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Via Email

March 12, 2025

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Re: Comment on the Draft (DEIR) and Final Environmental Impact Report (FEIR) for New Beatrice West Project – March 13, 2025, Planning Commission Hearing

Dear City Planning Commission President Lawshe and Honorable Members of the Planning Commission,

This comment is submitted on behalf of **Supporters Alliance for Environmental Responsibility ("SAFER")**, and its members living, working and recreating in and around the City of Los Angeles, regarding the Draft Environmental Impact Report ("DEIR") and Final Environmental Impact Report ("FEIR"), prepared for the New Beatrice West Project (SCH #2020120119, ENV-2020-3533-EIR), which proposes the construction of a new, eight-story office building with up to 196,100 square feet of office space, and 3,400 square feet of ground floor commercial space, and a five-level parking structure located at 12531-125553 West Beatrice

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Street, 12565-12575 West Beatrice Street, and 5410-5454 South Jandy Place in the City of Los Angeles. ("Project"). SAFER adopts by reference all comments filed this matter.

SAFER is concerned that the DEIR and FEIR fail as informational documents and fail to impose all feasible mitigation measures to reduce the Project's impacts. SAFER requests that the Planning Commission direct Planning staff to address these shortcomings in a revised final environmental impact report ("RFEIR") and recirculate the RFEIR prior to considering approvals for the Project.

PROJECT DESCRIPTION

The Project is located at 12531-12553 W. Beatrice Street, 12565-12575 W. Beatrice Street, and 5410-5454 S. Jandy Place, Los Angeles, California 90066. The Project includes the construction of a new eight-story office building with a total floor area of 199,500 square feet comprised of 196,100 square feet of office space and 3,400 square feet of ground floor commercial space. The Project is proposed on a 196,463 square foot (4.51 acre) site.

The Project site is currently occupied by a 23,072 square foot office building and two accessory buildings of 5,044 and 2,144 square feet at 12575 W. Beatrice Street, and an 87,881 square foot office building at 12541 W. Beatrice Street. As part of the Project, the existing structures at 12575 W. Beatrice Street would be removed while the existing office building at 12541 W. Beatrice Street would be retained. The existing property lot lines would be adjusted to accommodate a corner landscaped parcel, a building site for the construction of the proposed new building at 12575 W. Beatrice Street, and a parcel for the existing building (12541 W. Beatrice Street). When the lot line adjustment is complete, the lot at 12575 W. Beatrice Street would contain approximately 103,281 square feet (2.37 acres) and the lot at 12541 W. Beatrice Street would contain approximately 93,182 square feet (2.14 acres). An approximately 289 square foot lot would be created at the corner of Jandy Place and Beatrice Street for landscaping and open space purposes.

The Project would provide 811 parking spaces, fulfilling the requirements of the Los Angeles Municipal Code ("LAMC"). 791 of the parking spaces would be provided in five levels of structured parking, including three levels above grade and two subterranean levels, with the remaining spaces provided in a surface parking area. The Project would include landscaped courtyards and walkways to connect and integrate the proposed building with the remaining office building to create an integrated office campus. The Project would provide approximately 31,233 square feet of landscaping throughout the Project site.

The Project was previously considered and approved by the City under Case No. CPC-2016-1208-CU-SPR, which was approved by the City Planning Commission on August 18, 2017, and Case No. AA-2017-397-PMEX, which was approved by the Advisory Agency on June 7, 2018. The City prepared and adopted a mitigated negative declaration (Case No. ENV-2016-1209-MND). Two appeals were filed and heard by the City. The appeal of Case No. CPC-2016-1208-

CU-SPR was denied by the City Council on February 7, 2018; and the appeal of Case No. AA-2017-397-PMEX was denied by the City Planning Commission on November 19, 2018.

