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December 31, 2018

Sent via Email

Robert Garcia, Senior Planner
City of Orange, Community Development Department
Planning Division
rgarcia@cityoforange.org

Re: Trails at Santiago Creek Recirculated Draft Environmental Impact Report

Dear Mr. Garcia:

This law firm represents the **Southwest Regional Council of Carpenters** (Southwest Carpenters) in relation to the above-referenced project and submits this letter on its behalf.

Southwest Carpenters represents 50,000 union carpenters in six states, including in Southern California, and has a strong interest in ensuring well-ordered land-use planning and reducing the environmental impacts of development projects, such as the Trails at Santiago Creek Project (Project). In the Recirculated Draft Environmental Impact Report (DEIR), the City of Orange (City) determined the unmitigated Project would have a significant effect on several aspects of the environment.

The City describes the Project as constructing 128 single-family houses on individual lots across 40.7 acres on land currently zoned exclusively for sand and gravel operations, in addition to 40.2 acres of "Greenway/Santiago Creek" and 28.3 acres of Grasslands/Open Space. The City also describes the Project as including the construction of trails of undisclosed number, total mileage, and configuration, on-site and off-site public infrastructure, grading, and potential installation of off-site sound walls. The City describes the Project as including the following approvals:

- A General Plan Amendment to Change the City of Orange General Plan Designation for the site from Resource Area to Low Density Residential and Open Space; and from Low Density Residential to Open Space;
- A Zone Change to re-designate the site designation from Sand and Gravel and Single Family Residential to Specific Plan;
- Development Agreement
- Adoption of the Trails at Santiago Creek Specific Plan.

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Southwest Carpenters presents its comments of the DEIR, below, and looks forward to reviewing the City's responses to these comments when it releases the FEIR or a new Recirculated Draft Environmental Impact Report for the Project.

1
CONT

Project Description

The DEIR does not provide a sufficiently detailed Project Description, such that commenters could understand all relevant features and potential impacts of the Project. Please revise the Project Description to include answers to the below questions.

2

While the City claims nearly 70 acres of the Project site will be preserved in some form of open space, it does not disclose whether all relevant parcels will be deed restricted to remain perpetually as open space. Please disclose whether the relevant Project parcels will be preserved as open space through a conservation easement or equivalently protective deed restriction.

The City discloses it entered into a "pre-development agreement" with the Project applicant. (DEIR¹, p. ES-3.) This pre-development agreement states the Project would require certain approvals the City does not reference in the Project Description, including a Major Site Plan Review and Design Review. (ES-3.) Please clarify whether the Project will require these or other additional approvals. If the Project will not require these additional approvals, please explain why these approvals will not be required.

3

The City states the Project will require approximately 877,000 cubic yards of imported fill and 500,000 cubic yards of exported contaminated soils. (2-62.) Please clarify whether the City considers these activities as part of the Project, as opposed to mitigation required to reduce Project impacts. If the City claims these are Project features and does not evaluate these activities as mitigation, the City has erroneously compressed its analysis of impacts and mitigation. Also, the City does not fully describe the scope of the on-site grading activities. However, the City's maps showing the location of proposed grading indicate all land south of the creek will be graded, although only about one-third of Project land is slated for development as single-family housing. (3.4-8.) Please further clarify the extent of Project grading and explain why the Project will require grading in areas not slated to include single-family housing. Finally, please disclose whether the Project will require a grading permit and, if so, what type.

4

The City does not clarify how many miles of trails will be built, the configuration and number of these trails, or whether these trails will be open or closed to the public. (6.4-51.) Further, the City does not state whether the Project will remove existing access to the Santiago

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¹ Unless otherwise indicated, all references are to the Project DEIR.

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Creek Trail. It is not possible to understand the environmental impacts of the Project absent this information. Please clarify this in the City's next environmental document for the Project.

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CONT

It is unclear how many acres of sensitive habitat will be disturbed and permanently lost due to the Project, only that the Project will provide mitigation for this lost land. (ES-24.) Please provide a summary of the total impacted and permanently lost acres, including any lost wetlands and protected species' habitat, so that members of the public can understand the impacts of the Project.

6

The City provides a list of measures on pages ES-5 and ES-6 of the DEIR. However, it is unclear whether the City presents these as a part of the Project or mitigation measures. It is also unclear whether the City intends to make these binding as mitigation on the Project. If the City claims these are Project features and not mitigation measures and has analyzed the Project in the DEIR as though the Project included these features, this has skewed the City's analysis of the impacts of the Project, as well as required mitigation. Please clarify this in the City's next environmental review document for the Project.

7

The City hints that a variety of federal and state approvals will also be necessary prior to Project implementation. In the Project Description, please list all approvals that must occur.

8

Finally, on a related topic, it is noteworthy that the City Council rejected the previously proposed Rio Santiago project. (2-35.) However, in the DEIR, the City does not disclose the reasons for Project denial. If Project denial was premised on the environmental impacts of that project, this information would be highly relevant to the City's review of the Project. Please disclose all relevant reasons for the City Council's denial of the Rio Santiago project. If these reasons involve environmental concerns, please disclose whether the Project involves the same or similar environmental concerns, and, if so, whether the Project addresses any of the concerns that caused the denial of the Rio Santiago project.

9

Baseline

Apart from the City's evaluation of traffic impacts, it appears to have evaluated baseline conditions as though there was year-round rock crushing activity, equating to 686 daily trips, 500 of which are "truck" trips. (2-55 – 2-56.) However, baseline conditions only include 30, as opposed to 365, days of rock crushing trips each year. Thus, the City's analysis appears to skew the Project baseline in a manner that downplays Project impacts. Please revise the DEIR to properly disclose baseline conditions and evaluate Project impacts according to this corrected baseline.

