February 10, 2022
[vial email: More.Song@lacity.org]

Mr. More Song, City Planner
City of Los Angeles
Department of City Planning
200 North Spring Street, Room 763
Los Angeles, CA 90012

Re: RESPONSES TO APPEALANT'S COMMENTS ON THE 9500 PICO MIXED-USE PROJECT NEGATIVE DECLARATION [ENV-2020-5838-ND; CPC-2020-5837-DB-CU-SPR-VHCA]

Dear Mr. Song,

On behalf of TRG 9500 W Pico, LLC (Applicant), Parker Environmental Consultants has reviewed the appeal letter submitted by Lozeau Drury, LLP, on behalf of Supporters Alliance for Environmental Responsibility ("SAFER"), dated September 9, 2021, as justification for the appeal to the environmental clearance for the 9500 Pico Mixed-Use Project. The following includes our detailed responses to the comments and issues raised in the appeal letter. As noted in the responses below, the comments and disputes raised by the appellant are based on false arguments and speculation and do not provide any substantial evidence (or raise a fair argument supported by substantial evidence) that would require the preparation of a Mitigated Negative Declaration (MND) or an Environmental Impact Report (EIR) pursuant to the California Environmental Quality Act (CEQA).

Pursuant to Public Resource Code (PRC) Section 21082.2 (b), "[t]he existence of public controversy over the environmental effects of a project shall not require preparation of an environmental impact report if there is no substantial evidence in light of the whole record before the lead agency that the project may have a significant effect on the environment." Section 21082.2(c) also provides that "[a]rgument, speculation, unsubstantiated opinion or narrative, evidence which is clearly inaccurate or erroneous, or evidence of social or economic impacts which do not contribute to, or are not caused by, physical impacts on the environment, is not substantial evidence. Substantial evidence shall include facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts."

Further, the appellant's comments do not identify any deficiencies or inadequacies in the IS/ND's analysis based on fact that would warrant revisions or recirculation of the IS/ND. Thus, the IS/ND satisfies the environmental review requirements pursuant to CEQA, the State CEQA Guidelines, and the City of Los Angeles' policies for implementing CEQA and no further analysis is required.

Should you have any questions regarding any of the responses please contact me at (661) 257-2282 or by email at shane@parkerenvironmental.com.

Sincerely,

Shane E. Parker, Principal

Attachment A: Bracketed Appellant Justification Letter by Supporters Alliance for Environmental Responsibility (SAFER), Lozeau Drury, LLP, September 9, 2021.

Attachment B: Air Quality Dynamics, 9500 Pico Mixed-Use Project - Health Risk Assessment Evaluation Technical Memorandum, February 10, 2022.

COMMENT LETTER NO.1

Supporters Alliance for Environmental Responsibility (SAFER)
Lozeau Drury, LLP
Richard Toshiyuki Drury
1939 Harrison Street, Suite 150
Oakland, CA 94612
September 9, 2021

COMMENT 1.1

Dear President Millman and Planning Commissioners:

I am writing on behalf of Supporters Alliance For Environmental Responsibility ("SAFER") regarding the Initial Study and Negative Declaration ("IS/ND") prepared for the 9500 Pico Mixed-Use Project (ENV-2020-5838), including all actions related or referring to the proposed construction, use, and maintenance of a six-story mixed-use building with a total of 108 residential dwelling units and a total of 3,250 square feet of commercial space (1,000 square-foot restaurant and 2,250 square feet of retail) and 134 parking spaces provided within two levels of subterranean parking, located at 9500 - 9530 W. Pico Boulevard in the City of Los Angeles ("Project").

RSPONSE TO COMMENT 1.1

The comment introduces the commenter and presents an understanding of the Proposed Project. Public Resources Code, Section 21091(d)(1), states that the Lead Agency shall consider comments it received on a proposed negative declaration if those comments are received within the public review period. Similarly, CEQA Guidelines Section 15088 provides that the lead agency shall respond to comments raising significant environmental issues received during the noticed comment period and may respond to late comments. This comment letter was submitted on September 9th, 2021, 37 days after the conclusion of the public review period. The statutory public review period ended on August 4, 2021. Pursuant to Public Resources Code, Section 21091(d)(1), the Lead Agency does not have to consider or respond to comments received after the public review period. Nonetheless, without waiving the rights of the Lead Agency, and to inform the decision makers, below are good faith responses to late comments received.

COMMENT 1.2

After reviewing the IS/ND, we conclude the IS/ND fails as an informational document, and that there is a fair argument that the Project may have adverse environmental impacts. Therefore, we

request that the City of Los Angeles ("City") prepare an environmental impact report ("EIR") for the Project pursuant to the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000, et seq.

RESPONSE TO COMMENT 1.2

The commenter asserts that there is a fair argument that the Proposed Project may have adverse environmental impacts and requests that the Lead Agency (City of Los Angeles) prepare an EIR. However, as discussed below, the commenter does not provide substantial evidence to support their assertions that there is a fair argument that the Proposed Project would result in significant environmental impacts to warrant an Environmental Impact Report. Pursuant to CEQA Guidelines, Section 15064(f)(5), substantial evidence includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact. Substantial evidence is not argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment (PRC Section 21080(d) and (e)). As the claims and assertions presented by the commenter below are not supported by facts or credible evidence, they do not support a fair argument that the Project would result in a significant impact. As such, an EIR is not required.

COMMENT 1.3

This comment has been prepared with the assistance of Certified Industrial Hygienist, Francis "Bud" Offermann, PE, CIH, and environmental consulting firm Soil/Water/Air Protection Enterprise ("SWAPE"). Mr. Offerman's comment and curriculum vitae are attached as Exhibit A hereto and is incorporated herein by reference in its entirety. SWAPE's comment and the consultants' curriculum vitae are attached as Exhibit B hereto and are incorporated herein by reference in their entirety.

RESPONSE TO COMMENT 1.3

This comment identifies the preparers of this comment letter and summarizes their expertise and qualifications. SWAPE's comments, provided in Exhibit B to the Richard Toshiyuki Drury comment letter are incorporated and addressed separately as Comment Letter No.3. As this comment does not raise a specific CEQA issue, no further response is required.

COMMENT 1.4

I. PROJECT DESCRIPTION

The Project proposes the demolition of a car wash, food stand, and office building for the construction, use, and maintenance of a six-story mixed-use building with a total of 108 residential dwelling units and a total of 3,250 square feet of commercial space (1,000 square-foot restaurant and 2,250 square feet of retail). The Project Site consists of ten parcels in the City of Los Angeles, on the south side of Pico Boulevard, between Beverly Drive and Reeves Street. The Project's total floor area would consist of 96,871 square feet resulting in a floor area ratio of 3.75:1. Up to 12,600 square feet of open space would be provided, consisting of common open space and private balconies. Additionally, a total of 134 parking spaces would be provided within two levels of subterranean parking.

The 9500 W Pico LLC (the "Applicant") is requesting the following discretionary approvals: (1) Pursuant to LAMC Section 12.22 A.25, a Density Bonus Compliance Review to permit a mixed-use housing development with 108 units and 3,250 square feet of commercial space, and with the following four Off-Menu Density Bonus Incentives/Waivers: (a) an increase in FAR from 1.5:1 to a maximum of 3.75:1, (b) an increase in height from 45 feet and 3 stories to 72 feet and 6 stories, (c) to provide 52 percent of the residential parking stalls as compact stalls, and (d) to waive the required commercial loading space; (2) Pursuant to LAMC Section 12.24 U.26, a Conditional Use Permit to allow a 50 percent density increase, in exchange for reserving 17 percent of the base density as very low income units (13 units); and (3) Pursuant to LAMC Section 16.50, Site Plan Review for a proposed residential building creating more than 50 net dwelling units.

The properties surrounding the Project Site include a mix of commercial uses (including restaurants and retail), multi-family residential, hotel, and office uses. These land uses range in height from one- to eight-stories above grade.

RESPONSE TO COMMENT 1.4

The commenter presents a description of the Proposed Project. As this comment does not raise any specific environmental issues, no further response is required.

COMMENT 1.5

II. LEGAL STANDARD

As the California Supreme Court has held "[i]f 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 Env't v. South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 319-320 (CBE v. SCAQMD) (citing *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 88; *Brentwood Assn. for No Drilling, Inc. v. City of Los Angeles* (1982) 134 Cal.App.3d 491, 504–505). "Significant environmental effect" is defined very broadly as "a substantial or potentially substantial adverse change in the environment." Pub. Res. Code ("PRC") § 21068; see also 14 CCR § 15382. An effect on the environment need not be "momentous" to meet the CEQA test for significance; it is enough that the impacts are "not trivial." *No Oil, Inc.*, 13 Cal.3d at 83. "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 Env't v. Cal. Res. Agency* (2002) 103 Cal.App.4th 98, 109 (*CBE v. CRA*).

The EIR is the very heart of CEQA. *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1214 (*Bakersfield Citizens*); *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 Univ. of Cal.* (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 at 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." PRC § 21080(d); 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 (14 CCR § 15371), only if there is not even a "fair argument" that the project will have a significant environmental effect. PRC, §§ 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* (1989) 129 Cal.App.3d 436, 440.

However, mitigation measures may not be construed as project design elements or features in an environmental document under CEQA if such a mischaracterization is significant. See *Lotus vs. Department of Transportation* (2014) 223 Cal.App.4th 645. A "mitigation measure" is a measure designed to minimize a project's significant environmental impacts, PRC § 21002.1(a), while a "project" is defined as including "the whole of an action, which has a potential for resulting in either

a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment." CEQA Guidelines § 15378(a). Unlike mitigation measures, project elements are considered prior to making a significance determination. Measures are not technically "mitigation" under CEQA unless they are incorporated to avoid or minimize "significant" impacts. PRC § 21100(b)(3).

To ensure that the project's potential environmental impacts are fully analyzed and disclosed, and that the adequacy of proposed mitigation measures is considered in depth, mitigation measures that are not included in the project's design should not be treated as part of the project description. *Lotus*, 223 Cal.App.4th at 654-55, 656 fn.8. Mischaracterization of a mitigation measure as a project design element or feature is "significant," and therefore amounts to a material error, "when it precludes or obfuscates required disclosure of the project" environmental impacts and analysis of potential mitigation measures." *Mission Bay Alliance v. Office of Community Investment & Infrastructure* (2016) 6 Cal.App.5th 160, 185.

Where an initial study shows that the project may have a significant effect on the environment, a mitigated negative declaration may be appropriate. However, a mitigated negative declaration is proper *only* if the project revisions would avoid or mitigate the potentially significant effects identified in the initial study "to a point where clearly no significant effect on the environment would occur, and…there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment." PRC §§ 21064.5 and 21080(c)(2); *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 331. In that context, "may" means a reasonable possibility of a significant effect on the environment. PRC §§ 21082.2(a), 21100, 21151(a); *Pocket Protectors*, 124 Cal.App.4th at 927; *League for Protection of Oakland's etc. Historic Res. v. City of Oakland* (1997) 52 Cal.App.4th 896, 904–05.

Under the "fair argument" standard, an EIR is required if any substantial evidence in the record indicates that a project may have an adverse environmental effect—even if contrary evidence exists to support the agency's decision. 14 CCR § 15064(f)(1); Pocket Protectors, 124 Cal.App.4th at 931; *Stanislaus Audubon Society v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-51; *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602. The "fair argument" standard creates a "low threshold" favoring environmental review through an EIR rather than through issuance of negative declarations or notices of exemption from CEQA. *Pocket Protectors*, 124 Cal.App.4th at 928.

The "fair argument" standard is virtually the opposite of the typical deferential standard accorded to agencies. As a leading CEQA treatise explains:

> This 'fair argument' standard is very different from the standard normally followed by public agencies in making administrative determinations. Ordinarily, public agencies weigh the

> evidence in the record before them and reach a decision based on a preponderance of the evidence. [Citations]. The fair argument standard, by contrast, prevents the lead agency from weighing competing evidence to determine who has a better argument concerning the likelihood or extent of a potential environmental impact. The lead agency's decision is thus largely legal rather than factual; it does not resolve conflicts in the evidence but determines only whether substantial evidence exists in the record to support the prescribed fair argument.

Kostka & Zishcke, *Practice Under* CEQA, §6.29, pp. 273–74. The Courts have explained that "it is a question of law, not fact, whether a fair argument exists, and the courts owe no deference to the lead agency's determination. Review is de novo, with *a preference for resolving doubts in favor of environmental review*." *Pocket Protectors*, 124 Cal.App.4th at 928 (emphasis in original).

For over forty years the courts have consistently held that an accurate and stable project description is a bedrock requirement of CEQA—the *sine qua non* (that without which there is nothing) of an adequate CEQA document:

> Only through an accurate view of the project may affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the "no project" alternative) and weigh other alternatives in the balance. An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR.

County of Inyo v. City of Los Angeles (1977) 71 Cal.App.3d 185 at 192–93. CEQA therefore requires that an environmental review document provide an adequate description of the project to allow for the public and government agencies to participate in the review process through submitting public comments and making informed decisions.

Lastly, CEQA requires that an environmental document include a description of the project's environmental setting or "baseline." CEQA Guidelines § 15063(d)(2). The CEQA "baseline" is the set of environmental conditions against which to compare a project's anticipated impacts. *CBE v. SCAQMD*, 48 Cal.4th at 321. CEQA Guidelines section 15125(a) states, in pertinent part, that a lead agency's environmental review under CEQA:

> …must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time [environmental analysis] is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a Lead Agency determines whether an impact is significant.

See Save Our Peninsula Committee v. County of Monterey (2001) 87 Cal.App.4th 99, 124–25 ("*Save Our Peninsula*").) As the court of appeal has explained, "the impacts of the project must be measured against the 'real conditions on the ground,'" and not against hypothetical permitted levels. *Id*. at 121–23.

RESPONSE TO COMMENT 1.5

The above comment restates case law, secondary source material, and the State CEQA Guidelines regarding the basic purpose of CEQA and EIRs. As this comment does not raise any CEQA issues related to the Proposed Project, no further response is required.

COMMENT 1.6

III. DISCUSSION

A. There is Substantial Evidence of a Fair Argument that the Project Will 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 (September 4, 2021) (Exhibit A). Mr. Offermann concludes that it is likely that the Project will expose residents and commercial/industrial 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, "The 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. 3.

Formaldehyde is a known human carcinogen. Mr. Offermann states that there is a fair argument that future residents and employees of the restaurant and retail businesses will be exposed to a cancer risk from formaldehyde of approximately 120 per million, assuming all materials are compliant with the California Air Resources Board's formaldehyde airborne toxics control

measure. *Id*. at 4. This exceeds the South Coast Air Quality Management District's ("SCAQMD") CEQA significance threshold for airborne cancer risk of 10 per million. *Id*.

RESPONSE TO COMMENT 1.6

This comment references the comments provided by Mr. Offermann (Exhibit A to the Comment Letter). Mr. Offerman's review significantly overestimates the amount of daily formaldehyde exposure from the Proposed Project and is based on the following inaccurate exposure assumptions: (1) that the construction materials would not be code-compliant with the California Composite Wood Products Regulation (California CWP Regulation) or US EPA Toxic Substances Control Act Title IV Regulation; (2) that the formaldehyde daily emissions from construction materials would be constant over 45 years; (3) that residents would inhale 20 cubic meters of air per day and live in the Proposed Project for an average 70-year lifetime and occupy their units 24 hours per day; and (4) that the employees would work at the Project Site for eight hours per day, five days per week, 50 weeks per year for 45 years (starting at 20 years and retiring at age 65). These assumptions are unreasonable and are not based on real life exposure potential. Further, it is unreasonable to assume that applicable laws and regulations pertaining to building materials would not be followed. Thus, the commenter substantially overestimates the amount of formaldehyde emissions to which future residents and workers in the Proposed Project could be exposed, as well as potential health impacts. Moreover, the commenter is speculating that composite wood materials would be used in the interior of the building. Indoor building materials will not be known until the building permit stage. As such, any further analysis on the content of indoor building materials would be speculative.

Formaldehyde in wood products is regulated by the California Code of Regulations, Title 17, Sections 93120 through 93120.12.[1] The purpose of the Airborne Toxic Control Measure is to reduce formaldehyde emissions from composite wood products, and finished goods that contain composite wood products, that are sold, offered for sale, supplied, used, or manufactured for sale in California. All manufacturers of hardwood plywood, particleboard, and medium density fiberboard products must comply with the emission requirements of CCR Section 93120.2(a) as tested in accordance with ASTM E 1333. Thus, all wood products and finished goods used during construction of buildings in the State of California would be compliant with the emission standards as promulgated in the CCRs.

[1] Cal EPA, Final Regulation Order - Airborne Toxic Control Measure to Reduce Formaldehyde Emissions from Composite Wood Products, https://ww2.arb.ca.gov/sites/default/files/barcu/regact/2007/compwood07/fro-final.pdf, accessed December 2021.

Formaldehyde, which can be found in wood products, generally contains the highest concentration when products are new, and such concentrations gradually decrease with age.[2] Neither the SCAQMD nor the City of Los Angeles provide significance thresholds for indoor air quality. However, the California CWP Regulation is one of the most stringent regulations in effect to limit formaldehyde emissions from composite wood productions. All finished products sold or supplied to California are required to be compliant with the CWP Regulation or the US EPA Toxic Substances Control Act Title IV Regulation (whichever is more stringent). To the City's knowledge, there are no credible or peer-reviewed studies which assessed long-term indoor concentrations and associated lifetime exposure to formaldehyde in new homes and commercial spaces in California that suggest the existing rules and regulations on formaldehyde in building materials are ineffective. Nor has the commenter cited any such studies. The existing rules and regulations are robust and adequate to ensure that issues related to formaldehyde from building materials will not be an issue for indoor air quality for the Proposed Project.

In addition, the Proposed Project would be required to comply with the California Green Building Standards Code, which is Part 11 of the California Code of Regulations, commonly referred to as CALGreen. The Proposed Project would be built with materials that are compliant with current regulations, which are intended to set low levels of formaldehyde in composite wood materials. These measures have been established through CALGreen and are designed to reduce the quantity of air contaminants to acceptable levels. Division 4.5, Environmental Quality, of CALGreen provides mandatory residential measures to reduce the quantity of air contaminants that are odorous, irritating and/or harmful to the comfort and wellbeing of a building's installers, occupants, and neighbors. It includes VOC limits for paints, coating, adhesives, adhesive bonding primers, sealants, sealant primers, and caulk. Section 4.504.3, Carpet Systems, of CALGreen establishes product requirements to meet one of the following: (1) Carpet and Rug Institute's Green Label Plus Program; (2) California Department of Public Health, "Standard Method for the Testing and Evaluation of Volatile Organic Chemical Emissions from Indoor Sources Using Environmental Chambers," Version 1.1; (3) NSF/ANSI 140 at the Gold Level; or (4) Scientific Certifications Systems Indoor Advantage Gold. Furthermore, Section 4.504.5, Composite wood products, of the CALGreen Code establishes limits for formaldehyde as specified in Cal Green Table 4.504.5.

Mr. Offermann's comments overestimate the amount of potential residential exposure to formaldehyde from the Proposed Project in several aspects. First, he claims that residential occupants would inhale 20 cubic meters of air per day, yet cites no evidence to substantiate this claim. According to the American Lung Association, the average person inhales approximately

[2] County of Los Angeles Public Health, Environmental Health, Indoor Air Quality, website: http://www.publichealth.lacounty.gov/eh/TEA/ToxicEpi/indoorair.htm, accessed October 2021.

2,000 gallons of air per day, or roughly 7.57 cubic meters per day.[3] Second, the commenter incorrectly applies an entire 70-year average lifetime (24 hours per day from birth to death) to calculate residential formaldehyde exposure, thus vastly overestimating any potential formaldehyde exposure to residents who would occupy the Proposed Project. Third, the review assumes that residents would live at the Proposed Project for their entire lives. This is speculative and likely incorrect. Estimations of how many times a person living in the United States moves in his or her lifetime have ranged from 9 times to 11 times, depending on age, race, and socioeconomic status, among other categories.[4,5] Thus, it is speculative and likely incorrect to assume that the initial residents who occupy the Proposed Project would remain for the remaining duration of their lives.

Mr. Offermann's assumption that the daily exposure level of formaldehyde would be constant for a 45-year period significantly overestimates the amount of potential formaldehyde emissions from the Proposed Project in several aspects. First, it incorrectly assumes that construction materials would not comply with all applicable regulations. Second, it assumes that formaldehyde emissions from construction materials would remain constant for over 45 years, in fact, they decrease over time.[6] Third, based on the US Bureau of Labor Statistics, the median number of years that wage and salary workers had been with their current employer was 4.1 years in January 2020.[7] The commenter cites no evidence that the Proposed Project would employ the same workers consistently for 45 years. Thus, the commenter's assumptions that the employees of the Proposed Project would be exposed to a consistent dose of formaldehyde for 40 hours per week over a period of 45 years is unsubstantiated opinion that is not reflective of a real-world scenario. By significantly overstating the exposure duration time, Mr. Offermann's letter does not provide an accurate assessment of risk exposure. Therefore, the commenter does not provide credible evidence of significant impacts related to indoor air quality.

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[3] American Lung Association, How Your Lungs Get the Job Done, website: https://www.lung.org/blog/how-your-lungs-work, accessed October 2021.

[4] United States Census Bureau, Calculating Migration Expectancy Using ACS Data, website: https://www.census.gov/topics/population/migration/guidance/calculating-migration-expectancy.html, accessed October 2021.

[5] FiveThirtyEight, How Many Times Does The Average Person Move?, website: https://fivethirtyeight.com/features/how-many-times-the-average-person-moves/, accessed October 2021.

[6] US EPA, Questions on Formaldehyde, February 10, 2016, website, https://www.epa.gov/sites/default/files/2016-02/documents/formaldehyde_questions_and_answers_2-16.pdf, accessed December 2021.

[7] United States Bureau of Labor Statistics, News Release, Employee Tenure in 2020, released September 22, 2020, website: https://www.bls.gov/news.release/pdf/tenure.pdf, accessed October 2021.

