



200 & 201 E. Sandpointe  
580 Anton/Legacy Partners  
One & Two MacArthur Place  
3 Hutton Centre  
4 Hutton Centre  
3400 Avenue of the Arts  
Allied Universal Services  
Arnel & Affiliates  
Avenue of the Arts Hotel  
Banc of California  
California Southern University  
Center Club  
Commercial Bank of California  
Costa Mesa Marriott  
Courtyard by Marriott SCM  
Courtyard by Marriott Santa Ana  
Crowne Plaza  
DeFrenza Lee LLP  
DoubleTree Hotel  
DoubleTree Hotel by Hilton  
Equity Office/Griffin Towers  
Essex Skyline  
Experian  
Far West Management  
First American  
Hilton Orange County  
hive & The Press/Steelwave  
LMC A Lennar Company  
Linscott Law & Greenspan Engineers  
Mesa Water District  
Metro Pointe at South Coast  
Metro Town Square  
National University  
Pacific Arts Plaza/Irvine Company  
Park Mesa Villas  
PAYCHEX  
Pinnacle at MacArthur Place  
Residence Inn by Marriott  
Rose Equities  
Rutan & Tucker  
Sakioka Company, LLC  
Securitas Security Services  
Segerstrom Center for the Arts  
Servco Builders  
SPACES Regus  
C. J. Segerstrom & Sons  
South Coast Corporate Center  
South Coast Plaza  
South Coast Repertory  
The Enclave at South Coast  
The LAB/The CAMP  
The MET/McCarthy Cook & Co.  
The REMM Group/Village at S. C.  
The Westin South Coast Plaza  
University of Redlands  
Versailles on the Lake  
Whittier Law School

April 17, 2019

Mr. Minh Thai  
Executive Director Planning & Building Safety  
City of Santa Ana  
P.O. Box 1988, M20  
Santa Ana, CA 92701

Dear Mr. Thai:

Since the inception of South Coast Metro and over the last thirty-five years, we have watched the south Santa Ana area of South Coast Metro grow and continue to evolve.

One of the newest residential communities in the Metro, 580 Anton, was developed by Legacy Partners, and has been very well received. Legacy Partners is dedicated to developing as well as operating contemporary architectural residential communities.

We are particularly excited about the proposed Sunflower Residential Project. This project promises to add much needed housing within proximity and even walking distance to many of the businesses within the South Coast Metro.

It is our understanding that Legacy Partners has worked extensively with city staff and have met all city requirements. The Sunflower Residential Project is good for South Coast Metro and Santa Ana. We are looking forward to seeing this project move forward.

Sincerely,

A handwritten signature in blue ink, appearing to read "Diane Pritchett".

Diane Pritchett  
Executive Director

cc: South Coast Metro Alliance

1631 W. Sunflower Avenue  
Suite C-37  
South Coast Metro, California  
92704-7460  
714.435.2109/714.435.8522 Fax  
alliance@southcoastmetro.com



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[richard@lozeaudrury.com](mailto:richard@lozeaudrury.com)

BY E-MAIL AND OVERNIGHT MAIL

*Via Email and Hand Delivery*

April 19, 2019

Planning Commission  
c/o Selena Kelaher, AICP  
City of Santa Ana  
Planning and Building Agency | M20  
20 Civic Center Plaza  
Santa Ana, CA 92702  
[skelaher@santa-ana.org](mailto:skelaher@santa-ana.org)

Minh Thai, Executive Director  
City of Santa Ana  
Planning and Building Agency | M20  
20 Civic Center Plaza  
Santa Ana, CA 92702  
[mthai@santa-ana.org](mailto:mthai@santa-ana.org)

Raul Godinez, City Manager  
City of Santa Ana  
City Manager's Office  
20 Civic Center Plaza, 8<sup>th</sup> Floor  
Santa Ana, CA 92701  
[rgodinez@santa-ana.org](mailto:rgodinez@santa-ana.org)

Project Manager: Ivan Orozco  
E-mail: [IOrozco@santa-ana.org](mailto:IOrozco@santa-ana.org)  
Project Manager: Ali Pezeshkpour  
E-mail: [APezeshkpour@santa-ana.org](mailto:APezeshkpour@santa-ana.org)

**Re: Comment on Mitigated Negative Declaration for the Legacy Sunflower Project, 651 West Sunflower Avenue, Santa Ana, CA**

Honorable Members of the Planning Commission, Ms. Thai, and Mr. Godinez:

I am writing on behalf of the Supporters' Alliance for Environmental Responsibility ("SAFER"), a California non-profit organization with members living in the Santa Ana area, regarding the Mitigated Negative Declaration for the Legacy Sunflower Project, proposed to be located at 651 West Sunflower Avenue, Santa Ana, California.