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Aesthetics

The City states the Project will not affect views from Santiago Creek Trail. (3.1-8.) However, the City provides no evidence to support this conclusion, and images the City has provided from this trail show only partially obstructed views from this trail. Absent evidence, such as graphic representations of the Project site from the trail, the City's conclusion is not supported by substantial evidence. Further, the City's conclusion relies on Project features that do not constitute baseline conditions: "A greenway would be established along the creek corridor and the undeveloped land along the north bank of the creek would be permanently established as open space." (3.1-8.) Even incorporating these assumptions, the City has still failed to support its conclusion that "scenic views from the Santiago Creek Trail *would not be affected* by the project." (3.1-8.) Please revise this analysis and mitigate Project impacts to these views as needed.

11

The City references its Tree Protection Ordinance but does not disclose whether the loss of trees protected by this ordinance may result in a significant aesthetic impacts. (3.1-7.) Please evaluate these aesthetic impacts.

12

The City does not provide sufficient reasoning to determine other City Code provisions do not apply to the Project. The City summarily states:

Other areas of the Code related to aesthetics are not applicable to the proposed project because of the Planning Community (PC) zoning allows for the Specific Plan (SP) to create its own design standards.

(3.1-7.) This analysis is putting the cart before the horse. The City must describe impacts from *baseline* conditions, not from hypothetical "approved Project" conditions. The City's analysis must be revised to include a discussion of impacts that may be created by the Specific Plan adoption, in reference to pre-adoption conditions. The City must disclose these "other areas of the code related to aesthetics" and openly evaluate whether these other code provisions apply to the Project, and whether the Project will result in significant impacts in relation to these code provisions.

13

The City concedes "development of residences on site would change the character of approximately 40.7 acres of the project to residential uses," but then summarily concludes "these changes would not result in a significant impact." (3.1-9.) The City must provide more than conclusory statements to provide a valid analysis of Project impacts. Further, contrary to the City's statement, all evidence shows the development of undeveloped land, including open

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space, into 128 residences *would* impact views, both from Santiago Creek and East Santiago Canyon Road.

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Air Quality

The City's evaluation of cumulative air quality impacts is invalid. The City states:

The AQMD has published a report on how to address cumulative impacts from air pollution: White Paper on Potential Control Strategies to Address Cumulative Impacts from Air Pollution. In this report, the AQMD clearly states (page D-3):

The AQMD uses the same significance thresholds for project specific and cumulative impacts for all environmental topics analyzed in an Environmental Assessment or EIR . . . Projects that exceed the project-specific significance thresholds are considered by the SCAQMD to be cumulatively considerable. This is the reason project-specific and cumulative significance thresholds are the same. Conversely, projects that do not exceed the project-specific thresholds are generally not considered to be cumulatively significant."

15

(3.3-25 -- 3.3-26.) The Southern California Air Quality Management District (SCAQMD) has never promulgated such a significance threshold, and if it or any other lead agency were to rely on such a threshold, this would violate the clear mandate of CEQA to evaluate the cumulative impacts of the Project.

CEQA defines "cumulative impacts" as "two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts." (14 Cal. Code Regs. § 15355.) Crucially, "Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time." (14 Cal. Code Regs. §15355(b).) Indeed, the primary purpose of the cumulative impacts analysis is to evaluate impacts that are individually less than significant but are cumulatively significant when considering these impacts in conjunction with "other past, present, and reasonably foreseeable future projects." (14 Cal. Code Regs. § 15355.) An interpretation of this mandate that only requires the City to consider impacts that are individually significant violates this mandate and serves to entirely write this analysis out of CEQA. (4-3.) This faulty reasoning caused the City to determine the Project would have no cumulative air quality impacts, even for criteria pollutants the City claims the Southern California Air Basin (SCAB) is in non-attainment. Please revise this analysis to be consistent with the requirements of CEQA.

16

The City concludes only NO_x emissions are significant prior to mitigation. (3.3-28.) However, the vast majority of the City's mitigation is directed at reducing PM₁₀ emissions.

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Please provide further justification for the City's claim that the proposed mitigation would reduce Project NO_x impacts. Regarding the City's determination that Project impacts will be significant and unavoidable, please clarify this determination was only made in regard to NO_x emissions. (See 3.3-39.)

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The City's mitigation measure AIR-1g permits use of non-Tier IV Final off-road equipment. (3.3-33.) However, the City's evaluation of post-mitigation Project impacts assumes the Project will exclusively employ Tier-IV-Final vehicles. (E.g., 3.3-47 (Table 3.3-18).) This assumption is unsupported by the clear language of the mitigation measure, which permits more pollutive engines. Please revise the analysis of post-mitigation impacts to evaluate whether Project impacts will be less than significant using other lower-tier engine vehicles.

18

The City did not disclose the number of daily truck trips the Project would create, or whether it would be feasible to reduce the number of daily truck trips. The City only states the Project would generate 275,400 haul trips. It is unclear whether the City adequately evaluated air quality impacts during the construction of the Project. Also, it is unclear whether the City used the proper baseline of 30 days of rock-crushing trips per year. The evaluation of Project impacts would differ greatly using the other baseline suggested by the City of year-round rock-crushing activities. Please disclose the baseline the City used to determine the significance of Project impacts.

19

More information is necessary to understand the impacts of the Project. Tables 3.3-8 and 3.3-9 provide no reference to whether impacts to ozone will be significant. Further, Table 3.3-10, does not disclose the number of daily trips or trip lengths the City relies on to arrive at these calculations. Finally, for Table 3.3-1, please clarify whether 2017 and 2018 figures are available. If these figures are available, please update this table to include this data.

20

The Air Quality and Greenhouse Gas Appendix is confusing. Throughout the Appendix, the Appendix sets all hauling values, including trips, vehicle-miles traveled, and unmitigated off-site construction emissions, to zero. This implies the City assumed there would be no hauling trips in its determination of Project impacts. If so, then the City's analysis of Project impacts has greatly understated Project construction impacts. Please further explain the City's analysis regarding Project-related hauling trips.

