The Retreat at Sacramento (P18-063)
Initial Study/Mitigated Negative Declaration
Appendix B
Revisions to Initial Study
Comments and Responses
February 20, 2019

The Mitigated Negative Declaration for the Retreat at Sacramento (P18-063) was circulated for public comment from January 8, 2019 to February 8, 2019. Written comments were received as follows:

Date	Commenter
1/8/2019	PG&E
1/10/2019	Regional San
1/14/2019	Caltrans
2/8/2019	Lozeau | Drury LLP

Each of the written comments is attached. Each of the comments addressed the project site and conditions as they relate to the particular areas of concern of the respective commenting agency, company, organization or individual. The comments are acknowledged by the City and have been considered as part of the project planning and its implementation.

None of the comments identified any new significant effects, increases in severity of an impact identified in the Mitigated Negative Declaration, or provide significant new information. Recirculation of the Mitigated Negative Declaration, therefore, is not required.

Revisions to the Initial Study/Mitigated Negative Declaration

The City of Sacramento Community Development Department, as lead agency, released the Retreat at Sacramento (P18-063) Initial Study/Mitigated Negative Declaration (IS/MND) for public review beginning on January 8, 2019 pursuant to CEQA Guidelines Section 15105. The IS/MND and supporting documents were made available at the City of Sacramento, Community Development Department, 300 Richards Blvd., 3rd Floor, Sacramento, California. According to CEQA Guidelines Sections 15073 and 15074, the lead agency must consider the comments received during consultation and review periods together with the negative declaration. However, unlike the process followed with an Environmental Impact Report, comments received on a negative declaration are not required to be attached to the negative declaration, nor must the lead agency make specific written responses to public agencies. Nonetheless, the lead agency has chosen to provide responses to the comments received during the public review process for the IS/MND, as well as revisions to the IS/MND where necessary. The revisions and responses to comments are provided herein as Attachments 1 and 2, respectively.

Attachments

Attachment 1: Revisions to the Initial Study/Mitigated Negative Declaration
Attachment 2: Responses to Comments

Attachment 1

The Retreat at Sacramento (P18-063)
Initial Study/Mitigated Negative Declaration

Revisions to the Initial Study/Mitigated Negative Declaration

February 20, 2019

This document presents, in ~~strike-through~~ and double-underline format, the revisions to the Initial Study/Mitigated Negative Declaration (IS/MND) for the Retreat at Sacramento Project (proposed project). The revisions to the IS/MND do not affect the adequacy of the environmental analysis or conclusions in the IS/MND. Because the changes presented below would not result in any new significant impacts or an increase in impact significance from what was identified in the IS/MND, recirculation of the IS/MND is not required (CEQA Guidelines section 15073.5).

Based on the comments received on the IS/MND prepared for the proposed project (released for public review on January 8, 2018), as well as staff-initiated changes, the following revisions have been made to the IS/MND.

Page 2 of the IS/MND is hereby modified as follows to reflect a change in the project applicant name and contact information:

> Jason Doornbos
> ~~LCD Acquisitions, LLC.~~Retreat at Sacramento, LLC
> 315 Oconee Street
> Athens, GA 30601
> (706) 543-1910
> jdoornbos@landmarkproperties.com

The foregoing revision does not affect the adequacy of the IS/MND.

Page 23 of the IS/MND related to the soil export associated with the proposed project is hereby modified as follows:

- Prior to development of the project site, 115,364 square feet (sf) of existing on-site structures would be demolished;
- Approximately ~~17,~~514 cubic yards (CY) of soil export associated with off-haul of contaminated soils would be required; and
- Approximately 17,514 CY of soil import would be required, including 44 CY to replace off-hauled soils.

The foregoing revision is for clarification purposes only and does not affect the adequacy of the IS/MND.

Attachment 2

Responses to Comments

RESPONSES TO COMMENTS

This Responses to Comments document contains public and/or agency comments received during the public review period of the Retreat at Redding Project (proposed project) Initial Study/Mitigated Negative Declaration (IS/MND).

List of Commenters

The City of Sacramento received the following four comment letters during the open comment period on the IS/MND for the proposed project:

Letter 1 .....Plan Review Team Land Management, PG&E
Letter 2 .....Robb Armstrong, Regional San Development Services and Plan Check
Letter 3 .....Uzma Rehman, Caltrans
Letter 4 ..... Brian Flynn, Lozeau | Drury LLP

Response to Comments

The Response to Comments below include responses to the comment letters submitted regarding the proposed project. The letters are numbered and bracketed with assigned comment numbers. The bracketed comment letters are followed by numbered responses corresponding to each bracketed comment. It should be noted that where revisions to the IS/ND text are required in response to a comment, new text is double underlined and deleted text is ~~struck through~~.

Letter 1

Pacific Gas and Electric Company

Plan Review Team
Land Management

PGEPlanReview@pge.com

6111 Bollinger Canyon Road 3370A
San Ramon, CA 94583

January 8, 2019

Ron Bess
City of Sacramento
300 Richards Blvd., 3rd Floor
Sacramento, CA 95811

Ref: Gas and Electric Transmission and Distribution

Dear Mr. Bess,

Thank you for submitting P18-063 plans for our review. PG&E will review the submitted plans in relationship to any existing Gas and Electric facilities within the project area. If the proposed project is adjacent/or within PG&E owned property and/or easements, we will be working with you to ensure compatible uses and activities near our facilities.

Attached you will find information and requirements as it relates to Gas facilities (Attachment 1) and Electric facilities (Attachment 2). Please review these in detail, as it is critical to ensure your safety and to protect PG&E's facilities and its existing rights.

Below is additional information for your review:

1. This plan review process does not replace the application process for PG&E gas or electric service your project may require. For these requests, please continue to work with PG&E Service Planning: https://www.pge.com/en_US/business/services/building-and-renovation/overview/overview.page.

1-1 2. If the project being submitted is part of a larger project, please include the entire scope of your project, and not just a portion of it. PG&E's facilities are to be incorporated within any CEQA document. PG&E needs to verify that the CEQA document will identify any required future PG&E services.

3. An engineering deposit may be required to review plans for a project depending on the size, scope, and location of the project and as it relates to any rearrangement or new installation of PG&E facilities.

Any proposed uses within the PG&E fee strip and/or easement, may include a California Public Utility Commission (CPUC) Section 851 filing. This requires the CPUC to render approval for a conveyance of rights for specific uses on PG&E's fee strip or easement. PG&E will advise if the necessity to incorporate a CPUC Section 851filing is required.

This letter does not constitute PG&E's consent to use any portion of its easement for any purpose not previously conveyed. PG&E will provide a project specific response as required.

Sincerely,

Plan Review Team
Land Management

Letter 1 Cont'd

Pacific Gas and Electric Company

Attachment 1 – Gas Facilities

There could be gas transmission pipelines in this area which would be considered critical facilities for PG&E and a high priority subsurface installation under California law. Care must be taken to ensure safety and accessibility. So, please ensure that if PG&E approves work near gas transmission pipelines it is done in adherence with the below stipulations. Additionally, the following link provides additional information regarding legal requirements under California excavation laws: http://usanorth811.org/wp-content/uploads/2017/05/CA-LAW-English.pdf

1. Standby Inspection: A PG&E Gas Transmission Standby Inspector must be present during any demolition or construction activity that comes within 10 feet of the gas pipeline. This includes all grading, trenching, substructure depth verifications (potholes), asphalt or concrete demolition/removal, removal of trees, signs, light poles, etc. This inspection can be coordinated through the Underground Service Alert (USA) service at 811. A minimum notice of 48 hours is required. Ensure the USA markings and notifications are maintained throughout the duration of your work.

2. Access: At any time, PG&E may need to access, excavate, and perform work on the gas pipeline. Any construction equipment, materials, or spoils may need to be removed upon notice. Any temporary construction fencing installed within PG&E's easement would also need to be capable of being removed at any time upon notice. Any plans to cut temporary slopes exceeding a 1:4 grade within 10 feet of a gas transmission pipeline need to be approved by PG&E Pipeline Services in writing PRIOR to performing the work.

1-1 Cont'd

3. Wheel Loads: To prevent damage to the buried gas pipeline, there are weight limits that must be enforced whenever any equipment gets within 10 feet of traversing the pipe.

Ensure a list of the axle weights of all equipment being used is available for PG&E's Standby Inspector. To confirm the depth of cover, the pipeline may need to be potholed by hand in a few areas.

Due to the complex variability of tracked equipment, vibratory compaction equipment, and cranes, PG&E must evaluate those items on a case-by-case basis prior to use over the gas pipeline (provide a list of any proposed equipment of this type noting model numbers and specific attachments).

No equipment may be set up over the gas pipeline while operating. Ensure crane outriggers are at least 10 feet from the centerline of the gas pipeline. Transport trucks must not be parked over the gas pipeline while being loaded or unloaded.

4. Grading: PG&E requires a minimum of 36 inches of cover over gas pipelines (or existing grade if less) and a maximum of 7 feet of cover at all locations. The graded surface cannot exceed a cross slope of 1:4.