COMMENT 1.7

Mr. Offermann also notes that the high cancer risk that may be posed by the Project's indoor air emissions likely will be exacerbated by the additional cancer risk that exists as a result of the Project's location near roadways with moderate to high traffic (i.e. Pico Boulevard, Reeves Street, Beverly Drive, Alcott Street, etc.) and the high levels of $PM_{2.5}$ already present in the ambient air. Ex. A, pp. 12-15. No analysis has been conducted of the significant cumulative health impacts that will result to future employees of the Project.

RESPONSE TO COMMENT 1.7

The comment claims that the Proposed Project's potentially high cancer risk from indoor air emissions may lead to additional cancer risk as a result of the Proposed Project's proximity to nearby roadways and high levels of $PM_{2.5}$ existing in the ambient air. However, the comment cites no evidence to substantiate this claim or show that there are high levels of $PM_{2.5}$ along these streets. The California Supreme Court, in *California Building Industry Association v. Bay Area Air Quality Management District*, held that CEQA does not require an agency to consider the effects of existing environmental conditions on a proposed project's future users or residents.[8] The Court reasoned that CEQA requires analysis of the impacts of a project on the environment, including whether a project could exacerbate hazards that are already present, but not impacts of the environment on a project. The Court specifically found that the effects of existing air pollution on future residents are not impacts under CEQA. The CalEEMod (Version 2016.3.2) air quality worksheets provided in Appendix A of the IS/ND include calculations of the Project's $PM_{2.5}$ emissions during operation of the Proposed Project, which were concluded to have a less than significant impact on the environment. The regional and localized significance thresholds for $PM_{2.5}$ promulgated by the South Coast Air Quality Management District account for ambient concentrations of that pollutant, as described on Pages 52 through 54 of the IS/ND. Thus, the commenter does not provide credible evidence to support their claim.

COMMENT 1.8

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 5.

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[8] 62 Cal.4th 369 (2015).

RESPONSE TO COMMENT 1.8

As discussed previously in Response to Comment 1.6 and 1.7, the commenter does not provide substantial or credible evidence to support their assertions that there are significant environmental impacts from the Proposed Project's indoor air quality regarding formaldehyde, potentially high cancer risk from indoor air quality, or high levels of $PM_{2.5}$ in the existing ambient air to warrant an EIR or mitigation measures. Pursuant to CEQA Guidelines, Section 15064(f)(5), substantial evidence includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact. Substantial evidence is not argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment (PRC Section 21080(d) and (e). As the claims and assertions presented by the commenter are erroneous and supported by speculative and unsubstantiated assumptions, neither an EIR nor mitigation measures are required.

COMMENT 1.9

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 12-13.

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"). In addition to assessing the Project's potential health impacts to residents and employees, Mr. Offermann identifies the investigatory path that the City should be following in developing an EIR to more precisely evaluate the Projects' future formaldehyde emissions and establishing mitigation measures that reduce the cancer risk below the BAAQMD level. Ex. A, pp. 6-9. Such an analysis would be similar in form to the air quality modeling and traffic modeling typically conducted as part of a CEQA review.

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. Residents and commercial/industrial employees will be users of the Project. Currently, there is presumably little if any formaldehyde emissions at the site. Once the project is built, emissions will begin at levels that pose significant health risks. 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 and residents" 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 residents and employees of the Project are human beings and the health and safety of those residents and workers is as important to CEQA's safeguards as nearby residents currently living near the project site.

Because Mr. Offermann's expert review is substantial evidence of a fair argument of a significant environmental impact to future users of the project, an EIR, or at least a MND with adequate mitigation measures, must be prepared to disclose and mitigate those impacts.

RESPONSE TO COMMENT 1.9

See Response to Comment 1.6 through 1.8, above.

COMMENT 1.10

B. There is Substantial Evidence of a Fair Argument that the Project Will Have Significant Soil Contamination Impacts.

The IS/ND contains substantial evidence of a fair argument that the Project may have significant health and environmental impacts due to contaminated soil, and the evidence in the record does not support that the potential impacts will be mitigated to a level of significance.

First, the IS/ND fails to adequately evaluate the significant health and environmental risk impacts from releases of total petroleum hydrocarbons as gasoline (TPHg), and volatile organic compounds (VOCs; namely benzene, toluene, ethylbenzene [BTEX], and fuel oxygenates) due to the fact that the Project Site that [sic] is located on highly contaminated soil. Second, the IS/ND imposes mitigation measures on the Project to mitigate soil contamination impacts, which are improperly treated as project design elements and/or features. Third, the IS/ND fails to determine baseline conditions for soil contamination impacts, and defers mitigation measures intended to address such impacts. Therefore, CEQA requires an EIR to adequately evaluate the significant health risks and environmental impacts that the Project will likely to [sic] have from contaminated soil, or, at a minimum, a MND to mitigate the Project's soil contamination impacts.

RESPONSE TO COMMENT 1.10

The commenter claims that the Proposed Project's potential soil contamination impacts require an EIR or MND. This is incorrect. As previously discussed in Section IX. Hazards and Hazardous Materials of this IS/ND, soil vapor extraction of total petroleum hydrocarbons and VOCs, including benzene, toluene, ethylbenzene, xylene (BTEX) and MtBE began on the Project Site in April 2001 and was operational through March 18, 2004. In September 2008, the Los Angeles Regional Water Quality Control Board (LARWQCB) issued a No Further Action (NFA) letter upon the completion of such remediation and subsequent testing of soil samples. However, the NFA letter is conditioned on the present commercial land uses and soil conditions and does not apply to the Proposed Project as a mixed-use residential and commercial development, as stated on Page 107 of the IS/ND.

A closure evaluation for the Project Site under the State Water Resources Control Board's Low-Threat Underground Storage Tank Case Closure Policy (LTCP) was performed in November 2020 by the LARWQCB and posted on the State's GeoTracker website. On March 3, 2021, the LARWQCB was informed of the Project Site's planned redevelopment/land use change from commercial to residential for the Proposed Project. Accordingly, the LARWQCB has indicated that due to the planned site redevelopment/land use change from commercial to residential, "a soil vapor assessment needs to be completed at the [Project Site] to determine the risk of vapor intrusion into the proposed future building at the Site" and "CWCW [Century West Car Wash] is required to submit a soil vapor assessment work plan for the installation of soil vapor probes and collection of soil vapor samples at the Site." (See Page 107 of the IS/ND). To meet these requirements, soil gas sampling is planned to be completed after Project Site excavation to determine baseline conditions. (The existing improvements on the Project Site preclude

conducting such sampling now.) The LARWQCB regulatory requirement that the Proposed Project complete a soil vapor assessment will ensure that the Proposed Project does not constitute a significant risk to public health and the environment. The purpose of the soil vapor assessment is to determine the risk of vapor intrusion into the Proposed Project building by establishing baseline conditions on the Project Site. Those baseline conditions will then be evaluated to determine whether soil gas concentrations exceed the LTCP soil gas criteria. Thus, the commenter's assertion that the IS/ND fails to adequately evaluate the significant health and environmental risk impacts related to soil contamination is false and misleading.

The assertion that the IS/ND improperly treats mitigation measures as project design elements and/or features is incorrect. The IS/ND concludes that after compliance with regulatory requirements and the SCAQMD's corrective action mandates, impacts related to soil and soil vapor would be less than significant. Mitigation measures are only required for such effects which are found to be significant (see CEQA Guidelines Section 15126.4(a)(3)). Mitigation measures are identified by the lead agency after the project has undergone environmental review and are above-and-beyond existing laws, regulations, and requirements that would reduce environmental impacts.[9] The Proposed Project is subject to the regulatory agency requirement of completing a soil vapor assessment to determine the presence of soil vapor at the Project Site. The soil gas sampling results will be presented to the LARWQCB, in addition to a detailed description of the methane depressurization and parking structure exhaust ventilation systems. These systems are not introduced as mitigation measures, nor are they proposed as mitigation measures. These systems will be constructed to adhere to regulatory agency requirements or code requirements, not to mitigate a significant impact. Further, the depressurization system will be completed to fulfill LADBS methane requirements (see Page 107 of the IS/ND). The parking ventilation system will be constructed to fulfill LADBS and California Mechanical Code requirements regarding exhaust in parking garages (see Page 108 of the IS/ND). By implementing these required systems, which are independent of and not affected by the soil gas sampling results of the soil vapor assessment, residual concentrations of VOCs in soil vapor, if present, would be much lower than the measured methane gas concentrations and expected exhaust fumes that the Proposed Project ventilations systems are designed to mitigate. Thus, the use of the proposed ventilation systems would eliminate any exposure route of VOCs to occupants of the Project Site, and based on this information, there would be no human health risk to workers or future occupants of the Project Site through possible vapor intrusion (see Page 108 in the IS/ND; see also Appendix L of the IS/ND).

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[9] See California Association of Environmental Professionals, CEQA Portal, Portal Topic Paper on Mitigation Measures, updated 2/10/20, website: https://ceqaportal.org/tp/CEQA%20Mitigation%202020.pdf, accessed December 2021.

The assertion that the IS/ND fails to identify the environmental setting and improperly defers mitigation is based on incorrect assumptions. See Responses to Comments 1.12 through 1.14 below for further discussion.

COMMENT 1.11

i. The IS/ND fails to rebut the substantial evidence from LARWQCB that the Project will have significant soil contamination impacts.

The Project Site is currently occupied by Century West Car Wash ("CWCW") for commercial use. According to the IS/ND, the car wash property was identified as an underground storage tank (UST), leaking UST (LUST), Enforcement Action Listing (ENF), Historic Hazardous Waste & Substances Site (Hist Cortese), Facility and Manifest Data (HAZNET) and EDR Historic Auto Station site in the regulatory database report. IS/ND, p. 106.

In response to the identification of contaminated soils on the Project Site, a total of 64,759 pounds of total petroleum hydrocarbons were removed using a soil vapor extraction (SVE) system from April 2001 to March 2004. *Id*. at p. 107. The LARWQCB issued a No Further Action letter for soil remediation on September 17, 2008. *Id*. However, the LARWQCB has made clear that its No Further Action letter in 2008 "is conditioned on the present commercial land uses and soil conditions," and therefore does not apply to the [Project's] proposed development." *Id*.

The LARWQCB stated in its March 5, 2021 correspondence that "[b]enzene and other petroleum hydrocarbon concentrations in soil and groundwater at the Site could pose a risk of vapor intrusion into on-site buildings," *see* IS/ND, Attachment A, Appendix E.2, which the IS/ND denies. *See* IS/ND, p. 58 ("[V]apor intrusion is not considered a concern at the site.") Although the IS/ND contradicts itself, stating that these "concentrations of petroleum hydrocarbons in soil remaining at 25 feet bgs slightly exceed the human health screening levels for dermal contact, inhalation, and ingestion at residential properties." *Id*. at p. 58.

Accordingly, the LARWQCB has indicated that due to the planned site redevelopment/land use change from commercial to residential, "a soil vapor assessment needs to be completed at the [Project Site] to determine the risk of vapor intrusion into the proposed future building at the Site" and "CWCW is required to submit a soil vapor assessment work plan for the installation of soil vapor probes and collection of soil vapor samples at the Site." *Id*. at p. 107. This required action by the LARWQCB is substantial evidence of a fair argument that the Project involves significant risks to public health and the environment from soil contamination. Furthermore, the IS/ND's inclusion of a number of mitigation measures addressing the potential significant impacts from the contaminated soil at the Project Site, including vapor control systems, also provides

substantial evidence that the Project could cause significant health and environmental impacts. *See id*. at pp. 58-59.

Thus, the Project requires an EIR under CEQA, or at a minimum, a MND that includes adequate mitigation measures as discussed in the subsequent section.

RESPONSE TO COMMENT 1.11

With respect to the characterization of historic soil contamination and the LARWQB's No Further Action Letter, see Response to Comment 1.10 above. The commenter has not provided credible evidence demonstrating that the Proposed Project would cause significant health and environmental impacts or that the IS/ND proposes any mitigation measures. As such, an EIR or MND is not required for the Proposed Project. The commenter's concerns have been noted for the record and will be forwarded to the decision makers for their consideration.

COMMENT 1.12

ii. <u>The IS/ND imposes mitigations for soil contamination on the Project that do not qualify as "project design elements," and therefore, a MND, at a minimum, is required.</u>

The IS/ND imposes a number of mitigation measures for soil contamination throughout the documents that cannot be defined as "project design elements." Such mitigation measures are detailed in the following excerpts from the IS/ND:

> The proposed building is planned to be constructed with an active depressurization system beneath the foundation due to elevated methane gas and a subterranean ventilated parking structure. ***Based on these vapor control systems, the exposure route of possible vapor intrusion from off-gassing contaminated soil or groundwater, if any, has been eliminated***. *Id*. at p. 58 (emphasis added).
>
> … the subterranean parking structure will be constructed with a ventilation system that will include exhaust fans as well as fresh air intake fans designed to protect occupants from inhalation of vehicle exhaust. In accordance with the LADBS requirements, the ventilation system will ensure at least four air exchange rates per hour for the lowest level of the parking structure. *Id*. at pp. 58-59.

As concluded in the Qualitative Health Risk Assessment, residual concentrations of VOCs in soil vapor, if present, would be much lower than the measured methane gas concentrations and expected exhaust fumes that the ***ventilation systems are designed to mitigate***. The use of the

proposed ventilation systems would eliminate any exposure route of VOCs to occupants of the site. *Id*. at p. 59 (emphases added).

In addition, LARWQCB's requirement that "a soil vapor assessment" be completed at the Project Site and for the CWCW to submit a "a soil assessment work plan" in the IS/ND are mitigation measures that fail to qualify as project design elements. IS/ND, p. 107. "These are plainly mitigation measures and not part of the [P]roject itself." *See Lotus*, 223 Cal.App.4th at 656, fn.8.

The *Lotus* court explained that the chief purpose of the distinction between elements of a project and mitigation measures is to enable the determination of whether other more effective mitigation measures than those proposed should be considered. *Lotus*, 223 Cal.App.4th at 654– 55, 656 fn.8. In *Lotus*, the court found that the mischaracterization of mitigation measures as part of the project, in the form of a project design element or feature, compounded a significant omission in the EIR—i.e., the failure to apply a standard of significance to impacts on the root systems of old growth redwood trees. *Id*. at 654–55. The court explained that:

> Absent a determination regarding the significance of the impacts to the root systems of the old growth redwood trees, it is impossible to determine whether mitigation measures are required or to evaluate whether other more effective measures than those proposed should be considered. Should Caltrans determine that a specific tree or group of trees will be significantly impacted by proposed roadwork, that finding would trigger the need to consider a range of specifically targeted mitigation measures, including analysis of whether the project itself could be modified to lessen the impact. [Citation.] . . . Simply stating that there will be no significant impacts because the project incorporates 'special construction techniques;' is not adequate or permissible.

Id. at 656-657.

Here, the IS/ND omits any adequate analysis of predictable soil contamination impacts from the project, particularly the impacts to public health and the environment from soil contaminated by petroleum hydrocarbon concentrations and VOCs, and compounds this admission by "incorporating the proposed mitigation measures into its description of the project and then concluding that any potential impacts from the project will be less than significant." *Id*. at 656. These "avoidance, minimization, and/or mitigation measures," as they are characterized in the IS/ND, are not "part of the project." Instead, they are mitigation measures designed to reduce or eliminate the significant public health risks and environmental impacts of soil contamination that likely could be caused by the Project.

In "compressing the analysis of impacts and mitigation measures into a single issue, the EIR disregards the requirements of CEQA." *Id*. Thus, a new MND that lists the significant impacts of

soil contamination and specific mitigation measures to address adverse impacts must be prepared at a minimum.

RESPONSE TO COMMENT 1.12

As discussed in Response to Comments 1.10 through 1.11, above, and concluded in Section IX. Hazards and Hazardous Materials of the IS/ND, adherence to regulatory agency requirements of the LADBS, LAFD, California Mechanical Code, and compliance with the LARWQCB's path to closure requirements would ensure that the Proposed Project's impacts associated with soil vapor would be less than significant. The methane depressurization system will be constructed to fulfill LADBS requirements (see Page 107 of the IS/ND). The parking ventilation system will be constructed to fulfill LADBS and California Mechanical Code requirements (see Page 108 of the IS/ND). These systems are not introduced as mitigation measures, nor are they proposed as mitigation measures or project design features. These systems will be constructed to adhere to regulatory agency requirements or code requirements, not to mitigate a significant impact. As stated in Response to Comment 1.11, above, mitigation measures are only required for such effects which are found to be significant (see CEQA Guidelines Section 15126.4(a)(3)). The LARWQCB's requirement of a soil vapor assessment for the Proposed Project does not constitute a mitigation measure. The soil vapor assessment is not mitigating a significant impact, and no mitigation measures are proposed as part of the IS/ND. The purpose of the soil vapor assessment is to determine soil vapor conditions on the Project Site. The Proposed Project is subject to the regulatory agency requirement of completing a soil vapor assessment to determine soil vapor conditions on the Project Site. Furthermore, the conclusion from the IS/ND that impacts associated with soil vapor would be less than significant does not rely on the planned soil vapor assessment required by LARWQCB. The IS/ND's conclusions are based on compliance with the corrective action regulations imposed by the Water Board which would ensure that the Project meets the environmental and public health and safety standards pursuant to Health and Safety Code Section 25296.10.

COMMENT 1.13

iii. <u>The IS/ND fails to determine baseline conditions for soil contamination impacts, and improperly relies on deferred mitigation measures.</u>

CEQA requires that an environmental document include a description of the project's environmental setting or "baseline" at the time environmental review commences. CEQA Guidelines § 15063(d)(2). Every CEQA document must start from a "baseline" assumption. The CEQA "baseline" is the set of environmental conditions against which to compare a project's anticipated impacts. (*Communities for a Better Environment v. So. Coast Air Qual. Mgmnt. Dist.*

(2010) 48 Cal. 4th 310, 321.) Section 15125(a) of the CEQA Guidelines (14 C.C.R., § 15125(a)) states in pertinent part that a lead agency's environmental review under CEQA:

> "…must include a description of the physical environmental conditions in the vicinity of the project, as they exist at the time [environmental analysis] is commenced, from both a local and regional perspective. This environmental setting will normally constitute the baseline physical conditions by which a Lead Agency determines whether an impact is significant."

(See, *Save Our Peninsula Committee v. County of Monterey* (2001) 87 Cal.App.4th 99, 124-125 ("*Save Our Peninsula*.") As the court of appeal has explained, "the impacts of the project must be measured against the 'real conditions on the ground,'" and not against hypothetical permitted levels. (*Save Our Peninsula*,87 Cal.App.4th 99, 121- 123.) As the court has explained, using such a skewed baseline "mislead(s) the public" and "draws a red herring across the path of public input." (*San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 656; *Woodward Park Homeowners v. City of Fresno* (2007) 150 Cal.App.4th 683, 708-711.)

However, the IS/ND fails to consider baseline conditions for soil vapor. *See* IS/ND, p. 107 ("To meet the LARWQCB requirement, soil gas sampling is planned to be completed after site excavation to determine baseline conditions."). Thus, the IS/ND relies on a baseline for soil contamination that will exist sometime in the future, rather than the current baseline of heavily contaminated conditions. Therefore, the IS/ND for the Project is in violation of CEQA.

RESPONSE TO COMMENT 1.13

The commenter misrepresents CEQA Section 15063(d)(2), which states, "An initial study shall contain in brief form an identification of the environmental setting." The commenter also misquotes CEQA Section 15125(a), which states, "An EIR must include a description of the physical environmental conditions in the vicinity of the project," and Section 15125(a)(1), which states, "Generally, the lead agency should describe physical environmental conditions as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced, from both a local and regional perspective. Where existing conditions change or fluctuate over time, and where necessary to provide the most accurate picture practically possible of the project's impacts, a lead agency may define existing conditions by referencing historic conditions, or conditions expected when the project becomes operational, or both, that are supported with substantial evidence. In addition, a lead agency may also use baselines consisting of both existing conditions and projected future conditions that are supported by reliable projections based on substantial evidence in the record." The Proposed Project is not an EIR; it is an IS/ND.

The commenter also fails to provide substantial or credible evidence in support of its claim that the environmental setting of the Project Site was not properly identified. The environmental setting of the Project Site is characterized in Section in Section IX. Hazards and Hazardous Materials of the IS/ND. As stated in the IS/ND, the Proposed Project is subject to the regulatory agency requirement of completing a post grading soil vapor assessment to determine conditions on the Project Site after grading. The post-grading soil vapor conditions cannot be properly assessed until after grading is complete as the existing improvements would severely limit sampling now. In addition, excavation may result in removal and disposal of impacted soils in accordance with regulatory requirements, so sampling now, assuming it was feasible, would potentially overstate VOC concentrations. Furthermore, the conclusion from the IS/ND that impacts associated with soil vapor would be less than significant does not rely on the planned soil vapor assessment required by LARWQCB in accordance with regulatory requirements.

COMMENT 1.14

In addition, the IS/ND relies on deferred mitigation of soil contamination impacts. The IS/ND states that to meet LARWQCB's requirement that "soil gas sampling ***is planned to be completed after site excavation***" to determine baseline conditions. IS/ND, p. 107; *see Citizens for Responsible Equitable Environmental Development v. City of Chula Vista* (2011) 197 Cal.App.4th 327, 331-332 ("*CREED*") (holding that an agency may not rely on a corrective action plan to mitigate potential impacts of site contamination when the plan's mitigation measures for contaminated soil are not disclosed in the record). Therefore, the Project relies for mitigation on measures [sic] that are not set forth in the IS/ND and not required as mitigation measures. See CEQA prohibits this type of "deferred mitigation."

> A study conducted after approval of a project will inevitably have a diminished influence on decisionmaking. Even if the study is subject to administrative approval, it is analogous to the sort of post hoc rationalization of agency actions that has been repeatedly condemned in decisions construing CEQA." *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 307.

