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VIA U.S. MAIL & E-MAIL

August 12, 2019

E. Shearer-Nguyen
City of San Diego Development Services Center
1222 First Avenue
MS 501
San Diego, CA 92101
Em: DSDEAS@sandiego.gov

RE: 3Roots Project, Project No. 587128

Dear Ms. Nguyen,

On behalf of Southwest Regional Council of Carpenters as well as Michael Carmen LaBruno (collectively "**Commenters**" or "**Southwest Carpenters**"), my Office is submitting these comments on the City of San Diego's ("**City**" or "**Lead Agency**") Draft Environmental Impact Report ("**DEIR**") (SCH No. 2018041065) for the 3Roots Development Project ("**Project**").

The Southwest Carpenters is a labor union representing 50,000 union carpenters in six states, including in southern California, and has a strong interest in well-ordered land use planning and addressing the environmental impacts of development projects.

SI5-1

Individual members of the Southwest Carpenters include Michael Carmen LaBruno ("**Mr. Labruno**"). Mr. LaBruno lives, works, and recreates in the City of San Diego and surrounding communities and would be directly affected by the Project's environmental impacts. Commenters expressly reserves the right to supplement these comments at or prior to hearings on the Project, and at any later hearings and proceedings related to this Project. Cal. Gov. Code § 65009(b); Cal. Pub. Res. Code § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.

Commenters expressly reserve the right to supplement these comments at or prior to hearings on the Project, and at any later hearings and proceedings related to this

SI-52

SI5-1 The City acknowledges the constituency of the Southwest Carpenters, as well as the ability to supplement comments prior to final hearings on the Project.

SI5-2 This comment is a direct repetition of information provided as part of Comment 1. No additional response is required.

SI5-2 cont. Project. Cal. Gov. Code § 65009(b); Cal. Pub. Res. Code § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.

SI5-3 Commenters incorporate by reference all comments raising issues regarding the EIR submitted prior to certification of the EIR for the Project. *Citizens for Clean Energy v City of Woodland* (2014) 225 CA4th 173, 191 (finding that any party who has objected to the Project's environmental documentation may assert any issue timely raised by other parties).

SI5-4 Moreover, Commenters request that the Lead Agency provide notice for any and all notices referring or related to the Project issued under the California Environmental Quality Act ("**CEQA**"), Cal Public Resources Code ("**PRC**") § 21000 *et seq*, and the California Planning and Zoning Law ("**Planning and Zoning Law**"), Cal. Gov't Code §§ 65000–65010. California Public Resources Code Sections 21092.2, and 21167(f) and Government Code Section 65092 require agencies to mail such notices to any person who has filed a written request for them with the clerk of the agency's governing body.

I. **EXPERTS**

This comment letter includes comments from a scientific and technical experts Matthew F. Hagemann, P.G. C.Hg, QSD, QSP as well as Melanie R. Garcia. Their comments, attachments, and Curriculum Vitae ("CV") are attached hereto and are incorporated herein by reference ("**SWAPE Report**").

SI5-5 Mr. Hagemann has 30 years of experience in environmental policy, contaminant assessment and remediation, stormwater compliance, and CEQA review. He spent nine years with the U.S. EPA in the RCRA and Superfund programs and served as EPA's Senior Science Policy Advisor in the Western Regional Office where he identified emerging threats to groundwater from perchlorate and MTBE. While with EPA, Mr. Hagemann also served as a Senior Hydrogeologist in the oversight of the assessment of seven major military facilities undergoing base closure. He led numerous enforcement actions under provisions of the Resource Conservation and Recovery Act (RCRA) and directed efforts to improve hydrogeologic characterization and water quality monitoring. For the past 15 years, as a founding partner with Soil Water Air Protection Enterprise ("**SWAPE**"), Mr. Hagemann has developed extensive client relationships and has managed complex projects that include consultation as an expert

SI5-3 Comment noted.

SI5-4 As a commenter on the Draft EIR, Southwest Carpenters will receive future notices on the Project at the address noted on the comment letterhead (c/o Mitchell M. Tsai, 155 South El Molino Avenue, Suite 104, Pasadena, CA 91101).

SI-5 The City notes the cited qualifications of Mr. Hagemann and Ms. Garcia.

witness and a regulatory specialist, and a manager of projects ranging from industrial stormwater compliance to CEQA review of impacts from hazardous waste, air quality and greenhouse gas emissions.

SI5-5 cont.

Melanie R. Garcia holds a B.S. in Environmental Science & Environmental Engineering from the University of California, Los Angeles. Ms. Garcia currently serves as a Senior Project Analyst, Project Manager and Air Quality Specialist with SWAPE, specializing in greenhouse gas modeling, toxic exposure assessment and human health exposure for CEQA analysis and monitoring.