5. Excavating: Any digging within 2 feet of a gas pipeline must be dug by hand. Note that while the minimum clearance is only 12 inches, any excavation work within 24 inches of the edge of a pipeline must be done with hand tools. So to avoid having to dig a trench entirely with hand tools, the edge of the trench must be over 24 inches away. (Doing the math for a 24 inch wide trench being dug along a 36 inch pipeline, the centerline of the trench would need to be at least 54 inches [24/2 + 24 + 36/2 = 54] away, or be entirely dug by hand.)

Letter 1 Cont'd

Pacific Gas and Electric Company

Water jetting to assist vacuum excavating must be limited to 1000 psig and directed at a 40° angle to the pipe. All pile driving must be kept a minimum of 3 feet away.

Any plans to expose and support a PG&E gas transmission pipeline across an open excavation need to be approved by PG&E Pipeline Services in writing PRIOR to performing the work.

6. Boring/Trenchless Installations: PG&E Pipeline Services must review and approve all plans to bore across or parallel to (within 10 feet) a gas transmission pipeline. There are stringent criteria to pothole the gas transmission facility at regular intervals for all parallel bore installations.

For bore paths that cross gas transmission pipelines perpendicularly, the pipeline must be potholed a minimum of 2 feet in the horizontal direction of the bore path and a minimum of 12 inches in the vertical direction from the bottom of the pipe with minimum clearances measured from the edge of the pipe in both directions. Standby personnel must watch the locator trace (and every ream pass) the path of the bore as it approaches the pipeline and visually monitor the pothole (with the exposed transmission pipe) as the bore traverses the pipeline to ensure adequate clearance with the pipeline. The pothole width must account for the inaccuracy of the locating equipment.

1-1 Cont'd

7. Substructures: All utility crossings of a gas pipeline should be made as close to perpendicular as feasible (90° +/- 15°). All utility lines crossing the gas pipeline must have a minimum of 12 inches of separation from the gas pipeline. Parallel utilities, pole bases, water line 'kicker blocks', storm drain inlets, water meters, valves, back pressure devices or other utility substructures are not allowed in the PG&E gas pipeline easement.

If previously retired PG&E facilities are in conflict with proposed substructures, PG&E must verify they are safe prior to removal. This includes verification testing of the contents of the facilities, as well as environmental testing of the coating and internal surfaces. Timelines for PG&E completion of this verification will vary depending on the type and location of facilities in conflict.

8. Structures: No structures are to be built within the PG&E gas pipeline easement. This includes buildings, retaining walls, fences, decks, patios, carports, septic tanks, storage sheds, tanks, loading ramps, or any structure that could limit PG&E's ability to access its facilities.

9. Fencing: Permanent fencing is not allowed within PG&E easements except for perpendicular crossings which must include a 16 foot wide gate for vehicular access. Gates will be secured with PG&E corporation locks.

10. Landscaping: Landscaping must be designed to allow PG&E to access the pipeline for maintenance and not interfere with pipeline coatings or other cathodic protection systems. No trees, shrubs, brush, vines, and other vegetation may be planted within the easement area. Only those plants, ground covers, grasses, flowers, and low-growing plants that grow unsupported to a maximum of four feet (4') in height at maturity may be planted within the easement area.

11. Cathodic Protection: PG&E pipelines are protected from corrosion with an "Impressed Current" cathodic protection system. Any proposed facilities, such as metal conduit, pipes,

Letter 1 Cont'd

Pacific Gas and Electric Company

1-1 Cont'd

service lines, ground rods, anodes, wires, etc. that might affect the pipeline cathodic protection system must be reviewed and approved by PG&E Corrosion Engineering.

12. Pipeline Marker Signs: PG&E needs to maintain pipeline marker signs for gas transmission pipelines in order to ensure public awareness of the presence of the pipelines. With prior written approval from PG&E Pipeline Services, an existing PG&E pipeline marker sign that is in direct conflict with proposed developments may be temporarily relocated to accommodate construction work. The pipeline marker must be moved back once construction is complete.

13. PG&E is also the provider of distribution facilities throughout many of the areas within the state of California. Therefore, any plans that impact PG&E's facilities must be reviewed and approved by PG&E to ensure that no impact occurs which may endanger the safe operation of its facilities.

Letter 1 Cont'd

Pacific Gas and Electric Company

Attachment 2 – Electric Facilities

It is PG&E's policy to permit certain uses on a case by case basis within its electric transmission fee strip(s) and/or easement(s) provided such uses and manner in which they are exercised, will not interfere with PG&E's rights or endanger its facilities. Some examples/restrictions are as follows:

1. Buildings and Other Structures: No buildings or other structures including the foot print and eave of any buildings, swimming pools, wells or similar structures will be permitted within fee strip(s) and/or easement(s) areas. PG&E's transmission easement shall be designated on subdivision/parcel maps as "**RESTRICTED USE AREA – NO BUILDING.**"

2. Grading: Cuts, trenches or excavations may not be made within 25 feet of our towers. Developers must submit grading plans and site development plans (including geotechnical reports if applicable), signed and dated, for PG&E's review. PG&E engineers must review grade changes in the vicinity of our towers. No fills will be allowed which would impair ground-to-conductor clearances. Towers shall not be left on mounds without adequate road access to base of tower or structure.

1-1 Cont'd

3. Fences: Walls, fences, and other structures must be installed at locations that do not affect the safe operation of PG&'s facilities. Heavy equipment access to our facilities must be maintained at all times. Metal fences are to be grounded to PG&E specifications. No wall, fence or other like structure is to be installed within 10 feet of tower footings and unrestricted access must be maintained from a tower structure to the nearest street. Walls, fences and other structures proposed along or within the fee strip(s) and/or easement(s) will require PG&E review; submit plans to PG&E Centralized Review Team for review and comment.

4. Landscaping: Vegetation may be allowed; subject to review of plans. On overhead electric transmission fee strip(s) and/or easement(s), trees and shrubs are limited to those varieties that do not exceed 15 feet in height at maturity. PG&E must have access to its facilities at all times, including access by heavy equipment. No planting is to occur within the footprint of the tower legs. Greenbelts are encouraged.

5. Reservoirs, Sumps, Drainage Basins, and Ponds: Prohibited within PG&E's fee strip(s) and/or easement(s) for electric transmission lines.

6. Automobile Parking: Short term parking of movable passenger vehicles and light trucks (pickups, vans, etc.) is allowed. The lighting within these parking areas will need to be reviewed by PG&E; approval will be on a case by case basis. Heavy equipment access to PG&E facilities is to be maintained at all times. Parking is to clear PG&E structures by at least 10 feet. Protection of PG&E facilities from vehicular traffic is to be provided at developer's expense AND to PG&E specifications. Blocked-up vehicles are not allowed. Carports, canopies, or awnings are not allowed.

7. Storage of Flammable, Explosive or Corrosive Materials: There shall be no storage of fuel or combustibles and no fueling of vehicles within PG&E's easement. No trash bins or incinerators are allowed.

8. Streets and Roads: Access to facilities must be maintained at all times. Street lights may be allowed in the fee strip(s) and/or easement(s) but in all cases must be reviewed by PG&E for

Letter 1 Cont'd

Pacific Gas and Electric Company

proper clearance. Roads and utilities should cross the transmission easement as nearly at right angles as possible. Road intersections will not be allowed within the transmission easement.

9. Pipelines: Pipelines may be allowed provided crossings are held to a minimum and to be as nearly perpendicular as possible. Pipelines within 25 feet of PG&E structures require review by PG&E. Sprinklers systems may be allowed; subject to review. Leach fields and septic tanks are not allowed. Construction plans must be submitted to PG&E for review and approval prior to the commencement of any construction.

10. Signs: Signs are not allowed except in rare cases subject to individual review by PG&E.

1-1 Cont'd

11. Recreation Areas: Playgrounds, parks, tennis courts, basketball courts, barbecue and light trucks (pickups, vans, etc.) may be allowed; subject to review of plans. Heavy equipment access to PG&E facilities is to be maintained at all times. Parking is to clear PG&E structures by at least 10 feet. Protection of PG&E facilities from vehicular traffic is to be provided at developer's expense AND to PG&E specifications.

12. Construction Activity: Since construction activity will take place near PG&E's overhead electric lines, please be advised it is the contractor's responsibility to be aware of, and observe the minimum clearances for both workers and equipment operating near high voltage electric lines set out in the High-Voltage Electrical Safety Orders of the California Division of Industrial Safety (https://www.dir.ca.gov/Title8/sb5g2.html), as well as any other safety regulations. Contractors shall comply with California Public Utilities Commission General Order 95 (http://www.cpuc.ca.gov/gos/GO95/go_95_startup_page.html) and all other safety rules. No construction may occur within 25 feet of PG&E's towers. All excavation activities may only commence after 811 protocols has been followed.

Contractor shall ensure the protection of PG&E's towers and poles from vehicular damage by (installing protective barriers) Plans for protection barriers must be approved by PG&E prior to construction.

