

Moore, Tania

From: Fikes, Cathy
Sent: Tuesday, November 1, 2022 9:30 AM
To: Agenda Alerts
Subject: FW: Comment Re: 2022 Addendum - Bella Terra Residential Project
Attachments: 2022.10.31 Bella Terra CC comments - final w. exhibits.pdf

From: Adam Frankel <adam@lozeaudrury.com>
Sent: Tuesday, November 1, 2022 9:23 AM
To: CITY COUNCIL <city.council@surfcity-hb.org>; Beckman, Hayden <hayden.beckman@surfcity-hb.org>; Estanislau, Robin <Robin.Estanislau@surfcity-hb.org>
Cc: Rebecca Davis <rebecca@lozeaudrury.com>; Molly Greene <molly@lozeaudrury.com>
Subject: Re: Comment Re: 2022 Addendum - Bella Terra Residential Project

Dear all,

The Planning Division staff has brought to my attention that my previous submission did not include the referenced exhibits. Please see attached an updated copy of our letter with exhibits of independent expert comments regarding the Project included. I apologize for this oversight.

Best,
Adam Frankel

On Mon, Oct 31, 2022 at 4:24 PM Adam Frankel <adam@lozeaudrury.com> wrote:

Dear Mayor Delgleize, Honorable City Council Members, Mr. Beckman, and Ms. Estanislau:

I am writing on behalf of Supporters Alliance for Environmental Responsibility ("SAFER") regarding the proposed Addendum to the 2008 Final Program Environmental Impact Report ("FPEIR") and the 2010 EIR Addendum (hereinafter, "Addendum No. 2" or the "Addendum"), prepared for the Bella Terra Residential Project (File No. 22-843, General Plan Amendment No. 21-001, Zoning Text Amendment No. 21-003, and Resolution Nos. 2022-57 and 2022-58).

This comment is in regards to public hearing items Nos. ²¹20 and ²²21 at the November 1, 2022 Huntington Beach City Council meeting. Please see the attached letter for additional information. I would appreciate if you could please confirm receipt of this comment.

Best,
Adam Frankel

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**SUPPLEMENTAL
COMMUNICATION**

Meeting Date: 11/1/2022

Agenda Item No.: #21 (22-843)

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Via Email

October 31, 2022

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Kim Carr, Councilmember
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Re: City of Huntington Beach, City Council Meeting of November 1, 2022, Public Hearing Items Nos. 20-21; Bella Terra Residential Project; Appeal of Planning Commission Approval; Resolution No. 2022-57, Approving Addendum to Environmental Impact Report No. 21-002 (Addendum No. 2) to the Village at Bella Terra Specific Plan EIR No. 07-03 ("Bella Terra Residential Project"); Resolution No. 2022-58, Approving General Plan Amendment (GPA) No 21-001 and Introducing Ordinance No. 4267 for Approval of Zoning Text Amendment (ZTA) No 21-003

Dear Mayor Delgleize, Honorable City Council Members, Mr. Beckman, and Ms. Estanislau:

I am writing on behalf of Supporters Alliance for Environmental Responsibility ("SAFER") regarding the proposed Addendum to the 2008 Final Program Environmental Impact Report ("FPEIR") and the 2010 EIR Addendum (hereinafter, "Addendum No. 2" or the "Addendum"), prepared for the Bella Terra Residential Project (File No. 22-843, General Plan Amendment No. 21-001, Zoning Text Amendment No. 21-003, and Resolution Nos. 2022-57 and 2022-58).

Addendum No. 2 purports to analyze the environmental impacts of all actions related or referring to the proposed plans submitted by the Applicant, Bella Terra Associates, LLC (the "Applicant"), to demolish an existing 149,000-square-foot Burlington department store and

30,000 square feet of adjacent retail space, and to construct a seven-story mixed-use infill project consisting of 300 apartment units, 40,000 square feet of retail and restaurant space, an above-ground three-level podium parking garage with 404 spaces, and associated hardscape and landscape improvements, to be located at 7777 Edinger Avenue, in the City of Huntington Beach, California, as well as all associated General Plan and Zoning amendments (the "Project").

On November 17, 2008, the City approved the Village at Bella Terra Environmental Impact Report (SCH No. 2008031066) ("2008 Project"). On September 27, 2010, the City approved the Revised Village at Bella Terra/Costco, Addendum to the Village at Bella Terra Environmental Impact Report (SCH No. 2008031066) ("2010 Project"). The City now proposes adoption of the Addendum for approval of a "Revised Project" which would include 300 additional apartment units as well as the addition of 25,000 square feet of new retail space. Both of the earlier projects, as well as the Revised Project, have included various General Plan and zoning amendments to accommodate the Project's consistently changing scope and scale.

After reviewing the Addendum, we conclude that it fails as an informational document and that there is substantial evidence that the Project will have adverse environmental impacts. SAFER's review of the Addendum has been assisted by indoor air quality expert and Certified Industrial Hygienist, Francis "Bud" Offermann, PE, CIH (comments attached as Exhibit A), and noise expert Deborah Jue of the acoustics consulting firm Wilson Ihrig (comments attached as Exhibit B).

SAFER respectfully requests that the City of Huntington Beach ("City") prepare an environmental impact report ("EIR") for the Project, pursuant to the California Environmental Quality Act ("CEQA"), Public Resources Code section 21000, et seq. Please note that this letter supplements and adopts in its entirety SAFER's prior written comments submitted to the City's Planning Commission on September 27, 2022 (attached as Exhibit C).

LEGAL STANDARD

CEQA contains a strong presumption in favor of requiring a lead agency to prepare an EIR. This presumption is reflected in the "fair argument" standard, which requires the lead agency to prepare an EIR whenever substantial evidence in the whole record before the agency supports a fair argument that a project may have a significant effect on the environment. (Pub. Res. Code § 21082.2; *Laurel Heights Improvement Ass'n v. Regents of the University of California* (1993) ("Laurel Heights II") 6 Cal.4th 1112, 1123; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 82; *Quail Botanical Gardens v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602.)

I. Preparation of an Addendum Under CEQA

The City has prepared an Addendum to the previously certified 2008 FPEIR and 2010 Addendum. In order to comply with CEQA, an addendum must adhere to the CEQA Guidelines and the courts' prior decisions outlining the limited circumstances under which an addendum may be adopted. The proposed Addendum fails to comply with either of these requirements and, if adopted, would directly violate CEQA. Instead, in order to comply with CEQA, the City must

prepare an EIR which adequately considers and mitigates the Project's new significant environmental effects.

a. The Addendum Involves New Significant Environmental Effects and is Thus Inappropriate Under CEQA.

Pursuant to the CEQA Guidelines, an addendum to a previously certified EIR may be prepared only if "none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred." (CEQA Guidelines § 15164(b).) Notably, CEQA Guidelines § 15162(a) provides that **an addendum to an EIR is not appropriate** where:

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

The significant changes proposed by Addendum No. 2 cannot plausibly be described as "minor technical changes." The Addendum proposes the addition of **25,000 square feet of new commercial space and 300 new residential units**. If approved, these developments will result in significant environmental impacts that were not considered by the Project's previous CEQA approvals.

For instance, the proposed development of 300 **new** residential units is a significant increase beyond the 468 units that were approved by the 2010 Addendum. In fact, if Addendum No. 2 is approved, the total number of units on the Project site would rise to 768, which is **55**

units greater than the originally approved maximum of 713 units under the 2008 FPEIR.

SAFER has presented substantial evidence that **new significant environmental effects** will result from the Project, including air quality and noise impacts that were not adequately addressed or mitigated by the Addendum. Furthermore, these comments provide **new information of substantial importance** that make clear that the use of an Addendum is inappropriate. Therefore, SAFER respectfully requests that the City pursue the necessary efforts to prepare an EIR in compliance with state law.

