's air quality expert provides substantial evidence demonstrating that the Project is likely to have significant hazards and health risk impacts during construction from exposure to diesel particulate matter ("DPM") and Valley Fever spores, each of which pose serious health risks to nearby sensitive receptors and construction workers. Additionally, Dr. Clark demonstrates that both construction and future on-site workers may be exposed to unmitigated perchloroethylene ("PCE") in the site's soil—a known carcinogen that can lead to serious health effects. CARE CA's noise expert also provides substantial evidence that the Project may result in significant construction-related vibration and noise impacts, as well as operational noise from increased pedestrian activity. Substantial evidence provided by CARE CA's experts supports a fair argument that the Project may have significant effects on the environment which the MND fails to disclose or mitigate.[10] The City must prepare an environmental impact report ("EIR") to address these impacts and comply with CEQA.

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[6] *Id.* at 2-1.
[7] Exhibit A, Dr. James Clark, *Comments on the Initial Study/Mitigated Negative Declaration for the Commons at California Project* (hereinafter "Clark Comments").
[8] Exhibit B, Jack Meighan, *Comments on the Initial Study/Mitigated Negative Declaration for the Commons at California Project* (hereinafter "Meighan Comments").
[9] Pub. Res. Code (or "PRC") §§ 21000 et seq.; 14 Cal. Code Regs. ("CCR" or "CEQA Guidelines") §§ 15000 et seq.
[10] *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 928.

The MND also fails to support its significance findings with substantial evidence. As a result, the City cannot make the requisite findings to approve the Project's entitlements under local land use codes or the Subdivision Map Act. For the foregoing reasons and as explained in detail herein, the City must prepare an EIR for the Project before the City may consider Project approval. O-2-2 cont.

I. STATEMENT OF INTEREST

CARE CA is a non-profit organization which advocates for a sustainable construction industry and protecting the environment and health of its communities' workforces. The organization includes Redlands residents Christian Casillas, Eduardo Torres, and Gene Connally, the District Council of Ironworkers and Southern California Pipe Trades DC 16, along with their members, their families, and other individuals who live and work in Redlands and in San Bernardino County.

CARE CA advocates for protecting the environment and the health of their communities' workforces. CARE CA seeks to ensure a sustainable construction industry over the long-term by supporting projects that offer genuine economic and employment benefits, and which minimize adverse environmental and other impacts on local communities. CARE CA members live, work, recreate, and raise their families in Redlands and its communities. Accordingly, they would be directly affected by the Project's environmental, public health and worker health and safety impacts. Individual members may also work on the Project itself. They will be first in line to be exposed to any health and safety hazards that exist onsite. O-2-3

In addition, CARE CA has an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for business and industry to expand in the region, and by making the area less desirable for new businesses and new residents. Indeed, continued environmental degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduce future employment opportunities.

II. LEGAL BACKGROUND

CEQA is designed to inform decision-makers and the public about the potential, significant environmental effects of a project.[11] "CEQA's fundamental goal [is] fostering informed decision-making."[12]

The EIR is the very heart of CEQA because it acts as 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."[13] The EIR aids an agency in identifying, analyzing, disclosing, and, to the extent possible, avoiding a project's significant environmental effects through implementing feasible mitigation measures.[14] The EIR also serves "to demonstrate to an apprehensive citizenry that the Agency has analyzed and considered the ecological implications of its action."[15] Thus, an EIR "protects not only the environment but also informed self-government."[16]

O-2-4

In limited circumstances, an agency may avoid preparing an EIR. However, because "[t]he adoption of a negative declaration…has a terminal effect on the environmental review process" by allowing the agency to dispense with the duty to prepare an EIR, negative declarations are allowed only in cases that satisfy the fair argument standard.[17]

The "fair argument" standard is an exceptionally "low threshold" favoring environmental review in an EIR rather than a negative declaration.[18] Under the fair argument standard, a lead agency "shall" prepare an EIR whenever substantial evidence in the whole record before the agency supports a fair argument that a project may have a significant effect on the environment.[19] The phrase "significant

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[11] CEQA Guidelines § 15002.
[12] *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 406; PRC § 21100.
[13] *Dunn-Edwards v. Bay Area Air Quality Management Dist.* (1992) 9 Cal.App.4th 644, 652; *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1220.
[14] PRC § 21002.1(a); CEQA Guidelines § 15002(a), (f).
[15] *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 86.
[16] *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.
[17] *Citizens of Lake Murray v. San Diego* (1989) 129 Cal.App.3d 436, 440; PRC §§ 21100, 21064.
[18] *Consolidated Irrigation District v. City of Selma* (2012) 204 Cal.App.4th 187, 207; *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 928.
[19] PRC §§ 21080(d), 21082.2(d); 14 CCR §§ 15002(k)(3), 15064(f)(1), (h)(1); *Laurel Heights Improvement Assn. v. Regents of the Univ. of Cal.* (1993) 6 Cal.4th 1112, 1123; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 82; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-151; *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1601-1602.

effect on the environment" is defined as "a substantial, or potentially substantial, adverse change in the environment."[20] "Substantial evidence" required to support a fair argument is defined as "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached."[21]As a matter of law, substantial evidence includes both expert and lay opinion.[22]

Accordingly, a mitigated negative declaration may be prepared only when, after preparing an initial study, a lead agency determines that a project may have a significant effect on the environment, but:

(1) Revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review ***would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would***, and
(2) 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.[23]

O-2-4 cont.

With respect to this Project, the MND fails to satisfy the basic purposes of CEQA. The MND fails to adequately disclose, investigate, and analyze the Project's potentially significant impacts during construction and operation, and fails to provide substantial evidence to support its conclusions that impacts will be mitigated to a less than significant level.[24] Because substantial evidence shows that the Project may result in potentially significant impacts, a fair argument can be made that the Project may cause significant impacts requiring the preparation of an EIR.

III. SUBSTANTIAL EVIDENCE SUPPORTS A FAIR ARGUMENT THAT THE PROJECT'S IMPACTS ON AIR QUALITY AND PUBLIC HEALTH ARE POTENTIALLY SIGNIFICANT

O-2-5

The MND concludes that the Project would result in less than significant impacts on air quality and public health from Project-related emissions.[25] This conclusion is unsupported and is contradicted by substantial expert evidence which

[20] PRC § 21068.
[21] 14 CCR § 15384(a).
[22] PRC § 21080, subd. (e)(1); CEQA Guidelines § 15064(f)(5).
[23] PRC § 21064.5 (emphasis added).
[24] PRC § 21064.5.
[25] MND, p. 3-12.

supports a fair argument that the Project has significant, unmitigated impacts on air quality and public health.