13. PG&E is also the owner of distribution facilities throughout many of the areas within the state of California. Therefore, any plans that impact PG&E's facilities must be reviewed and approved by PG&E to ensure that no impact occurs that may endanger the safe and reliable operation of its facilities.

Letter 1: Plan Review Team Land Management, PG&E. January 8, 2019

Response to Comment 1-1

The comment provides a summary of PG&E's standard requirements related to gas and electric facilities and does not address the adequacy of the IS/MND.

Letter 2

REGIONALSAN
TAKING THE WASTE OUT OF WATER
Sacramento Regional County Sanitation District

Main Office
10060 Goethe Road
Sacramento, CA 95827-3553
Tel: 916.876.6000
Fax: 916.876.6160

Treatment Plant
8521 Laguna Station Road
Elk Grove, CA 95758-9550
Tel: 916.875.9000
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Christoph Dobson
Director of Policy & Planning

David O'Toole
Director of Internal Services

Joseph Maestretti
Chief Financial Officer

Nicole Coleman
Public Affairs Manager

www.regionalsan.com

Printed on Recycled Paper

January 10, 2019

Mr. Ron Bess
City of Sacramento – Community Development Department
300 Richards Boulevard, 3rd Floor
Sacramento CA 95811

Subject: Notice of Availability/Intent to Approve the Draft Mitigated Negative Declaration for the Retreat at Sacramento Project (P18-063)

Dear Mr. Bess,

Sacramento Regional County Sanitation District (Regional San) has the following comments pertaining to the Notice of Preparation of an Environmental Impact Report for the Tower 301 project.

The proposed project is located at 2601 Redding Avenue and consists of a 224-unit, 736-bed student housing facility on a 13.3-acre site.

Regional San is not a land-use authority. Projects identified within Regional San planning documents are based on growth projections provided by land-use authorities. Sewer studies may need to be completed to assess the impacts of any proposed project that has the potential to increase flow demands. Onsite and offsite impacts associated with constructing sanitary sewer facilities to provide service to the subject project site should be included in this environmental impact report.

2-1

Customers receiving service from Regional San are responsible for rates and fees outlined within the latest Regional San ordinances. Fees for connecting to the sewer system are set up to recover the capital investment of sewer treatment facilities that provides service to new customers. The Regional San ordinance is located on the Regional San website at: www.regionalsan.com.

Local sanitary sewer service for the proposed project site will be provided by the City of Sacramento's (City) local sewer collection system. Ultimate conveyance of wastewater from the City collection system to the Sacramento Regional Wastewater Treatment Plant (SRWTP) for treatment and disposal will be provided via Sump 2/2A and the Regional San City Interceptor system. Cumulative impacts of the proposed project will need to be quantified by the project proponents to ensure that wet and dry weather capacity limitations within Sump 2/2A and the City Interceptor are not exceeded.

Letter 2 Cont'd

Mr. Ron Bess
January 10, 2019
Page 2

On March 13, 2013, Regional San approved the Wastewater Operating Agreement between Regional San and the City. The following limitations are outlined in the subject Agreement:

Service Area	*Flow Rate (MGD)*
Combined Flows from Sump 2 and Sump 2A	*60*
Combined flows from Sumps 2, 2A, 21, 55, and 119	*98*
Total to City Interceptor of combined flows from Sumps 2, 2A, 21, 55, 119, and five trunk connections	*108.5*

2-1 Cont'd

The SRWTP provides secondary treatment using an activated sludge process. Incoming wastewater flows through mechanical bar screens through a primary sedimentation process. This allows most of the heavy organic solids to settle to the bottom of the tanks. These solids are later delivered to the digesters. Next, oxygen is added to the wastewater to grow naturally occurring microscopic organisms, which consume the organic particles in the wastewater. These organisms eventually settle on the bottom of the secondary clarifiers. Clean water pours off the top of these clarifiers and is chlorinated, removing any pathogens or other harmful organisms that may still exist. Chlorine disinfection occurs while the wastewater travels through a two mile "outfall" pipeline to the Sacramento River, near the town of Freeport, California. Before entering the river, sulfur dioxide is added to neutralize the chlorine. The design of the SRWTP and collection system was balanced to have SRWTP facilities accommodate some of the wet weather flows while minimizing idle SRWTP facilities during dry weather. The SRWTP was designed to accommodate some wet weather flows while the storage basins and interceptors were designed to accommodate the remaining wet weather flows.

A NPDES Discharge Permit was issued to Regional San by the Central Valley Regional Water Quality Control Board (Water Board) in December 2010. In adopting the new Discharge Permit, the Water Board required Regional San to meet significantly more restrictive treatment levels over its current levels. Regional San believed that many of these new conditions go beyond what is reasonable and necessary to protect the environment, and appealed the permit decision to the State Water Resources Control Board (State Board). In December 2012, the State Board issued an Order that effectively upheld the Permit. As a result, Regional San filed litigation in California Superior Court. Regional San and the Water Board agreed to a partial settlement in October 2013 to address several issues and a final settlement on the remaining issues were heard by the Water Board in August 2014. Regional San began the necessary activities, studies and projects to meet the permit conditions. The new treatment facilities to achieve the permit and settlement requirements must be completed by May 2021 for ammonia and nitrate and May 2023 for the pathogen requirements

Letter 2 Cont'd

Mr. Ron Bess
January 10, 2019
Page 3

Regional San currently owns and operates a 5-mgd Water Reclamation (WRF) that has been producing Title 22 tertiary recycled since 2003. The WRF is located within the SRWTP property in Elk Grove. A portion of the recycled water is used by Regional San at the SRWTP and the rest is wholesaled to the Sacramento County Water Agency (SCWA).

2-1 Cont'd

SCWA retails the recycled water, primarily for landscape irrigation use, to select customers in the City of Elk Grove. It should be noted that Regional San currently does not have any planned facilities that could provide recycled water to the proposed project or its vicinity. Additionally, Regional San is not a water purveyor and any potential use of recycled water in the project area must be coordinated between the key stakeholders, e.g. land use jurisdictions, water purveyors, users, and the recycled water producers.

If you have any questions regarding this letter, please feel free to contact me at (916) 876-6104 or by email: armstrongro@sacsewer.com.

Sincerely,

Robb Armstrong

Robb Armstrong
Regional San Development Services & Plan Check

Letter 2: Robb Armstrong, Regional San Development Services & Plan Check. January 10, 2019.

Response to Comment 2-1

The comment provides background information and does not address the adequacy of the IS/MND.

Letter 3

Ron Bess

From:	Rehman, Uzma@DOT <Uzma.Rehman@dot.ca.gov>
Sent:	Monday, January 14, 2019 2:18 PM
To:	Ron Bess
Cc:	Fong, Alexander Y@DOT
Subject:	Retreat at Sacramento

Hi Ron,
Thank you for submitting Retreat at Sacramento (MND) project for review. At this time Caltrans does not have any
3-1 comments.

Please let us know if anything changes.

Thanks,

Uzma Rehman
Transportation Planner
Caltrans, District 3
Planning, Local Assistance, and Sustainability
703 B Street | Marysville CA 95901
(530) 741-5173
Uzma.Rehman@dot.ca.gov

Caltrans

1

Letter 3: Uzma Rehman, Caltrans. January 14, 2019.

Response to Comment 3-1

The comment states that no comments are offered and therefore does not address the adequacy of the IS/MND.

Letter 4

LOZEAU DRURY LLP

T 510.749.9102
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1516 Oak Street, Suite 216
Alameda, Ca 94501

www.lozeaudrury.com
michael@lozeaudrury.com

February 8, 2019

Via E-Mail

Tom Buford, Principal Planner
Ron Bess, Assistant Planner
Community Development Department
City of Sacramento
300 Richards Boulevard, 3rd Floor
Sacramento, CA 95811
tbuford@cityofsacramento.org
rbess@cityofsacramento.org

Re: The Retreat at Sacramento aka The Redding Avenue Project (P18-063)

Dear Mr. Buford and Mr. Bess:

4-1 I am writing on behalf of the Laborers International Union of North America, Local Union 185 and its members living in and around the City of Sacramento ("LIUNA") regarding the Initial Study and Mitigated Negative Declaration ("IS/MND") and the proposed Conditional Use Permit ("CUP") prepared for The Retreat at Sacramento ("Project") (Project File No.P18-063). The IS/MND also refers to the Project as The Redding Avenue Project. After reviewing the IS/MND, and with the assistance of expert reviews by wildlife biologist Dr. Shawn Smallwood, and environmental consulting firm SWAPE, it is clear that there is a "fair argument" that the Project may have unmitigated adverse environmental impacts. The written expert comments of Dr. Smallwood and of SWAPE (attached hereto as Exhibit A and Exhibit B, respectively), as well as the comments below, identify substantial evidence of a fair argument that the Project may have significant environmental impacts. Accordingly, an environmental impact report ("EIR") is required to analyze these impacts and to propose all feasible mitigation measures to reduce those impacts. We urge the Community Development Department to decline to approve the IS/MND, and to prepare an EIR for the Project prior to any Project approvals.