Subsequently, two petitions for writ of mandate were filed and consolidated challenging the City's approvals of the Project, on the grounds that the City's MND was inadequate under CEQA (*Karney Management v. City of Los Angeles*, Case No. BS172677 [Consolidated with Case No. 18STCP03226]). The Honorable John A. Torribio of the Los Angeles County Superior Court ruled that the MND was inadequate as to aesthetics, noise and traffic. On January 21, 2020, the court entered a judgment granting the petition for writ of mandate as to the CEQA cause of action and denying the remainder of the causes of action. The judgment vacated the City's approval of the MND and required an EIR to be prepared. However, the judgment did not invalidate the underlying approvals.

I. LEGAL STANDARD

CEQA requires public agencies to analyze the potential environmental impacts of their proposed actions in an EIR. PRS § 21100. "The foremost principle under CEQA is that the Legislature intended the act to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." *Laurel Heights Improvement Assn. v. Regents of Univ. of Cal* ("*Laurel Heights I*") (1988) 47 Ca.3d.376, 390 (internal quotations omitted).

CEQA has two primary purposes. First CEQA is designed to inform decision makers and the public about the potential significant environmental effects of a project.¹ "Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR 'protects not only the environment but also informed self-government.'"² The EIR has been described as "an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return."³ As the CEQA Guidelines explain, "[t]he EIR serves not only to protect the environment but also to demonstrate to the public that it is being protected."⁴

Second, CEQA requires public agencies to avoid or reduce environmental damage when "feasible" by requiring consideration of environmentally superior alternatives and adoption of all

¹ Pub. Resources Code § 21061; CEQA Guidelines §§ 15002(a)(1); 15003(b)-e; *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 517 ("[T]he basic purpose of an EIR is to provide public agencies and the public in general with detailed information about the effect [that] a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.").

² *Citizens of Goleta Valley*, 52 Cal.3d at p. 564 (quoting *Laurel Heights I*, 47 Cal.3d at 392).

³ *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810; see also *Berkeley Keep Jets Over the Bay v. Bd. Of Port Comm'rs.* (2001) 91 Cal.App.4th 1344, 1354 ("*Berkeley Jets*") (purpose of EIR is to inform the public and officials of environmental consequences of their decisions *before* they are made).

⁴ CEQA Guidelines § 15003(b).

feasible mitigation measures.⁵ The EIR serves to provide agencies and the public with information about the environmental impacts of a proposed project and to “identify ways that environmental damage can be avoided or significantly reduced.”⁶ If the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has “eliminated or substantially lessened all significant effects on the environment” to the greatest extent feasible and that any unavoidable significant effects on the environment are “acceptable due to overriding concerns.”⁷

While courts review an EIR using an “abuse of discretion” standard, “the reviewing court is not to ‘uncritically rely on every study or analysis presented by a project proponent in support of its position. A clearly inadequate or unsupported study is entitled to no judicial deference.’”⁸ As courts have explained, a prejudicial abuse of discretion occurs if “the failure to include relevant information precludes informed decision-making and informed public participation, thereby thwarting the statutory goals of the EIR process.”⁹ “The ultimate inquiry, as case law and the CEQA guidelines make clear, is whether the EIR includes enough detail ‘to enable who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.’”¹⁰

II. THE DEIR AND FEIR FAIL TO DISCLOSE, ANALYZE AND MITIGATE POTENTIALLY SIGNIFICANT IMPACTS

An EIR must fully disclose all potentially significant impacts of a Project and implement all feasible mitigation to reduce those impacts to less than significant levels. The lead agency’s significance determination with regard to each impact must be supported by accurate scientific and factual data.¹¹ An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.¹²

Moreover, the failure to provide information required by CEQA is a failure to proceed in the manner required by CEQA.¹³ Challenges to an agency’s failure to proceed in the manner

⁵ CEQA Guidelines § 15002(a)(2), (3); *see also Berkeley Jets*, 91 Cal.App.4th at 1354; *Citizens of Goleta Valley*, 52 Cal.3d at p. 564.

⁶ CEQA Guidelines § 15002(a)(2).

⁷ *PRC § 21081(a)(3), (b); CEQA Guidelines §§ 15090(a), 15091(a), 15092(b)(2)(A), (B); Covington v. Great Basin Unified Air Pollution Control Dist.* (2019) 43 Cal.App.5th 867, 883.

