



T 510.836.4200  
F 510.836.4205

1939 Harrison Street, Ste. 150  
Oakland, CA 94612

[www.lozeaudrury.com](http://www.lozeaudrury.com)  
[brian@lozeaudrury.com](mailto:brian@lozeaudrury.com)

January 22, 2026

*Via Webform*<sup>1</sup>

Joe LaCava, President  
Kent Lee, President Pro Tem  
Jennifer Campbell  
Stephen Whitburn  
Henry L. Foster III  
Marni von Wilpert  
Raul A. Campillo  
Vivian Moreno  
Sean Elo-Rivera  
City Council  
City of San Diego  
202 C Street  
San Diego, CA 92101

**Re: SAFER Comment  
AVA Pacific Beach Project (Project No. 1059329)  
City Council Agenda Item 332 (Jan. 27, 2026)**

To President LaCava, President Pro Tem Lee, and Honorable Councilmembers:

This comment is submitted on behalf of **Supporters Alliance For Environmental Responsibility (“SAFER”)** and its members living in and around the City of San Diego (“City”) regarding the AVA Pacific Beach Project (Project No. 1059329) (“Project”) and its Draft Environmental Impact Report dated March 2025 (SCH No. 2022120345) and Final Environmental Impact Report dated July 2025 (collectively “the EIR”).

SAFER is concerned that the EIR fails to comply with the California Environmental Quality Act (“CEQA”) due to: (1) the EIR’s failure to adopt feasible mitigation measures to reduce the Project’s significant and unavoidable transportation impacts; (2) the EIR’s failure to adequately analyze and mitigate the increased cancer risks from emissions of diesel particulate matter during construction the Project; (3) the EIR’s failure to accurately model and estimate the Project’s construction emissions; (4) the EIR’s failure to accurately disclose and mitigate the Project’s ROG/VOC emissions; (5) the EIR’s failure to ensure that the Project will utilize clean

---

<sup>1</sup> <https://www.sandiego.gov/city-clerk/agenda-comment-form>

SAFER Comment

AVA Pacific Beach Project

CC Agenda Item 332 (Jan. 27, 2026)

January 22, 2026

Page 2

construction equipment; and (6) the EIR's failure to adequately analyze and mitigate the increased cancer risks to future residents from indoor emissions of formaldehyde.

SAFER's review of the Project and EIR was assisted by air quality experts Paul E. Rosenfeld, Ph.D, and Matt Hagemann, P.G., C.Hg. of Soil/Water/Air Protection Enterprise and indoor air quality expert Francis Offermann. CIH. Dr. Rosenfeld's comment and CV is attached hereto as **Exhibit A**. Mr. Offermann's comment and CV are attached hereto as **Exhibit B**.

SAFER respectfully requests that the City Council refrain from approving the Project and EIR until the EIR is revised to address SAFER's concerns as explained below.

## PROJECT DESCRIPTION

The Project involves demolishing surface parking areas and a recreational sports deck and replacing it with three multi-family residential buildings (138-units total) and parking. Buildings would be two levels and three levels and would not exceed the Coastal Zone height limit of 30 feet. Parking would be provided as partially wrapped structures and minimal surface parking. The Project would provide a total of 634 parking spaces, where none are required. The parking spaces would be provided in garages (614 spaces) and surface parking (20 spaces).

The 12.96-acre Project site is located at 3823, 3863, 3913 Ingraham Street and 3952 Jewell Street. The Project site is bordered by Fortuna Avenue to the north, Jewell Street to the east, Ingraham Street to the west, and La Playa Avenue to the south. Surrounding the Project site to the west, east, and south are multi- and single-family residential and commercial uses. The Crown Point Junior Music Academy is located immediately north of the project site, with single- and multi-family residential uses located farther north beyond the school.

## LEGAL STANDARD

CEQA requires that an agency analyze the potential environmental impacts of its proposed actions in an EIR (except in certain limited circumstances). (See, e.g., Pub. Res. Code, § 21100.) The EIR is the very heart of CEQA. (*Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652.) “The ‘foremost principle’ in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.” (*Communities for a Better Environment v. Cal. Resources Agency* (2002) 103 Cal.App.4th 98, 109.)

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. (14 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. Board*

*of Supervisors* (1990) 52 Cal.3d 553, 564.) 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.” (*Berkeley Keep Jets Over the Bay v. Bd. of Port Comm’rs.* (2001) 91 Cal.App.4th 1344, 1354 (*Berkeley Jets*); *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.)

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*, 91 Cal.App.4th at 1354; *Citizens of Goleta Valley*, 52 Cal.3d at 564.) 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).) 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.” (Pub. Res. Code, § 21081; 14 CCR § 15092(b)(2)(A) and (B).)