I. PROJECT BACKGROUND

LCD Acquisitions, LLC proposes to construct a 224-unit multi-family residential development including a club house, maintenance building, and recreational spaces and amenities. The Project would include a total of 31 buildings ranging from 2- to 3-stories high. The Project intends to provide an opportunity for student housing for students attending

Letter 4 Cont'd

California State University Sacramento ("CSUS"). The Project would provide on-site parking for 525 cars. The Project would extend over a 12.25 acre site currently occupied by the Dorris Lumber & Moulding Company, including warehouse structures, office buildings, and storage facilities. Approximately 77 percent of the site is paved with concrete and asphalt. The project site is currently designated Urban Neighborhood Low Density under the City's 2035 General Plan and zoned Mixed Use/Transit Overlay (RMX-TO). The Project will be bounded by Route 50 to the north, the Union Pacific railroad tracks to the east, Redding Avenue to the west, and a yet-to-be-built new residential development to the south.

II. LEGAL STANDARD

As the California Supreme Court 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., supra*, 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*).)

4-1 Cont'd

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, supra*, 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*, *supra*, 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*, *supra*, 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 Cal. Code Regs.§ 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

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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.) 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, supra*, 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, 904–905.)

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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, supra*, 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, supra*, 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. 273-274.) 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, supra*, 124 Cal.App.4th at 928.)

III. DISCUSSION

A. The IS/MND Fails to Adequately Analyze and Mitigate the Potential Adverse Impacts of the Project on Wildlife.

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The comment of Dr. Shawn Smallwood is attached as Exhibit A. Dr. Smallwood has identified several issues with the IS/MND for the Project. His concerns are summarized below.

1. The wildlife baseline relied upon by the IS/MND is woefully inadequate because the IS/MND underestimates the number of special-status species that may be impacted by the Project.

The IS/MND describes the Project site as within a developed area and therefore devoid of habitat for most special-status species (IS/MND, p. 30.) However, as Dr. Smallwood points out, "Multiple species of wildlife find ways to adapt to urban environments, including for foraging, nesting, cover, and as stop-over refuge during dispersal or migration." (Ex. A, pp. 1-2.) By looking at occurrence records and geographic range maps, Dr. Smallwood identified 43 special-status species and an additional 12 species of bats in the area around the Project site. (Ex. A, p. 2.) The occurrence of these species at or near the Project site warrants discussion and analysis in an EIR to ensure that any impacts are mitigated to a less than significant level.

4-2 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 Envt. v. So. Coast Air Qual. Mgmt. 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.*") By failing to assess the presence of wildlife at or flying through the site, the IS/MND fails to provide any baseline from which to analyze the Project's impacts on birds.

2. The IS/MND fails to address the potential adverse impact on bird species from window collisions.

4-3 The IS/MND makes no mention of the potential impacts to birds caused from collisions with the glass windows of the Project. Analyzing the potential impact on wildlife of window collisions is especially important because such collisions are "one of the greatest anthropogenic sources of bird mortality across North America." (Ex. A, p. 7.) As a preliminary matter, an EIR should be prepared to include "specific details of window placements, window extent, types of glass, and anticipated interior and exterior landscaping and lighting. (*Id.*)

Dr. Smallwood reviewed a number of studies in order to calculate the number of bird

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collisions per m^2 of glass windows per year. (Ex. A, p. 11.) According to his calculations, each m^2 of glass would result in 0.077 bird deaths per year. (*Id.*) Dr. Smallwood then looked at the building design for the Project and estimated that the Project would include approximately 3,526 m^2 of glass windows. (*Id.*) Based on the estimated 3,400 m^2 of glass windows and the 0.077 bird deaths per m^2 of glass windows, Dr. Smallwood estimates that the project could result in 272 bird deaths per year. (*Id.*)

4-3 Cont'd

In order to mitigate the impact of the window collisions on bird species, Dr. Smallwood has suggested several possible mitigation measures. For mitigation measures involving retrofitting the existing project, Dr. Smallwood suggests: (1) marking the windows (e.g. decals, film, fritted glass); (2) managing outdoor landscape to reduce reflection of vegetation; (3) managing indoor landscape; and (4) managing nocturnal lighting. (Ex. A, p. 15.) For mitigation measures involving the siting and design of the Project, Dr. Smallwood suggests: (1) deciding on the location of structures; (2) deciding on the façade and orientation of structures; (3) selecting types and sizes of windows; (4) minimizing transparency through two parallel façades; (5) minimizing views of interior plants; and (6) landscaping so as to increase distance between windows and vegetation. (Ex. A, p. 16.) Dr. Smallwood also suggests that the City also look to the guidelines developed by the American Bird Conservancy and the City of San Francisco to minimize injuries and fatalities to bird species. (*Id.* at p. 16-17.)

3. The IS/MND fails to address the potential adverse impact on wildlife from vehicle collisions due to increased traffic from the Project.

4-4

According to the IS/MND, the Project would generate 3,042 daily vehicle trips. (IS/MND, p. 75.) The increase in vehicle trips are likely to result in increased wildlife fatalities because vehicle collisions "crush and kill wildlife" and "the impacts have often been found to be significant at the population level." (Ex. A, p. 17.) In terms of avian mortality, it is estimated that vehicle collisions result in the death of 89 million to 340 million birds per year. (*Id.*) Because the impact of vehicle collisions on wildlife was not addressed at all in the IS/MND and Dr. Smallwood has provided substantial evidence of a fair argument that this impact from the Project's traffic may be significant, the City must analyze such impacts in an EIR.

Factors that affect the rate of vehicle collision with wildlife include: the type of roadway, human population density, temperature, extent of vegetation cover, and intersections with streams and riparian vegetation. (Ex. A, p. 17-18.) The City should formulate mitigation measures based on those factors in an EIR.

4. The IS/MND fails to address the potential adverse impact on bird species from artificial lighting from the Project.

4-5

Artificial lighting can cause substantial impacts on wildlife including displacement or altered activity patterns. (Ex. A, p. 18.) The City should analyze the effect of the Project's artificial lighting on wildlife and incorporate mitigation measures for lighting design in an EIR.

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5. The IS/MND fails to address the potential adverse impact on wildlife movement due to the Project.

4-6 Even though the Project is located in an urban setting, the City should have analyzed the impact of the project on wildlife movement. Wildlife uses open spaces and trees as stop-over habitat during migrations or dispersal from natal territories. (Ex. A, p. 18.) Any mature trees on the Project site likely provide stop-over and staging habitat for wildlife moving across Sacramento. (*Id.*) Urban and commercial sprawl has already eliminated natural surfaces from much of the landscape and the project would only further cut off wildlife from their movement patterns. (*Id.*) The City should prepare an EIR which analyzes the impact of the Project on wildlife movement and incorporates mitigation measures as needed.

6. The Project should include additional mitigation measures to lessen the potential adverse impacts of the Project on wildlife.

The IS/MND relies on preconstruction surveys and worker training to mitigate the potentially significant impacts of the Project on wildlife. (IS/MND, p. 33-36.) However, as Dr. Smallwood points out, preconstruction surveys on their own are not sufficient to mitigate the impact of the Project on wildlife. "Preconstruction surveys cannot prevent, minimize, or reduce the effect of habitat loss. Their sole purpose is to detect the readily detectable individuals for temporary buffering from construction or for salvage relocation just prior to destruction by the tractor blade." (Ex. A, p. 20.)

4-7 Preconstruction surveys should be used in conjunction with other mitigation measures to ensure that the impacts on the Project on wildlife are less than significant. In addition to preconstruction surveys, Dr. Smallwood recommends performing detection surveys, which "have been developed for most special-status species of wildlife." (Ex. A, p. 20.) Such detection surveys are necessary to support any conclusion that wildlife is absent from the Project site. (*Id.*) The City should also adopt compensatory mitigation measures to offset the impact of the project on wildlife movement because "[t]he proposed project site supports mature trees needed by bats and birds as stop-over habitat during long-distance dispersal or migration." (*Id.*) The impact on wildlife could be further reduced by requiring minimizing nighttime light pollution. (Ex. A, p. 21.) As mentioned above, drawing from the guidelines of the American Bird Conservancy and the City of San Francisco would help to mitigate the impact of window collision on avian wildlife. (*Id.*) Lastly, compensatory mitigation measures such as funding contributions to wildlife rehabilitation facilities would further reduce the impacts of the project on wildlife. (*Id.*) Because Dr. Smallwood has presented a fair argument that the Project will have a significant impact on wildlife, the City must prepare and circulate an EIR to incorporate the above concerns and suggested mitigation measures.

B. The IS/MND Relies on Unsubstantiated Input Parameters to Estimate Project Emissions and Thus Fails to Adequately Analyze the Project's Air Quality Impacts.