⁸ *Berkeley Jets*, 91 Cal.App.4th at p. 1355 (emphasis added) (quoting *Laurel Heights I*, 47 Cal.3d at 391, 409, fn. 12).

⁹ *Berkeley Jets*, 91 Cal.App.4th at p. 1355; *see also San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 722 (error is prejudicial if the failure to include relevant information precludes informed decision making and informed public participation, thereby thwarting the statutory goals of the EIR process); *Galante Vineyards*, 60 Cal.App.4th at p. 1117 (decision to approve a project is a nullity if based upon an EIR that does not provide decision-makers and the public with information about the project as required by CEQA); *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 946 (prejudicial abuse of discretion results where agency fails to comply with information disclosure provisions of CEQA).

¹⁰ *Sierra Club*, 6 Cal.5th at p. 516 (quoting *Laurel Heights I*, 47 Cal.3d at 405).

¹¹ CEQA Guidelines § 15064(b).

¹² *Kings Cty. Farm Bur. v. Hanford* (1990) 221 Cal.App.3d 692, 732.

¹³ *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236.

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required by CEQA, such as the failure to address a subject required to be covered in an EIR or to disclose information about a project's environmental effects or alternatives, are subject to a less deferential standard than challenges to an agency's factual conclusions.¹⁴ In reviewing challenges to an agency's approval of an EIR based on a lack of substantial evidence, the court will "determine de novo whether the agency has employed the correct procedures, scrupulously enforcing all legislatively mandated CEQA requirements."¹⁵

Additionally, CEQA requires agencies to commit to all feasible mitigation measures to reduce significant environmental impacts.¹⁶ In particular, the lead agency may not make required CEQA findings, including finding that a project impact is significant and unavoidable, unless the administrative record demonstrates that it has adopted all feasible mitigation to reduce significant environmental impacts to the greatest extent feasible.¹⁷

Even when the substantial evidence standard is applicable to agency decisions to certify an EIR and approve a project, reviewing courts will not "uncritically rely on every study or analysis presented by a project proponent in support of its position. A clearly inadequate or unsupported study is entitled to no judicial deference."¹⁸

A. The DEIR and FEIR Fail to Analyze and Mitigate Potentially Significant Impacts Resulting from Noise

Noise expert Ani Toncheva, expert noise consultant of environmental consulting firm Wilson Ihrig, performed an independent review and analysis of the Project's detrimental noise impacts, including review of the DEIR, DEIR Appendix I (Noise Calculation Worksheets, FEIR, and FEIR Appendix 2 (Supplemental Noise Worksheets). Ms. Toncheva's letter regarding the review is attached below as "Exhibit A".

Ms. Toncheva notes several adverse effects of noise, including noise-induced hearing loss, speech interference, sleep disturbance, cardiovascular and physiological effects (such as increased blood pressure, elevated heart rate, and vasoconstriction), and impaired cognitive performance.¹⁹ These adverse effects are likely to occur due to the Project's proposed unrealistic construction mitigation, errors in the operational noise analysis, and incomplete construction vibration mitigation.

The FEIR'S construction mitigation is unrealistic and does not affect all receivers. Ms. Toncheva states that the DEIR and FEIR make "unrealistic claims" about the reduction achieved

¹⁴ *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.

¹⁵ *Id.*, *Madera Oversight Coal., Inc. v. County of Madera* (2011) 199 Cal. App. 4th 48, 102.

¹⁶ CEQA Guidelines § 15002(a)(2).

¹⁷ PRC § 21081(a)(3), (b); CEQA Guidelines §§ 15090, 15091; *Covington v. Great Basin Unified Air Pollution Control Dist.* (2019) 43 Cal.App.5th 867, 883.

¹⁸ *Berkeley Jets*, 91 Cal.App.4th at 1355.