II. THE PROJECT WOULD BE APPROVED IN VIOLATION OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

A. Background Concerning the California Environmental Quality Act

CEQA has two basic purposes. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project. 14 California Code of Regulations ("**CCR**" or "**CEQA Guidelines**") § 15002(a)(1). "Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made. Thus, the EIR 'protects not only the environment but also informed self-government.' [Citation.]" (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 564.) The EIR has been described as "an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return." (*Berkeley Keep Jets Over the Bay v. Bd. of Port Comm'rs.* (2001) 91 Cal. App. 4th 1344, 1354 ("*Berkeley Jets*"); *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.)

SI5-6

Second, CEQA directs public agencies to avoid or reduce environmental damage when possible by requiring alternatives or mitigation measures. (CEQA Guidelines § 15002(a)(2) and (3); *see also, Berkeley Jets,* 91 Cal. App. 4th 1344, 1354; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553; *Laurel Heights Improvement Ass'n v. Regents of the University of California* (1988) 47 Cal.3d 376, 400.) The EIR serves to provide public agencies and the public in general with information about the effect that a proposed project is likely to have on the environment and to "identify ways that environmental damage can be avoided or significantly reduced." (CEQA Guidelines § 15002(a)(2).) If the project has a significant effect on the environment, the agency may approve the project only upon finding that it has "eliminated or substantially lessened

SI5-6 The comment provides general guidance regarding CEQA. The comment does not address the adequacy or accuracy of the Draft EIR. No further response is required.

SI5-6 cont.

all significant effects on the environment where feasible" and that any unavoidable significant effects on the environment are "acceptable due to overriding concerns" specified in CEQA section 21081. (CEQA Guidelines § 15092(b)(2)(A–B).)

SI5-7

While the courts review an EIR using an "abuse of discretion" standard, "the reviewing court is not to 'uncritically rely on every study or analysis presented by a project proponent in support of its position.' A 'clearly inadequate or unsupported study is entitled to no judicial deference.'" (*Berkeley Jets*, *supra,* 91 Cal.App.4th 1344, 1355 [emphasis added, quoting *Laurel Heights,* 47 Cal.3d at 391, 409 fn. 12]. Drawing this line and determining whether the EIR complies with CEQA's information disclosure requirements presents a question of law subject to independent review by the courts. (*Sierra Club v. Cnty. of Fresno* (2018) 6 Cal. 5th 502, 515; *Madera Oversight Coalition, Inc. v. County of Madera* (2011) 199 Cal.App.4th 48, 102, 131.) As the court stated in *Berkeley Jets*, *supra,* 91 Cal. App. 4th at 1355:

> A prejudicial abuse of discretion occurs "if the failure to include relevant information precludes informed decision-making and informed public participation, thereby thwarting the statutory goals of the EIR process.

The preparation and circulation of an EIR is more than a set of technical hurdles for agencies and developers to overcome. The EIR's function is to ensure that government officials who decide to build or approve a project do so with a full understanding of the environmental consequences and, equally important, that the public is assured those consequences have been considered. For the EIR to serve these goals it must present information so that the foreseeable impacts of pursuing the project can be understood and weighed, and the public must be given an adequate opportunity to comment on that presentation before the decision to go forward is made. (*Communities for a Better Environment v. Richmond* (2010) 184 Cal. App. 4th 70, 80 [quoting *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 449–450].)

B. CEQA Requires Revision and Recirculation of an Environmental Impact Report When Substantial Changes or New Information Comes to Light The DEIR Severely Underestimates Emissions By Omitting Information

SI5-8

Section 21092.1 of the California Public Resources Code requires that "[w]hen significant new information is added to an environmental impact report after notice has been given pursuant to Section 21092 … but prior to certification, the public

SI5-7 The comment provides general guidance regarding CEQA. The comment does not address the adequacy or accuracy of the Draft EIR. No further response is required.

SI5-8 This comment provides general guidance regarding CEQA. The comment does not address the adequacy or accuracy of the Draft EIR. No further response is required.

agency shall give notice again pursuant to Section 21092, and consult again pursuant to Sections 21104 and 21153 before certifying the environmental impact report" in order to give the public a chance to review and comment upon the information. (CEQA Guidelines § 15088.5.)

Significant new information includes "changes in the project or environmental setting as well as additional data or other information" that "deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative)." (CEQA Guidelines § 15088.5(a).) Examples of significant new information requiring recirculation include "new significant environmental impacts from the project or from a new mitigation measure," "substantial increase in the severity of an environmental impact," "feasible project alternative or mitigation measure considerably different from others previously analyzed" as well as when "the draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded." (*Id.*)

SI5-8 cont.

