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VIA U.S. MAIL & E-MAIL

September 8, 2020

Andy Uk, Associate Planner
City of Anaheim, Planning Services Division
200 South Anaheim Blvd.
Anaheim, CA 92805
Email: Auk@anaheim.net

RE: Initial Study/Mitigated Negative Declaration for The Invitation Project (SCH No. 2020080046)

Dear Mr. Uk,

On behalf of the **Southwest Regional Council of Carpenters** (“**Commenter**” or “**Carpenter**”), my Office is submitting these comments on the City of Anaheim’s (“**City**” or “**Lead Agency**”) Initial Study/Mitigated Negative Declaration (“**IS/MND**”) (SCH No. 2020080046) for the Invitation project located at 1122 North Anaheim Blvd. in the City of Anaheim which proposes to demolish the existing tow yard facility and construct 269 rental multi-family dwellings on a 4.49 acre site with a six-level parking structure. (“**Project**”).

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

Individual members of the Southwest Carpenters live, work and recreate in the City 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 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 incorporates 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 Cal. App. 4th 173, 191 (finding that any party who has objected to the Project’s environmental documentation may assert any issue timely raised by other parties).

Moreover, Commenter requests 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.

The City should seriously consider proposing that the Applicant provide additional community benefits such as requiring local hire and paying prevailing wages to benefit the City. Moreover, it would be beneficial for the City to require the Applicant to hire workers: (1) who have graduated from a Joint Labor Management apprenticeship training program approved by the State of California, or have at least as many hours of on-the-job experience in the applicable craft which would be required to graduate from such a state approved apprenticeship training program and; (2) who are registered apprentices in an apprenticeship training program approved by the State of California.

In addition, the City should require the Project to be built to standards exceeding the current 2019 California Green Building Code and 2020 County of Los Angeles Green Building Standards Code to mitigate the Project’s environmental impacts and to advance progress towards the State of California’s environmental goals.

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I. **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).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.

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 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).

¹ The CEQA Guidelines, codified in Title 14 of the California Code of Regulations, section 150000 et seq, are regulatory guidelines promulgated by the state Natural Resources Agency for the implementation of CEQA. (Cal. Pub. Res. Code § 21083.) The CEQA Guidelines are given “great weight in interpreting CEQA except when . . . clearly unauthorized or erroneous.” *Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 62 Cal. 4th 204, 217.

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*, 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*, 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. The City Should Prepare an EIR for the Project

A strong presumption in favor of requiring preparation of an EIR is built into CEQA. This presumption is reflected in what is known as the “fair argument” standard, under which an agency must prepare an EIR whenever substantial evidence in the record supports a fair argument that a project may have a significant effect on the environment. *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal. App. 4th 1597, 1602; *Friends of “B” St. v. City of Hayward* (1980) 106 Cal. App. 3d 988, 1002. The fair argument test stems from the statutory mandate that an EIR be prepared for any project that “may have a significant effect on the environment.” Pub. Res. Code §

21151; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68, 75; *Jensen v. City of Santa Rosa* (2018) 23 Cal. App. 5th 877, 884. Under this test, if a proposed project is not exempt and *may* cause a significant effect on the environment, the lead agency *must* prepare an EIR. Pub. Res. Code §§ 21100(a), 21151; CEQA Guidelines § 15064(a)(1), (f)(1). An EIR may be dispensed with only if the lead agency finds no substantial evidence in the initial study or elsewhere in the record that the project may have a significant effect on the environment. *Parker Shattuck Neighbors v. Berkeley City Council* (2013) 222 Cal. App. 4th 768, 785. In such a situation, the agency must adopt a negative declaration. Pub. Res. Code § 21080(c)(1); CEQA Guidelines §§ 15063(b)(2), 15064(f)(3).

