

Letter O-4

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VIA EMAIL:

Leonard Bechet
Community Development Department
City of Burbank
150 N. Third Street PO Box 6459
Burbank, CA 91510-6459
lbechet@burbankca.gov

Re: Comments on the 777 North Front Street Project (Project No. 170001265);
Draft EIR (SCH # 2018041012);

Dear Mr. Bechet:

On behalf of UNITE HERE Local 11 ("Local 11") and residents Cristian Castillo and Benito Soto (collectively or "Commentors"), this Office respectfully provides the City of Burbank ("City") the following comments regarding the Draft Environmental Impact Report ("DEIR")<sup>1</sup> and requested land use approvals ("Entitlements") (collectively "Project Approvals") for the referenced mixed-use development ("Project") located on a 6.77-acre site within the City ("Site") proposed by La Terra Development ("Applicant"). Commentors are concerned with the Project's compliance with the California Environmental Quality Act, Pub. Res. Code § 21000 et seq., ("CEQA") and the Burbank Municipal Code ("BMC" or "Code").

Local 11 works to make our region and the City a place of opportunity for all - a place where its members can work and afford to live. Local 11 and its hundreds of members who live or work in the Burbank area join together to advocate for improved land use and housing policies. Commentors, therefore, are concerned that this Project lacks sufficient affordable housing, particularly as it relates to low- and very-low-income levels which the City admits it desperately needs. Additionally, as fully discussed in the attached expert environmental comments of SWAPE (attached hereto as Exhibit A), the DEIR understates the Project's various air quality and greenhouse gas ("GHG") impacts—such as the DEIR's reliance on the City's outdated, unmonitored Greenhouse Gas Reduction Plan ("GGRP") adopted in 2013. Furthermore, due to the DEIR's flawed analysis, it fails to provide a reasonable range of alternatives, such as an alternative that provides greater commitments to affordable housing, which will have the co-benefit of reducing the Project's mobile emissions (i.e., air quality, GHG, traffic impacts).

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<sup>1</sup> Inclusive of the all appendices ("APP-##"). Unless other specified, all documents are retrieved from City website (https://www.burbankca.gov/departments/community-development/planning/current-planning/777-front-street). Furthermore, please note that pages cited herein are either to the page's stated pagination (referenced herein as "p. ##") or the page's location in the referenced PDF document (referenced herein as "PDF p. ##").



These Project Approvals are discretionary, not by right. The Project's affordable housing plan inconsistencies and GHG analysis must be better identified and adequately addressed in order to make the required City Zoning Code findings. The Project's lack of sufficient affordable housing and the City's failure to effectively, monitor, update, and track its GGRP concern Commentors. Absent compliance with the issues addressed herein, the Project's Entitlements and DEIR should be denied.

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(cont'd)

#### I. STANDING OF COMMENTORS

Local 11 represents more than 25,000 workers employed in hotels, restaurants, airports, sports arenas, and convention centers throughout Southern California and Phoenix, Arizona. Members of Local 11, including hundreds who live or work in the City of Burbank, join together to fight for improved living standards and working conditions. Making these comments to public officials in connection with matters of public concern about affordable housing and compliance with zoning rules is protected by the First Amendment, the *Noerr-Pennington* doctrine and is within the core functions of the union. Unions have standing to litigate land use and environmental claims. See *Bakersfield Citizens v. Bakersfield* (2004) 124 Cal.App.4th 1184, 1198.

Ms. Castillo and Mr. Soto both live within a half-mile of the Site and frequent the immediately adjacent area almost daily including neighboring restaurants, grocery stores, coffee shops, and public parks. As such, they will be adversely impacted if the issues discussed herein are not cured and, therefore, they have a beneficial interest in Project compliance with CEQA. This geographic proximity and nexus to the Project Site, alone, is sufficient to establish standing under CEQA and the Code. See *Bozung v. LAFCO* (1975) 13 Cal.3d 263, 272 (plaintiff living 1,800 feet from annexed property has standing to challenge the annexation); see also *Citizens Ass'n for Sensible Dev. v. County of Inyo* (1985) 172 Cal.App.3d 151, 158 ("a property owner, taxpayer, or elector who establishes a geographical nexus with the site of the challenged project has standing."); EMC §§ 9-3-108, 10-1-1907.2.B, 10-1-1907.3.B, 10-1-1910.A, 10-1, 1911.A ("any interested party" may appeal an environmental decision and "any person" may appeal a decision regarding land use entitlements).