If approved, Addendum No. 2 would significantly expand the scope of the CEQA approvals granted by the 2008 FPEIR and the 2010 Addendum—while failing to conduct a legally sufficient environmental review and proposing insufficient mitigation to address the Project’s new significant environmental effects. SAFER presents substantial evidence that the Project will have significant environmental effects which the Addendum fails to address. Therefore, to comply with CEQA, the City should deny the Addendum and undertake the necessary efforts to prepare an EIR in compliance with CEQA.

b. The Proposed Addendum Would Violate CEQA’s Standards for “Tiering” of Environmental Analysis Under Program EIRs.

Another key legal consideration at issue with the Addendum is “tiering.” CEQA permits agencies to “tier” CEQA documents, in which general matters and environmental effects are considered in a document “prepared for a policy, plan, program or ordinance followed by narrower or site-specific [environmental review] which incorporate by reference the discussion in any prior [environmental review] and which concentrate on the environmental effects which (a) are capable of being mitigated, or (b) were not analyzed as significant effects on the environment in the prior [EIR].” (Cal. Pub. Res. Code (“PRC”) § 21068.5.) “[T]iering is appropriate when it helps a public agency to focus upon the issues ripe for decision at each level of environmental review and in order to exclude duplicative analysis of environmental effects examined in previous [environmental reviews].” (*Id.* § 21093.) CEQA regulations strongly promote tiering of environmental review.

The 2008 EIR approved for The Village at Bella Terra is a *program* EIR. As explained by the 2008 DEIR: “Since the Village at Bella Terra consists of a GPA/ZTA as opposed to a specific development proposal, this EIR provides a **programmatic analysis** of the proposed project. As defined by the CEQA Guidelines Section 15168(c), a **Program EIR** can be used specifically for later activities, as would likely be the case for future development on the project site” [emph. added]. (*See*, 2008 DEIR, p. 15).

The CEQA Guidelines define a “program EIR” as an EIR “prepared on a series of actions that can be characterized as one large project and are related either: (1) Geographically, (2) As logical parts 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. (14 CCR § 15168.)

The California Supreme Court has explained the differing standards of review that apply where a lead agency relies on a previous *program* EIR versus a previous *project* EIR:

‘The standard for determining whether to engage in additional CEQA review for subsequent projects under a tiered EIR is more relaxed than the prohibition against additional review imposed by Public Resources Code section 21166 for project EIR’s.’ (*Friends of Mammoth v. Town of Mammoth Lakes Redevelopment Agency* (2000) 82 Cal.App.4th 511, 528, 98 Cal.Rptr.2d 334.) For project EIRs, of course, a subsequent or supplemental impact report is required in the event there are substantial changes to the project or its circumstances, or in the event of material new and previously unavailable information. (*Ibid.*, citing § 21166.) In contrast, when a tiered EIR has been prepared, review of a subsequent project proposal is more searching. If the subsequent project is consistent with the program or plan for which the EIR was certified, then ‘CEQA requires a lead agency to prepare an initial study to determine if the later project may cause significant environmental effects not examined in the first tier EIR.’ (*Ibid.* citing Pub. Resources Code, § 21094, subds. (a), (c).) ‘If the subsequent project is not consistent with the program or plan, it is treated as a new project and must be fully analyzed in a project—or another tiered EIR if it may have a significant effect on the environment.’ (*Friends of Mammoth*, at pp. 528–529, 98 Cal.Rptr.2d 334.)

(*Friends of College of San Mateo Gardens v. San Mateo County Community College Dist.* (2016) 1 Cal.5th 937, 960 (*San Mateo Gardens*).)

The Supreme Court further explained that, if a subsequent proposal is not “either the same as or within the scope of the project . . . described in the program EIR,” the use of an addendum under the more deferential substantial evidence standard is not appropriate. (*San Mateo Gardens*, *supra*, 1 Cal.5th at 960 [citing *Sierra Club*, *supra*, 6 Cal.App.4th at 1321].) Instead, “the agency is required to apply a more exacting standard to determine whether the later project might cause significant environmental effects that were not fully examined in the initial program EIR.” (*Id.* [citing *Sierra Club*, *supra*, 6 Cal.App.4th at 1321; Pub. Res. Code § 21094(c).])

Therefore, where a subsequent proposal falls outside the scope of the original program EIR, as is the case here, the more exacting “fair argument” standard applies. (*Sierra Club*, 6 Cal.App.4th at 1318; *see also Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152, 1164 [“when a prior EIR has been prepared and certified for a program or plan, the question for a court reviewing an agency’s decision not to use a tiered EIR for a later project ‘is one of law, i.e., ‘the sufficiency of the evidence to support a fair argument.’” [quoting *Sierra Club*, 6 Cal.App.4th at 1318]].])

Under the fair argument standard, a new EIR must be prepared “whenever it can be fairly argued on the basis of **substantial evidence that the project may have significant environmental impact**.” (*Sierra Club*, 6 Cal.App.4th at 1316 [quotations and citations omitted];

emphasis added].) When applying the fair argument test, “deference to the agency’s determination is not appropriate and its decision not to require an EIR can be upheld only when there is no credible evidence to the contrary.” (*Id.* at 1318.) “[I]f there is substantial evidence in the record that the later project may arguably have a significant adverse effect on the environment which was not examined in the prior program EIR, doubts must be resolved in favor of environmental review and the agency must prepare a new tiered EIR, notwithstanding the existence of contrary evidence.” (*Id.* at 1319.)

Lastly, where there is no evidence that a later project was contemplated at the time of the program EIR or that any site-specific environmental issues related to the later project were addressed in the program EIR, that later project is not within the scope of the program EIR. (See *NRDC v. City of Los Angeles* (2002) 103 Cal.App.4th 268, 284-85.) When a later project is not within the scope of the program EIR, an initial study followed by “either an EIR or a negative declaration” must be prepared. (14 CCR § 15168(c)(1).)

There can be no doubt that the effects of 300 additional units (for a total of 768 units) were not contemplated in the 2008 EIR, which only analyzed a *maximum* of 713 units. Because there is no detail or analysis in the 2008 EIR of the construction and operation of 768 units, there is no substantial evidence that this Project is within the scope of the 2008 EIR. As such, CEQA Guidelines section 15168 requires that the City prepare at initial study followed by an EIR or MND. As explained below, however, even though a negative declaration is permissible under CEQA Guidelines 15168, expert evidence submitted by SAFER establishes a fair argument that a supplemental EIR, rather than a negative declaration, is required for the Project. Furthermore, the Project’s remaining significant and unavoidable impacts also require the City to prepare an EIR and a statement of overriding considerations.

c. A Subsequent EIR and a Statement of Overriding Considerations Are Required Due to the Project’s Significant and Unavoidable Environmental Impacts.

The Addendum concedes that the earlier 2008 FPEIR and the 2010 Addendum concluded that the Project would result in significant and unavoidable impacts to air quality, noise, and traffic. Although these impacts were previously identified as significant and unavoidable, CEQA requires an EIR to evaluate and mitigate these impacts, as well as a Statement of Overriding Consideration, prior to the issuance of any subsequent approvals.

In *Communities for a Better Environment v. Cal. Resources Agency* (2002) 103 Cal.App.4th 98, 122-25, the court of appeal held that when a “first tier” EIR admits a significant, unavoidable environmental impact, the agency must prepare second tier EIRs for later projects to ensure that those unmitigated impacts are “mitigated or avoided.” (*Id.* [citing 14 CCR §15152(f.)]) The court reasoned that the unmitigated impacts were not “adequately addressed” in the first tier EIR since it was not “mitigated or avoided.” (*Id.*) Thus, significant effects disclosed in first tier EIRs will trigger second tier EIRs unless such effects have been “adequately addressed,” in a way that ensures the effects will be “mitigated or avoided.” (*Id.*)

A second tier EIR is required especially where the impact still cannot be fully mitigated. Such situations also require the preparation of a statement of overriding considerations. Here, the

court explained: “The requirement of a statement of overriding considerations is central to CEQA’s role as a public accountability statute; it requires public officials, in approving environmental detrimental projects, to justify their decisions based on counterbalancing social, economic or other benefits, and to point to substantial evidence in support.” (*Id.* at 124-25.)