¹⁹ Ex. A, at 2; *Guidelines for Community Noise*, eds B. Berglund, T. Lindvall, and D. Schwela, World Health Organization, Geneva, Switzerland, 1999 (<https://iris.who.int/handle/10665/66217>).

by Mitigation Measure NOI-MM-1.²⁰ This measure states that “a temporary sound barrier shall be designed to provide a minimum of 15-dB noise reduction at the ground level” at the residences across Beatrice Street (“R1”).²¹ However, a temporary sound barrier or heavy vinyl noise curtain typically used on construction sites would only achieve 5-10 dB reduction, a fact acknowledged by the FEIR and the methodology adopted therein.²²

Additionally, NOI-MM-1 only applies to ground floor residences and does not address mitigation for upper floors. A typical construction site barrier would only provide relief to multiple floors if the equipment is within 10 feet, however, the calculations presented in Appendix I of the DEIR show that most of the construction will be located beyond this distance.²³ Moreover, the DEIR predicates construction noise levels that exceed the adopted thresholds by up to 22.9 dB at R1, and acknowledges that this is a significant impact.²⁴ Ms. Toncheva suggests implementation of measures such as source mitigation like enclosures, temporary shielding around stationary equipment, and jackhammer jackets; window coverings on the receiver side; and a noise monitoring program during construction.²⁵ Therefore, the FEIR should be updated to reflect a realistic barrier reduction and increase noise mitigation to address the acknowledged and unmitigated significant noise impacts.

A public 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 measure because no record evidence existed that replacement water was available).) “Feasible” means capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, legal, social and technological factors. (14 CCR § 15364.) Mitigation measures must be fully enforceable through permit conditions, agreements or other legally binding instruments. (14 CCR § 15126.4(a)(2).) NOI-MM-1 fails to meet these legal standards.

Furthermore, the DEIR’s operational noise analysis contains multiple errors and fails to identify potentially significant noise impacts. For instance, the DEIR does not have a figure showing the layout and results of the modeling for mechanical noise from rooftop equipment.²⁶ However, Appendix I shows the reference sound power levels used in the modeling and indicates that the modeled results of predicted mechanical noise levels are at the first-floor residences.²⁷ These predictions ignore the effect on the upper floors of R1 residences, which would be closer to the rooftop equipment. Ms. Toncheva states that the DEIR’s estimated noise level at R1 of 37.1 dB is grossly underestimated, with a more realistic figure being 61-65 dBA (depending on the floor).²⁸ This would exceed the significance threshold of 55.8 dBA for operational noise presented

²⁰ Ex. A, at 3.

²¹ FEIR, at III-4.

²² Ex. A, at 3.

²³ Id.

²⁴ DEIR, at IV.I-35; Ex. A, at 3.

²⁵ Id.

²⁶ Id. At 4; DEIR IV.1-31.

²⁷ DEIR, Appendix I, at 117-118.

²⁸ DEIR, IV.1-13; Ex. A, at 4.

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in the DEIR. The DEIR (per NOI-PDF-2) also states that “all outdoor mounted mechanical equipment will be screened from off-site noise-sensitive receptors,” but does not provide details on the expected reduction.²⁹ The FEIR should be updated to provide a figure showing the relevant modeling used for the analysis, correct errors in the predictions including evaluating levels closer to the rooftop noise sources, provide information on measure NOI-PDF-2, and show that mechanical noise levels are not expected to exceed operational noise threshold with implemented shielding.

Finally, the DEIR’s discussion of construction vibration mitigation is incomplete. The DEIR acknowledges that “vibration impacts associated with the Project construction with respect to human annoyance would be potentially significant,” concluding that the Project’s vibration impacts with respect to human annoyance are significant and unavoidable.³⁰ However, the DEIR only considered wave barriers as potential mitigation, although other vibration mitigation measures such as buffer distances for certain equipment, or coordinate with the recording studio hours of operation to avoid impacting studio operations.³¹ The FEIR should be updated to consider other additional vibration mitigation measures.

B. The DEIR and FEIR Fail to Analyze and Mitigate Potentially Significant Indoor Air Quality Impacts

Indoor air quality expert Francis J. Offermann, P.E., C.I.H., of Indoor Environmental Engineering, conducted an independent review and analysis of the Project’s impact on indoor air quality. Mr. Offermann’s comment letter regarding his review of the Project is attached below as “Exhibit B”.

