



T 510.836.4200
F 510.836.4205

1939 Harrison Street, Ste. 150
Oakland, CA 94612

www.lozeaudrury.com
brian@lozeaudrury.com

May 5, 2026

Via Email and Webform¹

Jeffrey Szymanski, Hearing Officer
Patricia Bautista, Hearing Officer
Development Services Department
City of San Diego
7650 Mission Valley Road, MS DSD 1A
San Diego, CA 92108
HearingOfficer@sandiego.gov

Martin R. Mendez, Development Project Mgr.
Development Services Department
City of San Diego
7650 Mission Valley Road, MS DSD 1A
San Diego, CA 92108
mrmendez@sandiego.gov

**Re: SAFER Comment
10509 Vista Sorrento Parkway (PRJ-1062368)
Hearing Officer Agenda Item 5 (May 6, 2026)**

To the San Diego Hearing Officer and Mr. Mendez:

This comment is submitted on behalf of the **Supporters Alliance For Environmental Responsibility ("SAFER")** regarding the 10509 Vista Sorrento Parkway Project (PRJ-1062368) ("Project"), to be heard as Agenda Item 5 at the Hearing Officer's May 6, 2026 hearing.

SAFER is concerned that the City of San Diego ("City") has failed to conduct adequate review of the Project under the California Environmental Quality Act ("CEQA") by: (1) failing to conduct a quantified air quality study for the Project as required by mitigation measure MM-AQ-2 from the 2022 Mira Mesa Community Plan Update Program Environmental Impact Report ("2022 PEIR"); (2) failing to require the Project to adhere to mitigation measure MM.NOI-1 of the 2022 PEIR; and (3) failing to prepare an environmental impact report ("EIR") and statement of overriding considerations for the Project's significant and unavoidable impacts.

SAFER respectfully requests that the Hearing Officer refrain from approving the Project at this time and, instead, direct staff to remedy the issues raised in this comment to ensure compliance with CEQA.

PROJECT DESCRIPTION AND BACKGROUND

In 2022, the City certified the 2022 Mira Mesa Community Plan Update PEIR. The 2022 PEIR analyzed a comprehensive update of the Mira Mesa Community Plan and incorporated relevant policies from the City of San Diego General Plan for the distribution and arrangement of

¹ <https://www.sandiego.gov/development-services/hearing-officer/agenda-comment-form>

land uses and the local street and transit network, implementation of urban design, recommendations preserving and enhancing natural open space and historic and cultural resources, and the prioritization and provision of public facilities within the 10,000+-acre Mira Mesa community. The 2022 PEIR found that the Community Plan as a whole would have significant and unavoidable impacts, even with mitigation, to:

- Air Quality and Odors;
- Historical, Archaeological, and Tribal Cultural Resources;
- Noise;
- Public Services and Facilities;
- Public Utilities;
- Transportation; and
- Visual Effects and Neighborhood Character

The Project proposes a new commercial office building and a six-story parking garage within the Mira Mesa Community Plan at 10509 Vista Sorrento Parkway. The Project would be constructed in two phases. Phase 1 consists of demolishing a portion of the existing surface parking lot and accessory structures to construct a 6-story, 189,475-square-foot parking garage. Phase 2 consists of demolishing an existing four-story office building, completing demolition of the existing parking lot and the constructing a new four-story, 112,400 square-foot commercial office building for uses allowed within the IL-3-1 zone, including research and development (R&D) use, laboratory use, corporate headquarters and other office uses and associated site improvements to include landscaping, hardscape, site furnishings, and site lighting.

For the Project's CEQA determination, the City has prepared a "Section 15162 Evaluation," concluding that the Project is consistent with the 2022 PEIR and, as a result, that no further environmental review is required under CEQA Guidelines section 15162 (14 CCR § 15162).

LEGAL STANDARD

The 2022 PEIR serves as a program EIR for the Mira Mesa Community. For program EIRs, "later activities in the program must be examined in the light of the program EIR to determine whether an additional environmental document must be prepared." (14 CCR § 15168(c).) A program EIR may only serve "to the extent that it contemplates and adequately analyzes the potential environmental impacts of the project." (*Sierra Nevada Conservation v. County of El Dorado* (2012) 202 Cal.App.4th 1156, 1171 [quoting *Citizens for Responsible Equitable Envtl. Dev. v. City of San Diego Redevelopment Agency* (2005) 134 Cal.App.4th 598, 615].)