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Commentors have public interest standing given the approvals relate to the City's public duty to comply with applicable zoning and CEQA laws, and where Commentors seek to have that duty enforced. See *Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899, 914-916, n6 (noting that "the public interest exception applies where the question is one of public right and the object of the action is to enforce a public duty - in which case it is sufficient that the plaintiff be interested as a citizen in having the laws executed and the public duty enforced" and "promotes the policy of guaranteeing citizens the opportunity to ensure that no governmental body impairs or defeats the purpose of legislation establishing a public right."); see also *La Mirada Avenue Neighborhood Assn. of Hollywood v. City of Los Angeles* (2018) 22 Cal.App.5th 1149, 1158-1159 ("[o]ur Supreme Court has consistently recognized the importance of preserving the integrity of a locality's governing general plan for zoning" and that "the vindication of this significant policy benefits not only the persons living near the Project and the persons living within the geographical boundaries of the [area] at issue in this case, but also all residents of the City who benefit from the trial court's ruling that holds the City Council's zoning decisions to the letter and spirit of the municipal code."). Indeed, California "courts have repeatedly applied the 'public right/public duty' exception to the general rule that ordinarily a writ of mandate will issue only to persons who are beneficially interested." *Weiss v. City of Los Angeles* (2016) 2 Cal.App.5th 194, 205-206; see also *Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 166, 169-170 (it is



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sufficient that he is interested as a citizen in having the laws executed and the duty in question enforced).

This comment letter is made to exhaust remedies under administrative law principles and Pub. Res. Code § 21177 concerning the Project, and incorporates by this reference all written and oral comments submitted on the Project by any commenting party or agency. It is well-established that any party, as Commentors here, who participate in the administrative process can assert all factual and legal issues raised by anyone. See *Citizens for Open Government v. City of Lodi* (2006) 144 Cal.App.4th 865, 875.

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(cont'd)

II. PROJECT BACKGROUND

The Applicant is proposing the redevelopment of the 6.77-acre Site surrounded by commercial and industrial zones with the Interstate 5 Freeway to the northeast and the Downtown Burbank Metrolink Station to the southwest of the Project Site. The subject property is located in the Burbank Center Plan with a land use designation of Mixed Commercial/Office/Industrial and a zoning designation of Auto Dealership (DEIR, p. ES:1).<sup>3</sup> The Project includes 1,537 parking stalls and 965,623 square feet ("SF") of residential, hotel, retail, and open space amenity construction, including:

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- A 7-story, 272,162-SF building containing a total of 252 residential units;
- An 8-story, 346,644-SF building containing a total of 321 residential units;
- 1,067-SF of commercial retail space;
- A 7-story, 212,250-SF hotel with 307 hotel rooms; and
- A total of 1,537 parking spaces in an integrated parking structure with one level of subterranean parking and up to 7-levels of above grade parking (DEIR, pp. ES:2-3, 2:15-16).

III. PROJECT LACKS SUFFICIENT AFFORDABLE HOUSING

Here, the Project includes 573 apartment units comprised of a mix of studios, one-bedroom, two-bedroom, and three-bedroom units, with *potentially* 12 percent of the apartment units as deed restricted to be maintained affordable to *moderate-income* households for no less than fifty-five years (DEIR, p. 4.8-18). In addition to the Project, the DEIR evaluated several project alternatives (DEIR, pp. ES:6-7), including a reduced density alternative (45 percent reduction in all land uses proposed), which would also potentially have 12 percent of the units restricted to affordable at moderate income level (id. at p. 6:30). However, no alternative was considered focusing on more profound strides of affordability, particularly for low- or very-low-income levels, which is desperately needed (as discussed below).