"Significant effect upon the environment" is defined as "a substantial or potentially substantial adverse change in the environment." Pub. Res. Code § 21068; CEQA Guidelines § 15382. A project "may" have a significant effect on the environment if there is a "reasonable probability" that it will result in a significant impact. *No Oil, Inc. v. City of Los Angeles*, 13 Cal. 3d at 83 fn. 16; *Sundstrom v. County of Mendocino* (1988) 202 Cal. App. 3d 296, 309. If any aspect of the project may result in a significant impact on the environment, an EIR must be prepared even if the overall effect of the project is beneficial. CEQA Guidelines § 15063(b)(1). See *County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal. App. 4th 1544, 1580.

This standard sets a "low threshold" for preparation of an EIR. *Consolidated Irrig. Dist. v. City of Selma* (2012) 204 Cal. App. 4th 187, 207; *Nelson v. County of Kern* (2010) 190 Cal. App. 4th 252; *Pocket Protectors v. City of Sacramento* (2004) 124 Cal. App. 4th 903, 928; *Bowman v. City of Berkeley* (2004) 122 Cal. App. 4th 572, 580; *Citizen Action to Serve All Students v. Thornley* (1990) 222 Cal. App. 3d 748, 754; *Sundstrom v. County of Mendocino* (1988) 202 Cal. App. 3d 296, 310. If substantial evidence in the record supports a fair argument that the project may have a significant environmental effect, the lead agency must prepare an EIR even if other substantial evidence before it indicates the project will have no significant effect. See *Jensen v. City of Santa Rosa* (2018) 23 Cal. App. 5th 877, 886; *Clews Land & Livestock v. City of San Diego* (2017) 19 Cal. App. 5th 161, 183; *Stanislaus Audubon Soc'y, Inc. v. County of Stanislaus* (1995) 33 Cal. App. 4th 144, 150; *Brentwood Ass'n for No Drilling, Inc. v. City of Los Angeles* (1982) 134 Cal. App. 3d 491; *Friends of "B" St. v. City of Hayward* (1980) 106 Cal. App. 3d 988; CEQA Guidelines § 15064(f)(1).

As explained in full below, there is a fair argument that the Project will have a significant effect on the environment. As a result, the “low threshold” for preparation of an EIR has been met and the City must prepare an EIR.

C. CEQA Requires Revision and Recirculation of an Environmental Impact Report When Substantial Changes or New Information Comes to Light

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 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.*

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.

D. Due to the COVID-19 Crisis, the City Must Adopt a Mandatory Finding of Significance that the Project May Cause a Substantial Adverse Effect on Human Beings and Mitigate COVID-19 Impacts

CEQA requires that an agency make a finding of significance when a Project may cause a significant adverse effect on human beings. PRC § 21083(b)(3); CEQA Guidelines § 15065(a)(4).

Public health risks related to construction work requires a mandatory finding of significance under CEQA. Construction work has been defined as a Lower to High-risk activity for COVID-19 spread by the Occupational Safety and Health Administration. Recently, several construction sites have been identified as sources of community spread of COVID-19.²

SWRCC recommends that the Lead Agency adopt additional CEQA mitigation measures to mitigate public health risks from the Project's construction activities. SWRCC requests that the Lead Agency require safe on-site construction work practices as well as training and certification for any construction workers on the Project Site.

In particular, based upon SWRCC's experience with safe construction site work practices, SWRCC recommends that the Lead Agency require that while construction activities are being conducted at the Project Site:

Construction Site Design:

- The Project Site will be limited to two controlled entry points.
- Entry points will have temperature screening technicians taking temperature readings when the entry point is open.

² Santa Clara County Public Health (June 12, 2020) COVID-19 CASES AT CONSTRUCTION SITES HIGHLIGHT NEED FOR CONTINUED VIGILANCE IN SECTORS THAT HAVE REOPENED, available at <https://www.sccgov.org/sites/covid19/Pages/press-release-06-12-2020-cases-at-construction-sites.aspx>.

- The Temperature Screening Site Plan shows details regarding access to the Project Site and Project Site logistics for conducting temperature screening.
- A 48-hour advance notice will be provided to all trades prior to the first day of temperature screening.
- The perimeter fence directly adjacent to the entry points will be clearly marked indicating the appropriate 6-foot social distancing position for when you approach the screening area. Please reference the Apex temperature screening site map for additional details.
- There will be clear signage posted at the project site directing you through temperature screening.
- Provide hand washing stations throughout the construction site.