The MND fails to disclose or mitigate the potentially significant effects from exposure to Valley Fever spores disturbed during Project construction, lacks a quantified construction health risk analysis of the Project's expected toxic air contaminant ("TAC") emissions, fails to disclose significant health risk associated with construction TAC emissions, and fails to adequately analyze the Project's cumulative air quality impacts, as required by CEQA. Dr. Clark's comments provide substantial evidence supporting a fair argument that the expected exposure to Valley Fever and diesel particulate matter ("DPM") pose potentially significant individual and cumulative air quality and public health impacts that must be disclosed, analyzed, and mitigated in an EIR before the Project can be approved. O-2-5 cont.

A. Substantial Evidence Supports a Fair Argument that the Project Will Result in Significant, Unmitigated Valley Fever Impacts

Dr. Clark's comments provide substantial evidence demonstrating that the Project would pose a significant public health risk to construction workers, nearby residences, and surrounding community members from exposure to Valley Fever spores released during Project construction.[26] The MND fails to disclose and mitigate this risk.

O-2-6

Valley Fever is an infectious disease caused by inhaling *Coccidioides* spores, a fungus that lives in the top 2 to 12 inches of soil.[27] Valley Fever spores are tiny, ranging from approximately 0.002–0.005 millimeters ("mm"), and are not adequately controlled by standard dust control measures because standard dust control largely focuses on visible dust or larger dust particles—the PM10 fraction—not the very fine particles where the Valley Fever spores are found.[28] When soil containing this fungus is disturbed by activities such as digging, vehicles, or construction activities, the fungal spores become airborne and pose a significant health risk to workers and other nearby sensitive receptors.[29] Valley Fever often manifests as a mild respiratory illness, but it can progress to serious chronic forms, especially in immunocompromised individuals, and may even spread, impacting

[26] Clark Comments, pp. 19-23.
[27] *Id.* at p. 20.
[28] *Id.*; Frederick S. Fisher, Mark W. Bultman, and Demosthenes Pappagianis, Operational Guidelines (version 1.0) for Geological Fieldwork in Areas Endemic for Coccidioidomycosis (Valley Fever), U.S. Geological Survey Open-File Report 00-348, 2000, pp. 5, 7, available at: https://pubs.usgs.gov/of/2000/0348/pdf/of00-348.pdf.
[29] Clark Comments, p. 20.

organs including the skin, bones, brain, and spinal cord.[30] Valley Fever that spreads is associated with severe symptoms like meningitis, painful lesions, and swollen joints.[31]

One of CEQA's basic purposes is to inform government decision-makers and the public about the potential significant environmental effects of proposed projects.[32] Courts have previously found environmental documents deficient for failing to correlate adverse air pollution effects with indirect health effects.[33] Thus, impacts from potential Valley Fever exposure must be analyzed and mitigated to the greatest extent feasible pursuant to CEQA. Additionally, counties where Valley Fever is endemic are required to provide worker awareness training.[34] While San Bernardino County is not expressly identified as an endemic county in Labor Code 6709, recent evidence demonstrates that Valley Fever in San Bernardino is highly endemic and may pose a significant risk of exposure to construction workers and local residents.

O-2-6 cont.

Valley Fever is highly endemic (native and common) to semiarid regions of the United States.[35] "Highly endemic" means that the annual incidence rate of Valley Fever is greater than 20 cases per 100,000 per year.[36] The Project at issue proposes to construct a business hotel, a drive-through coffee shop, and a semi-automated car wash on a currently undeveloped 5.1-acre project site in the City of Redlands, County of San Bernardino.[37] Dr. Clark's comments demonstrate that Valley Fever is highly endemic to San Bernardino County and that the incidence rates have been rising at an alarming rate.[38] According to the California Department of Public Health, in just the first 8 months of 2024, 210 cases of Valley Fever were reported—representing a 552% increase compared to the number of cases reported in all of 2016.[39] As such, the proposed Project will exacerbate an existing and growing problem, resulting in a potentially significant public health risk which the MND fails to disclose or mitigate, in violation of CEQA. The MND also fails to include worker awareness training as a requirement for Project approval, in violation of the California Labor Code requirement of worker

[30] *Id.* at p. 22.
[31] *Id.*
[32] CEQA Guidelines § 15002(a)(1).
[33] *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502; *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184.
[34] Cal. Lab. Code § 6709(a).
[35] Cal. Lab. Code § 6709(a).
[36] Cal. Lab. Code § 6709(a).
[37] MND, p. 2-1.
[38] Clark Comments, p. 20.
[39] *Id.*

awareness training for Project sites located in counties where Valley Fever is endemic.[40]

The MND's failure to discuss Valley Fever is a major omission. The entire 5.1-acre project site is anticipated to be disturbed during construction activities.[41] Site preparation and grading of the proposed Project site is expected to last 13 days and to disturb approximately 15.5 acres of soil.[42] Additionally, grading of the project site would result in approximately 5,000 cubic yards of cut and require approximately 35,000 cubic yards of fill, requiring the import of approximately 30,000 cubic yards of soil.[43] These activities will generate a large amount of dust.[44] Dust exposure is a primary risk factor for contracting Valley Fever.[45] A study from Antelope Valley identified a clear link between soil disturbance and increased incidences of Valley Fever, with construction workers facing the greatest risk due to their direct and prolonged exposure.[46] However, the risk is not limited to the Project site.[47] The microscopic size of Valley Fever spores means they easily become airborne, allowing them to travel long distances.[48] This poses a significant health risk not only to nearby sensitive receptors—residences within 165 ft[49] and a school within 316 ft[50]—but also to communities located much further from the Project site.[51]

O-2-6 cont.

Additionally, these very small particles are not controlled by conventional construction dust control mitigation measures.[52] Even when standard dust control measures are in place, high winds can mobilize substantial amounts of dust from graded areas that carry Valley Fever spores and silica dust into surrounding communities.[53] Thus, compliance with South Coast Air Quality Management District's ("SCAQMD") Rule 403 fugitive dust control measures, discussed in the

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[40] Labor Code § 6709(b), (c).
[41] MND, p. 2-15.
[42] Clark Comments, p. 19.
[43] MND, p. 2-15.
[44] Clark Comments, p. 19.
[45] *Id.* at p. 19.
[46] *Id.* at p. 20.
[47] *Id.*
[48] *Id.*
[49] MND, p. 3-19.
[50] *Id.* at p. 3-54.
[51] Clark Comments, p. 20.
[52] *Id.* at p. 20; Frederick S. Fisher, Mark W. Bultman, and Demosthenes Pappagianis, Operational Guidelines (version 1.0) for Geological Fieldwork in Areas Endemic for Coccidioidomycosis (Valley Fever), U.S. Geological Survey Open-File Report 00-348, 2000, pp. 5, 7, available at: https://pubs.usgs.gov/of/2000/0348/pdf/of00-348.pdf.
[53] Clark Comments, p. 20.

MND, is inadequate to reduce the risks of Valley Fever exposure.[54] The Project site's desert location and exposure to desert winds contribute to this ineffectiveness.[55] Because of this, specific Valley Fever mitigation measures must be incorporated into the Project's mitigation plan. Given that the Project will be directly responsible for the generation of the spores into the local environment, Dr. Clark recommends that the City offer filtration for residences near the Project site.[56] Use of minimum efficiency reporting value 16 filters on the residences nearby would reduce exposure to the spores by as much as 95%.[57]

O-2-6 cont.