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First, it must be noted that neither the DEIR's project design features nor mitigation measures commit the Applicant to provide any percentage, let alone 12 percent, of the units to affordability. Whatever level of affordability is assumed in the DEIR, it must be made enforceable via a specific condition of approval that will bind the Applicant and its successors in interest.

Second, while the DEIR discloses the City's most recent Regional Housing Needs Allocation ("RHNA") requirements for the 2014-2021 planning period (DEIR, pp. 4.10:3), the DEIR fails to disclose the City's track record of providing its fair share of housing at all income levels. According to the most recent General Plan Annual Implementation and Housing Element Annual Progress

<sup>3</sup> See also City (2019) Aerial of Project Site, <https://www.burbankca.gov/home/showdocument?id=47493>.



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Report, the City is not on track of meeting its affordability housing goals. More than half-way into the planning period, the City must still come up with 683 very-low-income units (98 percent of its 694 RHNA allocation) and 393 low-income units (95 percent of its RHNA allocation) (see excerpt below):

**FIGURE 1: 2018 HOUSING ELEMENT<sup>3</sup>**

Income Level		RHNA Allocation by Income Level (2014-2021)	2014	2015	2016	2017	2018	Total Units to Date (all years)	Total Remaining RHNA by Income Level
Very Low	Deed Restricted	694		11				11	683
	Non-Deed Restricted								
Low	Deed Restricted	413					20	20	393
	Non-Deed Restricted								
Moderate	Deed Restricted	443					6	6	437
	Non-Deed Restricted								
Above Moderate		1134	19	14	275	17	35	360	774
<b>Total RHNA Allocation</b>		<b>2684</b>							
subtotals			19	25	275	17	61	397	2287

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Thus, even if all 155 project applications submitted in 2018 were approved, only seven low-income and 228 moderate-income units would be created, inclusive of this Project's 69 moderate-income units.<sup>4</sup> This is inadequate for such a large and opportune Site such as this Project – given the City is admittedly mostly built-out with few remaining vacant parcels for future development (DEIR, p. 4.10:6). For example, the Project Site is identified as one of ten opportunity sites under the Burbank Center Plan ("Specific Plan") that could serve as catalysts for future development (DEIR, pp. 4.1:10-11; Specific Plan,<sup>5</sup> pp. 13-15; Specific Plan Appendix A,<sup>6</sup> PDF pp. 8-40). However, most of the opportunity sites have been redeveloped with mostly commercial uses (e.g., office use, Ikea, AMC theater on opportunity sites 3, 6, and 10a [respectively]); and with seemingly no low- or very-low-income housing. *This begs the question, if not on this Project Site, how does the City reasonably expect to locate its 1,076 low- and very-low-income housing in time to meet its 2021 RHNA requirements?*

Third, the City and greater Los Angeles area is suffering an affordability housing crisis. According to the UCLA Ziman Center, Los Angeles housing prices have grown about four times faster than incomes since 2000 and "affordable housing production and preservation needs to accelerate."<sup>7</sup> Los Angeles is the least affordable rental market in the country, according to Harvard University's Joint Center for Housing Studies, and has been ranked the second-least affordable

<sup>3</sup> Burbank Community Development (3/19/19) Staff Report: 2018 General Plan Annual Implementation Progress Report and 2018 Housing Element Annual Progress Report, p. 4.

[https://burbank.granicus.com/MetaViewer.php?view\\_id=42&dip\\_id=8610&meta\\_id=350702](https://burbank.granicus.com/MetaViewer.php?view_id=42&dip_id=8610&meta_id=350702).

<sup>4</sup> *Ibid.*, Appendix B, PDF p. 2, 20.

[https://burbank.granicus.com/MetaViewer.php?view\\_id=42&dip\\_id=8610&meta\\_id=350704](https://burbank.granicus.com/MetaViewer.php?view_id=42&dip_id=8610&meta_id=350704).

