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Via Email

April 15, 2022

David Woon
Planning Assistant
Los Angeles City Planning
200 N. Spring St., Room 763
Los Angeles, CA 90012
David.woon@lacity.org

Re: Comment on Mitigated Negative Declaration, Melrose and Seward Project

Dear Mr. Woon:

I am writing on behalf of **Supporters Alliance for Environmental Responsibility ("SAFER")**, regarding the Mitigated Negative Declaration ("MND") prepared for the Project known as Melrose and Seward Project (ENV-2021-2909-MND), including all actions referring or related to the construction of a 5-story, 67,889 square foot office building located at 6101-6117 West Melrose Avenue and 713-735 North Seward Street in the City of Los Angeles ("Project"). We request that the City prepare an environmental impact report ("EIR") for the Project because there is a fair argument that the Project may have adverse environmental impacts.

This comment has been prepared with the assistance of Certified Industrial Hygienist, Francis "Bud" Offermann, PE, CIH (Exhibit A) and environmental consulting firm Soil/Water/Air Protection Enterprise ("SWAPE") (Exhibit B). We incorporate the Offermann and SWAPE comments herein by reference. As explained below and in the expert comments, there is a fair argument that the proposed Project may have significant adverse environmental impacts, and an EIR is therefore required.

In particular, Mr. Offermann finds that the Project has the potential to cause significant health risks from indoor air quality. Additionally, SWAPE demonstrates that the MND's Phase 1 ESA is inadequate and that the MND relies on improper and unsubstantiated input parameters for its air quality analysis which results in a significant underestimation of the Project's hazard, air quality, and greenhouse gas impacts. SWAPE also concludes that the Project will create significant cancer risks exceeding

CEQA significance thresholds of the South Coast Air Quality Management District (“SCAQMD”).

I. Project Description.

The applicant is proposing to demolish 8,473 square feet of commercial buildings in order to construct a five-story, approximately 78 foot tall, 67,889 square foot creative office building. Two, two-story buildings totaling about 17,134 square feet will be maintained onsite for the Project. The Project would also include 168 parking spaces and 26 bike spaces in a two-level underground parking garage. The City has prepared a Mitigated Negative Declaration for the Project. The applicant is seeking the following approvals: (1) a zone change and height district change from C4-1XL and CM-1VL to CM-2, (2) a Zoning Administrator’s Determination to allow the project to exceed the maximum transitional height requirements in the LAMC, (3) Site Plan Review, (4) and a Waiver of Dedication and/or Improvement to waive dedication and street widening requirements.

II. Legal Background.

As the Supreme Court held, “If no EIR has been prepared for a nonexempt project, but substantial evidence in the record supports a fair argument that the project may result in significant adverse impacts, the proper remedy is to order preparation of an EIR.” (*Communities for a Better Environment v. South Coast Air Quality Management Dist. (ConocoPhillips)* (2010) 48 Cal. 4th 310, 319-320 (“*CBE v. SCAQMD*”), citing, *No Oil, Inc. v. City of Los Angeles*, 13 Cal.3d at pp. 75, 88; *Brentwood Assn. for No Drilling, Inc. v. City of Los Angeles* (1982) 134 Cal. App. 3d 491, 504–505) “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. Calif. Resources Agency* (2002) 103 Cal. App. 4th 98, 109.)

The EIR is the very heart of CEQA. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1214; *Pocket Protectors v. City of Sacramento* (2004) 124 Cal. App. 4th 903, 927) The EIR is an “environmental ‘alarm bell’ whose purpose is to alert the public and its responsible officials to environmental changes before they have reached the ecological points of no return.” (*Bakersfield Citizens*, 124 Cal.App.4th at 1220.) The EIR also functions as a “document of accountability,” intended to “demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action.” *Laurel Heights Improvements Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392. The EIR process “protects not only the environment but also informed self-government.” (*Pocket Protectors*, 124 Cal.App.4th 927.)