An agency has an obligation to recirculate an environmental impact report for public notice and comment due to "significant new information" regardless of whether the agency opts to include it in a project's environmental impact report. (*Cadiz Land Co. v. Rail Cycle* (2000) 83 Cal.App.4th 74, 95 [finding that in light of a new expert report disclosing potentially significant impacts to groundwater supply "the EIR should have been revised and recirculated for purposes of informing the public and governmental agencies of the volume of groundwater at risk and to allow the public and governmental agencies to respond to such information."].) If significant new information was brought to the attention of an agency prior to certification, an agency is required to revise and recirculate that information as part of the environmental impact report..

C. The DEIR Fails to Account for The Impact of Diesel Particulate Matter

SI5-9

The significance determination regarding diesel particulate matter is incorrect and unsubstantiated, as the City and Project Applicant cannot claim that the Project would result in a less than significant health risk impact without properly assessing the risk posed to sensitive receptors as a result of diesel particulate matter (DPM) emissions that will be emitted during Project activities. Until the Project's construction and

SI5-9 The analysis contained in the Draft EIR is appropriate and accurate. As detailed in Section 5.4.4.2 of the Draft EIR, impacts related to exposure to diesel particulate matter would be less than significant. Refer to Responses to Comments 35 and 36 of this letter for additional detail.

SI5-9 cont. operational health risk impacts are adequately quantified and compared to applicable thresholds, the DEIR and associated appendices cannot make any significance determination regarding the Project's health risk impacts. (SWAPE Report p. 6.)

SI5-10 Finally, by failing to prepare a construction or operational HRA for existing sensitive receptors, the DEIR is inconsistent with recommendations set forth by the Office of Environmental Health Hazard Assessment (OEHHA), the organization responsible for providing recommendations for health risk assessments in California. (SWAPE Report p. 6) In February of 2015, OEHHA released its most recent Risk Assessment Guidelines: Guidance Manual for Preparation of Health Risk Assessments, which was formally adopted in March of 2015. This guidance document describes the types of projects that warrant the preparation of a health risk assessment (HRA). Construction of the Project will produce emissions of DPM, a human carcinogen, through the exhaust stacks of construction equipment over an approximately 48-month construction schedule (p. 5.4-14). The OEHHA document recommends that all short-term projects lasting at least two months be evaluated for cancer risks to nearby sensitive receptors. Therefore, per OEHHA guidelines, health risk impacts from Project construction should have been evaluated by the DEIR. Furthermore, once construction of the Project is complete, the Project will operate for a long period of time. During operation, the Project will generate vehicle trips, which will generate additional exhaust emissions, thus continuing to expose nearby sensitive receptors to toxic air contaminant (TAC) emissions. The OEHHA document recommends that exposure from projects lasting more than 6 months should be evaluated for the duration of the project, and recommends that an exposure duration of 30 years be used to estimate individual cancer risk for the maximally exposed individual resident (MEIR). Although the expected lifetime of the Project was not provided, one can reasonably assume that the Project will operate for at least 30 years, if not more. Therefore, health risks from Project operation should have also been evaluated by the Project applicant, as a 30-year exposure duration vastly exceeds the 2-month and 6-month requirements set forth by OEHHA. These recommendations reflect the most recent health risk policy, and as such, an updated assessment of health risks to nearby sensitive receptors from Project construction and operation should be included in an updated and recirculated DEIR.

SI5-11

SI5-10 This comment suggests that a Health Risk Assessment (HRA) is required based upon data included as Exhibit C of the comment letter. The City disagrees with the assertion that the Draft EIR is inconsistent with OEHHA recommendations. The Project would only be inconsistent with recommendations if screening or proposed uses indicated that potentially significant impacts could occur. Refer to Responses to Comments 35 and 36 for additional detail regarding the potential for significant impacts.

SI5-11 As detailed on page 5.4-23 of the Draft EIR, the Project would not include any land use identified by the California Air Resources Board (CARB) in their Air Quality and Land Use Handbook as one that may emit substantial quantities of TACs and therefore potentially conflict with sensitive land uses. Refer to Responses to Comments 35 and 36 of this letter for additional detail.

D. The DEIR Does Not Adequately Evaluate the Project's Impacts On Air Quality and Should Be Revised and Recirculated

SI5-12

An agency is required to revise and recirculate an EIR for public comment for information disclosures showing "[a] significant new environmental impact," "[a] substantial increase in the severity of an environmental impact," "[a] feasible project alternative or mitigation measure" or when [t]he draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded." (*See also* CEQA Guidelines § 15088.5.) Revisions to environmental analysis in an environmental impact report requires recirculation of the environmental impact report to give the public a meaningful opportunity to comment. (*Gray v. Cty. of Madera* (2008)167 Cal. App. 4th 1099, 1121 – 22.)