The MND violates CEQA by not disclosing or mitigating the potentially significant impacts of Valley Fever. The MND also violates the California Labor Code by not including worker awareness training as a requirement for Project approval. Dr. Clark's comments provide substantial evidence supporting a fair argument that Project construction may result in significant air quality and public health impacts from Valley Fever exposure. Thus, an EIR must be prepared that discloses the risks of Valley Fever, identifies ways to mitigate exposure to Coccidioides, and includes worker awareness training in accordance with California's Labor Code.

B. The MND Fails to Analyze the Potentially Significant Air Quality and Health Risks from the Project's Use of Fire Pumps and Back-up Generators

The MND's assessment of the Project's air quality impacts is inaccurate and unsupported because it omits fire pumps and back-up generators from its emissions estimates. Dr. Clark provides substantial evidence demonstrating that, due to emissions of both criteria air pollutants and TACs that will be generated by the Project's diesel fire pump and back-up generator. The City's failure to include these emissions in the air quality analysis is a failure to disclose and analyze potentially significant air quality and public health impacts.

O-2-7

The Project proposes to develop a four-story, 58-foot-tall business hotel totaling 55,185 square feet and containing 90 rooms.[58] As part of the proposed fire protection system, the Project includes plans to install a fire pump.[59] Pursuant to Section 913.1 of the California Fire Code, fire pumps must be installed in

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[54] *Id.* at p. 22.
[55] *Id.*
[56] *Id.*
[57] *Id.*
[58] MND, p. 2-9.
[59] The Commons at California Fire Master Plan.

accordance with the National Fire Protection Association Standard 20 ("NFPA 20").[60] NFPA 20 requires that fire pumps be supplied by a reliable power source to ensure continued operation during an emergency.[61] One of the most common methods of providing emergency power is through a diesel-fueled generator.[62] These systems emit harmful air pollutants, including diesel particulate matter ("DPM")—a human carcinogen.[63] As Dr. Clark explains, even if these systems are operated only for routine maintenance and testing, CARB's Airborne Toxic Control Measure for stationary diesel engines permits up to 100 hours of annual operation.[64] Generator testing may therefore result in TAC emissions which the MND failed to disclose.

CEQA requires lead agencies to use their best efforts to investigate and disclose all that they reasonably can about a Project's potential environmental impacts.[65] When uncertain future events could lead to a range of possible outcomes, analysis may be based on a reasonable worst-case scenario.[66] Accordingly, the City must also consider foreseeable scenarios that would result in prolonged operation of backup generators, such as Public Safety Power Shutoffs and extreme heat events.[67]

O-2-7 cont.

By failing to account for emissions from diesel fire pumps and backup generators, the City has underestimated the Project's true air quality and health risk impacts, which may be significant. This omission renders the MND's analysis incomplete and unsupported by substantial evidence. The City must analyze, disclose, and mitigate the air quality and public health risks that emissions from the installation and operation of the Project's fire pump and generator systems pose in an EIR.

[60] 2022 California Fire Code § 913.1.
[61] NFPA 20 §§ 9.2.1, 9.2.2;
[62] Shawn Mahoney, NFPA, *Maintaining Your Emergency Power Supply System is Critical, Particularly During Hurricane Season* (June 14, 2024), available at: https://www.nfpa.org/news-blogs-and-articles/blogs/2020/09/18/maintaining-your-emergency-power-supply-system-is-critical-particularly-during-hurricane-season.
[63] California Air Resources Board, Overview: Diesel Exhaust & Health, available at: https://ww2.arb.ca.gov/resources/overview-diesel-exhaust-and-health.
[64] Clark Comments, p. 5.
[65] 14 CCR § 15144; *Rodeo Citizens Ass'n v. County of Contra Costa* (2018) 22 CA5th 214, 226.
[66] *Planning & Conserv. League v. Castaic Lake Water Agency* (2009) 180 CA4th 210, 244.
[67] Clark Comments, p. 5.

C. The MND Lacks a Quantitative Health Risk Analysis for the Project's Construction Related Diesel Particulate Matter Emissions

The MND fails to analyze the health risk posed to sensitive receptors close to the Project's construction zone, in violation of CEQA. A quantitative health risk analysis ("HRA") is necessary to determine whether the health risk posed by the Project's construction air emissions will result in a cancer risk that exceeds adopted thresholds of significance.

CEQA Guidelines section 15126.2, subdivision (a) requires the CEQA document to "analyze any significant environmental effects the project might cause by bringing development and people into the area affected."[68] The CEQA Guidelines require the CEQA document to identify "relevant specifics of…health and safety problems caused by the physical changes."[69] CEQA Appendix G specifically requires the lead agency to evaluate whether the Project will "expose sensitive receptors to substantial pollutant concentrations."[70] O-2-8

The California Supreme Court has upheld CEQA's requirement to disclose the extent to which a project's air emissions may result in adverse health impacts. In *Sierra Club v. County of Fresno*, the County's failure to include a health risk analysis in an EIR enabled the Court to find "the EIR insufficient because it failed to explain why it was not feasible to provide an analysis that connected the air quality effects to human health consequences."[71] Here, the MND fails to provide the requisite discussion of the potential public health impacts that will result from the Project's emissions of TACs during construction and fails to indicate the concentration at which such pollutants would trigger adverse health effects. "Without such information, the general public and its responsible officials cannot make an informed decision on whether to approve the project."[72] The City must prepare an EIR which includes a quantified health risk analysis to connect the Project's air quality impacts with human health consequences.

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[68] 14 CCR § 15126.2(a).
[69] 14 CCR § 15126.2(a).
[70] CEQA Appendix G, Section III.D.
[71] *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 519; *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 134 Cal.App.4th 1184, 1220 ("After reading the EIRs, the public would have no idea of the health consequences that result when more pollutants are added to a nonattainment basin. On remand, the health impacts resulting from the adverse air quality impacts must be identified and analyzed in the new EIRs).
[72] *Santa Clarita Org. v. County of Los Angeles* (2003) 106 Cal.App.4th 715, 724.

Project construction is anticipated to last 13 months. [73] The construction activities are expected to generate significant short-term air quality impacts, including emissions of particulate matter (PM2.5 and PM10), carbon monoxide, nitrogen oxides, volatile organic compounds ("VOC"), and TACs, such as DPM from heavy-duty construction equipment.[74] The MND acknowledges these emissions but improperly provides only a qualitative analysis of the Project's construction related health risk impacts, and fails to compare emissions to applicable quantitative health risk thresholds, rendering the analysis inadequate.[75] Specifically, the MND omits a comparison of the Project's health risk impacts to SCAQMD's adopted numeric threshold of 10 in one million.[76] The omission of this information makes the MND's impact analysis inadequate and renders its conclusions unsupported.