While the 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.’” (*Berkeley Jets*, 91 Cal.App.4th at 1355 [quoting, *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal. 3d 376, 391, 409, n. 12.] “A prejudicial abuse of discretion occurs ‘if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process.’” (*Berkeley Jets, supra*, 91 Cal.App.4th at 1355.)

An EIR must “include[] sufficient detail to enable those who did not participate in its preparation to understand and to consider meaningfully the issues the proposed project raises.” (*Sierra Club v. Cty. of Fresno* (2018) 6 Cal.5th 502, 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.) “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.*) 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.)

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.

## DISCUSSION

### **I. The EIR Fails to Adopt All Feasible Mitigation Measures for the Project's Significant and Unavoidable 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. (Pub. Res. Code § 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.” (*Citizens of Goleta Valley*, 52 Cal.3d at 564.) When an EIR concludes that a project will have significant impacts, the lead agency has two duties: to meaningfully consider feasible mitigation measures and alternatives, and 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.)

The lead agency may not approve a project with significant impacts unless it makes one or more of three findings:

- (1) that changes or alternatives have been required in, or incorporated into, the project that mitigate or avoid the significant effects on the environment;
- (2) that the agency making the findings lacks jurisdiction to make the change, but that another agency does have such authority, and either has made or can and should make, the change; and/or
- (3) that specific economic, legal, social, technological, or other considerations ... make infeasible the mitigation measures or project alternatives identified in the EIR.

(Pub. Res. Code §21081(a); 14 CCR §15091(a).)

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; *Cal. Native Plant Soc'y v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 992 (CNPS).) “[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.)

The EIR concludes that the Project would result in a significant and unavoidable transportation impact due to the Project’s residential vehicle miles traveled (“VMT”) exceeding the significance threshold for residential projects of 15 percent below the regional mean VMT per capita. (FEIR, p. 5.2-13.) The EIR requires a single mitigation measure to reduce this impact:

**TRANS-1:** In accordance with SDMC Section 143.1103(b)(1), the project shall include VMT Reduction Measures totaling five points. Prior to issuance of the first Certificate of Occupancy, the Owner/Permittee shall provide and maintain the following Vehicle Miles Traveled (VMT) reduction measures totaling five points as shown on Exhibit A, satisfactory to the City Engineer.

- Pedestrian Measure 8: Install resting area/recreation node on-site, adjacent to public pedestrian walkway (Four Points)
- Bicycle Measure 12: Provide on-site bicycle repair station ( One Point)

(Id.) Even with incorporation of TRANS-1, the EIR still concludes the VMT impact will be significant and unavoidable. (FEIR, p. 5.2-13 to -14.)

Because the Project’s transportation impact remains significant and unavoidable even with incorporation of MM TRANS-1, the City must require all feasible mitigation measures to reduce the impact to the extent possible prior to proceeding with the Project. (Pub. Res. Code §21081(a); 14 CCR §15091(a).) However, the EIR fails to demonstrate that the City considered the feasibility of additional measures beyond MM TRANS-1.

There is ample opportunity for the City to expand the current on-site mitigation measures to reduce the Project’s VMTs. As an initial matter, there is no reason for limiting the VMT reduction measures to only five points. The EIR only requires two reduction measures from Appendix T of the City’s Mobility Choices Regulations.<sup>2</sup> However, Appendix T provides numerous other reduction measures that could be applied to this Project, including:

- Installing electric bicycle charging stations/micro-mobility charging stations that are available to the public. (2 points)

---

<sup>2</sup> [https://www.sandiego.gov/sites/default/files/mobility\\_choices\\_appendix\\_t\\_6\\_15\\_2020.pdf](https://www.sandiego.gov/sites/default/files/mobility_choices_appendix_t_6_15_2020.pdf)

- Providing short-term bicycle parking spaces that are available to the public, at least 10% beyond minimum requirements. (1.5 points)
- Providing long-term bicycle parking spaces at least 10% beyond minimum requirements. (2 points)
- Providing on-site designated micro-mobility (e.g. bicycles, Ebikes, electric scooters, shared bicycles, and electric pedal assisted bicycle) parking area) that is available to the public.
- Installing pedestrian enhancing amenities at adjacent intersections (hardscape): Median refuges, raised crosswalks. (2.5 points)

The City must consider whether additional VMT reduction measures from Appendix T, including but not limited to those listed above, are feasible for this Project. All feasible reduction measures must be applied to the Project before the City certifies the EIR.