21

The City's Localized Significance Threshold (LST) operational impacts analysis seems flawed. The City assumes Project operation would only impact five acres of the Project site during project operation, but no evidence supports such a small acreage of the Project would be utilized during operation. Rather, the City states up to 50 acres of the Project site would likely be used daily for residential purposes. (3.3-43.) Further, the City's discussion of Project impacts

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seems to entirely ignore mobile emissions, which is the largest source of Project emissions, by far. (3.3-47.) Please revise this discussion to correct these erroneous assumptions and analysis.

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Biological Resources

The City must better disclose baseline conditions on the Project site. For instance, while the City discloses the Project has the potential to impact least Bell's vireo and California coastal gnatcatcher (3.4-15 – 3.4-16.), it only belatedly references other species that have been spotted on-site, such as the white-tailed kite and prairie falcon. (3.4-38, 3.4-40.) These references are buried towards the end of the City's discussion of impacts to biological resources and fail to provide any in-depth analysis of these species, such as where individuals were spotted, how many, and when. Further, aside from least Bell's vireo habitat, the City fails to disclose the acreage of potential foraging, dispersing, breeding, etc., habitat that exists on-site for any other species. Instead, contrary to the unusually high number of protected species sightings, the City seems to repeatedly dismisses the Project site as having no suitable habitat for these other species. This conclusion is contrary to the repeated and numerous sightings of these other protected species on the Project site.

23

It is also unclear whether the City's biological surveying was sufficient to identify the presence or absence of all protected species. The DEIR does not clarify whether the City conducted thorough surveys or evaluated habitat suitability for all migratory bird species that have the potential to occur in the region and on-site. Please provide a list of all protected species that have the potential to occur in the region and on-site and identify which of the species on this list were seen onsite, are likely to occur onsite, or have suitable habitat onsite. Please revise the discussion of baseline Project site conditions to ensure greater accuracy and clarity.

24

The City does not provide sufficient evidence to support a finding that its proposed mitigation will significantly reduce impacts to protected species. (E.g., ES-22.) For instance, no mitigation measures are designed to limit noise during the operation of the Project, or to restrict operational use to avoid individuals of protected species, their habitat, or nesting sites. Further, while the City relies on City ordinances to claim lighting and other noise impacts will be reduced to a less-than-significant level, the City produces no evidence whatsoever that these ordinances were designed to protect wildlife, or that reducing noise and lighting impacts to a less-than-significant level for human purposes would provide equally less-than-significant impacts for wildlife. (E.g., 3.4-46, 3.4-58.) For lighting-related impacts, please direct readers to the relevant code section that would require this lighting to "be shielded away from Santiago Creek." (3.4-58.) Most lighting ordinances do not regulate onsite exposure to lighting and only concern themselves with impacts to offsite receptors. Absent binding mitigation, it is unlikely the Project will be required to direct lighting away from the creek.

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In fact, the City's mitigation measures presume take of endangered species, which, if unauthorized, is illegal and a significant impact by any measure. For instance, MM-BIO 2c only becomes effective *after* activities result in the take of least Bell's vireo, not before. Once unauthorized take has occurred, actions to reduce the likelihood of future take do not serve to reverse or mitigate the significant impact that has already occurred. While the adaptive management promoted by this and other mitigation measures may be productive, it does not support a less-than-significant finding.

25
CONT

The City's analysis regarding impacts to the California coastal gnatcatcher are deeply concerning. Although several individuals were seen onsite, even in more disturbed areas where they are more easily spotted, the City suggests impacts to this species will be less than significant although no mitigation is directed at reducing impacts to gnatcatcher populations. (3.4-15.) Although the City attempts to downplay the suitability of Project habitat, Southwest Carpenters is aware of no other project site that has had such a high number of gnatcatcher sightings, all of which the City somehow describes as "incidental." The City attempts to downplay the significance of this habitat by describing it as temporary "dispersing" habitat but fails to provide an explanation as to why this sort of habitat is not crucial to the continued survival of the gnatcatcher, such that its loss would result in a significant impact. Indeed, the City suggests that only impacts to "critical" habitat would be significant. (3.4-40.) The Endangered Species Act does not provide such a narrow definition of habitat impacts, nor does it distinguish between the value of temporary versus permanent habitat, as both are crucial for species survival. Further, the City fails to evaluate the suitability of the riparian areas of the Project site to serve as gnatcatcher habitat. In short, there is clear evidence the Project site has significant habitat value for this species, such that its loss or disturbance may affect this species' dispersal, foraging, and, possibly, nesting habitat. Please provide a more detailed analysis of gnatcatcher impacts.

26

The City determines no significant impacts would occur to the willow flycatcher. (3.4-44.) The City does not clearly state whether willow flycatchers are a protected species, such that impacts to this species and its habitat could result in significant impacts. The willow flycatcher is a migratory species and is, thus, protected under the Migratory Bird Treaty Act. The City does not state in its analysis of impacts to this species how the Project would avoid the take of this species. And, while the City claims flycatchers are not expected to breed within the offsite area, the City provides no evidence that the Project site contains no suitable nesting habitat for this species. Absent evidence that the Project will avoid the take of this species, which the City has yet to provide, the City cannot determine that impacts to this species will be less than significant and require no mitigation.

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The DEIR provides no discussion of impacts related to edge effects, although Project construction and operation will both reduce the total acreage of undeveloped buffer on the Project site, placing both construction and operational uses directly against the creek. (E.g., Exhibit 3.4-8.) According to DEIR maps, grading will occur directly adjacent to, and possibly within, the creek, including directly adjacent to areas the City has identified as least Bell's vireo habitat. (Exhibit 3.4-8.) The City must evaluate impacts to protected species in light of this lack of buffer, as well as the temporary and permanent edge effects caused by the Project.