Testing Procedures:

- The temperature screening being used are non-contact devices.
- Temperature readings will not be recorded.
- Personnel will be screened upon entering the testing center and should only take 1-2 seconds per individual.
- Hard hats, head coverings, sweat, dirt, sunscreen or any other cosmetics must be removed on the forehead before temperature screening.
- Anyone who refuses to submit to a temperature screening or does not answer the health screening questions will be refused access to the Project Site.
- Screening will be performed at both entrances from 5:30 am to 7:30 am.; main gate [ZONE 1] and personnel gate [ZONE 2]
- After 7:30 am only the main gate entrance [ZONE 1] will continue to be used for temperature testing for anybody

gaining entry to the project site such as returning personnel, deliveries, and visitors.

- If the digital thermometer displays a temperature reading above 100.0 degrees Fahrenheit, a second reading will be taken to verify an accurate reading.
- If the second reading confirms an elevated temperature, DHS will instruct the individual that he/she will not be allowed to enter the Project Site. DHS will also instruct the individual to promptly notify his/her supervisor and his/her human resources (HR) representative and provide them with a copy of Annex A.

Planning

- Require the development of an Infectious Disease Preparedness and Response Plan that will include basic infection prevention measures (requiring the use of personal protection equipment), policies and procedures for prompt identification and isolation of sick individuals, social distancing (prohibiting gatherings of no more than 10 people including all-hands meetings and all-hands lunches) communication and training and workplace controls that meet standards that may be promulgated by the Center for Disease Control, Occupational Safety and Health Administration, Cal/OSHA, California Department of Public Health or applicable local public health agencies.³

The United Brotherhood of Carpenters and Carpenters International Training Fund has developed COVID-19 Training and Certification to ensure that Carpenter union members and apprentices conduct safe work practices. The Agency should require that all construction workers undergo COVID-19 Training and Certification before being allowed to conduct construction activities at the Project Site.

³ See also The Center for Construction Research and Training, North America's Building Trades Unions (April 27 2020) NABTU and CPWR COVIC-19 Standards for U.S Constructions Sites, *available at* https://www.cpwr.com/sites/default/files/NABTU_CPWR_Standards_COVID-19.pdf; Los Angeles County Department of Public Works (2020) Guidelines for Construction Sites During COVID-19 Pandemic, *available at* https://dpw.lacounty.gov/building-and-safety/docs/pw_guidelines-construction-sites.pdf.

E. The IS/MND Fails to Adequately Disclose, Analyze and Mitigate the Project’s Significant Noise Impacts

CEQA Guidelines, Appendix G, Sec. XII. (a) specifies that a potentially significant impact for noise should be found where there is “[e]xposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies.” Here, the Project has the potential to generate excessive noise levels during the construction phase which could affect nearby sensitive receptors at residential sites. The IS/MND discloses that there are nearby sensitive receptors to the Project site which include residences to the south on North Kemp Street and La Palma Avenue only 500 feet away. (IS/MND, p. 104.) First, Goal 3.1 of the City of Anaheim General Plan, Noise Element, specifies that construction on weekends or holidays should be discouraged, construction equipment should operate with mufflers and intake silencers no less effective than originally equipped, and the use of portable noise barriers for heavy construction operations within 100 feet residences should be used unless they are infeasible.⁴ The IS/MND fails to state how it will comply with Goal 3.1, and it should, because construction activities will be taking place within close proximity to residential sites.

Second, the IS/MND admits that noise levels from heavy construction vehicles will exceed 85dBA at 50 feet from the vehicles, and the Project will generate hundreds of trips from workers and vendors vehicles. (IS/MND, pp. 109-110.) However, the IS/MND concludes that construction-related noise levels would not exceed the 80 dBA threshold established by the Federal Transit Administration (FTA) for construction noise levels. This claim is unsubstantiated and not supported by substantial evidence. Noise levels from site construction activities will be substantially higher to sensitive receptors than the IS/MND’s estimates based on the simple fact that the noise estimates are approximated using a distance point from the center of the Project site (the furthest possible point to all affected receptors) which fails to account for noise impacts emanating from other Project site areas, or increases in dBA levels from construction vehicles and haul trips that are not accounted for in these estimates.