The applicant, Legacy Partners, has submitted an application to construct a 226-unit apartment building at 651 West Sunflower Avenue. The 3.59-acre site currently contains an existing 9,875-square foot single story building used as a church and paved parking lot which are proposed for demolition. The applicant is proposing to construct a five-story building apartment building wrapped around a six-story parking structure containing 452 parking spaces. Courtyards, landscaping and various on-site amenities are also proposed. The project will require a general plan amendment and zone change.

The City is proposing to rely on a mitigated negative declaration (MND) for purposes of review under the California Environmental Quality Act ("CEQA").

The City apparently released the MND for public review on or about March 14, 2019, for a public comment period ending on April 8, 2019. The matter is scheduled for consideration by the Planning Commission on April 22, 2019.

Our law firm did not receive notice of the release of the MND, and did not become aware of the MND until it was mentioned in the agenda for the Planning Commission hearing, despite the fact that on August 20, 2018, this law firm filed a written request to the City of Santa Ana ("City") pursuant to CEQA sections 21092.2 and 21167(f), and Government Code section 65092, requesting written notice of all CEQA documents, including mitigated negative declarations. Public Resources Code Sections 21092.2 and 21167(f), and Government Code Section 65092, require agencies to mail such notices to any person who has filed a written request for them with the clerk of the agency's governing body. The City failed to comply with this duty.

Since the City failed to comply with CEQA sections 21092.2, 21167(f) and Government Code section 65092, by failing to provide us with notice of the issuance of the MND for the Sunflower Legacy Project, we request that the City re-open the public comment period for the MND, and continue the Planning Commission hearing until after the completion of the re-opened public comment period. The public comment period should be no less than thirty days. Thank you.

Sincerely,



Richard Drury  
Counsel for SAFER



T 510.836.4200  
F 510.836.4205

410 12th Street, Suite 250  
Oakland, Ca 94607

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[richard@lozeaudrury.com](mailto:richard@lozeaudrury.com)

*Via Email and U.S. Mail*

August 20, 2018

Candida Neal, Planning Manager  
Planning and Building Agency  
City of Santa Ana  
P.O. Box 1988  
Santa Ana, CA 92702  
[cneal@santa-ana.org](mailto:cneal@santa-ana.org)

Maria D. Huizar, City Clerk  
Clerk of the Council Office  
City of Santa Ana  
20 Civic Center Plaza, 8th Floor  
Santa Ana, CA 92702  
[clerk@ci.santa-ana.ca.us](mailto:clerk@ci.santa-ana.ca.us)

**Re: Request for Mailed Notice of CEQA and Land Use Actions and Public Hearings**

Dear Ms. Neal and Ms. Huizar:

I am writing on behalf of the Laborers International Union of North America, Local Union 652 and its members living in the City of Santa Ana ("LiUNA").

We hereby request that the City of Santa Ana ("City") send by electronic mail, if possible or U.S. Mail to our firm at the address below notice of any and all actions or hearings related to activities undertaken, authorized, approved, permitted, licensed, or certified by the City and any of its subdivisions, and/or supported, in whole or in part, through contracts, grants, subsidies, loans or other forms of assistance from the City, including, but not limited to the following:

- Notice of any public hearing in connection with the Project as required by California Planning and Zoning Law pursuant to Government Code Section 65091.
- Any and all notices prepared for the Project pursuant to the California Environmental Quality Act ("CEQA"), including, but not limited to:
  - Notices of any public hearing held pursuant to CEQA.
  - Notices of determination that an Environmental Impact Report ("EIR") is required for a project, prepared pursuant to Public Resources Code Section 21080.4.
  - Notices of any scoping meeting held pursuant to Public Resources Code Section 21083.9.
  - Notices of preparation of an EIR or a negative declaration for a project, prepared pursuant to Public Resources Code Section 21092.
  - Notices of availability of an EIR or a negative declaration for a project, prepared pursuant to Public Resources Code Section 21152 and Section 15087 of Title 14 of the California Code of Regulations.
  - Notices of approval and/or determination to carry out a project, prepared pursuant to Public Resources Code Section 21152 or any other provision of law.