<sup>5</sup> <https://www.burbankca.gov/home/showdocument?id=2627>.

<sup>6</sup> <https://www.burbankca.gov/home/showdocument?id=2626>.

<sup>7</sup> <http://www.anderson.ucla.edu/Documents/areas/cts/ziman/2014-08/WPrev.pdf>.



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region for middle-class people seeking to buy a home.<sup>8</sup> Burbank City officials and staff are on record noting the City's affordability issues. When recommending low-income housing should be included in housing projects, Burbank Housing Authority Manager stated:

"When comparing housing costs and wages of our current residents and workforce, our community does not have housing to accommodate the large number of highly paid workers, let alone affordable housing options for lower- and moderate-income households ... almost 10,000 households pay more than 50% of their gross income on housing costs ... That is one in every four households."<sup>9</sup>

Fourth, the lack of affordable housing has a disparate effect on working-class communities who are forced to commute from further distances into the City.<sup>10</sup> Admittedly, the City is a "jobs rich" community in which more workers commute to the City from other communities for their jobs than residents commute to points outside the City for their jobs" (DEIR, p. 4.10.2). This, in turn, increases vehicle miles traveled ("VMT") which has an adverse impact on air quality, GHG emissions, and traffic. For these reasons, numerous studies have urged municipalities to increase affordable housing units near transit-oriented developments, like the Project here.<sup>11</sup>

Fifth, the Project's lack of affordable housing for low- and very-low-income levels is inconsistent with goals, policies, and standards under applicable the land use plans (many of which improperly are ignored or not identified in the DEIR), including but not limited to the following pages:

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<sup>8</sup> Los Angeles Times (1/11/15) L.A. has a serious housing crisis and it's time for city officials to do something about it <http://www.latimes.com/opinion/editorials/la-ed-affordable-housing-part-1-20150111-story.html>.

<sup>9</sup> Los Angeles Times (11/5/16) Rent and home prices in Burbank are higher than residents can afford, city official says, <https://www.latimes.com/social/burbank-leader/news/tn-blr-me-housing-20161104-story.html>.

<sup>10</sup> Brookings Institution (Feb. 2008) Commuting to Opportunity-The Working Poor and Commuting in the United States, p. 3. ("Households make trade-offs in housing and transportation expenses, spending more for housing located near jobs or choosing more affordable housing farther from jobs with higher transportation costs, including long and expensive commutes. A recent study by the Center for Housing Policy (CHP) finds that this trade-off between housing and transportation is disappearing for many; finding housing that a working family can afford—those that earn between the minimum wage and 120 per cent of area median income—means commuting long distances to work."), <https://www.brookings.edu/wp-content/uploads/2016/06/0314-transportation-puentes.pdf>.

<sup>11</sup> National Center for Sustainable Transportation (Apr. 2017) Affordable Housing in Transit-Oriented Developments-Impacts on Driving and Policy Approaches, pp. iii, 3, 14 ("...the location of affordable housing near transit provides meaningful benefits, particularly for lower-income residents and transit operators ..."). <https://ncst.ucdavis.edu/wp-content/uploads/2015/10/NCST-TO-027-Boarnet-Bostic-Affordable-TOD-White-Paper-FINALv2.pdf>; California Housing Partnership Corporation (May 2014) Why Creating And Preserving Affordable Homes Near Transit Is A Highly Effective Climate Protection Strategy, p. 3 ("Lower income households drive 25-30% fewer miles when living within 1/2 mile of transit than those living in non-TOD areas ... This underscores why it is critical to ensure that low-income families can afford to live in these areas."), <http://www.transformca.org/sites/default/files/CHPC%20TF%20Affordable%20TOD%20Climate%20Strategy%20BOOKLET%20FORMAT.pdf>.



