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November 12, 2019

BY EMAIL

The Honorable City Council
of the City of Long Beach
411 West Ocean Blvd, 11th Floor
Long Beach, CA 90802

Re: 3rd and Pacific Project (Item 8 on the Council's November 12, 2019 Agenda)

Dear Councilmembers:

We represent the applicant in the above matter, Ensemble Real Estate Investments, in connection with the above-referenced mixed use project (the "Project"). We are writing in response the last minute letter submitted by appellant SAFER in the late afternoon yesterday, a state holiday, a little over 24 hours in advance of tonight's City Council meeting. SAFER has clearly engaged in a last minute data dump to deprive the City and applicant of a reasonable opportunity to respond. Nonetheless, we and Ramboll, the air quality and GHG expert that prepared Appendices B (air quality) and E (greenhouse gas emissions), have been able to review the letter and its attachments. As set forth below, SAFERs arguments are without merit and SAFER's appeal should be denied.

Given the pressing time constraints, we are submitting this letter in advance of Ramboll's formal response letter, which we will submit later today. However, the following reflects Ramboll's expert findings.

1. Tiered EIR vs. Addendum.

SAFER maintains that the City was required to prepare a tiered EIR for the Project. As set forth below, the City's determination not to prepare an EIR is correct and supported by substantial evidence.

In January 2012, the City certified the Downtown Plan Program Environmental Impact Report (PEIR) and adopted the Downtown Plan. The PEIR analyzed the potential environmental impacts that may result from the implementation of the Downtown Plan, which covers an area of approximately 719 acres, including the Project site. The PEIR assumed that full implementation of the Downtown Plan could increase the density and intensity of existing Downtown land uses

by adding up to (1) approximately 5,000 new residential units; (2) 1.5 million square feet (sf) of new office, civic, cultural, and similar uses; (3) 384,000 sf of new retail; (4) 96,000 sf of restaurants; and (5) 800 new hotel rooms.

CEQA establishes the type of environmental documentation required when changes to a project occur after an EIR is certified. Specifically, CEQA Guidelines Section 15164(a) states that:

> The lead agency or responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred.

CEQA Guidelines Section 15162 requires a subsequent EIR when an EIR has been certified or mitigated negative declaration adopted and one or more of the following circumstances exist:

> 1. Substantial changes are proposed in the project which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects;
>
> 2. Substantial changes occur with respect to the circumstances under which the project is undertaken, which will require major revisions of the previous EIR or negative declaration due to the involvement of new significant environmental effects or a substantial increase in the severity of previously identified significant effects; or
>
> 3. New information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified as complete or the negative declaration was adopted, shows any of the following:
>
> a. The project will have one or more significant effects not discussed in the previous EIR or negative declaration;
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> b. Significant effects previously examined will be substantially more severe than shown in the previous EIR;
>
> c. Mitigation measures or alternatives previously found not to be feasible would in fact be feasible, and would substantially reduce one or more significant effects of the

project, but the project proponents decline to adopt the mitigation measure or alternative; or

d. Mitigation measures or alternatives which are considerably different from those analyzed in the previous EIR would substantially reduce one or more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

As set forth in Response 2 below, consistent with CEQA, the City prepared an Addendum to determine whether the Project would result in any new or increased significant impacts beyond those disclosed in the PEIR. The Addendum and its supporting expert technical reports provide substantial evidence showing that the Project would not result in any such new or increased significant impacts or would otherwise require preparation of a subsequent or supplemental EIR.

CEQA Guidelines Section 15168(a) provides:

A program EIR is an EIR which may be prepared on a series of actions that can be characterized as one large project and are related either:

(1) Geographically,

(2) A logical parts [sic] in the chain of contemplated actions,

(3) In connection with issuance of rules, regulations, plans, or other general criteria to govern the conduct of a continuing program, or

(4) As individual activities carried out under the same authorizing statutory or regulatory authority and having generally similar environmental effects which can be mitigated in similar ways.