August 20, 2018

Request for Mailed Notice of CEQA and Land Use Actions and Public Hearings in the City of Santa Ana

Page 2 of 2

- Notices of approval or certification of any EIR or negative declaration, prepared pursuant to Public Resources Code Section 21152 or any other provision of law.
- Notices of determination that a project is exempt from CEQA, prepared pursuant to Public Resources Code section 21152 or any other provision of law.
- Notice of any Final EIR prepared pursuant to CEQA.
- Notice of determination, prepared pursuant to Public Resources Code Section 21108 or Section 21152.

Please note that we are requesting notices of CEQA actions and notices of any public hearings to be held under any provision of Title 7 of the California Government Code governing California Planning and Zoning Law. **This request is filed pursuant to Public Resources Code Sections 21092.2 and 21167(f), and Government Code Section 65092**, which requires agencies to mail such notices to any person who has filed a written request for them with the clerk of the agency's governing body.

Please send notice by electronic mail, if possible or U.S. Mail to:

Richard Drury  
Komalpreet Toor  
Lozeau Drury LLP  
410 12<sup>th</sup> Street, Suite 250  
Oakland, CA 94607  
510 836-4200  
[richard@lozeaudrury.com](mailto:richard@lozeaudrury.com)  
[komal@lozeaudrury.com](mailto:komal@lozeaudrury.com)

Please call if you have any questions. Thank you for your attention to this matter.

Sincerely,



Komalpreet Toor  
Legal Assistant  
Lozeau | Drury LLP

April 18, 2019

Mr. Minh Thai  
Executive Director Planning and Building Safety  
City of Santa Ana Planning and Building Agency, M20  
20 Civic Center Plaza , PO Box 1988 ,Santa Ana, CA 92702

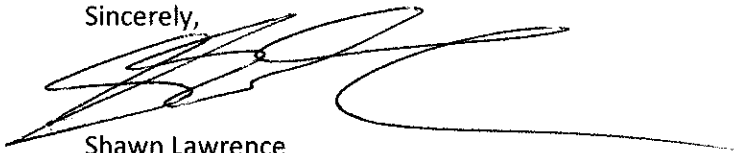
**Re:                Legacy Sunflower Residential Project**

Dear Minh:

My name is Shawn Lawrence and I reside in the Sandpointe Community in the City of Santa Ana. I am unable to attend the planning commission meeting this Monday, April 22, but wanted to write in support of the project.

I believe the new project will be a substantial improvement to the area and help support our property values. Also, I share the same concerns as other neighbors, that existing parking lot of the church and drainage channel invites loitering and illicit activity during the evening hours, which will effectively be eliminated as a result of having new "eyes" and residents living in this community. I've seen the caliber of the building around the corner off of Anton and believe it would be a substantial upgrade to the community.

Sincerely,

A handwritten signature in black ink, appearing to read 'Shawn Lawrence', with a long, sweeping horizontal line extending to the right.

Shawn Lawrence  
117 Murphy Avenue  
Santa Ana, CA 92707

# Lakes Costa Mesa Association

c/o Premier Property Management

25018 Marguerite Parkway #262

Mission Viejo, CA 92692

714-348-0002

[emilybenedick@gmail.com](mailto:emilybenedick@gmail.com)

April 15, 2019

Mr. Minh Thai

Executive Director Planning and Building Safety

City of Santa Ana Planning and Building Agency, M20

20 Civic Center Plaza | PO Box 1988 | Santa Ana, CA 92702

Dear Mr. Thai,

Re: Proposed Sunflower Residential Project  
651 Sunflower Avenue, Santa Ana, CA

On behalf of the Lakes Association, I wanted to take the opportunity to support the proposed Legacy Partner's project.

As you may know the Lakes Association is located caddy corner from the proposed project on the Southwest quadrant of Sunflower Avenue and Sakioka (Flower) Avenue. Legacy Partner's 580 Anton property is part of the Lakes Association and a neighbor to our member properties.

As you can imagine, developing any type of construction project with nearby operating businesses and apartments can be difficult. Legacy Partners did a wonderful job managing this process and communicating with our Association members throughout the project completion.

The final 580 Anton project has exceeded our expectations. The project has been well received and their operating staff is very attentive. The property is a true asset to our Association and the South Coast Metro area.

Based upon the plans that I have seen; I believe that Legacy will continue with their commitment to building timeless high-quality buildings on the Sunflower Project.