The MND's omission of an HRA also conflicts with standard regulatory guidance. A quantitative health risk analysis of construction TAC emissions is regularly used to evaluate impacts on sensitive receptors. SCAQMD defines sensitive receptors as "any residence including private homes, condominiums, apartments, and living quarters, schools as defined under paragraph (b)(57), preschools, daycare centers and health facilities such as hospitals or retirement and nursing homes."[77] The location of sensitive receptors is relevant to assessing toxic impacts on public health.[78] Here, the closest residence to the Project site is 165 feet away[79] and the closest school is an elementary school approximately 316 feet away[80] There are therefore several sensitive receptors located in close proximity to the Project site who may be adversely impacted by the Project's TAC emissions. An HRA must be conducted to analyze the potential impacts to these receptors. Without this analysis, the MND lacks substantial evidence to conclude that health risk impacts will be less than significant. O-2-8 cont.

The MND's failure to analyze construction-related health risks is also inconsistent with the Office of Environmental Health Hazard Assessment's ("OEHHA") *Risk Assessment Guidelines: Guidance Manual for Preparation of*

[73] MND, p. 2-15.
[74] *Id*. at p. 3-15.
[75] MND Appendix A, p. 53.
[76] SCAQMD, Air Quality Significance Thresholds, available at: https://www.aqmd.gov/docs/default-source/ceqa/handbook/south-coast-aqmd-air-quality-significance-thresholds.pdf?sfvrsn=25 (last visited 7/5/25).
[77] SCAQMD Rule 1470(b)(60).
[78] SCAQMD AB 2588 and Rule 1402 Supplemental Guidelines, p. 10, available at: https://www.aqmd.gov/docs/default-source/planning/risk-assessment/forms-and-guidelines/ab-2588-supplemental-guidelines-2024.pdf?sfvrsn=6.
[79] MND, p. 3-19.
[80] *Id*. at p. 3-54.

Health Risk Assessments. These guidelines recommend that all short-term projects lasting at least 2 months assess cancer risks and that exposure from projects lasting more than 6 months should be evaluated for the duration of the project.[81] Here, the Project's construction is anticipated to take 13 months.[82] Because the anticipated duration of the Project's construction would exceed the 2-month and 6-month requirements set forth by OEHHA, a quantified HRA under OEHHA guidance should have been prepared to evaluate the Project for its entire duration.

For the foregoing reasons, the MND's failure to include an HRA to quantify the adverse health risk impacts that will be caused by exposure to TACs from the Project's construction-related DPM emissions renders the MND's air quality analysis inadequate and demonstrates that the MND lacks substantial evidence for its conclusion that no significant health impacts will result. Therefore, an HRA must be conducted, and this must be set forth in an EIR, along with mitigation measures to reduce any significant health risks to less than significant levels. O-2-8 cont.

D. Substantial Evidence Supports a Fair Argument that the Project's Construction Health Risk is Significant and Unmitigated

Dr. Clark performed an HRA using SCAQMD's AERMOD Health Risk Assessment Tool and Guidance from the OEHHA Air Toxics Hot Spots Program Manual.[83] This analysis provides substantial evidence demonstrating that the Project may result in significant cancer risks to nearby sensitive receptors that the MND fails to disclose and mitigate.

Specifically, Dr. Clark calculated that the cancer risk to infants from exposure to DPM emitted during Project construction would be 37 in 1,000,000, which far exceeds the SCAQMD significance threshold of 10 in 1,000,000. [84] This constitutes a significant environmental impact under CEQA that must be fully analyzed and mitigated to the greatest extent feasible. Dr. Clark identifies several mitigation measures that could reduce the Project's DPM emissions, including: (1) use of Tier 4 final rated equipment on off-road construction equipment, (2) use of diesel particle filters to off-road construction equipment, (3) use of aqueous fuels, and (4) use of cooled exhaust gas recirculation technology on off-road construction O-2-9

[81] OEHHA, *Risk Assessment Guidelines: Guidance Manual for Preparation of Health Risk Assessments*, pp. 8-18, available at: https://oehha.ca.gov/air/crnr/notice-adoption-air-toxics-hot-spots-program-guidance-manual-preparation-health-risk-0.
[82] MND, p. 2-15.
[83] Clark Comments, pp. 13, 15.
[84] *Id.* at p. 16.

equipment.[85] The MND includes no air quality mitigation measures because it incorrectly concludes that air quality impacts are less than significant.

Dr. Clark provides substantial evidence supporting a fair argument that the Project's construction emissions may expose sensitive receptors to cancer risks well above established thresholds, which the MND fails to identify, analyze, or mitigate. The City cannot approve the Project until it prepares an EIR that discloses the Project's potentially significant health risks and adopts all feasible mitigation measures to reduce DPM emissions to less than significant levels. O-2-9 cont.

E. The MND Fails to Adequately Disclose, Analyze, or Mitigate the Project's Cumulative Air Quality Impacts

The MND concludes that the Project's cumulative air quality impacts would be less than significant.[86] However, this conclusion is not supported by substantial evidence because the MND fails to analyze the Project's impacts combined with the impacts of past, present, or foreseeable future projects, as required by CEQA.

A CEQA document must evaluate a cumulative impact if the project's incremental effect combined with the effects of other projects is "cumulatively considerable."[87] This determination is based on an assessment of the project's incremental impacts "viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects."[88] Proper cumulative impact analysis is vital because "the full environmental impact of a proposed project cannot be gauged in a vacuum. One of the most important environmental lessons that has been learned is that environmental damage often occurs incrementally from a variety of small sources. These sources appear insignificant when considered individually, but assume threatening dimensions when considered collectively with other sources with which they interact."[89] O-2-10

The MND asserts that the Project will not result in cumulative air quality impacts simply because its construction and operational emissions fall below SCAQMD'S project-level significance thresholds.[90] It claims that this analysis is sufficient because the thresholds already account for when a project's emissions

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[85] *Id.*
[86] MND, p. 3-15.
[87] CEQA Guidelines § 15130(a).
[88] CEQA Guidelines §§ 15065(a)(3), 15355(b).
[89] *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 114.
[90] MND, pp. 3-17, 3-18.

would be cumulatively considerable.[91] However, this approach ignores the Project's potential cumulative contribution to the existing environment and violates CEQA.

The MND's "drop in the bucket" approach has been rejected by the courts for failing to comply with CEQA's requirement that a project mitigate impacts that are "cumulatively considerable."[92] A leading case on this issue is *Kings County Farm Bureau v. City of Hanford*.[93] In *Kings County*, the city prepared an EIR for a 26.4-megawatt coal-fired cogeneration plant.[94] Notwithstanding the fact that the EIR found that the project region was out of attainment for PM_{10} and ozone, the city failed to incorporate mitigation for the project's cumulative air quality impacts from project emissions because it concluded that the Project would contribute "less than one percent of area emissions for all criteria pollutants."[95] The city reasoned that, because the project's air emissions were small in ratio to existing air quality problems, that this necessarily rendered the project's "incremental contribution" minimal under CEQA.[96] The court rejected this approach, finding it "contrary to the intent of CEQA." The court stated: O-2-10 cont.