The PEIR meets each of the forgoing criteria. First, the Downtown Plan covers the development of a number of contiguous properties within a specific geographic area, Downtown. Further, the development of individual projects pursuant to the Downtown Plan are logical parts of that plan, which is intended to regulate development in Downtown. Moreover, the PEIR was prepared in connection with the adoption of the Downtown Plan, which is a plan that includes rules, regulations, and other criteria to govern Downtown development. Finally, the type of urban infill development projects permitted under the Downtown Plan would have generally similar environmental effects that can be mitigated in similar ways.

One of the benefits of program EIRs is to avoid having to prepare EIRs for subsequent related activities. CEQA Guidelines Section 15168(c) provides:

> **Use with Later Activities**. Subsequent activities in the program must be examined in the light of the program EIR to determine whether an additional environmental document must be prepared.
>
> (1) If a later activity would have effects that were not examined in the program EIR, a new Initial Study would need to be prepared leading to either an EIR or a negative declaration.
>
> (2) If the agency finds that pursuant to Section 15162, no new effects could occur or no new mitigation measures would be required, the agency can approve the activity as being within the scope of the project covered by the program EIR, and no new environmental document would be required.
>
> (3) An agency shall incorporate feasible mitigation measures and alternatives developed in the program EIR into subsequent actions in the program.
>
> (4) Where the subsequent activities involve site specific operations, the agency should use a written checklist or similar device to document the evaluation of the site and the activity to determine whether the environmental effects of the operation were covered in the program EIR.

As set forth in Response 2 below, the Project was addressed in the PEIR. The Addendum assessed potential impacts of the Project and determined that it would not have effects that were not analyzed in the PEIR. Further, the Mitigation Monitoring and Reporting Program for the Project includes all applicable mitigation measures from the PEIR. Therefore, contrary to the comment, a tiered EIR is not required for the Project.

Pursuant to Section 1.3 of the PEIR, the PEIR serves "as a basis for streamlined environmental review of all subsequent public and private actions that may be subject to CEQA review for land development projects, infrastructure improvements, and other ordinances, programs, and actions that the Lead Agency determines to be necessary to implement the Downtown Plan." Furthermore, the PEIR states:

> Because the Project is an adoption of a plan, not an individual or series of development projects, subsequent environmental review will be subject to the provisions of Section 15183 of the State CEQA Guidelines, under which projects that are consistent with the development density or intensity of the plan "shall not be subject to additional environmental review,

except as might be necessary to examine whether there are project-specific significant effects which are peculiar to the project or its site." Section 15183 provides additional guidance for preparation of an Initial Study for subsequent projects to determine whether there are project- or site-specific impacts; environmental effects that were not analyzed as significant effects in the PEIR; as offsite or cumulative impacts; or as more severe impacts than were identified in the PEIR.

The mitigation measures to the PEIR require, where appropriate, preparation of specific additional studies and analyses to determine whether an individual project would result in project-specific new or increased significant effects that are peculiar to the project or its site. The Addendum includes all of the required studies and provides substantial evidence that the Project would not result in Project-specific new or increased significant effects that are peculiar to the Project or its site. Therefore, the Project is also exempt from further CEQA review under CEQA Guidelines Section 15183.

2. Project Addressed in PEIR.

SAFER's claim that the Project was not addressed in the PEIR is incorrect. The PEIR analyzed the adoption and implementation of the Downtown Plan that would replace, and in fact did replace, the existing land use, zoning, and planned development districts as the land use and design document for all future development in the Downtown Plan area. The PEIR assessed the maximum development under the Downtown Plan, consisting of (1) approximately 5,000 new residential units, (2) 1.5 million sf of new office, civic, cultural, and similar uses, (3) 384,000 sf of new retail, (4) 96,000 sf of restaurants, and (5) 800 new hotel rooms.

The Project would be developed on a site located within boundaries of the Downtown Plan area, which is the Project site identified in the PEIR. Specifically, it is located in the Plan's Business and Entertainment District. The Project would replace two existing surface parking lots on a 1.2-acre site with an 8-story building and a 23-story high rise building. A pedestrian-focused paseo would be constructed between the two proposed buildings. The Project would include a total of 345 residential units and 14,481 sf of ground floor retail commercial space. Thus, the Project is well within the development envelope analyzed in the PEIR.