28

The City concludes, without evidence, that the total loss of 100 southern tarplant individuals and their habitat would not result in significant impacts to this species. (3.4-34.) The City arrives at this conclusion by stating that the loss of 100 individuals is *per se* less than significant; however, the City provides no standard or significance threshold to support this conclusion. This conclusion, thus, appears arbitrary. Please clarify at what point the City would consider impacts to this species to be significant. Absent the City's adoption of a standardized threshold, impacts that result in the loss of any number of tarplant individuals or their habitat should be considered significant.

29

The City does not clearly state whether there will be any enforceable restrictions to dog or cat ownership within the Project site. Dogs and cats pose an existential threat to the continued existence of many protected species, including the California coastal gnatcatcher and least Bell's vireo. To prevent impacts to these species, the City should clarify whether dog and cat ownership will be prohibited, or whether dogs and cats must be kept inside at all times. Further, the City should clarify whether there will be an enforceable prohibition against dog walking within Project open space and along Project trails.

30

Regarding impacts to the prairie falcon, the City suggests only direct impacts to this species would be considered significant. (3.4-40.) Please clarify whether the city only considers direct impacts to this species to be significant. If so, please state why this is so and under what standard.

31

The City appears to improperly compress its evaluation of impacts and mitigation in its evaluation of biological resources. The City lists a series of nine measures, which it describes as "project design features," which "serve to avoid or minimize impacts to least Bell's vireo." (3.4-43, 3.4-58.) These are mitigation measures. By portraying mitigation measures as Project design features, the City has compressed its discussion of Project impacts and mitigation and, thus, failed to accurately describe Project impacts. Further, because these items are listed as "project design features," it is unclear whether these measures will be enforceable as opposed to optional. Further, even assuming Project compliance with these features, what evidence is there that compliance with these measures will avoid unauthorized take of protected species?

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Regarding mitigation measure MM BIO-2a, please clarify what the City means by “occupied” habitat when it says, “the following BMPs will ensure that indirect impacts will not occur to the least Bell’s vireo within 300 feet of occupied habitat.” (3.4-46.) Specifically, does this mean this mitigation measure is only aimed to protect habitat a biologist determines least Bell’s vireo individuals are currently using? The mitigation measure does not seem to be narrowly aimed to impacts to occupied habitat, nor should it be. Please remove reference in this mitigation measure to “occupied” habitat, accordingly. Further, while this mitigation measure references monitoring by a certified biologist, this mitigation measure does not explicitly require full-time biological monitoring. Please revise this mitigation measure to ensure there will be a full-time, qualified biological monitor onsite. Please further clarify whether this monitor will be required to report the take of any individuals of protected species.

33

The City advances constraining Project construction activities to daylight hours as mitigation but provides no evidence that this will actually reduce impacts to species the City has identified onsite. (3.4-46.) Species surveys conducted by the City were presumably only conducted during the day, and these surveys showed there was an abundance of activity during daylight hours. While some species are nocturnal, the species the City has identified as occurring onsite are not. Thus, restraining construction to only occur during the day serves to worsen, rather than decrease, Project impacts.

34

MM Bio-2a directly conflicts with other mitigation measures designed to reduce noise impacts on human sensitive receptors. This mitigation measure requires construction equipment to be sited “so that emitted noise is directed away from sensitive receptors (i.e., least Bell’s vireo territory within Santiago Creek).” (3.4-46.) However, this conflicts with mitigation measures designed to reduce impacts to human sensitive receptors, which require that this equipment be sited so that noise is directed away from these receptors. Please ensure all noise-related mitigation measures are consistent and provide the greatest possible mitigation to all sensitive receptors.

35

The City does not provide sufficient discussion regarding impacts to trees protected under the City’s Tree Preservation Ordinance. What evidence is there that impacts to trees protected under the ordinance will not result in a significant impact prior to mitigation? The DEIR states, “The Tree Preservation Ordinance . . . affords City staff discretion in imposing conditions on tree removal activities and replanting.” (3.4-61.) Because this ordinance provides City staff wide discretion, to rely on this ordinance, the City must disclose what conditions it will place on the Project and impose these conditions as Project mitigation.

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The City's evaluation of cumulative impacts to biological resources is flawed. The City concludes the Project cannot have cumulatively significant impacts on biological resources so long as individual impacts remain less than significant. (4-4.) This analysis fails CEQA's mandate to consider cumulative impacts. (14 Cal. Code Regs. § 15355.)

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Cultural Resources

The third sentence in Mitigation Measure CUL-2 is incomplete. (3.5-23.) This sentence reads, "If the find is determined to have archaeological or paleontological [*word or words missing*], the procedures in Mitigation Measure CUL-1 or Mitigation Measure CUL-3 shall be implemented." (3.5-23.) Please revise this mitigation measure to ensure it forms a coherent mandate.

38

Mitigation Measure CUL-3 is concerning and highlights an important deficiency in the Project Description. This mitigation measure is triggered, "*If* the subsurface excavations for this project are proposed to exceed depths of 15 feet below the surface . . ." (3.5-24.) The City must disclose whether Project excavation will reach this depth.

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Geology and Soils

The City fails to provide an adequate baseline of conditions at the Project site and impacts of the Project. The City states, "At the time of this writing, a design-level geotechnical report for the Project not available. Such a report would provide recommendations on the appropriate level of soil engineering and building design necessary to minimize ground-shaking hazards." (3.6-8.) Again, regarding potential impacts arising from liquefaction, the City states, "because of the proposed project's location to Santiago Creek, the potential for liquefaction should be further explored and addressed during a design-level geotechnical exploration." (3.6-8.) Instead of disclosing this information up front in the EIR, as required by CEQA, the City requires the Project applicant to submit this report at some later date, relying on this as-yet finalized report to conclude impacts under Significance Threshold GEO-1 would be less than significant. (3.6-8 – 3.6-9.)

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The City has clearly failed to adequately disclose, address, or mitigate Project-related geological hazard impacts. The City should prepare and finalize the design-level geotechnical report it repeatedly references and disclose this information in a recirculated DEIR. As the City's discussion of geological impacts currently reads, the City has provided insufficient information regarding the impacts of the Project to geology and soils.