[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. *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 92.

The IS/ND relies on such "tentative plans for future mitigation" that were rejected in the cases of CREED, *Sundstrom*, and *CBE v. Richmond*. As such, the IS/ND fails to comply with CEQA. Thus,

a new document must be prepared setting forth base conditions and specific mitigation measures that will be implemented.

RESPONSE TO COMMENT 1.14

The commenter's claims that the IS/ND relies on deferred mitigation of soil contamination impacts is based on incorrect assumptions. As stated previously in Response to Comment 1.12, the LARWQCB's requirement of a soil vapor assessment for the Proposed Project does not constitute a mitigation measure. The soil vapor assessment is not mitigating a significant impact, and no mitigation measures are proposed as part of the IS/ND. The purpose of the soil vapor assessment is to determine baseline conditions on the Project Site. Neither is the soil vapor assessment a tentative plan for future mitigation after completion of the CEQA process. The Proposed Project is subject to the regulatory agency requirement of completing a soil vapor assessment. The conclusion from the IS/ND that impacts associated with soil vapor would be less than significant does not rely on the planned soil vapor assessment required by LARWQCB in accordance with regulatory requirements. See Response to Comment 1.12 for a detailed response.

COMMENT 1.15

C. Contrary to the IS/ND, the Project Will Cause a Wasteful, Inefficient, and Unnecessary Consumption of Natural Gas.

CEQA requires that mitigation measures should include measures to reduce wasteful, inefficient, and unnecessary consumption of energy. Pub Res C §21100(b)(3). However, the IS/ND states that the Project is estimated to cause a substantial increase in the total natural gas demand (960,025 kBTU/yr^2) compared to the existing demand (233,507 kBTU/ yr^2). IS/ND, p. 75. Although the IS/ND states that the project's natural gas needs are anticipated to fall within Southern California Gas' ("SCG") current storage capacity, this factor in itself does not mean the project is not causing wasteful, inefficient, or unnecessary consumption of natural gas. IS/ND, p. 84.

Starting in 2019 with the City of Berkeley, numerous cities throughout the state of California have adopted bans or restrictions on the amount of natural gas hookups in new construction.[10] As of August 5, 2021, 49 cities had adopted a commitment to gas-free buildings.[11] In the "Findings and Purpose" section of its ordinance, Berkeley explains that its prohibition on natural gas infrastructure was based on the "scientific evidence [] establish[ing] that natural gas combustion,

[10] "A Furious Industry Backlash Greets Moves by California Cities to Ban Natural Gas in New Construction," Inside Climate News (March 5, 2021) https://insideclimatenews.org/news/05032021/gas-industry-fights-bans-in-homes-businesses/.

[11] "California's Cities Lead the Way to a Gas-Free Future," Sierra Club (July 22, 2021; updated August 5, 2021) https://www.sierraclub.org/articles/2021/07/californias-cities-lead-way-gas-free-future.

procurement and transportation produce significant greenhouse gas emissions that contribute to global warming and climate change." Berkeley Municipal Code § 12.80.010 (A). It also cited concerns about sea level rise because of its proximity to the water, and concerns about the asthma and other health conditions of its citizens that would be exacerbated by the combustion of natural gas. *Id*. at (B)(1)-(2), (C).

Although the City of Los Angeles has yet to enact a ban on new natural gas hookups, there are still measures that this project could take that could reduce its dependency on natural gas, and the City should at least prepare an MND to address and mitigate this substantial increase in natural gas use of over 960,000 kBTU/ yr^2 as compared to current use and analyze the feasibility of requiring this Project to be all electric without natural gas.

RESPONSE TO COMMENT 1.15

The commenter cites no evidence to support the claim that the Proposed Project's net total natural gas demand of 940,824 cubic feet per year as compared to the existing demand of 228,837 cubic feet per year constitutes wasteful, inefficient, or unnecessary consumption of natural gas warranting mitigation. As concluded in Section VI. Energy, of the IS/ND, the Proposed Project would not cause wasteful, inefficient, or unnecessary consumption of natural gas. The Proposed Project's operational natural gas consumption of 940,824 cubic feet per year represents a small fraction of one percent of the SCG's existing natural gas storage capacity of 112.5 billion cubic feet allocated for residential, small industrial, and commercial customers, as of 2018. Therefore, the Proposed Project would be well within SCG's capabilities to supply the Project Site with natural gas (see Page 74 of the IS/ND).

Moreover, as discussed on Page 75 of Section VI. Energy, of the IS/ND, the Proposed Project would be required to comply with energy conservation standards pursuant to Title 24 of the California Administrative Code (CALGreen) and required to comply with the L.A. Green Building Code, which requires the use of numerous conservation measures beyond those required by CALGreen. Compliance with CALGreen and the L.A. Green Building Code would ensure that the Proposed Project would not cause wasteful, inefficient, or unnecessary consumption of natural gas. Moreover, because of such compliance, the Proposed Project would be more efficient than the existing improvements, which were all built many years ago under far less stringent regulatory requirements. Thus, Project consumption of natural gas resources and use of natural gas infrastructure would remain less than significant. As such, no mitigation measures are required or necessary.

COMMENT 1.16

D. The IS/ND Relied on Unsubstantiated Input Parameters to Estimate Project Emissions and Thus the Project May Result in Significant Air Quality Impacts.

Matt Hagemann, P.G., C.Hg., and Dr. Paul E. Rosenfeld, Ph.D., of the environmental consulting firm SWAPE reviewed the IS/ND's analysis of the Project's impacts on 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.

SWAPE found that the IS/ND 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. The ND relies on emissions calculated from the California Emissions Estimator Version CalEEMod.2016.3.2 ("CalEEMod"). IS/ND, p. 50. 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. 1. CEQA requires any changes to the default values to be justified by substantial evidence. *Id*. at 1-2.

SWAPE reviewed the IS/ND's CalEEMod output files and found that the values input into the model were inconsistent with information provided in the ND. Ex. B, p. 2. As a result, the IS/ND's air quality analysis cannot be relied upon to determine the Project's emissions.

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

RESPONSE TO COMMENT 1.16

The commenter's claims that the IS/ND's analysis and conclusions for air quality are not supported by substantial evidence are a preface to specific claims made below. The same comments are raised in more detail in the SWAPE letter, attached as Exhibit B to the Lozeau Drury letter. Responses to the SWAPE letter are included below under Comment Letter No. 3.

COMMENT 1.17

1. Unsubstantiated Reduction to Parking Land Use Size. Ex. B, p. 2.

RESPONSE TO COMMENT 1.17

See Response to Comment 3.4 in Comment Letter No. 3, below.

COMMENT 1.18

2. Unsubstantiated Changes to Individual Construction Phase Lengths. Ex. B, p. 3.

RESPONSE TO COMMENT 1.18

See Response to Comment 3.5 in Comment Letter No. 3, below.

COMMENT 1.19

3. Unsubstantiated Change to Gas Fireplaces Value. Ex. B, p. 5.

RESPONSE TO COMMENT 1.19

See Response to Comment 3.6 in Comment Letter No. 3, below.

COMMENT 1.20

4. Incorrect Application of Construction-Related Mitigation Measure. Ex. B, p. 5.

RESPONSE TO COMMENT 1.20

See Response to Comment 3.7 in Comment Letter No. 3, below.

COMMENT 1.21

5. Incorrect Application of Operational Mitigation Measures. Ex. B, p. 7.

RESPONSE TO COMMENT 1.21

See Response to Comment 3.8 in Comment Letter No. 3, below.

COMMENT 1.22

Significantly, SWAPE points out that the IS/ND "fails to incorporate or require any mitigation for the proposed Project whatsoever," but uses mitigation measures for its model, thereby "artificially reduc[ing]" its emissions estimates. Ex. B., p. 8. Further, SWAPE states that project design features ("PDFs") that are not formally included as mitigation measures "may be eliminated from the Project's design altogether," rendering it impossible to guarantee whether the operational measures discussed in the IS/ND would be implemented, monitored, or enforced. *Id*.

As a result of these errors in the IS/ND, the Project's construction and operational emissions were underestimated and cannot be relied upon to determine the significance of the Project's air quality impacts.

RESPONSE TO COMMENT 1.22

See Response to Comment 3.7 through 3.9 in Comment Letter No. 3, below.

COMMENT 1.23

E. An Updated Air Model Analysis Found that the Project Will have a Significant Air Quality Impact.

To more accurately determine the Project's construction and operational emissions, SWAPE prepared an updated CalEEMod model using more site-specific information and corrected input parameters. *See* Ex. B, p. 9. SWAPE's updated analysis demonstrates that the Project's construction-related VOC and operational NOx emissions increased by approximately 1,446% and 1,018%, respectively, and exceed the applicable SCAQMD significance thresholds. *Id*. Thus, SWAPE's model demonstrates that the Project would result in a potentially significant air quality impact that was not previously identified or addressed in the IS/ND. An EIR should be prepared to adequately assess and mitigate the potential air quality impacts that the Project may have on the surrounding environment.

RESPONSE TO COMMENT 1.23

See Response to Comment 3.9 in Comment Letter No. 3, below.

COMMENT 1.24

F. There is Substantial Evidence of a Fair Argument 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.[12]

The IS/ND failed to conduct a quantified construction or operational health risk analysis ("HRA") emissions, resulting in an inadequate health risk emissions analysis. IS/ND, p. 53-57. The IS/ND stated that based on its short-term construction schedule of 24 months, it would not result in long-term TAC emissions and that health risks associated with DPM during construction would be less than significant. *Id*. at 57. It also states that because the project is a mixed-use residential and commercial development, it "would not support any land uses or activities that would involve the use, storage, or processing of carcinogenic or non-carcinogenic toxic air contaminants." *Id*. at 58. SWAPE identifies four main reasons for why the IS/ND's evaluation of health risk impacts and less-than-significant conclusion is incorrect.

First, the IS/ND's localized significance threshold ("LST") only assesses impacts of pollutants at a local level, and therefore can only evaluate impacts from criteria pollutants. The LST therefore does address impacts from DPM and renders the IS/ND inadequate.

Second, the IS/ND fails to quantitively evaluate construction-related and operational toxic air contaminants ("TACs") or make a reasonable effort to connect emissions to health impacts. Ex. B, p. 11. SWAPE identifies potential emissions from both the exhaust stacks of construction equipment and daily vehicle trips. *Id*. In failing to connect TAC emissions to potential health risks to nearby receptors, the Project fails to meet the CEQA requirement that projects correlate increases in project-generated emissions to adverse impacts on human health cause by those emissions. Ex. B, p. 11; *See Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 510.

Third, 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.* OEHHA recommends that projects lasting at least 2 months be evaluated for cancer risks to nearby sensitive receptors, a time period which this Project easily exceeds. Ex. B, p.11. The OEHHA document also recommends that 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

[12] See CARB Resources – Overview: Diesel Exhaust & Health, available at https://ww2.arb.ca.gov/resources/overview-diesel-exhaust-and-health.).

recommends that health risk impacts from the project be evaluated. *Id*. An EIR is therefore required to analyze these impacts. *Id*.

Fourth, the IS/ND's claim that there will be a less than significant impact without having conducted a qualified construction or operational HRA for nearby sensitive receptors also fails under CEQA requirements. An EIR or at least an MND should be prepared to quantify the cumulative excess cancer risk posed by the Project's construction and operation to nearby, existing receptors, and compare it to the SCAQMD threshold of 10 in one million. *Id*.

SWAPE prepared a screening-level HRA to evaluate potential impacts from Project construction. SWAPE used AERSCREEN, the leading screening-level air quality dispersion model. SWAPE applied a sensitive receptor distance of 25 meters and analyzed impacts to individuals at different stages of life based on OEHHA and SCAQMD guidance utilizing age sensitivity factors. *Id*. at 12-15.

SWAPE found that the excess cancer risks at a sensitive receptor located approximately 25 meters away over the course of Project construction are approximately 47.8 in one million for infants and 14.9 in one million for children. *Id*. At 15. Moreover, **the excess lifetime cancer risk over the course of a Project operation of 30 years is approximately 69.9 in one million**. *Id*. The risks to infants, children, and lifetime residents appreciably 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 diesel particulate emissions. A health risk assessment must be prepared disclosing the health risk impacts from toxic air contaminants.

RESPONSE 1.24

See Response to Comment 3.10 in Comment Letter No. 3, below, regarding diesel particulate matter (DPM) and toxic air contaminants (TACs) and see Response to Comment 3.11, below, regarding the preparation of an HRA.

COMMENT 1.25

G. The IS/ND Failed to Adequately Analyze the Project's Greenhouse Gas Impacts and Thus the Project May Result in Significant Greenhouse Gas Emissions.

The IS/ND estimates that the Project would generate net annual GHG emissions of 318.26 metric tons of carbon dioxide equivalent per year ("MT CO2e/year"), and that installment of fixtures such as energy efficient lighting, low flow plumbing features, and a recycling program will reduce GHG

emissions. IS/ND, p. 97-98. It also states that this falls below the SCAQMD proposed nonindustrial screening threshold of 3,000 MT CO2e/year, which the IS/ND states is further evidence that the GHG impacts of the project are less than significant. *Id*. at 97. However, SWAPE states that the IS/ND's conclusion about a less-than-significant greenhouse gas impact is incorrect for several reasons.

RESPONSE TO COMMENT 1.25

Detailed responses to these two concerns are presented in Response to Comment 3.13 and 3.14 in Comment Letter No. 3, below.

COMMENT 1.26

First, the IS/ND's analysis of GHG impacts is based on a flawed air model, as discussed in the Air Quality section of SWAPE's comments. This resulted in an underestimation of GHG emissions, and therefore does not provide a reliable assessment of the Project's significance. Ex. B, p. 17.

RESPONSE TO COMMENT 1.26

See Response to Comment 3.13 in Comment Letter No. 3, below.

COMMENT 1.27

Second, SWAPE states that the IS/ND relies on features that are not included as mitigation measures, and SWAPE can therefore not verify that the measures would be implemented, monitored, and enforced on the project site. *Id*.

RESPONSE TO COMMENT 1.27

See Response to Comment 3.14 in Comment Letter No. 3, below.

COMMENT 1.28

SWAPE's analysis demonstrated a potentially significant health risk impact from the project that necessitates mitigation, and it proposes that the Project's product design features be implemented as formal mitigation measures. In addition to implementing these measures, the EIR or MND should include an updated air quality, health risk, and GHG analysis.

RESPONSE TO COMMENT 1.28

As discussed in the responses to Comment Letter No. 3, below, SWAPE's analysis failed to demonstrate a potentially significant health risk impact from the Proposed Project that would necessitate mitigation. SWAPE's analysis is incorrect and is based on erroneous information. The Proposed Project would not lead to a potentially significant health risk impact. No mitigation measures are required, and no project design features are proposed. An EIR or an MND is not required.

COMMENT 1.29

IV. CONCLUSION

In light of the above comments, the City must prepare an EIR for the Project or, at minimum, a MND, and the MND or draft EIR should be circulated for public review and comment in accordance with CEQA. Thank you for considering these comments.

RESPONSE TO COMMENT 1.29

As discussed in Response to Comments 1.1 through 1.28, above, and in the responses to Comment Letter No. 2 and Comment Letter No. 3, below, the commenter does not provide credible evidence to support their assertions that the Proposed Project would result in significant impacts, or that the Proposed Project requires the preparation of an EIR or MND. The claims and assertions presented by the commenter are erroneous and supported by speculative and unsubstantiated assumptions. Pursuant to CEQA Guidelines, Section 15064(f)(5), substantial evidence includes fact, a reasonable assumption predicated upon fact, or expert opinion supported by fact. Substantial evidence is not argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment (PRC Section 21080(d) and (e). Impacts related to indoor air quality, soil contamination, greenhouse gas emissions, and human health risks would remain less than significant. An EIR or MND is not required. No further analysis is required.

COMMENT LETTER NO.2

Indoor Environmental Engineering
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Francis J. Offermann, PE, CIH
September 4, 2021

COMMENT 2.1

Indoor Air Quality Impacts

Indoor air quality (IAQ) directly impacts the comfort and health of building occupants, and the achievement of acceptable IAQ in newly constructed and renovated buildings is a well-recognized design objective. For example, IAQ is addressed by major high-performance building rating systems and building codes (California Building Standards Commission, 2014; USGBC, 2014). Indoor air quality in homes is particularly important because occupants, on average, spend approximately ninety percent of their time indoors with the majority of this time spent at home (EPA, 2011). Some segments of the population that are most susceptible to the effects of poor IAQ, such as the very young and the elderly, occupy their homes almost continuously. Additionally, an increasing number of adults are working from home at least some of the time during the workweek. Indoor air quality also is a serious concern for workers in hotels, offices and other business establishments**.**

The concentrations of many air pollutants often are elevated in homes and other buildings relative to outdoor air because many of the materials and products used indoors contain and release a variety of pollutants to air (Hodgson et al., 2002; Offermann and Hodgson, 2011). With respect to indoor air contaminants for which inhalation is the primary route of exposure, the critical design and construction parameters are the provision of adequate ventilation and the reduction of indoor sources of the contaminants.

Indoor Formaldehyde Concentrations Impact. In the California New Home Study (CNHS) of 108 new homes in California (Offermann, 2009), 25 air contaminants were measured, and formaldehyde was identified as the indoor air contaminant with the highest cancer risk as determined by the California Proposition 65 Safe Harbor Levels (OEHHA, 2017a), No Significant Risk Levels (NSRL) for carcinogens. The NSRL is the daily intake level calculated to result in one excess case of cancer in an exposed population of 100,000 (i.e., ten in one million cancer risk) and for formaldehyde is 40 µg/day. The NSRL concentration of formaldehyde that represents a daily dose of 40 µg is 2 µg/m^3, assuming a continuous 24-hour exposure, a total daily inhaled air

volume of 20 m^3, and 100% absorption by the respiratory system. All of the CNHS homes exceeded this NSRL concentration of 2 $\mu g/m^3$. The median indoor formaldehyde concentration was 36 $\mu g/m^3$, and ranged from 4.8 to 136 $\mu g/m^3$, which corresponds to a median exceedance of the 2 $\mu g/m^3$ NSRL concentration of 18 and a range of 2.3 to 68.

Therefore, the cancer risk of a resident living in a California home with the median indoor formaldehyde concentration of 36 $\mu g/m^3$, is 180 per million as a result of formaldehyde alone. The CEQA significance threshold for airborne cancer risk is 10 per million, as established by the South Coast Air Quality Management District (SCAQMD, 2015).

Besides being a human carcinogen, formaldehyde is also a potent eye and respiratory irritant. In the CNHS, many homes exceeded the non-cancer reference exposure levels (RELs) prescribed by California Office of Environmental Health Hazard Assessment (OEHHA, 2017b). The percentage of homes exceeding the RELs ranged from 98% for the Chronic REL of 9 $\mu g/m^3$ to 28% for the Acute REL of 55 $\mu g/m^3$.

The 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.

In January 2009, the California Air Resources Board (CARB) adopted an airborne toxics control measure (ATCM) to reduce formaldehyde emissions from composite wood products, including hardwood plywood, particleboard, medium density fiberboard, and also furniture and other finished products made with these wood products (California Air Resources Board 2009). While this formaldehyde ATCM has resulted in reduced emissions from composite wood products sold in California, they do not preclude that homes built with composite wood products meeting the CARB ATCM will have indoor formaldehyde concentrations below cancer and non-cancer exposure guidelines.

A follow up study to the California New Home Study (CNHS) was conducted in 2016-2018 (Singer et. al., 2019), and found that the median indoor formaldehyde in new homes built after 2009 with CARB Phase 2 Formaldehyde ATCM materials had lower indoor formaldehyde concentrations, with a median indoor concentrations [sic] of 22.4 $\mu g/m^3$ (18.2 ppb) as compared to a median of 36 $\mu g/m^3$ found in the 2007 CNHS. Unlike in the CNHS study where formaldehyde concentrations were measured with pumped DNPH samplers, the formaldehyde concentrations in the HENGH study were measured with passive samplers, which were estimated to under-measure the true indoor formaldehyde concentrations by approximately 7.5%. Applying this correction to the HENGH indoor formaldehyde concentrations results in a median indoor concentration of 24.1 $\mu g/m^3$, which is 33% lower than the 36 $\mu g/m^3$ found in the 2007 CNHS.

Thus, while new homes built after the 2009 CARB formaldehyde ATCM have a 33% lower median indoor formaldehyde concentration and cancer risk, the median lifetime cancer risk is still 120 per million for homes built with CARB compliant composite wood products. This median lifetime cancer risk is more than 12 times the OEHHA 10 in a million cancer risk threshold (OEHHA, 2017a).

RESPONSE TO COMMENT 2.1

The above information summarizes certain findings and studies pertaining to the health risks posed by formaldehyde exposure in residential buildings. As this information does not directly address the Proposed Project or impact analysis in the IS/ND and raises no environmental issues specific to the Proposed Project, no further response is warranted.

COMMENT 2.2

With respect to the 9500 Pico Mixed-Use Project in Los Angeles, CA the buildings consist of residential and commercial spaces.

The residential occupants will potentially have continuous exposure (e.g. 24 hours per day, 52 weeks per year). These exposures are anticipated to result in significant cancer risks resulting from exposures to formaldehyde released by the building materials and furnishing commonly found in residential construction.

Because these residences will be constructed with CARB Phase 2 Formaldehyde ATCM materials, and be ventilated with the minimum code required amount of outdoor air, the indoor residential formaldehyde concentrations are likely similar to those concentrations observed in residences built with CARB Phase 2 Formaldehyde ATCM materials, which is a median of 24.1 $\mu g/m^3$ (Singer et. al., 2020)

Assuming that the residential occupants inhale 20 m^3 of air per day, the average 70-year lifetime formaldehyde daily dose is 482 µg/day for continuous exposure in the residences. This exposure represents a cancer risk of 120 per million, which is more than 12 times the CEQA cancer risk of 10 per million. For occupants that do not have continuous exposure, the cancer risk will be proportionally less but still substantially over the CEQA cancer risk of 10 per million (e.g. for 12/hour/day occupancy, more than 6 times the CEQA cancer risk of 10 per million).