As discussed above, due to omitted information and incorrect input parameters in the CalEEMod models, the DEIR significantly underestimates Project emissions and air quality impacts. Additionally, health risk impacts from the Project's diesel emissions should have been evaluated in the DEIR. A revised DEIR addressing these significant omissions and impacts should be recirculated for public review and comment according to CEQA standards.

E. CEQA Bars the Deferred Development of Environmental Mitigation Measures

SI5-13

CEQA mitigation measures proposed and adopted into an environmental impact report are required to describe what actions that will be taken to reduce or avoid an environmental impact. (CEQA Guidelines § 15126.4(a)(1)(B) [providing "[f]ormulation of mitigation measures should not be deferred until some future time."].) While the same Guidelines section 15126.5(a)(1)(B) acknowledges an exception to the rule against deferrals, but such exception is narrowly proscribed to situations where "measures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way." (Id.) Courts have also recognized a similar exception to the general rule against deferral of mitigation measures where the performance criteria for each mitigation measure is identified and described in the EIR. (Sacramento Old City Ass'n v. City Council (1991) 229 Cal.App.3d 1011.)

Impermissible deferral can occur when an EIR calls for mitigation measures to be created based on future studies or describes mitigation measures in general terms but

SI5-12 This comment references CEQA Guidelines Section 15088.5. The statement that "Revisions to environmental analysis in an environmental impact report requires recirculation of the environmental impact report…" is incorrect. Section 15088.5 provides that such recirculation is necessary if the revisions result in "significant new information:" Section 15088.5 states that such significant new information could be:

> *(1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.*
>
> *(2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.*
>
> *(3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the project's proponents decline to adopt it.*
>
> *(4) The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. (Mountain Lion Coalition v. Fish and Game Com. (1989) 214 Cal.App.3d 1043).*

For this project, although some limited clarification and updates have been provided in the Final EIR, there is no new significant environmental impact associated with the project that was not already addressed in the Draft EIR. Where, for example, increases or decreases to assessed acreages (e.g. in biology), or a revision to a retaining wall discussion west of Camino Santa Fe is provided in the Final EIR, these changes did not result in a "substantial increase in the severity of an environmental impact," and in fact, the inclusion of the incremental changes are folded into the mitigation measures that would reduce the impact to "a level of insignificance." No project alternative or mitigation measure "considerably different from others previously analyzed" was proposed which the project proponents declined to adopt. In fact, no project alternative or mitigation measure of any type proposed for consideration.

SI5-12 (cont.)

Finally, the EIR contained approximately 800 pages of text, figures and tables, to explain CEQA significance conclusion and to provide the public with information adequate to support meaningful public review and comment. This was supported by detailed and thorough technical analyses. In fact, the detail pulled from the studies and presented in this comment supports the amount of detail available for review. Certainly, it did not preclude meaningful comment, even if, ultimately, the City disagrees with the comment's conclusions.

After consideration of the modeling assumptions and conclusions provided by the commenter, the City finds that relevant information relevant to CalEEMod inputs parameters, omission of parking lot land use, and failure to include all hauling truck trips, was not omitted from the CalEEMod model (see Responses to Comments 31 through 33 of this letter). The Draft EIR's air quality analysis complied with CAPCOA and CARB guidelines, as well as publicly adopted City thresholds, and therefore did not significantly underestimate Project diesel emissions or health risks, and is adequate under CEQA (see Responses to Comments 35 and 36 which respond to the detailed queries provided by the commenter). No recirculation is required.

the agency fails to commit itself to specific performance standards. (Preserve Wild Santee v. City of Santee (2012) 210 Cal.App.4th 260, 281 [city improperly deferred mitigation to butterfly habitat by failing to provide standards or guidelines for its management]; San Joaquin Raptor Rescue Center v. County of Merced (2007) 149 Cal.App.4th 645, 671 [EIR failed to provide and commit to specific criteria or standard of performance for mitigating impacts to biological habitats]; see also Cleveland Nat'l Forest Found. v San Diego Ass'n of Gov'ts (2017) 17 Cal.App.5th 413, 442 [generalized air quality measures in the EIR failed to set performance standards]; California Clean Energy Comm. v City of Woodland (2014) 225 Cal.App.4th 173, 195 [agency could not rely on a future report on urban decay with no standards for determining whether mitigation required]; POET, LLC v. State Air Resources Bd. (2013) 218 Cal.App.4th 681, 740 [agency could not rely on future rulemaking to establish specifications to ensure emissions of nitrogen oxide would not increase because it did not establish objective performance criteria for measuring whether that goal would be achieved]; Gray v. County of Madera (2008) 167 Cal.App.4th 1099, 1119 [rejecting mitigation measure requiring replacement water to be provided to neighboring landowners because it identified a general goal for mitigation rather than specific performance standard]; Endangered Habitats League, Inc. v. County of Orange (2005) 131 Cal.App.4th 777, 794 [requiring report without established standards is impermissible delay].)