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Greenhouse Gases

The City provides insufficient evidence to show Project greenhouse gas impacts would be less than significant. In its discussion of greenhouse gas impacts, the City relies heavily on the analysis contained in Appendix F. However, Appendix F contains little to no discussion of greenhouse gas impacts. Instead, this appendix, itself, references what it calls appendices A and B, neither of which contain information relevant to the City's greenhouse gas analysis. (See Appendix F, p. 337.) It is impossible to understand what information the City used to arrive at its calculations of greenhouse gas emissions based on the tables provided in Appendix F. Further, these tables do not contain the same figures as those in the DEIR. The overall result of this discussion is confusing and uninformative.

42

Please clarify what baseline the City used to estimate project-related greenhouse gas impacts. Specifically, if the City assumed baseline rock-crushing traffic would occur year-round, this is not the correct baseline. Further, if the City assumes no hauling trips for the duration of Project construction, this assumption is contradicted by the clear evidence in the record that hundreds of thousands of hauling trips will occur over the duration of Project construction. In addition, please clarify what values the City used to determine operational mobile greenhouse gas emissions. In particular, please clarify values for the number, length, and duration of these trips, as each of those values are important to confirm the City has properly evaluated Project impacts.

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The City relies on a quantitative threshold of 3,500 metric tons of carbon dioxide (MTCO_{2e}) per year. However, the quantitative threshold for residential uses advanced by SCAQMD is 3,000 MTCO_{2e} per year. Please clarify how the City arrived at its 3,500 MTCO_{2e} threshold.

The City provides an inadequate discussion of impacts under Significance Threshold GHG-2. Under this threshold, the City is required to evaluate whether the Project would "conflict with any applicable plan, policy or regulation of an agency adopted for the purpose of reducing the emissions of greenhouse gases." (3.7-22.) The City states:

At the time of this analysis, the City of Orange has not yet adopted a GHG reduction plan that the project can be evaluated against. In addition, the City has not completed the GHG inventory, benchmarking, and goal-setting process required to identify a reduction target and to take advantage of the streamlining provisions contained in the CEQA Guidelines amendments adopted for SB 97. Since no other local or regional climate action plan is in place, the project is assessed for its consistency with ARB's adopted AB

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32 Scoping Plan. This would be achieved with an assessment of the project's compliance with Scoping Plan measures.

(3.7-22.) This is the exact analytical approach that was invalidated by the Supreme Court in *Center for Biological Diversity v. California Department of Fish and Wildlife* (2015) 62 Cal.4th 204. Please recirculate the DEIR with a revised analysis of Project greenhouse gas impacts that is consistent with state law.

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CONT

Hazards and Hazardous Materials

The City relies on a series of outdated environmental site assessments from 2000, 2009 and 2011. (3.8-1.) The City does not provide sufficient evidence to conclude that these assessments, which are several years to two decades old, remain relevant for describing on-site hazards and hazardous conditions. As the City is aware, the Project has continued to be used for recycling and rock-crushing purposes, and landfill toxins may have continued to migrate onto the Project site. Please provide additional evidence to support the City's reliance on these outdated studies or, otherwise, recirculate the DEIR with an up-to-date study that accurately describes Project site conditions.

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The City's discussion of Significance Threshold HAZ-3 is wrong and completely deficient. The City's reasoning for determining impacts under this threshold are less than significant do not match the standard provided by the City or CEQA Guidelines. HAZ-3 is designed to evaluate whether the Project would "emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school." (3.8-14.) The City discloses the Project would, indeed, handle, transport, and emit hazardous emissions and materials within one-quarter mile of the adjacent Salem Lutheran Church and School, but entirely dismisses these impacts by reasoning, "None of these uses would involve *routine* use of hazardous or acutely hazardous materials, substances or waste. Additionally, the proposed project's uses would not involve activities that would routinely emit toxic air contaminants (e.g., diesel particulate matter)." (3.8-14.) This is not the standard by which the Project must be measured. By inserting the undefined term "routine" into the City's analysis, the City has entirely discounted the serious impacts the Project will cause to this and potentially other schools under this significance threshold. This analysis fails to reference or account for the hundreds of thousands of hauling trips that will be needed to transport toxic soils off-site and replace these soils with clean fill. In short, this analysis entirely fails to disclose and mitigate Project impacts in a manner that protects the students at this and any other nearby schools, is unsupported by the overwhelming evidence to the contrary in the record and must be revised in a recirculated DEIR.

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Regarding Impact HAZ-5, the City does not fully analyze Project impacts. Please clarify whether Project construction would involve the closure of any roads, or individual lanes, to street traffic. Any road or lane closures may create a bottleneck in an evacuation and would, thus, pose a threat or otherwise impair the implementation of an adopted emergency response plan. If it is the City's intention to prohibit any street or lane closures resulting from the Project, this must be included in the DEIR as mitigation.

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The City also provides an inadequate discussion of fire hazards. First, the City fails to provide a sufficient description of baseline conditions. Please disclose whether some or all of the Project site is located within a Very High Fire Hazard Severity Zone, as this is crucial to determining whether Project impacts will be less than significant, as the City states. Because the Project is located on an urban/wildland interface, it is likely susceptible to a very high risk of fire hazard absent substantial mitigation. However, the City provides no mitigation that would prevent the exposure of "people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas." (14 Cal. Code Regs., Ch. 3, Appx. G § VII(h).) The City's brief analysis of this impact shows it has again compressed its discussion of impacts and mitigation measures and has inappropriately set forth mitigation measures as though they were Project design features. (3.8-16.) The City's cursory analysis is incredibly concerning, as the Project likely has a high risk of exposing people and structures to wildland fire. Please revise this analysis in a recirculated DEIR.

48

Hydrology and Water Quality

The City concludes the Project has a less-than-significant potential to contribute to runoff and flooding. (ES-34.) Yet, the City states the Project will be required to formulate a flood evacuation plan. Please explain why a Project that has a less-than-significant flooding potential is required to create and implement a flood evacuation plan.