An EIR is required if “there is substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment.” (Pub. Res. Code § 21080(d) (emphasis added); see also *Pocket Protectors*, 124 Cal.App.4th at 927.) In very limited circumstances, an agency may avoid preparing an EIR by issuing a negative declaration, a written statement briefly indicating that a project will have no significant impact thus requiring no EIR (CEQA Guidelines § 15371), only if there is not even a “fair argument” that the project will have a significant environmental effect. (Pub. Res. Code §§ 21100, 21064.) Since “[t]he adoption of a negative declaration . . . has a terminal effect on the environmental review process,” by allowing the agency “to dispense with the duty [to prepare an EIR],” negative declarations are allowed only in cases where “the proposed project will not affect the environment at all.” (*Citizens of Lake Murray v. San Diego*, 129 Cal.App.3d 436, 440 (1989).) CEQA contains a “**preference for resolving doubts in favor of environmental review**.” (*Pocket Protectors*, 124 Cal.App.4th at 927 (emphasis in original).)

III. DISCUSSION

A. The MND’s Mitigation Measures for its Significant Traffic Impacts Fail to Meet CEQA Standards.

The MND determines that the Project’s daily work vehicle miles traveled (“VMT”) per employee would be 8.4, which exceeds the threshold of 7.6 VMT for the Central APC sub-area, which is where the Project site is located. MND, p. 193. The Project proposes project design features including reduction of parking, meeting the LAMC’s bicycle parking requirements, and providing showers and lockers on-site, but even with these improvements, the VMT exceeds the threshold. *Id.* The City therefore proposes to implement several mitigation measures. As demonstrated below, all of these measures fail to meet CEQA standards for mitigation.

CEQA Guidelines require EIRs and MNDs to “describe feasible measures which could minimize significant adverse impacts,” and states that those measures “must be fully enforceable through permit conditions, agreements, or other legally-binding instruments.” CCR Tit. 14 § 15126.4(a)(1), (2). Policies calling for future “programs” that do not identify a responsible agency, a deadline, or any substantive content are not enforceable by the public. Policies that call for future ordinances without identifying performance standards are also not enforceable, in the sense that the public will not be able to hold the City to any standards in enacting these ordinances. A mitigation measure or policy is insufficient when it embodies nothing more than a hope that a solution will be found and fails to establish a method that will actually mitigate impacts. *King County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 728 (fatal flaw to rely on “mitigation agreement” where EIR presented no evidence that it was feasible). CEQA requires an agency to take steps to be sure that mitigation

measures are actually implemented as a condition of development, not merely adopted and then neglected or disregarded. *Federation of Hillside & Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261.

Here, the measures proposed in the MND to mitigate the Project's significant VMT impact call for development of future programs or activities with no deadline or provision for interim measures. Further, the policies have so little content and are so vague that there can be no certainty that implementation of a conforming program or activity will actually have any real effect on the impacts at issue.

- (1) The first mitigation measure proposed is the use of marketing and promotion to "educate and inform travelers about site-specific transportation options and the effects of their travel choices." *Id.* at 194. This is a vague measure, and its potential to effectively mitigate traffic impacts is entirely speculative.
- (2) The second measure is a strategy which "encourages employees to work alternative schedules or telecommute," and it states that "[a] minimum 25% of the employees will be participating in this program." MND, p. 194. The MND fails to explain how the City will ensure that 25% of employees participate if it merely *encourages* rather than *requires* employees to work alternative schedules and/or telecommute. This measure is therefore impermissibly vague and unenforceable.
- (3) The third is a ride share program, for which the MND states "a minimum of 10% of the employees will be eligible." MND, p. 194. While 10% of employees will be *eligible* for this program, it is unclear how many employees the MND expects will actually participate, and how the City plans to ensure that anyone will participate. This mitigation measure is entirely unenforceable and does not give the requisite level of detail necessary to inform the public of its effectiveness and feasibility.

All three measures fail to meet CEQA requirements, and the MND does not provide substantial evidence demonstrating that the measures will be effective. The City must prepare an EIR and propose clear, feasible, enforceable measures to address the Project's significant traffic impacts, as well as substantial evidence demonstrating that those measures will work to mitigate impacts to a less than significant level.

B. The MND Fails to Properly Assess the Project's Potential Growth-Inducing Impacts.

The MND states that the Project is expected to use 244 employees and that this increase "would not result in a notable increase in the demand for new housing." MND, p. 179-180. However, the Project proposes to build 67,889 square feet of office space where there previously stood a commercial building and parking. The MND does not

state where the future tenants of that office space will come from, but it is likely that at least a portion will come from areas outside of the direct vicinity of the Project site.