Please share this letter with the City Council and Planning Commission members considering this project.

Sincerely,

A handwritten signature in black ink that reads "Emily Benedick". The signature is fluid and cursive, with the first name "Emily" and last name "Benedick" clearly legible.

Emily Benedick

Lakes Costa Mesa Association

cc: Ali Pezeshkpour, AICP  
Senior Planner, Planning Division



15320 Barranca Pkwy, Suite 100  
Irvine, CA 92618  
CA BRE License # 00881503

April 12, 2019

Ali Pezeshkpour, AICP  
City of Santa Ana Planning and Building Agency, M20  
20 Civic Center Plaza | PO Box 1988 | Santa Ana, CA 92702

Dear Ali,

Re: 651 Sunflower Avenue, Santa Ana, CA

Our company owns 242 Apartment units located at 805 W. Stevens Ave. in the City of Santa Ana near Legacy Partner's proposed Sunflower project.

I am writing in support of the project, which is well conceived and will bring much needed jobs, housing and funds to the City of Santa Ana. Legacy Partners has a solid reputation as a developer and manager in the industry which is a plus.

Please relay our support to the City Council and Planning Commission as they consider the merits of the project.

Sincerely,

A handwritten signature in blue ink, appearing to read "PJ". The signature is stylized with a large, sweeping "P" and a more compact "J".

Paul Julian





# Santa Ana Unified School District

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Stefanie P. Phillips, Ed.D.  
Superintendent of Schools

April 18, 2019

Mr. Minh Thai  
Executive Director Planning and Building Safety  
City of Santa Ana Planning and Building Agency, M20  
20 Civic Center Plaza, Santa Ana, CA 92702

**Re: Application for 651 Sunflower Ave.**

Dear Mr. Thai,

On behalf of Santa Ana Unified School District, we would like the Planning Commission and City Council to know that we have worked with the applicant, Legacy Partners, on an improved and enhanced solution to the drop off and pick up area on the current Sound Church site.

We believe the agreement we have reached with them is a better long-term solution than today's condition and support the city approval of this project.

We have already executed a signed agreement with Legacy Partners and support the replacement of The Sound Church building with the proposed quality multi-family project Legacy Partners is proposing.

Sincerely,

A handwritten signature in blue ink, appearing to read "Orin L. Williams", with a stylized flourish at the end.

Orin L. Williams  
Assistant Superintendent  
Facilities & Governmental Relations

---

1601 East Chestnut Avenue, Santa Ana, CA 92701-6322 (714) 558-5501

## BOARD OF EDUCATION

Valerie Amezcua, President • Rigo Rodriguez, Ph.D., Vice President  
Alfonso Alvarez, Ed.D., Clerk • John Palacio, Member

**From:** [Pezeshkpour, Ali](#)  
**To:** [Bernal, Sarah](#)  
**Cc:** [Orozco, Ivan](#)  
**Subject:** FW: 651 West Sunflower Ave. project  
**Date:** Thursday, April 25, 2019 4:11:17 PM  
**Attachments:** [Windows - proposed design\\_email\\_WRONG.png](#)  
[Windows - proposed design\\_email\\_RIGHT.png](#)  
[Windows - proposed design\\_email\\_RIGHT\\_blue.png](#)  
[Windows - proposed design\\_email\\_WRONG\\_X.png](#)  
[Concept 01 - wrong vs right.png](#)  
**Importance:** High

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Another public comment on 651 W. Sunflower for the file and PC.

Ivan, feel free to touch bases with this guy and to relay his idea to the developer to see if they would consider it during Building plan check, if you find it appropriate as case planner.

Thanks,

-Ali

*April 2019 counter availability: 8:00-12:30 on the 2<sup>nd</sup>, 9<sup>th</sup>, 16<sup>th</sup>, and 23<sup>rd</sup>, and 12:30-4:00 on the 12<sup>th</sup> and 30<sup>th</sup>.*

**Ali Pezeshkpour, AICP**

Senior Planner, Planning Division

[apezeshkpour@santa-ana.org](mailto:apezeshkpour@santa-ana.org)

City of Santa Ana Planning and Building Agency, M20

20 Civic Center Plaza | PO Box 1988 | Santa Ana, CA 92702

Phone: (714) 647-5882 | Fax: (714) 973-1461 | [santa-ana.org/pb/planning-division](http://santa-ana.org/pb/planning-division)

