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VIA EMAIL

November 17, 2025

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Re: Comment on the Final Environmental Impact Report for the Anaheim Hills Festival Specific Plan Amendment Project (SCH No. 2024010859)

Dear Chairperson Walker, Honorable Members of the Anaheim Planning Commission, and Ms. Lauffer:

This comment is submitted on behalf of Supporters Alliance for Environmental Responsibility ("SAFER") regarding the Environmental Impact Report ("FEIR") prepared for the Anaheim Hills Festival Specific Plan Amendment Project (SCH No. 2024010859) ("Project"). The Project involves amendments to the General Plan and the Anaheim Hills Festival Specific Plan to build a new 447-unit, multi-family residential building in the Anaheim Hills area of the City of Anaheim, California. The Project is scheduled to be heard at the Anaheim Planning Commission hearing on November 17, 2025 at 5pm.

SAFER is concerned that the EIR violates CEQA because: (1) it relies on improper deferred mitigation for the Project's fire and evacuation safety impacts, which is prohibited under the California Environmental Quality Act ("CEQA"), without evidence of the measures'

effectiveness; (2) its mitigation measures for soil stability impacts are inadequate; (3) it fails to include all feasible mitigation measures to reduce the Project's transportation impacts; and (4) it fails to analyze and mitigate the Project's significant indoor air quality impacts. SAFER requests that the Planning Commission deny certification of the EIR for the Project and instead require the City to address the EIR's shortcomings in a recirculated EIR, before Project approval.

SAFER's review of the Project has been assisted by indoor air quality expert Francis Offermann, P.E., C.I.H. Mr. Offermann's comment and CV are attached as Exhibit A and are incorporated herein by reference in their entirety.

PROJECT DESCRIPTION

The Project involves the demolition of an existing movie cinema on the Project site and the construction of a new, 447-unit, multi-family residential building with a five-level wraparound parking structure with one level of subterranean parking on 16.2 acres of a 85.7-acre site, located in the Anaheim Hills area of the City of Anaheim. The Project site is bounded by Santa Ana Canyon Road and SR-91 to the north, Roosevelt Road to the east, single family residences to the south, and undeveloped land to the west. Surrounding land uses include commercial uses to the north, office and institutional uses to the east, residential uses to the south, and undeveloped private parcels, a park preserve, and a utility transmission corridor to the west. The site currently has a General Plan land use designation of Regional Commercial. The site consists of the entirety of the Anaheim Hills Festival Specific Plan ("Specific Plan"), which currently includes four different commercial Development Areas ("Das").

The Project includes amendments to the Specific Plan and General Plan. The Specific Plan amendment would create a new development area, DA 5, within the existing Specific Plan boundaries to allow for the development of residential uses mixed in with existing commercial development. DA 5 would reduce DA 2 from 48 acres to 31.8 acres. The net reduction of 16.2 acres from DA 2 would be used to create DA 5 and build the Project. The General Plan amendment would change the Project site's land use designation from Regional Commercial to Mixed-Use Medium.

LEGAL STANDARD

I. CEQA and Environmental Impact Reports

CEQA has two primary purposes. First, CEQA is designed to inform decisionmakers and the public about the potential, significant environmental effects of a project. (14 Cal. Code Regs. ["CCR"] § 15002(a)(1).) "Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR 'protects not only the environment but also informed self-government.'" (*Citizens of Goleta Valley v. Bd. Of Supervisors* (1990) 52 Cal.3d 553, 564.) Second, CEQA requires public agencies to avoid or reduce environmental damage when "feasible" by requiring "environmentally superior" alternatives and all feasible mitigation measures. (14 CCR § 15002(a)(2) and (3); *see also Berkeley Jets Over the Bay Com. V. Board of Port Cmrs.* (2001) 91 Cal.App.4th 1349, 1354;

Goleta Valley, 52 Cal.3d at 564.)