When using a prior PEIR for a subsequent project, CEQA requires that "[a]n agency shall incorporate feasible mitigation measures and alternatives developed in the program EIR into later activities in the program." (14 CCR § 15168(c)(3).) Furthermore, a subsequent EIR or negative declaration is required for a subsequent project if so required by CEQA Guidelines section 15162

(“Section 15162”). (14 CCR § 15168(c)(2). Under Section 15162, a subsequent EIR or negative declaration is required where:

- (1) Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
- (2) Substantial changes occur with respect to the circumstances under which the project is undertaken which will require major revisions of the previous EIR or Negative Declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
- (3) New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:
 - (A) The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
 - (B) Significant effects previously examined will be substantially more severe than shown in the previous EIR;
 - (C) Mitigation measures or alternatives previously found not to be feasible would, in fact, be feasible and would substantially reduce one or more significant effects of the project, but the project proponents decline to adopt the mitigation measure or alternative; or
 - (D) Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

(14 CCR § 15162(a).)

When a program EIR admits significant and unavoidable environmental impacts, a subsequent project with the same significant and unavoidable impacts requires its own EIR and statement of overriding considerations prior to approval. (See *Communities for a Better Env't. v. Cal. Res. Agency* (2002) 103 Cal.App.4th 98, 122-25.)

DISCUSSION

I. The City Must Conduct a Quantified Air Quality Study for the Project as Required by the 2022 Mira Mesa PEIR.

CEQA requires that the City apply all feasible mitigation measures from the 2022 Mira Mesa PEIR to this Project. (14 CCR § 15168(c)(3).) Mitigation Measure MM-AQ-2 from 2022 PEIR explicitly requires that the City prepare a quantified air quality study for any project within the Mira Mesa Community:

MM-AQ-2: Project-specific Construction Air Quality Impact Analysis.

Proposed development projects that are subject to CEQA shall have construction-related air quality impacts analyzed using the latest available CalEEMod model, or other analytical method determined in conjunction with the City. The results of the construction-related air quality impacts analysis shall be included in the development project's CEQA documentation. If such analyses identify potentially significant regional or local air quality impacts based on the City's CEQA Significance Determination Thresholds, the City shall require the incorporation of appropriate mitigation to reduce such impacts. Examples of potential mitigation measures are provided in MM-AQ-3.

(2022 Final PEIR, Ex. C (Mitigation Monitoring and Reporting Program), p. C-4 to -5.)

As the California Air Pollution Control Officers Association explains:²

The California Emissions Estimator Model (CalEEMod) is a statewide land use emissions computer model designed to provide a uniform platform for government agencies, land use planners, and environmental professionals to quantify potential criteria pollutant and greenhouse gas (GHG) emissions associated with both construction and operations from a variety of land use projects.

...

The model is a comprehensive tool for quantifying air quality impacts from land use projects located throughout California. The model can be used for a variety of situations where an air quality analysis is necessary or desirable such as preparing California Environmental Quality Act (CEQA) or National Environmental Policy Act (NEPA) documents, conducting pre-project planning, and, verifying compliance with local air quality rules and regulations, etc.

Here, the City has not analyzed the Project's construction-related air quality emissions using CalEEMod or any other analytical method. Instead, the City's Section 15162 Memorandum provides only a qualitative analysis of construction emissions, concluding that "[t]he project would be consistent with the designated MMCP land uses and zoning and is not anticipated to exceed daily construction emissions thresholds or to have a significant impact on air quality." (15162 Memorandum, p. 4.)

MM-AQ-2 does not provide an exemption for projects where the City does not "anticipate" significant emissions. The plain text of MM-AQ-2 requires *all* projects in Mira Mesa to "have construction-related air quality impacts analyzed using the latest available CalEEMod model, or other analytical method" and that all *results* of that quantified analysis be provided with the Project's CEQA documentation. Furthermore, the fact that the Project is consistent with Mira Mesa's land uses and zoning is irrelevant to whether MM-AQ-2 applies to

² <https://www.aqmd.gov/caleemod/home>

the Project—and simply does not constitute an “analytical method” as required by MM-AQ-2. The 2022 PEIR concluded that the Community Plan would result in significant and unavoidable air quality impacts and required MM-AQ-2 to, in part, mitigate those impacts to the extent feasible. Nothing in the 2022 PEIR indicates that MM-AQ-2 applies only if a subsequent project is inconsistent with applicable land uses and zoning. Instead, MM-AQ-2 applies to all projects in Mira Mesa, including this Project.