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<b>Burbank 2035 General Plan<sup>12</sup></b>
<b>Introduction</b>
Housing Variety: Burbank offers a wide range of housing to meet the needs of all age groups, family types, and income levels, as well as those with special housing needs.
<b>Land Use</b>
Policy 5.3: Provide more diverse housing opportunities, increase homeownership opportunities, and support affordable housing by encouraging alternative and innovative forms of housing.
Policy 5.5: Provide options for more people to live near work and public transit by allowing higher residential densities in employment centers such as Downtown Burbank and the Media District.
<b>Plan realization</b>
Program LU-10: Inter-Agency Consultation: Identify opportunities for public/private partnerships to provide affordable housing and/or address public and social needs.
<b>Housing Element<sup>13</sup></b>
Goal 2-Variety Of Housing Sites: Burbank seeks to provide housing sites that accommodate a range of housing types to meet the diverse needs of existing and future residents.
Goal 3-Affordable Housing: Burbank will assist in the development of housing affordable to all economic segments of the community.
Policy 3.1: Encourage the production of a variety of housing types to address the needs of lower (including extremely low), moderate, and upper-income households to maintain an economically diverse and balanced community.
Policy 3.3: Provide regulatory incentives and concessions to facilitate the development of affordable housing.
Policy 3.5: Encourage the development of affordable housing for large families and the disabled by providing specific incentives and concessions within the City's Inclusionary Housing Ordinance.

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Sixth, the *DEIR's failure to adequately identify the Project's inconsistency with the abovementioned affordable housing provisions is fatal under CEQA*. An EIR must identify, fully analyze and mitigate any inconsistencies between a proposed project and the general, specific, regional, and other plans that apply to the project. CEQA Guidelines § 15125(d); *Pfeiffer v. City of Sunnyvale City Council* (2011) 200 Cal.App.4th 1552, 1566; *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 881. There does not need to be a direct conflict to trigger this requirement; even if a project is "incompatible" with the "goals and policies" of a land use plan, the EIR must assess the divergence between the project and the plan, and mitigate any adverse effects of the inconsistencies. *Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 376-79; see also *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903 (holding under CEQA that a significant impact exists where project conflicts with local land use policies); *Friends of "B" Street v. City of Hayward* (1980) 106 Cal.App.3d 986, 998 (held county development and infrastructure improvements must be consistent with adopted general plans) (citing Gov. Code § 65302).

Seventh, the Project requires numerous Entitlements (DEIR, p. ES-1-2, 2:31),<sup>14</sup> mandating discretionary land use findings. As such, *this Project is discretionary, not by right*. The City has the leverage to disapprove the Project or to ensure that it actually benefits the City through more affordable housing. Please use it.

<sup>12</sup> <https://www.burbankca.gov/home/showdocument?id=23448>.

<sup>13</sup> <https://www.burbankca.gov/home/showdocument?id=23868>.

<sup>14</sup> See also City (219) 777 Front Street, <https://www.burbankca.gov/departments/community-development/planning/current-planning/777-front-street>.



In sum, the Site is a prime candidate for affordable housing—please do not squander this opportunity to exercise your discretion to require affordable housing for this Project for low- or very-low-income residents so that City residents like Commentors can afford to live there.

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**IV. INADEQUATE ALTERNATIVES ANALYSIS**

The discussion of mitigation and alternatives is “the core of an EIR,” requiring a lead agency to select a reasonable range of alternatives for evaluation guided by a clearly written statement of objectives. *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564-65; see also CEQA Guidelines § 15124(b). It is the lead agency’s affirmative duty to approve a project only after “meaningful consideration of alternatives and mitigation measures.” *Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 134. This duty cannot be defeated by defining objectives too narrowly or too broadly or artificially limiting the agencies’ ability to implement reasonable alternatives by prior contractual commitments. See e.g., *City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1447; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 736. Instead, a “reasonable range of alternatives” should be:

- “capable of being accomplished in a successful manner” (Pub. Res. Code § 21061.1);
- “attain most of the basic objectives of the project” (*Sierra Club v. County of Napa* (2004) 121 Cal.App.4th 1490, 1509 (citing CEQA Guidelines § 15126.6(a) and (f)); and
- achieve the project’s “underlying fundamental purpose” (*In re Bay-Deita* (2008) 43 Cal.4th 1143, 1164-1165 (citing CEQA Guidelines § 15124(b)).