---

**From:** Alek [mailto: ]  
**Sent:** Thursday, April 25, 2019 4:03 PM  
**To:** Orozco, Ivan <[iorozco@santa-ana.org](mailto:iorozco@santa-ana.org)>; Pezeshkpour, Ali <[APezeshkpour@santa-ana.org](mailto:APezeshkpour@santa-ana.org)>  
**Subject:** RE: 651 West Sunflower Ave. project  
**Importance:** High


Dear City Representative:


I'm a resident of Los Angeles -- and an occasional visitor to the Santa Ana area. I am a major **supporter** of new mixed-use developments. So, let me thank you for proposing such a great -- and much needed -- project! By examining the proposed project, I am thrilled to see such a great proposed transformation! I am referring to the information, found on Urbanize.LA website:



<https://urbanize.la/post/226-apartments-replace-church-santa-ana>

I would like to offer a suggestion -- in regards to the building design; more specifically, the proposed window design.


\*By the way, I have some background in architecture, urban development, and graphic design -- therefore I am happy to share some of my ideas with you!



Many new buildings across the city seem to have odd-looking windows -- with a strange design; unfortunately, the 651 West Sunflower Ave. development is one of them (according to the latest images from Urbanize LA). The mullion appears to be: the fixed glass panel is located below the operable window:  However, this so-called "Contemporary design" is **architecturally & aesthetically incorrect**, to be honest; it looks like a simply "inverted" version of a traditional mullion. Unfortunately, this design looks extremely awkward and primitive, ruining the entire aesthetics of a new building. It is indeed strange that so many developers are so obsessed with this primitive window mullion!

Another major drawback of this type of windows -- is that the upper vertical "divider" (separating the operable windows) obstructs a clear skyline view from the window, as eloquently mentioned by one of the developers. As a comparison, the traditional pattern's upper fixed horizontal glass panel  provides a clear, unobstructed skyline view.

Therefore, instead of "contemporary" odd-looking windows, the developers should install **this**  traditional type of mullion design - the type that is a standard all across the world, including many of our own U.S. cities. The Design Studio should truly change its standard, and consider to implement this traditional type  on new developments.

Attached please find a drawing -- **current** design (as described above) versus **suggested**.

I'm also attaching a **revised image of the 651 West Sunflower Ave.** development (I took the liberty of photoshopping the windows) -- and applying the improved look of the windows to your original renderings. You can see how much better the building now appears -- once you apply these traditional  types of windows. -- again, see the "**Revised1.jpg**" and "**Revised2.jpg**" attachments.

Therefore, I strongly recommend that the City encourages the developer to **Not** include this "inverted" contemporary design: . Instead, if a developer prefers a simpler type of window, then **this traditional**  type of mullion should be the standard.

Otherwise, I am in full **SUPPORT** of this great project. I specifically love the color design and

abundance of greenery / landscaping, as well as the presence of decorative sidewalks.

Thank you for looking into my suggestions! Please feel free to contact me, should you have any questions and/or concerns.

Please also forward my comments to the architectural and development team(s), as needed.

All the best!

Sincerely,

~ Alek Friedman

*URBAN DEVELOPMENT ADVOCATE,*

*COMPUTER CONSULTANT / GRAPHIC DESIGNER*

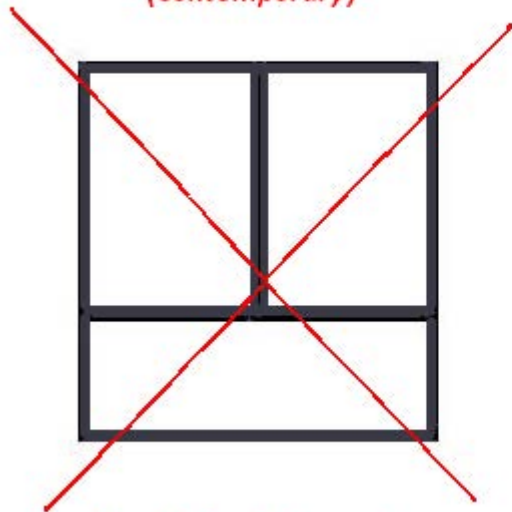
323 - 465 - 8511

Los Angeles, California

***ATTACHMENTS:***

- Revised renderings of the "Legacy Sunflower" development;
- Concepts of window pattern designs