At a minimum, the IS/MND should-recalculate its noise estimates using disparate distance measurements to get an accurate accounting of noise levels. And the

⁴ City of Anaheim General Plan, Noise Element, pp. I-32-33. Attached as Exhibit A.

IS/MND’s noise analysis located in Appendix I otherwise fails to substantiate the input parameters used in its calculations performed with FHWA RCNM.

F. The IS/MND Defers Formulation of Mitigation Measures for Hazardous Materials

The IS/MND fails to adequately mitigate the Project’s significant hazardous materials impacts by deferring the formulation of Mitigation Measure MM HAZ-5.

Section 15126.4(a)(1)(B) of the CEQA Guidelines states “[f]ormulation of mitigation measures shall not be deferred until some future time.” While specific details of mitigation measure may be deferred, an agency is required to (1) commit itself to mitigation, (2) adopt specific performance standards the mitigation will achieve, and (3) identify the type(s) of potential action(s) that can feasibly achieve that performance standard and that will be considered, analyzed, and potentially incorporated in the mitigation measure. *See Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 281; *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 671.

The Phase II environmental site assessment determined that removal of Total Petroleum Hydrocarbons (TPH)-impacted soils was required due to contamination from the site’s current and historical uses. (IS/MND, p. 84.) To achieve adequate contaminated soil removal, the Project requires a workplan to removal impacted soils with concentrations in excess of screening levels. (*Id.*) However, no workplan has been formulated or included in the IS/MND. Instead, the IS/MND calls for preparation of a workplan that will eventually be accepted by Cal EPA and the Regional Water Quality Control Board. This is deferred mitigation. The IS/MND needs to be amended to include additional information about a workplan beyond simply stating the goal of impacted soil removal which will meet regulatory requirements.

G. The DEIR Fails to Support Its Findings with Substantial Evidence

When new information is brought to light showing that an impact previously discussed in the DEIR but found to be insignificant with or without mitigation in the DEIR’s analysis has the potential for a significant environmental impact supported by substantial evidence, the EIR must consider and resolve the conflict in the evidence. (See *Visalia Retail, L.P. v. City of Visalia* (2018) 20 Cal. App. 5th 1, 13, 17; see also *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal. App. 4th

1099, 1109.) While a lead agency has discretion to formulate standards for determining significance and the need for mitigation measures—the choice of any standards or thresholds of significance must be “based to the extent possible on scientific and factual data and an exercise of reasoned judgment based on substantial evidence. (CEQA Guidelines § 15064(b); *Cleveland Nat'l Forest Found. v. San Diego Ass'n of Gov'ts* (2017) 3 Cal. App. 5th 497, 515; *Mission Bay Alliance v. Office of Community Inv. & Infrastructure* (2016) 6 Cal. App. 5th 160, 206.) And when there is evidence that an impact could be significant, an EIR cannot adopt a contrary finding without providing an adequate explanation along with supporting evidence. (*East Sacramento Partnership for a Livable City v. City of Sacramento* (2016) 5 Cal. App. 5th 281, 302.)

In addition, a determination that regulatory compliance will be sufficient to prevent significant adverse impacts must be based on a project-specific analysis of potential impacts and the effect of regulatory compliance. In *Californians for Alternatives to Toxics v. Department of Food & Agric.* (2005) 136 Cal. App. 4th 1, the court set aside an EIR for a statewide crop disease control plan because it did not include an evaluation of the risks to the environment and human health from the proposed program but simply presumed that no adverse impacts would occur from use of pesticides in accordance with the registration and labeling program of the California Department of Pesticide Regulation. *See also Ebbetts Pass Forest Watch v Department of Forestry & Fire Protection* (2008) 43 Cal. App. 4th 936, 956 (fact that Department of Pesticide Regulation had assessed environmental effects of certain herbicides in general did not excuse failure to assess effects of their use for specific timber harvesting project).