The employees of the commercial spaces are expected to experience significant indoor exposures (e.g., 40 hours per week, 50 weeks per year). These exposures for employees are anticipated to result in significant cancer risks resulting from exposures to formaldehyde released

by the building materials and furnishing commonly found in offices, warehouses, residences and hotels.

Because the commercial spaces will be constructed with CARB Phase 2 Formaldehyde ATCM materials, and be ventilated with the minimum code required amount of outdoor air, the indoor formaldehyde concentrations are likely similar to those concentrations observed in residences built with CARB Phase 2 Formaldehyde ATCM materials, which is a median of 24.1 μg/m^3 (Singer et. al., 2020)

Assuming that the employees of commercial spaces work 8 hours per day and inhale 20 m^3 of air per day, the formaldehyde dose per work-day at the offices is 161 μg/day.

Assuming that these employees work 5 days per week and 50 weeks per year for 45 years (start at age 20 and retire at age 65) the average 70-year lifetime formaldehyde daily dose is 70.9 μg/day.

This is 1.77 times the NSRL (OEHHA, 2017a) of 40 μg/day and represents a cancer risk of 17.7 per million, which exceeds the CEQA cancer risk of 10 per million. This impact should be analyzed in an environmental impact report ("EIR"), and the agency should impose all feasible mitigation measures to reduce this impact. Several feasible mitigation measures are discussed below and these and other measures should be analyzed in an EIR.

Appendix A, Indoor Formaldehyde Concentrations and the CARB Formaldehyde ATCM, provides analyses that show utilization of CARB Phase 2 Formaldehyde ATCM materials will not ensure acceptable cancer risks with respect to formaldehyde emissions from composite wood products.

Even composite wood products manufactured with CARB certified ultra low emitting formaldehyde (ULEF) resins do not insure [sic] that the indoor air will have concentrations of formaldehyde the meet the OEHHA cancer risks that substantially exceed 10 per million. The permissible emission rates for ULEF composite wood products are only 11-15% lower than the CARB Phase 2 emission rates. Only use of composite wood products made with no-added formaldehyde resins (NAF), such as resins made from soy, polyvinyl acetate, or methylene diisocyanate can insure [sic] that the OEHHA cancer risk of 10 per million is met.

RESPONSE TO COMMENT 2.2

The above comment speculates that the future resident's exposure to formaldehyde would be consistent with a 24 hour per day, 70-year lifetime dose. As described in Response to Comment 1.6 in Comment Letter No. 1, above, the analysis is based upon a series of incorrect assumptions.

The interior building materials have not been selected and would change from time to time over the life of the Proposed Project as a result of demising interior commercial tenant spaces and tenant improvements based on lease tenure and turn-over rates and residents making home improvements to replace flooring and cabinetry in interior units as a result of wear and style preferences. However, as required by law, the Proposed Project would be built with materials that are compliant with current regulations, which establish appropriate levels of formaldehyde in composite wood materials. See Response to Comment 1.6 in Comment Letter No. 1, above.

In addition, the commenter is speculating that composite wood materials would be used in the interior of the building. Indoor building materials will not be known until the building permit stage. As such, it is speculative to provide any further analysis on the content of indoor building materials, and the commenter has not provided credible evidence that the Proposed Project would cause significant impacts related to indoor air quality.

COMMENT 2.3

The following describes a method that should be used, prior to construction in the environmental review under CEQA, for determining whether the indoor concentrations resulting from the formaldehyde emissions of specific building materials/furnishings selected exceed cancer and non-cancer guidelines. Such a design analyses can be used to identify those materials/furnishings prior to the completion of the City's CEQA review and project approval, that have formaldehyde emission rates that contribute to indoor concentrations that exceed cancer and non-cancer guidelines, so that alternative lower emitting materials/furnishings may be selected and/or higher minimum outdoor air ventilation rates can be increased to achieve acceptable indoor concentrations and incorporated as mitigation measures for this project.

Pre-Construction Building Material/Furnishing Formaldehyde Emissions Assessment

This formaldehyde emissions assessment should be used in the environmental review under CEQA to assess the indoor formaldehyde concentrations from the proposed loading of building materials/furnishings, the area-specific formaldehyde emission rate data for building materials/furnishings, and the design minimum outdoor air ventilation rates. This assessment allows the applicant (and the City) to determine, before the conclusion of the environmental review process and the building materials/furnishings are specified, purchased, and installed, if the total chemical emissions will exceed cancer and non-cancer guidelines, and if so, allow for changes in the selection of specific material/furnishings and/or the design minimum outdoor air ventilations rates such that cancer and non-cancer guidelines are not exceeded.

1.) Define Indoor Air Quality Zones. Divide the building into separate indoor air quality zones, (IAQ Zones). IAQ Zones are defined as areas of well-mixed air. Thus, each ventilation system with

recirculating air is considered a single zone, and each room or group of rooms where air is not recirculated (e.g. 100% outdoor air) is considered a separate zone. For IAQ Zones with the same construction material/furnishings and design minimum outdoor air ventilation rates. (e.g. hotel rooms, apartments, condominiums, etc.) the formaldehyde emission rates need only be assessed for a single IAQ Zone of that type.

2.) Calculate Material/Furnishing Loading. For each IAQ Zone, determine the building material and furnishing loadings (e.g., m^2 of material/m^2 floor area, units of furnishings/m^2 floor area) from an inventory of all potential indoor formaldehyde sources, including flooring, ceiling tiles, furnishings, finishes, insulation, sealants, adhesives, and any products constructed with composite wood products containing urea-formaldehyde resins (e.g., plywood, medium density fiberboard, particleboard).

3.) Calculate the Formaldehyde Emission Rate. For each building material, calculate the formaldehyde emission rate (µg/h) from the product of the area-specific formaldehyde emission rate (µg/m^2-h) and the area (m^2) of material in the IAQ Zone, and from each furnishing (e.g. chairs, desks, etc.) from the unit-specific formaldehyde emission rate (µg/unit-h) and the number of units in the IAQ Zone.

NOTE: As a result of the high-performance building rating systems and building codes (California Building Standards Commission, 2014; USGBC, 2014), most manufacturers of building materials furnishings sold in the United States conduct chemical emission rate tests using the California Department of Health "Standard Method for the Testing and Evaluation of Volatile Organic Chemical Emissions for Indoor Sources Using Environmental Chambers," (CDPH, 2017), or other equivalent chemical emission rate testing methods. Most manufacturers of building furnishings sold in the United States conduct chemical emission rate tests using ANSI/BIFMA M7.1 Standard Test Method for Determining VOC Emissions (BIFMA, 2018), or other equivalent chemical emission rate testing methods.

CDPH, BIFMA, and other chemical emission rate testing programs, typically certify that a material or furnishing does not create indoor chemical concentrations in excess of the maximum concentrations permitted by their certification. For instance, the CDPH emission rate testing requires that the measured emission rates when input into an office, school, or residential model do not exceed one-half of the OEHHA Chronic Exposure Guidelines (OEHHA, 2017b) for the 35 specific VOCs, including formaldehyde, listed in Table 4-1 of the CDPH test method (CDPH, 2017). These certifications themselves do not provide the actual area-specific formaldehyde emission rate (i.e., µg/m^2-h) of the product, but rather provide data that the formaldehyde emission rates do not exceed the maximum rate allowed for the certification. Thus, for example, the data for a certification of a specific type of flooring may be used to calculate that the area-specific emission rate of formaldehyde is less than 31 µg/m^2-h, but not the actual measured specific

emission rate, which may be 3, 18, or 30 µg/m^2-h. These area-specific emission rates determined from the product certifications of CDPH, BIFA, and other certification programs can be used as an initial estimate of the formaldehyde emission rate.

If the actual area-specific emission rates of a building material or furnishing is needed (i.e. the initial emission rates estimates from the product certifications are higher than desired), then that data can be acquired by requesting from the manufacturer the complete chemical emission rate test report. For instance if the complete CDPH emission test report is requested for a CDHP certified product, that report will provide the actual area-specific emission rates for not only the 35 specific VOCs, including formaldehyde, listed in Table 4-1 of the CDPH test method (CDPH, 2017), but also all of the cancer and reproductive/developmental chemicals listed in the California Proposition 65 Safe Harbor Levels (OEHHA, 2017a), all of the toxic air contaminants (TACs) in the California Air Resources Board Toxic Air Contamination List (CARB, 2011), and the 10 chemicals with the greatest emission rates.

Alternatively, a sample of the building material or furnishing can be submitted to a chemical emission rate testing laboratory, such as Berkeley Analytical Laboratory (https://berkeleyanalytical.com), to measure the formaldehyde emission rate.

4.) Calculate the Total Formaldehyde Emission Rate. For each IAQ Zone, calculate the total formaldehyde emission rate (i.e. µg/h) from the individual formaldehyde emission rates from each of the building material/furnishings as determined in Step 3.

5.) Calculate the Indoor Formaldehyde Concentration. For each IAQ Zone, calculate the indoor formaldehyde concentration (µg/m^3) from Equation 1 by dividing the total formaldehyde emission rates (i.e. µg/h) as determined in Step 4, by the design minimum outdoor air ventilation rate (m^3/h) for the IAQ Zone.

$$C_{in} = \frac{E_{total}}{Q_{oa}} \quad \text{(Equation 1)}$$

where:

C_{in} = indoor formaldehyde concentration (µg/m^3)

E_{total} = total formaldehyde emission rate (µg/h) into the IAQ Zone.

Q_{oa} = design minimum outdoor air ventilation rate to the IAQ Zone (m^3/h)

The above Equation 1 is based upon mass balance theory, and is referenced in Section 3.10.2 “Calculation of Estimated Building Concentrations” of the California Department of Health

"Standard Method for the Testing and Evaluation of Volatile Organic Chemical Emissions for Indoor Sources Using Environmental Chambers", (CDPH, 2017).

6.) Calculate the Indoor Exposure Cancer and Non-Cancer Health Risks. For each IAQ Zone, calculate the cancer and non-cancer health risks from the indoor formaldehyde concentrations determined in Step 5 and as described in the OEHHA Air Toxics Hot Spots Program Risk Assessment Guidelines; Guidance Manual for Preparation of Health Risk Assessments (OEHHA, 2015).

7.) Mitigate Indoor Formaldehyde Exposures of exceeding the CEQA Cancer and/or Non- Cancer Health Risks. In each IAQ Zone, provide mitigation for any formaldehyde exposure risk as determined in Step 6, that exceeds the CEQA cancer risk of 10 per million or the CEQA non-cancer Hazard Quotient of 1.0.

Provide the source and/or ventilation mitigation required in all IAQ Zones to reduce the health risks of the chemical exposures below the CEQA cancer and non-cancer health risks.

Source mitigation for formaldehyde may include:

1.) reducing the amount materials and/or furnishings that emit formaldehyde

2.) substituting a different material with a lower area-specific emission rate of formaldehyde

Ventilation mitigation for formaldehyde emitted from building materials and/or furnishings may include:

1.) increasing the design minimum outdoor air ventilation rate to the IAQ Zone.

NOTE: Mitigating the formaldehyde emissions through use of less material/furnishings, or use of lower emitting materials/furnishings, is the preferred mitigation option, as mitigation with increased outdoor air ventilation increases initial and operating costs associated with the heating/cooling systems.

Further, we are not asking that the builder "speculate" on what and how much composite materials be used, but rather at the design stage to select composite wood materials based on the formaldehyde emission rates that manufacturers routinely conduct using the California Department of Health "Standard Method for the Testing and Evaluation of Volatile Organic Chemical Emissions for Indoor Sources Using Environmental Chambers," (CDPH, 2017), and use the procedure described earlier above (i.e. Pre- Construction Building Material/Furnishing

Formaldehyde Emissions Assessment) to insure [sic] that the materials selected achieve acceptable cancer risks from material off gassing of formaldehyde.

RESPONSE TO COMMENT 2.3

The above comment proposes a methodology for analyzing carcinogenic risks in a mixed-use residential and commercial building. Interior finishes for the commercial component and all furnishings would be subject to tenant specifications that would not be known until after the Proposed Project is approved and constructed. Thus, any analysis regarding such materials would be speculative, and CEQA does not require speculation. Further, as specified above, the building materials would be compliant with the LAMC, L.A. Green Building Code, and other applicable regulations, which provide specifications for acceptable formaldehyde concentrations in composite wood products. See Response to Comment 1.6 in Comment Letter No. 1, above. The Proposed Project would be compliant with these specifications and would not cause any significant environmental impact related to indoor air quality.

In addition, as described in Response to Comment 3.11 in Comment Letter No. 3, above, the reference to the OEHHA Air Toxics Hot Spots Program Risk Assessment Guidelines is irrelevant, because the Air Toxics Hot Spots Program is inapplicable to the Proposed Project. The Air Toxics "Hot Spots" Information and Assessment Act of 1987 (Hot Spots Act) regulates stationary sources. The Hot Spots Act is designed to provide information to state and local agencies and to the general public on the extent of airborne emissions from stationary sources and the potential public health impacts of those emissions.[13] Stationary sources are typically industrial-type uses that emit toxic air contaminants (TACs)[14] and are regulated by and/or require permits from the Air Districts. Examples of stationary sources include: metal finishing/manufacturing, chrome plating facilities, various product manufacturing (e.g., food, chemical, material, etc.), stationary diesel engines (e.g., emergency backup generators), and refineries.[15] The guidance manuals are not

[13] "Air Toxics Hot Spots Program Risk Assessment Guidelines – The Air Toxics Program Guidance Manual for Preparation of Health Risk Assessments." OEHHA, August 2003, Section 1.1, page. 1-1. See also, Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments". OEHHA, February 2015. Available at: https://oehha.ca.gov/air/crnr/notice-adoption-air-toxics-hot-spots-program-guidance-manual-preparation-health-risk-0, Section 1.1, page. 1-1 (accessed September 16, 2021).

[14] "Toxic air contaminant" means an air pollutant which may cause or contribute to an increase in mortality or in serious illness, or which may pose a present or potential hazard to human health. See Health and Safety Code Section 39655.

[15] "Risk Management Guidance for Stationary Sources." CARB and CAPCOA, July 2015, Section I.D, page 5 and Appendix A, Table A-1: Statewide ARB Air Toxics Regulations for Stationary Sources. Available at: https://ww2.arb.ca.gov/sites/default/files/classic/toxics/rma/rmgssat.pdf (accessed September 16, 2021).

meant to be used for a health risk evaluation of typical non-stationary source land use projects such as residential and commercial development projects.

COMMENT 2.4

Outdoor Air Ventilation Impact. Another important finding of the CNHS, was that the outdoor air ventilation rates in the homes were very low. Outdoor air ventilation is a very important factor influencing the indoor concentrations of air contaminants, as it is the primary removal mechanism of all indoor air generated contaminants. Lower outdoor air exchange rates cause indoor generated air contaminants to accumulate to higher indoor air concentrations. Many homeowners rarely open their windows or doors for ventilation as a result of their concerns for security/safety, noise, dust, and odor concerns (Price, 2007). In the CNHS field study, 32% of the homes did not use their windows during the 24-hour Test Day, and 15% of the homes did not use their windows during the entire preceding week. Most of the homes with no window usage were homes in the winter field session. Thus, a substantial percentage of homeowners never open their windows, especially in the winter season. The median 24-hour measurement was 0.26 air changes per hour (ach), with a range of 0.09 ach to 5.3 ach. A total of 67% of the homes had outdoor air exchange rates below the minimum California Building Code (2001) requirement of 0.35 ach. Thus, the relatively tight envelope construction, combined with the fact that many people never open their windows for ventilation, results in homes with low outdoor air exchange rates and higher indoor air contaminant concentrations.

The 9500 Pico Mixed-Use Project in Los Angeles, CA is close to roads with moderate to high traffic (e.g., W. Pico Blvd, S. Beverly St, Reeves St, etc.) and thus the Project site is a sound impacted site.

According to the Negative Declaration – 9500 Pico Mixed-Use Project (Parker Environmental Consultants, 2021) the existing ambient daytime noise levels in Table 4.15, range from 62.0 to 70.4 dBA L_{eq}. We note that the data collected for this assessment consisted of just 15 minutes of daytime measurements on a single day and long term noise measurements with inclusion of the project future noise resulting from traffic is needed to accurately assess the ambient noise levels L_{dn}, and the required project mitigation.

As a result of the high outdoor noise levels, the current project will require a mechanical supply of outdoor air ventilation to allow for a habitable interior environment with closed windows and doors. Such a ventilation system would allow windows and doors to be kept closed at the occupant's discretion to control exterior noise within building interiors.

$PM_{2.5}$ Outdoor Concentrations Impact. An additional impact of the nearby motor vehicle traffic associated with this project, are the outdoor concentrations of $PM_{2.5}$. According to the Negative

Declaration – 9500 Pico Mixed-Use Project (Parker Environmental Consultants, 2021) the Project is located in the South Coast Air Basin, which is a State and Federal non-attainment area for $PM_{2.5}$.

An air quality analyses should to be [sic] conducted to determine the concentrations of $PM_{2.5}$ in the outdoor and indoor air that people inhale each day. This air quality analyses needs to consider the cumulative impacts of the project related emissions, existing and projected future emissions from local $PM_{2.5}$ sources (e.g. stationary sources, motor vehicles, and airport traffic) upon the outdoor air concentrations at the Project site. If the outdoor concentrations are determined to exceed the California and National annual average $PM_{2.5}$ exceedence [sic] concentration of 12 $\mu g/m^3$, or the National 24-hour average exceedance concentration of 35 $\mu g/m^3$, then the buildings need to have a mechanical supply of outdoor air that has air filtration with sufficient removal efficiency, such that the indoor concentrations of outdoor $PM_{2.5}$ particles is less than the California and National $PM_{2.5}$ annual and 24-hour standards.

It is my experience that based on the projected high traffic noise levels, the annual average concentration of $PM_{2.5}$ will exceed the California and National $PM_{2.5}$ annual and 24-hour standards and warrant installation of high efficiency air filters (i.e. MERV 13 or higher) in all mechanically supplied outdoor air ventilation systems.

RESPONSE TO COMMENT 2.4

Pursuant to Section 99.04.504.6 of the LAMC, mechanically ventilated buildings are required to meet the air filtration requirements of the 2019 California Energy Code. The 2019 Building Energy Efficiency Standards for Residential and Non Residential Buildings include requirements for mandatory mechanical ventilation intended to improve indoor air quality (IAQ) in homes, and requirements for MERV 13 air filtration on space conditioning systems, and ventilation systems that provide outside air to the occupiable space of a dwelling.[16] As such, the Proposed Project would already provide for the mechanical supply of outdoor air ventilation suggested by the commenter, and the commenter does not provide any credible evidence of indoor air quality impacts from the Proposed Project.

[16] California Energy Commission, 2019 Building Energy Efficiency Standards for Residential and Non-Residential Buildings, Title 24, Part 6 and Associated Administrative Regulations, at Section 120.1 – Requirements for Ventilation and Indoor Air Quality.

COMMENT 2.5

Indoor Air Quality Impact Mitigation Measures

The following are recommended mitigation measures to minimize the impacts upon indoor quality:

Indoor Formaldehyde Concentrations Mitigation. Use only composite wood materials (e.g. hardwood plywood, medium density fiberboard, particleboard) for all interior finish systems that are made with CARB approved no-added formaldehyde (NAF) resins (CARB, 2009). CARB Phase 2 certified composite wood products, or ultra-low emitting formaldehyde (ULEF) resins, do not insure [sic] indoor formaldehyde concentrations that are below the CEQA cancer risk of 10 per million. Only composite wood products manufactured with CARB approved no-added formaldehyde (NAF) resins, such as resins made from soy, polyvinyl acetate, or methylene diisocyanate can insure [sic] that the OEHHA cancer risk of 10 per million is met.

Alternatively, conduct the previously described Pre-Construction Building Material/Furnishing Chemical Emissions Assessment, to determine that the combination of formaldehyde emissions from building materials and furnishings do not create indoor formaldehyde concentrations that exceed the CEQA cancer and non-cancer health risks.

It is important to note that we are not asking that the builder “speculate” on what and how much composite materials be used, but rather at the design stage to select composite wood materials based on the formaldehyde emission rates that manufacturers routinely conduct using the California Department of Health “Standard Method for the Testing and Evaluation of Volatile Organic Chemical Emissions for Indoor Sources Using Environmental Chambers”, (CDPH, 2017), and use the procedure described above (i.e. Pre-Construction Building Material/Furnishing Formaldehyde Emissions Assessment) to insure [sic] that the materials selected achieve acceptable cancer risks from material off gassing of formaldehyde.

RESPONSE TO COMMENT 2.5

As required by law, the Proposed Project would comply with Section 4.504.5, Finish Pollutant Material Control, of the L.A. Green Building Code, which requires hardwood plywood, particleboard and medium density fiberboard composite wood products used on the interior or exterior of the building shall meet the requirements for formaldehyde as specified in CALGreen Table 4.504.5, Formaldehyde Limits – Maximum Formaldehyde Emissions in Parts Per Million (for mandatory residential requirements), and Table 5.504.4.5, Formaldehyde Limits – Maximum Formaldehyde Emissions in Parts Per Million (for mandatory nonresidential requirements). Compliance with these requirements would be verified by the Department of Building and Safety through the plan approval process and as noted in item 23 of the City of Los Angeles Building

Code Plan Check Notes – Form GRN-15.[17] See also Response to Comment 1.6 in Comment Letter No. 1, above.

COMMENT 2.6

Outdoor Air Ventilation Mitigation. Provide each habitable room with a continuous mechanical supply of outdoor air that meets or exceeds the California 2016 Building Energy Efficiency Standards (California Energy Commission, 2015) requirements of the greater of 15 cfm/occupant or 0.15 cfm/ft^2 of floor area. Following installation of the system conduct testing and balancing to insure [sic] that required amount of outdoor air is entering each habitable room and provide a written report documenting the outdoor airflow rates. Do not use exhaust only mechanical outdoor air systems, use only balanced outdoor air supply and exhaust systems or outdoor air supply only systems. Provide a manual for the occupants or maintenance personnel, that describes the purpose of the mechanical outdoor air system and the operation and maintenance requirements of the system.