Since the 2008 Program FPEIR and the 2010 Addendum identified multiple significant and unavoidable impacts, a second tier EIR is now required to determine if additional mitigation measures can now be imposed to reduce or eliminate those impacts. If those impacts remain significant and unavoidable, a Statement of Overriding Considerations is required in addition to the EIR. “[T]he responsible public officials must still go on the record and explain specifically why they are approving the later project despite its significant unavoidable impacts.” (*Communities for a Better Environment*, 103 Cal.App.4th at 124–25.) Therefore, approval of the Addendum would be improper and an EIR is required for the Project’s significant and unavoidable impacts.

DISCUSSION

I. The Project Will Have Significant Indoor Air Quality and Adverse Health Impacts.

Certified Industrial Hygienist, Francis “Bud” Offermann, PE, CIH, has reviewed the Addendum and all relevant documents regarding the Project’s indoor air emissions. Based on this review, Mr. Offermann concludes that the Project will likely expose future residents of the Project to significant impacts related to indoor air quality, and in particular, emissions of the cancer-causing chemicals benzene and formaldehyde. Mr. Offermann is a leading expert on indoor air quality and has published extensively on the topic. Mr. Offermann’s expert comments are attached as Exhibit A.

Importantly, neither the 2008 FPEIR nor the 2010 Addendum addressed indoor air quality impacts from formaldehyde or benzene emissions. Because these impacts were not previously analyzed, the fair argument standard applies and an EIR is required to address and mitigate these impacts.

A. Future Residents Will Face Elevated Cancer Risks from Indoor Formaldehyde Emissions.

Formaldehyde is a known human carcinogen and is listed by the State of California as a Toxic Air Contaminant (“TAC”). The South Coast Air Quality Management District (“SCAQMD”), the agency responsible for regulating air quality within the South Coast Air Basin—which includes the City of Huntington Beach—has established a cancer risk significance threshold from human exposure to carcinogenic TACs of 10 per million. (Ex. A, p. 2.)

Mr. Offermann explains that many composite wood products typically used in building materials and furnishings commonly found in offices, warehouses, residences, and hotels contain formaldehyde-based glues which off-gas formaldehyde over a very long period of time. He states that “[t]he primary source of formaldehyde indoors is composite wood products manufactured with urea-formaldehyde resins, such as plywood, medium density fiberboard, and particleboard.

These materials are commonly used in building construction for flooring, cabinetry, baseboards, window shades, interior doors, and window and door trims.” (*Id.*, pp. 2-3.)

Mr. Offermann concludes that future residents of the Project will be exposed to a cancer risk from formaldehyde of approximately 120 per million, *even assuming* that all materials are compliant with the California Air Resources Board’s formaldehyde airborne toxics control measure. (*Id.*, p. 4.) This risk level is **12 times greater** than SCAQMD’s CEQA significance threshold for airborne cancer risk of 10 per million. Importantly, Mr. Offermann’s conclusions are based on studies that were conducted in 2019 and which were therefore not available for review when the 2008 FPEIR and 2010 Addendum were approved.

The California Supreme Court has emphasized the importance of air district significance thresholds in providing substantial evidence of a significant adverse environmental impact under CEQA. (*Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 327 [“As the [South Coast Air Quality Management] District’s established significance threshold for NOx is 55 pounds per day, these estimates [of NOx emissions of 201 to 456 pounds per day] constitute substantial evidence supporting a fair argument for a significant adverse impact.”].) Since expert evidence demonstrates that the Project will exceed the SCAQMD’s CEQA significance threshold, there is substantial evidence that an “unstudied, potentially significant environmental effect[]” exists. (See *San Mateo Gardens, supra*, 1 Cal.5th at 958.)

The Addendum’s failure to address the Project’s formaldehyde emissions is also contrary to the California Supreme Court’s decision in *California Building Industry Ass’n v. Bay Area Air Quality Mgmt. Dist.* (2015) 62 Cal.4th 369, 386 (“*CBIA*”). In that case, the Supreme Court held that potentially adverse impacts to future users and residents resulting from a Project’s environmental impacts must be addressed by the CEQA review process. The issue before the Court in *CBIA* was whether an air district could enact CEQA guidelines that advised lead agencies that they must analyze the impacts of existing environmental conditions that occurred near a project site.

The Supreme Court held that CEQA does not generally require lead agencies to consider the environment’s effects *on a project* (*CBIA*, 62 Cal.4th at 385-88). However, it ruled that agencies must still consider the extent to which a project may *exacerbate existing environmental conditions* at or near a project site, insofar as those conditions may affect the project’s future users or residents. (*Id.* at 388.) Specifically, the Supreme Court wrote, CEQA’s statutory language requires lead agencies to disclose and analyze “*impacts on a project’s users or residents* that arise from the project’s *effects on the environment*.” (*Id.* at 387 [emph. added].)

The Supreme Court’s reasoning in *CBIA* is well-grounded in CEQA’s statutory language. CEQA expressly identifies a project’s effects on human beings as an effect that must be addressed as part of an environmental review. “Section 21083(b)(3)’s express language, for example, requires a finding of a ‘significant effect on the environment’ (§ 21083(b)) whenever the ‘environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly.’” (*CBIA*, 62 Cal.4th at 386.) Likewise, “the Legislature has made clear—in declarations accompanying CEQA’s enactment—that public health and safety are of

great importance in the statutory scheme.” (*Id.* [citing e.g., §§ 21000, subds. (b), (c), (d), (g), 21001, subds. (b), (d)].) It goes without saying that the future residents of the Project are human beings. It is axiomatic that the health and safety of those residents is subject to CEQA’s environmental safeguards.

B. Hazardous Soil Vapors from the Costco Gas Station Will Negatively Impact Indoor Air Quality and Impact the Health of Future Residents.

Next, Mr. Offermann observes: “Another indoor air quality impact **that was not addressed** in the Addendum to the Final Program Environmental Impact Report [nor by the 2010 EIR Addendum for the Village at Bella Terra (LSA, 2022), is the potential impact of ground contaminants from the Costco gas station, which is located within 100 feet of the Project.” (*Id.*, p. 12.)

In regard to this significant impact, Mr. Offermann explains: “Gasoline stations frequently cause contamination of the ground from spills and leaks of gasoline and other petroleum products, **which results in vapors containing benzene, a known human carcinogen**, to permeate and migrate through the surrounding ground soil and enter the air of nearby buildings.” (Ex. A., p. 12.) The Addendum fails to address or offer any mitigation for this significant indoor air quality and health impact.

The failure to address the gas station’s impact on human health is once again contrary to the California Supreme Court’s holding in *CBIA*, discussed above.¹ Here, the elevated cancer risk that may result from the Project’s indoor air emissions will be exacerbated by the additional cancer risk that exists due to the Project’s location immediately adjacent to a Costco gas station. Therefore, these indoor air quality and human health impacts must be analyzed by an EIR.

C. An EIR Must Be Prepared to Disclose and Mitigate the Project’s Significant Indoor Air Quality and Adverse Health Impacts.

