

2. Response to Comments

LETTER A12 – Wittwer Parkin, LLP representing the Southwest Regional Council of Carpenters (14 pages)

wittwer / parkin

January 14, 2019

VIA E-MAIL

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City of Newport Beach
Community Development Department
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**Re: Newport Crossings Mixed Use Project Draft Environmental Impact Report
(PA2017-017)**

Dear Ms. Murillo:

Wittwer Parkin, LLP represents the Southwest Regional Council of Carpenters (“Southwest Carpenters”) and submits this letter on the above-referenced project on its behalf. Southwest Carpenters represents 50,000 union carpenters in six states, including in Southern California. Southwest Carpenters has a strong interest in addressing the environmental impacts of development projects, including the proposed Newport Crossings Mixed-Use Project (“Project”) at 1701 Corinthian Way, 1660 Dove Street, 4251, 4253, 4255 Martingale Way, and 4200, 4220, and 4250 Scott Drive in Newport Beach, California.

The Project is located in the “Airport Area” region of the City of Newport Beach (“City”). (DEIR, p. 1-4.) It is located near the John Wayne Airport, and is surrounded by offices, retail uses, and hotels. (*Id.* at Figure 3-3a [depicting project site and surrounding area], p. 4-4.) The Project site is approximately 5.69 acres, and is currently used as a shopping center, with eight retail and commercial buildings, surface parking, and trees. (*Id.* at p. 1-4.) The Project, if approved, would result in the demolition of these facilities and the construction of 350 apartment units, 2,000 square feet of restaurant space, 5,500 square feet of retail space, a six-level, five story parking structure, and a half-acre park. (*Ibid.*) Of the 350 apartment units, 91 would be constructed under a 35% density bonus, and 30% of the total units would be reserved for affordable housing. (*Id.* at pp. 1-4, 3-12.) In order to construct the Project, the Project Applicant would need to receive two “development concessions”: approval to build to 77 feet and 9 inches, rather than 55 feet, as required by the zoning code, and permission to build more one-bedroom and studio apartments than is typically permitted. (*Id.* at pp. 1-4 – 1-5, 3-33.) It would also need a lot line adjustment to consolidate three parcels into one large parcel for the mixed-use project, a half-acre parcel for the park, and a small parcel for emergency access improvements needed for the Project. (*Id.* at p. 3-33.)

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In the DEIR, the City concludes that the Project would not result in any significant and unavoidable adverse impacts. (DEIR, p. 6-1.) It determines that the Project would result in potentially significant impacts to air quality, biological resources, cultural resources, hazards and hazardous materials, and fire protection and emergency services. (*Id.* at pp. 1-9, 1-11, 1-13 – 1-14, 1-15.) It asserts that mitigation would reduce these impacts to below a level of significance. (*Ibid.*) This is incorrect. As discussed more fully below, the DEIR is confusing, missing key analysis, and does not provide sufficient support for conclusions that the Project will have less than significant impacts in a number of areas.

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I. The DEIR's Cumulative Projects List Does Not Provide Sufficient Information.

The data provided in the Cumulative Projects List is insufficient to fully examine the listed projects. (DEIR, pp. 4-13 – 4-14.) The list does not include a description of related development or indicate when the developments will be constructed, nor does the list identify how close the developments are to the Project site. (*Ibid.*) It is, therefore, difficult for Southwest Carpenters to determine how these developments will have cumulative effects in conjunction with the proposed Project. Please update the Cumulative Projects List to, at minimum, include a description of each development, an address for each development and their distance from the Project site, as well as projected construction dates.

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II. The DEIR's Air Quality Analysis is Incomplete.

A. The air quality analysis is uninformative.

“[A]n EIR is ‘an informational document’” aimed at providing “‘detailed information about the effect which a proposed project is likely to have on the environment...’” (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 391 [“*Laurel Heights*”], citing Pub. Resources Code § 21061 and Cal. Code Regs., tit. 14, § 15003(b)-(e).) An EIR that is unclear fails to adequately inform the public about a potential project's impact on the environment.