CEQA requires that an agency analyze the potential environmental impacts of its proposed actions in an Environmental Impact Report ("EIR"), except in certain limited circumstances. (*See, e.g.*, Pub. Res. Code ["PRC"] § 21100.) The EIR is the very heart of CEQA. (*Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652. The EIR is an "environmental 'alarm bell' whose purpose is to alert the public and its responsible officials to environmental changes before they have reached the ecological points of no return." (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004), 124 Cal.App.4th 1184, 1220.) The EIR also functions as a "document of accountability," intended to "demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action." (*Laurel Heights Improvements Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 392.)

The EIR serves to provide agencies and the public with information about the environmental impacts of a proposed project and to "identify ways that environmental damage can be avoided or significantly reduced." (14 CCR § 15002(a)(2).) Critical to this purpose, the EIR must contain an "accurate and stable project description." (*Cnty. of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185 at 192-93 ("An accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR.") The project description must contain (a) the precise location and boundaries of the proposed project, (b) a statement of the project objectives, and (c) a general description of the project's technical, economic, and environmental characteristics. (14 CCR § 15124.)

II. Standard of Review

The California Supreme Court has emphasized that:

> When reviewing whether a discussion is sufficient to satisfy CEQA, a court must be satisfied that the EIR (1) includes sufficient detail to enable those who did not participate in its preparation to understand and to consider meaningfully the issues the proposed project raises [citation omitted] . . .

(*Sierra Club v. Cty. Of Fresno* (2018) 6 Cal.5th 502, 510 (2018) [citing *Laurel Heights Improvement Assn.*, 47 Cal.3d at 405].) The Court in *Sierra Club v. Cty. of Fresno* also emphasized that another primary consideration of sufficiency is whether the EIR "makes a reasonable effort to substantively connect a project's air quality impacts to likely health consequences." (*Id.* at 510.) "Whether or not the alleged inadequacy is the complete omission of a required discussion or a patently inadequate one-paragraph discussion devoid of analysis, the reviewing court must decide whether the EIR serves its purpose as an informational document." (*Id.* at 516.)

Although an agency has discretion to decide the manner of discussing potentially significant effects in an EIR, "a reviewing court must determine whether the discussion of a potentially significant effect is sufficient or insufficient, i.e., whether the EIR comports with its

intended function of including 'detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.'" (*Sierra Club*, 6 Cal.5th at 516 [citing *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1197].) "The determination whether a discussion is sufficient is not solely a matter of discerning whether there is substantial evidence to support the agency's factual conclusions." (*Id.* at 516.) As the Court emphasized:

> [W]hether a description of an environmental impact is insufficient because it lacks analysis or omits the magnitude of the impact is not a substantial evidence question. A conclusory discussion of an environmental impact that an EIR deems significant can be determined by a court to be inadequate as an informational document without reference to substantial evidence.

(*Id.* at 514.) Additionally, "in preparing an EIR, the agency must consider and resolve every fair argument that can be made about the possible significant environmental effects of a project." (*Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1109.)

III. Mitigation Measures

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

If the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has "eliminated or substantially lessened all significant effects on the environment where feasible" and that any unavoidable significant effects on the environment are "acceptable due to overriding concerns." (PRC § 21081; 14 CCR § 15092(b)(2)(A) and (B).)

DISCUSSION

I. The EIR relies on improper deferred mitigation measures for the Project's fire and evacuation safety impacts, without evidence that the measures are effective.

An EIR's mitigation measures must be fully enforceable and must actually rectify, reduce or eliminate an impact on the environment. (CEQA Guidelines, §§ 15370, 15126.4, subd. (a)(2).) "Mitigating conditions are not mere expressions of hope." (*Sierra Club v. Cnty. of San Diego* (2014) 231 Cal.App.4th 1152, 1167 [quoting *Lincoln Place Tenants Ass'n v. City of Los Angeles* (2005) 130 Cal.App.4th 1491, 1508].) The purpose of having mitigation measures is that they "actually be implemented as a condition of development, and not merely adopted and then

neglected or disregarded." (*Lincoln Place Tenants Assn. v. City of Los Angeles* (2005) 130 Cal.App.4th 1491, 1508.) A lead agency must determine, based on substantial evidence, that mitigation measures are effective. (*Lotus v. Dep't of Transportation* (2014) 223 Cal.App.4th 645, 656-658.) In addition, "[f]ormulation of mitigation measures shall not be deferred until some future time." (CEQA Guidelines § 15126.4, subd. (a)(1)(B).) "Deferred mitigation violates CEQA if it lacks performance standards to ensure the mitigation goal will be achieved." (*Golden Door Properties, LLC v. Cnty. of San Diego* (2020) 50 Cal.App.5th 467, 520.) Here, the EIR's mitigation measures for fire and evacuation safety impacts do not meet these fundamental standards.

