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VIA U.S. MAIL & E-MAIL

March 23, 2020

Via E-Mail & U.S. Mail

Attn: One Metro West Draft EIR
Mino Ashabi, Principal Planner
City of Costa Mesa
Development Services Department
77 Fair Drive
Costa Mesa, CA 92626
Em: OMWPublicComments@costamesaca.gov

RE: One Metro West Project, State Clearinghouse No. 2019050014

Dear Ms. Ashabi,

On behalf of the **Southwest Regional Council of Carpenters** ("**Commenters**" or "**Carpenters**"), my Office is submitting these comments on the City of Costa Mesa ("**City**" or "**Lead Agency**") Draft Environmental Impact Report ("**DEIR**") (SCH No. 2019050014) for the One Metro West Project, a proposed "mixed-use development that consists of residential, specialty, retail, creative office, and open space uses." "The project is proposed to include up to 1,057 residential dwelling units (anticipated rental units), 25,000 square feet of commercial creative office, 6,000 square feet of specialty retail, and 1.5 acres of open space." ("**Project**").

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

Commenter expressly reserves the right to supplement these comments at or before 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.

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Commenter incorporates by reference all comments raising issues regarding the EIR submitted before 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).

Moreover, Commenter requests that the Lead Agency provide notice for 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.

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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). "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.

O1-2

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

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 are 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).

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B. The DEIR Does Not Adequately Describe the Project

An EIR must be "prepared with a sufficient degree of analysis to provide decision-makers with information which enables them to make a decision which intelligently takes account of environmental consequences." *Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20, 26. An EIR's description of the Project should identify the Project's main features and other information needed for an assessment of the Project's environmental impacts. *Citizens for a Sustainable Treasure Island v City & County of San Francisco* (2014) 227 Cal.App.4th 1036, 1053.

The DEIR fails to describe the specific land use entitlements that the Project will be seeking. The DEIR lists required entitlements from various state and local agencies, but indicates that the list is non-exhaustive and that the entitlements listed are "in addition to" non-descript "ministerial actions such as demolition permit, grading permit, building permits, certificates of occupancy, etc." DEIR, p. 3-27.

Among the listed entitlements required are amendments to the General Plan, Specific Plan, and Master Plan, as well as a change in zoning. However, the Project fails to describe these listed changes. Without further detail as to what these amendments entail, as well as the extent of the ministerial actions, the Project fails to provide a sufficient description upon which to evaluate the Project's potential land use impacts.

C. The DEIR Must Describe All Feasible Mitigation Measures That Can Minimize the Project's Significant and Unavoidable Environmental Impacts

A fundamental purpose of an EIR is to identify ways in which a proposed project's significant environmental impacts can be mitigated or avoided. Pub. Res. Code §§ 21002.1(a), 21061. To implement this statutory purpose, an EIR must describe any feasible mitigation measures that can minimize the Project's significant environmental effects. PRC §§ 21002.1(a), 21100(b)(3); CEQA Guidelines §§ 15121(a), 15126.4(a).

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"¹ and find that 'specific overriding economic, legal, social, technology or other benefits of the project outweigh the significant effects on the environment.'□ "A gloomy forecast of environmental

¹ PRC §§ 21002; 21002.1, 21081; CEQA Guidelines §§ 15091, 15092(b)(2)(A).

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degradation is of little or no value without pragmatic, concrete means to minimize the impacts and restore ecological equilibrium." *Environmental Council of Sacramento v. City of Sacramento* (2006) 142 Cal.App.4th 1018, 1039.

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1. *The DEIR Does Not Mitigate The Project's Significant and Unavoidable Greenhouse Gas Emissions*

The DEIR concludes that the Project will have significant Greenhouse Gas (GHG) emissions impacts since the estimated total emissions from the Project's construction and operation and mobile sources will exceed the SCAQMD threshold. DEIR, 4.5-12. But the DEIR explains that there are no additional feasible mitigation measures beyond those that the DEIR current proposal that would reduce GHG emissions to levels that are less than significant, DEIR 5.6-16. This explanation is untrue.

The only two proposed mitigation measures, GHG-1 and GHG-2, suggest merely to ensure that the Project is designed so that the parking areas provide the minimum number of electric vehicle charging stations required by the State's Green Building Standards Code Sections A5.106.5.1.2 and A5.106.5.3.2, which require only 12% of total designated parking spaces be used for low-emitting, fuel-efficient, and carpool/vanpool vehicles. Since the DEIR premises its GHG mitigation upon providing a minimum of EV parking spaces, and potentially more, the DEIR implicitly concedes that additional mitigation is possible.