While alternatives must implement the most basic project objectives, they need not implement all of them. See *California Native Plant Soc’y v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 991; see also *Mira Mar Mobile Community v. City of Oceanside* (2004) 119 Cal.App.4th 477, 488-489. The discussion must “focus on alternatives capable of eliminating any significant adverse environmental effects or reducing them to a level of insignificance, even if these alternatives would impede to some degree the attainment of the project objectives, or would be costlier.” *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 873; see also CEQA Guidelines § 15126.6(a); *Cleveland III*, 17 Cal.App.5th at 436 (EIR discussion deficient where no alternative was considered that significantly reduced total vehicle miles traveled and where the alternatives labeled ‘transit emphasis’ was a “misnomer” given they only advanced certain rapid bus projects, left rail/trolley projects largely unchanged, and provided no increased transit projects/services).

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Here, the DEIR identified alternative 4 (the reduced density alternative) as the environmentally superior alternative (DEIR, p. 6:36). However, this conclusion is reached only because the DEIR improperly failed to identify land use impacts stemming from the Project’s lack of low- and very-low-income affordable housing discussed above, as well as air quality and GHG impacts discussed in the enclosed expert comment letter. The DEIR should have included an alternative that provided more affordable housing, including units for low- and very-low-income levels that represent a mix-income housing alternative. Such an alternative would also have the co-benefit of reducing VMTs and thus further mitigating mobile emissions (i.e., air quality, GHG, and traffic impacts). Furthermore, such an alternative would attain most of the Project objectives and purpose.

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#### V. THE PROJECT'S AIR QUALITY AND GHG IMPACTS ARE UNDERSTATED

As outlined in the May 6, 2019 SWAPE comment letter, attached hereto as Exhibit A and incorporated herein in its entirety by this reference, the DEIR does not adequately analyze the Project's complete air quality or GHG impacts. In short, SWAPE found that:

##### AIR QUALITY IMPACT:

- The DEIR used unsubstantiated input parameters when estimating the Project's air emissions, such as underestimating of the number of hauling truck trips expected to occur during grading.
- When correct, an updated analysis showed an 88 percent increase in construction-related NOx emissions, which exceed thresholds set forth by the South Coast Air Quality Management District ("SCAQMD").
- The DEIR does not adequately analyze through a health risk assessment ("HRA") whether the Project will expose residential sensitive receptors to substantial pollutant concentrations during Project construction and operation, including diesel particulate matter through the use of diesel-fueled construction equipment on-site.
- Upon conducting its own screening-level preliminary HRA, SWAPE found that the infant, child, and lifetime cancer risks exceed the SCAQMD threshold of 10 in one million.
- The DEIR fails to account for overlapping emissions when residential building 1 (phase 1) will likely be operational, and residential building 2 and the hotel is being constructed (phase 2 and 3). This must be analyzed in a revised modeling, or a condition that would bar operation until all phases of construction have been completed.

##### GHG IMPACT:

- The City has failed to update, monitor, or implement its Greenhouse Gas Reduction Plan ("GGRP")—a type of climate action plan ("CAP") used by the Applicant for streamline CEQA review—and no longer meets the requirements of CEQA Guidelines § 15183.5(b)(1)(E) that requires CAPs to be monitored and amended if the plan is not achieving specified GHG reduction levels.
- The 2013 GGRP is outdated and fails to account for the newer interim target of 40 percent reduction in GHG emissions compared to 1990 levels by 2030 under SB 32 made law in 2016, which is a "widely acknowledged as a necessary interim target to ensure that California meets its longer-range goal of reducing greenhouse gas emissions to 80 percent below 1990 levels by the year 2050." *Cleveland National Forest Foundation v. San Diego Assn. of Governments* ("Cleveland HF") (2017) 3 Cal.5th 497, 519.
- The DEIR performs a perfunctory review of the Project's consistency with the City's GGRP and ignores numerous project-level mitigation measures found in the GGRP and other applicable plans, such as those under the California Air Resources Board ("CARB") 2017 Scoping Plan adopted in response to SB 32.
- Notwithstanding the Project's building efficiency measures, the Project fails to provide for additionality, as required under CEQA<sup>15</sup> and necessary for the State to meet its 2030 and

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<sup>15</sup> See CEQA Guideline § 15064.4(b)(1); see also *Center for Biological Diversity v. Cal. Dept. of Fish and Wildlife* (2015) 62 Cal.4th 204, 226, 229.