SI5-13 cont.

1. Biological Remediation

The project site was an active aggregate mining operation and concrete processing plant from 1958 to 2016, at which time reclamation began. The CUP approved by the City for mining and processing activities has been modified throughout the life of the mine to adjust the boundaries of the resource extraction area. The latest CUP was approved on September 13, 1990 (CUP 89-0585). (DEIR S-3.)

SI5-14

The City's biological mitigation measures are heavily deferred or overly reliant on existing plans, i.e. Multiple Species Conservation Program Subarea Plan. The biological mitigation measures may be inconsistent. The remediation affects waters of the United States.

SI5-15
SI5-16
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SI5-18

2. Noise Reduction

Mitigation measure NOI-1 provides that "Noise levels from the community sports fields shall not exceed City of San Diego noise standards for multi-family housing at

SI5-19

SI5-13 The comment provides general guidance regarding CEQA and is an introduction to specific comments below on biology and noise (see Responses to Comments 15 and 19).

SI5-14 This comment accurately summarizes the timing of on-site mining and the prior CUP. No further response is required.

SI5-15 There is no deferral of mitigation. 3Roots would be implemented in two phases, as described in Chapter 3.0, including Table 3-4, which details residential, commercial, park, roadway etc. components of each phase, with the location on site of these phases shown in Figure 3-27. Mitigation is tied appropriately to each phase.

Review of the biological mitigation measures as specified in EIR Section 5.9 and Chapter 11.0 shows the following. BIO-1 shows that covenants of easement (COEs)/irrevocable offers of dedication (IODs) of MHPA lands are expressly tied to "prior to the first grading permit" for the COEs, with the initial IOD moving forward at that same time and the IOD associated with MHPA lands along Carroll Canyon Creek being tied to Phase 2 and "prior to impacts to jurisdictional wetlands/waters…" This is because the land cannot be conveyed as MHPA with inappropriate encumbrances. Removal of some above- and below-ground utilities/mining structures, as well as initial reclamation grading, is part of the base Reclamation Plan obligations. This will all be completed following approval of the permits, and therefore is characterized as Phase 2 in the EIR. Mitigation Measure BIO-2 addresses construction activities. Timing is expressly specified as prior to, during, and post construction. There is no way to make this happen sooner.

BIO-3 addresses revegetation and restoration of Carroll Canyon Creek – currently in a degraded (and in some areas piped underground) condition. The measure has elements called out for prior to permit issuance, prior to start of construction, during construction and post construction, with the measure elements impossible to implement prior to their appropriate time. it is noted that landscape construction drawings are part of the prior to permit time period. This is standard timing for detailed construction drawings, which the resource agencies review relative to precise planting palette, temporary irrigation specifications etc. It should not be confused with the substantial information already provided in the EIR and supporting technical studies circulated with the EIR (including the Habitat Reclamation and Revegetation Plan) which clearly laid out preliminary plant palette choices, express elimination of identified invasive non-natives, types of on-site soils (critical to success of restored habitats), acreages of revegetation and

SI5-15 (cont.)

restoration activities, assessment of the locational suitability for these actions, target functions and services, specific requirements to include qualified personnel (biologists, and licensed engineer, landscape architect, and installation/ maintenance contractor), oversight and coordination between the City and permitting agencies, removal of invasives, installation of container stock/cuttings/ hydroseed, specific plant palettes identification for riparian/coastal sage scrub/ southern mixed chaparral/coastal sage and chaparral transition habitats, the 120-day establishment period and identification of success criteria, with additional detail relative to the five-year maintenance program required to ensure mitigation with documenting reports. There is no deferral.

BIO-4 addresses least Bell's vireo (LBV) habitat, which would be subject to potential impact only in the Phase 2 Carroll Canyon Creek area. The measure expressly calls out timing as "prior to the first Phase 2 grading permit." BIO-5 addresses potential effects to LBV habitat and birds during nesting season (including indirect impacts). The measure requires preparation actions prior to issuance of any grading permit to include documentation of lack of bird presence in the relevant areas and the potential for complete avoidance by restricting activities outside the nesting season (dates specified). If construction must occur with birds present, the measure requires City oversight and monitoring by a qualified acoustician (defined in the measure) to specific hourly averaged decibel maxima (60 dBA), as well as potential implementation of sound barriers, with numbers of times and locations of monitoring to occur specified in the measure.