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,

¹ Interestingly, the Supreme Court specifically discussed the adverse environmental impacts of ground soil contaminants from gasoline stations – and the required procedures under CEQA for disclosure and mitigation of these impacts – in the *CBIA* decision. “Suppose that an agency wants to locate a project next to the site of a long-abandoned gas station. For years, that station pumped gasoline containing methyl tertiary-butyl ether (MTBE), an additive -- now banned by California -- that can seep into soil and groundwater. (See *Western States Petroleum Assn. v. State Dept. of Health Services* (2002) 99 Cal.App.4th 999, 1003; Cal. Code Regs., tit. 13, § 2262.6, subd. (a) [prohibiting the addition of MTBE to gasoline starting Dec. 31, 2003].) Without any additional development in the area, the MTBE might well remain locked in place, an existing condition whose risks -- most notably the contamination of the drinking water supply -- are limited to the gas station site and its immediate environs. But by virtue of its proposed location, the project threatens to disperse the settled MTBE and thus exacerbate the existing contamination. The agency would have to evaluate the existing condition -- here, the presence of MTBE in the soil -- as part of its environmental review. Because this type of inquiry still focuses on the *project’s impacts on the environment* -- how a project might worsen existing conditions -- directing an agency to evaluate how such worsened conditions could affect a project’s future users or residents is entirely consistent with this focus and with CEQA as a whole. (*CBIA*, 62 Cal. 4th, *supra*, at 389.)

1597–98. “[U]nder CEQA, the lead agency bears a burden to investigate potential environmental impacts.”.) The proposed Project will have significant impacts on health and air quality by emitting cancer-causing levels of formaldehyde into the air that will expose future residents to cancer risks potentially in excess of SCAQMD’s significance threshold of 10 per million.

The carcinogenic formaldehyde emissions which Mr. Offermann identified are not an existing environmental condition. To the contrary, those emissions will be caused *by the Project* and will result in adverse effects on the environment. If built without appropriate mitigation, the Project will slowly emit formaldehyde over long periods of time to levels that pose significant direct and cumulative health risks to Project residents. As noted above, the Supreme Court in *CBA* expressly found that a Project’s environmental impacts, including those that affect a “project’s users and residents,” must be addressed by the CEQA review process. Therefore, an EIR must be prepared to identify existing levels of TAC emissions near the Project site – such as those resulting from the operation of the adjacent Costco gas station – and the impact that those will have on the health of future residents. Moreover, an EIR must evaluate the *cumulative effect* on future residents resulting from both the Project’s indoor formaldehyde emissions *and* existing off-site TAC emissions.

Mr. Offermann concludes that these significant impacts should be analyzed in an EIR and that additional mitigation measures should be imposed to reduce the significant health risks that will result from indoor emissions of formaldehyde and benzene. (*Id.*, pp. 12-14.) Mr. Offermann proposes various feasible mitigation measures to reduce these impacts, including by imposing a requirement that the Project applicant install air filters throughout the building and commit to using only composite wood materials that are made with CARB approved no-added formaldehyde (NAF) resins, or ultra-low emitting formaldehyde (ULEF) resins, for all of the buildings’ interior spaces.

Additionally, Mr. Offermann observes that further “environmental assessment is needed to ascertain if mitigation measures such as a sub-slab ventilation system will be required to [e]nsure that the concentrations of gasoline ground contaminants [from the Costco gas station], including benzene, are maintained at acceptable concentrations in the indoor air of the Project (e.g., occupant indoor exposures are less than the NSRL of 13 µg/day for benzene).” (*Id.*)

Mr. Offermann’s observations constitute substantial evidence that the Project will produce potentially significant air quality and health impacts which the Addendum and the previous CEQA documents have failed to address. Therefore, the City must therefore prepare an EIR to fully evaluate and mitigate these adverse impacts to future Project residents.

II. The Project Will Have Significant Noise Impacts and Lacks Appropriate Mitigation.

Deborah Jue of the acoustics consulting firm Wilson Ihrig reviewed the Addendum and the associated Noise and Vibration Technical Report (Appendix F). Based on her review, Ms. Jue concluded that the Project will result in “substantial and significant” noise impacts which were not adequately considered or mitigated by the Addendum. Ms. Jue’s expert comments are attached as Exhibit B.

A. The Addendum Obscures the Project's Likely Impacts Upon Sensitive Noise Receptors, Including School Children and Vulnerable Residents.

Ms. Jue notes that the Addendum lacks a quantified noise threshold to properly “assess the impact of construction noise at the nearby schools.” (Ex. B., p. 1.) Instead, the Addendum refers to the City’s 80 dBA construction noise threshold, without evaluating whether this is an appropriate threshold for determining whether the Project’s construction noise will negatively impact neighboring schools. (*Id.*) This oversight is problematic because CEQA does not permit public agencies to apply significance thresholds “in a way that forecloses the consideration of any other substantial evidence showing there may be a significant effect.” (*Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 105.)

Therefore, Ms. Jue writes, additional analysis must be performed to “show that on-going noise from Project construction activities, including increased truck activities off-site would not exceed 55 dBA exterior/40 dBA interior at nearby school buildings,” which will be impacted by Project construction during two—and possibly even three—academic school years. (*Id.*, pp. 1-2.)

Furthermore, the Addendum improperly obscures the Project’s likely noise impacts to impacted residents of the immediately adjacent building, The Residences at Bella Terra, by referring to the substantial noise increases it will produce as “temporary.” As Ms. Jue explains, however, this characterization is contrary to the CEQA Guidelines. In fact, the Guidelines specifically ask whether a Project will result in a “substantial *temporary or permanent* increase in ambient noise levels in the vicinity of the project” to determine whether its noise impacts may be deemed significant. (*Id.*, pp. 3-4.) To characterize the planned 28 months of construction noise as “temporary” obscures the fact that the impact to residents will be “substantial and significant,” and will require additional “mitigation measures such as sound barriers [and] buffer distances.” (*Id.*, p. 4.)

B. The Addendum Fails to Adopt Legally Enforceable Mitigation Measures and Improperly Defers Mitigation.

CEQA requires that mitigation measures be fully enforceable through permit conditions, agreements, or other legally binding instruments. 14 CCR § 15126.4(a)(2). (*See also, Woodward Park Homeowners Assn., Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 730 [project proponent’s agreement to a mitigation by itself is insufficient; mitigation measure must be an enforceable requirement].) furthermore, a CEQA lead agency may not rely on mitigation measures to reduce a Project’s impacts if the proposed measures are not enforceable. (*Id.*)

The Addendum proposes several Project Design Features (“PDFs”) to reduce the Project’s noise impacts – but it lacks any legally enforceable mitigation measures. (Ex. B., p. 3.) As Ms. Jue observes, these PDFs are insufficient because they lack any legally binding enforcement or reporting mechanism, and thus fail to comply with CEQA by leaving open the possibility that they will not be implemented.

In one PDF, for instance, the Addendum suggests that the “Project shall be reviewed by an acoustical consultant,” and that it will be subject thereafter to review and approval by Planning Department staff. (*Id.*) But again, this PDF lacks any legally enforceable mechanism to ensure this independent review takes place.

It also fails to disclose what criteria will be used to assess whether the proposed mitigation is adequate. CEQA does not allow this type of deferred mitigation because it limits the law’s primary goal of providing broad public disclosure to inform decision making.

“Formulation of mitigation measures shall not be deferred until some future time.” 14 CCR § 15126.4(a)(1)(B). Similarly, as the courts have explained, “Numerous cases illustrate that reliance on tentative plans for future mitigation after completion of the CEQA process *significantly undermines CEQA’s goals of full disclosure and informed decision making*; and consequently, these mitigation plans have been overturned on judicial review as constituting improper deferral of environmental assessment.” (*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 92 [emph. added].)