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The Project is located in the South Coast Air Basin (“SCAB”). (DEIR, p. 5.2-1.) The SCAB is in non-attainment for California Ambient Air Quality Standards for ozone (“O₃”), inhalable particulate matter (“PM₁₀”), and fine particulate matter (“PM_{2.5}”), and is in non-attainment for PM_{2.5} and the 8-hour standards for O₃ under the National Ambient Air Quality Standards. (*Id.* at pp. 5.2-5 – 5.2-7, 5.2-12.)

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The City does not clearly explain whether it considered all of the information about the Project to reach its conclusions about Project impacts. It explains that the Project is consistent with Impact 5.2-1 (“the proposed project is consistent with the applicable air quality management plan”). (DEIR, pp. 5.2-22 – 5.2-23.) It explains: “projects that are consistent with the local general plan are considered consistent with the air quality-related regional plan,” because such projects are consistent with general-plan related demographic projections, and thus, they reason, will not have unexpected impacts on air quality. (*Ibid.*) The DEIR notes that “changes in population, housing, or employment growth projections have the potential to affect SCAG’s demographic projections.” (*Id.* at p. 5.2-23.) The evidence demonstrates that the Project will redevelop a commercial retail space into a hybrid-residential/retail/restaurant development, which will increase the population. (*Ibid.*) The DEIR states that this should not impact the Project’s ability to comply with the Air Quality Management Plan, and summarily states that the Project would be within the projected housing growth, but it does not explain why. (*Ibid.*) In addition, it fails to address how the Project’s 35% density bonus for above what is typically permitted for housing on site will increase the population density or how this, in turn, could impact the Project’s consistency with the applicable Air Quality Management Plan. (See *id.* at pp. 3-12, 5.2-23) [density bonus].) Please update the Air Quality analysis to better explain how this would be within projected housing growth and address the density bonus’s potential impacts on compliance with air quality standards.

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Further, the City does not explain how compliance with various regulatory requirements (RR AIR-1, RR AIR-2, and RR AIR-3) have any bearing on the potential of the Project to conflict with the Air Quality Management Plan, such that compliance with these unrelated regulations would reduce Project impacts to less than significant *prior* to mitigation. (See *id.* at p. 5.2-23.) In fact, much of the air quality analysis frequently references regulations that the Project must comply with or measures to reduce impacts that are contained in other portions of the DEIR, without a description of the measures, reference to where they are described, or, most importantly, how these measures serve to reduce Project impacts. (See, *e.g.*, DEIR, pp. 5.2-22 - 5.2-31.) As another example, the DEIR explains, “with implementation of RR AIR-1, RR AIR-2, and RR AIR-4, Impact 5.2-3 would be less than significant,” etc. (*Id.* at p. 5.2-26.) But the DEIR fails to explain or clearly indicate what these impacts or measures entail. This is uninformative and does not allow Southwest Carpenters to understand the City’s conclusions about air quality impacts. Please update the air quality analysis to adequately explain what the measures or procedures and impacts it references entail and explain how these measures will reduce Project impacts.

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B. The DEIR does not adequately examine cumulative air quality impacts.

When conducting an environmental impact analysis, an agency's determinations must be supported by evidence in the record. (Cal. Code Civ. Proc. § 1094.5 [providing that agency findings must be supported by record evidence]; Cal. Pub. Resources Code § 21168 [applying the Section 1094.5 standard to CEQA actions].) An agency cannot simply draw conclusions without analysis. (See *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 511–512, 515 [“*Topanga*”].) It “must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order.” (*Ibid.*)

The City's conclusion that “air pollutant emissions associated with the proposed project would not be cumulatively considerable” is not supported by the evidence. (DEIR, p. 5.2-31.) Nearby development, in conjunction with the Project, will have significant and unavoidable cumulative air quality impacts. The data provided in the Cumulative Projects List shows that the developments listed will result in significant construction and will increase residential, hotel, commercial, office, and other uses. (See *id.* at pp. 4-13 – 4-14.) This will result in increased vehicle trips, and will ultimately delay the air basin's timely attainment with air quality standards designed to protect human health and the environment. (*Ibid.*) Tellingly, the City does not disclose whether any of the cumulative projects it lists have been found to have significant and unavoidable impacts, to which the Project will cumulatively contribute. The evidence in the record does not support a conclusion that the Project will result in a less than cumulatively considerable impact.