4-8 The IS/MND for the Project relies on emissions calculated from the California

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4-8 Cont'd Emissions Estimator Model Version CalEEMod.2016.3.2 ("CalEEMod"). This model relies on recommended default values based on site specific information related to a number of factors. The model is used to generate a project's construction and operational emissions. SWAPE reviewed the Project's CalEEMod output files and found that several of the values input into the model were inconsistent with information provided in the IS/MND. This results in an underestimation of the Project's emissions. As a result, the Project may have a significant air quality impacts and an EIR is required to properly analyze these potential impacts. The following sections highlight SWAPE's findings.

1. <u>The air quality model in the IS/MND fails to include all proposed land uses.</u>

4-9 SWAPE shows that the Project's construction emissions are underestimated because the IS/MND's CalEEMod model failed to include the proposed 525-space parking land use even though the IS/MND states that Project includes "a 224-unit, 736-bed, student housing facility with 525 parking spaces on a 12.3-acre property." (IS/MND, p. 1; Ex. B., p. 2.) As SWAPE noted, "By completely omitting the proposed parking land use, the IS/MND fails to account for all the emissions that would be produced during construction and operation of the Project." (Ex. B, p. 2).

2. <u>The air quality model in the IS/MND fails to account for all material export during construction.</u>

4-10 SWAPE finds that the IS/MND's CalEEMod analysis failed to consider all of the construction debris that will be removed from the Project during site construction. According to the IS/MND, "Approximately 17,514 cubic yards (CY) of soil export associated with off-haul of contaminated soils would be required." (IS/MND, p. 23.) However, the value inputted into the CalEEMod in the IS/MND was only for 514 cubic yards of material export. (Ex. B, p. 3.) As a result, the Project's construction-level emissions are underestimated.

3. <u>The air quality model in the IS/MND uses an incorrect land use population.</u>

4-11 According to the IS/MND, the Project will consist of 224 residential units with 736 beds, generating approximately 736 new residents. (IS/MND, p. 70.) However, SWAPE found that the air model in the IS/MND assumed a population of only 598 residents. (Ex. B, p. 3.) By underestimating the resident population by 138 residents, the IS/MND underestimates the emissions associated with operation of the Project.

4. <u>With more accurate input parameters, the air quality model results in emissions from the Project in excess of the SMAQMD threshold.</u>

4-12 In order to determine more accurate estimates of the emissions of the Project, SWAPE prepared an updated CalEEMod model which included 479 parking spaces, 46 garage parking spaces, the full 17,154 cubic yards of soil export, and a resident population of 736 people. (Ex.

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B, p. 4.) The updated model resulted in NOx emissions of 101.8 pounds per day, a twenty-nine percent increase over the IS/MND estimate of 78.9 pounds of NOx per day. (*Id.*) Importantly, the Sacramento Metropolitan Air Quality Management District (SMAQMD) has set a significance threshold for NOx of 85 pounds per day. Because the updated model exceeds the SMAQMD threshold for NOx, substantial evidence of a fair argument that the Project will have significant air quality impacts from NOx emissions and the City must prepare an EIR to address this impact and to incorporate appropriate mitigation measures.

4-12

C. The IS/MND Fails to Adequately Evaluate Health Risks from Diesel Particulate Matter Emissions

With hardly more than a couple sentences of explanation, the IS/MND inexplicably concludes that the health risk posed to nearby sensitive receptors from exposure to toxic air contaminant ("TAC") emissions and diesel particulate matter ("DPM") from the Project would be less than significant. No effort is made by the applicant to justify this conclusion with a quantitative health risk assessment ("HRA"). The IS/MND's back-of-the envelope approach to evaluating a Project's health impacts to existing nearby residences is inconsistent with the approach recommended by the California Office of Environmental Health Hazard Assessment ("OEHHA") and the California Air Pollution Control Officers Association ("CAPCOA").

OEHHA guidance makes clear that all short-term projects lasting at least two months be evaluated for cancer risks to nearby sensitive receptors. (Ex. B, p. 6.) OEHHA also recommends a health risk assessment of a project's operational emissions for projects that will be in place for more than 6 months. (*Id.*) Projects lasting more than 6 months should be evaluated for the duration of the project, and an exposure duration of 30 years be used to estimate individual cancer risk for the maximally exposed individual resident. (*Id.*) The Project would last at least 30 years and certainly much longer than six months.

4-13

In order for the IS/MND to be reasonable under CEQA, the cavalier assertions regarding the Project's health impacts on nearby residences must be substantiated with a thorough health risk assessment. Based on all of the guidance available from the expert agencies, a health risk assessment should have been prepared for the Project. The City and IS/MND's conclusory assertions fail to rebut the expert guidance.

SWAPE prepared a screening-level HRA to evaluate potential impacts from the Project. SWAPE used AERSCREEN, the leading screening-level air quality dispersion model. (Ex. B, p. 6.) SWAPE analyzed impacts to individuals at different stages of life based on OEHHA and SMAQMD guidance. (Ex. B, pp. 7-8.)

SWAPE found that the excess cancer risk for adults, children, infants, and third-trimester gestations at a sensitive receptor located approximately 25 meters away, over the course of Project construction and operation, are approximately 3.2, 29, 43, and 2.2 in one million, respectively. (Ex. B, p. 8.) Moreover, the excess cancer risk over the course of a residential lifetime is approximately 77 in one million. (*Id.*) These values appreciably exceed the SMAQMD's threshold of 10 in one million. This is a potentially significant impact not

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addressed in the IS/MND. An EIR with a more refined HRA that is representative of site conditions must be prepared in order to evaluate the Project's health risk impact and to include suitable mitigation measures.

D. The IS/MND Fails to Demonstrate Compliance with the City's Climate Action Plan.

According to the IS/MND, the Project would not result in significant greenhouse gas (GHG) emissions because the Project would be consistent with the goals and policies of the City's Climate Action Plan (CAP). The City's CAP requires that projects subject to CEQA review complete a "CAP Consistency Review Checklist." (Ex. B, p. 9.) However, the IS/MND does not contain the CAP Consistency Review Checklist. Instead, as noted by SWAPE:

4-14

> [T]he IS/MND attempts to demonstrate consistency with the CAP by simply stating the goals and policies that the Project will incorporate or be consistent with. For example, the IS/MND states that it will be consistent with Goal LU 2.5, Policy LU 2.5.1, and Policy LU 2.7.6 to increase the walkable areas and other policies that promote land use efficiency as well as pedestrian and bicycle traffic. Thus, while the IS/MND does reference the proposed Project's features related to pedestrian, bike, and transit accessibility, the Applicant fails to discuss compliance with the traffic calming, renewable energy, and water efficiency measures outlined in the Consistency Review Checklist

(Ex. B, p. 10.) Without evaluating all aspects of the Consistency Review Checklist, the Project cannot claim that it is consistent with the City's CAP. The City should prepare an EIR with an updated GHG analysis to ensure compliance with the City's CAP.

E. There is Substantial Evidence of a Fair Argument that the Project Will Have a Significant Health Risk Impact from its Indoor Air Quality Impacts.

4-15

Formaldehyde is a known human carcinogen. Many composite wood products typically used in residential and office building construction contain formaldehyde-based glues which off-gas formaldehyde over a very long time period. The primary source of formaldehyde indoors is composite wood products manufactured with urea-formaldehyde resins, such as plywood, medium density fiberboard, and particle board. These materials are commonly used in residential and office building construction for flooring, cabinetry, baseboards, window shades, interior doors, and window and door trims. Given the prominence of materials with formaldehyde-based resins that will be used in constructing the Project and the residential buildings, there is a significant likelihood that the Project's emissions of formaldehyde to air will result in very significant cancer risks to future residents and workers in the buildings. Even if the materials used within the buildings comply with the Airborne Toxic Control Measures (ATCM) of the California Air Resources Board (CARB), significant emissions of formaldehyde may still occur.

The residential buildings will have significant impacts on air quality and health risks by emitting cancer-causing levels of formaldehyde into the air that will expose workers and residents to

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cancer risks well in excess of SMAQMD's threshold of significance. A 2018 study by Chan et al. (attached as Exhibit C) measured formaldehyde levels in new structures constructed after the 2009 CARB rules went into effect. Even though new buildings conforming to CARB's ATCM had a 30% lower median indoor formaldehyde concentration and cancer risk than buildings built prior to the enactment of the ATCM, the levels of formaldehyde still posed cancer risks greater than 100 in a million, well above the 10 in one million significance threshold established by the SMAQMD.

4-15 Based on expert comments submitted on other similar projects and assuming all the Project's and the residential building materials are compliant with the California Air Resources Board's formaldehyde airborne toxics control measure, future residents and employees using the Project will be exposed to a cancer risk from formaldehyde greater than the SMAQMD's CEQA significance threshold for airborne cancer risk of 10 per million. Currently, the City does not have any idea what risk will be posed by formaldehyde emissions from the Project or the residences.