III. CONCLUSION

In conclusion, SAFER believes that the Addendum fails as an informational document and that there is substantial evidence the Project will have significant noise and air quality impacts. Additionally, because the previous CEQA approvals determined that the Project would have significant and unavoidable environmental impacts, a second tier EIR and a statement of overriding considerations are required. Therefore, we respectfully request that the City deny approval of the Addendum and instead undertake the necessary efforts prepare an EIR for the Project.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Adam Frankel', is positioned above the printed name.

Adam Frankel
LOZEAU DRURY LLP

EXHIBIT A



INDOOR ENVIRONMENTAL ENGINEERING



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Date: October 20, 2022

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From: Francis J. Offermann PE CIH

Subject: Indoor Air Quality: The Village at Bella Terra - Huntington Beach, CA
(IEE File Reference: P-4637)

Pages: 19

Indoor Air Quality Impacts

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

The concentrations of many air pollutants often are elevated in homes and other buildings relative to outdoor air because many of the materials and products used indoors contain

and release a variety of pollutants to air (Hodgson et al., 2002; Offermann and Hodgson, 2011). With respect to indoor air contaminants for which inhalation is the primary route of exposure, the critical design and construction parameters are the provision of adequate ventilation and the reduction of indoor sources of the contaminants.

Indoor Formaldehyde Concentrations Impact. In the California New Home Study (CNHS) of 108 new homes in California (Offermann, 2009), 25 air contaminants were measured, and formaldehyde was identified as the indoor air contaminant with the highest cancer risk as determined by the California Proposition 65 Safe Harbor Levels (OEHHA, 2017a), No Significant Risk Levels (NSRL) for carcinogens. The NSRL is the daily intake level calculated to result in one excess case of cancer in an exposed population of 100,000 (i.e., ten in one million cancer risk) and for formaldehyde is 40 µg/day. The NSRL concentration of formaldehyde that represents a daily dose of 40 µg is 2 µg/m³, assuming a continuous 24-hour exposure, a total daily inhaled air volume of 20 m³, and 100% absorption by the respiratory system. All of the CNHS homes exceeded this NSRL concentration of 2 µg/m³. The median indoor formaldehyde concentration was 36 µg/m³, and ranged from 4.8 to 136 µg/m³, which corresponds to a median exceedance of the 2 µg/m³ NSRL concentration of 18 and a range of 2.3 to 68.

Therefore, the cancer risk of a resident living in a California home with the median indoor formaldehyde concentration of 36 µg/m³, is 180 per million as a result of formaldehyde alone. The CEQA significance threshold for airborne cancer risk is 10 per million, as established by the South Coast Air Quality Management District (SCAQMD, 2015).

Besides being a human carcinogen, formaldehyde is also a potent eye and respiratory irritant. In the CNHS, many homes exceeded the non-cancer reference exposure levels (RELs) prescribed by California Office of Environmental Health Hazard Assessment (OEHHA, 2017b). The percentage of homes exceeding the RELs ranged from 98% for the Chronic REL of 9 µg/m³ to 28% for the Acute REL of 55 µg/m³.

The primary source of formaldehyde indoors is composite wood products manufactured with urea-formaldehyde resins, such as plywood, medium density fiberboard, and

particleboard. These materials are commonly used in building construction for flooring, cabinetry, baseboards, window shades, interior doors, and window and door trims.

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

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

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

With respect to The Village at Bella Terra - Huntington Beach, CA, the buildings consist of residential and commercial spaces.

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

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

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

The employees of the commercial spaces are expected to experience significant indoor exposures (e.g., 40 hours per week, 50 weeks per year). These exposures for employees are anticipated to result in significant cancer risks resulting from exposures to formaldehyde released by the building materials and furnishing commonly found in offices, warehouses, residences and hotels.

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

Assuming that the employees of commercial spaces work 8 hours per day and inhale 20

m³ of air per day, the formaldehyde dose per work-day at the offices is 161 µg/day.

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

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

In addition, we note that the average outdoor air concentration of formaldehyde in California is 3 ppb, or 3.7 µg/m³, (California Air Resources Board, 2004), and thus represents an average pre-existing background airborne cancer risk of 1.85 per million. Thus, the indoor air formaldehyde exposures describe above exacerbate this pre-existing risk resulting from outdoor air formaldehyde exposures.

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

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

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

Pre-Construction Building Material/Furnishing Formaldehyde Emissions Assessment

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

1.) Define Indoor Air Quality Zones. Divide the building into separate indoor air quality zones, (IAQ Zones). IAQ Zones are defined as areas of well-mixed air. Thus, each ventilation system with recirculating air is considered a single zone, and each room or group of rooms where air is not recirculated (e.g. 100% outdoor air) is considered a separate zone. For IAQ Zones with the same construction material/furnishings and design minimum outdoor air ventilation rates. (e.g. hotel rooms, apartments, condominiums, etc.) the formaldehyde emission rates need only be assessed for a single IAQ Zone of that type.

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

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

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

CDPH, BIFMA, and other chemical emission rate testing programs, typically certify that a material or furnishing does not create indoor chemical concentrations in excess of the maximum concentrations permitted by their certification. For instance, the CDPH emission rate testing requires that the measured emission rates when input into an office, school, or residential model do not exceed one-half of the OEHHA Chronic Exposure Guidelines (OEHHA, 2017b) for the 35 specific VOCs, including formaldehyde, listed in Table 4-1 of the CDPH test method (CDPH, 2017). These certifications themselves do not provide the actual area-specific formaldehyde emission rate (i.e., $\mu\text{g}/\text{m}^2\text{-h}$) of the

product, but rather provide data that the formaldehyde emission rates do not exceed the maximum rate allowed for the certification. Thus, for example, the data for a certification of a specific type of flooring may be used to calculate that the area-specific emission rate of formaldehyde is less than $31 \mu\text{g}/\text{m}^2\text{-h}$, but not the actual measured specific emission rate, which may be 3, 18, or $30 \mu\text{g}/\text{m}^2\text{-h}$. These area-specific emission rates determined from the product certifications of CDPH, BIFA, and other certification programs can be used as an initial estimate of the formaldehyde emission rate.

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

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

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

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

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

where:

C_{in} = indoor formaldehyde concentration ($\mu\text{g}/\text{m}^3$)

E_{total} = total formaldehyde emission rate ($\mu\text{g}/\text{h}$) into the IAQ Zone.

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

The above Equation 1 is based upon mass balance theory, and is referenced in Section 3.10.2 “Calculation of Estimated Building Concentrations” of the California Department of Health “Standard Method for the Testing and Evaluation of Volatile Organic Chemical Emissions for Indoor Sources Using Environmental Chambers”, (CDPH, 2017).

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

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

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

Source mitigation for formaldehyde may include:

- 1.) reducing the amount materials and/or furnishings that emit formaldehyde
- 2.) substituting a different material with a lower area-specific emission rate of formaldehyde

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

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

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

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

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

rates below the minimum California Building Code (2001) requirement of 0.35 ach. Thus, the relatively tight envelope construction, combined with the fact that many people never open their windows for ventilation, results in homes with low outdoor air exchange rates and higher indoor air contaminant concentrations.

This Project is close to roads with moderate to high traffic (e.g., Gothard Street, Edinger Avenue, San Diego Freeway (405), Center Avenue, Goldenwest Street, etc.), as well as air traffic from the Joint Forces Training Center (JFTC) airfield. Thus, the Project site is a sound impacted site.

In Appendix F of the Addendum to the Final Program Environmental Impact Report and 2010 EIR Addendum for the Village at Bella Terra (LSA, 2022), Table 4-1 reports that the existing noise levels ranged from 63-65 dBA CNEL. As these measurements were collected 10/15-18/21 during the pandemic, the future post-pandemic noise levels will have higher traffic volumes and ambient noise levels.