Moreover, the Project is consistent with all of the applicable standards of the Downtown Plan, including the following:

Use. The Project's residential and retail uses are permitted in Business and Entertainment District (Downtown Plan Table 3-1).

Density. Density is regulated though height and floor area ratio (FAR). (See below.)

Height. The Project is located in the Height Incentive Area (Downtown Plan Figure 3-2), which provides a base height of 240 feet and a height of up to 500 feet by providing development incentives (Downtown Plan Table 3-3). As the Project would provide green roofs, achieve LEED Silver certification or equivalent, and have 10 percent of the site dedicated as public open space, it is entitled to the increased height bonus (Downtown Plan Table 3-4). Therefore, the Project's maximum height of 269 feet is consistent with the Downtown Plan and well below the maximum permitted.

FAR. The base FAR in the Height Incentive Area is 8.0 to 1, with a maximum FAR of 11.0 to 1 permitted with incentives (Downtown Plan Table 3-3). By providing the above incentives, the Project is entitled to an additional FAR of 1.5 to 1, for a total of 9.5 to 1. With an FAR of 9.48 to 1, the Project is consistent with the Downtown Plan standards.

Parking. The Project would be required to provide 447 parking spaces at the ratios set forth in Downtown Plan Tables 3-5 and 3-6. The Project would exceed this requirement by providing 563 spaces.

Open Space. The Downtown Plan requires the Project to provide 10,454 square feet of common outdoor open space, 500 square feet of common indoor open space, and 6,288 square feet of private open space (Downtown Plan Table 3-10). The Project would exceed these requirements by providing 13,944 square feet of common outdoor open space, 11,688 square feet of common indoor open space, and 11,340 square feet of private open space.

Thus, contrary to the comment, the Project was in fact addressed in the PEIR.

3. Indoor Air Quality

SAFER maintains that the Project would have a significant impact on indoor air quality due to formaldehyde. However, SAFER provides no credible evidence that the Project will be constructed with building materials with significant amounts of formaldehyde, citing only outdate, unsubstantiated, and/or general information. As set forth in the memorandum from air quality expert Eric Lu of Ramboll, "the unsubstantiated comments regarding the indoor air quality risk levels have no merit, as there is no analysis to assess any risk level as stated in the

comment." Moreover, "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 at the project."

The letter from Indoor Environmental Engineering (IEE) is based on a series of inaccurate assumptions, including that (1) the Project's construction materials would not be compliant with the applicable regulations to reduce formaldehyde exposure, including Title 24, Cal Green, and CARB ATCM (Airborne Toxic Control Measure to Reduce Formaldehyde Emissions from Composite Wood Product ; (2) the formaldehyde daily emissions from construction materials would be constant for over 70 years for residents and 45 years for workers; (3) residents would live in their units for 70 years; and (4) the employees would work at the Project Site for 8 hours/day, 5 days/week, 50 weeks/year for 45 years. In fact, (1) the construction materials would comply with all such applicable regulations, (2) the amount of formaldehyde off-gassing from construction materials decreases over time, (3) per the U.S. Environmental Protection Agency's *Exposure Factors Handbook* lifetime risk values for residents should be based on an exposure duration of 350 days per year for 30 years; and (4) based on the U.S. Bureau of Labor Statistics, the median number of years workers remain in a job is 4.2 years. In fact, as to point 4, Appellant cites to no evidence that the predominately residential Project will employ the same workers consistently for 45 years. As a result of the inaccurate assumptions, the IEE letter substantially overstates formaldehyde impacts on future workers and residents and is not credible.

4. Air Quality Modeling

SAFER makes several claims with respect to the air quality modeling used in the Addendum. First, SAFER asserts that the modeling failed to take into account 11,688 square feet of common indoor amenity space. In fact, this space is included in the 95,130 square feet of residential amenities and services shown in Table 2 of the Addendum. Thus, separately including this space in the modeling would represent a double counting that would overstate emissions.