2050 GHG goals according to CARB, which confirms that *California "is not on track" to meet GHG reductions expected under SB 375* (i.e., Sustainable Communities Strategy).<sup>16</sup>

- The DEIR fails to make a good-faith effort to disclose the Project's GHG emissions, as required by CEQA Guidelines § 15064.4. *Buried in its appendices, the DEIR shows that the Project will result in 10,610 metric tons of carbon dioxide equivalents per year ("MTCO<sub>2</sub>e/yr") or 5.2 MTCO<sub>2</sub>e/yr per service population<sup>17</sup> ("MTCO<sub>2</sub>e/yr/sp"), which exceeds SCAQMD's project-level efficiency threshold of 4.8 and 5.2 MTCO<sub>2</sub>e/yr/sp for target years 2020 and 2035 (respectively)—thresholds proposed prior to the more aggressive targets adopted per SB 32.*
- In the face of a facially outdated and unenforced CAP, the DEIR's failure to apply SCAQMD's efficiency threshold and find a significant GHG impacts amounts to a failure to evaluate cumulative GHG impacts consistent with evaluating scientific knowledge and regulatory schemes—as required under CEQA. *See Cleveland II*, 3 Cal.5th at 504, 515, 518, 519.
- Due to the DEIR's flawed GHG analysis discussed above, the DEIR failed to recognize the Project's significant GHG impact or include a meaningful project alternative that would reduce said impacts, such as a *project alternative that would include more in the form of affordable housing, specified commitments to onsite renewable energy, an aggressive VMT reducing plan with generous public transit program, greater water efficiency requirements, and the possible utilization of carbon offsets via the State's Cap-n-Trade program.*

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**VI. STATEMENT OF OVERRIDING CONSIDERATION**

The DEIR admits, at a minimum, that the Project will have significant, unmitigated traffic impacts. So too, Commentors are concerned about potentially significant air quality, GHG, and land use impacts discussed herein and the enclosed expert comment. Here, the Project fails to impose all feasible mitigation measures or identify a CEQA-compliant statement of overriding considerations. *See Lawler v. City of Redding* (1992) 7 Cal.App.4th 778 (vacating city's approval of a sports facility on city-owned land in an unincorporated area until adopting measures to sufficient mitigate noise impacts).

When approving a project that will have significant environmental impacts not fully mitigated, a lead agency must adopt a "statement of overriding considerations" finding that the project's benefits outweigh its environmental harm. *See* CEQA Guidelines § 15043; *see also* Pub. Res. Code § 21081(b); *Sierra Club v. Contra Costa County* (1992) 10 Cal.App.4th 1212, 1222. An overriding statement expresses the "larger, more general reasons for approving the project, such as the need to create new jobs, provide housing, generate taxes and the like." *Concerned Citizens of S. Central LA v. Los Angeles Unif. Sch. Dist.* (1994) 24 Cal.App.4th 826, 847. It must fully inform and disclose the specific benefits expected to outweigh environmental impacts, supported by substantial evidence. *See* CEQA Guidelines §§ 15043(b), 15093(b); *see also Sierra Club*, 10 Cal.App.4th at 1223. Furthermore, an agency may adopt a statement of overriding considerations *only after* it has imposed all feasible mitigation measures to reduce a project's impact to less than significant levels. *See* CEQA Guidelines §§ 15091 & 15126.4. Hence, decisionmakers may not approve a project when feasible mitigation measures can substantially lessen or avoid such impacts. *See* Pub. Res. Code § 21002; *see also* CEQA Guidelines § 15092(b)(2).