In reaching this conclusion, the DEIR fails to comply with its obligations under CEQA. CEQA requires an agency drafting an EIR to conduct “[a] reasonable analysis of the cumulative impacts of the relevant projects.” (Cal. Code Regs., tit. 14, § 15130(b)(5).) An agency must “examine reasonable, feasible options for mitigating or avoiding the project's contribution to any significant cumulative effects” in an EIR, (*ibid.*), and “must use its best efforts to find out and disclose all that it reasonably can” (*San Franciscans for Reasonable Growth v. City & County of San Francisco* (1984) 151 Cal.App.3d 61, 74 [“*San Franciscans*”]). The DEIR does not “use its best efforts to find out and disclose all it reasonably can.” (*Ibid.*) In the cumulative air quality impacts analysis, the DEIR does not analyze, let alone mention, any of the projects on the Cumulative Projects List included in the DEIR, or other projects in the greater South Coast Air Basin region, nor does it disclose the air quality impacts of each project. (DEIR, pp. DEIR, p. 5.2-31.) As described *supra*, the Cumulative Projects List also lacks sufficient information to determine whether each project might contribute to cumulative air quality impacts, either on a local or regional level. (See *id.* at pp. 4-13 – 4-14.) Please confirm whether the City analyzed the actual impacts of surrounding projects or provide estimates of project emissions from

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construction or operation of such projects. The City must, at a minimum, provide information on all potential related projects included in the Cumulative Projects List.

The DEIR also segregates the cumulative air quality impacts of construction from impacts from the operation of other past, present, and reasonably foreseeable future projects. (DEIR, p. 5.2-31.) This makes it difficult to understand the overarching emissions of pollutants from this and other projects. Please provide information that discusses these projects' total air quality impacts – rather than providing separate analyses of construction and operations related impacts.

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In an FEIR or a recirculated DEIR, please provide specific pollutant projections for, at minimum, each of the approved projects listed in the DEIR and explain the projected cumulative impact of the Project in conjunction with additional development. Further, please provide a list of all past, present, and reasonably foreseeable future projects in the SCAB that have been found to result in significant and unavoidable air quality impacts.

III. The DEIR's Greenhouse Gas ("GHG") Emissions Analysis Is Insufficient.

A. The GHG analysis incorrectly relies on federal and statewide regulations that do not apply to individual projects.

The Legislature and California Supreme Court have indicated that "an EIR is 'an informational document'... and that '[t]he purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect which a proposed project is likely to have on the environment....'" (*Laurel Heights, supra*, 47 Cal.3d at 391, citing Cal. Pub. Resources Code § 21061 and Cal. Code Regs., tit. 14, § 15003(b)-(e).) Yet the DEIR's discussion of potential impacts on greenhouse gas emissions ("GHGs") fails to clearly identify or analyze applicable regulations and plans in the context of the Project.

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The City incorrectly relies on federal and statewide plans and regulations which were not designed to be applied at the project-level. (See *Center for Biological Diversity v. Dep't of Fish & Wildlife* (2015) 62 Cal.4th 204 ["*Newhall Ranch*"]; DEIR, pp. 5.6-5 - 5.6-15.) The City provides little analytical connection between these plans and requirements for the Project itself. (See *ibid.*) These plans, for example, discuss GHG emissions requirements for manufacturers of vehicles and suggestions for local governments, but do not provide project-specific standards for development projects. (*Id.* at pp. 5.6-6 – 5.6-9.) This information is unnecessary and undermines the DEIR's function as a transparent, educational document.