RESPONSE TO COMMENT 2.6

The mechanical air supply will meet the specifications of the L.A. Green Building Code as required for residential and commercial spaces. The comment suggests additional mitigation measures; however, no mitigation measures are warranted as impacts are less than significant.

COMMENT 2.7

$PM_{2.5}$ Outdoor Air Concentration Mitigation. Install air filtration with sufficient $PM_{2.5}$ removal efficiency (e.g. MERV 13 or higher) to filter the outdoor air entering the mechanical outdoor air supply systems, such that the indoor concentrations of outdoor $PM_{2.5}$ particles are less than the California and National $PM_{2.5}$ annual and 24-hour standards. Install the air filters in the system such that they are accessible for replacement by the occupants or maintenance personnel. Include in the mechanical outdoor air ventilation system manual instructions on how to replace the air filters and the estimated frequency of replacement.

RESPONSE TO COMMENT 2.7

As stated above, pursuant to Section 99.04.504.6 of the LAMC, mechanically ventilated buildings are required to meet the air filtration requirements of the 2019 California Energy Code. The 2019 Building Energy Efficiency Standards include requirements for mandatory mechanical ventilation

[17] See City of Los Angeles Building Code Plan Check Notes – Form GRN-15, website: https://www.ladbs.org/docs/default-source/forms/green-building-2017/green-building-code-plan-check-notes-non-residential-buildings.pdf, accessed October 2021.

intended to improve indoor air quality (IAQ) in homes, and requirements for MERV 13 air filtration on space conditioning systems, and ventilation systems that provide outside air to the occupiable space of a dwelling. No mitigation measures are warranted as impacts are less than significant.

COMMENT 2.8

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RESPONSE TO COMMENT 2.8

This comment provides a list of references that were cited or referred to by the commenter, and no further response is warranted.

COMMENT LETTER NO.3

Soil Water Air Protection Enterprise (SWAPE)
2656 29th Street, Suite 201
Santa Monica, CA 90405
Matt Hagemann, P.G., C.Hg.
Paul E. Rosenfeld, PhD
September 8, 2021

COMMENT 3.1

Dear Ms. Davis,

We have reviewed the August 2021 Department of City Planning Recommendation Report ("Staff Report") and the July 2021 Initial Study and Negative Declaration ("IS/ND") for the 9500 Pico Mixed Use Project '("Project") located in the City of Los Angeles ("City"). The Project proposes to construct 108 residential dwelling units and 3,250-SF of commercial space, as well as 134 parking spaces, on the 0.59-acre site.

RESPONSE TO COMMENT 3.1

This introductory comment acknowledges that SWAPE has reviewed the IS/ND for the Proposed Project. This introductory comment accurately restates the proposed land uses on the Project Site. No further response is required.

COMMENT 3.2

Our review concludes that the IS/ND fails to adequately evaluate the Project's air quality, health risk, and greenhouse gas impacts. As a result, emissions and health risk impacts associated with construction and operation of the proposed Project are underestimated and inadequately addressed. An EIR should be prepared to adequately assess and mitigate the potential air quality, health risk, and greenhouse gas impacts that the project may have on the surrounding environment.

RESPONSE TO COMMENT 3.2

The commenter asserts that the IS/ND fails to comply with CEQA and expresses concerns regarding potential air quality, health risk, and greenhouse gas impacts. The commenter discusses their concerns in more detail under the subheadings of their comment letter. As such, detailed responses to each of these concerns are presented below.

COMMENT 3.3

Air Quality

Unsubstantiated Input Parameters Used to Estimate Project Emissions

The IS/ND's air quality analysis relies on emissions calculated with CalEEMod.2016.3.2 (p. 50).[18] CalEEMod provides recommended default values based on site-specific information, such as land use type, meteorological data, total lot acreage, project type and typical equipment associated with project type. If more specific project information is known, the user can change the default values and input project-specific values, but the California Environmental Quality Act ("CEQA") requires that such changes be justified by substantial evidence. Once all of the values are inputted into the model, the Project's construction and operational emissions are calculated, and "output files" are generated. These output files disclose to the reader what parameters are utilized in calculating the Project's air pollutant emissions and make known which default values are changed as well as provide justification for the values selected.

When reviewing the Project's CalEEMod output files, provided in the Air Quality Modeling Worksheets ("AQ Worksheets") and the Greenhouse Gas Quality Modeling Worksheets ("GHG Worksheets") as Appendix A and Appendix D, respectively, to the IS/ND, we found that several model inputs were not consistent with information disclosed in the IS/ND. As a result, the Project's construction and operational emissions are underestimated. As a result, an EIR should be prepared to include an updated air quality analysis that adequately evaluates the impacts that construction and operation of the Project will have on local and regional air quality.

RESPONSE TO COMMENT 3.3

The commenter raises concerns with several parameters in the air quality modeling, including reduction to parking land use size, construction phase lengths, gas fireplace values, construction related mitigation measures, and operational mitigation measures. These input parameters are discussed in detail in Response to Comments 3.4 through 3.8, below.

COMMENT 3.4

Unsubstantiated Reduction to Parking Land Use Size

According to the IS/ND, the Project proposes to construct 134 parking spaces (p. 4). Review of the CalEEMod output files confirms that the "9500 Pico Mixed-Use Project" model includes the

[18] CAPCOA (November 2017) CalEEMod User's Guide, http://www.aqmd.gov/docs/default-source/caleemod/01_user-39-s-guide2016-3-2_15november2017.pdf?sfvrsn=4%20.

correct number of parking *spaces* (see excerpt below) (Appendix A, pp. 302, 331; Appendix D, pp. 473).

Land Uses	Size	Metric	Lot Acreage	Floor Surface Area	Population
Enclosed Parking with Elevator	134.00	Space	0.00	52,595.00	0
Quality Restaurant	1.00	1000sqft	0.00	1,000.00	0
Apartments Mid Rise	108.00	Dwelling Unit	0.59	93,621.00	291
Regional Shopping Center	2.25	1000sqft	0.00	2,250.00	0
User Defined Commercial	1.00	User Defined Unit	0.00	0.00	0

However, further review demonstrates that the parking *square footage* was reduced from the default value of 53,600- to 52,595-SF (see excerpt below) (Appendix A, pp. 304, 333; Appendix D, pp. 475).

Table Name	Column Name	Default Value	New Value
tblLandUse	LandUseSquareFeet	53,600.00	52,595.00

As you can see in the excerpt above, the parking land use size was manually reduced by 1,005-SF. As previously mentioned, the CalEEMod User's Guide requires any changes to model defaults be justified.[19] According to the "User Entered Comments & Non-Default Data" table, the justification provided for this change is: "Project Data provided by Site Plans dated July 2020" (Appendix A, pp. 303, 332; Appendix D, pp. 474). However, the IS/ND and associated documents fail to mention the square footage of the proposed parking structure, or justify this reduction whatsoever. As such, we cannot verify the revised parking land use size.

This unsubstantiated reduction presents an issue, as the land use size feature is used throughout CalEEMod to determine default variables and emission factors that go into the model's calculations. Land use square footage is used for certain calculations such as determining the area of wall space to be painted (i.e., VOC emissions from architectural coatings) and volume of the building that is heated or cooled (i.e., energy impacts).[20] Thus, by including an unsubstantiated reduction to the square footage of the proposed parking land use, the model underestimates the Project's emissions and should not be relied upon to determine Project significance.

RESPONSE TO COMMENT 3.4

As acknowledged by the commenter, the CalEEMod model includes the correct number of parking spaces as identified in the Project Description section of the ND. The parking area of 52,595 square feet was based on the input value of the gross floor area assigned to parking, utility and

[19] CalEEMod User Guide, available at: http://www.aqmd.gov/docs/default-source/caleemod/01_user-39-s-guide2016-3-2_15november2017.pdf?sfvrsn=4, p. 2, 9
[20] CalEEMod User Guide, available at: http://www.caleemod.com/, p. 28

storage spaces as shown on the July 14, 2020 planning application drawings. Specifically, the plan set identified the following gross building area assigned to the parking area:

OTHER FLOOR AREA:

B2 Parking, Utility, Storage 21,900 SF
LEVEL B1 Parking, Utility, Storage 23,160 SF
LEVEL 01 Parking, Utility, Storage 7,535 SF

The above gross square footage area totals 52,595 square feet. As such, the model inputs are justified and accurately reflect the Proposed Project.

COMMENT 3.5

Unsubstantiated Changes to Individual Construction Phase Lengths

Review of the CalEEMod output files demonstrates that the "9500 Pico Mixed-Use Project" model includes several changes to the default individual construction phase lengths (see excerpt below) (Appendix A, pp. 303-304, 332-333; Appendix D, pp. 474-475).

Table Name	Column Name	Default Value	New Value
tblConstructionPhase	NumDays	5.00	87.00
tblConstructionPhase	NumDays	100.00	345.00
tblConstructionPhase	NumDays	10.00	22.00
tblConstructionPhase	NumDays	2.00	66.00
tblConstructionPhase	PhaseEndDate	6/15/2021	12/30/2022
tblConstructionPhase	PhaseEndDate	6/8/2021	8/30/2022
tblConstructionPhase	PhaseEndDate	1/15/2021	2/2/2021
tblConstructionPhase	PhaseEndDate	1/19/2021	5/5/2021
tblConstructionPhase	PhaseStartDate	6/9/2021	9/1/2022
tblConstructionPhase	PhaseStartDate	1/20/2021	5/5/2021
tblConstructionPhase	PhaseStartDate	1/16/2021	2/3/2021

As a result of these changes, the model includes a construction schedule as follows (see excerpt below) (Appendix A, pp. 310, 339; Appendix F, pp. 482):

Phase Number	Phase Name	Phase Type	Start Date	End Date	Num Days Week	Num Days
1	Demolition	Demolition	1/4/2021	2/2/2021	5	22
2	Grading	Grading	2/3/2021	5/5/2021	5	66
3	Building Construction	Building Construction	5/5/2021	8/30/2022	5	345
4	Architectural Coating	Architectural Coating	9/1/2022	12/30/2022	5	87

As you can see in the excerpts above, the demolition phase length was increased by roughly 340%, from the default value of 5 to 22 days; the grading phase length was increased by roughly 1,220%, from the default value of 5 to 66 days; the building construction phase length was increased by roughly 6,800%, from the default value of 5 to 345 days; and the architectural coating phase length was increased by roughly 1,640%, from the default value of 5 to 87 days. As previously mentioned, the CalEEMod User's Guide requires any changes to model defaults be justified.[21] According to the "User Entered Comments & Non-Default Data" table, the justification provided for these changes is: "Assumes 24-month construction schedule" (Appendix A, pp. 303, 332; Appendix D, pp. 474). Furthermore, regarding the anticipated construction schedule, the IS/ND states:

> "For purposes of analyzing impacts associated with air quality, this analysis assumes a Project construction schedule of approximately 24 months, with final buildout occurring in 2023" (p. 33).

However, these justifications are insufficient, as the IS/ND cannot simply assume the Project's anticipated construction schedule. According to the CalEEMod User's Guide:

> "CalEEMod was also designed to allow the user to change the defaults to reflect site- or project-specific information, when available, provided that the information is supported by substantial evidence as required by CEQA."[22]

Here, as the IS/ND and associated documents fail to provide substantial evidence to support the revised construction schedule, we cannot verify the changes.

These unsubstantiated changes present an issue, as the construction emissions are improperly spread out over a longer period of time for some phases, but not for others. According to the

[21] CalEEMod User Guide, available at: http://www.caleemod.com/, p. 2, 9
[22] CalEEMod Model 2013.2.2 User's Guide, available at: http://www.aqmd.gov/docs/default-source/caleemod/usersguideSept2016.pdf?sfvrsn=6, p.12.

CalEEMod User's Guide, each construction phase is associated with different emissions activities (see excerpt below).[23]

> *Demolition* involves removing buildings or structures.
>
> *Site Preparation* involves clearing vegetation (grubbing and tree/stump removal) and removing stones and other unwanted material or debris prior to grading.
>
> *Grading* involves the cut and fill of land to ensure that the proper base and slope is created for the foundation.
>
> *Building Construction* involves the construction of the foundation, structures and buildings.
>
> *Architectural Coating* involves the application of coatings to both the interior and exterior of buildings or structures, the painting of parking lot or parking garage striping, associated signage and curbs, and the painting of the walls or other components such as stair railings inside parking structures.
>
> *Paving* involves the laying of concrete or asphalt such as in parking lots, roads, driveways, or sidewalks.

As such, by disproportionately altering the individual construction phase lengths without proper justification, the model's calculations are altered and may underestimate emissions. Thus, by including unsubstantiated changes to the default individual construction phase lengths, the model may underestimate the Project's construction-related emissions and should not be relied upon to determine Project significance.

RESPONSE TO COMMENT 3.5

As noted in the CalEEMod worksheets, the timing and sequence of the Proposed Project's construction manual was adjusted to be consistent with the Applicant's data. The argument that these changes cannot be made without further substantiation is without merit. The purpose of the environmental analysis is to analyze the Proposed Project, which is defined by the Applicant. The anticipated construction schedule is detailed on page 33 of the ND. The assumption that the Proposed Project will be constructed during an approximately 24-month time period is reasonable and consistent with other projects of the same size and scale throughout the region. Further justification is not required.

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[23] "CalEEMod User's Guide." CAPCOA, November 2017, available at: http://www.aqmd.gov/docs/default-source/caleemod/01_user-39-s-guide2016-3-2_15november2017.pdf?sfvrsn=4, p. 31.

COMMENT 3.6

Unsubstantiated Change to Gas Fireplaces Value

Review of the CalEEMod output files demonstrates that the "9500 Pico Mixed-Use Project" model includes a manual reduction to the default gas fireplace value (see excerpt below) (Appendix A, pp. 304, 333; Appendix D, pp. 475).

Table Name	Column Name	Default Value	New Value
tblFireplaces	NumberGas	91.80	0.00

As you can see in the excerpt above, the model assumes that the Project would not include any gas fireplaces. As previously mentioned, the CalEEMod User's Guide requires any changes to model defaults be justified.[24] According to the "User Entered Comments & Non-Default Data" table, the justification provided for this change is: "No woodstoves or fireplaces proposed" (Appendix A, pp. 303, 332; Appendix D, pp. 474). However, the IS/ND and associated documents fail to mention gas fireplaces or substantiate this reduction whatsoever. This is incorrect, as according to the CalEEMod User's Guide:

> "CalEEMod was also designed to allow the user to change the defaults to reflect site- or project-specific information, when available, provided that the information is supported by substantial evidence as required by CEQA."[25]

Here, as the IS/ND and associated documents fail to provide substantial evidence to support the revised gas fireplace value, we cannot verify the changes.

This unsubstantiated reduction presents an issue, as CalEEMod uses the number of gas fireplaces to calculate the Project's area-source operational emissions.[26] Thus, by including unsubstantiated reductions to the default number of gas fireplaces, the models may underestimate the Project's area-source operational emissions and should not be relied upon to determine Project significance.

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[24] CalEEMod User Guide, available at: http://www.caleemod.com/, p. 2, 9
[25] CalEEMod Model 2013.2.2 User's Guide, available at: http://www.aqmd.gov/docs/default-source/caleemod/usersguideSept2016.pdf?sfvrsn=6, p. 12.
[26] CalEEMod User Guide, available at: http://www.caleemod.com/, p. 40.

RESPONSE TO COMMENT 3.6

The commenter's claim that gas fireplaces should have been assumed as part of the air quality modeling analysis fails to recognize that the Proposed Project does not include any gas fireplaces.. Thus, the analysis accurately reflects the Proposed Project.

COMMENT 3.7

Incorrect Application of Construction-Related Mitigation Measure

Review of the CalEEMod output files demonstrates that the "9500 Pico Mixed-Use Project" model includes the following construction-related mitigation measure (see excerpt below) (Appendix A, pp. 312, 341; Appendix D, pp. 484):

3.1 Mitigation Measures Construction

Water Exposed Area

As previously mentioned, the CalEEMod User's Guide requires any changes to model defaults be justified.[27] However, no justification is provided by the "User Entered Comments & Non-Default Data" table for the inclusion of the "Water Exposed Area" construction-related mitigation measure. Furthermore, regarding Project compliance with fugitive dust control measures, the IS/ND states:

> "For purposes of this analysis, the following regulatory compliance measures have been identified as being applicable to the Proposed Project's construction activities:
>
> - Compliance with provisions of the SCAQMD District Rule 403. The project shall comply with all applicable standards of the Southern California Air Quality Management District, including the following provisions of District Rule 403:
>
> - All unpaved demolition and construction areas shall be wetted at least twice daily during excavation and construction, and temporary dust covers shall be used to reduce dust emissions and meet SCAQMD District Rule 403. Wetting could reduce fugitive dust by as much as 50 percent" (p. 49-50).

However, the inclusion of the construction-related mitigation measure remains unsupported for two reasons.

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[27] CalEEMod User Guide, available at: http://www.caleemod.com/, p. 2, 9

First, the inclusion of the "Water Exposed Area" mitigation measure, based on the Project's supposed compliance with SCAQMD Rule 403, is unsupported. According to the Association of Environmental Professionals ("AEP") *CEQA Portal Topic Paper* on mitigation measures:

> "By definition, mitigation measures are not part of the original project design. Rather, mitigation measures are actions taken by the lead agency to reduce impacts to the environment resulting from the original project design. Mitigation measures are identified by the lead agency after the project has undergone environmental review and are above-and-beyond existing laws, regulations, and requirements that would reduce environmental impacts."[28]

As demonstrated in the excerpt above, mitigation measures "are not part of the original project design" and are intended to go "above-and-beyond" existing regulatory requirements. As such, the inclusion of the above mitigation measure, based solely on SCAQMD Rule 403, is unsubstantiated.

Second, according to the above-mentioned AEP report:

> "While not 'mitigation', a good practice is to include those project design feature(s) that address environmental impacts in the mitigation monitoring and reporting program (MMRP). Often the MMRP is all that accompanies building and construction plans through the permit process. If the design features are not listed as important to addressing an environmental impact, it is easy for someone not involved in the original environmental process to approve a change to the project that could eliminate one or more of the design features without understanding the resulting environmental impact."[29]

As demonstrated in the excerpt above, project design features ("PDFs") that are not formally included as mitigation measures may be eliminated from the Project's design altogether. Thus, as the abovementioned construction-related measure is not formally included as a mitigation measure, we cannot guarantee that it would be implemented, monitored, and enforced on the Project site. By including a construction-related mitigation measure without properly committing to its implementation, the model may underestimate the Project's construction-related emissions and should not be relied upon to determine Project significance.

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[28] "CEQA Portal Topic Paper Mitigation Measures." AEP, February 2020, available at: https://ceqaportal.org/tp/CEQA%20Mitigation%202020.pdf, p. 5.

[29] "CEQA Portal Topic Paper Mitigation Measures." AEP, February 2020, available at: https://ceqaportal.org/tp/CEQA%20Mitigation%202020.pdf, p. 6.

RESPONSE TO COMMENT 3.7

The commenter states that the Proposed Project inappropriately applied mitigation as part of the modeling for the Proposed Project using CalEEMod and that "project design features" would not be enforceable. The Proposed Project is required to adhere to regulatory compliance measures pursuant to the AQMD Rules, such as Rule 403 (Fugitive Dust). The interface on CalEEMod (Version 2016.3.2) lists this Rule under the "Mitigation" tab, although it is actually required by the SCAQMD. The term "Mitigation" applied in CalEEMod is defined differently than "Mitigation Measures" under CEQA. "Mitigation" applied in CalEEMod are requirements for the Proposed Project, including mandatory regulatory requirements that are not considered mitigation measures defined in Section 15370 of the State CEQA Guidelines, or the design features of the Proposed Project. "Mitigation Measures" under CEQA are utilized when a significant impact has been identified, and mitigation measures are necessary to reduce that significant impact to less than significant. The commenter references mitigation measures as "above-and-beyond existing laws, regulations, and requirements," defined by the Association of Environmental Professional's *CEQA Portal Topic Paper*. It should be noted that AEP is a non-profit organization of interdisciplinary professionals, which do not enforce standards or regulations, but instead provide guidance documents addressing environmental issues with respect to CEQA. According to Section 15370 of the State CEQA Guidelines, mitigation measures include "reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action."

As disclosed in the CalEEMod User Guide, requirements such as percentage adjustments to fugitive dust rules have not been incorporated into the unmitigated fugitive dust calculations.[30] However, compliance with fugitive dust rules regulatory requirements is not considered to be mitigation under CEQA. Therefore, since the SCAQMD requires implementation of AQMD Rules during construction activities, the "Water Exposed Area" box was checked under "Mitigation" in CalEEMod as part of the Proposed Project. Therefore, the "Mitigated" scenario for the Proposed Project is the scenario that includes the typical construction activities and the required AQMD Rules that are legally required for the Proposed Project. The Proposed Project's air quality emissions would be well below the threshold of significance for all six criteria pollutants and below the localized significance thresholds. As such, air quality mitigation measures were not required or warranted by the Proposed Project. The term "Mitigation" differs when applied in CalEEMod, as disclosed in the CalEEMod User Guide, compared to mitigation measures defined by the CEQA Statute and Guidelines. The Proposed Project does not include mitigation measures as part of the initial emissions calculations to mitigate a significant effect. The "Mitigated" scenario is the Proposed Project's initial construction emissions scenario, which applied required regulations

[30] CalEEMod User Guide, Page 13, November 2017, website: https://www.aqmd.gov/docs/default-source/caleemod/01_user-39-s-guide2016-3-2_15november2017.pdf?sfvrsn=4, accessed October 2021.

set by SCAQMD. Therefore, the "mitigation" scenario in CalEEMod reflects the application of required regulations and requirements only.