The City has a duty to investigate issues relating to a project's potential environmental impacts. (*See County Sanitation Dist. No. 2 v. County of Kern*, (2005) 127 Cal.App.4th 1544, 1597–98. ["[U]nder CEQA, the lead agency bears a burden to investigate potential environmental impacts."].) "If the local agency has failed to study an area of possible environmental impact, a fair argument may be based on the limited facts in the record. Deficiencies in the record may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences." (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.) Given the lack of study conducted by the City on the health risks posed by emissions of formaldehyde from new residential projects, a fair argument exists that such emissions form the Project may pose significant health risks. As a result, the City should prepare an EIR which calculates the health risks that the formaldehyde emissions may have on future residents and workers and identifies appropriate mitigation measures.

IV. CONCLUSION

4-16 For the foregoing reasons, the IS/MND for the Project should be withdrawn, an EIR should be prepared, and the draft EIR should be circulated for public review and comment in accordance with CEQA. Thank you for considering these comments.

Sincerely,

Brian Flynn
Lozeau | Drury LLP

Letter 4: Brian Flynn, Lozeau | Drury LLP. February 8, 2019.

Response to Comment 4-1

The comment summarizes information related to the proposed project's background and the legal standards regarding a CEQA EIR. The comment does not directly address the adequacy of the IS/MND.

Response to Comment 4-2

Section II of the ISMND accurately describes the baseline conditions:

> "The project site consists of 12.95 acres and currently contains the Dorris Lumber & Moulding Company, which includes warehouse structures, office buildings, and storage facilities. On-site vegetation is sparse and includes small patches of ruderal grasses; however, approximately 77 percent of the site is overlain with impervious surfaces such as concrete and asphalt."

The proposed project would not affect terrestrial wildlife's use of the railroad right-of-way as a movement corridor, as cyclone fencing currently separates the site from the railroad. In addition, the project site does not contain substantial foraging, roosting or nesting habitat for American white pelicans, double-crested cormorants, white-faced ibises, sandhill cranes, osprey, or tricolored blackbirds. While such birds have been documented as flying over the site, the site does not contain special habitat features for the species. The proposed development would not prevent birds from flying over the site.

Furthermore, many of the species identified by the commenter do not qualify as special-status species per the criteria listed in Section 6.2 of the City of Sacramento General Plan Background Report, which defines special-status species as follows:

- Species listed, proposed, or candidate species for listing as Threatened or Endangered by the USFWS pursuant to the Federal Endangered Species Act (FESA) of 1969, as amended;
- Species listed as Rare, Threatened, or Endangered by the CDFW pursuant to the California Endangered Species Act (CESA) of 1970, as amended;
- Species designated as Fully Protected under Sections 3511 (birds), 4700 (mammals), and 5050 (reptiles and amphibians) of the California Fish and Game Code;
- Species designated by the CDFW as California Species of Concern;
- Plant species listed as Category 1B and 2 by the CNPS; and
- Species not currently protected by statute or regulation, but considered rare, threatened or endangered under CEQA (section 15380).

Table 6-3 in the General Plan Background Report includes the following special-status species potentially occurring the General Plan policy area:

- **Birds**: Tricolor blackbird (nesting), Burrowing owl (burrow sites), Swainson's hawk, Northern harrier (nesting), White-tailed kite (nesting), Loggerhead shrike (nesting), Song sparrow – "Modesto" population (year-round), Purple martin (nesting), and Bank swallow.
- **Mammals**: Pallid bat, Pacific western big-eared bat, Western red bat, and American badger.

The species listed above, as well as additional species with occurrence records in CDFW and USFWS databases covering an area of over 525 square miles (nine 1:25,000 USGS topographic quadrangles centered on the project site), were evaluated in the Biological Resource Report prepared for the IS/MND.

Neither Comment Letter 4 nor Appendix A to Comment Letter 4 includes any evidence, let alone substantial evidence, that the analysis presented in the Biological Resources section of the IS/MND is inadequate

Response to Comment 4-3

The studies cited by the commenter do not reflect the scale and setting of the proposed development. Specifically, the proposed project would consist of 31 residential buildings ranging from one to three stories with standard-sized windows. The studies sited by the commenter include the following development types:

- A university with a three-story, glass-sided walkway between two multistory college campus buildings;
- A museum in an urban park;
- Corporate office parks with large expanses of glass, which were surrounded by, or intermixed with, open space and/or forested areas;
- High-rise buildings in New York City;
- A windowless 540-foot skyscraper in New York City; and
- The 555-foot-tall Washington Monument.

Unlike the proposed project, the structures listed above generally include large expanses of glass. Such structures are consistent with the type of buildings that the San Francisco Planning Department's "Standards for Bird-Safe Buildings" considers to be high-risk to birds and are considered to be "bird hazards." San Francisco's Bird-Safe Standards apply to two circumstances known to pose a high risk to birds and are considered to be "bird hazards."

For informational purposes, the two circumstances regulated by the Bird-Safe Standards are evaluated in Table 1 below for applicability to proposed project. As shown in the table, the circumstances would not apply. Furthermore, the Bird-Safe Standards provide exemptions for bird collision zone treatment for residential-zoned buildings less than 45-feet-tall with limited glass façades (less than 50 percent glazing). The project would qualify for such exemptions.

Table 1 Bird-Safe Standard Applicability	
Hazard	**The Retreat**
"Location-related hazards" are buildings located inside of, or within a clear flight path of less than 300 feet from, an urban bird refuge.	Not applicable. The project site is not adjacent to an urban bird refuge, defined herein as open spaces two acres or larger dominated by vegetation or adjacent to open water.
"Feature-related hazards" is a building specific hazard including free-standing clear glass walls, skywalks, greenhouses on rooftops, and balconies that have unbroken glazed segments 24 square feet and larger in size.	Not applicable. The proposed project would not include large expanses of glass or any other feature-related hazards.

Of the studies cited by the commenter, the study that most closely represents the scale and scope of the proposed development evaluated the following:

- A rural residence surrounded by mixed trees, shrubs, field and lawn;
- A suburban house surrounded by trees, shrubs, and lawn; and
- Approximately four-foot-wide by four-foot-tall square windows experimentally installed at the edge of a forest and corn field.

The project site is not located adjacent to a forest, field, or other similar natural habitat. Rather, the site is currently developed with a millworks and wood manufacturing facility and is surrounded by existing urban development. On the west side of the project site, powerlines and telecommunication lines are present on both sides of the street, with multiple lines at different elevations. To the north, the site is bordered by US 50, a light rail track bridge, and additional electrical infrastructure. Such features represent barriers to low-flying birds in the immediate site vicinity. In addition, the bird strike collisions per square meter of glass windows per year percentage referenced by the commenter appears to use mostly high-risk structures (high rises, glass sided buildings, multistory buildings adjacent to open spaces). Based on the above, metrics developed from "high-risk" examples are not applicable to the proposed project.

Response to Comment 4-4

The studies cited by the commenter do not reflect the scale and setting of the proposed development. Specifically, the studies focused on the following areas:

- Low traffic volume, two-lane paved roads outside major metropolitan areas and a four-lane road through Banff National Park; and
- A compilation of 16 studies (nine U.S. and seven European studies) of two or four lane roads and gravel roads.

The proposed project site is located within a major metropolitan area and is surrounded by existing buildings, roadways, and railways, whereas the studies referenced by the

commenter analyzed conditions in rural areas. In addition, as noted in the 2014 Loss et al. study, studies of road mortality usually focus on “hot spots”, or areas with atypically high wildlife mortality due to vehicle collisions, that would not be expected to be the same across every road in every region. Thus, the mortality rates produced by the studies cited by the commenter are not applicable to the proposed project.