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<sup>16</sup> CARB (Nov. 2018) 2018 Progress Report, p. 4-7 (emphasis added), [https://ww2.arb.ca.gov/sites/default/files/2018-11/Final2018Report SB150 112618 02 Report.pdf](https://ww2.arb.ca.gov/sites/default/files/2018-11/Final2018Report%20SB150%20112618_02_Report.pdf).

<sup>17</sup> Service population includes residents, employees, and hotel guests served by the Project.



Moreover, in addition to imposing all feasible mitigation, to the extent that overriding considerations are needed, key among the findings that the lead agency must make is that:

"Specific economic, legal, social, technological, or other considerations, including the provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or alternatives identified in the environmental impact report ... [and that those] benefits of the project outweigh the significant effects on the environment." Pub. Res. Code § 21081(a)(3) & (b), emphasis added.

O-4.7  
(cont'd)

Here, the DEIR only references the paltry affordable housing units—none of which are for low- or very-low-income levels. Nor does the DEIR attempt to determine whether new jobs created by the Project, in either the construction phase or the operational phase, will be for "highly trained workers," and what the likely salary and wage ranges of these jobs will be. Without this information, the City lacks substantial evidence to make any overriding statement.

O-4.8

The City should require payment of prevailing wages for all construction phase workers and living wages for all operational phase workers. Such a requirement will ensure that the Project provides "employment opportunities for highly trained workers" in accordance with the mandates of CEQA. Without such requirements, the Project may actually depress wage rates and fail to provide high-quality job opportunities.

In short, the City cannot find that the economic benefits of the Project outweigh the environmental costs if it does not provide more housing at low- and very-low-income levels, and know what the economic benefits will be. A revised DEIR is required to provide this information. This issue of job quality is critically important to Local 11.

## VI. CONCLUSION

Commentors respectfully appreciate the opportunity to provide these comments. Local 11 works to make our City a place of opportunity for all – a place where its members can work and afford to live. Local 11, therefore, is a stakeholder in this Project, and its members including hundreds who live or work in the City, join together to fight for improved land use and housing policies. Making these comments to public officials in connection with matters of public concern about affordable housing and compliance with zoning rules is protected by the First Amendment, the *Noerr-Pennington* doctrine and is within the core functions of the union.

Again, the DEIR is fundamentally flawed because the DEIR fails to properly analyze the Project's land use, air quality, and GHG impacts; consider a reasonable range of alternatives, or provide sufficient information regarding a potential statement of overriding consideration. The Project Approvals are discretionary, not by right. Absent compliance with the issues addressed herein, the City should reject Applicant's requested Entitlements for this Project. The City has clear legal authority to disapprove the Project and demand more for its residents. Commentors respectfully request that the City recirculate the DEIR that address the issues discussed herein and the enclosed expert comment letter.

O-4.9

Commentor reserves the right to supplement these comments at future hearings and proceedings for this Project. See *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1120 (CEQA litigation not limited only to claims made during EIR comment period).



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Finally, on behalf of Commentor, this Office requests, to the extent not already on the notice list, all notices of CEQA actions, Appeal hearing and any approvals, Project CEQA determinations, or public hearings to be held on the Project under state or local law requiring local agencies to mail such notices to any person who has filed a written request for them. See Pub. Res. Code §§ 21080.4, 21083.9, 21092, 21092.2, 21108, 21167(f) and Gov. Code § 65092. Please send notice by electronic and regular mail to: Gideon Kracov, Esq., 801 S. Grand Avenue, 11th Fl., Los Angeles, CA 90017, [gk@gideonlaw.net](mailto:gk@gideonlaw.net) (cc: [jordan@gideonlaw.net](mailto:jordan@gideonlaw.net)).

O-4.9  
(cont'd)

Sincerely,



Gideon Kracov  
Attorney for Commentors

Attachment:

Exhibit A: Expert Comment of SWAPE dated May 6, 2019