The commenter also mistakes required features of the Proposed Project as "project design features" that may be eliminated from the Proposed Project's design unless reintroduced as mitigation measures. As previously established, the *mitigation scenario* in CalEEMod reflects the application of required regulations (such as compliance with SCAQMD Rule 403) and is not proposed as project design features for purposes of mitigating impacts. Since the SCAQMD requires implementation of AQMD Rules during construction activities, the "Water Exposed Area" box was checked under "Mitigation" in CalEEMod as part of the Proposed Project. Therefore, the commenter's claim that the compliance with SCAQMD Rule 403 is unenforceable is speculative and unsubstantiated. Moreover, as discussed in Section III. Air Quality of the IS/ND, the Proposed Project would not result in significant air quality impacts. The commenter does not provide credible evidence that the Proposed Project would result in significant air quality impacts that would warrant mitigation measures. The IS/ND appropriately concluded that the Proposed Project would not result in a significant impact to air quality when applying all existing laws, regulations, and requirements.

COMMENT 3.8

Incorrect Application of Operational Mitigation Measures

Review of the CalEEMod output files demonstrates that the "9500 Pico Mixed-Use Project" model includes the following operational mitigation measures (see excerpt below) (Appendix A, pp. 324, 326, 328, 329, 353, 355, 357, 358; Appendix D, pp. 496, 501, 503, 505):

Energy-Related Mitigation Measures:

5.1 Mitigation Measures Energy

Exceed Title 24

Install High Efficiency Lighting

Install Energy Efficient Appliances

Area-Related Mitigation Measures:

6.1 Mitigation Measures Area

Use Low VOC Paint - Residential Interior
Use Low VOC Paint - Residential Exterior
Use Low VOC Paint - Non-Residential Interior
Use Low VOC Paint - Non-Residential Exterior
No Hearths Installed
Use Low VOC Cleaning Supplies

Water-Related Mitigation Measures:

7.1 Mitigation Measures Water

Apply Water Conservation Strategy
Install Low Flow Bathroom Faucet
Install Low Flow Kitchen Faucet
Install Low Flow Toilet
Install Low Flow Shower

Waste-Related Mitigation Measure:

8.1 Mitigation Measures Waste

Institute Recycling and Composting Services

As previously mentioned, the CalEEMod User's Guide requires any changes to model defaults be justified.[31] However, the model only provides a justification for the energy-related mitigation measures. Specifically, according to the "User Entered Comments & Non-Default Data" table, the justification provided for this inclusion is: "2019 Title 24 approximately 7% more efficient than 2016 Title 24" (Appendix A, pp. 303, 332; Appendix D, pp. 474). However, the inclusion of the above-mentioned operational mitigation measures is unsupported for two reasons.

First, the IS/ND fails to incorporate or require any mitigation for the proposed Project whatsoever. Thus, by including mitigation measures in the model, the Project's emissions estimates are artificially reduced.

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[31] CalEEMod User Guide, available at: http://www.caleemod.com/, p. 2, 9

Second, as previously discussed, according to AEP guidance:

> "While not 'mitigation', a good practice is to include those project design feature(s) that address environmental impacts in the mitigation monitoring and reporting program (MMRP). Often the MMRP is all that accompanies building and construction plans through the permit process. If the design features are not listed as important to addressing an environmental impact, it is easy for someone not involved in the original environmental process to approve a change to the project that could eliminate one or more of the design features without understanding the resulting environmental impact."[32]

As you can see in the excerpt above, PDFs that are not formally included as mitigation measures may be eliminated from the Project's design altogether. Thus, as the above-mentioned operational measures are not formally included as mitigation measures, we cannot guarantee that they would be implemented, monitored, and enforced on the Project site. By including operational mitigation measure without properly committing to their implementation, the model may underestimate the Project's operational emissions and should not be relied upon to determine Project significance.

RESPONSE TO COMMENT 3.8

As previously discussed in Response to Comment 3.7, above, the analytical assumptions in CalEEMod such as providing installation of energy-efficient appliances, no hearths, low-VOC cleaning supplies, applying water conservation strategies, and instituting recycling and composting services are only available under the mitigated scenario. The interface on CalEEMod (Version 2016.3.2) lists these rules under the "Mitigation" tab, when they are actually required rules and regulations by the SCAQMD, State, or City. The term "Mitigation" in CalEEMod is defined differently than "Mitigation Measures" under CEQA. The model does not allow for these features to be implemented in the "unmitigated project" impact scenario. As such, the values that appear under the mitigated results columns are reflective of the Proposed Project impacts that are compliant with required State and City policies and regulations. While these features are termed "Mitigation" in CalEEMod, they are, in fact, required for all projects and are not considered "mitigation measures" for the purposes of CEQA.

As disclosed in Section VI. Energy, of the IS/ND, the Proposed Project would be required to include energy-efficient appliances, pursuant to the L.A. Green Building Code and 2019 Title 24 Building Standards. As implemented through regulatory compliance measures, the Proposed Project would not include any hearths or fireplaces. Consistent with SCAQMD 1113, the Proposed

[32] "CEQA Portal Topic Paper Mitigation Measures." AEP, February 2020, available at: https://ceqaportal.org/tp/CEQA%20Mitigation%202020.pdf, p. 6.

Project would be required to adhere to the VOC limits for architectural coatings, as disclosed on Page 50, in Section III. Air Quality, of the IS/ND. As mandated by the L.A. Green Building Code, the Proposed Project would be required to provide low-flow plumbing fixtures and fixture fittings that reduce potable water use within the development by at least 20 percent compared to the "water use baseline" established by LAMC Section 99.04.303. As shown on Page 99 in Section VIII. Greenhouse Gas Emissions, of the IS/ND, the Proposed Project would achieve at least a 70 percent solid waste diversion rate through source reduction, recycling, composting, and other methods, in compliance with SB 1374 and AB 939 and 341. In the present case, the application of these features are regulatory compliance measures and are not proposed or recommended as mitigation measures.

Again, the commenter references mitigation measures as "above-and-beyond existing laws, regulations, and requirements," defined by AEP's *CEQA Portal Topic Paper*. As stated previously in Response to Comment 3.7, above, AEP is a non-profit organization of interdisciplinary professionals, which do not enforce standards or regulations, but instead provide guidance documents addressing environmental issues with respect to CEQA. According to Section 15370 of the State CEQA Guidelines, mitigation measures include "reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action." Therefore, the "Mitigation" scenario in CalEEMod reflects the application of required regulations only. The IS/ND concluded that the Proposed Project would not result in a significant impact to air quality when applying all existing laws, regulations, and requirements.

Therefore, the Proposed Project's air quality impacts have been determined to be less than significant, assuming all regulatory compliance measures are implemented. As such, no mitigation measures are warranted.

COMMENT 3.9

Updated Analysis Indicates Significant Air Quality Impact

In an effort to more accurately estimate Project's construction-related and operational emissions, we prepared updated CalEEMod models, using the Project-specific information provided by the IS/ND. In our updated models, we omitted the unsubstantiated changes to the parking land use size, individual construction phase lengths, and gas fireplace values and excluded the unsubstantiated construction-related and operational mitigation measures.

Our updated analysis estimates that the Project's construction-related VOC and NOx emissions exceed the applicable SCAQMD thresholds of 75- and 100-pounds per day ("lbs/day") (see table below).[33]

Model	VOC	NO_X
IS/ND Construction	8.22	50.19
SWAPE Construction	127.15	561.20
% Increase	1,446%	1,018%
SCAQMD Regional Threshold (lbs/day)	**75**	**100**
Threshold Exceeded?	***Yes***	***Yes***

As you can see in the excerpt above, the Project's construction-related VOC and NO_x emissions, as estimated by SWAPE, increase by approximately 1,446% and 1,018%, respectively, and exceed the applicable SCAQMD significance thresholds. Thus, our model demonstrates that the Project would result in a potentially significant air quality impact that was not previously identified or addressed in the IS/ND. As a result, an EIR should be prepared to adequately assess and mitigate the potential air quality impacts that the Project may have on the surrounding environment.

RESPONSE TO COMMENT 3.9

The commenter claims that an updated CalEEMod analysis shows that the Proposed Project would lead to significant construction and operational air quality impacts due to Volatile Organic Compounds (VOCs) and nitrogen oxides (NOx) emissions. This is based on incorrect parameters, as previously discussed in Response to Comment 3.4 through 3.8, above.

As previously discussed in Response to Comment 3.7 and 3.8, the term "mitigation" differs when applied in CalEEMod, as disclosed in the CalEEMod User Guide, compared to mitigation measures defined by the CEQA Statute and Guidelines. The "Mitigated" scenario is the scenario that includes the typical construction activities and the required AQMD Rules that are legally required for the Proposed Project. However, CalEEMod does not allow for these features to be implemented in the "unmitigated project" impact scenario. As such, the values that appear under the mitigated results columns are reflective of the Proposed Project impacts that are compliant with required State and City policies and regulations. While these features are termed "Mitigation" in CalEEMod, they are, in fact, required for all projects and are not considered "mitigation

[33] "South Coast AQMD Air Quality Significance Thresholds." SCAQMD, April 2019, available at: http://www.aqmd.gov/docs/default-source/ceqa/handbook/scaqmd-air-quality-significance-thresholds.pdf.

measures" for the purposes of CEQA. The Proposed Project does not include mitigation measures as part of the initial emissions calculations to mitigate a significant effect.

As implemented through regulatory compliance measures, the Proposed Project would not include any hearths or fireplaces. Consistent with SCAQMD Rule 1113, the Proposed Project would be required to adhere to the VOC limits for architectural coatings, as disclosed on Page 50, in Section III. Air Quality, of the IS/ND.

As shown in Tables 4.1, 4.2, 4.3, and 4.4 in Section III. Air Quality and provided in Appendix A, Air Quality Modeling Worksheets of the IS/ND, construction and operational air quality emissions of the Proposed Project would be well below the thresholds of significance for all six criteria pollutants, including NOx, and below the localized significance thresholds.

Thus, as concluded in the IS/ND, the Proposed Project's construction and operation would not lead to significant air quality impacts.

The commenter and SWAPE do not provide credible evidence that the Proposed Project's construction and operation would lead to an exceedance in VOCs and NOx emissions that would warrant mitigation measures. As such, no mitigations are required. An EIR is not required to be prepared.

COMMENT 3.10

Diesel Particulate Matter Health Risk Emissions Inadequately Evaluated

The IS/ND concludes that the proposed Project would have a less-than-significant health risk impact, based on a localized significance threshold ("LST") analysis, without conducting a quantified construction or operational health risk analysis ("HRA") (p. 53-57). Specifically, regarding potential health risk impacts associated with Project construction, the IS/ND states:

> "The Proposed Project's construction activities would generate toxic air contaminants (TAC) in the form of diesel particulate matter (DPM) emissions associated with the use of heavy trucks and construction equipment during construction. DPM has no acute exposure factors (i.e., no short-term effects). Therefore, the SCAQMD Handbook does not recommend an analysis of TACs from short-term construction activities, which result in a limited duration of exposure. According to SCAQMD methodology, health effects from carcinogenic air toxics are usually described in terms of individual cancer risk. Specifically, "Individual Cancer Risk" is the likelihood that a person continuously exposed to concentrations of TACs over a 70-year lifetime will contract cancer based on the use of standard risk assessment methodology. Given the short-term construction schedule of

> approximately 24 months, the Proposed Project would not result in a long-term (i.e., 70-year) source of TAC emissions. No residual emissions and corresponding individual cancer risk are anticipated after construction. Because there is such a short-term exposure period (24 out of 840 months equal to a 70-year lifetime), health risks associated with DPM emissions during construction would be less than significant. Moreover, the Proposed Project would be required to comply with the CARB Air Toxics Control Measure that limits diesel powered equipment and vehicle idling to no more than 5 minutes at a location. In addition, as discussed above, the Proposed Project would not result in a localized significant impact. Therefore, the Proposed Project would result in a less than significant impact related to construction TACs" (p. 57).

As demonstrated above, the IS/ND concludes that the Project would result in a less-than-significant construction-related health risk impact because the short-term construction schedule would not result in a long-term exposure of toxic air contaminant ("TAC") emissions, the Project would comply with the CARB Air Toxics Control Measure, and the Project would not result exceed localized significant thresholds. Furthermore, regarding potential health risk impacts associated with Project operation, the IS/ND states:

> "The Proposed Project consists of a mixed-use residential and commercial development. These uses would not support any land uses or activities that would involve the use, storage, or processing of carcinogenic or non-carcinogenic toxic air contaminants. As such, no significant toxic airborne emissions would result from Proposed Project implementation" (p. 58).

As demonstrated above, the IS/ND concludes that the Project would result in a less-than-significant operational health risk impact because the proposed Project does not include land uses that would generate TACs. However, the IS/ND's evaluation of the Project's potential health risk impacts, as well as the subsequent less-than-significant impact conclusion, is incorrect for four reasons.

First, the use of an LST analysis to determine the health risk impacts posed to nearby, existing sensitive receptors as a result of the Project's construction-related and operational toxic air contaminant ("TAC") emissions is incorrect. While the LST method assesses the impact of pollutants at a local level, it only evaluates impacts from criteria air pollutants. According to the *Final Localized Significance Threshold Methodology* document prepared by the SCAQMD, the LST analysis is only applicable to NO_x, CO, PM_{10}, and $PM_{2.5}$ emissions, which are collectively referred to as criteria air pollutants.[34] Because the LST method can only be applied to criteria air

[34] "Final Localized Significance Threshold Methodology." SCAQMD, Revised July 2008, available at:

pollutants, this method cannot be used to determine whether emissions from TACs, specifically diesel particulate matter ("DPM"), a known human carcinogen, would result in a significant health risk impact to nearby sensitive receptors. As a result, health impacts from exposure to TACs, such as DPM, were not analyzed, thus leaving a gap in the IS/ND's analysis.

Second, the IS/ND fails to quantitatively evaluate the Project's construction-related and operational TACs or make a reasonable effort to connect these emissions to potential health risk impacts posed to nearby existing sensitive receptors. This is incorrect, as construction of the proposed Project will produce emissions of DPM through the exhaust stacks of construction equipment over a potential construction duration of 24 months (p. 33). Furthermore, the proposed land uses are expected to generate approximately 840 average daily vehicle trips, which will generate additional exhaust emissions and continue to expose nearby sensitive receptors to DPM emissions (Appendix A, pp. 323, 352; Appendix D, pp. 495). However, the IS/ND fails to evaluate the potential Project-generated TACs or indicate the concentrations at which such pollutants would trigger adverse health effects. Thus, without making a reasonable effort to connect the Project's construction-related and operational TAC emissions to the potential health risks posed to nearby receptors, the IS/ND is inconsistent with CEQA's requirement to correlate the increase in emissions generated by the Project with the potential adverse impacts on human health.

Third, the IS/ND's conclusion is inconsistent with guidance from 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 *Risk Assessment Guidelines: Guidance Manual for Preparation of Health Risk Assessments* in February 2015. This guidance document describes the types of projects that warrant the preparation of an HRA. The OEHHA document recommends that all short-term projects lasting at least two months be evaluated for cancer risks to nearby sensitive receptors. As the Project's construction duration vastly exceeds the 2-month requirement set forth by OEHHA, it is clear that the Project meets the threshold warranting a quantified HRA under OEHHA guidance. Furthermore, the OEHHA document recommends that exposure from projects lasting more than 6 months be evaluated for the duration of the project and recommends that an exposure duration of 30 years be used to estimate individual cancer risk for the maximally exposed individual resident ("MEIR"). Even though we were not provided with the expected lifetime of the Project, we can reasonably assume that the Project will operate for at least 30 years, if not more. Therefore, we recommend that health risk impacts from Project operation also be evaluated, as a 30- year exposure duration vastly exceeds the 6-month requirement set forth by OEHHA. These recommendations reflect the most recent state health risk policies, and as

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http://www.aqmd.gov/docs/default-source/ceqa/handbook/localized-significance-thresholds/final-lst-methodology-document.pdf.

such, we recommend that an analysis of health risk impacts posed to nearby sensitive receptors from Project-generated DPM emissions be included in an EIR for the Project.

Fourth, by claiming a less than significant impact without conducting a quantified construction or operational HRA for nearby, existing sensitive receptors, the IS/ND fails to compare the Project's cumulative excess cancer risk to the applicable SCAQMD numeric threshold of 10 in one million, and lacks evidence to support its conclusion that the health risk would be under the threshold.[35] Thus, pursuant to CEQA and SCAQMD guidance, an analysis of the health risk posed to nearby, existing receptors from Project construction and operation should have been conducted.

RESPONSE TO COMMENT 3.10

The Proposed Project's construction emissions were quantified utilizing CalEEMod (Version 2016.3.2), which is the SCAQMD's recommended methodology for addressing construction impacts for infill development projects subject to CEQA review. As shown in Table 4.1, Estimated Peak Daily Construction Emissions, and Table 4.3, Proposed Project Estimated Daily Operational Emissions, in Section III. Air Quality of the IS/ND, the Proposed Project's construction and operational emissions would not exceed the regional thresholds of significance for any of the criteria pollutants. Specifically, the CalEEMod emissions analysis found that the Proposed Project's peak daily construction emissions for PM_{10} (particulate matter equal to or less than 10 microns in diameter) and $PM_{2.5}$ (particulate matter equal to or less than 2.5 microns in diameter) would be 6.5 lbs/day in total and 3.41 lbs/day, respectively. Comparably, the thresholds of significance for PM_{10} and $PM_{2.5}$ emissions are 150 lbs/day and 55 lbs/day, respectively. Thus, the Proposed Project's PM_{10} and $PM_{2.5}$ emissions are substantially below the thresholds of significance.

Furthermore, Diesel Particulate Matter (DPM) is a subset of both PM_{10} and $PM_{2.5}$. Approximately 94 percent of all DPM particles are less than 2.5 microns in diameter and the remaining 6 percent are between 2.5 microns in diameter and 10 microns in diameter.[36] Thus, DPM is accounted for within the PM_{10} and $PM_{2.5}$ emissions thresholds. Therefore, since PM_{10} and $PM_{2.5}$ would be substantially below the thresholds of significance, and DPM represents a fraction of the total PM_{10} and $PM_{2.5}$ emissions generated during construction, the emissions of DPM within PM_{10} and $PM_{2.5}$ would not rise to the level of significance for PM_{10} and $PM_{2.5,}$ and thus would not warrant the preparation of an HRA. As discussed below, the requirement to prepare a construction or

[35] "South Coast AQMD Air Quality Significance Thresholds." SCAQMD, April 2019, available at: http://www.aqmd.gov/docs/default-source/ceqa/handbook/scaqmd-air-quality-significance-thresholds.pdf.

[36] Scientific Review Panel Findings for the Proposed Identification of Diesel Exhaust as a Toxic Air Contaminant Report, May 27, 1998, website: https://www.arb.ca.gov/srp/findings/4-22-98.pdf, accessed October 2021.

operational HRA pursuant to OEHHA Guidelines is not required under CEQA or any required permits or approvals. Based on the relatively low emissions associated with PM_{10} and $PM_{2.5}$ during both construction and operation, there is no credible evidence to suggest that the Proposed Project would generate diesel emissions that are excessive or above acceptable levels that already occur in the environment.

See Response to Comment 3.11, below, for a detailed response to the issues raised by the commenter related to preparation of an HRA.

As shown in the CalEEMod worksheets (see Appendix A of the IS/ND), the highest number of haul trips would occur during the grading/excavation phases to haul soil export from the Project Site. Therefore, the greatest potential for DPM emissions to occur would be during the grading/excavation phase (approx. 3 months) and the remaining construction activities during another 16 months would result in reduced heavy-duty construction equipment in comparison to the grading/excavation phase. Thus, the Proposed Project would not result in a long-term source of TAC emissions. No residual TAC emissions or corresponding individual cancer risk are anticipated after construction. Because there is such a short-term exposure period (24 out of 840 months equal to a 70-year lifetime), health risks associated with DPM emissions during construction would be less than significant. Moreover, the Proposed Project would be required to comply with the CARB Air Toxics Control Measure that limits diesel powered equipment and vehicle idling to no more than 5 minutes at a location. In addition, as discussed above, the Proposed Project would not result in a significant localized air quality impact. Therefore, the Proposed Project would result in a less than significant impact related to construction TACs. The IS/ND appropriately concludes that impacts associated with the release of toxic air contaminants would be less than significant.

Notwithstanding the above, for informational purposes a refined HRA was prepared by Air Quality Dynamics to address construction related emissions utilizing all relevant and appropriate assessment and dispersion modeling methodologies presented by the U.S. Environmental Protection Agency, California Environmental Protection Agency and SCAQMD to ensure a viable quantification of pollutant exposures associated with the generation of contaminant emissions from construction related activities. Results of the refined HRA identified lower DPM concentrations than the SWAPE screening-level analysis and cancer risk estimates below SCAQMD's significance threshold (see Attachment B to this response letter). As concluded in Air Quality Dynamics refined HRA analysis, the carcinogenic risk estimate for the maximum exposed residential receptor for the Project's construction activities totaled 7.1E-06, which denotes an excess case of cancer of 0.71 in one hundred thousand (100,000) individuals exposed. The cancer risk for the maximum exposed residential receptor is thus predicted to be below the State of California's significance threshold of one in one hundred thousand (1.0E-05).

Additionally, the refined HRA prepared by Air Quality Dynamics included an evaluation of the potential chronic noncarcinogenic effects of DPM exposure related to the Project's construction activities. The Project's noncancer health risk was calculated to be 7.9E-02, which is commensurate with a numeric value of 0.072. As the hazard index for the respiratory endpoint totaled less than one for the maximum exposed residential receptor, the Project's chronic noncarcinogenic effects would be less than significant. Thus, based upon the predicted carcinogenic risk and noncarcinogenic hazard estimates for the residential exposure scenario, the refined HRA demonstrates that construction of the Proposed Project will not result in significant impacts due to DPM emissions.