Response to Comment 4-5

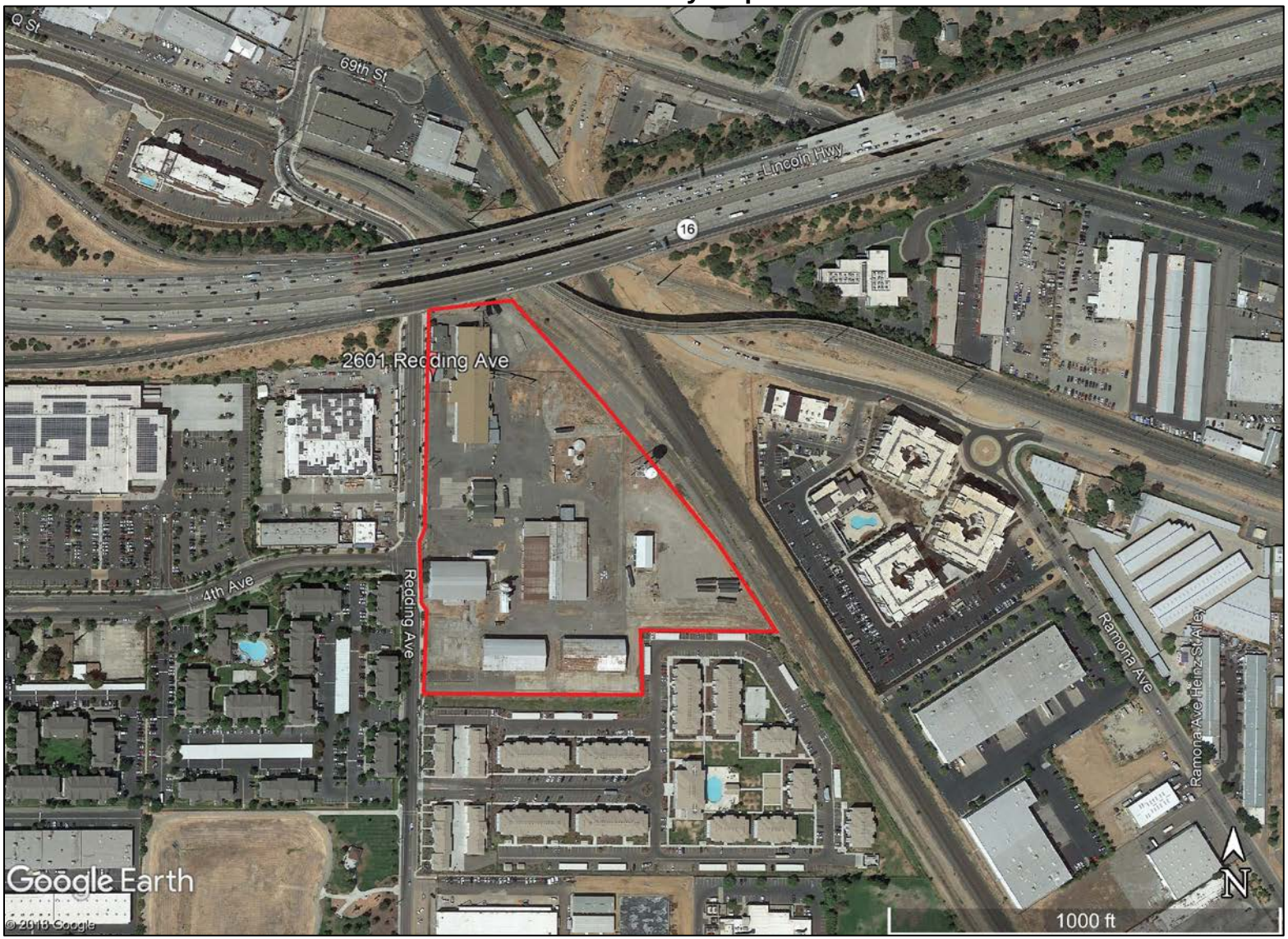
The Aesthetics section of the IS/MND addressed the environmental impacts related sources of light and glare associated with the proposed project. The IS/MND determined that the proposed project would be subject to General Plan policies, building codes, and a design review. Policy ER 7.1.4, of the 2035 General Plan states the following:

> Reflective Glass prohibits new development from resulting in any of the following: (1) using reflective glass that exceeds 50 percent of any building surface and on the bottom three floors; (2) using mirrored glass; (3) using black glass that exceeds 25 percent of any surface of a building; (4) using metal building materials that exceed 50 percent of any street-facing surface of a primarily residential building; and (5) using exposed concrete that exceeds 50 percent of any building. The proposed project would comply with the aforementioned General Plan policies, which would be ensured through the Site Plan and Design Review process.

As such, with implementation of General Plan goals designed to reduce light and glare and proof of compliance through a design review, the proposed project would not result in the introduction of substantially greater intensity or dispersal of light relative to what has been previously analyzed in the Master EIR. In addition, the project site is an infill location surrounded by existing development that includes multi-family residential uses to the east, southwest, and south and commercial development to the west (see Figure 1). As it stands, the discussion of the project’s impacts relating to new sources of light and glare is consistent with the General Plan and similar in the type and intensity as adjacent multi-family residential development. Pursuant to CEQA Guidelines, additional analysis of the project’s impact to lighting is not required.

Furthermore, the project area is located within a brightly lit urban area. Substantial sources of light in the project area include the Sacramento State University Hornets Stadium (less than 0.5-mile north of the site), a 140,000 square foot Target store (less than 1,000 feet west of the site), and US 50, which is elevated above the project site’s north boundary. The chapter cited by the commenter addresses lighthouses and lightships, floodlights and ceilometers, city lights and horizon glows, fires and flares, and broadcast and communication towers. The scale of the effect of city lights and horizon glows (most relevant to the project), especially in urban Sacramento, is much broader than that of the group of residential buildings that would be developed with the project. Thus, lighting associated with the proposed project would be relatively minor relative to existing sources of light in the project area.

Figure 1
Aerial Vicinity Map



Response to Comment 4-6

The project site is located in an urban and built-out area within the City of Sacramento and is surrounded by existing development that includes multi-family residential to the east, south, and southwest, and commercial development to the west. Thus, the project site could be considered infill development.

The 2035 Master EIR states that the majority of development that could occur under the 2035 General Plan would consist of infill and urban expansion of developed areas, which do not support a wide diversity of biological resources. Despite the relatively probability that special-status species would occur within such development areas, implementation of General Plan Policy ER 2.1.10 would require habitat assessments for sensitive species to be conducted and, if habitat is present, focused/protocol-level surveys conducted for any project requiring discretionary approval. The Master EIR concluded that, with implementation of General Plan policies, build-out of the 2035 General Plan would result in less-than-significant impacts related to reducing the habitat or population of special-status wildlife species. The proposed project would be consistent with the General Plan and, therefore, be subject to compliance with all General Plan goals and policies related to biological resources. As such, Mitigation Measures 3-1 through 3-4(b) would be adequate to reduce impacts to special-status wildlife species to less-than-significant levels.

In addition, the project site does not contain any existing wildlife corridors. The site is highly disturbed and has significant movement barriers. For example, while the nearby railroad right-of-way may function as a movement corridor, cyclone fencing with barbed wire on top separates the site from the fenced railroad tracks. The roads, commercial and residential development around the property render the site highly unlikely to serve as a movement corridor for terrestrial wildlife. In addition, the site has relatively few trees, most of which are street trees along Redding Avenue. The site does not contain any aquatic resources that would attract avian species on a significant scale (particularly with the American River corridor as an alternative less than a mile away). The height of the proposed structures would be similar to other existing structures surrounding the site and would not obstruct flyways of avian species. Migrating birds in particular fly at much higher altitudes.

Furthermore, the project site is not a “stop-over” or “staging” habitat for migrating wildlife. The site was an active millworks facility through 2018. The level of human activity and noise from the manufacturing facility would discourage “stop-overs.” The site lacks substantial vegetation or other natural resources that would qualify it as Warnock’s (2010) definition of staging habitat: “[…] sites with abundant, predictable food resources where birds prepare for an energetic challenge (usually a long flight over a barrier such as an ocean or a desert) requiring substantial fuel stores and physiological changes without which significant fitness costs are incurred.” The site would not fragment any existing contiguous habitat; rather, the site is currently developed and is surrounded by existing development that has already fragmented the landscape on a much larger scale.

Response to Comment 4-7

The project site is currently built-out with a millworks and wood manufacturing facility and is surrounded by existing development. As such, redevelopment of the project site with multi-family residential housing would not substantially reduce the habitat of a wildlife species. Furthermore, the commenter does not specify why the pre-construction surveys required as mitigation in the IS/MND would not be adequate to ensure that special-status species are absent from the site prior to initiation of construction/demolition activities. The mitigation provided in the IS/MND is consistent with the Biological Resources Evaluation prepared for the proposed project by Sycamore Environmental Consultants, Inc.

With regard to window collisions, light pollution, and wildlife movement, please see Response to Comments 4-3, 4-5, and 4-6, respectively.

Response to Comment 4-8

See Response to Comments 4-9 through 4.15 below.

Response to Comment 4-9

As noted in the CalEEMod Use Guide, CalEEMod inherently accounts for driveways and parking areas when modeling residential land uses.[1] Thus, parking areas were accounted for in the project modeling.

Response to Comment 4-10

The discussion of on page 23 of the IS/MND contains an error which states that 17,514 CY of soil export would be associated with the proposed project. A review of the CalEEMod modeling results for the proposed project confirmed the correct input of 514 CY was modeled. Thus, the CalEEMod modeling results for the proposed project are consistent with what is anticipated for the proposed project and the calculated construction-level emissions are accurate. Based on the information contained in the comment, page 23 of the IS/MND is hereby amended as follows:

- Prior to development of the project site, 115,364 square feet (sf) of existing on-site structures would be demolished;
- Approximately ~~17,~~514 cubic yards (CY) of soil export associated with off-haul of contaminated soils would be required; and
- Approximately 17,514 CY of soil import would be required, including 44 CY to replace off-hauled soils.

The above changes are for clarification purposes only and do not affect the conclusions of the IS/MND.

[1] California Air Pollution Control Officers Association. *California Emissions Estimator Model, User's Guide, Version 2016.3.2* [pg. 20]. November 2017.