1. *The IS/MND Fails to Support its Air Quality Analysis with Substantial Evidence.*

Diesel particulate matter health risk emissions were inadequately evaluated this the conclusion that operational and construction health risk impacts would be less than significant without conducting a quantified construction or operational health risk assessment (HRA) is not based upon substantial evidence. More specifically, the IS/MND attempts to justify this by stating,

“The relatively short duration—when compared to a 30-year period—would limit exposures of on- and off-site receptors. In addition, exhaust emissions from off-road vehicles associated with overall project-related construction activities would not exceed the screening-level LSTs.” (IS/MND, p. 57).

However, this justification and subsequent less than significant impact finding are incorrect.

First, the use of the LST method to determine the Project's health risk impacts on nearby, existing sensitive receptors is incorrect. While the LST method assesses the impact of pollutants at a local level, it only evaluates impacts from criteria air pollutants. According to the Final Localized Significance Threshold Methodology document prepared by the SCAQMD, the LST analysis is only applicable to NO_x, CO, PM₁₀, and PM_{2.5} emissions, which are collectively referred to as criteria air pollutants.⁵ Because the LST method can only be applied to criteria air pollutants, this method cannot be used to determine whether emissions from DPM, a known human carcinogen, will result in a significant health risk impact to nearby sensitive receptors. As a result, health impacts from exposure to toxic air contaminants (TACs), such as diesel particulate matter (DPM), were not analyzed, thus leaving a gap within the IS/MND's analysis.

Second, by claiming a less than significant impact without conducting a quantified HRA to nearby, existing sensitive receptors as a result of Project construction and operation, the IS/MND fails to compare the excess health risk to the SCAQMD's specific numeric threshold of 10 in one million.⁶ Thus, the IS/MND cannot conclude less than significant health risk impacts resulting from Project construction and operation without quantifying emissions to compare to the proper threshold.

Third, the omission of a quantified HRA is inconsistent with the most recent guidance published by the Office of Environmental Health Hazard Assessment (OEHHA), the organization responsible for providing guidance on conducting HRAs in California. In February of 2015, OEHHA released its most recent *Risk Assessment Guidelines: Guidance Manual for Preparation of Health Risk Assessments*.⁷ This guidance document describes the types of projects that warrant the preparation of an HRA. Construction of the Project will produce emissions of DPM, a human carcinogen,

⁵ "Final Localized Significance Threshold Methodology." SCAQMD, Revised July 2008, *available at*: <http://www.aqmd.gov/docs/default-source/ceqa/handbook/localized-significance-thresholds/final-lst-methodology-document.pdf>.

⁶ "South Coast AQMD Air Quality Significance Thresholds." SCAQMD, April 2019, *available at*: <http://www.aqmd.gov/docs/default-source/ceqa/handbook/scaqmd-air-quality-significance-thresholds.pdf?sfvrsn=2>

⁷ "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, *available at*: http://oehha.ca.gov/air/hot_spots/hotspots2015.html

through the exhaust stacks of construction equipment over a construction period of approximately 2,440 days (Appendix B, pp. 116, 169, 224, 277). The OEHHA document recommends that all short-term projects lasting at least two months be evaluated for cancer risks to nearby sensitive receptors.⁸ Therefore, per OEHHA guidelines, the health risk impacts from Project construction should be evaluated by the IS/MND.

Furthermore, once construction of the Project is complete, the Project will operate for a long period of time. As previously stated, Project operation will generate thousands of daily vehicle trips, not including pass-by trips or internal capture, which will generate additional exhaust emissions and continue to expose nearby sensitive receptors to DPM emissions. (*See* IS/MND, Appendix A). The OEHHA document recommends that exposure from projects lasting more than 6 months 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).⁹ Even though the IS/MND does provide for the expected lifetime of the Project, we can reasonably assume that the Project will operate for at least 30 years, if not more. Therefore, health risks from Project operation should also be evaluated, as a 30-year exposure duration vastly exceeds the 2-month and 6-month requirements set forth by OEHHA. This guidance reflects 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 a revised CEQA evaluation for the Project.