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The DEIR's discussion of Impact 5.6-2 does not clearly explain how it selected "applicable" plans. The City states that Impact 5.6-2, which provides "[i]mplementation of the proposed project would not conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of GHGs," would be "less than significant." (DEIR, pp. 5.6-22, 5.6-25.) In reaching this conclusion, the City discusses two policies: the California Air Resources Board ("CARB") Scoping Plan and the Southern California Association of Governments' ("SCAG") Regional Transportation Plan/Sustainable Communities Strategy. (*Id.* at pp. 5.6-23 – 5.6-25.) But the City does not explain why, of the many plans and regulations listed, these are "applicable" plans. (*Ibid.*) In fact, it admits that the CARB Scoping Plan "is not directly applicable to cities/counties and individual projects," and, is, thus, not a proper document against which to measure the impacts of Project. (*Id.* at p. 5.6-23.)

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B. The GHG analysis does not clearly explain how certain measures would ensure that the Project would have less than a significant impact on GHG emissions.

As discussed *supra*, an EIR is an "an informational document." (*Laurel Heights, supra*, 47 Cal.3d 376, 391, citing Pub. Resources Code § 21061 and Cal. Code Regs., tit. 14, § 15003(b)-(e).) An agency cannot simply state conclusions without analysis – it "must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order." (*Topanga, supra*, 11 Cal.3d 506, 511–512, 515.)

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The DEIR concludes that certain regulations and/or practices would ensure that the Project does not result in significant environmental impacts, but does not explain how. (See DEIR, p. 5.6-22.) The impact analysis states: "with implementation of RR GHG-1, RR GHG-2, RR GHG-3, and RR-GHG-4, Impact 5.6-1 would be less than significant." (*Ibid.*) In reaching this conclusion, the City does not explain what RR GHG-1 – RR GHG-4 are, nor how the implementation of these measures would ensure that Impact 5.6-1 would be "less than significant." (See *ibid.*; *id.* at p. 5.6-19 [describing briefly RR GHG-1 – RR GHG-4].) This makes it difficult for Southwest Carpenters to understand the City's conclusions about GHG emission impacts. Please update the discussion of GHG emissions to explain what the mitigation measures or impacts it references entail.

C. The DEIR's cumulative Greenhouse Gas Emissions analysis is not sufficiently specific.

According to the California Supreme Court:

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With respect to climate change, an individual project's emissions will most likely not have any appreciable impact on the global problem by themselves, but they will

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contribute to the significant cumulative impact caused by greenhouse gas emissions from other sources around the globe. The question therefore becomes whether the project's incremental addition of greenhouse gases is 'cumulatively considerable' in light of the global problem, and thus significant.

(*Newhall Ranch, supra*, 62 Cal.4th 204, 219, citing Crockett, Addressing the Significance of Greenhouse Gas Emissions Under CEQA: California's Search for Regulatory Certainty in an Uncertain World (July 2011) 4 Golden Gate U. Envtl. L.J. 203, 207-208.) The City does not provide sufficient information in the DEIR to determine whether the Project's incremental addition of greenhouse gasses would be cumulatively considerable and thus significant.

The City concludes that, because the Project does not exceed South Coast Air Quality Management District's ("SCAQMD") screening threshold for individual projects, "impacts would be less than significant." (DEIR, pp. 5.6-22, 5.6-25.) But the DEIR does not examine projected growth in the City of Newport Beach, estimate or examine what cumulative emissions from other concurrent projects might be, nor does it examine how this might relate to the Project's and the City's contributions to global GHG emissions. (*Ibid.*; see *id.* at pp. 4-13 – 4-14 [Cumulative Projects List, including other concurrent projected developments].)

Furthermore, the DEIR does not provide sufficient threshold information about existing GHG emissions in the City. (See Cal. Code Regs., tit. 14, § 15125(a); DEIR, § 5.6.) The DEIR does not analyze what the City's current per-capita GHG emissions are, or whether the City as a whole is on track to meet the 2030 GHG emission goals set forth in SB 32, as broadly outlined in the 2017 Climate Change Scoping Plan or provide any other quantitative benchmark to determine whether the Project, in conjunction with other development, would significantly impact GHG emissions. (See *id.* at § 5.6, p. 5.6-8.)