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

PM_{2.5} Outdoor Concentrations Impact. An additional impact of the nearby motor vehicle traffic associated with this project, are the outdoor concentrations of PM_{2.5}. This Project is located in the South Coast Air Basin, which is a State and Federal non-attainment area for PM_{2.5}.

An air quality analyses should to be conducted to determine the concentrations of PM_{2.5} in the outdoor and indoor air that people inhale each day. This air quality analyses needs to consider the cumulative impacts of the project related emissions, existing and projected future emissions from local PM_{2.5} sources (e.g. stationary sources, motor vehicles, and airport traffic) upon the outdoor air concentrations at the Project site. If the outdoor concentrations are determined to exceed the California and National annual average PM_{2.5}

exceedence concentration of $12 \mu\text{g}/\text{m}^3$, or the National 24-hour average exceedence concentration of $35 \mu\text{g}/\text{m}^3$, then the buildings need to have a mechanical supply of outdoor air that has air filtration with sufficient removal efficiency, such that the indoor concentrations of outdoor $\text{PM}_{2.5}$ particles is less than the California and National $\text{PM}_{2.5}$ annual and 24-hour standards.

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

Ground Contamination Impact. Another indoor air quality impact that was not addressed in the Addendum to the Final Program Environmental Impact Report and 2010 EIR Addendum for the Village at Bella Terra (LSA, 2022), is the potential impact of ground contaminants from the Costco gas station, which is located within 100 feet of the Project. Gasoline stations frequently cause contamination of the ground from spills and leaks of gasoline and other petroleum products, which results in vapors containing benzene, a known human carcinogen, to permeate and migrate through the surrounding ground soil and enter the air of nearby buildings. Thus, an environmental assessment is needed to ascertain if mitigation measures such as a sub-slab ventilation system will be required to insure that the concentrations of gasoline ground contaminants, including benzene, are maintained at acceptable concentrations in the indoor air of the Project (e.g., occupant indoor exposures are less than the NSRL of $13 \mu\text{g}/\text{day}$ for benzene).

Indoor Air Quality Impact Mitigation Measures

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

Indoor Formaldehyde Concentrations Mitigation. Use only composite wood materials (e.g. hardwood plywood, medium density fiberboard, particleboard) for all interior finish systems that are made with CARB approved no-added formaldehyde (NAF) resins

(CARB, 2009). CARB Phase 2 certified composite wood products, or ultra-low emitting formaldehyde (ULEF) resins, do not insure indoor formaldehyde concentrations that are below the CEQA cancer risk of 10 per million. Only composite wood products manufactured with CARB approved no-added formaldehyde (NAF) resins, such as resins made from soy, polyvinyl acetate, or methylene diisocyanate can insure that the OEHHHA cancer risk of 10 per million is met.

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

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

Outdoor Air Ventilation Mitigation. Provide each habitable room with a continuous mechanical supply of outdoor air that meets or exceeds the California 2016 Building Energy Efficiency Standards (California Energy Commission, 2015) requirements of the greater of 15 cfm/occupant or 0.15 cfm/ft² of floor area. Following installation of the system conduct testing and balancing to insure that required amount of outdoor air is entering each habitable room and provide a written report documenting the outdoor airflow rates. Do not use exhaust only mechanical outdoor air systems, use only balanced outdoor air supply and exhaust systems or outdoor air supply only systems. Provide a manual for the occupants or maintenance personnel, that describes the purpose of the

mechanical outdoor air system and the operation and maintenance requirements of the system.

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

Ground Contamination Assessment and Mitigation. Conduct an environmental assessment to ascertain if mitigation measures such as a sub-slab ventilation system will be required to insure that the concentrations of gasoline ground contaminants, including benzene, are maintained at acceptable concentrations in the indoor air of the Project (e.g., occupant indoor exposures are less than the NSRL of 13 µg/day for benzene).

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APPENDIX A

INDOOR FORMALDEHYDE CONCENTRATIONS AND THE CARB FORMALDEHYDE ATCM

With respect to formaldehyde emissions from composite wood products, the CARB ATCM regulations of formaldehyde emissions from composite wood products, do not assure healthful indoor air quality. The following is the stated purpose of the CARB ATCM regulation - *The purpose of this airborne toxic control measure is to “reduce formaldehyde emissions from composite wood products, and finished goods that contain composite wood products, that are sold, offered for sale, supplied, used, or manufactured for sale in California”*. In other words, the CARB ATCM regulations do not “assure healthful indoor air quality”, but rather “reduce formaldehyde emissions from composite wood products”.

Just how much protection do the CARB ATCM regulations provide building occupants from the formaldehyde emissions generated by composite wood products? Definitely some, but certainly the regulations do not “*assure healthful indoor air quality*” when CARB Phase 2 products are utilized. As shown in the Chan 2019 study of new California homes, the median indoor formaldehyde concentration was of 22.4 $\mu\text{g}/\text{m}^3$ (18.2 ppb), which corresponds to a cancer risk of 112 per million for occupants with continuous exposure, which is more than 11 times the CEQA cancer risk of 10 per million.

Another way of looking at how much protection the CARB ATCM regulations provide building occupants from the formaldehyde emissions generated by composite wood products is to calculate the maximum number of square feet of composite wood product that can be in a residence without exceeding the CEQA cancer risk of 10 per million for occupants with continuous occupancy.

For this calculation I utilized the floor area (2,272 ft²), the ceiling height (8.5 ft), and the number of bedrooms (4) as defined in Appendix B (New Single-Family Residence Scenario) of the Standard Method for the Testing and Evaluation of Volatile Organic Chemical Emissions for Indoor Sources Using Environmental Chambers, Version 1.1, 2017, California Department of Public Health, Richmond, CA. <https://www.cdph.ca.gov/Programs/CCDPHP/DEODC/EHLB/IAQ/Pages/VOC.aspx>.

For the outdoor air ventilation rate I used the 2019 Title 24 code required mechanical ventilation rate (ASHRAE 62.2) of 106 cfm (180 m³/h) calculated for this model residence. For the composite wood formaldehyde emission rates I used the CARB ATCM Phase 2 rates.

The calculated maximum number of square feet of composite wood product that can be in a residence, without exceeding the CEQA cancer risk of 10 per million for occupants with continuous occupancy are as follows for the different types of regulated composite wood products.

Medium Density Fiberboard (MDF) – 15 ft² (0.7% of the floor area), or
Particle Board – 30 ft² (1.3% of the floor area), or
Hardwood Plywood – 54 ft² (2.4% of the floor area), or
Thin MDF – 46 ft² (2.0 % of the floor area).

For offices and hotels the calculated maximum amount of composite wood product (% of floor area) that can be used without exceeding the CEQA cancer risk of 10 per million for occupants, assuming 8 hours/day occupancy, and the California Mechanical Code minimum outdoor air ventilation rates are as follows for the different types of regulated composite wood products.

Medium Density Fiberboard (MDF) – 3.6 % (offices) and 4.6% (hotel rooms), or
Particle Board – 7.2 % (offices) and 9.4% (hotel rooms), or
Hardwood Plywood – 13 % (offices) and 17% (hotel rooms), or
Thin MDF – 11 % (offices) and 14 % (hotel rooms)

Clearly the CARB ATCM does not regulate the formaldehyde emissions from composite wood products such that the potentially large areas of these products, such as for flooring, baseboards, interior doors, window and door trims, and kitchen and bathroom cabinetry, could be used without causing indoor formaldehyde concentrations that result in CEQA cancer risks that substantially exceed 10 per million for occupants with continuous occupancy.