CEQA Guidelines require Projects to describe growth-inducing impacts of a Project. CCR Tit. 14 § 15126(d). In *Napa Citizens for Honest Government v. Napa County Bd. of Supervisors*, the City of Napa prepared a CEQA analysis for its General and Specific Land Use Plans and “found that the Project would create a need and opportunity for employment” and “conclude[ed] that it would result in a need for additional housing units at locations outside of the Project area.” (2001) 91 Cal.App.4th 342, 370. While the City’s CEQA analysis did not include further assessment of this impact, its Specific Plan contained a “Market and Jobs/Housing Analysis” which included an estimate of the additional employees that would be added to the area and the new housing units that would be required to accommodate that growth. *Id.* at 371. The Court found that this analysis fulfilled CEQA’s purpose as an informational document and was therefore adequate. *Id.*

Here, the MND makes no mention of additional housing that may be required as a result of its construction of tens of thousands of square feet of new office buildings. The MND therefore violates CEQA because it fails to properly assess the Project’s growth-inducing impacts.

C. There is a Fair Argument that the Project May Have a Significant Health Risk Impact from its Indoor Air Quality Impacts.

Certified Industrial Hygienist, Francis “Bud” Offermann, PE, CIH, has conducted a review of the proposed Project and relevant documents regarding the Project’s indoor air emissions. Indoor Environmental Engineering Comments (April 9, 2022) (Exhibit A). Mr. Offermann concludes that it is likely that the Project will expose commercial employees of the Project to significant impacts related to indoor air quality, and in particular, 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’s expert comments and curriculum vitae are attached as Exhibit A.

Mr. Offermann explains that many composite wood products used in building materials and furnishings commonly found in offices, warehouses, residences, and hotels contain formaldehyde-based glues which off-gas formaldehyde over a very long time period. He states, “[t]he primary source of formaldehyde indoors is composite wood products manufactured with urea-formaldehyde resins, such as plywood, medium density fiberboard, and particleboard. These materials are commonly used in building construction for flooring, cabinetry, baseboards, window shades, interior doors, and window and door trims.” Ex. A, p. 2-3.

Formaldehyde is a known human carcinogen. Mr. Offermann states that future commercial employees of the Project would be exposed to a 17.7 in one million risk,

even assuming all materials are compliant with the California Air Resources Board's formaldehyde airborne toxics control measure. *Id.* at 4. This potential exposure level exceeds the South Coast Air Quality Management District's ("SCAQMD") CEQA significance threshold for airborne cancer risk of 10 per million.

Mr. Offermann concludes that these significant environmental impacts should be analyzed in an EIR and mitigation measures should be imposed to reduce the risk of formaldehyde exposure. *Id.* at 4. Mr. Offermann identifies mitigation measures that are available to reduce these significant health risks, including the installation of air filters and a requirement that the applicant 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 or ultra-low emitting formaldehyde (ULEF) resins in the buildings' interiors. *Id.* at 11-12.

The City has a duty to investigate issues relating to a project's potential environmental impacts, especially those issues raised by an expert's comments. See *Cty. Sanitation Dist. No. 2 v. Cty. of Kern*, (2005) 127 Cal.App.4th 1544, 1597–98 ("under CEQA, the lead agency bears a burden to investigate potential environmental impacts").

The 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*"). 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 800-801. However, to the extent a project may exacerbate existing adverse environmental conditions at or near a project site, those 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 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. Commercial employees will be users of the Project. Rather than excusing the City from addressing the impacts of carcinogens emitted into the indoor air from the project, the Supreme Court in *CBIA* expressly finds that this type of effect by the project on the environment and a "project's users" must be addressed in the CEQA process.

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 (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 future employees of the Project are human beings and the health and safety of those workers is as important to CEQA’s safeguards as that of nearby residents currently living near the project site.

The City must prepare an EIR which discloses and mitigates the potential environmental impacts to future users of the building.

D. There is a Fair Argument that the Project May Have Significant Adverse Hazardous Material, Air Quality, Health Risk, and Greenhouse Gas Impacts.