49

For Impact HYD-3, the City concludes the Project "would achieve no net increase discharge [*sic*] of stormwater into the Handy Creek storm drain during storm events." (3.9-24.) However, this is because the City claims flows will be regulated by "riprap and an energy dissipater." (3.9-24.) The City has, again compressed its discussion of impacts and mitigation measures in a manner that serves to downplay Project impacts and disinform readers. Please revise this discussion to evaluate Project impacts prior to mitigation.

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Land Use

The City has erroneously determined the Project would not conflict with the General Plan designations currently in effect for the Project Site. (3.10-11.) However, if this were the case,

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the Project would not require a General Plan Amendment re-designating land use from Resource Area to Residential. As the City admits on numerous occasions, the Project could not be constructed under current land use designations. Also, as the City recognizes, the Project would serve to greatly intensify the allowed land uses on the Project site as compared to currently permitted uses and activities. (*See, e.g.*, 5-2.) Thus, the City's conclusion is unsupported by the evidence in the record.

This concern is further compounded by the City's faulty reasoning in support of its conclusion. The city states, "With implementation of the General Plan Amendment, the project will be consistent with the City of Orange General Plan." (3.10-11.) This impermissibly evaluates Project consistency with the Project, rather than the impacts of the Project in reference to pre-approval baseline conditions.

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CONT

The City's analysis of General Plan consistency entirely overlooked the most important aspect of the General Plan as it relates to the Project site, the *land use designation of the Project site*. Instead of evaluating the most relevant aspect of the City's general plan, the City cites to a bevy of generic General Plan policies that apply citywide. It does not serve the informational purposes of CEQA to omit the most important aspect of the General Plan as this document relates to the Project site and doing so creates the appearance of the City intentionally glossing over this information.

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The General Plan designation of Resource Area *does not permit the construction of residential units*. This designation, "provides for the continued use of areas for mining and agriculture. Passive and active recreational uses are also permitted in areas with this designation. Resource Areas also serve as a holding zone for areas that are currently used for mining and agriculture, but may not have these uses in the future." This designation further "Allows for agricultural uses and continued use of stream and river channels for aggregate mining. Passive and active recreational uses are also permitted." The City's General Plan discloses that only 93 acres of Resource Area-designated land exist in the City, the vast majority of which are found on the Project site. The Project proposes to re-designate this land to uses other than Resource Area, thus resulting in the near-total loss of land designated as Resource Area in the City. The City was required, but failed, to disclose this in the DEIR. The Project is clearly inconsistent with this land-use designation, which applies to the Project over the more generic citywide provisions the City evaluates.

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Likewise, the City concludes the Project would not conflict with the provisions of the City of Orange Municipal Code—in particular the City's zoning provisions. (3.10-31.) This reasoning is flawed for the same reasons as the City's reasoning regarding the Project's General Plan consistency. However, as the City notes, the Project site must be rezoned: "These land use

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changes are necessary to allow the proposed development on the site” – *meaning that the Project conflicts with land use designations currently in effect*. The City’s reasoning fails to find support in the record and must be revised.

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CONT

For Impact LUP-3, the City summarily states the Project would not conflict with the provisions of an applicable habitat conservation plan, but fails to support this conclusion with any evidence or other analysis. CEQA requires more of the City than conclusory statements. Please provide a detailed analysis of the consistency of the Project, or lack thereof, with all applicable habitat conservation plan policies.

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Noise

For some reason, the City does not provide a quantitative analysis of Project construction noise impacts, although all of the City’s noise standards are expressed quantitatively. (3.12-20.) Importantly, the City does not disclose whether construction noise would exceed hourly or daily noise thresholds set by the City. Further, the City’s qualitative analysis of noise impacts confusingly segments noise impacts, such as crew commutes and transport of construction equipment, from the remainder of construction noise. This analysis excludes a discussion of the number and noise levels of Project-related truck trips during construction. (3.12-21.) However, these noise impacts will occur concurrently with other construction noise, so it is uninformative and defeats the purpose of CEQA’s impacts analysis to claim these segmented noises are individually less than significant.

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The City’s analysis in Tables 3.12-12 through 3.12-14 provides a shifting baseline, which entirely fails the informational purposes of CEQA and serves to mask the significant impacts of the Project at multiple sensitive receptors. The Project will serve, either individually or cumulatively, to raise noise levels at certain sensitive receptors to levels above 65 dBA CNEL, a fact the City entirely fails to mention, address, or mitigate. No evidence supports the City’s conclusion Project noise impacts at these sensitive receptors will be less than significant prior to mitigation. Accordingly, the City’s mitigation fails to address impacts to off-site receptors during the long-term operation of the Project. MM NOI-1b and MM NOI-1c are the only operational mitigation measures; however, these mitigation measures only address impacts to “on-site receptors,” not to off-site receptors. (3.12-39.) Thus, impacts to off-site receptors remain significant and unmitigated, in violation of CEQA.

57

In the introduction of the DEIR, the City references certain promises made during community meetings, including the installation of a sound wall to shield certain off-site communities from Project-created sounds. However, the City makes no references to this promised sound wall in its discussion of Project noise impacts. Please clarify whether the City

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has assumed the installation of this sound wall would occur prior to mitigation, and whether the City has relied on the installation of this sound wall to determine Project impacts will be less than significant. If so, the City has, again, erroneously compressed its discussion of Project impacts and mitigation.

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CONT

The City's evaluation of cumulative noise impacts is flawed. According to the City, impacts during construction will not be cumulatively significant because, "It is highly unlikely that a substantial number of the cumulative projects would be constructed simultaneously and close enough to one another for noise impacts to be compounded Therefore, it is reasonable to conclude that construction noise from the proposed project would not combine with noise from other development projects to cause cumulatively significant noise impacts." (4-9.) This is not consistent with the analysis required by CEQA. It is erroneous to artificially divide cumulative noise impacts into "construction" and "operation," as all that matters to sensitive receptors is the volume, not the type, of noise. Project construction will contribute to cumulatively significant noise impacts when considered in conjunction with all other contemporaneous noise impacts.