> We find the analysis used in the EIR and urged by GWF avoids analyzing the severity of the problem and allows the approval of projects which, when taken in isolation, appear insignificant, but when viewed together, appear startling. Under GWF's "ratio" theory, the greater the over-all problem, the less significance a project has in a cumulative impacts analysis. We conclude the standard for a cumulative impacts analysis is defined by the use of the term "collectively significant" in Guidelines section 15355 and the analysis must assess the collective or combined effect of energy development. The EIR improperly focused upon the individual project's relative effects and omitted facts relevant to an analysis of the collective effect this and other sources will have upon air quality.[97]

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[91] *Id.* at 3-15.
[92] PRC § 21083(b)(2); CEQA Guidelines § 15130; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 719-21.
[93] *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal. App. 3d 692 ("Kings County"); *see also, Friends of Oroville v. City of Oroville* (2013) 219 Cal. App. 4th 832, 841-42.
[94] *Kings County, supra,* at 707.
[95] *Id.* at 719.
[96] *Id.* at 720.
[97] *Id.* at 721; *see also People of the State of California v. City of Fontana,* Case No. CIVSB2121829, Petition for Writ of Mandate, available at https://climatecasechart.com/wp-content/uploads/case-documents/2021/20210723_docket-CIVSB2121829_petition-for-writ-of-mandate.pdf ("The MND's cumulative air quality impact analysis does not account for—or even acknowledge—the multitude of other warehouses near the Project. Rather than consider the environmental setting within which the

Furthermore, SCAQMD is updating its cumulative impact guidance to eliminate the project-level approach and adopt cumulative impact thresholds. Guidance from SCAQMD's November 6, 2024 Working Group recommends that agencies use a more stringent health risk significance threshold.[98] The draft SCAQMD protocols lower the cancer risk threshold (from 10 in one million) if certain factors reflecting high pollution burden are met.[99] These factors include determining (1) the background cancer risk affecting the Project area via the SCAQMD Multiple Air Toxics Exposure Study (MATES), (2) if there are 951 daily heavy-duty truck trips or more that would traverse the truck route, and (3) if the Project is located in a SB 535 disadvantaged community or an AB 617 community.[100] Although the new protocols have not yet been formally adopted, the proposed guidance demonstrates that SCAQMD intends for agencies to conduct a detailed analysis of cumulative impacts, and demonstrates the insufficiency of the MND's cumulative impacts analysis.

O-2-10 cont.

Therefore, the MND's cumulative impacts analysis is inadequate because it improperly focuses on the individual project's relative effects and omits facts relevant to an analysis of the collective effect this and other sources will have upon air quality. The City must prepare an EIR that provides a comprehensive analysis of the Project's potentially significant cumulative air quality impacts.

IV. SUBSTANTIAL EVIDENCE SUPPORTS A FAIR ARGUMENT THAT THE PROJECT WILL RESULT IN POTENTIALLY SIGNIFICANT, UNMITIGATED IMPACTS RELATED TO HAZARDS

O-2-11

The MND concludes that the Project will not result in significant impacts from hazards.[101] However, this conclusion is not supported by substantial evidence

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Project will be situated, the MND simply states that the Project will not result in a cumulatively considerable increase in emissions because the Project's individual air quality impacts will be less than significant. The MND even applies this reasoning to its analysis of health impacts from localized emissions, despite making no attempt to determine or disclose the severity of the existing health impacts from localized emissions in the community")

[98] SCAQMD, CEQA Policy Development: Analyzing Cumulative Impacts from Air Toxics in CEQA Documents, available at: https://www.aqmd.gov/home/rules-compliance/ceqa/ceqa-policy-development-(new); SCAQMD, Working Group Meeting #6: Cumulative Impacts from Air Toxics for CEQA Projects, available at: https://www.aqmd.gov/docs/default-source/ceqa/documents/wgm-6-20241106.pdf?sfvrsn=405a8561_13.

[99] *Id.*

[100] SCAQMD, Comments on Draft Environmental Impact Report (DEIR) for the Proposed DJT4 Parcel Delivery Facility Project (Proposed Project) (SCH No. 2023070241) (December 20, 2024), pp. 2-62–2-63, available at: https://www.cityofbrea.gov/DocumentCenter/View/17864/DJT4-Parcel-Delivery-Facility-Final-EIR-.

[101] MND, p. 3-50.

and is contradicted by substantial evidence from Dr. Clark which supports a fair argument that the Project may pose significant public health impacts from unmitigated soil vapor exposure. The Phase I and Phase II Environmental Site Assessments ("ESA") failed to analyze the entire Project site by limiting their review to the car wash parcel.[102] Additionally, the MND does not compare the detected levels of perchloroethylene ("PCE") to any established significance thresholds.[103] Dr. Clark's comments provide substantial evidence supporting a fair argument that the Project could expose construction workers and future guests to potentially significant health risks.[104] These risks must be disclosed and mitigated to the greatest extent feasible in an EIR.

The Project site contains residual soil contamination from historic uses. A Phase I ESA was prepared for the proposed car wash parcel.[105] The assessment identified a former dry cleaner located approximately 130 feet east of the project site.[106] The dry cleaner operated from at least 1997 until 2014 and used PCE, a hazardous VOC, in its operation.[107] Due to the proximity of this facility, the Phase I ESA concluded that the former dry cleaner represented a potential area of concern and recommended a Phase II Limited Soil Vapor Assessment to evaluate the possible presence of VOCs on the car wash parcel.[108] Accordingly, the Phase II assessment was conducted and detected elevated levels of PCE in soil vapor exceeding the applicable Commercial Environmental Screening Level ("ESL").[109] However, the results showed variations across the car wash parcel.[110] A concentrated "hot spot" of PCE contamination was found along the eastern boundary, while lower levels were detected toward the central portion of the site.[111] Based on this discrepancy, the assessment concludes that the elevated concentrations at the eastern edge were not representative of the overall conditions of the site's subsoil.[112] Relying on the USEPA's "OSWER Technical Guide For Assessing and Mitigating the Vapor Intrusion Pathway from Subsurface Vapor Sources to Indoor Air", the assessment further stated that situating the proposed building away from the "hot spot" would act as a vapor intrusion mitigation

O-2-11 cont.