Additionally, the Project is only providing electric vehicle (“EV”) charging stations at 10 of the 634 new parking spaces (1.6%). (FEIR, p. 5.5-24.) An additional 9 of the 634 spaces (1.4%) will be “EV Capable” ( which means electric infrastructure will be run to the spaces but no charger will be installed. (*Id.*) The EV spaces provided by the Project fall well below the state’s CalGreen requirements. The most recent 2024 updates to the CalGreen code require *forty percent* (40%) of the Project’s total spaces to be equipped with EV charging stations. (CalGreen § 4.106.4.2.2.b.) Under the older 2022 CalGreen Code, twenty-five percent (25%) of the total spaces need to have EV chargers and an additional ten percent (10%) need to be EV Capable. The Project, with 1.6% EV chargers and 1.4% EV Capable, comes nowhere close to meeting either standard.

There is no discussion in the EIR about the feasibility of increasing the required amount of EV charging stations or EV capable spaces to further reduce the significant and avoidable VMT impact. At the very least, the City needs to require the bare minimum required by code. However, the City must also consider the feasibility of going beyond the bare minimum required by code, such as adopting CalGreen’s Tier 1 and Tier 2 voluntary measures, which demonstrate the potential feasibility of requiring more EV spaces. (CalGreen §§ A5.106.5.3.1, A5.106.5.3.2.)

The City cannot certify the EIR until it demonstrates that it has applied all feasible mitigation measures for the Project’s significant and unavoidable VMT impact. The EIR must be revised to incorporate additional feasible mitigation measures or otherwise explain why additional measures are infeasible.

## **II. The EIR fails to adequately analyze and mitigate the increased cancer risk from the Project’s emissions of diesel particulate matter.**

Dr. Paul Rosenfeld, Ph.D., of the Soil/Water/Air Protection Enterprise reviewed the

EIR's air quality analysis. Dr. Rosenfeld's comment letter and CV are attached as **Exhibit A**. Dr. Rosenfeld found that the EIR failed to adequately analyze and mitigate the human health impacts resulting from the Project's emissions of diesel particulate matter ("DPM"), a known toxic air contaminant ("TAC") and human carcinogen.

The EIR concludes that the Project's impacts from DPM will be less than significant without conducting a quantified construction health risk assessment ("HRA"). As noted by Dr. Rosenfeld, agencies must make a "reasonable effort to substantively connect a project's air quality impacts to likely health consequences." (Ex. A, p. 8.) Such an analysis is not possible without a quantified HRA. A quantified HRA for construction of the Project is necessary to ensure that the Project's health risks are disclosed and compared to the Air District's significance threshold for increased cancer risk. (*Id.*)

Dr. Rosenfeld prepared a screening-level HRA to evaluate potential impacts to human health from DPM during construction of the Project using AERSCREEN, the leading screening-level air quality dispersion model. (Ex. A, pp. 8-10.) According to the EIR's air quality modeling data, construction of the Project will generate 328.7 pounds of DPM over the 1250-day construction period. (*Id.*, p. 9.) Using those values, Dr. Rosenfeld conducted an HRA to calculate the increased cancer risk resulting from those DPM emissions to the maximally exposed individual receptor located approximately 100 meters downwind of the Project site. (*Id.*) Dr. Rosenfeld's HRA utilized age sensitivity factors in order to account for the increased sensitivity to carcinogens during early-in-life exposure and to assess the risk for susceptible subpopulations such as children. (*Id.*, p. 10.)

Dr. Rosenfeld's HRA found that increased cancer risk to infants during construction of the Project would be 74.9 in one million. (Ex. A, p. 11.) Additionally, the increased cancer risk for a 30-year residential lifetime would be 84.9 in one million. (*Id.*) These cancer risks exceed SDAPCD's CEQA significance threshold of 10 in one million.

By failing to conduct a construction HRA, the EIR fails to provide substantial evidence that the Project's health impacts from DPM emissions would be less than significant. Dr. Rosenfeld's analysis provides concrete evidence that the City should further investigate the air quality impacts from construction of the Project. The EIR must be amended and recirculated in order to disclose this impact and mitigate it to the extent feasible.

### **III. The EIR fails to adequately analyze the Project's emissions of criteria pollutants.**

The EIR relies the California Emissions Estimator Model Version ("CalEEMod") to estimate the Project's emissions of criteria pollutants. CalEEMod relies on recommended default values based on site specific information but allows the user to override the default values if more specific information about a project is known. Dr. Rosenfeld reviewed the Project's available CalEEMod output files from the EIR and found that the values input into the model

were inconsistent with information provided in the EIR, resulting in an underestimation of the Project's emissions. (Ex. 1, p. 3.)