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Regarding cumulative operational impacts, the City incorrectly reasons:

The proposed project's contribution to vehicular noise levels would not exceed the applicable thresholds of significance, which take into account existing noise levels as well as noise from trips associated with other planned or approved projects. Thus, the proposed project would not combine with other projects to cause a cumulatively considerable increase in ambient roadway noise.

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(4-9.) This analysis is also improper. The City's analysis of noise impacts shows several locations will exceed 65 decibels CNEq during the lifetime of the Project. The Project will cumulatively contribute to these noise exceedances. The City must revise its evaluation of cumulative Project impacts to ensure its accuracy and compliance with CEQA.

Population and Housing

The City claims the Project will not result in individual or cumulative impacts related to population and housing. However, the City does not arrive at this conclusion in reference to population trends. If the City's population is exceeding its estimated growth rate, please disclose this. If this is the case, the Project will cumulatively contribute to this exceedance, including to all related environmental impacts.

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Public Services

The City's analysis of environmental impacts related to school services is entirely deficient. The City claims:

Pursuant to Government Code Section 65995 payment of adopted development fees is the "full and complete mitigation" for impacts to school facilities and local governments are prohibited from assessing additional fees or exactions for school impacts

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(3.14-9.) This statement is incorrect. The city is required to evaluate the direct, indirect, and cumulative impacts of the Project on school facilities and services. The City cannot entirely avoid consideration and mitigation of those impacts by relying on Section 65995. Please revise the DEIR to include a full discussion of Project-related impacts to schools.

The City has determined impacts to library facilities are less than significant, in part, because the City's General Plan does not include any standards or goals for the provision of library services." (3.14-10.) This analysis is insufficient as evidence to determine whether the Project will significantly impact library services, such that facilities will need to be expanded or new facilities constructed. Please add a further explanation of these impacts and provide mitigation as needed.

63

The City fails to adequately evaluate cumulative impacts in relation to public services. The City forecasts a doubling of the City's service area, from "approximately 27 square miles with future expansion of up to 55 square miles." (3.14-2.) Nonetheless, the City has concluded that cumulative impacts to public services will be less than significant prior to mitigation. In the City's analysis of cumulative impacts, it does not explain how City services would be able to meet service needs absent substantial growth of these services and related facilities, in light of a projected doubling of the City's service area.

64

Regarding cumulative impacts to fire department services, the City states:

According to the Fire Department, existing facilities are sufficient to serve the proposed project in conjunction with existing and cumulative projects. Therefore, the proposed project, in conjunction with other future projects, would not have a cumulatively significant impact related to fire protection and emergency medical services.

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(4-10.) This statement is conclusory and not based on evidence in the record. For the DEIR to adequately serve as an informational document, the City must support its conclusions with evidence. The City further reasons, again in a conclusory fashion, that impacts from all other

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past, present, and future projects *cannot* become cumulatively significant because all other projects will be “reviewed for impacts on fire protection and emergency medical services and would be required to address potential impacts with mitigation.” (4-10.) This analysis is logically and analytically deficient. Individual Project mitigation will do nothing to stop the need for increased or modified fire department facilities, staffing, and vehicle trips. As the population and demands on this and other services increases, fire department staffing, vehicle trips, and facilities will need to expand.

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CONT

Traffic

The City downplays the traffic impacts of the Project. The City, again, evaluates certain mitigation measures as though they were “Project design features,” thus failing to disclose the true impacts of the Project. (*See, e.g.*, 3.16-85 – 3.16-85 (stating “The LOS calculations for this intersection include the following improvements that will be constructed as part of the proposed Project: Provide a third northbound through-lane.”).) the City’s conclusions that the Project will not have a significant impact rely on this “Project design feature,” which is clearly mitigation designed to address Project impacts. (3.16-93.) This analytical approach violates CEQA. Further, this mitigation was applied inconsistently between tables. For instance, Table 3.16-11 shows this mitigation would only improve traffic conditions on Cannon Street and Taft Avenue during morning hours, whereas Table 3.15-12 shows these improvements would only affect traffic flows during afternoon hours.

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The City’s analysis of traffic impacts presents a shifting baseline or improperly assumes the implementation of mitigation measures the City has not made binding on the Project. According to the City, certain “Existing-with-Project” impacts actually *decrease* after implementation of the Project but prior to the implementation of mitigation measures. (*See, e.g.*, Tables 3.16-11, 3.16-12.) The City arrives at this same conclusion regarding the 2040 scenario. (3.16-111.) This conclusion contradicts the evidence in the record, as the Project will add, not subtract, trips to all affected roadways.

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The City’s analysis regarding the significance of Project impacts is contradicted by the information in the DEIR. While several intersections are shown to have services levels of LOS E or worse, yet all tables indicate Project impacts will be less than significant. (*See, e.g.*, 3.16-97, 3.16-102 – 3.16-103.) The City states, although certain roadway segments “are forecast to operate at unacceptable LOS E and/or LOS F on a daily basis in the Year 2040 . . . , the proposed project . . . is expected to add less than 0.010 to the V/C ratio.” (3.16-111.) However, the City does not claim the Significance Threshold requires this or any project to single-handedly decrease LOS to unacceptable levels, and the City cites to no policy that would support this conclusion. Further, this entirely ignores the significance of cumulative Project traffic impacts.

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Please explain how Project impacts will be less than significant, despite the fact that the Project will contribute to and worsen these impacts. Please reference the threshold the City relies on when it states that a 0.010 V/C ratio increase is *per se* less than significant. This language appears nowhere in the significance thresholds advanced and discussed by the City in the DEIR. Please revise this analysis to ensure it accurately reflects and mitigates Project impacts.