[102] *Id.* at pp. 3-52, 3-53.
[103] MND Appendix F: Phase II Limited Soil Vapor Assessment, p. 4.
[104] Clark Comments, p. 8.
[105] MND, p. 3-52.
[106] *Id.* at p. 3-53.
[107] *Id.*
[108] *Id.*
[109] MND Appendix F, p. 4.
[110] *Id.*
[111] *Id.*
[112] *Id.*

measure.[113] As a result, the City concluded that the elevated PCE levels would not pose a significant health risk to future onsite workers.[114]

However, the MND's significance determination is not supported by substantial evidence for several reasons. First, as explained by Dr. Clark, the Phase I and II ESAs evaluated only the car wash parcel and entirely excluded the drive-through coffee shop and hotel parcels.[115] The MND lacks any supporting evidence for the City's decision to exclude an analysis of potential contamination on these parcels. Furthermore, Dr. Clark explains that, due to the fact that only four soil borings were installed on the Project site, it is possible that the ESAs' investigation missed additional subsurface contamination at the future location of the hotel (parcel 1) and coffee shop (parcel 3).[116] Without samples from parcel 1 and parcel 3, the MND lacks substantial evidence to conclude that future workers and guests on those parcels will not face significant health risks from PCE exposure. Second, the Phase II assessment's reliance on the OSWER Technical Guide alone is inadequate and without merit. As Dr. Clark explains, the vertical and horizontal extent of the PCE soil vapor plume has yet to be determined.[117] Because of this, the MND's assumption that the PCE levels found at the eastern edge of the car wash parcel do not exist on other parts of the Project site is unsupported.[118] Additionally, the MND fails to compare the PCE concentrations detected to any applicable significance threshold, leaving the MND's conclusion unsupported by any meaningful standard of evaluation.

O-2-11 cont.

Dr. Clark's comments also provide substantial evidence that the Project's PCE levels may result in significant health impacts from both indoor exposure during operation and outdoor exposure during construction that must be disclosed and mitigated in an EIR.[119] Specifically, the highest concentrations of PCE detected were measured at 86 ug/m^3 and 200 ug/m^3.[120] Dr. Clark explains that the MND failed to follow applicable regulatory guidance for assessing vapor intrusion sites established by the California Department of Toxic Substances Control ("DTSC").[121] When Dr. Clark applied DTSC's methodology, he found that the detected concentration of 200 ug/m^3 in soil gas would result in an estimated indoor air

[113] *Id.*
[114] *Id.*
[115] MND, pp. 3-52, 3-53.
[116] Clark Comments, p. 6.
[117] Clark Comments, p. 7.
[118] *Id.*
[119] *Id.* at pp. 8-9.
[120] MND Appendix F, p. 4.
[121] Clark Comments, pp. 7-8.

concentration of up to 6 ug/m^3.[122] This is three times higher than DTSC's screening threshold for commercial workers and thirteen times higher than the residential exposure threshold,[123] resulting in a significant public health risk from indoor exposure that the MND fails to disclose or mitigate.[124] Absent mitigation, onsite workers and guests may be exposed to unsafe levels of toxic PCE vapors.[125]

Dr. Clark also provides substantial evidence supporting a fair argument that the Project may result in potentially significant health risks to construction workers who are exposed to PCE contamination during site excavation and construction.[126] According to the EPA's 2020 risk evaluation of PCE, both acute and chronic inhalation or dermal exposure to PCE can lead to serious health effects, including neurotoxicity, liver damage, and cancer.[127] Despite these known risks, the MND does not include a Health Risk Assessment or identify any mitigation measure or cleanup requirements to reduce worker exposure.[128] O-2-11 cont.

For these reasons, the MND lacks substantial evidence to conclude that the Project will not result in significant hazard or health risk impacts. Dr. Clark provides substantial evidence supporting a fair argument that the Project will result in potentially significant health risks related to exposure to PCE. Therefore, the City must prepare an EIR that fully addresses these impacts prior to Project approval.

V. SUBSTANTIAL EVIDENCE SUPPORTS A FAIR ARGUMENT THAT THE PROJECT'S NOISE IMPACTS ARE POTENTIALLY SIGNIFICANT AND UNMITIGATED

A. The MND Fails to Analyze Construction Noise Against Applicable Thresholds or Disclose Noise Increases Over Ambient Levels O-2-12

The MND fails to adequately assess the Project's potentially significant construction noise impacts. Specifically, the MND fails to compare the Project's expected construction noise levels against either an absolute noise threshold or a threshold for increase over ambient noise levels. Despite this, the MND concludes that the Project's construction noise will be less than significant.[129] This conclusion

[122] *Id.* at p. 8.
[123] *Id.*
[124] *Id.*
[125] *Id.*
[126] *Id.* at pp. 8-9.
[127] *Id.* at p. 8.
[128] *Id.* at p. 9.
[129] MND, p. 3-86.

is not supported by substantial evidence and reflects a failure to engage in the fundamental impact analysis required by CEQA.

Under CEQA, lead agencies have discretion to choose the noise significance thresholds to apply to a project.[130] In applying these significance thresholds, the lead agency must consider both the "absolute noise level" associated with a project as well as the increase in the level of noise that will result from a project.[131] The MND calculates that the Project's construction noise would range between 57 to 69 dBA Leq at the residential property to the southwest and from 56 to 60 dBA Leq at the commercial property to the east.[132] However, rather than evaluating these noise levels against a defined significance threshold, the MND relies solely on compliance with Sections 8.06.090(F) and 8.06.120(G) of the City of Redlands Municipal Code to conclude that the Project's impacts will be less than significant.[133] These sections exempt construction activities from the City's noise ordinance, provided the work occurs between 7:00am and 8:00pm, Mondays through Saturdays, and that all combustion-powered machinery is equipped with standard mufflers and silencing equipment.[134] O-2-12 cont.

This approach is inadequate under CEQA because the MND offers no evidence or analysis to demonstrate that compliance with the City's construction-hour and muffler requirements will avoid significant noise impacts. As Mr. Meighan explains, under the City's logic, there is effectively no upper limit to daytime construction noise that would ever be considered significant as long as it occurs during permitted hours.[135] Without applying a meaningful significance threshold—or any threshold at all—the MND fails to evaluate the Project's potential impacts on the nearby sensitive receptors and the community, and its conclusion of a less than significant impact lacks substantial evidence.[136]

Because the MND omits a legally adequate analysis of the Project's construction noise impacts, an EIR is required under CEQA to fully analyze these potential impacts and to propose mitigation, if necessary.

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[130] *King & Gardiner Farms, LLC v. County of Kern* (2022) 45 CA5th 814, 884.
[131] *King & Gardiner Farms, LLC v. County of Kern* (2022) 45 CA5th 814, 887, 893; *Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 CA4th 714, 733.
[132] MND, p. 3-86.
[133] *Id.* at pp. 3-80, 3-81, 3-86.
[134] *Id.* at pp. 3-80, 3-81, 3-86.
[135] Meighan Comments, p. 3.
[136] *Id.*

B. The MND's Vibration Impacts Analysis is Inaccurate and Unsupported by Substantial Evidence

The MND concludes that vibration generated by the Project's construction activities would be less than significant.[137] However, this conclusion is not supported by substantial evidence. The analysis assumes that the nearest sensitive receptor is 175 feet away[138] when the nearest sensitive receptor actually is a residence located only 165 feet away from the Project site.[139] As Mr. Meighan explains, the MND's use of this further distance in its vibration analysis underestimates the Project's true impacts.[140] Applying the correct distance may reveal significant impacts that were not previously disclosed or mitigated in the MND.[141] O-2-13

Therefore, the MND lacks substantial evidence to support its significance determination, and an EIR is required to address this deficiency using accurate and appropriate distance measurements.