Matt Hagemann, P.G., C.Hg., and Dr. Paul E. Rosenfeld, Ph.D., of the environmental consulting firm SWAPE reviewed the MND’s analysis of the Project’s impacts on hazards, air quality, health risk, and greenhouse gases. SWAPE’s comment letter and CVs are attached as Exhibit B and their comments are briefly summarized here.

1. The MND’s Phase 1 Environmental Site Assessment Fails to Cover the Entire Project Site and is Therefore Inadequate.

The City prepared a Phase 1 Environmental Site Assessment (“ESA”) as part of its analysis of hazards and hazardous materials. However, SWAPE found that the ESA did not encompass the entirety of the Project site, and therefore the MND’s determination of less-than-significant hazard and hazardous materials impacts is unreliable and unsupported by substantial evidence. Ex. B, p. 1. The City must prepare an EIR with a supplemental Phase 1 ESA which assesses the full Project site. *Id.* at 2.

2. The MND Relied on Unsubstantiated Input Parameters to Estimate Project Emissions and Thus the Project May Result in Significant Air Quality Impacts.

SWAPE found that the MND incorrectly estimated the Project’s construction and operational emissions and therefore cannot be relied upon to determine the significance of the Project’s impacts on local and regional air quality. Ex. B, p. 3. The MND relies on emissions calculated from the California Emissions Estimator Version CalEEMod.2020.4.0 (“CalEEMod”). MND, p. 53. This model, which is used to generate a project’s construction and operational emissions, relies on recommended default

values based on site specific information related to a number of factors. Ex. B, p. 3. CEQA requires any changes to the default values to be justified by substantial evidence. *Id.*

SWAPE reviewed the MND's CalEEMod output files and found that the values input into the model were inconsistent with information provided in the MND. *Id.* As a result, the MND's air quality analysis cannot be relied upon to determine the Project's emissions.

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

1. Underestimated Land Use Sizes. Ex. B, p. 3-4.
2. Unsubstantiated Reductions to Architectural and Area Coating Emission Factors. Ex. B, p. 5-6.
3. Underestimated Operational Daily Vehicle Trip Rates. Ex. B, p. 6-7.
4. Incorrect Application of Construction-Related Mitigation Measures. Ex. B, p. 7-8.

Based on the issues listed above, the MND's analysis of air quality cannot be relied upon to determine the significance of impacts and an EIR must be prepared.

3. There is Substantial Evidence that the Project May Have a Significant Health Impact as a Result of Diesel Particulate Emissions.

One of the primary emissions of concern regarding health effects for land development projects is diesel particulate matter ("DPM"), which can be released during Project construction and operation. DPM consists of fine particles with a diameter less than 2.5 micrometers including a subgroup of ultrafine particles (with a diameter less than 0.1 micrometers). Diesel exhaust also contains a variety of harmful gases and cancer-causing substances. Exposure to DPM is a recognized health hazard, particularly to children whose lungs are still developing and the elderly who may have other serious health problems. According to the California Air Resources Board ("CARB"), DPM exposure may lead to the following adverse health effects: aggravated asthma; chronic bronchitis; increased respiratory and cardiovascular hospitalizations; decreased lung function in children; lung cancer; and premature deaths for those with heart or lung disease.¹

¹ See CARB Resources - Overview: Diesel Exhaust & Health, available at <https://ww2.arb.ca.gov/resources/overview-diesel-exhaust-and-health>).

The MND concluded that the Project would have less-than-significant construction-related and operational health risk impacts based on its claims that the emissions would be short-term, “similar to other development projects in the City,” and compliant with AQMP and CARB regulations. MND, p. 61-62. SWAPE identifies three main reasons for why the MND’s evaluation of health risk impacts and less-than-significant conclusion is incorrect.

First, because the City did not prepare a quantified construction and operational Health Risk Assessment (“HRA”), it failed to correlate increased emissions from the Project to adverse impacts on human health caused by those emissions. Ex. B, p. 10. SWAPE find that this is incorrect because the Project would cause emissions both through its 22 months of construction and through its 549 daily vehicle trips. MND, p. 35, Appendix H.2, pp. 6; Ex. B, p. 10. In failing to connect TAC emissions to potential health risks to nearby receptors, the Project fails to meet CEQA requirements. *Id.*; See *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 510.