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

If CARB Phase 2 compliant or ULEF composite wood products are utilized in construction, then the resulting indoor formaldehyde concentrations should be determined in the design phase using the specific amounts of each type of composite wood product, the specific formaldehyde emission rates, and the volume and outdoor air ventilation rates of the indoor spaces, and all feasible mitigation measures employed to reduce this impact (e.g. use less formaldehyde containing composite wood products and/or incorporate mechanical systems capable of higher outdoor air ventilation rates). See the procedure described earlier (i.e. Pre-Construction Building Material/Furnishing Formaldehyde Emissions Assessment) to insure that the materials selected achieve acceptable cancer risks from material off gassing of formaldehyde.

Alternatively, and perhaps a simpler approach, is to use only composite wood products (e.g. hardwood plywood, medium density fiberboard, particleboard) for all interior finish systems that are made with CARB approved no-added formaldehyde (NAF) resins.

EXHIBIT B



October 17, 2022

Mr. Adam Frankel
Lozeau | Drury LLP
1939 Harrison Street, Suite 150
Oakland, California 94612

SUBJECT: Bella Terra Residential Project, Comments on the EIR Addendum and Technical Report

Dear Mr. Frankel,

Following are comments on the Addendum (2022 Addendum) to the Final Program EIR and 2010 EIR Addendum for the subject matter project. The proposed project (Project) focuses on the residential portion of the original Village at Bella Terra in Huntington Beach, CA. This Project would result in the demolition and removal of an existing department store and adjacent retail space to construction a seven-story mixed-use infill project consisting of 300 apartments units, ground floor retail and restaurant uses and associated hardscape and landscaping improvements. The noise and vibration analysis is summarized in Appendix F which contains a Technical Report (TR) and a summary memo (Memo) that compares the prior environmental analyses with the current analyses.

Analysis Lacks Noise Thresholds Schools

The 2022 Addendum and Appendix F do not include any criteria or numeric analysis to assess the impact of construction noise at the nearby schools. The 2022 Addendum TR identifies speech interference and performance as a concern, particular at learning environments such as schools (page 2-6). The 2022 Addendum TR lacks any discussion of whether the City of Huntington's 80 dBA construction noise threshold (Item 2, page 5-5) is adequate to maintain an appropriate background or intermittent noise level in classroom buildings. The 2021 California Collaborative for High Performance Schools (CHPS)¹ version 2.0 identifies an interior on-going noise level 40 dBA or less from all noise sources. Typical construction with windows open for ventilation typically reduces sound by 15 dBA.² Thus, the analysis must show that on-going noise from Project construction activities, including increased truck activities off-site would not exceed 55 dBA exterior/40 dBA

¹ 2014 version 1.03 CHPS required 45 dBA. https://chps.net/sites/default/files/file_attach/CA-CHPS_Criteria_2014_V1.03.pdf
https://chps.net/sites/default/files/file_attach/CAv2-requirements-only.pdf

² This is a base assumption of the California Title 24 code which requires multi-family residences to show that the building shell can reduce sound to achieve 45 dBA (Ldn) when the exterior environment exceeds 60 Ldn.

interior at nearby school buildings. With a 28-month construction duration (2022 Addendum page 2-29), the Project would affect at least two academic years and possibly three.

Construction Noise Increase Threshold

As noted in Appendix F (page 2-6), a change (increase) of 10 dBA is perceived as being “twice as loud”. A noise increase of 20 dBA is perceived as being four times as loud. In addition to the absolute noise level of 80 dBA for daytime construction identified as a threshold of significance in the 2022 Addendum Memo (page 5 of 12), a relative noise increase must also be used. Just because these changes are temporary is no reason to discount them as significant per CEQA. We recommend identifying a noise increase exceeding 10 dBA over the existing (average) condition as significant.

Construction Noise Requires Mitigation

Pile Installation

As noted in the Appendix F Memo, the 2010 Draft Addendum mentions the noise from impact pile driving, but the mitigation measures proposed in that document are not specific to reducing impact pile driving noise. The 2022 Addendum assumes that the pile foundation will be auger cast piles (2022 Addendum PDF-GEO-1) which are drilled and cast-in-place and generate less noise and vibration than impact driven piles. The intention to avoid or reduce potentially damaging vibration is identified as part of PDF-NOI-2 (2022 Addendum TF page 1-5), but the motivation to reduce noise is not identified.

The 2022 Addendum uses an absolute threshold for construction noise (80 dBA), and if impact pile driving were used, it would exceed 80 dBA at the nearest noise sensitive use (The Residences at Bella Terra 75 ft away) and generate a significant noise impact. The use of auger cast piles must be codified as a mitigation measure so that any potential changes to the method of pile installation would be subject to review and approval with regard to noise and vibration impact.

Other Construction Noise

Furthermore, the 2022 Addendum TR is not very transparent regarding the noise impact from construction activities at The Residences at Bella Terra. The average construction noise estimates are shown in Table 7-3 of the TR, but a closer examination of the calculations in Appendix B (Table 8) show that the analysis uses the “acoustical average” which was actually the geometric mean: square root[(closest x farthest)]. The 2022 Addendum does not disclose the actual construction noise that would occur for any activities occurring closest to these residences. The table below shows the construction noise levels by phase at the closest distance, a near distance and the “acoustical average”. The combined noise levels combine the construction with the average noise level (61 dBA Leq, identified in Appendix F TR Table 4-1 at the LT1 measurement location)³. Just because noise levels and noise increase are temporary is no reason to discount them as significant per CEQA.

³ These numbers are almost unchanged from the “Project only” values because the Project noise is so much higher.

Table 1 Additional Construction Noise Calculations for The Residences at Bella Terra

Construction Phase	Leq @ 50 ft	Distances (ft)			8-hour Leq - Project only			Combined Noise levels (Average, 61 dBA)			Noise increase above average		
		Closest	Near	"acoustical average"	Closest	Near	"acoustical average"	Closest	Near	"acoustical average"	Closest at 75 ft	Near at 125 ft	"acoustical average" at 192 ft
Demolition	90	75	125	192	86	82	78	86	82	78	25	21	17
Site Preparation	82	75	125	192	78	74	70	79	74	71	18	13	10
Grading and Pile Installation	89	75	125	192	85	81	77	85	81	77	24	20	16
Building Construction	82	75	125	192	78	74	70	79	74	71	18	13	10
Architectural Coating	74	75	125	192	70	66	62	71	67	65	10	6	4
Paving	82	75	125	192	78	74	70	79	74	71	18	13	10

Items in **bold** exceed either Huntington Beach 80 dBA noise limit or 10 dBA over existing average noise level.

Items in **red** are more than 15 dBA higher than the existing average noise level.

Mitigation Measures are Not Properly Identified

The 2022 Addendum identifies several Project Design Features (PDFs). These appear to be specific elements of the project that are intended to avoid any findings of significant impacts and the corresponding mitigation measures. For the most part these PDFs lack any legally binding enforcement or reporting mechanism. This is inadequate because the use of these noise- and vibration-related PDFs fail to satisfy CEQA's requirement that all mitigation measures be legally binding and enforceable.

- PDF-NOI-1: This PDF to limit vibration-generating activities within 12 ft of nearby structures or require a vibration survey and monitoring lacks any direct enforcement or reporting mechanism. *The project must incorporate a mitigation measure that binds the project to this PDF.*
- PDF-NOI-2: This PDF to limit vibration from pile installation identifies the use of auger cast piles instead of driven piles. There is no enforcement or reporting mechanism to ensure this will be implemented during construction. *The project must incorporate a mitigation measure that binds the project to this PDF.*
- PDF-NOI-3: This PDF indicates that the design of the Project shall be reviewed by an acoustical consultant, and includes a requirement that the City will review and approve this report. *The Project must incorporate a mitigation measure that binds the project to this PDF.*
- PDF-NOI-4: This PDF limits the hours of operation of the pool and pool deck and requires the Project operator to enforce these hours. *The Project must incorporate a mitigation measure that binds the project to this PDF and clarifies expectations to document enforcement of these hours.*

Furthermore, the 2022 Addendum Memo makes this statement (page 5 of 12) "Therefore, although some large noise increases are predicted, the resulting noise levels would not exceed the applicable City noise limits for temporary construction activities. As a result, the overall impact of construction noise is determined to be less than significant." **This statement is counter to CEQA guidance.** The CEQA checklist (Appendix G, Item XIII. Noise a.) asks would the project result in (emphasis mine):

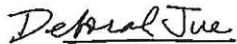
generation of a **substantial temporary** or permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies?