COMMENT 3.11

Screening-Level Analysis Indicates a Potentially Significant Health Risk Impact

In order to conduct our screening-level risk analysis we relied upon AERSCREEN, which is a screening level air quality dispersion model.[37] The model replaced SCREEN3, and AERSCREEN is included in the OEHHA[38] and the California Air Pollution Control Officers Associated ("CAPCOA")[39] guidance as the appropriate air dispersion model for Level 2 health risk screening analyses ("HRSAs"). A Level 2 HRSA utilizes a limited amount of site-specific information to generate maximum reasonable downwind concentrations of air contaminants to which nearby sensitive receptors may be exposed. If an unacceptable air quality hazard is determined to be possible using AERSCREEN, a more refined modeling approach is required prior to approval of the Project.

In order to estimate the health risk impacts posed to residential sensitive receptors as a result of the Project's construction-related and operational TAC emissions, we prepared a preliminary HRA using the annual PM_{10} exhaust estimates from the IS/ND's CalEEMod output files. Consistent with recommendations set forth by OEHHA, we assumed residential exposure begins during the third trimester stage of life. The CalEEMod model indicates that construction activities will generate approximately 367 pounds of DPM over the 725-day construction period (Appendix A, pp. 11, 40). The AERSCREEN model relies on a continuous average emission rate to simulate maximum downward concentrations from point, area, and volume emission sources. To account for the

[37] U.S. EPA (April 2011) AERSCREEN Released as the EPA Recommended Screening Model, https://www.epa.gov/technical-air-pollution-resources

[38] "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, available at: http://oehha.ca.gov/air/hot_spots/2015/2015GuidanceManual.pdf.

[39] CAPCOA (July 2009) Health Risk Assessments for Proposed Land Use Projects, http://www.capcoa.org/wp-content/uploads/2012/03/CAPCOA_HRA_LU_Guidelines_8-6-09.pdf.

variability in equipment usage and truck trips over Project construction, we calculated an average DPM emission rate by the following equation:

$$Emission\ Rate\ \left(\frac{grams}{second}\right) = \frac{367.2\ lbs}{725\ days} \times \frac{453.6\ grams}{lbs} \times \frac{1\ day}{24\ hours} \times \frac{1\ hour}{3{,}600\ seconds} = \mathbf{0.00266\ g/s}$$

Using this equation, we estimated a construction emission rate of 0.00266 grams per second ("g/s"). Subtracting the 725-day construction period from the total residential duration of 30 years, we assumed that after Project construction, the sensitive receptor would be exposed to the Project's operational DPM for an additional 28.01 years, approximately. The operational CalEEMod emissions indicate that operational activities will generate approximately 14 pounds of DPM per year throughout operation. Applying the same equation used to estimate the construction DPM rate, we estimated the following emission rate for Project operation:

$$Emission\ Rate\ \left(\frac{grams}{second}\right) = \frac{13.8\ lbs}{365\ days} \times \frac{453.6\ grams}{lbs} \times \frac{1\ day}{24\ hours} \times \frac{1\ hour}{3{,}600\ seconds} = \mathbf{0.000198\ g/s}$$

Using this equation, we estimated an operational emission rate of 0.000198 g/s. Construction and operational activity was simulated as a 0.59-acre rectangular area source in AERSCREEN with dimensions of 69.1- by 34.55-meters. A release height of three meters was selected to represent the height of exhaust stacks on operational equipment and other heavy-duty vehicles, and an initial vertical dimension of one and a half meters was used to simulate instantaneous plume dispersion upon release. An urban meteorological setting was selected with model-default inputs for wind speed and direction distribution.

The AERSCREEN model generates maximum reasonable estimates of single-hour DPM concentrations from the Project site. EPA guidance suggests that in screening procedures, the annualized average concentration of an air pollutant be estimated by multiplying the single-hour concentration by 10%.[40] According to the IS/ND, the nearest sensitive receptor is immediately South of the Project Site (p. 55, Figure 4.1). However, review of the AERSCREEN output files demonstrates that the maximally exposed individual resident ("MEIR") is located approximately 25 meters from the Project site. Thus, the single-hour concentration estimated by AERSCREEN for Project construction is approximately 16.56 µg/m^3 DPM at approximately 25 meters downwind. Multiplying this single-hour concentration by 10%, we get an annualized average concentration of 1.656 µg/m^3 for Project construction at the MEIR. For Project operation, the single-hour

[40] "Screening Procedures for Estimating the Air Quality Impact of Stationary Sources Revised." EPA, 1992, available at: https://www.epa.gov/technical-air-pollution-resources; see also "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, available at: https://oehha.ca.gov/media/downloads/crnr/2015guidancemanual.pdf p. 4-36.

concentration estimated by AERSCREEN is 1.236 µg/m^3 DPM at approximately 25 meters downwind. Multiplying this single-hour concentration by 10%, we get an annualized average concentration of 0.1236 µg/m^3 for Project operation at the MEIR.

We calculated the excess cancer risk to the MEIR using applicable HRA methodologies prescribed by OEHHA. Consistent with the 2.25-year construction schedule included in the Project's CalEEMod output files, the annualized average concentration for Project construction was used for the entire third trimester of pregnancy (0.25 years) and 1.74 years of the infantile stage of life (0 – 2 years); and the annualized averaged concentration for operation was used for the remainder of the 30-year exposure period, which makes up the remaining infantile stage of life and the entire child (2 – 16 years) and adult stages of life (16 – 30 years).

Consistent with OEHHA guidance and recommended by the SCAQMD, BAAQMD, and SJVAPCD guidance, we used Age Sensitivity Factors ("ASF") to account for the heightened susceptibility of young children to the carcinogenic toxicity of air pollution.[41,42,43] According to this guidance, the quantified cancer risk should be multiplied by a factor of ten during the third trimester of pregnancy and during the first two years of life (infant), as well as multiplied by a factor of three during the child stage of life (2 – 16 years). We also included the quantified cancer risk without adjusting for the heightened susceptibility of young children to the carcinogenic toxicity of air pollution in accordance with older OEHHA guidance from 2003. This guidance utilizes a less health protective scenario than what is currently recommended by SCAQMD, the air quality district with jurisdiction over the City, and several other air districts in the state. Furthermore, in accordance with the guidance set forth by OEHHA, we used the 95th percentile breathing rates for infants.[44] Finally, according to SCAQMD guidance, we used a Fraction of Time At Home ("FAH") Value of 1 for the

[41] "Draft Environmental Impact Report (DEIR) for the Proposed The Exchange (SCH No. 2018071058)." SCAQMD, March 2019, available at: http://www.aqmd.gov/docs/default-source/ceqa/comment-letters/2019/march/RVC190115-03.pdf?sfvrsn=8, p. 4.

[42] "California Environmental Quality Act Air Quality Guidelines." BAAQMD, May 2017, available at: https://www.baaqmd.gov/~/media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en. P. 56; see also "Recommend Methods for Screening and Modeling Local Risks and Hazards.' BAAQMD, May 2011, available at: https://www.baaqmd.gov/~/media/Files/Planning%20and%20Research/CEQA/BAAQMD%20Modeling%20Approach.ashx, p. 65, 86.

[43] "Update to District's Risk Management Policy to Address OEHHA's Revised Risk Assessment Guidance Document." SJVAPCD, May 2015, available at: https://www.valleyair.org/busind/pto/staff-report-5-28-15.pdf, p. 8, 20, 24.

[44] "Supplemental Guidelines for Preparing Risk Assessments for the Air Toxics 'Hot Spots' Information and Assessment Act," July 2018, available at: http://www.aqmd.gov/docs/default-source/planning/risk-assessment/ab2588supplementalguidelines.pdf, p. 16.

3rd trimester and infant receptors.[45] We used a cancer potency factor of 1.1 $(mg/kg\text{-}day)^{-1}$ and an averaging time of 25,550 days. The results of our calculations are shown below.

The Maximally Exposed Individual at an Existing Residential Receptor							
Age Group	**Emissions Source**	**Duration** (years)	**Concentration** (ug/m3)	**Breathing Rate** (L/kg-day)	**Cancer Risk** (without ASFs*)	**ASF**	**Cancer Risk** (with ASFs*)
3rd Trimester	Construction	0.25	1.656	361	2.25E-06	10	**2.25E-05**
Infant (Age 0 - 2)	*Construction*	*1.74*	*1.656*	*1090*	*4.72E-05*	10	**4.78E-04**
	Operation	*0.26*	*0.1236*	*1090*	*5.35E-07*		
	Total	2			4.78E-05		
Child (Age 2 - 16)	Operation	14	0.1236	572	1.49E-05	3	**4.47E-05**
Adult (Age 16 - 30)	Operation	14	0.1236	261	4.97E-06	1	**4.97E-06**
Lifetime		**30**			**6.99E-05**		**5.50E-04**

* We, along with CARB and SCAQMD, recommend using the more updated and health protective 2015 OEHHA guidance, which includes ASFs.

As demonstrated in the table above, the mitigated excess cancer risks for the 3rd trimester of pregnancy, infants, children, and adults at the MEIR located approximately 25 meters away, over the course of Project construction and operation, utilizing ASFs, is approximately 22.5, 478, 44.7, and 4.97 in one million, respectively. The excess cancer risk over the course of a residential lifetime (30 years), utilizing ASFs, is approximately 550 in one million. The 3rd trimester, infant, child, and lifetime cancer risks exceed the SCAQMD threshold of 10 in one million, thus resulting in a potentially significant impact not previously addressed or identified by the IS/ND.

Utilizing ASFs is the most conservative, health-protective analysis according to the most recent guidance by OEHHA and reflects recommendations from the air district. Results without ASFs are presented in the table above, although we do not recommend utilizing these values for health risk analysis. Regardless, the excess cancer risks for the 3rd trimester of pregnancy, infants, children, and adults at the MEIR located approximately 25 meters away, over the course of Project construction and operation, without ASFs, are approximately 2.25, 47.8, 14.9, and 4.97 in one million, respectively. The excess cancer risk over the course of a residential lifetime (30 years), without ASFs, is approximately 69.9 in one million. The infant, child, and lifetime cancer risks

[45] "Risk Assessment Procedures for Rules 1401, 1401.1, and 212." SCAQMD, August 2017, available at: http://www.aqmd.gov/docs/default-source/rule-book/Proposed-Rules/1401/riskassessmentprocedures_2017_080717.pdf, p. 7.

exceed the SCAQMD threshold of 10 in one million, thus resulting in a potentially significant impact not previously addressed or identified by the IS/ND. While we recommend the use of ASFs, the Project's cancer risk without ASFs, as estimated by SWAPE, exceeds the SCAQMD threshold regardless.

An agency must include an analysis of health risks that connects the Project's air emissions with the health risk posed by those emissions. Our analysis represents a screening-level HRA, which is known to be conservative and tends to err on the side of health protection.[46] The purpose of the screening-level construction and operational HRA shown above is to demonstrate the link between the proposed Project's emissions and the potential health risk. Our screening-level HRA demonstrates that construction and operation of the Project could result in a potentially significant health risk impact, when correct exposure assumptions and up-to-date, applicable guidance are used. Therefore, since our screening-level HRA indicates a potentially significant impact, the City should prepare an EIR with an HRA which makes a reasonable effort to connect the Project's air quality emissions and the potential health risks posed to nearby receptors. Thus, the City should prepare an updated, quantified air pollution model as well as an updated, quantified refined health risk analysis which adequately and accurately evaluates health risk impacts associated with both Project construction and operation.

RESPONSE TO COMMENT 3.11

Contrary to the commenter's claim, a detailed HRA is not required for the Proposed Project because (1) the Project does not include any uses or activities that necessitate a HRA as part of the permitting process, and (2) the Project would not result in excessive DPM emissions triggering the need for a detailed HRA.

The Air Toxics "Hot Spots" Information and Assessment Act of 1987 (Hot Spots Act) regulates stationary sources. The Hot Spots Act is designed to provide information to state and local agencies and to the general public on the extent of airborne emissions from stationary sources and the potential public health impacts of those emissions.[47] The Office of Environmental Health Hazard Assessment (OEHHA), in conjunction with the California Air Resources Board (CARB) and the California Air Pollution Control Officers Association (CAPCOA), has adopted guidance

[46] "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, available at: https://oehha.ca.gov/media/downloads/crnr/2015guidancemanual.pdf, p. 1-5.

[47] "Air Toxics Hot Spots Program Risk Assessment Guidelines – The Air Toxics Program Guidance Manual for Preparation of Health Risk Assessments." OEHHA, August 2003, Section 1.1, page. 1-1. See also, Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments". OEHHA, February 2015. Available at: https://oehha.ca.gov/air/crnr/notice-adoption-air-toxics-hot-spots-program-guidance-manual-preparation-health-risk-0, Section 1.1, page. 1-1 (accessed September 16, 2021).

manuals for use in implementing the Air Toxics "Hot Spots" Program (Hot Spots Program) as part of the Hot Spots Act (Health and Safety Code Section 44360 et. seq.). In 2003, OEHHA adopted the *Air Toxics Hot Spots Program Risk Assessment Guidelines – The Air Toxics Program Guidance Manual for Preparation of Health Risk Assessments* (2003 Guidance Manual). OEHHA adopted a new version of the manual in March 2015, called the *Hot Spots Program Guidance Manual for the Preparation of Risk Assessments* (2015 Guidance Manual). The guidance manuals are intended to address health risks from airborne contaminants released by stationary sources. [48] The intent of developing the guidance manuals is to provide health risk assessment (HRA) procedures for use in the Hot Spots Program or for the permitting of new or modified stationary sources.[49] Stationary sources are typically industrial-type uses that emit toxic air contaminants (TACs)[50] and are regulated by and/or require permits from the Air Districts. Examples of stationary sources include: metal finishing/manufacturing, chrome plating facilities, various product manufacturing (e.g., food, chemical, material, etc.), stationary diesel engines (e.g., emergency backup generators), and refineries.[51] The guidance manuals are not meant to be used for a health risk evaluation of typical non-stationary source land use projects such as residential and commercial development projects.

OEHHA did not opine on or include CEQA significance thresholds applicable to construction activities or the operation of non-stationary source projects in the guidance manuals.[52] Additionally, in the *Risk Management Guidance for Stationary Sources of Air Toxics* (2015), CARB and CAPCOA recognized that the guidance manuals do not include guidance for CEQA and that this would be handled by individual Air Districts.[53]

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[48] 2003 Guidance Manual and 2015 Guidance Manual at Section 1.1, page. 1-2.

[49] Ibid.

[50] "Toxic air contaminant" means an air pollutant which may cause or contribute to an increase in mortality or in serious illness, or which may pose a present or potential hazard to human health. See Health and Safety Code Section 39655.

[51] "Risk Management Guidance for Stationary Sources." CARB and CAPCOA, July 2015, Section I.D, page 5 and Appendix A, Table A-1: Statewide ARB Air Toxics Regulations for Stationary Sources. Available at: https://ww2.arb.ca.gov/sites/default/files/classic/toxics/rma/rmgssat.pdf (accessed September 16, 2021).

[52] "Final Environmental Assessment for: Proposed Amended Rule 307.1 – Alternative Fees for Air Toxics Emissions Inventory; Proposed Amended Rule 1401 – New Source Review of Toxic Air Contaminants; Proposed Amended Rule 1402 – Control of Toxic Air Contaminants from Existing Sources; SCAQMD Public Notification Procedures for Facilities Under the Air Toxics 'Hot Spots' Information and Assessment Act (AB 2588) and Rule 1402; and, SCAQMD Guidelines for Participating in the Rule 1402 Voluntary Risk." (SCAQMD Final EA) SCAQMD, September 2016, pages 1-2 and 2-23, September 2016. Affected facilities are those in identified for the AB 2588 Air Toxics Hot Spots program, which does not include the proposed Project nor mixed-use projects like the proposed Project that are not stationary sources. Further, the SCAQMD states it "does not have guidance on construction Health Risk Assessments."

[53] "Risk Management Guidance for Stationary Sources." CARB and CAPCOA, July 2015, Section III.J, page 16.

For these reasons, the Proposed Project is not subject to regulation under the Hots Spots Act, the 2003 Guidance Manual, or 2015 Guidance Manual.

CAPCOA HRA Guidance

The CAPCOA guidance document *Health Risk Assessments for Proposed Land Use Projects* (2009) (CAPCOA HRA Guidance) provides lead agencies with guidance regarding when and how an HRA should be prepared. It bases the risk assessment methodology on the procedures developed by the OEHHA to meet the mandates of the Hot Spots Act. CAPCOA recognized that "[w]hile local air districts have ample experience evaluating and mitigating toxic emissions from permitted stationary sources, most have limited experience preparing or reviewing risk assessments associated with multiple toxic sources or assessments for exhaust from mobile sources that are typically found when evaluating health risks to proposed land use projects." To bridge the gap between stationary sources subject to regulation by the Air Districts under the Hot Spots Act and health risk impacts from and to land use projects, CAPCOA prepared the CAPCOA HRA Guidance.[54] The CAPCOA HRA Guidance only recommends assessment of health risks related to two types of land use projects, as described below.

Type A – Land use projects with toxic emissions that impact receptors, including:

- Combustion related power plants;
- Gasoline dispensing facilities;
- Asphalt batch plants;
- Warehouse distribution centers;
- Quarry operations; and
- Other stationary sources that emit toxic substances.

Type B – Land use projects that will place receptors in the vicinity of existing toxics sources, including residential, commercial, and institutional developments proposed to be located in the vicinity of existing toxic emission sources, such as:

- Stationary sources;

[54] "While local air districts have ample experience evaluating and mitigating toxic emissions from permitted statutory sources, most have limited experience preparing or reviewing risk assessment associated with multiple toxic sources or assessment for exhaust from mobile sources that are typically found when evaluating health risks to proposed land use projects. In order to provide consistency to lead agencies, project proponents and the general public throughout the state, the [CAPCOA] formed a subcommittee … to develop guidance on assessing the health risk impacts from and to proposed land use projects." "Health Risk Assessment for Proposed Land Use Projects." CAPCOA, July 2009, page. 1. Available at http://www.capcoa.org/wp-content/uploads/2020/12/with-stamp_CAPCOA_HRA_LU_Guidelines_8-6-09-min.pdf (accessed September 16, 2021).

- High traffic roads;
- Freeways;
- Rail yards; and
- Ports

The Proposed Project here is not a Type A or Type B land use project under the CAPCOA HRA Guidance. The operation of the Proposed Project does not include any of the industrial uses listed, nor does it include a stationary source that emits TACs. Nor is the Proposed Project a warehouse or distribution facility that generates more than 100 trucks per day or more than 40 trucks with operating transport refrigeration units.[55] The Proposed Project also does not involve siting sensitive receptors near an existing stationary source or industrial use. Further, the CAPCOA HRA Guidance does not consider construction-related health risks. For these reasons, the preparation of an HRA is not required.

SCAQMD Guidance

The South Coast Air Quality Management District (SCAQMD) is the Air District in charge of implementing, regulating, and enforcing the Hot Spots Program in the South Coast Air Basin. The SCAQMD has promulgated rules in furtherance of the Hot Spots Act,[56] and prepared supplemental guidelines for preparing HRAs as a supplement to OEHHA's guidance manuals.[57] These SCAQMD rules and supplemental guidelines provide guidance for the preparation of HRAs for stationary and certain mobile sources, as described below.[58] The SCAQMD has developed limited guidelines and documents relevant to HRAs and CEQA analyses for non-stationary source land use projects. Specifically, these rules and guidelines do not require HRAs to be prepared as part of CEQA documents that evaluate the construction and operational impacts of residential

[55] "Air Quality and Land Use Handbook: A Community Health Perspective." CARB, April 2005, available at: https://www.arb.ca.gov/ch/handbook.pdf "Health Risk Assessment Guidance for Analyzing Cancer Risks from Mobile Source Diesel Idling Emissions for CEQA Air Quality Analysis." SCAQMD, August 2003.

[56] See SCAQMD Rules and Regulations XIV – Toxics and Other Non-Criteria Pollutants, Rules 1401 and 1402.

[57] "AB 2588 and Rule 1402 Supplemental Guidelines for Preparing Risk Assessment for the Air Toxics 'Hot Spots' Information and Assessment Act." SCAQMD, October 2020, Available at: http://www.aqmd.gov/docs/default-source/planning/risk-assessment/ab-2588-supplemental-guidelines.pdf?sfvrsn=19 (accessed September 16, 2021).

[58] "Health Risk Assessment Guidance for Analyzing Cancer Risks from Mobile Source Diesel Idling Emissions for CEQA Air Quality Analysis." SCAQMD, August 2003.

and/or commercial projects, like the mixed-use Proposed Project.[59] These documents are discussed in more detail, below.

To start with, SCAQMD does not have recommended guidance on HRAs for operational impacts related to non-stationary source land use projects, except for the following guidance documents, neither of which requires preparation of an HRA for the Proposed Project:

- *Health Risk Assessment Guidance for Analyzing Cancer Risks from Mobile Source Diesel Idling Emissions for CEQA Air Quality Analysis* (2003) (Mobile Source Guidance)

- *Guidance Document for Addressing Air Quality Issues in General Plans and Local Planning* (2005) (Local Planning Guidance)

The Mobile Source Guidance provides interim guidance and recommended procedures for preparing HRAs for projects with the potential for DPM impacts, including the following limited activities: (1) truck idling and movement (such as, but not limited to, truck stops, warehouse/distribution centers or transit centers); (2) ship hotelling at ports; and (3) train idling. The Proposed Project does not include any of these industrial-related activities. As part of the project's construction process, it is estimated that there would be approximately 46 round trips per day (23 inbound trips and 23 outbound trips) for a limited period of 66 days. Additionally, as shown in Appendix G.1, Transportation Study, of the IS/ND, the project is estimated to generate 840 average daily trips. Based on the proposed residential and retail land uses, the CalEEMod model provides an estimation of the vehicle fleet using the EMFAC emission factors correlated for the region. As shown in the CalEEMod worksheets, the mix of heavy-heavy duty trucks and medium-heavy duty trucks assumed in the CalEEMod model is approximately 6 percent of the total daily trips, or 47 truck trips per day. This is significantly fewer trucks than the volume of trucks associated with a truck stop, warehouse/distribution center, or transit center and fewer than the 100 trucks per day (or 40 trucks with operating transport refrigeration units), called for by CAPCOA and the SCAQMD to warrant the preparation of an HRA.