Because the City has not analyzed the Project’s construction-related emissions as required by MM-AQ-2 from the 2022 PEIR, the Hearing Officer should not approve the Project at this time. Instead, the City must prepare a quantified emissions analysis using CalEEMod or other analytical method prior to further consideration of this Project.

II. The City Must Require the Project to Comply with Mitigation Measure MM-NOI-1 from the 2022 Mira Mesa PEIR.

CEQA requires that the City apply all feasible mitigation measures from the 2022 Mira Mesa PEIR to this Project. (14 CCR § 15168(c)(3).) Mitigation Measure MM-NOI-1 requires that *all* subsequent projects implement a list of enumerated noise reduction measures “to minimize short-term noise levels caused by construction activities.” (Draft PEIR, p. 5.9-12.) The measures include: manufacturer-recommended noise reduction devices and factory-recommended mufflers, electrical power to operate air compressors and similar power tools, additional noise attenuation techniques such as temporary sound barriers or sound blankets, and notice to nearby receptors prior to certain phases of construction. (*Id.* at pp. 5.9-12 to -13.)

The City’s Section 15162 Memorandum claims that “construction noise impacts would be less than significant and the implementation of PEIR Mitigation Measure NOI-1 is not required.” (15162 Memorandum, p. 23.) The Memorandum relies on the City’s Noise Abatement and Control Ordinance as the basis for that conclusion. However, the 2022 PEIR does not provide an exemption from MM-NOI-1 based on a project’s adherence to the City’s noise ordinance. Furthermore, the City’s claim that “[c]onstruction activities would be temporary and short-term in nature,” *id.*, is irrelevant because MM-NOI-1 was adopted explicitly “to minimize short-term noise levels caused by construction activities” (Draft PEIR, p. 5.9-12).

This Project cannot be approved without requiring the applicant to adhere to the noise reduction measures required by MM-NOI-1.

III. The City Must Prepare an EIR and Statement of Overriding Considerations for Impacts that Remain Significant and Unavoidable.

When a prior EIR, such as the 2022 PEIR, admits significant and unavoidable impacts, a later project requires its own EIR and statement of overriding considerations for any impacts that remain significant and unavoidable. (See *Communities for a Better Env’t.*, *supra*, 103 Cal.App.4th at 124-25 [CEQA does not allow agencies to “adopt one statement of overriding considerations for a prior, more general EIR, and then avoid future political accountability by approving later,

more specific projects with significant unavoidable impacts pursuant to the prior EIR and statement of overriding considerations.”].)

The 2022 PEIR identified numerous significant and unavoidable (“SU”) impacts, including transportation and air quality. (Draft PEIR, p. 7-10.) For transportation impacts, the City’s Section 15162 Memorandum concedes that the Project-level impact remains SU. (15162 Memorandum, p. 31 [“While the Project’s transportation impact remains significant and unavoidable, this is consistent with the VMT transportation impacts related to employment uses in the MMCP, which were also are considered significant and unavoidable.”].) Because the Project’s transportation impact remains SU, CEQA requires a subsequent EIR and new statement of overriding considerations for that impact. (See *Communities for a Better Env’t*, *supra*, 103 Cal.App.4th at 124-25.)

For air quality impacts, the City’s Section 15162 Memorandum fails to provide substantial evidence that the SU impacts identified in the 2022 PEIR will be less-than-significant for this Project. The Memorandum concludes:

Based on the foregoing analysis and information, there is no evidence that the project would require a substantial change to the PEIR air quality analysis. The project would not create any new significant air quality impact, nor would it substantially increase the severity of air quality impacts from that described in the PEIR.

(15162 Memorandum, p. 5.) The Memorandum misconstrues the issue. The question is not whether the Project will result in any “new” impact or “more severe” impact compared to the 2022 PEIR. The question is whether the SU impacts identified in the 2022 PEIR remain SU. The City should conduct a quantified air quality analysis, as discussed above in Section I, and apply appropriate mitigation measures, if necessary, to ensure that the impacts are, in fact, less than significant. Without such an analyses, the City lacks substantial evidence to conclude that the project’s air quality impacts are not significant and unavoidable.

CONCLUSION

SAFER respectfully requests that the Hearing Office not approve the Project unless and until the City: (1) conducts a quantified air quality study for the Project as required by MM-AQ-2; (2) requires the Project to adhere to mitigation measure MM.NOI-1; and (3) prepares an EIR and statement of overriding considerations for the Project’s significant and unavoidable impacts.

Sincerely,



Brian B. Flynn
Lozeau Drury LLP