

Comment Letter No. 8

Mitchell M. Tsai, Attorney

Southwest Regional Council of Carpenters (1-21-2020)

(Note: In an effort to conserve resources, the Exhibits attached to Comment Letter No. 8 are not included below; the entire Letter can be viewed in Appendix C attached to this Final EIR)



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VIA U.S. MAIL & E-MAIL

January 21, 2020

City of Menifee
Menifee City Hall, Community Development Department
Attention: Manny Baeza, Senior Planner
29844 Haun Road
Menifee, CA 92586
Em: mbaeza@cityofmenifee.us

RE: Menifee North Specific Plan 260, Amendment No. 3 (2010-090), SCH No. 2019029123 ("Palomar Crossings")

Dear Mr. Baeza,

On behalf of the Southwest Regional Council of Carpenters (Collectively "Commenter" or "Carpenters"), my Office is submitting these comments on the County of San Diego's ("County" or "Lead Agency") Draft Environmental Impact Report ("DEIR" or "draft EIR") (SCH No. 2019029123) for Menifee North Specific Plan 260, Amendment No. 3 (2010-090) or "Palomar Crossings" Project ("Project").

8.1

The Project involves a Specific Plan Amendment to the Menifee North Specific Plan No. 260 ("SP 260, A3"). DEIR, 1-1. SP260, A3 proposes modifications to the Specific Plan Land Use Plan Planning Areas (PA) to increase the total dwelling unit count *by 721 units*, by re-designating PA11 to Very High Density Residential and PA12 to Commercial / Very High-Density Residential. *Id.*

8.2

The 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.

8.3

Commenter 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.

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Commenter 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.

8.5

Commenter 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 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).

8.6

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.

8.7

I. EXPERTS

This comment letter includes comments from air quality and greenhouse gas experts Matt Hagemann, P.G., C.Hg. and Paul Rosenfeld, Ph.D. concerning the DEIR. Their comments, attachments, and Curriculum Vitae ("CV") are attached hereto and are incorporated herein by reference.

8.8

Matt Hagemann, P.G., C.Hg. ("Mr. Hagemann") has over 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 Senior Hydrogeologist in the oversight of the assessment of seven major military facilities undergoing base closer. 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.

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For the past 15 years, Mr. Hagemann has worked as a founding partner with SWAPE (Soil/Water/Air Protection Enterprise). At SWAPE, Mr. Hagemann has developed extensive client relationships and has managed complex projects that include consultation as an expert 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.

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Mr. Hagemann has a Bachelor of Arts degree in geology from Humboldt State University in California and a Masters in Science degree from California State University Los Angeles in California.

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Paul Rosenfeld, Ph.D. ("Dr. Rosenfeld") is a principal environmental chemist at SWAPE. Dr. Rosenfeld has over 25 years' experience conducting environmental investigations and risk assessments for evaluating impacts on human health, property, and ecological receptors. His expertise focuses on the fate and transport of environmental contaminants, human health risks, exposure assessment, and ecological restoration. Dr. Rosenfeld has evaluated and modeled emissions from unconventional oil drilling operations, oil spills, landfills, boilers and incinerators, process stacks, storage tanks, confined animal feeding operations, and many other industrial and agricultural sources. His project experience ranges from monitoring and modeling of pollution sources to evaluating the impacts of pollution on workers at industrial facilities and residents in surrounding communities.

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Dr. Rosenfeld has investigated and designed remediation programs and risk assessments for contaminated sites containing lead, heavy metals, mold, bacteria, particular matter, petroleum hydrocarbons, chlorinated solvents, pesticides, radioactive waste, dioxins and furans, semi- and volatile organic compounds, PCBs, PAHs, perchlorate, asbestos, per- and poly-fluoroalkyl substances (PFOA/PFOS), unusual polymers, fuel oxygenates (MTBE), among other pollutants. Dr. Rosenfeld also has experience evaluating greenhouse gas emissions from various projects and is an expert on the assessment of odors from industrial and agricultural sites, as well as the evaluation of odor nuisance impacts and technologies for abatement of odorous emissions. As a principal scientist at SWAPE, Dr. Rosenfeld directs air dispersion modeling and exposure assessments. He has served as an expert witness and testified about pollution sources causing nuisance and/or personal injury at dozens of sites and has testified as an expert witness on more than ten cases involving exposure to air contaminants from industrial sources.

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Dr. Rosenfeld has a Ph.D. in soil chemistry from the University of Washington, M.S. in environmental science from U.C. Berkeley, and a B.A. in environmental studies from U.C. Santa Barbara.