**CURRENT DESIGN:**  
*(Contemporary)*

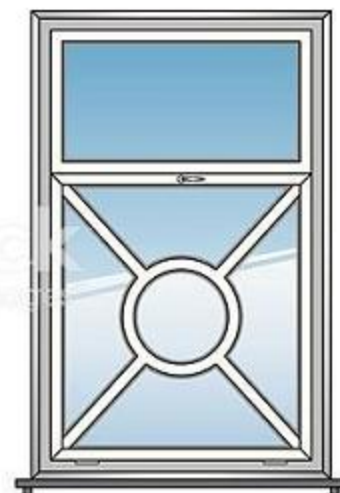
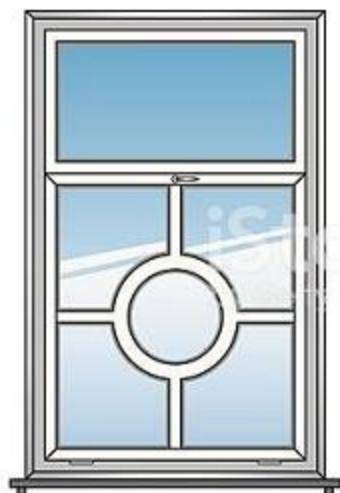


**Aesthetically incorrect**

**SUGGESTED DESIGN:**  
*(Traditional)*



**Aesthetically correct**













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F 510.836.4205

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Oakland, CA 94612

www.lozeaudrury.com  
brian@lozeaudrury.com

May 13, 2019

*By E-mail*

Mark McLoughlin, Chair  
Cynthia Contreras-Leo, Vice Chair  
Felix Rivera  
Eric M. Alderete  
Kenneth Nguyen  
David Benavides  
Angie Cano  
Planning Commission  
City of Santa Ana  
20 Civic Center Plaza  
Santa Ana, CA 92701  
Email: eComments@santa-ana.org.

Ivan Orozco, Project Manager  
Ali Pezeshkpour, Project Manager  
Planning and Building Agency  
City of Santa Ana  
20 Civic Center Plaza  
Santa Ana, CA 92701  
E-mail: IOrozco@santa-ana.org  
APezeshkpour@santa-ana.org

**Re: Comment on the Mitigated Negative Declaration for the Sunflower Legacy Apartments Project.**

Dear Honorable Members of the Santa Ana Planning Commission:

I am writing on behalf the Sustainers Alliance For Environmental Responsibility ("SAFER") concerning the Mitigated Negative Declaration ("MND") for the Sunflower Legacy Apartments Project ("Project") in Santa Ana. After reviewing the MND, we conclude that it fails as an informational document and fails to rely on substantial evidence. Therefore, we request that the City of Santa Ana prepare an Environmental Impact Report ("EIR") for the Project pursuant to the California Environmental Quality Act, Public Resources Code section 21000, et seq.

**I. PROJECT DESCRIPTION**

The Project applicant proposes the development of 226 multi-family apartments on a 3.59-acre site located at 651 Sunflower Avenue. The property is developed with the Sound Church and would be demolished. The Project proposes 226 apartments in a five-story building. A six level parking structure, which includes one level of subterranean parking and five levels above ground, is proposed for the middle of the site along the northern project boundary with a five-story apartment building wrapped around the five level parking structure on three sides.

The Project includes 35 studio apartments, 114 one-bedroom apartments and 77 two-bedroom apartments. The apartment building would be 75 feet in height to the top of roof and the parking structure would be 70 feet in height. The Project proposes 452 parking spaces, including 10 subterranean parking spaces, and handicap spaces. Four bicycle parking spaces are proposed. The Project proposes 57,957 square feet of open space including 22,781 square feet of passive open space, 24,096 square feet of active open space and 11,080 square feet of private open space. A total of 227 storage units are proposed for all five levels in the parking structure, including 20 storage units in the subterranean parking level, for use by the residents.

The Project is scheduled to be constructed in two phases. Project construction would start in the first quarter of 2020 and the first phase completed in October 2021. The second phase is scheduled to be completed in December 2021 or early 2022.