A. The EIR relies on improperly deferred mitigation measures for the Project's fire and evacuation safety impacts.

Lead agencies may defer formulating mitigation until after project approval only "when it is impractical or infeasible to include those details during the project's environmental review." (CEQA Guidelines § 15126.4(a)(1)(B); *see also POET, LLC v. State Air Res. Bd.* (2013) 218 Cal.App.4th 681, 736.) An EIR must also explain an agency's decision to defer finalizing the specifics of mitigation. (*Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 281.)

In the limited circumstances where deferring mitigation is justified, the EIR must (1) commit itself to the mitigation, (2) adopt specific performance standards the mitigation will achieve, and (3) identify the types of potential actions that can feasibly achieve that performance standard. (Guidelines § 15126.4, subd. (a)(1)(B); *See Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 281; *San Joaquin Raptor Rescue Center v. Cnty. of Merced* (2007) 149 Cal.App.4th 645, 671.)

CEQA disallows deferring the formulation of mitigation measures to post-approval studies. (CEQA Guidelines § 15126.4(a)(1)(B); *Sundstrom v. Cnty. of Mendocino* (1988) 202 Cal.App.3d 296, 308-309.) An agency may only defer the formulation of mitigation measures when it possesses "'meaningful information' reasonably justifying an expectation of compliance." (*Sundstrom*, 202 Cal.App.3d at 308; *see also Sacramento Old City Association v. City Council of Sacramento* (1991) 229 Cal.App.3d 1011, 1028-29 (mitigation measures may be deferred only "for kinds of impacts for which mitigation is known to be feasible").)

An agency may not rely on mitigation measures of uncertain efficacy or feasibility (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727 (finding groundwater purchase agreement inadequate mitigation because there was no evidence that replacement water was available).) This approach helps "insure the integrity of the process of decisionmaking by precluding stubborn problems or serious criticism from being swept under the rug." (*Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 935.)

Moreover, "mitigation measure[s] [that do] no more than require a report be prepared and followed" do not provide adequate information for informed decisionmaking under CEQA. (*Endangered Habitats League, Inc. v. Cnty. of Orange* (2005) 131 Cal.App.4th 777, 794; CEQA

Guidelines § 15126.4(a)(1)(B).) By deferring the development of specific mitigation measures, the City has effectively precluded public input into the development of those measures. CEQA prohibits this approach. As explained by the court in *Communities for a Better Env't v. Richmond* (2010) 184 Cal.App.4th 70, 92:

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

Here, the EIR offers three mitigation measures to reduce the Project's adverse impacts related to fire and evacuation safety. These include: (1) PDF HAZ-1, in which the Project Applicant will prepare a construction fire prevention plan to be submitted to Anaheim Fire & Rescue for review and approval before Project construction begins; (2) PDF HAZ-2, in which the Applicant will develop a wildfire evacuation and awareness plan to be submitted for review and approval by the City of Anaheim Planning Department, Anaheim Police Department, and Anaheim Fire & Rescue before the issuance of a certificate of occupancy for the first multiple-family residential unit; and (3) MM HAZ-1, in which the Applicant will prepare a construction management plan to be submitted for review and approval by Anaheim Fire & Rescue before the issuance of grading permits.

However, all three measures constitute improper deferred mitigation, because all three of the plans would not be formulated until *after* Project approval, thereby depriving the public and the CEQA decision-making body of any opportunity to review the plans to ensure they are adequate. The EIR does not explain why it is impossible to prepare each of these mitigation plans now, during the EIR process.