SAFER states that the modeling understates the parking garage by approximately 1,934 square feet, the retail by 44 square feet, and daily vehicle trips by 7 trips. As set forth in Tables 3 and 4 of the Addendum, the Project's construction and operational emissions would be well below the SCAQMD significance threshold for all criteria pollutants and less than the significant and unavoidable construction and operation impacts identified in the PEIR. The minor discrepancies cited by SAFER would not affect this conclusion, even if correct.

Finally, SAFER argues that the air quality modeling should have included a concrete/industrial saw instead of a grader during the grading phase. In fact, a concrete/industrial saw is used to cut concrete, not grade soil. A saw would be used in the demolition phase, it was thus included in the modeling for that phase and not the grading phase. Specifically, a concrete/industrial saw is not needed during earthwork (grading) phase, but a grader would be. Page 34 of Appendix B (Table 4) to the Addendum is incorrect; however, the actual air quality modeling properly included a grader instead of a saw during the grading phase. Therefore, the construction emission qualities in the Addendum are correct.

For the foregoing reasons, SAFER fails to provide credible evidence that the Project would result in new or substantial increased air quality impacts beyond those disclosed in the PEIR.

5. Health Risks

SAFER asserts that the City should prepare a health risk assessment (HRA) to determine the health risk posed to existing nearby sensitive receptors as a result of Project construction and operation. The SCAQMD has published and adopted the *Guidance Document for Addressing Air Quality Issues in General Plans and Local Planning*, which provides recommendations regarding the siting of new sensitive land uses near potential sources of air toxic emissions (e.g., freeways, distribution centers, rail yards, ports, refineries, chrome plating facilities, dry cleaners, and gasoline dispensing facilities).[1] The SCAQMD recommends that HRAs be conducted for substantial sources of DPM (e.g., truck stops and warehouse distribution facilities that generate more than 100 trucks per day or more than 40 trucks with operating transport refrigeration units). Based on this guidance, there was no quantitative analysis required for future cancer risk from Project construction or operation as the residential and retail Project does not include any of the SCAQMD main identified uses of DPM.

The SCAQMD as a Responsible Commenting Agency, provided the following comment on January 4, 2017, regarding the proposed Green Line Mixed Use Specific Plan (www.aqmd.gov/docs/default-source/ceqa/comment-letters/2017/deirgreenline010417.pdf?sfvrsn=5), which further supports that only substantial operational diesel truck activity warrants further evaluation in an HRA:

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[1] *SCAQMD, Guidance Document for Addressing Air Quality Issues in General Plans and Local Planning,* May 6, 2005.

> If the proposed project will expose future sensitive receptors to potential adverse health impacts from carcinogenic emissions generated by the SCAQMD permitted stationary sources and from the nearby rail and truck operations, SCAQMD staff recommends that a health risk assessment (HRA) be conducted. The HRA should include the SCAQMD permitted sources (i.e., the gasoline storage and dispensing equipment, the auto-body shop spray booths) emitting toxic air contaminants (TACs) within one quarter mile of the project site. The HRA should also include all warehouse sites within 1,000 feet that include truck activity that exceeds 100 trucks per day, or where more than 40 trucks with operating transport refrigeration units (TRUs) per day, or where TRU units exceed 300 hours per week. No additional analysis of operational health risk impacts is warranted based on this comment.

SAFER maintains that the Project will include a substantial number of diesel truck trips during operation. However, given that nature of the Project land uses (i.e., residential and limited retail), the Project would generate fewer than 100 trips per day by diesel powered vehicles.

The Project proposes to construct a total of 345 residential dwelling units, approximately 14,480 square feet of retail space, and 563 parking spaces. Based on our experience with similar projects and input from the Project applicant, a conservative estimate of the number of daily/annual truck trips is provided below.