Specifically, Dr. Rosenfeld found that the following values used in the EIR's air quality analysis were either inconsistent with information provided in the EIR or otherwise unjustified:

1. Unsubstantiated changes to land use size (Ex. A, pp. 2-3.)
2. Unsubstantiated changes to construction schedule (Ex. A, pp. 3-5.)
3. Underestimated amount of required demolition (Ex. A, p. 5.)
4. Unsupported application of Tier 4 Final emissions standards (Ex. A, pp. 5-6.)

Due to the unjustified edits to CalEEMod's default values, the EIR's air quality analysis underestimates the Project's emissions and fails to provide substantial evidence that those impacts will be less than significant. The EIR must be revised adequately evaluate the impacts that construction and operation of the Project will have on local and regional air quality.

#### **IV. The EIR fails to adequately disclose and mitigate the Project's significant ROG/VOC emissions.**

In an effort to accurately determine the Project's emissions, Dr. Rosenfeld prepared an updated CalEEMod that (1) excluded the unsupported changes to the construction phase lengths; (2) excluded the unsupported application of Tier 4 Final emissions standards; and (3) included the correct amount of demolition. (Ex. A, p. 7.) Dr. Rosenfeld's updated analysis found that the Project's construction-related ROG/VOC emissions would reach 219 pounds per day, well in excess of SDAPCD's 137 pounds per day significance threshold. (Ex. A, p. 8.)

Dr. Rosenfeld has provided feasible mitigation measures that could be applied to reduce the Project's emissions. (Ex. A, pp. 12-24.) The City Council should ensure that the Project's emissions are mitigated to the extent feasible. The EIR must be revised and recirculated to disclose the Project's significant ROG/VOC emissions and to include feasible mitigation measures for those emissions.

#### **V. The EIR Fails to Ensure the Use of Clean Construction Equipment.**

In the EIR's analysis of whether the Project would expose sensitive receptors to substantial pollutant concentrations, the EIR claims, "Construction equipment would consist of Tier 4 Final equipment (the most recent engine emissions standard implemented by the Federal EPA), which would further reduce the potential for impact of construction DPM emissions on sensitive receptors." (FEIR, p. 5.4-22.) This claim is entirely unsubstantiated because nothing in the EIR's mitigation measures or the EIR's discussion of the Project's design features requires the use of Tier 4 Final equipment. By assuming that the Project will utilize Tier 4 Final equipment without actually requiring it, the EIR fails to accurately describe the Project and underestimates the Project's impacts. The EIR must be revised to include Tier 4 Final as a

binding mitigation measure or otherwise be revised to remove references to Tier 4 Final in the EIR and the EIR's air quality modeling.

## **VI. The EIR Fails to Disclose and Mitigate the Project's Significant Indoor Air Quality Impacts.**

The EIR fails to discuss, disclose, analyze, and mitigate the significant health risks posed by the Project from formaldehyde, a toxic air contaminant ("TAC"). Certified Industrial Hygienist, Francis Offermann, PE, CIH, has conducted a review of the Project, attached as **Exhibit B**. Mr. Offermann is one of the world's leading experts on indoor air quality, in particular emissions of formaldehyde, and has published extensively on the topic. As discussed below and set forth in Mr. Offermann's comments, the Project's emissions of formaldehyde will result in significant cancer risks to the Project's future residents. Mr. Offermann's expert opinion demonstrates the Project's significant health risk impacts, which the City has a duty to investigate, disclose, and mitigate in a recirculated EIR.

Formaldehyde is a known human carcinogen and listed by the State of California as a TAC. SDAPCD has established a significance threshold for health risks from carcinogenic TACs of 10 in a million (Ex. B, p. 2.). The EIR fails to acknowledge the significant indoor air emissions that will result from the Project. Specifically, there is no discussion of impacts or health risks, no analysis, and no identification of mitigations for the Project's significant emissions of formaldehyde Project.

Mr. Offermann explains that many composite wood products typically used in home and apartment building construction contain formaldehyde-based glues which off-gas formaldehyde. 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. B, pp. 2-3.)

Mr. Offermann found that future residents of the Project's residential units will be exposed to a cancer risk from formaldehyde of approximately 120 per million, *even assuming that* all materials are compliant with the California Air Resources Board's formaldehyde airborne toxics control measure. (Ex. B, p. 3.) This is more than 12 times SDAPCD's CEQA significance threshold of 10 per million. (*Id.*)

Mr. Offermann concludes that these significant environmental impacts must be analyzed in an EIR and mitigation measures should be imposed to reduce the risk of formaldehyde exposure. (Ex. B, pp. 5, 11-13.) He prescribes a methodology for estimating the Project's formaldehyde emissions in order to do a more project-specific health risk assessment. (Ex. B, pp. 5-9). Mr. Offermann also suggests several feasible mitigation measures, such as requiring the use of no-added-formaldehyde composite wood products, which are readily available. (Ex. B pp. 11-

13.) Mr. Offermann also suggests requiring air ventilation systems which would reduce formaldehyde levels. (Ex. B, p. 12.) Since the EIR does not analyze this impact at all, none of these or other mitigation measures have been considered.