## II. LEGAL STANDARD

As the California Supreme Court held, “[i]f no EIR has been prepared for a nonexempt project, but substantial evidence in the record supports a fair argument that the project may result in significant adverse impacts, the proper remedy is to order preparation of an EIR.” (*Communities for a Better Env’t v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 319-320 [“*CBE v. SCAQMD*”], citing, *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 88; *Brentwood Assn. for No Drilling, Inc. v. City of Los Angeles* (1982) 134 Cal.App.3d 491, 504–505.) “Significant environmental effect” is defined very broadly as “a substantial or potentially substantial adverse change in the environment.” (Pub. Res. Code [“PRC”] § 21068; *see also* 14 CCR § 15382.) An effect on the environment need not be “momentous” to meet the CEQA test for significance; it is enough that the impacts are “not trivial.” (*No Oil, Inc., supra*, 13 Cal.3d at 83.) “The ‘foremost principle’ in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.” (*Communities for a Better Env’t v. Cal. Resources Agency* (2002) 103 Cal.App.4th 98, 109 [“*CBE v. CRA*”].)

The EIR is the very heart of CEQA. (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1214; *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 University of California* (1988) 47 Cal.3d 376, 392.) The EIR process “protects not only the environment but also informed self-government.” (*Pocket Protectors*, 124 Cal.App.4th at 927.)

An EIR is required if “there is substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment.” (PRC § 21080(d); *see also Pocket Protectors*, 124 Cal.App.4th at 927.) In very limited circumstances, an agency may avoid preparing an EIR by issuing a negative declaration, a written statement

briefly indicating that a project will have no significant impact thus requiring no EIR (14 Cal. Code Regs. § 15371), only if there is not even a “fair argument” that the project will have a significant environmental effect. (PRC, §§ 21100, 21064.) Since “[t]he adoption of a negative declaration . . . has a terminal effect on the environmental review process,” by allowing the agency “to dispense with the duty [to prepare an EIR],” negative declarations are allowed only in cases where “the proposed project will not affect the environment at all.” (*Citizens of Lake Murray v. San Diego* (1989) 129 Cal.App.3d 436, 440.)

Where an initial study shows that the project may have a significant effect on the environment, a mitigated negative declaration may be appropriate. However, a mitigated negative declaration is proper *only* if the project revisions would avoid or mitigate the potentially significant effects identified in the initial study “to a point where clearly no significant effect on the environment would occur, and . . . there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant effect on the environment.” (Public Resources Code §§ 21064.5 and 21080(c)(2); *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 331.) In that context, “may” means a *reasonable possibility* of a significant effect on the environment. (Pub. Resources Code, §§ 21082.2(a), 21100, 21151(a); *Pocket Protectors, supra*, 124 Cal.App.4th at 927; *League for Protection of Oakland's etc. Historic Resources v. City of Oakland* (1997) 52 Cal.App.4th 896, 904–905.)

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, 150-15; *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602.) The “fair argument” standard creates a “low threshold” favoring environmental review through an EIR rather than through issuance of negative declarations or notices of exemption from CEQA. (*Pocket Protectors*, 124 Cal.App.4th at 928.)

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

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

(Kostka & Zishcke, *Practice Under CEQA*, §6.29, pp. 273-274.) The Courts have explained that “it is a question of law, not fact, whether a fair argument exists, and the courts owe no deference to the lead agency’s determination. Review is de novo, with a **preference for resolving doubts**

**in favor of environmental review.”** (*Pocket Protectors*, 124 Cal.App.4th at 928 [emphasis in original].)

### **III. DISCUSSION**

#### **A. The MND Fails to Disclose, Analyze, and Mitigate Potentially Significant Impacts of the Project due to Hazardous Materials.**

The MND states that “[t]here is the potential for asbestos containing materials (ACMs) and/or lead based paint to be present” yet also admits that “[a]sbestos and lead based paint surveys were not included in the Phase I ESA.” (MND, p. 56.) The omission of such surveys fails to satisfy CEQA’s requirement to “demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action.” (*Laurel Heights*, 47 Cal.3d at p. 392.) Instead, the City impermissibly defers further analysis of asbestos and lead paint until the Project applies for demolition permits. “A study conducted after approval of a project will inevitably have a diminished influence on decisionmaking. Even if the study is subject to administrative approval, it is analogous to the sort of post hoc rationalization of agency actions that has been repeatedly condemned in decisions construing CEQA.” (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 307.) The City must conduct surveys to determine whether asbestos or lead paint are present on the Project site and disclose such findings to the public prior to approving the Project.