Furthermore, the EIR deferred the preparation of the plans until after completion of CEQA review without imposing any substantive standards. Such deferred mitigation is invalid under CEQA, and the Project's impacts on fire and evacuation safety thus likely remain significant. A revised, recirculated EIR is required to develop clear, enforceable mitigation measures to address the Project's significant adverse impacts on fire and evacuation safety.

Additionally, the City may not delegate the formulation and approval of mitigation measures to address environmental impacts to the applicant, as it does here. An agency's legislative body must ultimately review and vouch for all environmental analysis mandated by CEQA. (*Sundstrom*, 202 Cal.App.3d at 306-308.) Thus, the EIR may not rely on safety plans to be developed and implemented later without approval by the City Council. Yet, that is precisely what the EIR's mitigation measures do. The City has therefore improperly delegated its legal responsibility of determining what constitutes adequate mitigation to the Applicant, in violation of CEQA.

B. There is no evidence that the EIR's mitigation measures for the Project's fire and evacuation safety impacts are effective.

A lead agency must determine, based on substantial evidence, that mitigation measures are effective. (*Lotus*, 223 Cal.App.4th at 656-658.) "[M]itigation measure[s] [that do] no more than require a report be prepared and followed" do not provide adequate information for informed decision-making under CEQA. (*Endangered Habitats League, Inc. v. Cnty. of Orange* (2005) 131 Cal.App.4th 777, 794; CEQA Guidelines § 15126.4(a)(1)(B).)

Here, the City failed to provide any evidence that the three abovementioned mitigation measures for the Project's fire and evacuation safety impacts will actually be effective to meaningfully reduce the Project's impacts because the City failed to quantify the effectiveness of the mitigation measures. The City also failed to compare the measures' effectiveness against a numerical threshold of impact significance. Nor could they, since the plans do not have to be created until after the EIR is certified and the Project is approved. As a result, the public has no way to evaluate whether the plans will actually decrease the fire and evacuation safety impacts. Moreover, the three mitigation measures do not provide the City adequate information to conclude that these measures will be effective. Therefore, the EIR violates CEQA because there is no evidence the mitigation measures will be effective and actually reduce fire and evacuation safety impacts.

II. The EIR relies on inadequate, deferred mitigation measures for the Project's adverse soil stability impacts.

Here, the EIR offers one mitigation measure, MM GEO-1, for the Project's adverse soil stability impacts. MM GEO-1 requires that, before the issuance of grading and building permits, the City's Building Division and Public Works Department review all Project plans for grading, foundation, structural, infrastructure, and other relevant construction permits to ensure compliance with the recommendations contained in the Geotechnical Exploration and Feasibility Report prepared for the Project in 2022 by NMG Geotechnical, Inc.

However, this constitutes insufficient, deferred mitigation because the City's review of the Project plans for compliance with the Geotechnical Exploration and Feasibility Report must be conducted ***before*** Project approval, especially since this Report is presently available. Otherwise, there is no way to determine whether the mitigation is sufficient to reduce impacts and the CEQA decision-making body will be deprived of the opportunity to review the plans for compliance, in violation of CEQA.

III. The EIR fails to require all feasible mitigation measures to reduce the Project's adverse transportation impacts.

CEQA prohibits a lead agency from approving a project with significant environmental effects if there are feasible mitigation measures or alternatives that can substantially lessen or avoid those effects. (PRC § 21002; *Mountain Lion Found. V. Fish & Game Comm'n* (1997) 16 Cal.4th 105, 134; *Laurel Heights*, 47 Cal.3d at 403 ["The chief goal of CEQA is mitigation or avoidance of environmental harm"].) CEQA defines "feasible" as "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors." (PRC § 21061.1; 14 CCR § 15364.)

"The core of an EIR is the mitigation and alternatives sections." (*Goleta Valley*, 52 Cal.3d at 564.) When an EIR concludes that a project will have significant impacts, the lead agency has two duties: (1) to meaningfully consider feasible mitigation measures and alternatives, and (2) to identify mitigation measures and alternatives rejected as infeasible. (*See, Preservation Action Council v. City of San Jose* (2006) 141 Cal.App.4th 1336, 1353.)