With a 28-month construction duration, these noise increases caused by construction activity that would occur within 192 ft of The Residences at Bella Terra would be substantial and significant, requiring mitigation measures such as sound barriers, buffer distances, etc.

Please feel free to contact me with any questions on this information.

Very truly yours,

WILSON IHRIG



Deborah A. Jue, INCE-USA
Principal

bella terra residential addendum_wilson ihrig_10-17-22.docx

EXHIBIT C



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September 27, 2022

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Re: Comment on Proposed Addendum to Environmental Impact Report No. 21-002, Bella Terra Residential Project, September 27, 2022 Planning Commission Meeting Public Hearing Item No. 1 (File No. 22-747, General Plan Amendment No. 21-001, Zoning Text Amendment No. 21-003, Site Plan Review No. 21-002)

Dear Honorable Planning Commissioners, Mr. Beckman, and Ms. Estanislau:

I am writing on behalf of Supporters Alliance for Environmental Responsibility ("SAFER") regarding the proposed Addendum to the 2008 Final Program Environmental Impact Report ("FPEIR") and the 2010 EIR Addendum (hereinafter, the "2022 Addendum"), prepared for the Bella Terra Residential Project (File No. 22-747, General Plan Amendment No. 21-001, Zoning Text Amendment No. 21-003, Site Plan Review No. 21-002).

The 2022 Addendum for the proposed Project includes all actions related or referring to the proposed demolition of an existing 149,000 square foot Burlington department store and of 30,000 square feet of adjacent retail space, and the proposed construction of a seven-story mixed-use infill project consisting of 300 apartment units, 40,000 square feet of retail and restaurant space, an above-ground three-level podium parking garage with 404 spaces, and associated hardscape and landscape improvements, at 7777 Edinger Avenue in the City of Huntington Beach (the "Project").

After reviewing the 2022 Addendum, we conclude that it fails as an informational document, and that there is a fair argument that the Project may have adverse environmental impacts. Therefore, we request that the City of Huntington Beach (“City”) prepare an environmental impact report (“EIR”) for the Project pursuant to the California Environmental Quality Act (“CEQA”), Public Resources Code section 21000, et seq.

LEGAL STANDARD

The EIR is the very heart of CEQA. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1214 (*Bakersfield Citizens*); *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 927.) The EIR is an “environmental ‘alarm bell’ whose purpose is to alert the public and its responsible officials to environmental changes before they have reached the ecological points of no return.” (*Bakersfield Citizens*, 124 Cal.App.4th at 1220.) The EIR also functions as a “document of accountability,” intended to “demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action.” (*Laurel Heights Improvements Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 392.) The EIR process “protects not only the environment but also informed self-government.” (*Pocket Protectors*, 124 Cal.App.4th at 927.)

CEQA contains a strong presumption in favor of requiring a lead agency to prepare an EIR. This presumption is reflected in the “fair argument” standard, which requires the lead agency to prepare an EIR whenever substantial evidence in the whole record before the agency supports a fair argument that a project may have a significant effect on the environment. (Pub. Res. Code § 21082.2; *Laurel Heights Improvement Ass’n v. Regents of the University of California* (1993) (“*Laurel Heights IP*”) 6 Cal.4th 1112, 1123; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 82; *Quail Botanical Gardens v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602.)

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

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

This ‘fair argument’ standard is very different from the standard normally followed by public agencies in their decision making. Ordinarily, public agencies weigh the evidence in the record and reach a decision based on a preponderance of the evidence. [Citation]. 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.

(Kostka & Zishcke, *Practice Under the California Environmental Quality Act*, §6.37 (2d ed. Cal. CEB 2021).) The Courts have explained that “it is a question of law, not fact, whether a fair argument exists, and the courts owe no deference to the lead agency’s determination. Review is de novo, with a preference for resolving doubts in favor of environmental review.” (*Pocket Protectors*, 124 Cal.App.4th at 928 (emphasis in original).)

LEGAL REVIEW OF CEQA ADDENDUM

The City has prepared an Addendum to a previously certified EIR. In order to be compliant with CEQA, an Addendum must comply with the CEQA Guidelines and with the courts’ prior decisions outlining the circumstances under which an Addendum may be adopted. The Addendum presented today fails to comply with either of these requirements and, if adopted, would directly violate CEQA.

a. The Addendum Involves New Significant Environmental Effects and Violates CEQA

Pursuant to the CEQA Guidelines, an addendum to a previously certified EIR may be prepared only if “none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred.” (CEQA Guidelines § 15164(b).) Notably, CEQA Guidelines § 15162(a) provides that **an addendum to an EIR is not appropriate where:**

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

more significant effects on the environment, but the project proponents decline to adopt the mitigation measure or alternative.

The significant proposed changes presented cannot plausibly be described as “minor technical changes” to the 2008 FPEIR and 2010 Addendum. To the contrary, the 2022 Addendum proposes the addition of 40,449 square feet of commercial space and 300 residential units to the area designated as “Area B.” None of the significant environmental impacts that will result from these newly proposed developments were previously considered. In fact, the proposed construction of 300 units—in addition to the existing 468 units that were constructed as part of development of the Revised Village at Bella Terra/Costco (the “2010 Project”)—would *exceed by 55 units the FPEIR’s approved maximum* of 713 residential units.

These proposed changes make clear that the Project involves **new significant environmental effects** and **new information of substantial importance** that make the use of Addendum here entirely inappropriate.

THE CITY’S INADEQUATE PUBLIC DISCLOSURES FRUSTRATE THE PURPOSE OF CEQA

The courts have made clear that a core tenet of the EIR process is that it “protects not only the environment but also informed self-government.” (*Pocket Protectors*, 124 Cal.App.4th at 927.) Adoption of the 2022 Addendum would violate key principles of informed self-government and legally required disclosures of public records.

As of this writing, the City has not publicly released or made available for public inspection the 2008 FPEIR or the 2010 Addendum. Notably, the City’s Planning Division maintains a dedicated web page including a list of all environmental documents and related approvals prepared for the various stages of the Project.¹ However, none of the published hyperlinks are currently functional, thus impeding the public’s ability to view these important records. At a minimum, the City should republish all prior environmental review documents related to the Project prior to undertaking any further consideration of additional approvals.

CONCLUSION

In conclusion, SAFER believes that the 2022 Addendum fails as an informational document, and that there is a fair argument that the Project may have adverse environmental impacts. Therefore, we request that the City of Huntington Beach (“City”) prepare an environmental impact report (“EIR”) for the Project pursuant to the California Environmental Quality Act (“CEQA”), Public Resources Code section 21000, et seq.

We reserve the right to supplement these comments, including but not limited to at public hearings concerning the Project. *Galante Vineyards v. Monterey Peninsula Water Management Dist.*, 60 Cal. App. 4th 1109, 1121 (1997).

¹ <https://www.huntingtonbeachca.gov/government/departments/planning/major/BTVillage.cfm> (visited on Sept. 27, 2022).

September 27, 2022
Proposed Addendum for the Bella Terra Residential Project
Page 5 of 5

Sincerely,

A handwritten signature in black ink, appearing to read 'Adam Frankel', written in a cursive style.

Adam Frankel
LOZEAU DRURY LLP