Lastly, there is no evidence in Appendix A that any cumulative impacts air quality analysis was conducted that included other projects. Thus, there is no substantial evidence upon which to base the IS/MND's conclusion of no significant cumulative impacts that require additional mitigation measures.

The IS/MND needs to conduct a cumulative air quality impacts analysis, and if there is a potentially significant impact, impose adequate and all feasible measures.

⁸ "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, available at: http://oehha.ca.gov/air/hot_spots/2015/2015GuidanceManual.pdf, p. 8-18.

⁹ "Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments." OEHHA, February 2015, available at: http://oehha.ca.gov/air/hot_spots/2015/2015GuidanceManual.pdf, p. 8-6, 8-15.

2. *The IS/MND Fails to Support its Findings on Greenhouse Gas Impacts with Substantial Evidence.*

CEQA Guidelines § 15064.4 allow a lead agency to determine the significance of a project's GHG impact via a qualitative analysis (e.g., extent to which a project complies with regulations or requirements of state/regional/local GHG plans), and/or a quantitative analysis (e.g., using model or methodology to estimate project emissions and compare it to a numeric threshold). So too, CEQA Guidelines allow lead agencies to select what model or methodology to estimate GHG emissions so long as the selection is supported with substantial evidence, and the lead agency "should explain the limitations of the particular model or methodology selected for use." CEQA Guidelines § 15064.4(c).

Here, the IS/MND concludes that the Project will have a less than significant impact relating to greenhouse gas emissions because it estimates that Project emissions will not exceed South Coast AQMD's 3,000 metric tons of carbon dioxide equivalent per year. (IS/MND, p. 73.) The IS/MND estimates that total emissions will amount to 2,601 MTCO_{2e} per year. However, it appears that based on a preliminary analysis of estimated Project emissions calculated with CalEEMod, the IS/MND underestimates Project emissions associated with its activities. (See IS/MND, Appendix A.) The Project underestimates mobile daily trips, and otherwise makes unsubstantiated reductions from default CalEEMod values without substantial evidence.

Furthermore, there is no evidence that the IS/MND accounted for the Project's cumulative GHG impacts by analyzing the Project's GHG emissions together with "the effects of past projects, the effects of other current projects, and the effects of probable future projects." CEQA Guidelines § 15065(a)(3). An EIR must discuss cumulative impacts when they are significant and the project's incremental contribution is "cumulatively considerable." CEQA Guidelines §15130(a). A project's incremental contribution is cumulatively considerable if the incremental effects of the project are significant "when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects." CEQA Guidelines § 15065(a)(3). The IS/MND needs to conduct a cumulative GHG impacts analysis, and if there is a potentially significant impact, impose adequate and all feasible measures.

3. *The IS/MND's Transportation Analysis is Not Supported by Substantial Evidence.*

In 2013, SB 743 was enacted (Stats 2013, ch 386) in an effort to limit the use of level-of-service standards in CEQA analysis and to promote the use of standards that place greater focus on implementing the state's goals of reducing greenhouse gas (GHG) emissions, promoting transit, and increasing infill development. Pub. Res. Code §21099.

Despite the fact that the California Natural Resources Agency adopted revised CEQA Guidelines on December 28, 2018 calling for a change from level of service (LOS) traffic analysis to vehicle miles traveled (VMT), which lead agencies were required to implement no later than June 30, 2020, the IS/MND utilizes and relies on a LOS analysis to determine that the Project has no significant transportation impacts. The IS/MND failed to conduct a VMT analysis and relies on a supposed exemption under CEQA Guidelines Section 15064.3(b)(1) for projects located along high-quality transit corridors. However, this is problematic because the IS/MND does not demonstrate that the Project qualifies for a VMT analysis exemption. The IS/MND fails to demonstrate that it is located along a high-quality transit corridor as that is defined by Pub. Res. Code. Sec. 21155(b).

Pub. Res. Code. Sec. 21155(b) defines a high quality transit corridor as:

a corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours. A project shall be considered to be within one-half mile of a major transit stop or high-quality transit corridor if all parcels within the project have no more than 25 percent of their area farther than one-half mile from the stop or corridor and if not more than 10 percent of the residential units or 100 units, whichever is less, in the project are farther than one-half mile from the stop or corridor.