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CONT

The DEIR contains a list of “planned improvements.” (3.16-107.) However, it is unclear whether the Project will be required to contribute to these improvements. Please clarify whether the Project will contribute its fair share to these improvements and require this contribution as a mitigation measure.

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Table 3.16-13 contains information that differs from the information contained in the other tables. This table indicates the Cannon and Taft intersection will operate at LOS F, whereas other tables indicate this intersection will operate at LOS E. Please explain the difference between the information in these tables.

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The City provides an incorrect analysis of cumulative Project traffic impacts. The City erroneously states the Project would only cumulatively contribute to “one facility operating at deficient levels.” (4-12.) However, as mentioned above, the City’s analysis of traffic impacts indicates the Project will contribute to impacts to several intersections that are projected to operate at LOS E or worse. By the City’s own measure, this is a cumulatively significant impact the City was required to disclose and mitigate.

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Tribal Cultural Resources

The City’s analysis regarding Impact TCR-2 is completely deficient. Impact TCR-2 addresses whether the Project would cause “a substantial adverse change in the significance of a tribal cultural resource.” (3.17-9.) Rather than reference the voluminous evidence in the record that shows tribal cultural resources have been found even on the surface of the Project site, the City instead reasons:

To date, the City of Orange has not received a tribal consultation request from any of the tribes and, therefore, there is no basis for the City to conclude that the project site supports tribal cultural resources.

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(3.17-9.) This reasoning is entirely inadequate to support the City’s finding that Project impacts will be less than significant. The City cannot conclude there will be no impacts to tribal resources simply because no tribes responded timely to consultation. “No response” does not equate to “no resources,” especially with evidence in the record that shows the Project site was

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used by Native American tribes. The City must revise this analysis and mitigate impacts to tribal cultural resources accordingly.

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CONT

Utilities

The City provides insufficient information regarding impacts to wastewater facilities (Impact USS-2). (3.18-10 – 3.18-11.) The City's analysis does not address whether these wastewater facilities will have sufficient peak wet weather capacity to handle Project flows, combined with all other past, present, and reasonably foreseeable future flows. The City's base statement that the Project will only represent 0.01 percent of the primary treatment capacity at these facilities would be significant if these facilities are at risk of experiencing sanitary sewer overflows either now or in the future.

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For Impact USS-3, the City concludes the Project will not have a significant impact prior to mitigation. (3.18-11 – 3.18-12.) However, the City arrives at this conclusion by relying on Project design features that are really mitigation measures, including catch basins, detention basins, flow control structures, and flow monitoring. The City must provide an accurate evaluation of pre-mitigation Project impacts.

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Alternatives

The City wrongly dismisses the Environmentally Superior Alternative. The City states this alternative:

would not advance following project objectives: transition of an infill site with a Specific Plan; developing logical internal circulation system for pedestrians, bicyclists, equestrians, and motorists; and would not permit the Development Agreement benefits to the community. In addition, the Collaborative Group Alternative is not financially feasible.

(5-35.) The City's dismissal of the Environmentally Superior Alternative is wrong for multiple reasons. For instance, the City dismisses this alternative because it does not include adoption of the Specific Plan that is entirely unique to the Project. The City's analysis, thus, impermissibly narrows its consideration of Project alternatives, as only the Project could possibly meet this objective. Further, the City's claims that the Project would not provide an internal circulation system for pedestrians, bicyclists, equestrians, and motorists, and is not financially feasible are all conclusory. Please provide a more accurate, fair, and detailed analysis explaining why this alternative is *infeasible*, as opposed to less financially desirable to the Project applicant.

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Energy Conservation

In a revised Energy Conservation section, please analyze the impacts of exporting cut and importing fill. (6-5.) Specifically, please evaluate whether there is any opportunity to reduce the number of these trips or the trip length.

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Evidence in the record strongly suggests the Project promotes wasteful use of energy resources. The Project is two miles away from the nearest bus stop, and the City states there are no plans to extend services anywhere closer to the Project site. This means that the Project location makes public transportation options prohibitive and will heavily promote the use of personal vehicles. Despite this reality, the City fails to evaluate the distance of the Project site from commercial and job centers. Regardless, vehicle-miles traveled will be much higher for the Project than for most other projects closer to urban centers and public transportation options.

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The City admits it will not require the Project to install rooftop solar panels on all or some of the Project housing, instead only requiring that these roofs be “solar ready.” This is not a mitigation measure, the vast majority of single-family housing built in California’s history is “solar ready.” The City’s failure to consider and require the installation of rooftop solar panels will result in lost energy savings and, thus, energy waste. This is all the more poignant because the next iteration of the California Building Codes, to be released in 2019, will *require* the installation of rooftop solar panels. This means that the California Building Commission has determined this feature is not only feasible but necessary. Please revise the DEIR’s evaluation of energy conservation to require universal installation of rooftop solar panels.

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Conclusion

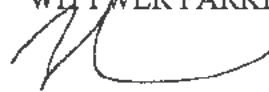
Southwest Carpenters thanks the City for providing an opportunity to comment on the DEIR. Pursuant to Section 21092.2 of the Public Resources Code and Section 65092 of the Government Code, Southwest Carpenters request notification of all CEQA actions and notices of any public hearings concerning this Project, including any action taken pursuant to California Planning and Zoning Law. In addition, pursuant to Public Resources Code section 21167(f), please provide a copy of each Notice of Determination issued by the City in connection with this Project and please add Southwest Carpenters to the list of interested parties in connection with this Project and direct all notices to my attention. Please send all notices by email, or if email is unavailable, by U.S. Mail to:

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Nicholas Whipps
Ashley McCarroll
Wittwer Parkin LLP
147 S. River St., Ste. 221
Santa Cruz, CA 95060
nwhipps@wittwerparkin.com
amccarroll@wittwerparkin.com

Very truly yours,
WITTWER PARKIN LLP

A handwritten signature in black ink, appearing to be 'N. Whipps', written over the printed name.

Nicholas Whipps