- It is conservatively assumed that each residential unit would require one move in/move out per year and would require a heavy-duty diesel truck (690 trucks per year). (It is anticipated that actual number of move in/move outs would be less per year and many would not require heavy-duty diesel trucks.) In addition, it is conservatively assumed that each residential unit would receive on average two packages per week from a heavy-duty diesel truck (most deliveries would be from non-diesel vehicles). This would be equivalent to approximately five deliveries (e.g., UPS or FedEx) per day since a single truck would delivery multiple packages at the Project site during each visit (1825 trucks per year). Approximately two trash trucks would be required per week (104 trucks per year). Using these conservative assumptions, the total trucks related to the proposed residential uses would equal 2,619 per year, or an average of about seven per day, excluding holiday. Please note that this conservatively assumes that all trucks would be diesel.

- It is conservatively estimated that the 14,480 square feet of retail space would generate a maximum of five deliveries per day and require two trash trucks per week. This is

equivalent to 1,929 trucks per year or just over five trucks per day. Once again, this conservatively assumes that all trucks would be diesel.

As shown above, the Project is conservatively estimated to generate on average approximately 12 diesel trucks per day. Given the purpose of the trips (e.g., package delivery or move in/move out), it is unlikely that any of these trucks would include operating transport refrigeration units. Based on the SCAQMD guidance, the Addendum did not include a no quantitative analysis required for future cancer risk within the Project Area as the Project is consistent with the recommendations regarding the siting of new sensitive land uses near potential sources of TAC emissions provided in the SCAQMD *Guidance Document for Addressing Air Quality Issues in General Plans and Local Planning*. Specifically, the Project is not considered to be a substantial source of diesel particulate matter warranting a refined HRA since daily truck trips to the Project Site would not exceed 100 trucks per day or more than 40 trucks with operating transport refrigeration units.

The SCAQMD Handbook also does not recommend analysis of TACs from short-term construction activities. The rationale for not requiring a health risk assessment for construction activities is the 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 20 months, the 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 (20 out of 840 months of a 70-year lifetime), further evaluation of construction TAC emissions within the Draft EIR was not warranted.

The comment correctly identifies that the Office of Environmental Health Hazard Assessment (OEHHA) adopted a new version of the Air Toxics Hot Spots Program Guidance Manual for the Preparation of Risk Assessments (Guidance Manual) in March of 2015.7. The Guidance Manual was developed by OEHHA, in conjunction with CARB, for use in implementing the Air Toxics "Hot Spots" Program (Health and Safety Code Section 44360 et. seq.). The Air Toxics "Hot Spots" Program requires stationary sources to report the types and quantities of certain substances routinely released into the air. The goals of the Air Toxics "Hot Spots" Act are to collect emission data, to identify facilities having

localized impacts, to ascertain health risks, to notify nearby residents of significant risks, and to reduce those significant risks to acceptable levels.

The new Guidance Manual provides recommendations related to cancer risk evaluation of certain short-term projects. As discussed in Section 8.2.10 of the Guidance Manual, "The local air pollution control districts sometimes use the risk assessment guidelines for the Hot Spots program in permitting decisions for short-term projects such as construction or waste site remediation." Short-term projects that would require a permitting decision by South Coast Air Quality Management District (SCAQMD) typically would be limited to site remediation (e.g., stationary soil vapor extractors) and would not be applicable to the proposed Project. The new Guidance Manual does not provide specific recommendations for evaluation of short-term use of mobile sources (e.g., heavy-duty diesel construction equipment).

Additionally, in comments presented to the SCAQMD Governing Board (Meeting Date: June 5, 2015, Agenda No. 28) relating to toxic air contaminant exposures under Rules 1401, 1401.1, 1402 and 212 revisions, use of the OEHHA guidelines specifically related to the applicability and use of early-life exposure adjustments for projects subject to CEQA, it was reported that:

> The Proposed Amended Rules are separate from the CEQA significance thresholds. The Response to Comments Staff Report PAR 1401, 1401.1, 1402, and 212 A - 8 June 2015 SCAQMD staff is currently evaluating how to implement the Revised OEHHA Guidelines under CEQA. The SCAQMD staff will evaluate a variety of options on how to evaluate health risks under the Revised OEHHA Guidelines under CEQA. The SCAQMD staff will conduct public workshops to gather input before bringing recommendations to the Governing Board. In the interim, staff will continue to use the previous guidelines for CEQA determinations.