The Project is located at 1122 North Anaheim Blvd. in Anaheim between La Palma Ave. and the Riverside freeway. There are several fixed-route bus stops within one-half mile of the Project site along Lemon St. and La Palma Ave., however, there is no evidence that the OCTA bus routes on Lemon or La Palma run every 15 minutes during peak commute hours.¹⁰ For example, the bus route along La Palma, OCTA line 38, runs approximately every 45 minutes during morning commute hours at the stop closest to the Project site heading west towards Beach Blvd. As such, the

¹⁰ See bus schedules for OCTA lines 47 and 38, available at <https://www.octa.net/ebusbook/RoutePDF/route047.pdf> and <https://octa.net/ebusbook/RoutePDF/route038.pdf>. Attached as Exhibit B.

IS/MND needs to be revised to include a VMT analysis, or demonstrate how it qualifies for an exemption pursuant to CEQA Guidelines Section 15064.3.

In addition, the Governor’s Office of Planning and Research Sitecheck database, a database that compiles comprehensive information concerning property parcels in the State of California, confirmed that the Project Site is not within half a mile of a high quality transit corridor or a major transit stop.¹¹

II. **THE PROJECT VIOLATES THE STATE PLANNING AND ZONING LAW AS WELL AS THE CITY’S GENERAL PLAN**

A. Background Regarding the State Planning and Zoning Law

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, 378-79; 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 988, 998 (held county development and infrastructure improvements must be consistent with adopted general plans) (citing Gov. Code 65302).

B. The Project is Inconsistent with the State’s Regional Housing Needs Assessment Allocations for the City of Anaheim and the City’s Resolution No. 2018-106

The Regional Housing Needs Assessment (RHNA) is mandated by State Housing Law as part of the periodic process of updating local housing elements of the General Plan. The RHNA quantifies the need for housing within each jurisdiction during specified planning periods. The City Council’s March 19, 2019 Agenda Report,

¹¹ See Governor’s Office of Planning and Research (September 8, 2020) Site Check Report APN 035 – 010 – 51, accessed September 8, 2020 at <http://sitecheck.opr.ca.gov> (search for APN 035-010-51), attached as Exhibit E.

Annual Housing Element Progress Report for the 2018 Reporting Period indicates that the City is woefully behind schedule in constructing affordable housing units.¹² Anaheim’s RHNA assessment allocation is 5,702 affordable units, of which 2,933 units had yet to be constructed as of March 19, 2019. The requirement to construct 5,702 affordable units is a state-required component of the City’s General Plan.

The City had also adopted a resolution, Resolution No. 2018-106, making it a priority to create affordable housing in Anaheim, explicitly noting that the City was well-behind its RHNA allocation to create housing for moderate, low, and very-low income residents.¹³ Section 1 of the Resolution requires that developers “will engage earnestly and objectively in discussions with City staff as projects are contemplated and proposed that result in the consideration of viable options for the creation of affordable housing to the extent feasible.”

The simple fact is that the Project will not include *any* affordable housing units as part of the Project; and there is no evidence that the developer ever attempted to work with the City to provide these units. What was the rationale for not including affordable housing units? Was it not feasible? The IS/MND includes no discussion and excludes affordable units by fiat without earnestly attempting to include them in the Project. The Project opts to, instead, make an unspecified contribution to the City’s affordable housing “programs (i.e. Senior Safety Net Program).” This is unacceptable. The City cannot and will not meet its RHNA obligations for construction through 2021 if every developer excludes affordable units in their residential projects, as the developer proposes here. And the City’s Resolution requires some analysis or discussion on this issue.

The City should require inclusion of affordable housing units on this Project so that it may assist the City to reach its RHNA assessment allocation.

¹²March 19, 2019 City Council Agenda Report, http://local.anaheim.net/docs_agend/questys_pub/20865/20895/20896/21055/21056/Staff%20Report21056.pdf. Attached as Exhibit C.