When a Project exceeds a duly adopted CEQA significance threshold, as here, this alone establishes substantial evidence that the project will have a significant adverse environmental impact. Indeed, in many instances, such air quality thresholds are the only criteria reviewed and treated as dispositive in evaluating the significance of a project's air quality impacts. (See, e.g. *Schenck v. County of Sonoma* (2011) 198 Cal.App.4th 949, 960 [County applies Air District's "published CEQA quantitative criteria" and "threshold level of cumulative significance"]; see also *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 110-111 ["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 made clear the substantial importance that an air district significance threshold plays in providing substantial evidence of a significant adverse impact. (*Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 327 Since expert evidence demonstrates that 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. Cmt. Coll. Dist.* (2016) 1 Cal.5th 937, 958 [emph. added].)

The failure of the EIR 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). In that case, the Supreme Court expressly holds that potential adverse impacts to future users and residents from pollution generated by a proposed project **must be addressed** under CEQA. At issue in *CBIA* was whether the Air District could enact CEQA guidelines that advised lead agencies that they must analyze the impacts of adjacent environmental conditions on a project. The Supreme Court held that CEQA does not generally require lead agencies to consider the environment's effects on a project. (*CBIA*, 62 Cal.4th at 800-01.) However, to the extent a project may exacerbate existing environmental conditions at or near a project site, those would still have to be considered pursuant to CEQA. (*Id.* at 801.) In so holding, the Court expressly held that CEQA's statutory language required 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 [emphasis added].)

The carcinogenic formaldehyde emissions identified by Mr. Offermann are not an existing environmental condition. Those emissions to the air will be from the Project. People will be residing in the Project's buildings once built and emitting formaldehyde. Once built, the Project will begin to emit formaldehyde at levels that pose significant direct and cumulative health risks. The Supreme Court in *CBIA* expressly finds that this type of air emission and health impact by the project on the environment and a "project's users and residents" must be addressed

in the CEQA process. The existing TAC sources near the Project site would have to be considered in evaluating the cumulative effect on future residents of both the Project's TAC emissions as well as those existing off-site emissions.

The 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.) 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., PRC §§ 21000, 21001].) It goes without saying that the future residents of the Project are human beings and their health and safety must be subject to CEQA's safeguards.

The City has a duty to investigate issues relating to a project's potential environmental impacts. (*See County Sanitation Dist. No. 2 v. County of Kern*, (2005) 127 Cal.App.4th 1544, 1597–98. [“[U]nder CEQA, the lead agency bears a burden to investigate potential environmental impacts.”].) The proposed buildings will have significant impacts on air quality and health risks by emitting cancer-causing levels of formaldehyde into the air that will expose future residents to cancer risks potentially in excess of SDAPCD's significance threshold for cancer health risks of 10 in a million. Currently, outside of Mr. Offermann's comments, the City does not have any idea what risks will be posed by formaldehyde emissions from the Project. As a result, the City must include an analysis and discussion in an updated EIR which discloses and analyzes the health risks that the Project's formaldehyde emissions may have on future residents and identifies appropriate mitigation measures.

## CONCLUSION

The EIR fails to comply with the requirements of CEQA due to: (1) the EIR's failure to adopt feasible mitigation measures to reduce the Project's significant and unavoidable transportation impacts; (2) the EIR's failure to adequately analyze and mitigate the increased cancer risks from emissions of diesel particulate matter during construction of the Project; (3) the EIR's failure to accurately model and estimate the Project's construction emissions; (4) the EIR's failure to accurately disclose and mitigate the Project's ROG/VOC emissions; (5) the EIR's failure to ensure that the Project will utilize clean construction equipment; and (6) the EIR's failure to adequately analyze and mitigate the increased cancer risks to future residents from indoor emissions of formaldehyde.

SAFER respectfully requests that the City Council refrain from approving the Project and EIR until the EIR is revised to remedy the shortcomings raised in this comment.

SAFER Comment  
AVA Pacific Beach Project  
CC Agenda Item 332 (Jan. 27, 2026)  
January 22, 2026  
Page 12

Sincerely,



Brian B. Flynn  
Lozeau Drury LLP