When a comment suggests "better ways to avoid or mitigate the significant environmental impacts" (14 CCR §§15088(c), 15204(a)), the lead agency must respond to the comment by either explaining why further consideration of the alternative or mitigation was rejected or by providing an evaluation of the alternative. (*Marin Mun. Water Dist. V. KG Land Cal. Corp.* (1991) 235 Cal.App.3d 1652, 1666; *see Cal. Native Plant Soc'y v. City of Santa Cruz* ["CNPS"] (2009) 177 Cal.App.4th 957, 992.) "'[A]n adequate EIR must respond to specific suggestions for mitigating a significant environmental impact unless the suggested mitigation is facially infeasible.' [citation omitted] 'While the response need not be exhaustive, it should evince good faith and a reasoned analysis.'" (*CNPS*, 177 Cal.App.4th at 992, *citing L.A. Unified School Dist. V. City of L.A.* (1997) 58 Cal.App.4th 1019, 1029; *see also, Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3d 433, 442, fn. 8.)

When an EIR has identified significant environmental effects that have not been mitigated or avoided, the agency may not approve the project unless it first finds that "[s]pecific economic, legal, social, technological, or other considerations . . . make infeasible the mitigation measures or alternatives identified in the environmental impact report." (PRC § 21081(a)(3); see 14 CCR §15091(a)(3).) Rejected alternatives and mitigation measures must be "truly infeasible." (*City of Marina v. Bd. Of Trustees of Cal. State Univ.* (2006) 39 Cal.4th 341, 369.) Infeasibility findings must be supported by substantial evidence in the record. (PRC § 21081.5; 14 CCR § 15091(b).) "The required findings constitute the principal means chosen by the Legislature to enforce the state's declared policy 'that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects. . .' (*City of Marina*, 39 Cal.4th at 350 [quoting PRC § 21002].)

The City has labeled the Project's transportation impact as "significant and unavoidable," providing two mitigation measures, PDF TRANS-1 and PDF TRANS-2, to reduce the adverse impacts of the Project's vehicle miles traveled ("VMT"). PDF TRANS-1 requires the Project to include 45 moderate-income level housing units, estimating that this will reduce Project-generated VMT by about 2.86%. PDF TRANS-2 requires the Project to provide 893 residential parking spaces total, which is expected to reduce Project-generated VMT by 1%.

However, the California Department of Transportation ("Caltrans") suggested additional transportation mitigation measures in its August 4, 2025 comment on the Project's draft EIR to further mitigate the Project's adverse transportation impacts and reduce the Project's VMT. These additional measures include, among other things: (1) encouraging the use of public transit among future residents, visitors, and workers; (2) implementing high-quality pedestrian, bicycle, and transit facilities, including safety measures like physically separated sidewalks and bike lanes, pedestrian-oriented LED lighting, and raised crosswalks; and (3) strategic placement of

short- and long-term bike parking. In its responses to Caltrans's comment in the FEIR, the City failed to meaningfully respond to these suggested mitigation measures. The City neither explained why further consideration of the measure was rejected nor provided any evaluation of the measure; it merely "noted" the comments. The FEIR provides no evidence that any of these measures are infeasible.

The EIR must be revised to consider these measures and adopt all these additional mitigation measures to further reduce the Project's significant transportation impacts.

IV. The EIR failed to analyze and mitigate the Project's significant indoor air quality impacts.

Certified industrial hygienist Francis Offermann, P.E., C.I.H., has reviewed the Project, the EIR, and other relevant documents regarding the Project's indoor air emissions. The EIR provides no analysis of the Project's indoor air quality impacts. Mr. Offermann concluded that the Project will expose its future residents to significant health impacts related to indoor air quality, particularly emissions of the cancer-causing chemical formaldehyde. Mr. Offermann is a leading expert on indoor air quality and has published extensively on the topic.

Mr. Offermann explains that many composite wood products used in building materials commonly found in residences and commercial spaces contain formaldehyde-based glues which release formaldehyde gas over a very long period of time. He states, "The primary source of formaldehyde indoors is composite wood products manufactured with urea-formaldehyde resins, such as plywood, medium density fiberboard, and particle board. These materials are commonly used in residential, office, and retail building construction for flooring, cabinetry, baseboards, window shades, interior doors, and window and door trims." (Ex. A at 2-3.)