Mr. Offermann states that the Project will result in significant cancer risks from exposures to formaldehyde released by the building materials and furnishings.³² The Project contains commercial spaces which will be constructed with CARB Phase 2 Formaldehyde ATCM materials and ventilated with the minimum code required amount of outdoor air. Based on Mr. Offermann’s modeling, the Project’s average 70-year lifetime formaldehyde daily dose is 70.9 ug/day, which is 1.77 times the California Proposition 65 Safe Harbor Levels, No Significant Risk Levels (NSRL) for carcinogens, and represents a cancer risk of 17.7 per million, which exceeds the CEQA cancer risk of 10 per million.³³ This impact, combined with the preexisting average outdoor air concentration of formaldehyde in California, which carries a risk of 1.85. per million,³⁴ should be analyzed in a revised EIR, and all feasible mitigation measures should be implemented to reduce this impact.

²⁹ DEIR, IV.1-32; Ex. A, at 4.

³⁰ DEIR, IV.1-55-56.

³¹ Ex. A, at 4.

³² Ex. B, at 4.

³³ Id.

³⁴ Id.

Mr. Offermann states that a revised EIR should incorporate a pre-construction building material/furnishing formaldehyde emissions assessment.³⁵ In order to evaluate and analyze the potential impacts from formaldehyde, the assessment should do the following:

1. Define Indoor Air Quality Zones. Divide the building into separate indoor air quality zones, (IAQ Zones). IAQ Zones are defined as areas of well-mixed air. Thus, each ventilation system with recirculating air is considered a single zone, and each room or group of rooms where air is not recirculated (e.g. 100% outdoor air) is considered a separate zone. For IAQ Zones with the same construction material/furnishings and design minimum outdoor air ventilation rates. (e.g. hotel rooms, apartments, condominiums, etc.) the formaldehyde emission rates need only be assessed for a single IAQ Zone of that type.³⁶
2. Calculate Material/Furnishing Loading. For each IAQ Zone, determine the building material and furnishing loadings (e.g., m² of material/m² floor area, units of furnishings/m² floor area) from an inventory of all potential indoor formaldehyde sources, including flooring, ceiling tiles, furnishings, finishes, insulation, sealants, adhesives, and any products constructed with composite wood products containing urea-formaldehyde resins (e.g., plywood, medium density fiberboard, particleboard).³⁷
3. Calculate the Formaldehyde Emission Rate. For each building material, calculate the formaldehyde emission rate (µg/h) from the product of the area-specific formaldehyde emission rate (µg/m²-h) and the area (m²) of material in the IAQ Zone, and from each furnishing (e.g. chairs, desks, etc.) from the unit-specific formaldehyde emission rate (µg/unit-h) and the number of units in the IAQ Zone.³⁸
4. Calculate the Total Formaldehyde Emission Rate. For each IAQ Zone, calculate the total formaldehyde emission rate (i.e. µg/h) from the individual formaldehyde emission rates from each of the building material/furnishings as determined in Step 3.³⁹
5. Calculate the Indoor Formaldehyde Concentration. For each IAQ Zone, calculate the indoor formaldehyde concentration (µg/m³) from Equation 1 by dividing the total formaldehyde emission rates (i.e. µg/h) as determined in Step 4, by the design minimum outdoor air ventilation rate (m³/h) for the IAQ Zone.⁴⁰
6. Calculate the Indoor Exposure Cancer and Non-Cancer Health Risks. For each IAQ Zone, calculate the cancer and non-cancer health risks from the indoor formaldehyde concentrations determined in Step 5 and as described in the OEHHA Air Toxics Hot Spots Program Risk Assessment Guidelines; Guidance Manual for Preparation of Health Risk Assessments (OEHHA, 2015).⁴¹
7. Mitigate Indoor Formaldehyde Exposures of exceeding the CEQA Cancer and/or Non-Cancer Health Risks. In each IAQ Zone, provide mitigation for any formaldehyde

³⁵ Id. at 5-10.

³⁶ Id. at 6.