What are the projected GHG emissions from construction and operation of the other projects listed in the Cumulative Projects List? Is there additional projected growth in Newport Beach that would contribute to GHG emissions? If so, what are the estimated emissions from such growth? What are the cumulative estimated emissions? How would such emissions comply with quantitative GHG emissions thresholds? Are there any projects within the City or nearby jurisdictions that have been found to result in significant and unavoidable greenhouse gas impacts? Is the City of Newport Beach on track to meet GHG emissions SB 32 greenhouse gas reductions goals, as outlined in the 2017 Climate Change Scoping Plan? Are there other qualitative thresholds for GHG emissions that the City could use to determine the City's current contributions to GHGs and how the Project might impact this contribution in conjunction with other development? Please provide specific, estimates, data, and analysis.

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D. The DEIR does not provide adequate mitigation for GHG emissions.

The City fails to provide adequate mitigation to reduce GHG-related impacts. The City's findings that the Project would result in less than significant impacts and, thus, not require mitigation measures are not supported by evidence in the record. (See DEIR, p. 5.6-25; Cal. Code Civ. Proc. § 1094.5; Cal. Pub. Resources Code § 21168.) The City, therefore, has failed to provide appropriate and enforceable mitigation for the greenhouse gas impacts of the Project. (Cal. Code Regs., tit. 14, § 15126.4(a)(1) ["An EIR shall describe feasible measures which could minimize significant adverse impacts, including where relevant, inefficient and unnecessary consumption of energy"]; Cal. Code Regs., tit. 14, § 15126.4(a)(2) ["Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally-binding instruments"].)

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Please revisit the GHG analysis, as described, *supra*, and update GHG mitigation measures accordingly.

IV. The DEIR Does Not Provide Sufficient Enforcement Mechanisms for Mitigation of Impacts to Biological or Cultural Resources.

An agency "shall provide that measures to mitigate or avoid significant effects on the environment are fully enforceable through permit conditions, agreements, or other measures," and must have a monitoring program to ensure the implementation of mitigation. (Cal. Pub. Resources Code, § 21081.6 (a) and (d).) "*The purpose of these requirements is to ensure that feasible mitigation measures will actually be implemented as a condition of development, and not merely adopted and then neglected or disregarded.*" (*California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, citing *Federation of Hillside & Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1260-1261, Cal. Pub. Resources Code, § 21002.1(b) [emphasis in original].)

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The DEIR's biological resources analysis states that the Project may have "potentially significant" impacts to nesting migratory birds, if nests exist in on-site trees. (DEIR, p. 5.3-4.) It proposes, as mitigation, that a biologist determine whether there are migratory bird nests in on-site trees, and, if there are, create a buffer zone around the nest until the nest is no longer active. (*Id.* at pp. 5.3-7 – 5.3-8.) It requires the biologist to submit documentation regarding whether there are migratory bird nests on site to the City, but does not require that the City monitor the protection of migratory bird nests, should they exist. (*Ibid.*) This does not ensure that mitigation will actually be implemented. Please update the EIR to include requirements that ensure that, should migratory bird nests exist on site, the City will ensure that a buffer zone around such nests

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is erected and construction does not occur within that buffer until these nests are no longer active.

In the DEIR's cultural resources analysis, the City finds that the Project has "potentially significant" impacts and has the potential to damage buried archeological resources and paleontological resources. (DEIR, p. 5.4-10.) It states that, if archeological resources are discovered during grading, "all construction work within 50 feet of the find shall cease and the archeologist will assess the find for importance." (*Ibid.*) If the find is not important, then the DEIR states that "work will be permitted to continue in the area." (*Id.* at pp. 5.4-10 – 5.4-11.) But the DEIR does not explain what should occur if the find is important or if the find is Native American in origin, and does not provide enforceable mitigation measures to protect such a find. (*Ibid.*) If paleontological resources are discovered during grading, the DEIR likewise provides that if the discovery is determined "not to be important" then work may continue, but does not explain what should occur if the find is important and does not provide enforceable mitigation measures to protect such a find. (*Id.* at p. 5.4-11.) This does not ensure enforceable protection of important resources. Please update the DEIR to provide enforceable mitigation mechanisms to provide for the protection of important archeological and paleontological resources.