C. Substantial Evidence Supports a Fair Argument That Project-Related Pedestrian Noise Will Result in a Significant Impact

The MND concludes that the Project's noise impacts will be less than significant.[142] However, the MND fails to consider the potential impacts associated with increases in existing pedestrian noise, particularly around the Project's proposed pool area. Mr. Meighan provides substantial evidence demonstrating that the increase in pedestrian-generated noise could result in significant noise impacts on nearby residences that were not previously disclosed or mitigated in the MND.[143] O-2-14

For example, as Mr. Meighan explains, a typical group of 30 individuals in an outdoor social setting can generate noise levels of approximately 62 dBA at a distance of 12 feet.[144] Because noise levels at the closest receivers could be much lower than the measured daytime ambient minimum of 62dBA used in the MND, noise generated at the pool could combine with existing ambient noise levels and

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[137] MND, p. 3-92.
[138] *Id.*
[139] *Id.* at p. 3-19.
[140] Meighan Comments, p. 4.
[141] *Id.*
[142] MND, p. 3-73.
[143] Meighan Comments, p. 4.
[144] *Id.*

cause a significant increase above ambient noise levels at the closest residences.[145] This is a potentially significant noise impact that is not disclosed in the MND.

Moreover, several key factors of pool-related activities could further increase noise above acceptable levels.[146] Amplified music and pool mechanical equipment, which are common noise sources in pool areas, could further increase noise levels. Additionally, the hard surfaces surrounding a pool can reflect and amplify sound, further intensifying the impact on nearby residences.[147] O-2-14 cont.

By failing to consider these foreseeable noise sources, the MND underestimates the Project's true noise impacts and fails to support its less than significant finding with substantial evidence. In order to comply with CEQA, a comprehensive analysis of Project's noise impacts, including pedestrian noise, must be conducted in an EIR.

VI. THE MND FAILS TO ADEQUATELY ANALYZE THE PROJECT'S POTENTIALLY SIGNIFICANT ENERGY IMPACTS

The MND's conclusion that the Project's construction-related energy impacts would be less than significant is not supported by substantial evidence.[148] The MND fails to evaluate whether feasible energy conservation measures could reduce construction energy use, as required by CEQA Guidelines Appendix F. Without this analysis, the MND cannot demonstrate that the Project's energy consumption would not be wasteful, inefficient, or unnecessary. Accordingly, the Project's energy impacts remain potentially significant.

O-2-15

CEQA requires an environmental document to discuss mitigation measures for significant environmental impacts, including "measures to reduce the wasteful, inefficient, and unnecessary consumption of energy."[149] The CEQA Guidelines require discussion of energy conservation measures when relevant, and provide the following examples in Appendix F:

- Potential measures to reduce wasteful, inefficient and unnecessary consumption of energy during construction, operation, maintenance and/or removal. The discussion should explain why certain measures were incorporated in the project and why other measures were dismissed.

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[145] *Id.*
[146] *Id.*
[147] *Id.*
[148] MND, p. 3-32.
[149] PRC § 21100(b)(3); *Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 912, 930.

- The potential of siting, orientation, and design to minimize energy consumption, including transportation energy, increase water conservation and reduce solid waste.
- The potential for reducing peak energy demand.
- Alternate fuels (particularly renewable ones) or energy systems.
- Energy conservation which could result from recycling efforts.[150]

Courts have rejected CEQA documents that fail to include adequate analysis investigation into energy conservation measures that might be available or appropriate for a project.[151] In *California Clean Energy Commission v. City of Woodland* ("*CCEC*"), the Court of Appeal reviewed an EIR for a shopping center on undeveloped agricultural land.[152] The EIR in *CCEC* concluded that, due to the proposed project's compliance with Title 24 guidelines and regulations, the project would be expected to have a less-than-significant impact regarding the wasteful, inefficient, or unnecessary consumption of energy.[153] But the lead agency's EIR did not include discussion regarding the different renewable energy options that might be available or appropriate for the project.[154] The Court held "the City's EIRs failed to comply with the requirements of Appendix F to the Guidelines by not discussing or analyzing renewable energy options."[155] The lead agency argued that compliance with the Building Code sufficed to address energy impact concerns for the project.[156] But the Court explained: O-2-15 cont.

> Although the Building Code addresses energy savings for components of a new commercial construction, it does not address many of the considerations required under Appendix F of the CEQA Guidelines… These considerations include whether a building should be constructed at all, how large it should be, where it should be located, whether it should incorporate renewable energy resources, or anything else external to the building's envelope. Here, a requirement that Gateway II comply with the Building Code does not, by itself, constitute an adequate assessment of mitigation measures that can be taken to address the energy impacts during construction and operation of the project.[157]

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[150] CEQA Guidelines § 15126.4(a)(1)(C) (stating "'Energy conservation measures, as well as other appropriate mitigation measures, shall be discussed when relevant.").
[151] *Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 CA4th 256; *Spring Valley Lake Ass'n v. City of Victorville* (2016) 248 CA4th 91.
[152] *CCEC* (2014) 225 CA4th 173.
[153] *Id.* at 184.
[154] *Id.* at 213.
[155] *Id.* at 213.
[156] *Id.* at 210, 211.
[157] *Id.* at 211.

The Supreme Court of California agreed with the *CCEC* court's decision in *League to Save Lake Tahoe Mtn. Area Preservation Found. v County of Placer* ("*League to Save Lake Tahoe*"), holding that even projects that find a less-than-significant energy impact must "discuss whether any renewable energy features could be incorporated into the project."[158] In *Save Lake Tahoe*, the Court considered an EIR for a land use specific plan and rezoning to permit residential and commercial development and preserve forest land near Truckee and Lake Tahoe.[159] The EIR did not consider whether it was feasible to power the project on 100 percent renewable electrical energy or some lesser percentage, nor evaluate strategies for reducing reliance on fossil fuels, increasing reliance on renewable resources, reducing peak loads, and reducing the impacts of relying on remote generation facilities.[160] The lead agency reasoned that this analysis was not required because energy impacts would be less than significant.[161] Citing CEQA Guidelines Section 15126.2, subdivision (b) and the decision in *CCEC*, the Court held that when an EIR analyzes the project's energy use to determine if it creates significant effects, it should discuss whether any renewable energy features could be incorporated into the project.[162] The Court found that the EIR violated CEQA for not discussing whether the project could increase its reliance on renewable energy sources to meet its energy demand.[163]

O-2-15 cont.