Response to Comment 4-11

Emissions estimates produced by CalEEMod are not based on population inputs. Thus, the default population assumptions in CalEEMod do not affect the modeling outputs. Therefore, the modeling performed in the proposed project is consistent with anticipated operational emissions associated with the proposed project.

Response to Comment 4-12

See Response to Comments 4-9 through 4-11 above. Given that CalEEMod inherently accounts for parking associated with residential uses, the modeling referenced by the commenter overestimates emissions from the proposed parking areas and the overall project.

Response to Comment 4-13

Potential impacts related to the exposure of sensitive receptors to substantial pollutant concentrations are discussed in-depth on pages 25 through 28 of the IS/MND. The discussion of pollutant concentrations includes consideration of pollutants during both project operations and construction. As noted on page 27 of the IS/MND, operation of the proposed project would not include activities considered to be major sources of toxic air contaminants (TACs) by the California Air Resources Board (CARB).

As noted in the IS/MND, project construction would involve the use of off-road construction equipment, some of which may be diesel-powered, resulting in the emission of diesel particulate matter (DPM) during project construction. The Sacramento Metropolitan Air Quality Management District's (SMAQMD's) *Guide to Air Quality Assessment in Sacramento County* notes that SMAQMD has not established a quantitative threshold of significance for construction-related TAC emissions, and recommends that construction activity be considered on a case-by-case basis.[2] In the case of the proposed project, the IS/MND included project-specific analysis of potential sources of DPM during project construction and concluded that the anticipated construction activity would be unlikely to result in DPM emissions resulting in a significant increase in cancer risk to nearby sensitive receptors.

Subsequent to preparation of the IS/MND a health risk assessment was performed to provide further information related to the potential for construction of the proposed project to result in significant health risks to nearby sensitive receptors due to the exposure of such receptors to DPM from construction equipment. DPM is the solid material in diesel exhaust, more than 90 percent of such material is less than one micrometer in diameter, and, thus, DPM is a subset of the $PM_{2.5}$ category of pollutants. The $PM_{2.5}$ associated with short-term construction activities resulting from implementation of the proposed project under the aforementioned construction assumptions, at the maximally exposed sensitive

[2] Sacramento Metropolitan Air Quality Management District. *Guide to Air Quality Assessment in Sacramento County* [pg. 5-4]. May 2018.

receptor nearest to the site, has been estimated using the American Meteorological Society/Environmental Protection Agency (AMS/EPA) Regulatory Model (AERMOD) dispersion model. The associated cancer risk and non-cancer hazard index were calculated using the CARB's Hotspot Analysis Reporting Program Version 2 (HARP 2) Risk Assessment Standalone Tool (RAST), which calculates the cancer and non-cancer health impacts using the risk assessment guidelines of the 2015 Office of Environmental Health Hazard Assessment (OEHHA) Guidance Manual for Preparation of Health Risk Assessments.[3] The modeling was performed in accordance with the USEPA's User's Guide for the AMS/EPA Regulatory Model – AERMOD[4] and the 2015 OEHHA Guidance Manual.

The CalEEMod results for average annual unmitigated construction exhaust $PM_{2.5}$ emissions from the proposed project were used to calculate the emission rate applied in AERMOD. Construction activities were assumed to occur seven days per week and restricted to the hours specified in IS/MND Mitigation Measure 8-1. The construction exhaust emissions were modeled in AERMOD as a series of volume sources located throughout the site where improvements are proposed. A receptor grid using flagpole receptors was applied to AERMOD all locations of sensitive receptors within one-quarter mile of the project site, per SMAQMD air dispersion modeling guidance. The maximum annual average and maximum one-hour average concentrations from AERMOD were applied to HARP 2 RAST to calculate the cancer risk and non-cancer hazard index, respectively, to the maximally exposed resident in the area surrounding the project site.

As noted previously, SMAQMD does not maintain a specific threshold for increased cancer or non-cancer health risks resulting from construction activity. However, SMAQMD and the City consider an increase in risk of cancer by 10 in 1 million cases or more to be a significant impact resulting from operation of a stationary source of TACs. Although construction equipment operating within the project site would be mobile, and would operate at various locations within the project site throughout project construction, allowing for variable dispersion of DPM within the project site, for the purposes of this analysis, the City and SMAQMD's standard that sources should not result in an increased risk of cancer by more than 10 in 1 million cases is applied to the health risk for construction activity. Additionally, SMAQMD considers an increase in a hazard index of one or more resulting from operation of any stationary equipment a significant impact. Thus, in the absence of a specific hazard index threshold for construction activity, the proposed project would be considered to result in a significant impact if DPM from construction activity results in a hazard index of one or more.

The cancer and non-cancer health risks associated with construction-related DPM emissions are presented in Table 2 below.

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3 Office of Environmental Health Hazard Assessment. *Air Toxics Hot Spots Program Risk Assessment Guidelines, Guidance Manual for Preparation of Health Risk Assessments* [pg. 8-18]. February 2015.

4 U.S. Environmental Protection Agency. *User's Guide for the AMS/EPA Regulatory Model (AERMOD)*. December 2016.

Table 2 Maximum Cancer Risk and Hazard Index Associated with Construction DPM			
	Cancer Risk (per million persons)	**Acute Hazard Index**	**Chronic Hazard Index**
At Maximally Exposed Receptor	8.12	0.00	0.09
Thresholds of Significance	*10*	*1.0*	*1.0*
Exceed Thresholds?	**NO**	**NO**	**NO**
Sources: AERMOD, and HARP 2 RAST, February 2019 (see Appendix).			

As shown in Table 2, construction activity would not result in cancer or non-cancer health risks in excess of the SMAQMD's thresholds of significance.

The commenter proports to have analyzed operational health risks resulting from the proposed project; however, as discussed on page 27 of the IS/MND, the proposed project would not include operations that would result in a substantial amount of TAC emissions. The commenter does not provide information regarding the type of TAC emissions assumed to result from operation of the proposed project, and, therefore, the source and accuracy of the health risks presented in the comment cannot be assessed. Regardless of the commenter's assertion that operations of the proposed project would result in increased operational health risks, operations of the proposed project would not involve any substantial sources of TACs identified by the CARB in the *Air Quality and Land Use Handbook: A Community Health Perspective*.[5]

Response to Comment 4-14

The City does not currently require use of the Consistency Review Checklist. The Checklist was previously used by the City when the City's Climate Action Plan (CAP) was separate from the City's General Plan. Given that the CAP has since been incorporated into the General Plan, consistency with the General Plan policies referenced in the IS/MND is sufficient to ensure consistency with the CAP. Thus, the analysis presented within the IS/MND is consistent with Section 15064.4 of the CEQA Guidelines.

Response to Comment 4-15

The 2018 study referenced by the commenter addressed long-term (30-year) exposure of residents to formaldehyde. The proposed project would consist of student housing and, thus, would involve a much shorter exposure period for each resident. In addition, the 2018 study referenced by the commenter specifically states that "[…] new California homes now have lower indoor formaldehyde levels than previously measured, likely as a result of California's formaldehyde emission standards." Such standards include the Airborne Toxic Control Measures (ATCM) adopted by CARB. As building standards continue to become more stringent, formaldehyde concentrations in new development are anticipated to decrease. Given that the newer subset of homes evaluated in the study

[5] California Air Resources Board. *Air Quality and Land Use Handbook: A Community Perspective*. April 2005.

were built between 2011 and 2018, whereas the proposed homes would be constructed in 2019 or later, formaldehyde concentrations associated with the proposed residences would likely be lower than those referenced in the study.

The 2018 study does not make any conclusions regarding the health risks of formaldehyde concentrations. Rather, the study only presents average concentrations of formaldehyde, as well as other pollutants associated with cooking fumes, from the 70 new homes evaluated in the study. The commenter does not provide information regarding the 'expert comments submitted on other similar projects' that have led to the conclusion that future residents and workers at the project would be exposed to a substantial cancer risk due to formaldehyde exposure. Therefore, the source and accuracy of the health risks presented in the comment cannot be assessed.

Furthermore, per SMAQMD, the 10 in one million threshold referenced by the commenter is generally not used for consideration of health risks due to indoor exposure. Such a threshold is typically used to consider airborne cancer risk associated with outdoor areas. Therefore, the conclusions reached by the commenter would be inaccurate as to indoor areas.

Response to Comment 4-16

The comment summarizes the conclusions of the commenter's letter and restates the opinion that the IS/MND should be withdrawn and an EIR be prepared for the proposed project. The concerns have been responded to in the above responses.

Response to Exhibit A

Please see Response to Comments 4-2 through 4-7.

The commenter suggests that the IS/MND include, as mitigation, funding contributions to wildlife rehabilitation facilities. However, given that the mitigation provided in the IS/MND would be sufficient to reduce impacts to less-than-significant levels, additional mitigation is not necessary. It should be noted that Exhibit A includes references to development of a hotel, which is not included as part of the proposed project.

Response to Exhibit B

Please see Response to Comments 4-9 through 4-15.

Response to Exhibit C

The document contains information referenced in Letter 4, but does not specifically address the adequacy of the IS/MND.