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

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

When a project exceeds a duly adopted CEQA significance threshold, as here, this alone establishes substantial evidence that the project will have a significant adverse environmental impact. Indeed, in many instances, such air quality thresholds are the only criteria reviewed and treated as dispositive in evaluating the significance of a project's air quality impacts. (*See, e.g. Schenck v. Cnty. of Sonoma* (2011) 198 Cal.App.4th 949, 960 [County applies Air District's "published CEQA quantitative criteria" and "threshold level of cumulative significance"]; *see also CEB*, 103 Cal.App.4th at 110-11 ["A 'threshold of significance' for a given environmental effect is simply that level at which the lead agency finds the effects of the project to be significant"].) The California Supreme Court has shown the importance an air district significance threshold has in providing substantial evidence of a significant adverse impact. (*Communities for a Better Env't v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 327 [estimated emissions in excess of air district's significance thresholds "constitute substantial evidence supporting a fair argument for a significant adverse impact"].) Since expert evidence shows the Project will exceed the SCAQMD's CEQA significance threshold, there is substantial evidence that an "unstudied, potentially significant environmental effect[]" exists. (*See Friends of Coll. of San Mateo Gardens v. San Mateo Cnty. Cmty. Coll. Dist.* (2016) 1 Cal.5th 937, 958.)

The City's failure to address the Project's formaldehyde emissions is contrary to the California Supreme Court's decision in *California Building Industry Ass'n v. Bay Area Air Quality Mgmt. Dist.* (2015) 62 Cal.4th 369, 386 ("*CBIA*"). The Court held in *CBIA* that CEQA does not generally require lead agencies to analyze the impacts of adjacent environmental conditions on a project. (*Id.* at 800-01.) However, to the extent that a project may exacerbate existing environmental conditions at or near a project site, those effects would still have to be considered pursuant to CEQA. (*Id.* at 801 ["CEQA calls upon an agency to evaluate existing conditions in order to assess whether a project could exacerbate hazards that are already present"].) In so holding, the Court expressly held that CEQA's statutory language requires lead agencies to disclose and analyze "impacts on a project's users or residents that arise from the project's effects on the environment." (*Id.* at 800.)

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

The California Supreme Court's reasoning is well-grounded in CEQA's statutory language. CEQA expressly includes a project's effects on human beings as an effect on the environment that must be addressed in an environmental review. "Section 21083(b)(3)'s express language, for example, requires a finding of a 'significant effect on the environment' (§ 21083(b)) whenever the 'environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.'" (*CBIA*, 62 Cal.4th at 800 [emphasis in original].) Likewise, "the Legislature has made clear—in declarations accompanying CEQA's enactment

— that public health and safety are of great importance in the statutory scheme." (*Id.*, *citing e.g.*, §§ 21000, subds. (b), (c), (d), (g), 21001, subds. (b), (d).) It goes without saying that the Project's future residents are human beings, and their health and safety must be subjected to CEQA's safeguards.

The City has a duty to investigate issues relating to a project's potential environmental impacts. (*See County Sanitation Dist. No. 2 v. Cnty. of Kern*, (2005) 127 Cal.App.4th 1544, 1597-98. ["[U]nder CEQA, the lead agency bears a burden to investigate potential environmental impacts."].) The Project will have significant effects on indoor air quality and health risks by emitting formaldehyde that will expose future residents to cancer risks exceeding SCAQMD's significance threshold for cancer risk of 10 per million. In light of this impact and the City's lack of any evidence to the contrary, the EIR does not comply with CEQA, and the Project must undergo CEQA review through a revised EIR instead before Project approval.

CONCLUSION

For the foregoing reasons, SAFER respectfully requests that the Planning Commission require the City to revise the EIR for the Project to adequately address and mitigate the Project's significant adverse impacts and ensure compliance with CEQA. The City should then recirculate the EIR so that the public will have a full opportunity to review and comment on the analysis and mitigation measures. Thank you for your consideration.

Sincerely,

Hayley Uno
LOZEAU DRURY LLP