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

The MND concludes that the health risk posed to nearby sensitive receptors from exposure to toxic air contaminant (“TAC”) emissions and diesel particulate matter (“DPM”) from the Project would be less than significant. (MND, p. 43-45). However, no effort is made to justify this conclusion with a quantitative health risk assessment (“HRA”). The MND’s back-of-the-envelope approach to evaluating a Project’s health impacts to existing nearby residences is inconsistent with the approach recommended by the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the California Air Pollution Control Officers Association (“CAPCOA”).

OEHHA guidance makes clear that all short-term projects lasting at least two months be evaluated for cancer risks to nearby sensitive receptors. OEHHA also recommends a health risk assessment of a project’s operational emissions for projects that will be in place for more than 6 months. Projects lasting more than 6 months should be evaluated for the duration of the project, and an exposure duration of 30 years be used to estimate individual cancer risk for the maximally exposed individual resident. The Project would last at least 30 years and certainly much longer than six months. The construction phase alone is expected to last over 24 months – more than four time longer than the OEHHA threshold of 6 months.

In order for the MND to be reasonable under CEQA, the MND’s assertions regarding the Project’s health impacts on nearby residences must be substantiated with a health risk

assessment. Based on all of the guidance available from the expert agencies, a health risk assessment must be prepared for the Project.

**D. The MND Fails to Disclose, Analyze, and Mitigate Potential Adverse Impacts of the Project on Indoor Air Quality.**

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

The residential buildings may have significant impacts on air quality and health risks by emitting cancer-causing levels of formaldehyde into the air that may expose workers and residents to cancer risks in excess of SCAQMD's threshold of significance. A 2018 study by Chan et al. (attached as Exhibit B) measured formaldehyde levels in new structures constructed after the 2009 CARB rules went into effect. Even though new buildings conforming to CARB's ATCM had a 30% lower median indoor formaldehyde concentration and cancer risk than buildings built prior to the enactment of the ATCM, the levels of formaldehyde may still pose cancer risks greater than 100 in a million, well above the 10 in one million significance threshold established by the SCAQMD.

Based on published studies, and assuming all the Project's and the residential building materials will be compliant with the California Air Resources Board's formaldehyde airborne toxics control measure, future residents and employees using the Project may be exposed to a cancer risk from formaldehyde greater than the SCAQMD's CEQA significance threshold for airborne cancer risk of 10 per million.

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

an EIR which calculates the health risks that the formaldehyde emissions may have on future residents and workers and identifies appropriate mitigation measures.

#### **IV. CONCLUSION**

For the foregoing reasons, SAFER urges the City to prepare and circulate an EIR to properly disclose, analyze, and mitigate the Project's significant impacts. Thank you for your attention to these comments. Please include this letter in the record of proceedings for this project.

Sincerely,



Brian Flynn  
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## Dale Helvig

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May 13, 2019

Chairman McLoughlin and Planning Commissioners

City of Santa Ana

Santa Ana CA 92702

Just a quick note to voice my objection to the size and number of parking spaces provided at 651 West Sunflower. The Legacy Partners, LLC is proposing a 63 DUA project next to residential with the equivalent of 2.0 parking spaces per unit or 452 spaces. This is far short of the 661 required by Santa Ana Municipal Code (SAMC 41-1322). This project should be reduced in size or it should provide the required parking in accordance with the SAMC.

### Santa Ana Code of Ordinance:

#### Sec. 41-1322. - Multiple-family dwellings.



- |                  |   |
|------------------|---|
| <b>226 Spots</b> | (a) The minimum off-street parking requirements for each dwelling unit in multiple-family dwellings are as follows: one (1) space in a garage or carport.   |
| <b>303 Spots</b> | (b) Each multiple-family dwelling site shall provide off-street parking spaces, in addition to the minimum requirements of subsection (a) of this section, in an amount not less than the number of bedrooms on the site. Such spaces may be open or covered and may be assigned to particular units or not so assigned. Bachelor units shall be considered as one-bedroom units. |
| <b>132 Spots</b> | (c) In addition to the minimum requirements of subsections (a) and (b) of this section, each multiple-family dwelling site shall provide guest parking, identified as such, in an amount of spaces not less than twenty-five (25) per cent of the minimum required spaces under subsections (a) and (b) of this section, but in no case less than three (3) spaces.               |
| <b>Total 661</b> |   |

(Ord. No. NS-2087, § 1, 10-1-90; Ord. No. NS-2091, § 1, 11-19-90; Ord. No. NS-2340, § 10, 12-15-97)

Respectfully,

Dale A Helvig

Chairman, North Santa Ana Preservation Association (NSAPA)

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