To date, the SCAQMD, as a commenting agency, has not conducted public workshops nor developed policy relating to the application of early-life exposure adjustments utilizing OEHHA guidance for projects prepared by other public/lead agencies subject to CEQA.

6. GHG Emissions

SAFER argues the Draft EIR fails to demonstrate the "additionality" concept whereby GHG emissions reductions otherwise required by law or regulation are appropriately considered part of the baseline, and pursuant to CEQA Guideline 15064.4(b)(1), a new project's emissions should be compared against the existing baseline and a project should not take credit for emissions reductions that would have occurred regardless of the project.

SAFER mischaracterizes the California Supreme Court's decision in *Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 62 Cal.4th 204, (also known as the Newhall Ranch case). As a preliminary matter, the Court does not even mention "additionality" in its decision. Rather, the Court reviewed the methodology used to analyze GHG emissions in an EIR prepared for a project that proposed 20,885 dwelling units with 58,000 residents on 12,000 acres of undeveloped land in a rural area of the County of Los Angeles. The EIR used a departure from "business as usual" (BAU) approach to determine whether the project would impede the state's compliance with statutory emissions reduction mandate established by the AB 32 Climate Change Scoping Plan. The Court did not invalidate the BAU approach but did hold that "the Scoping Plan nowhere related that statewide level of reduction effort to the percentage of reduction that would or should be required from individual projects and nothing DFW or Newhall have cited in the administrative record indicates the required percentage reduction from business as usual is the same for an individual project as for the entire state population and economy."[2] The California Supreme Court suggested regulatory consistency as one pathway to compliance, by stating that a lead agency might assess consistency with AB 32's goal in whole or in part by looking to compliance with regulatory programs designed to reduce GHG emissions from particular activities, including statewide programs and local climate action plans or GHG emissions reduction plans. This approach is consistent with CEQA Guidelines Section 15064, which provides that a determination that an impact is not cumulatively considerable may rest on compliance with previously adopted plans or regulations, including plans or regulations for the reduction of GHG emissions.

The commenter suggests that the state is not on track to meet GHG reduction targets. In fact, CARB recently found:

> In 2017, emissions from statewide emitting activities were 424 million metric tons of CO2 equivalent (MMTCO2e), which is 5 MMTCO2e lower than 2016 levels. 2017 emissions have decreased by 14 percent since peak levels in 2004 and are 7 MMTCO2e below the 1990 emissions level and the State's 2020 GHG limit. Per capita GHG emissions in California

[2] *Center for Biological Diversity v. California Department of Fish and Wildlife (2015) 62 Cal.4th 204, 230.*

> have dropped from a 2001 peak of 14.1 tonnes per person to 10.7 tonnes per person in 2017, a 24 percent decrease. Overall trends in the inventory also demonstrate that the carbon intensity of California's economy (the amount of carbon pollution per million dollars of gross domestic product (GDP)) is declining. From 2000 to 2017, the carbon intensity of California's economy has decreased by 41 percent from 2001 peak emissions while simultaneously increasing GDP by 52 percent. In 2017, GDP grew 3.6 percent while the emissions per GDP declined by 4.5 percent compared to 2016.[3]

Moreover, whether or not the state is on track to meet statewide GHG reduction targets is irrelevant as to whether the Project is consistent with the GHG reduction goals imbedded in the various reduction targets. The GHG Technical Report (Addendum Appendix E) provides a thorough consistency analysis which supports the Addendum determination that which the Addendum demonstrates the Project would not result in a new significant substantial increase in the severity of GHG impacts previously identified in the PEIR.