BIO-6 requires a property analysis record (PAR; cost estimate for the amount to be endowed to support the Long-Term Habitat Management Plan in perpetuity) to be completed prior to any construction permits, including the first grading permit. While BIO-6 requires documentation as a very early action, in fact, this cost estimate (called the Estimate of Long-term Management in the Long-Term Habitat Management Plan) was prepared during public review by the San Diego Habitat Conservancy (SDHC). The SDHC will be the long-term habitat manager for Carroll Canyon Creek. Similarly, the routine City requirement noted in BIO-7 is to confirm identification of the long-term habitat manager. As noted, that has occurred, and it will be the SDHC. BIO-8 requires City confirmation of the long-term management areas and confirmation that an appropriate reference to the Habitat Reclamation and Mitigation Plan be placed on the construction plans. The City has approved the mitigation location, as demonstrated in the approved biological technical reports detailing their implementation (see BIO-3 discussion overall).

SI5-15 (cont.)

BIO-9 requires that all jurisdictional waters permits will be obtained from the specified agencies prior to any grading permit issued for Phase 2. This is timely relative to that grading. There is no impermissible deferral relative to biological mitigation measures.

SI5-16 The meaning of this comment is unclear and no specifics are provided relative to the assertion that "mitigation measures are overly reliant on existing plans.". No further response is required.

For purposes of clarification, however, it is noted that the MSCP is referenced three times in the mitigation measures – once each in BIO-2, BIO-3 and BIO 8. The first reference is associated with other relevant documents with which construction shall be required to comply: City Biology Guidelines, ESL [City Environmentally Sensitive Lands Ordinance] and MSCP, State CEQA, and other applicable local, state and federal law. The MSCP in particular is relevant because this is a plan designed in concert by the City, USFWS, CDFW (then) California Department of Fish and Game, and County of San Diego in accordance with the State's Natural Community Conservation Planning Act of 1991 (NCCP Act). This Plan specifically addresses areas identified for preservation of habitat quantities and qualities sufficient to maintain sensitive species and its importance cannot be overstated. The second reference addresses situations in which unanticipated potential impacts could occur to sensitive species that are not covered by the MSCP or federal or state lists and allows for addressing those species. The third reference explicitly requires MSCP staff to be part of the team responsible for ensuring that areas identified for long-term management have correctly been identified on construction plans.

SI5-17 The meaning of this comment is unclear and no specifics are provided relative to the assertion that "biological mitigation measures may be inconsistent."

SI5-18 Comment noted. No additional response is required.

the property line." Two "potential noise reduction measures include the following two options:

> Option 1: Prohibit public address systems.
>
> Option 2: Provide an installation plan to show noise reduction measures such as multiple speakers mounted on and in the bleachers with directional speakers pointing into the field area away from the residential areas with a programmable (lockable) system volume level limit. A final layout analysis shall be required to show compliance with the area for the planned hours of operations, sufficient to comply with noise ordinance and as approved by City Development Services Department review.

SI5-19 cont.

This is a deferred mitigation measure, and the city must show why this is adequate to mitigate the potential significant impact.

Similarly, mitigation measure NOI-2 provides that prior to issuance of building permits, a noise analysis shall be completed to assess operational noise sources from the commercial area within PA-19 and PA-20 and their noise impacts to the nearby mutli-family residences in PA-12, PA-13, and PA-14. Noise attenuation measures identified in the noise analysis shall be incorporated into the project design to ensure compliance with the City Noise Ordinance limits between this commercial zone and multi-family residential zone. A number of *potential* methods for ensuring interior noise levels are provided. These measures are inappropriately deferred , as they are to be created based on future studies, and describe only potential mitigation measures without committing to specific performance standards.

SI5-20

3. Hydrology and Water Quality

The DEIR acknowledges that the Project will have significant and unmitigated impacts to hydrology and water quality, but fails to adopt any mitigation measures for the Project. The DEIR states that there will be no mitigation for this impact pending the release of FEMA's verification of the hydrology analysis.

However, the release of FEMA's verification of the Project's hydrology analysis and subsequently proposed mitigation measures for the Project "significant and unmitigated impacts as acknowledged by the DEIR require revision and recirculation of the DEIR. (DEIR at 5-50.)

SI5-21

SI5-19 Presentation of two potential options does not constitute deferral of mitigation. There is no conflict between the City choosing between a simple removal of the noise source or allowing for attendee ease of hearing though proposal of a sound system with locational restrictions. One or the other of them must be implemented, and mitigation is assured. Identification of future actions based on specific design, so long as criteria area specified, is not deferral. In this case, final mapping for the park will show the exact layout of the field in the northwest corner, closest to future on site residential uses constructed as part of Phase 2 (residential property line approximately 350 feet distant). The equipment to be installed will have the advantage of being identified at that time, so it may be the most up to date. The efficacy of the measure would be confirmed against the City noise ordinance thresholds, which controls noise to varying decibel requirements based on time of day. There is no improper deferral of specific mitigation.