³⁷ Id.

³⁸ Id.

³⁹ Id. at 8.

⁴⁰ Id.

⁴¹ Id. at 8-9.

exposure risk as determined in Step 6, that exceeds the CEQA cancer risk of 10 per million or the CEQA non-cancer Hazard Quotient of 1.0.

- a. Source mitigation:
 - i. reducing the amount materials and/or furnishings that emit formaldehyde
 - ii. substituting a different material with a lower area-specific emission rate of formaldehyde
- b. Ventilation mitigation for formaldehyde emitted from building materials and/or furnishings:
 - i. increasing the design minimum outdoor air ventilation rate to the IAQ Zone.⁴²

Mr. Offermann also states that the Project will cause negative impacts due to lack of outdoor air ventilation. The tight building envelope construction, combined with the fact that many people never open their windows for ventilation, results in homes with low outdoor air exchange rates and higher indoor air contaminant concentrations.⁴³ In order to design the Project building such that interior noise levels are acceptable, an acoustic study with actual on-site measurements of the existing ambient noise levels and modeled future ambient noise levels should be conducted over a minimum of a one-week period, which in concert with a mechanical supply of outdoor air ventilation, will allow occupants to balance exterior noise reduction with having a habitable interior environment.⁴⁴

Another potential significant impact requiring revision of the FEIR is the outdoor concentration of PM_{2.5}. The Project site already has an existing cancer risk of 460 per million due to the site's high concentrations of ambient air contaminants from high levels of motor vehicle traffic.⁴⁵ Mr. Offermann concludes that the annual average of PM_{2.5} from the Project will exceed the California and National PM_{2.5} standards, and warrants installation of high efficiency air filters in all mechanically supplied outdoor air ventilation systems.⁴⁶ In addition, air quality analyses should be conducted to determine the concentrations of PM_{2.5} people inhale each day, including cumulative impacts from project-related emissions, existing and future emissions from local PM_{2.5} sources upon the outdoor air concentration at the Project site.⁴⁷

Due to the foregoing indoor air quality impacts, further analysis and mitigation is needed. Mr. Offermann suggests the following indoor air quality impact mitigation measures:

1. Indoor Formaldehyde Concentrations Mitigation. Use only composite wood materials (e.g. hardwood plywood, medium density fiberboard, particleboard) for all interior finish systems that are made with CARB approved no-added formaldehyde (NAF) resins (CARB, 2009). CARB Phase 2 certified composite wood products, or ultra-low emitting

⁴² Id. at 9.

⁴³ Id. at 10.

⁴⁴ Id. at 11.

⁴⁵ Id.

⁴⁶ Id. at 12.

⁴⁷ Id. at 11.

formaldehyde (ULEF) resins, do not ensure indoor formaldehyde concentrations that are below the CEQA cancer risk of 10 per million. Only composite wood products manufactured with CARB approved no-added formaldehyde (NAF) resins, such as resins made from soy, polyvinyl acetate, or methylene diisocyanate can ensure that the OEHHA cancer risk of 10 per million is met.

- a. Alternatively, conduct the previously described Pre-Construction Building Material/Furnishing Chemical Emissions Assessment, to determine that the combination of formaldehyde emissions from building materials and furnishings do not create indoor formaldehyde concentrations that exceed the CEQA cancer and non-cancer health risks.
2. Outdoor Air Ventilation Mitigation. Provide each habitable room with a continuous mechanical supply of outdoor air that meets or exceeds the California 2016 Building Energy Efficiency Standards (California Energy Commission, 2015) requirements of the greater of 15 cfm/occupant or 0.15 cfm/ft² of floor area. Following installation of the system conduct testing and balancing to ensure that required amount of outdoor air is entering each habitable room and provide a written report documenting the outdoor airflow rates. Do not use exhaust only mechanical outdoor air systems, use only balanced outdoor air supply and exhaust systems or outdoor air supply only systems. Provide a manual for the occupants or maintenance personnel, that describes the purpose of the mechanical outdoor air system and the operation and maintenance requirements of the system.
3. PM_{2.5} Outdoor Air Concentration Mitigation. Install air filtration with sufficient PM_{2.5} removal efficiency (e.g. MERV 13 or higher) to filter the outdoor air entering the mechanical outdoor air supply systems, such that the indoor concentrations of outdoor PM_{2.5} particles are less than the California and National PM_{2.5} annual and 24-hour standards. Install the air filters in the system such that they are accessible for replacement by the occupants or maintenance personnel. Include in the mechanical outdoor air ventilation system manual instructions on how to replace the air filters and the estimated frequency of replacement.