¹³ A Resolution of the City Council of the City of Anaheim Adopting an Affordable Housing Policy that Affordable Housing is a Priority in the City of Anaheim, <https://www.anaheim.net/DocumentCenter/View/23785/RES-2018-106-Affordable-Housing-Policy---Signed-and-Replaced-Scans>. Attached as Exhibit D.

C. The Proposed Land Use Amendments and Entitlements Conflict with SB 375 and SCAG’s 2016 Regional Transportation Plan and Sustainable Communities Strategy

In 2008, Senate Bill 375 amended CEQA and empowered metropolitan planning organizations (MPOs) to enact regional plans to reduce GHG emissions from passenger vehicles. MPOs are required to prepare regional transportation plans (RTP) and sustainable community strategies (SCS) in an effort to meet CARB’s GHG reduction goals under SB 375. (Gov. Code § 65080(b)(2)(B).) SB 375 specifically targets GHG emissions from passenger vehicles by linking land use decisions to transportation planning. (*Id.*) If the regional SCS/RTP plan does not achieve CARB’s GHG reduction targets, then the MPO is required to create an alternative planning strategy (APS) that shows how the targets can be achieved through other mechanism such as alternative development patterns, infrastructure decisions, or other alternative transportation measures or policies that can still achieve CARB’s reduction targets. (Gov. Code § 65080(b)(2)(I).)

For this Project, the applicable plan is SCAG’s 2016 RTP/SCS plan adopted in April 2016.

The IS/MND fails to analyze the Project’s consistency with SCAG’s RTP/SCS plan, and is inconsistent in many respects. For example, SCAG’s 2016 RTP/SCS requires or suggests the following that the Project fails to consider or adopt in the IS/MND:

- Land Use Policies: pursuing affordable housing or providing more transportation options for short trips;¹⁴
- Transportation Network Strategies: providing transit fare discounts; providing transit integration strategies such as integration of active transportation and transit by improving pedestrian access and bicyclist access;¹⁵
- Transportation Demand Management Strategies: encourage use and implementation of TDM strategies such as rideshare incentives, parking management, parking subsidies for carpoolers,

¹⁴ SCAG (Apr. 2016) 2016 RTP/SCS, pp. 75-114. Attached as Exhibit E.

¹⁵ *Id.*

incentives for telecommuting, integrated mobility hubs, or additional investments in active transportation infrastructure;¹⁶ and

- Clean Vehicle Technology Strategies: use of neighborhood electric vehicles (NEVs), and anticipating shared mobility platforms, car-to-car communication or automated vehicle technologies.¹⁷

The IS/MND fails to demonstrate consistency with SCAG’s 2016 RTP/SCS Plan and should be revised to meet its goals and policies.

D. The IS/MND is Inconsistent with the City’s General Plan Noise Element

Goal 3.1 of the City of Anaheim General Plan, Noise Element, specifies that construction on weekends or holidays should be discouraged, construction equipment should operate with mufflers and intake silencers no less effective than originally equipped, and the use of portable noise barriers for heavy construction operations within 100 feet residences should be used unless they are infeasible.¹⁸ The IS/MND fails to state how it will comply with Goal 3.1, and it should, because construction activities will be taking place within close proximity to residential sites.

The IS/MND should be amended to include compliance measures with Goal 3.1 of the City General Plan Noise Element.

III. CONCLUSION

Commenters request that the City revise and recirculate the Project’s IS/MND and/or prepare an environmental impact report which addresses 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

ATTACHMENTS:

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ City of Anaheim General Plan, Noise Element, pp. I-32-33.

City of Anaheim General Plan, Noise Element (May 2004) (Exhibit A);

Orange County Transportation Authority Bus Schedules for Lines 38 and 47 (Exhibit B);

City of Anaheim Annual Housing Element Progress Report (March 19, 2019) (Exhibit C);

City of Anaheim City Council Resolution No. 2018-106 (August 14, 2018) (Exhibit D); and

Southern California Association of Governments 2016 Regional Transportation Plan/Sustainable Communities Strategy (April 2016) (Exhibit E).