SAFER maintains that the Addendum improperly relies upon consistency with the City's Sustainable City Action Plan to determine the significance of the Project's GHG impacts. In the absence of any applicable adopted numeric threshold, the significance of the Project's GHG emissions was evaluated consistent with CEQA Guidelines Section 15064.4(b)(2) and applicable case law by considering whether the Project complies with applicable plans, policies, regulations and requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of GHG emissions. For this Project, as a land use development project, the most directly applicable adopted regulatory plan to reduce GHG emissions is the 2016 RTP/SCS, which is designed to achieve regional GHG reductions from the land use and transportation sectors as required by SB 375 and the State's long-term climate goals. This analysis also considers consistency with regulations or requirements of AB 32 and the Sustainable City Action Plan. This local plan is relevant it that it contains a number of actions and measurable goals to reduce GHGs. As set forth in the Addendum, the Project would be consistent with the applicable goals, policies, and objectives of these plans. Therefore, impacts would be less than significant.

SAFER further asserts that the Addendum could not rely on the strategies in AB 32 or the RTP/SCS as they are not Project-specific. This is incorrect. As SAFER acknowledges, CEQA Guidelines § 15064.4(b)(3) allows a lead agency to consider "[t]he extent to which the project complies with regulations or requirements adopted to implement a ***statewide, regional, or local***

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[3] *2019 Edition, California Greenhouse Gas Emission Inventory: 2000 – 2017*

plan for the reduction or mitigation of greenhouse gas emissions." (Emphasis added.) Moreover, the 2016 RTP/SCS as a CARB-certified GHG reduction plan.

SAFER argues that the City's Sustainability Action Plan is outdated, and that City should have relied on the SCAQMD's *Interim Threshold* (although not officially adopted) to keep up with the evolving scientific knowledge and State regulatory schemes. This unadopted SCAQMD threshold is now over 10 years old and was based on information even older. Therefore, it does not represent the current standard of evolving scientific data, as SAFER maintains. As noted, the threshold selected by the City as lead agency, which assessed the Project's consistency with applicable GHG reduction plans, is consistent with the CEQA Guidelines and applicable case law, including the Supreme Court's decision in the Newhall Ranch case.

The other air districts cited in the comment have no jurisdiction over the Project or the City.

SAFER claims that the air modeling improperly reduced the carbon intensity factor in the CalEEMod inputs. The CalEEMod program allows users to include project-specific inputs in lieu of general default inputs, which are based on averages of information from a variety of projects and sites. The carbon intensity factor used in the GHG analysis reflects data specific to the Project area, including a higher percentage of renewable energy (which results in less GHG emissions) in the electricity supplied to the Project as compared to the default input. The GHG analysis is therefore more accurate than if it had used the default factor.

Based on the foregoing, SAFER does not provide any credible evidence that the Project will result in new or substantially increase significant GHG impacts beyond those set forth in the PEIR. Therefore, none of SAFER's suggested mitigation measures to reduce GHG emissions are warranted.

7. Biological Resources

SAFER claims that the Project may have a significant impact on biological resources as a result of avian window collisions, but again fails to provide credible evidence to support its claim. As set forth in the memorandum from biological expert Tony Bomkamp of Glenn Lukos Associates, according to the United States Fish & Wildlife Service less than one percent of bird strikes occur with high rises such as the Project. Moreover, the Project would implement Condition 3, which incorporates the most up-to-date "Best Practices" that will significantly reduce the Project's potential for avian window collisions. Thus, the memorandum concludes that "there is no potential for significant impacts on avian species due to window collisions associated with the project."

7. Significant and Unavoidable Impacts in the PEIR

SAFER asserts that the City must prepare an EIR because the PEIR finds significant and unavoidable impacts. However, the portion of the case cited by the Appellant relates to a challenge to a CEQA Guideline Section that has since been rescinded. Therefore, that case has no relevance to the Project. The question is not whether the PEIR discloses significant and unavoidable impacts, but whether the Project will result in any new or materially increased significant impacts not assessed in the PEIR. The Addendum and its supporting expert technical reports provides substantial evidence that the Project will not result in such new or increased impacts.

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Very truly yours,

Dale J. Goldsmith

cc: Development Services