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V. The DEIR's Land Use Analysis is Inadequate.

A. The DEIR does not adequately explain how the Project complies with existing land use regulations.

An EIR that is unclear or omits key information fails to adequately inform the public about a potential project's impact on the environment. (See *Laurel Heights, supra*, 47 Cal.3d 376, 391 ["an EIR is an informational document" that should provide "detailed information about the effect which a proposed project is likely to have on the environment..."], citing Cal. Pub. Resources Code § 21061, Cal. Code Regs., tit. 14, § 15003(b)-(e) [citations omitted].)

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The DEIR appears to conflict with itself with respect to land use. In the Housing and Population component of the DEIR, the DEIR states "most of the proposed development is consistent with the general plan," yet Table 5.9-1, which analyzes land use consistency, states that the Project is consistent with all "Applicable Goals and Policies" of the Newport Beach General Plan ("General Plan"). (Compare DEIR, p. 5.11-10 with pp. 5.9-12 - 5.9-25.) Is the Project, in its entirety, consistent with the City's General Plan? If it is not, what components of the Project are not compliant with the General Plan? Please provide specific references to exact General Plan policies and provisions.

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The DEIR does not clearly explain how the Project complies with existing land use regulations. According to the DEIR Executive Summary, in order to be constructed, the Project must receive a “density bonus,” a development concession to allow the construction of more studios and one-bedroom units than are currently permitted under the building code, and a waiver of existing building requirements to permit the developer to construct a project that is 77 feet 9 inches in height, rather than 55 feet, as permitted by code. (DEIR, p. 1-4.) The DEIR discusses the density bonus in several places, but does not explain how the Project, in fact, meets the requirements for such a density bonus. (See *id.* at § 5.9.) In addition, when analyzing the Project’s compliance with the General Plan, the DEIR states that “[e]xact rent prices have not been determined at this time” for “affordable” units, and does not provide any assurance that the City will require that the Project provide an appropriate number of units that are actually affordable. (*Id.* at p. 5.9-12.) It is also unclear in the land use section what the requirements are for a mix of unit sizes, where these requirements are derived, nor why the project does not have to comply with these requirements. (*Id.* at § 5.9.) Nor does it explain how the Project qualifies for a waiver of existing height requirements, such that it may be constructed more than 20 feet higher than what is permitted by existing land use regulations. (*Ibid.*) All of these factors impact the Project’s consistency with land use requirements, and should be adequately explained in the land use analysis. Please update and recirculate the DEIR with this information, so that Southwest Carpenters can better understand how the Project does or does not comply with existing land use regulations and whether the Project qualifies for exemptions or exceptions from such regulations, and thus better understand how the Project will impact land use in Newport Beach.

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The DEIR states that the Project is consistent with the zoning code. (DEIR, p. 5.9-25.) It states that the code only permits a maximum of 50 dwelling units per acre under the MU-H2 land use designation. (*Ibid.*) But according to the DEIR, the Project site, after the dedication of a public park, is 5.19 acres, and the project includes 350 dwelling units. (*Ibid.*) This would result in 67.437 dwelling units per acre. (See *ibid.*) If the Project will have 67.437 dwelling units per acre, how does the it comply with the zoning code’s limitation of 50 dwelling units per acre?

B. The DEIR does not explain how various regulations or practices would ensure that the Project will not result in significant land use impacts.

As in other portions of the DEIR, the City concludes that certain regulations and/or practices would ensure that the Project would not result in significant environmental impacts, but does not explain how. (See DEIR, p. 5.9-26.) This makes it difficult for Southwest Carpenters to understand the City’s analysis of land use impacts. Please explain what the regulations, practices, and impacts referenced in this section of the DEIR entail and how these will minimize land use impacts.