These are not the only feasible means of mitigating GHG emissions. In particular, the CEQA Guidelines require mitigation measures that go far beyond the Project providing a minimum number of electric vehicle charging stations, requiring that an EIR consider:

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- (1) Steps in an existing plan or mitigation program for the reduction of emissions that are required as part of the lead agency's decision;
- (2) Reductions in emissions resulting from a project through implementation of project features, project design, or other measures, such as those described in Appendix F;
- (3) Off-site measures, including offsets that are not otherwise required, to mitigate a project's emissions;
- (4) Measures that sequester greenhouse gases;

- (5) In the case of the adoption of a plan, such as a general plan, long-range development plan, or plans for the reduction of greenhouse gas emissions, mitigation may include the identification of specific measures that may be implemented on a project-by-project basis. Mitigation may also include the incorporation of specific measures or policies found in an adopted ordinance or regulation that reduces the cumulative effect of emissions.

CEQA Guidelines § 15126.4(c). Also, organizations and public agencies have published lists of feasible and quantifiable greenhouse gas mitigation that should have been at least discussed in the Project DEIR, including the California Air Pollution Control Officers Association August 2010 report "Quantifying Greenhouse Gas Mitigation Measures: A Resource for Local Government to Assess Emission Reductions from Greenhouse Gas Mitigation Measures" ("CAPCOA Report")² which the South Coast Air Quality Management District has recognized as a "comprehensive guidance document for quantifying the effectiveness of GHG mitigation measures."³

The DEIR must analyze the effectiveness and feasibility of several greenhouse gas mitigation measures proposed by the CAPCOA Report, including greenhouse gas mitigation measures for building energy use, lighting, alternative energy generation, land use, landscaping, waste, vegetation, construction and different measures including carbon sequestration or other off-site mitigation measures.

2. The DEIR Fails to Adequately Analyze and Mitigate the Project's Significant Air Quality Impacts

The DEIR determines that air quality impacts resulting from construction activities after mitigation are "significant and unavoidable." DEIR at ES-6. However, the DEIR

² California Air Pollution Control Officers Association (August 2010) "Quantifying Greenhouse Gas Mitigation Measures: A Resource for Local Government to Assess Emission Reductions from Greenhouse Gas Mitigation Measures," accessed March 22, 2020, available at <https://www.aqmd.gov/docs/default-source/ceqa/handbook/mitigation-measures-and-control-efficiencies/quantifying-greenhouse-gas-mitigation-measures.pdf?sfvrsn=0> (attached as Exhibit A)

³ South Coast Air Quality Management District (2019) "Greenhouse Gases, accessed on March 22, 2019, available at <https://www.aqmd.gov/home/rules-compliance/ceqa/air-quality-analysis-handbook/mitigation-measures-and-control-efficiencies/greenhouse-gases> (attached as Exhibit B)

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O1-6

again fails to discuss all feasible mitigation measures that could substantially lessen the Project's significant and unavoidable air quality impacts.

Mitigation measure AIR-1 provides that "prior to the issuance of a grading permit, the grading plans shall stipulate that the contractor shall use construction equipment that meets the U.S. Environmental Protection Agency (EPA) Tier 3 level of emission controls fitted with Level 2 Diesel Particular Filters (DPF) for all construction equipment 50 horsepower or more during construction activities." (DEIR, p. 1-20.)

The DEIR fails to discuss or explain why the latest technology, namely EPA Tier 4 construction equipment⁴ with current Level 3 Diesel Particular Filters⁵ would be infeasible. Tier 4 engines are required for all construction equipment constructed since 2014. 40 CFR § 1039.101 ("The exhaust emission standards for this section apply after the 2014 model year.").

Mitigation measure AIR-2 provides that "the project contractor shall only use interior paints with low VOC content with a maximum concentration of 30 grams per liter (g/L) for residential building architectural coating to reduce VOC emissions."

Here too, the DEIR fails to explain why the Project does not utilize widely available Zero VOC paints with a maximum concentration of fewer than 5 grams per liter of VOCs⁶.

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⁴ United States Environmental Protection Agency Regulations for Emissions from Heavy Equipment with Compression-Ignition (Diesel) Engines, accessed March 22, 2020, available at <https://www.epa.gov/regulations-emissions-vehicles-and-engines/regulations-emissions-heavy-equipment-compression> (attached as Exhibit C)

⁵ California Air Resources Board "Verification Procedure" accessed March 22, 2020, available at <https://ww3.arb.ca.gov/diesel/verdev/vt/cvt.htm> (attached as Exhibit D)

⁶ See e.g. California Department of Public Health (2018) "The Sherwin-Williams Company Commercial Painting Schedule Guide," accessed March 22, 2020, available at https://images.sherwin-williams.com/content_images/sw-099123_chps_2011.pdf (attached as Exhibit E); Sherwin-Williams "Green Programs Specifications" accessed March 22, 2020, available at <https://www.sherwin-williams.com/home-builders/specifications/progs-and-voc-regs/leed-and-other-green-specifications> (attached as Exhibit F); Greenguard "Your Guide to Low- and Zero-VOC Paints from Better Homes and Gardens magazine" accessed March 22, 2020, available at <http://greenguard.org/files/LivingGreenPaintGuide.pdf> (attached as Exhibit G).