SI5-20 The listed potential mitigation noise attenuating elements are all appropriate for implementation following construction. The issue addressed is total decibel level reaching the sensitive receptors which may exceed City standards. Relative to performance standards, the City refers the commenter to the first paragraph of NOI-2, which directly precedes the element list. That text identifies the specific time of day and the specific decibel levels that must not be exceeded. Those are the performance standards. The entire mitigation measure addresses actions for Planning Areas (PAs)19 and 20 (in Phase 2) relative to then existing residential uses in PAs 12, 13, and 14 and specifies such. The potential need for mitigation for PA 19 and 20 uses relative to those previously constructed residential uses cannot be confirmed until those units and built and in operation. The timing of the mitigation implementation is appropriate. The restriction to "prior to issuance of building permits," however, has been clarified to read "prior to issuance of building permits for Phase 2" in the Final EIR. There is no improper deferral of specific mitigation and recirculation is not required. The commenter is referred to Response to Comment 12 of this letter for types of actions supporting recirculation under CEQA Guidelines Section 15088.5. No such actions have occurred.

SI5-21 FEMA staff have reviewed hydrological modeling and analyses relevant to the CLOMR. There are no remaining questions regarding flow or containment. Issuance of the CLOMR, however, requires issuance of resource agency permits addressing impacts to jurisdictional waters. The Section 401 permit issued by the RWQCB requires a certified EIR prior to issuance. The USACE 404 permit cannot be issued until the 401 is received.

III. THE PROJECT VIOLATES STATE PLANNING AND ZONING LAW BY BEING INCONSISTENT WITH THE CITY'S GENERAL PLAN HOUSING ELEMENT

A. Background Concerning The State Planning and Zoning Law

Each California city and county must adopt a comprehensive, long-term general plan governing development. *Napa Citizens for Honest Gov. v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 352, citing Gov. Code §§ 65030, 65300. The general plan sits at the top of the land use planning hierarchy (*see DeVita v. County of Napa* (1995) 9 Cal.4th 763, 773), and serves as a "constitution" or "charter" for all future development. *Lesher Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 540.

General plan consistency is "the linchpin of California's land use and development laws; it is the principle which infused the concept of planned growth with the force of law." *See Debottari v. Norco City Council* (1985) 171 Cal.App.3d 1204, 1213.

SI5-22

State law mandates two levels of consistency. First, a general plan must be internally or "horizontally" consistent: its elements must "comprise an integrated, internally consistent and compatible statement of policies for the adopting agency." See Gov. Code § 65300.5; *Sierra Club v. Bd. of Supervisors* (1981) 126 Cal.App.3d 698, 704. A general plan amendment thus may not be internally inconsistent, nor may it cause the general plan as a whole to become internally inconsistent. *See DeVita*, 9 Cal.4th at 796 fn. 12.

Second, state law requires "vertical" consistency, meaning that zoning ordinances and other land use decisions also must be consistent with the general plan. See Gov. Code § 65860(a)(2) [land uses authorized by zoning ordinance must be "compatible with the objectives, policies, general land uses, and programs specified in the [general] plan."]; *see also Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176, 1184. A zoning ordinance that conflicts with the general plan or impedes achievement of its policies is invalid and cannot be given effect. *See Lesher*, 52 Cal.3d at 544.

State law requires that all subordinate land use decisions, including conditional use permits, be consistent with the general plan. See Gov. Code § 65860(a)(2); *Neighborhood Action Group*, 156 Cal.App.3d at 1184.

A project cannot be found consistent with a general plan if it conflicts with a general

SI5-21 (cont.)

This is described in Chapter 3.0 of the EIR, which also states that Phase 2 construction of elements located within the floodplain is conditioned upon receipt of all agency permits. As noted in Section 5.15, "the CLOMR will be obtained prior to release of any grading permits for areas within on-site FEMA-floodway/ floodplain jurisdiction." The discussion identifies the issues, notes the lack of the CLOMR, and conservatively identifies the lack of a CLOMR as a significant and unmitigated impact. No "subsequent mitigation measures" are anticipated and none of the recirculation triggering events has occurred (please refer to Response to Comment 12 of this letter. The discussion provided on page S-50 of the Draft EIR has been amended to clarify this. There is no need for revision or recirculation as none of the triggering events has occurred.