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C. The City’s cumulative impacts conclusions are not supported by an analysis of the facts.

The City’s discussion of cumulative impacts to land uses does not bridge the analytic gap between raw evidence and its conclusions. (DEIR p. 5.9-27; see *Topanga, supra*, 11 Cal.3d at 511--512, 515; Cal. Code Civ. Proc. § 1094.5; Cal. Pub. Resources Code § 21168.) The City’s cumulative impacts analysis also fails to provide a sufficient “summary of the expected environmental effects to be produced by those projects” on the Cumulative Projects List. (See Cal Code Regs., tit. 14, § 15130(b)(4).)

The DEIR makes conclusory statements, without analysis of individual projects, that the project would not contribute to cumulatively considerable impacts, because other developments “would be subject to compliance with regional and local plans.” (DEIR p. 5.9-27.) But it does not examine any of the developments listed on the Cumulative Projects List, describe whether they are compatible with existing land uses, or discuss if, together, they would result in a considerably cumulative impact. (*Id.*) Likewise, it states that the area around the Project is “in transition from strictly nonresidential uses . . . to a wider range of mixed uses,” but does not explain how this transition complies with an existing land use plan, the Newport Beach General Plan, or zoning regulations. (*Id.*) The DEIR also states that this “transition is creating rather than dividing a community,” but this is illogical. (*Id.*) If developers are constructing projects with residences amid an area that is currently non-residential, how would this not divide an existing community? Please explain.

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Please update the cumulative impacts analysis to specifically examine and discuss the developments included on the Cumulative Projects List. Please explain how close these developments are to the Project; whether these developments, specifically, comply with applicable zoning, General Plan, and other land use designations; whether they are receiving density bonus or other variances, waivers, or incentives; and how these developments could foreseeably result in significant cumulative land use impacts.

VI. The City’s Conclusion that the Project Would Not Contribute to A Cumulative Effect on Traffic and Transportation is not Supported by Sufficient Analysis.

An EIR’s cumulative impacts analysis “shall reflect the severity of the impacts and their likelihood of occurrence . . .” (Cal. Code Regs., tit. 14, § 15130(b).) Providing incomplete information “concerning the severity and significance of cumulative impacts impedes meaningful public discussion and skews the decisionmaker’s perspective concerning the environmental consequences of the project, the necessity for mitigation measures, and the

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appropriateness of project approval.” (*Citizens to Preserve the Ojai v. County of Ventura* (1985) 176 Cal.App.3d 421, 431.)

The DEIR does not provide complete information to support its analysis that the Project would not result in cumulatively considerable impacts to traffic and transportation. The DEIR states that the “proposed project would not result in either project-specific significant or cumulatively considerable impacts” to traffic and transportation. (DEIR, p. 5.14-31.) But the City does not clearly explain how it reaches these conclusions. (*Ibid.*) It states that “the traffic study included traffic from 25 projects in Newport Beach,” but does not provide a direct citation or reference for the traffic study, nor does it discuss which projects were examined, where they were located, or what the objective traffic impacts are from each project. (See *ibid.*) The DEIR also does not mention or examine the Cumulative Projects List, or how developments on this list that are located in the immediate vicinity of the Project might impact traffic and transportation in conjunction with the existing project. (See *ibid.*)