The Project will have a potentially significant effect on indoor air quality. The DEIR and FEIR fail to properly disclose, analyze and mitigate the Project's potential impacts to indoor air quality. Therefore, the FEIR should be revised to address these issues.

C. The Statement of Overriding Consideration Must Consider Whether the Project Provides Employment Opportunities for Highly Trained Workers

The DEIR concludes that the project will have significant and unavoidable environmental impacts related to noise and vibration.⁴⁸ Therefore, in order to approve the Project, CEQA requires the City to adopt a statement of overriding considerations, providing that the Project's overriding benefits outweigh its environmental harm.⁴⁹ An Agency's determination that a project's benefits

⁴⁸ DEIR, VI-1-3.

⁴⁹ CEQA Guidelines, § 15043.

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outweigh its significant, unavoidable impacts “lies at the core of the lead agency’s discretionary responsibility under CEQA.”⁵⁰

In adopting a statement of overriding considerations, the City must set forth the reason for its action, pointing to supporting substantial evidence in the administrative record.⁵¹ This requirement reflects the policy that public agencies must weigh a project’s benefits against its unavoidable environmental impacts, and may find the adverse impacts acceptable only if the benefits outweigh the impacts.⁵² Importantly, a statement of overriding considerations is legally inadequate if it fails to accurately characterize the relative harms and benefits of a project.⁵³

Here, in order to approve the Project, the City must find that the Project’s significant, unavoidable impacts are outweighed by the Project’s benefits to the community. CEQA specifically references employment opportunities for highly trained workers as a factor to be considered in making the determination of overriding benefits.⁵⁴ There is no substantial evidence in the record showing that the Project’s significant, unavoidable impacts are outweighed by benefits to the community. For example, the Applicant has not made any commitments to employ graduates of state approved apprenticeship programs or taken other steps to ensure employment of highly trained and skilled craft workers on Project construction.

This issue was raised in previous comments to the DEIR.⁵⁵ The City responded in the FEIR, stating that the comment “does not raise issues,” that the City has “complied with and will continue to comply with Public Resources Code Section 21081,” and that “there is no requirement to use union labor in order to adopt a statement of overriding considerations.”⁵⁶

The City’s response is insufficient, as it does nothing to address the actual concerns raised on this issue. The City’s denial of issues being raised is bears no weight when it does not even attempt to explain this denial. Similarly, the City offers no evidence supporting its claim that it complied with PRC § 21081. Finally, even assuming that the City is correct regarding the lack of requirements to use union labor, the City’s response does not demonstrate that the City considered employment opportunities for highly trained workers as a factor in making the determination of overriding benefits. Therefore, despite the City’s responses to this issue, the City would not fulfill its obligations under CEQA if it adopted a statement of overriding considerations and approved the project.

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⁵⁰ *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392.

⁵¹ Pub. Resources Code, § 21081, subd. (b); CEQA Guidelines, § 15093, subds. (a) and (b); *Cherry Valley Pass Acres & Neighbors v. City of Beaumont* (2010) 190 Cal.App.4th 316, 357.

⁵² Pub. Resources Code, § 21081(b); CEQA Guidelines, § 15093, subds. (a) and (b).

⁵³ *Woodward Park Homeowners Association v. City of Fresno* (2007) 150 Cal.App.4th 683, 717.

⁵⁴ Pub. Resources Code, § 21081, subds. (a)(3) and (b).

⁵⁵ FEIR, Appendix FEIR-1

⁵⁶ FEIR Section II, page II-39.

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Sincerely,

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