With regard to construction impacts, the SCAQMD's CEQA Air Quality Handbook (1993) (Air Quality Handbook) does not recommend analysis of TACs from short-term construction activities associated with land use development projects due to the limited duration of exposure related to construction impacts. According to SCAQMD methodology, health effects from carcinogenic air toxics are usually described in terms of individual cancer risk. Specifically, "Individual Cancer Risk" is the likelihood that a person continuously exposed to concentrations of TACs over a

[59] SCAQMD Final EA, pages 1-2 and 2-23, September 2016. Affected facilities are those in identified for the AB 2588 Air Toxics Hot Spots program, which does not include the proposed Project nor mixed-use projects like the proposed Project that are not stationary sources. Further, the SCAQMD states it "does not have guidance on construction Health Risk Assessments."

70-year lifetime will contract cancer based on the use of standard risk assessment methodology.[60] Because the construction schedule for the Proposed Project is based on estimates that the phases which require the most heavy-duty diesel vehicle usage, such as demolition, site grading, excavation, would last for a much shorter duration (e.g., approximately 4 months), and the overall construction schedule would be limited to approximately 24 months, construction of the Proposed Project would not result in a substantial, long-term (i.e., 70-year) source of TAC emissions. No residual emissions and corresponding individual cancer risk are anticipated after construction. Because there is such a short-term exposure period (24 out of 840 months of a 70-year lifetime), further evaluation of construction TAC emissions within the IS/ND was not warranted.

California Supreme Court Guidance

The IS/ND's analysis of air quality impacts is consistent with the California Supreme Court's decision in *Sierra Club v. County of Fresno*, 6 Cal.5th 502 (2018) (*County of Fresno*). *County of Fresno* only requires preparation of an HRA if there is a significant air quality impact from criteria air pollutants. The City has prepared a document titled *Air Quality and Health Effects (Sierra Club v. County of Fresno)*, which takes the same position. Applying the principles *County of Fresno*, it provides lead agency guidance on how to implement the case in future CEQA documents.

Therefore, an HRA correlating air quality with specific human health impacts is only required for projects that have a significant impact with respect to criteria air pollutants. The comment requests that an HRA be prepared to assess health risk impacts from DPM. However, the IS/ND concluded that impacts from TACs and criteria pollutants would be less than significant without mitigation measures. As such, the *County of Fresno* analysis is not required, and an HRA did not have to be prepared for the Proposed Project.

Inaccurate Assumptions Within the Screening Analysis

In addition to the above justifications, the SWAPE screening analysis is not based on a reasonable set of assumptions that reflect the Proposed Project and thus does not present a fair argument that a significant toxic air contaminant impact would occur. The SWAPE assessment substantially overestimated potential diesel exhaust emissions from construction and operation of the Proposed Project. SWAPE incorrectly used the combination of both on-site and off-site emissions (regional emissions) to represent on-site emissions (localized emissions). This assumption is the equivalent of having all diesel delivery and haul trucks that would actually travel regionally to and from the Project Site (up to 33 miles) exclusively on the Project Site.

[60] South Coast Air Quality Management District (SCAQMD) CEQA Handbook, 1993. Chapters 5, 9 and 10.

Another key defect in the SWAPE analysis is that it is based on an incorrect presumed estimate of 367 lbs/day of DMP over a 725 day construction period. While the commenter has cited "(Appendix A, pp. 11 and 40)" as the source for this estimate, the CalEEMod worksheets does not support this estimate. For one, a screening level analysis based on the annual PM_{10} emissions is not representative of DPM exposure. As discussed above, DPM is a subset of both PM_{10} and $PM_{2.5}$. Approximately 94 percent of all DPM particles are less than 2.5 microns in diameter and the remaining 6 percent are between 2.5 microns in diameter and 10 microns in diameter.[61] Thus, any calculation based on PM_{10} emissions should factor in this adjustment. Second, SWAPE's estimate is incorrectly based on 725 active construction days instead of 520, as proposed. SWAPE's calculation incorrectly assumes the Proposed Project's construction activity would occur at full intensity for seven days per week, including Sundays and holidays, over the entire length of construction. This is not a valid assumption. As stated on Page 33 and again on Page 150 of the IS/ND, LAMC Section 41.40 prohibits construction between the hours of 9:00 p.m. to 7:00 a.m., Monday through Friday, between 6:00 p.m. and 8:00 a.m., on Saturday, and no construction on Sunday. The Project would comply with LAMC Section 41.40. As shown in the CalEEMod worksheets contained in Appendix A of the IS/ND, the Proposed Project's construction would actually occur over a period of 520 days. Therefore, SWAPE's assumptions grossly overestimates the annual average construction emissions that would occur over the duration of construction.

The operational emission rate of 14 lbs/year of diesel exhaust (rounded up from 13.8 lbs in Attachment B of SWAPE's comment letter) emissions is similarly based on the unmitigated regional operational results and assumes that these emissions occur each year for 28.01 years. This assumption suffers from the problem identified above for construction (combination of both on-site and off-site emissions). This assumption is the equivalent of having all vehicular trips that would actually travel regionally to and from the Project Site exclusively on the Project Site. Compounding this mistake is SWAPE's assumption that all of these emissions would be diesel. Diesel emissions represent a small fraction of the overall fleet mix. Furthermore, the SWAPE analysis assumed 28.01 years of operation, but held the emission factors constant to the buildout year. Thus, potential impacts would be overstated because it does not represent an average of emissions over the 28.01 years by excluding improvements in the vehicle fleet mix as a result of State mandates over time. As an example, the On-Road Heavy-Duty Diesel Vehicles (In-Use) Regulation requires diesel trucks and buses that operate in California to be upgraded to reduce emissions. By January 1, 2023, nearly all trucks and buses will need to have 2010 model year engines or equivalent.

[61] Scientific Review Panel Findings for the Proposed Identification of Diesel Exhaust as a Toxic Air Contaminant Report, May 27, 1998, website: https://www.arb.ca.gov/srp/findings/4-22-98.pdf, accessed October 2021.

With respect to the Proposed Projects' operational DPM emissions, SWAPE assumed the Project's "operational activities will generate approximately 14 pounds of DPM per year throughout operation"; however, no explanation or justification is provided as to how these emissions were calculated. As shown in Attachment B of SWAPE's comment letter, 14 pounds of DPM per year (rounded up from 13.8 lbs) was calculated from an annual emission rate of 0.0069 tons/year. However, the CalEEMod worksheets do not include DPM emissions, and the estimate of 0.0069 tons per year does not correlate to any of the data provide in the CalEEMod worksheets. Furthermore, it is important to note SWAPE's utilization of the AERSCREEN model instead of AERMOD. The most important differences between AERSCREEN and AERMOD are the following:

Meteorological Data: The AERSCREEN model uses user-defined conditions, which assume worst-case meteorological conditions occurring 24 hours per day, 365 days per year for the entire construction and operation duration along with the maximum daily emissions occurring each of those days. The HRA prepared in response to these comments instead used AERMOD which allows for SCAQMD representative meteorological data (Northwest Coastal Los Angeles) to be used in calculation of annual concentrations. This SCAQMD meteorological data provides hourly conditions (e.g., wind speed, wind direction, and stability class) over a five-year period (43,800 hours). With these conditions, the AERMOD model is more representative of likely Project impacts compared to the AERSCREEN model.

Site-Specific Conditions: AERMOD allows for analysis of multiple volume sources which is required to adequately represent Project construction and operation. The use of a single rectangular source with a release height of 3 meters to represent construction and operational activities provided in the SWAPE analysis does not adequately represent the Project Site, does not account for complex terrain conditions, and likely overstates emissions because of the plume interaction with terrain. In addition, a volume source and not an area source is the type of source recommended by the SCAQMD for modeling construction equipment and diesel truck exhaust emissions (SCAQMD LST Guidelines). In addition, the SCAQMD LST Guidelines recommend a 5-meter release height instead of 3 meters, which would also overestimate potential concentrations. By accounting for site-specific conditions around the Project Site, the AERMOD model is more representative of likely Project impacts compared to the AERSCREEN model.

Source-to-Receptor Distance: The SWAPE analysis used a 5,000-meter source-to-receptor distance, which is inconsistent with the IS/ND (Table 4.4, Localized On-Site Peak Daily Construction Emissions). SWAPE reported that maximum impacts occurred 5,000 meters downwind. This is highly unusual for a screening model to provide a higher

> concentration further downwind for an area source as the pollutant travels further away from the source the plume becomes wider and pollutant concentrations decrease. An exception to this general rule is for a stack/chimney point source where the source is released high enough and with enough velocity/buoyancy that the ground concentrations closer to the source can result in lower pollutant concentrations. As a result, any findings from the SWAPE analyses based on modeling that shows higher concentrations from an area source further downwind are likely incorrect.

Consequently, the coarser AERSCREEN evaluation provides a much less accurate assessment of Project health risks compared to the refined AERMOD evaluation. Moreover, as discussed above, the SWAPE screening level analysis was not performed in accordance with requirements included in SCAQMD's LST methodology and OEHHA's guidance. As explained above, the analysis did not account for the following: (1) site-specific conditions; (2) use of a refined dispersion model; (3) use of SCAQMD mandated meteorological data from the closest/most representative meteorological monitoring site within the Project area; and (4) higher pollutant concentrations at more distant receptors for an area source. If the SWAPE analysis accounted for the guidance and data discussed above, then the results would have been substantially less.

For all of these reasons, SWAPE's health risk results are misleading, highly inaccurate, and lack credibility. SWAPE's conclusions do not constitute credible evidence that the Proposed Project would have a significant health risk impact with respect to DPM emissions. Moreover, although it is not required by law as part of a regulatory program or under CEQA, a refined HRA was prepared by Air Quality Dynamics to evaluate the potential cancer risk and chronic noncarcinogenic risks associated with the Proposed Project's construction activities (see Attachment B to this response letter). As discussed in further detail in Response to Comment 3.10 above, the refined HRA demonstrates that construction of the Proposed Project will not result in significant impacts due to TAC emissions.

COMMENT 3.12

Greenhouse Gas

Failure to Adequately Evaluate Greenhouse Gas Impacts

The IS/ND estimates that the Project would generate net annual GHG emissions of 318.26 metric tons of carbon dioxide equivalents per year ("MT CO_2e/year") (see excerpt below) (p. 98, Table 4.11).

Table 4.11
Proposed Project Operational Greenhouse Gas Emissions

Emissions Source	Estimated Project Generated CO_2e Emissions (Metric Tons per Year)
	Proposed Project
Area	1.87
Energy	492.96
Mobile	844.04
Stationary	4.59
Waste	7.99
Water	74.42
Construction Emissions [a]	32.40
Subtotal GHG Emissions:	***1,458.27***
Less Existing GHG Emissions:	*(1,140.01)*
Net Total Existing GHG Emissions:	**318.26**

Notes:
[a] *Pursuant to SCAQMD guidance recommended in the SCAQMD GHG Working Group meeting on November 19, 2009, the total construction GHG emissions were amortized (i.e., averaged annually) over 30 years and added to the operation of the Project.*
Calculation data and results provided in Appendix D, Greenhouse Gas Emissions Worksheets.

Furthermore, the IS/ND states:

"For purposes of this comparison it should be noted that the Proposed Project's structural and operational features such as installing energy efficient lighting, low flow plumbing fixtures, and implementing an operational recycling program during the life of the Proposed Project would reduce the Proposed Project's GHG emissions. When considering the fact that the Proposed Project is an infill development and is recycling land and reutilizing existing infrastructure, which is encouraged through the state, regional and local plans and policies (i.e., AB32, B375, and SCAG's 2020 Connect SoCal growth strategy), the Proposed Project's net GHG emissions would equal 318.26 CO2e MTY, which would be well below the SCAQMD proposed nonindustrial screening threshold of 3,000 MTCO2e/year. While neither SCAQMD nor the City have adopted this screening threshold, the fact the Proposed Project's GHG emissions are below the threshold provides further substantial evidence that the Proposed Project's GHG impacts are less than significant" (p. 97).

However, the IS/ND's GHG analysis, as well as the subsequent less-than-significant impact conclusion, is incorrect for two reasons:

1) The IS/ND's quantitative GHG analysis relies upon an incorrect and unsubstantiated air model; and
2) The IS/ND incorrectly relies upon unsubstantiated GHG reduction measures.

RESPONSE TO COMMENT 3.12

The commenter claims the GHG analysis in the IS/ND is incorrect for two reasons. Detailed responses to the two specific claims listed by the commenter regarding the less-than-significant conclusions presented under the subheadings are addressed below in Responses to Comments 3.13 and 3.14.

COMMENT 3.13

1) Incorrect and Unsubstantiated Quantitative Analysis of Emissions

As previously stated, the IS/ND estimates that the Project would generate net annual GHG emissions of 318.26 MT CO_2e/year (p. 98, Table 4.11). However, the quantitative GHG analysis provided in the IS/ND is unsubstantiated. As previously discussed, when we reviewed the Project's CalEEMod output files, provided in the AQ and GHG Worksheets, as Appendix A and Appendix D to the IS/ND, we found that several of the values inputted into the model are not consistent with information disclosed in the IS/ND. As a result, the model underestimates the Project's emissions, and the quantitative GHG analysis provided in the IS/ND should not be relied upon to determine Project significance. An EIR should be prepared that adequately assesses the potential GHG impacts that construction and operation of the proposed Project may have on the surrounding environment.

RESPONSE TO COMMENT 3.13

The commenter asserts that the quantitative GHG analysis provided in the IS/ND is unsubstantiated because specific inputs in CalEEMod were incorrect and resulted in an underestimation of the Proposed Project emissions. As discussed in Response to Comment 3.4 through 3.8, above, the commenter's claims regarding CalEEMod modeling are based on incorrect assumptions. Thus, the assertions and claims that the Proposed Project would result in a significant impact to greenhouse gas emissions are not supported by credible evidence.

Furthermore, as clearly stated on Page 95 in Section VIII. Greenhouse Gas Emissions, no applicable numeric significance threshold for GHG emissions has been adopted by the State, SCAQMD, or the City of Los Angeles, and although State, regional, and local plans and policies have been adopted to help address climate change, no current law or regulation would regulate all aspects of the Proposed Project's GHG emissions. In the absence of any adopted numeric

threshold, the significance of the Proposed Project's GHG emissions is evaluated consistent with CEQA Guidelines Section 15064.4(b)(2) by considering whether the Proposed Project complies with applicable plans, policies, regulations, and requirements adopted to implement a Statewide, regional, or local plans for the reduction or mitigation of greenhouse gas emissions. Thus, the significance of the Proposed Project's GHG emissions impacts is not based on the quantification of GHG emissions provided in the CalEEMod worksheets.

COMMENT 3.14

2) Incorrect Reliance on GHG Reduction Measures

As previously stated, the IS/ND estimates that the Project would generate net annual GHG emissions of 318.26 MT CO_2e/year (p. 98, Table 4.11). Regarding reduction features, the IS/ND states:

> "For purposes of this comparison it should be noted that the Proposed Project's structural and operational features such as installing energy efficient lighting, low flow plumbing fixtures, and implementing an operational recycling program during the life of the Proposed Project would reduce the Proposed Project's GHG emissions" (p. 97).

However, the use of reduction features is unsupported. As previously discussed, none of these design features are formally included as mitigation measures. This incorrect, as AEP guidance states:

> "While not 'mitigation', a good practice is to include those project design feature(s) that address environmental impacts in the mitigation monitoring and reporting program (MMRP). Often the MMRP is all that accompanies building and construction plans through the permit process. If the design features are not listed as important to addressing an environmental impact, it is easy for someone not involved in the original environmental process to approve a change to the project that could eliminate one or more of the design features without understanding the resulting environmental impact."[62]

As you can see in the excerpts above, design features that are not formally included as mitigation measures may be eliminated from the Project's design altogether. Thus, as the above-mentioned GHG reduction measures are not formally included as mitigation measures, we cannot guarantee that they would be implemented, monitored, and enforced on the Project site. As these design

[62] "CEQA Portal Topic Paper Mitigation Measures." AEP, February 2020, available at: https://ceqaportal.org/tp/CEQA%20Mitigation%202020.pdf, p. 6.

features are not formally included as mitigation measures, we cannot verify that they would be implemented, monitored, and enforced on the Project site.

RESPONSE TO COMMENT 3.14

The commenter claims that the Proposed Project's GHG reduction measures are unsupported. In the CalEEMod model, analytical assumptions such as providing installation of energy-efficient appliances, no hearths, using low-VOC cleaning supplies, applying water conservation strategies, and instituting recycling and composting services are only available under the mitigated scenario. As previously discussed in Response to Comment 3.7 through 3.9, above, the interface on CalEEMod (Version 2016.3.2) lists these rules under the "mitigation" tab, when they are actually required rules by the SCAQMD, State, and City. The term "mitigation" in CalEEMod is defined differently than "Mitigation Measures" under CEQA. According to Section 15370 of the State CEQA Guidelines, mitigation measures include "reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action." The IS/ND concluded that the Proposed Project would not result in a significant GHG impact when applying all existing laws, regulations, and requirements. Therefore, the Mitigation scenario in CalEEMod reflects the application of required regulations and design features and is not proposed as mitigation measures. The model does not allow for these required features to be implemented in the "unmitigated project" impact scenario.

The commenter also claims that the IS/ND improperly labels these requirements as unenforceable project design features in order to reduce GHG emissions and conclude a less than significant GHG impacts. This is incorrect. As previously established, the mitigation scenario in CalEEMod reflects the application of required rules and regulations are not proposed as project design features. The model does not allow for these required features to be implemented in the "unmitigated project" impact scenario, but they are nonetheless required of the Proposed Project. Therefore, the commenter's claim that the Proposed Project's GHG reduction measures are unenforceable is speculative and unsubstantiated. Moreover, as discussed in Section VIII. Greenhouse Gas Emissions of the IS/ND, the Proposed Project would not result in a significant GHG impacts. The commenter does not provide credible evidence that the Proposed Project would result in significant GHG impacts that would warrant mitigation measures.

The commenter references that it is good practice to include project design features into a Mitigation Monitoring Program (MMP), citing the Association of Environmental Professional's *CEQA Portal Topic Paper*. It should be noted that AEP is a non-profit organization of interdisciplinary professionals, which does not enforce standards or regulations, but instead provides guidance documents addressing environmental issues with respect to CEQA. The IS/ND concluded that the Proposed Project would not result in a significant impact to greenhouse gas

emissions when applying all existing laws, regulations, and requirements. Therefore, no mitigation measures are necessary, and neither is an MMP.

COMMENT 3.15

Design Features Should be Included as Mitigation Measures

Our analysis demonstrates that the Project would result in a potentially significant construction-related air quality impact that should be mitigated further. We recommend that the Staff Report implement all product design features ("PDFs"), such as fugitive dust control measures as well as compliance with Title 24 and CALGreen Building Code, as formal mitigation measures. As a result, we could guarantee that these measures would be implemented, monitored, and enforced on the Project site. Including formal mitigation measures by properly committing to their implementation would result in verifiable emissions reductions that may help reduce emissions to less-than-significant levels.

RESPONSE TO COMMENT 3.15

The commenter asserts that the analysis completed by SWAPE demonstrates that the Proposed Project would result in a potentially significant impact to construction-related air quality and warrants mitigation. This is based on incorrect information. As previously established in Response to Comment 3.7, above, the Proposed Project is required to adhere to regulatory compliance measures pursuant to the SCAQMD Rules, such as Rule 403 (Fugitive Dust). The interface on CalEEMod (Version 2016.3.2) lists this Rule 403 under the "mitigation" tab, although it is actually required by the SCAQMD. The term "mitigation" applied in CalEEMod is defined differently than "Mitigation Measures" under CEQA. "Mitigation" applied in CalEEMod are requirements for the Proposed Project, including mandatory regulatory requirements, such as Rule 403. This also applies to the energy-efficient appliances required of the Proposed Project in compliance with the development standards of CALGreen (Title 24) and of the L.A. Green Building Code, which is more stringent than Title 24. Thus, the commenter is incorrect in claiming that these Proposed Project requirements need to be reintroduced as mitigation measures.

In addition, the commenter mistakes required features of the Proposed Project as "project design features." As previously established, the Mitigation scenario in CalEEMod reflects the application of required regulations and design features (such as compliance with SCAQMD Rule 403), which are not proposed as project design features under CEQA. Therefore, the commenter's claim that the compliance with SCAQMD Rule 403 is unenforceable is speculative and unsubstantiated. Moreover, as discussed in Section III. Air Quality of the IS/ND, the Proposed Project would not result in significant air quality impacts. The commenter does not provide credible evidence that

the Proposed Project would result in significant air quality impacts that would warrant mitigation measures.

COMMENT 3.16

Disclaimer

SWAPE has received limited discovery regarding this project. Additional information may become available in the future; thus, we retain the right to revise or amend this report when additional information becomes available. Our professional services have been performed using that degree of care and skill ordinarily exercised, under similar circumstances, by reputable environmental consultants practicing in this or similar localities at the time of service. No other warranty, expressed or implied, is made as to the scope of work, work methodologies and protocols, site conditions, analytical testing results, and findings presented. This report reflects efforts which were limited to information that was reasonably accessible at the time of the work, and may contain informational gaps, inconsistencies, or otherwise be incomplete due to the unavailability or uncertainty of information obtained or provided by third parties.

RESPONSE TO COMMENT 3.16

The commenter provides a general disclaimer stating they have received limited discovery of the Proposed Project but fails to state what additional information is needed to further comment on the IS/ND. This comment does not include any specificity, cite any evidence, or otherwise raise a significant environmental issue in the IS/ND. Thus, no further response is required.