D. The DEIR Omits Relevant Information Regarding the Existing Environment and Fails to Disclose Potential Contamination On the Project Site Adequately

The DEIR fails to disclose that the Project site is located in an area of prior agricultural use before 1975. The City conducted a Phase I Site Assessment (Appendix G) to identify evidence of "recognized environmental conditions," (REC) which includes "the presence or likely presence of any hazardous substances or petroleum products in, on, or at a property: (1) due to release to the environment; (2) under conditions indicative of a release to the environment; or (3) under conditions that pose a material threat of a future release to the environment." "De minimis conditions are not recognized environmental conditions." DEIR, Appx. G. P. 1.

Documents reviewed in the Site Assessment revealed that the Site had been used for agricultural purposes before 1975 and was occupied by Nissan Motor Corporation from approximately 1975 to 2011. *Id.* p. 12. A prior, unrelated Site Assessment reported potential environmental concerns related to "the historical agricultural use and potential presences of residual chemicals, historical industrial lighting operations during Nissan's occupancy, a former oil interceptor which was removed from the Site on November 17, 2010, and the potential for polychlorinated biphenyls (PCBs) to be present in onsite electrical transformers." *Id.*

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The Phase I Site Assessment states, "the past agricultural use of the Site (dry farming) suggests that pesticides may have been used on the Site. If so, pesticides and associated metals may be present in soil on the Site." *Id.* p. 14-15. Despite this finding and well-known persistence of highly toxic pesticides employed in agricultural usage before 1975 in soil, the Site Assessment concludes, on insufficient evidence, that the historical agricultural usage is not considered a REC.

Only one soil sample was collected beneath the oil-interceptor upon its removal in 2010. *Id.* p. 12. No further soil assessment has been conducted to assess soil contamination due to the prior agricultural or industrial uses.

According to Appendix G of the CEQA Guidelines, a project would have a significant effect on the environment if the Project would (1) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials; or (2) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment. The DEIR fails to adequately assess these

potential impacts by failing to disclose and analyze possible soil contamination due to prior industrial and agricultural uses and the potential release of hazardous materials as a result of soil removal on the Site.

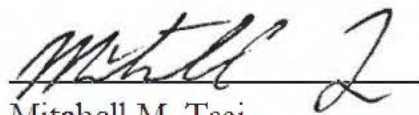
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II. CONCLUSION

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

O1-8

Sincerely,



Mitchell M. Tsai

Attorneys for Southwest Regional Council of Carpenters

Attached:

California Air Pollution Control Officers Association (August 2010) "Quantifying Greenhouse Gas Mitigation Measures: A Resource for Local Government to Assess Emission Reductions from Greenhouse Gas Mitigation Measures," accessed March 22, 2020, available at <https://www.aqmd.gov/docs/default-source/ceqa/handbook/mitigation-measures-and-control-efficiencies/quantifying-greenhouse-gas-mitigation-measures.pdf?sfvrsn=0> (attached as Exhibit A);

South Coast Air Quality Management District (2019) "Greenhouse Gases," accessed on March 22, 2019, available at <https://www.aqmd.gov/home/rules-compliance/ceqa/air-quality-analysis-handbook/mitigation-measures-and-control-efficiencies/greenhouse-gases> (attached as Exhibit B);

United States Environmental Protection Agency Regulations for Emissions from Heavy Equipment with Compression-Ignition (Diesel) Engines, accessed March 22, 2020, available at <https://www.epa.gov/regulations-emissions-vehicles-and-engines/regulations-emissions-heavy-equipment-compression> (attached as Exhibit C);

California Air Resources Board "Verification Procedure" accessed March 22, 2020, available at <https://ww3.arb.ca.gov/diesel/verdev/vt/cvt.htm> (attached as Exhibit D);

California Department of Public Health (2018) "The Sherwin-Williams Company Commercial Painting Schedule Guide," accessed March 22, 2020, available at

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Greenguard "Your Guide to Low- and Zero- VOC Paints from Better Homes and Gardens magazine" accessed March 22, 2020, available at <http://greenguard.org/files/LivingGreenPaintGuide.pdf> (attached as Exhibit G).