Here, the MND acknowledges that "[c]onstruction of the proposed project would consume fuel from construction equipment, worker trips, and construction vendor/hauling trips"[164], and that "[i]n addition to fuel consumption by construction equipment, the proposed project would generate fuel consumption through construction worker trips."[165] Despite recognizing these sources of energy use, the MND concludes without analysis that, because construction will be temporary and the Project will comply with applicable federal and state regulations, its construction-related energy use will not be wasteful, inefficient, or unnecessary.[166]

However, this conclusion fails to meet CEQA's standard for evaluating energy impacts. As in *League to Save Lake Tahoe*, the City does not discuss whether any energy conservation or renewable energy features could be incorporated into the Project. For example, the MND failed to consider the use of Tier 4 Final

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[158] *League to Save Lake Tahoe* (2022) 75 CA5th 63, 167–68.
[159] *Id.* at 70.
[160] *Id.* at 165-166.
[161] *Id.* at 166.
[162] *Id.* at 167-168.
[163] *Id.* at 168.
[164] MND, p. 3-32.
[165] *Id.* at p. 3-33.
[166] *Id.* at pp. 3-32—3-35.

construction equipment, electric or hybrid vehicles, or recycled or locally sourced materials—all of which are feasible and commonly implemented to reduce construction energy impacts.

Furthermore, reliance on compliance with standard regulations such as Title 24 is insufficient. As the cases above demonstrate, compliance with Title 24 regulations alone does not support the conclusion that energy impacts are less than significant. [167] The MND must consider energy conservation measures that go beyond the Title 24 mandatory standards, in order to demonstrate that the Project's energy consumption would not be wasteful, inefficient, or unnecessary. The MND's failure to do so renders its conclusion unsupported and the Project's construction related energy impacts remain potentially significant. O-2-15 cont.

In sum, the MND's energy analysis fails to adequately analyze measures that would reduce the wasteful, inefficient, and unnecessary consumption of energy during the Project's construction. It also fails to meaningfully address Appendix F's considerations of whether a buildings should be constructed at all, how large it should be, where it should be located, whether it should incorporate renewable energy resources, or anything else external to the building's envelope.[168] This violates CEQA and thus an EIR must be prepared that includes this analysis.

VII. THE PLANNING COMMMISSION CANNOT MAKE THE REQUISITE FINDINGS TO RECOMMEND APPROVAL OF THE PROJECT'S ENTITLEMENTS

The Project requires the City to issue several discretionary approvals, including: two Conditional Use Permits ("CUP") for the proposed hotel and drive through coffee shop; a Tentative Parcel Map ("TPM"); and Commission review and approval of the site plan, site improvements, landscaping plans, and architectural elevations for each portion of the Project.[169] However, as discussed above, the MND fails to adequately analyze or mitigate several significant environmental impacts. As a result, the City cannot make the requisite findings to approve the Project's CUP or TPM. O-2-16

Conditional Use Permit

To approve a CUP, the City must make the following findings:

[167] *Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 CA4th 256, 264; *California Clean Energy Comm. v. City of Woodland* (2014) 225 CA4th 173, 208.
[168] *Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 CA4th 256, 264.
[169] MND, pp. 2-15, 2-23.

- That the proposed development will not adversely affect the applicable land use plans of the city;
- That the proposed development will not be detrimental to the public health, safety and welfare;
- Theat the proposed development will comply to the maximum extent feasible with the regulations of the city's general plan, the applicable zoning district and the city's development standards;
- That the proposed development is appropriate at the proposed location.[170]

As detailed in our comments and those of our experts, there is substantial evidence that the Project may result in several potentially significant environmental impacts. These include: (1) serious health risks to future onsite workers and guests from vapor intrusion due to PCE contamination; (2) exposure to Valley Fever and DPM emissions during construction, (3) significant noise impacts to nearby residences from construction related vibration noise and project related increase in pedestrian noise, and (4) potentially significant cumulative air quality impacts. The MND fails to adequately analyze or mitigate these impacts. These unaddressed impacts would be detrimental to the public health, safety, or welfare of the community. As such, the City may not approve the CUP until it prepares an EIR to adequately analyze and mitigate the Project's significant impacts and incorporate all feasible mitigation measures to avoid or minimize these impacts to the greatest extent feasible.

O-2-16 cont.

Tentative Parcel Map

Before approving the Project's proposed tentative parcel map, the City must make the following findings:

- That the proposed map is consistent with the general plan or applicable specific plan, or other applicable provisions of the Municipal Code;
- That the site is physically suitable for the type of development;
- That the site is physically suitable for the proposed density of development;
- That the design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage or substantially and avoidably injure fish or wildlife or their habitat;

[170] Redlands Municipal Code ("RMC") § 18.192.060.

- That the design of the subdivision or the type of improvements are not likely to cause serious public health problems;
- That the design of the subdivision or the type of improvements will not conflict with easements, acquired by the public at large, for access through or use of, property within the proposed subdivision;
- Subject to section 66474.4 of the subdivision map act, that the land is not subject to a contract entered into pursuant to the California land conservation act of 1965 and that the resulting parcels following a subdivision of the land would be too small to sustain their agricultural use.[171]

For the same reasons stated above, the City cannot make these required findings because the Project presents potentially significant environmental impacts which have not been properly analyzed or disclosed in the MND. Accordingly, the City lacks substantial evidence to support a finding that the design of the subdivision or the proposed improvements are not likely to cause substantial environmental damage or serious public health problems. The City must first prepare an EIR that fully addresses all of the Project's potentially significant environmental impacts, as required by CEQA. O-2-16 cont.

Additionally, the City lacks substantial evidence to conclude that the proposed map is consistent with the City's General Plan. For example, the City's General Plan contains specific noise policies and thresholds designed to protect sensitive receptors from intrusive or excessive noise levels. As discussed above and in Mr. Meighan's comments, the Project may result in potentially significant noise impacts that would affect the nearby residences that were not disclosed or mitigated in the MND. Therefore, because the Project could result in violation of adopted noise policies, the TPM is inconsistent with the General Plan.

In short, the MND's failure to address the Project's significant impacts preclude the Planning Commission from making the findings required to approve the Project. Therefore, the Planning Commission cannot approve the MND or the Project entitlements without first requiring preparation of an EIR that accurately analyzes and discloses the Project's significant environmental effects.

VIII. CONCLUSION

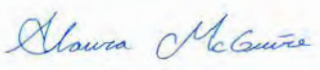
For the reasons discussed above, the MND for the Project is inadequate under CEQA. There is substantial evidence supporting a fair argument that the Project will result in significant, unmitigated impacts which the MND fails to O-2-17

[171] RMC §§ 17.11.040(C), 17.07.070(D); Subdivision Map Act §§ 66474, 66473.5.

disclose or mitigate. The County must prepare an EIR and circulate it for public review to address these impacts. Until then, the City may not lawfully approve the Project. O-2-17 cont.

Thank you for your attention to these comments. Please include them in the record of proceedings for the Project.

Sincerely,



Alaura R. McGuire

Attachments
ARM:acp

7944-005acp