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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.

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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).

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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

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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:

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cont.

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).

8.18

B. The DEIR Fails to Adequately Describe the Project

Throughout the DEIR, it describes the Project as involving a Specific Plan Amendment (SPA 260, A3) which would increase the total dwelling unit count by 721 units, based on maximum potential dwelling units in Planning Areas 11 and 12. DEIR, p. 1-1. But curiously and contradictorily, the DEIR proceeds to state that “[i]t should be noted that, as a worst-case scenario, 246,312 square feet of commercial uses and 637 multi-family dwelling units were utilized in the analysis of this DEIR.” *Id.*

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It is well-established that “[a]n accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR.” *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193. “A curtailed, enigmatic or unstable project description draws a red herring across the path of public input.” *Id.* at p. 198.

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However, the DEIR does not clearly disclose the total dwelling units allowed under the Project, upon approval of the proposed Amendment and the proposed increase of 721 dwelling units. Based on Table 3-1, SPA260, A3 Land Use Summary, the total allowed dwelling units allowed under the Specific Plan will be 1506. DEIR, p. 3-4. If that is the case, it's not clear why the DEIR is using the worst-case scenario of 637 multi-family dwelling units in all of the analysis in the DEIR, which is even lower than the proposed increase of 721 units. 8.21

Thus, the DEIR fails to accurately describe the Project and as a result, fails to adequately analyze and mitigate its impacts. 8.22

Simply put, the entire DEIR fails to analyze the Project as proposed. The entire DEIR is deficient and fails to comply with CEQA. 8.23

C. The DEIR Provides Vague and Unenforceable Mitigation Measures and Improperly Defers Formulation and Imposition of Performance-Based Mitigation Measures

CEQA mitigation measures proposed and adopted into an environmental impact report are required to describe what actions 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.) 8.24

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 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 8.25

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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].)

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cont.

Here, the DEIR is plagued by vague, deferred mitigation, and measures that lack appropriate performance standards:

- MM-AQ-2: During Project construction, the Project applicant shall install high-efficiency lighting (such as LEDs) that is at least 34% more efficient than standard lighting.
 - o No enforceable performance standard or any specific criteria for implementation of what “standard” lighting is and vague.
- MM-GHG-1 Prior to occupancy, the Project applicant shall require that high-efficiency lighting (such as LEDs) be installed that is at least 34% more efficient than standard lighting.
 - o No enforceable performance standard or any specific criteria for implementation of what “standard” lighting is and vague.
- MM-ENR-5 Prior to occupancy the Project applicant shall provide secure on-site bicycle storage or cages for the residential uses
 - o No enforceable performance standard on what “secure” is.
 - o Vague as to how many bicycles the storage or cages should accommodate to mitigate the Project’s impacts.
- MM-TR-4 Provide secure on-site bicycle storage or
- cages for the residential uses.

8.26

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- No enforceable performance standard on what “secure” is.
 - Vague as to how many bicycles the storage or cages should accommodate to mitigate the Project’s impacts.
- MM-TR-5 Provide convenient/highly visible on-site bicycle parking racks for the commercial uses.
 - No enforceable performance standard on what “convenient” and “highly visible” on-site bicycle parking racks entail.
 - Vague as to where the bicycle parking racks should be located in relation to the entrances for commercial uses.
 - No enforceable way to ensure that the Project’s significant traffic impacts could be mitigated to the extent feasible.
- MM-ENR-6 Prior to occupancy the Project applicant shall provide convenient/highly visible on-site bicycle parking racks for the commercial uses.
 - No enforceable performance standard on what “convenient” and “highly visible” on-site bicycle parking racks entail.
 - Vague as to where the bicycle parking racks should be located in relation to the entrances for commercial uses.
 - No enforceable way to ensure that the Project’s significant energy impacts could be mitigated to the extent feasible.
- MM-NOI-1 During construction, the contractor shall ensure all construction equipment is equipped with appropriate noise attenuating devices and equipment shall be maintained so that vehicles and their loads are secured from rattling and banging. Idling equipment shall be turned off when not in use.
 - No enforceable performance standard on what “appropriate” noise attenuating devices and equipment entail.
 - No way to ensure no noise exceedances, e.g. requiring a contractor to measure noise levels throughout the day.
- MM-NOI-2 Construction staging areas should be located as far from noise-sensitive land uses as reasonably feasible.
 - No enforceable performance standard on what “as far from” and “reasonably feasible” can be interpreted as.
- MM-HAZ-1 Pesticide Presence. Prior to any ground disturbance activities, the Project applicant shall submit a work plan to DTSC for review and approval.