Further, the City’s conclusions in the DEIR do not align with the information in the Traffic Impact Analysis. For instance, under a Future Year 2022 Plus Project scenario, the Traffic Impact Analysis found that MacArthur Boulevard/Michelson Drive and MacArthur Boulevard/Campus Drive intersections would operate at levels of service (LOS) of “F” and “E,” respectively. (DEIR, Appx. J, p. J-31.) Without further explanation, the Traffic Impact Analysis states “LOS E is acceptable” at these intersections. (*Ibid.*) No reasoning supports this conclusion, nor does this statement address that one of these intersections was found to operate at LOS F. Moreover, by only considering cumulative conditions from a “Future Year 2022 Plus Project” scenario, the Traffic Impact Analysis, and, thus, the DEIR entirely fails to provide an adequate evaluation of cumulative impacts. The Project will remain operational well beyond 2022. Crucially, *the Project will not even be constructed or occupied by 2022*, as “the project would be built in a single phase spanning approximately 38 months, from December 2019 to **February 2023.**” (DEIR, p. 3-33 (emphasis added).) Thus, the cumulative traffic impacts analysis fails to evaluate the traffic impacts from the vast majority of Project trips, including all of the traffic impacts generated during the decades of Project operation. This failure clearly results in an inadequate cumulative impacts analysis and must be revised.

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In a recirculated DEIR, please evaluate the following: Which developments were examined/excluded in the cumulative traffic study? What are the quantitative traffic impacts? How will development listed on the Cumulative Projects List and located near the Project impact traffic and transportation with respect to project construction, operation, and as a whole? Please explain these topics in detail.

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VII. The DEIR's Alternatives Analysis is Incomplete.

The CEQA alternatives analysis has been described by the California Supreme Court as the "core of an EIR." (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.) CEQA provides a "*substantive mandate* that public agencies refrain from approving projects for which there are feasible alternatives or mitigation measures" that can lessen the environmental impact of proposed projects. (*Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 134, citing Pub. Resources Code § 21081 [emphasis added].) It "compels government... to mitigate... adverse effects through... the selection of feasible alternatives." (*Sierra Club v. State Board of Forestry* (1994) 7 Cal.4th 1215, 1233; see also Pub. Resources Code § 21002.) A lead agency's ability to comply with this mandate is predicated on a clear analysis of correct findings of a project's impacts. "Without meaningful analysis of alternatives in the EIR, neither the courts nor the public can fulfill their proper roles in the CEQA process." (*Laurel Heights, supra*, 47 Cal.3d at 404; *Preservation Action Council v. City of San Jose* (2006) 141 Cal.App.4th 1336, 1350.)

An EIR's review of Project alternatives must analyze alternatives "which are capable of avoiding or substantially lessening any significant effects of the project." (Cal. Code Regs., tit. 14, § 15126.6(b).) An EIR's very purpose is to identify ways to reduce or avoid significant environmental impacts. (*Laurel Heights, supra*, 47 Cal.3d at 403.) In order to achieve this purpose, the EIR must correctly identify project impacts. Yet, the Project alternatives analysis, as drafted, does not adequately assess whether alternatives would avoid or substantially lessen significant Project effects, because the DEIR either does not provide a sufficient analysis or incorrectly finds impacts to be less than significant, including in the areas of air quality, greenhouse gases, land use, and traffic and transportation. The DEIR's alternatives analysis, therefore, does not identify feasible alternatives that lessen adverse impacts, nor does it sufficiently examine whether the alternatives listed would mitigate or avoid Project impacts. (See DEIR, § 7.) This is improper.

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Please revise the DEIR as requested throughout this correspondence. Should a reexamination of the DEIR result in altered findings or information, please concurrently update the alternatives analysis to include options that would lessen or avoid all significant and inadequately mitigated impacts.

VIII. Conclusion

Southwest Carpenters thanks the City for providing an opportunity to comment on the DEIR. Please update the DEIR to adequately address the issues raised in these comments, then recirculate the revised DEIR.

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Pursuant to Section 21092.2 of the Public Resources Code and Section 65092 of the Government Code, please notify Southwest Carpenters of all CEQA actions and notices of any public hearings concerning this Project, including any action taken pursuant to California Planning and Zoning Laws. In addition, pursuant to Public Resources Code section 21167(f), please provide a copy of each Notice of Determination issued by the City or any other public entity in connection with this Project and add Southwest Carpenters to the list of interested parties in connection with this Project. All notices should be directed to my attention. Please send all notices by email, or if email is unavailable, by U.S. Mail to:

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Very truly yours,
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