Second, the California Department of Justice recommends the preparation of a quantitative HRA pursuant to the Office of Environmental Health Hazard Assessment (“OEHHA”), the organization responsible for providing guidance on conducting HRAs in California, as well as local air district guidelines. OEHHA released its most recent guidance document in 2015 describing which types of projects warrant preparation of an HRA. See “Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments.” OEHHA, February 2015, *available at*: http://oehha.ca.gov/air/hot_spots/hotspots2015.html. The OEHHA document recommends that if a project’s construction is expected to exceed 2 months, as this one will, an HRA must be prepared. Ex. B, p. 10. Additionally, if a Project is expected to last over 6 months, the exposure should be evaluated throughout the project using a 30-year exposure duration to estimate individual cancer risks. *Id.* Based on its extensive experience, SWAPE reasonably assumes that the Project will last at least 30 years, and therefore recommends that health risk impacts from the project be evaluated. *Id.* at 10-11.

Third, in failing to prepare any HRA, the MND also fails to compare excess health risk impacts to SCAQMD’s threshold of 10 in one million. *Id.* at 11. SWAPE states that “an assessment of the health risk posed to nearby, existing receptors from Project construction and operation should have been conducted.” *Id.*

SWAPE prepared a screening-level HRA to evaluate potential impacts from Project construction and operation using AERSCREEN, a screening-level air quality dispersion model. Ex. B, p. 11. SWAPE applied a sensitive receptor distance of 50 meters and analyzed impacts to individuals at different stages of life based on OEHHA and SCAQMD guidance utilizing age sensitivity factors. *Id.* at 11-15.

SWAPE found that the excess cancer risks at a sensitive receptor located

approximately 50 meters away over the course of Project construction and operation are approximately 21.4 in one million for infants. *Id.* at 14. Moreover, **the excess residential lifetime cancer risk is approximately 32.8 in one million.** *Id.* The risks to infants and lifetime residents exceed SCAQMD's threshold of 10 in one million.

SWAPE's analysis constitutes substantial evidence that the Project may have a significant health impact as a result of its diesel particulate emissions. SWAPE recommends that "an EIR [] be prepared, including a quantified air pollution model as well as an updated, quantified refined health risk assessment which adequately and accurately evaluates and mitigates health risk impacts associated with both Project construction and operation." *Id.* at 15.

4. The MND Failed to Adequately Analyze the Project's Greenhouse Gas Impacts and Thus the Project May Result in Significant Greenhouse Gas Emissions.

The MND estimates that the Project would generate net GHG emissions of 849.18 metric tons of carbon dioxide equivalents per year. MND, p. 100. It relies on consistency with the CARB 2017 Scoping Plan, SB 32, LA Sustainable City plan, LA Green Building Code and SCAG's 2020-2045 RTP/SCS to conclude that greenhouse gas impacts would be less than significant. MND, p. 102-114. However, SWAPE states that the MND's conclusion about a less-than-significant greenhouse gas impact is incorrect for four reasons:

- (1) The GHG analysis relies upon an incorrect and unsubstantiated air model;
- (2) The unsubstantiated air model indicates a potentially significant impact;
- (3) The MND fails to consider the performance-based standards under CARB's Scoping Plan;
- (4) The MND fails to consider the performance-based standards under SCAG's RTP/SCS.

Ex. B, p. 15-16.

SWAPE's analysis demonstrates potentially significant health risk and GHG impacts from the project that necessitate mitigation, and it identifies several feasible mitigation measures applicable to the Project. *Id.* at 19-24. In addition to implementing these measures, an EIR should be prepared for the Project which includes an updated hazards and hazardous materials, air quality, health risk, and GHG analysis.

IV. CONCLUSION

For the foregoing reasons, SAFER believes that the MND is inadequate. SAFER requests that the City prepare an Environmental Impact Report ("EIR") to analyze and mitigate the Project's significant adverse environmental impacts. Thank you.

Sincerely,

A handwritten signature in cursive script that reads "Amalia Bowley Fuentes".

Amalia Bowley Fuentes
LOZEAU DRURY LLP