SI5-22 This comment provides a general overview of the need for California cities to adopt a General Plan, as well as summary statements regarding consistency with such plans. The comment does not address the adequacy or accuracy of the Draft EIR. No further response is required.

plan policy that is "fundamental, mandatory, and clear," regardless of whether it is consistent with other general plan policies. *See Endangered Habitats League v. County of Orange* (2005) 131 Cal.App.4th 777, 782-83; *Families Unafraid to Uphold Rural El Dorado County v. Bd. of Supervisors* (1998) 62 Cal.App.4th 1332, 1341-42 ("*FUTURE*"). Moreover, even in the absence of such a direct conflict, an ordinance or development project may not be approved if it interferes with or frustrates the general plan's policies and objectives. *See Napa Citizens*, 91 Cal.App.4th at 378-79; *see also Lesher*, 52 Cal.3d at 544 (zoning ordinance restricting development conflicted with growth-oriented policies of general plan).

SI5-22 cont.

B. The Project Is Inconsistent With the City's General Plan Affordable Housing Requirement

The Housing Element of the City's General Plan requires that the City produce at least 700 additional units for moderate-income households, 3,600 additional units for low income households, 3,000 additional units of housing for very low-income households and 3,000 additional units for extremely low-income households by December 31, 2020. (City of San Diego Housing Element at p. HE-48.) Objective I Community Balance of the Housing Element of the City's General Plan implements a policy intended towards meeting that requirement by requiring that "a minimum of ten percent of all new units . . . be affordable to low- and very low- income residents or for moderate income homebuyers." (City of San Diego Housing Element at p. HE-122.)

SI5-23

SI5-23 This comment provides a quote from the City's Housing Element. The comment does not address the adequacy or accuracy of the Draft EIR. No further response is required.

The Project blatantly violates that requirement by setting aside 10 percent of the Project's total proposed residential units for market rate senior housing, and setting aside no units for moderate, low and very low income residents. By failing to set aside any units towards affordable housing in this Project, the Project undermines the City's goal of providing at least 700 additional units for moderate-income households, 3,600 additional units for low income households, 3,000 additional units of housing for very low-income households and 3,000 additional units for extremely low-income households by December 31, 2020. (City of San Diego Housing Element at p. HE-48.) The most recent data from the City regarding the City's affordable housing production indicates that the City is woefully behind in producing affordable housing for all affordable categories (City of San Diego 2019 Annual Element Progress Report at p.15.) The Project violates the City's mandatory affordable housing requirements.

SI5-24

SI5-24 This comment is incorrect. As described in Chapter 3.0 of the EIR, an element of Goals and Objectives 3 is to provide "for rent, age-restricted, affordable (10 percent of total units)" housing. This is referenced throughout relevant discussions in Chapter 3.0. It is also specifically alluded to in Section 5.1 under the heading "Consistency with the Environmental Goals and/or Objectives of the General Plan and MMCP," to wit: "Residences would include 180 units of on-site affordable housing (i.e., 10 percent of total proposed units) to meet the City's affordable housing requirements and Environmental Justice goals (GP policies LU-C.4, LU-H.1.e, LU-H.2, LU-H.3, HE-A.5, HE-B.4, HE-B.5, HE-B.16, and HE-I.6)." Contrary to the comment, the Project neither undermines the City's housing goals, nor violates the City's mandatory affordable housing requirements.

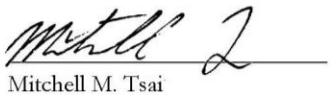
C. **The DEIR's Land Use Analysis Fails to Disclose the Aforementioned Impact on the City's Housing Element**

SI5-25 Finally the Project's DEIR is deficient for the aforementioned reasons since the DEIR's land use analysis fails to disclose the Project's inconsistency with the General Plan's affordability requirements.

IV. **CONCLUSION**

SI5-26 Commenters request that the City revise and recirculate the Project's environmental impact report to address the aforementioned concerns. If the City has any questions or concerns, feel free to contact my Office.

Sincerely,



Mitchell M. Tsai
Attorneys for Southwest Regional
Council of Carpenters

Attached:

Matthew F. Hagemann, P.G. C.Hg, QSD, QSP, Resume (Exhibit A);

Melanie R. Garcia, Resume (Exhibit B); and

Letter from Matthew F. Hagemann and Melanie R. Garcia, SWAPE to Mitchell M. Tsai, Mitchell M. Tsai, Attorney At Law RE: Comments on the 3Roots Project (SCH No. 2018041065) (Aug. 9, 2019) (Exhibit C);

SI5-25 This is a summary comment stating that the Draft EIR was deficient for the "above-stated reasons" relative to failure to disclose the Project's inconsistency with General Plan affordability requirements. Refer to Response to Comment 12.

SI5-26 As shown in each of the above responses, and disclosed though the Draft EIR, the Draft EIR requires neither revision nor recirculation.