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- Improper deferral of preparation of a work plan until after Project Approval. | 8.26
- Improper deferral of characterization of the extent of the pesticide presence on the Project Site, including a Phase II investigation. | cont.

As a result of these improper and inadequate mitigation measures, the DEIR violates CEQA. | 8.27

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

As detailed in the comment letter by Mr. Matt Hagemann and Dr. Paul Rosenfeld of SWAPE, which is attached hereto as Exhibit 3, the DEIR violates CEQA in the following ways:

- Use of unsubstantiated input parameters for CalEEMod.206.3.2. were used that underestimated Project emissions
- Use of incorrect trip purpose percentages was used in CalEEMod which may have underestimated emissions | 8.28
- Use of unsubstantiated application of mobile-related mitigation measures in the CalEEMod without verifiable justification
- Failure to implement all feasible mitigation to reduce Project's significant NOx emissions

As a result, the DEIR fails to adequately analyze and mitigate the Project's air quality impacts and violates CEQA. | 8.29

E. The DEIR Fails to Adequately Disclose, Analyze and Mitigate the Project's Significant Health Risk Emissions Impacts

According to experts Mr. Matt Hagemann and Dr. Rosenfeld (see Exhibit 3), the DEIR violates CEQA in the following ways:

- The DEIR's use of a Localized Significance Threshold (LST) analysis rather than conducting a quantified Health Risk Assessment (HRA) resulted in an inadequate evaluation of Diesel Particulate Matter health risk emissions
- The omission of a quantified HRA is inconsistent with the Risk Assessment Guidelines by the Office of Environmental Health Hazard Assessment (OEHHA) | 8.30

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- The DEIR's limited HRA related to operational mobile emissions (1) fails to include the Project's entire operational emissions as recommended by CalEEMod's User's Guide and (2) fails to evaluate the cumulative lifetime cancer risk to nearby, existing receptors as a result of Project construction and operation together, including all aspects of the Project. 8.30 cont.
- A simple screening-level HRA indicates the Project will have a significant health risk impact not previously identified and analyzed by the DEIR

As a result, the DEIR fails to adequately analyze and mitigate the Project's health risk impacts and violates CEQA. 8.31

F. The DEIR Fails to Adequately Disclose, Analyze and Mitigate the Project's Significant Greenhouse Gas Impacts

According to experts Mr. Matt Hagemann and Dr. Rosenfeld (see Exhibit 3), the DEIR violates CEQA in several ways. 8.32

The DEIR fails to adequately evaluate greenhouse gas impacts because (1) California Air Resources Board (CARB)'s 2017 Scoping Plan is not a Climate Action Plan that qualifies under the CEQA Guidelines, (2) Uses incorrect and unsubstantiated analysis (from the incorrect air model and makes up its own adjusted threshold) that indicate a potentially significant GHG impact, (3) Updated CalEEMod output files, modeled by Mr. Hagemann and Dr. Rosenfeld, disclose that the Project's mitigated GHG emissions (both construction and operational) would approximately total 7.66 MT CO₂e/SP/year, which exceeds the SCAQMD 2035 efficiency threshold of 3.0 MT CO₂e/SP/year, as well as the unsubstantiated interpolated 2023 threshold of 4.43 MT CO₂e/SP/year and SCAQMD 2020 efficiency threshold of 4.8 MT CO₂e/SP/year. Exhibit 3, p. 14-16. 8.33

The DEIR fails to mitigate the Project's GHG emissions to the extent feasible because Mr. Hagemann and Dr. Rosenfeld's analysis demonstrates that construction emissions may result in potentially significant impacts. Some of the feasible mitigation measures to mitigate the Project's construction GHG emissions that the DEIR must be revised to include are: (1) implementation of diesel control measures, (2) repower or replace older construction equipment engines, (3) install retrofit devices on existing construction equipment, (4) use electric and hybrid construction equipment, (5) implement a construction vehicle inventory tracking system, (5) "Enhanced Exhaust Control Practices" recommended by the Sacramento Metropolitan Air Quality 8.34

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Management District (SMAQMD), and (6) use of spray equipment with greater transfer efficiencies. Exhibit 3, p. 15-21.

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cont.

As for operational GHG emissions, Mr. Hagemann and Dr. Rosenfeld recommend the DEIR to include various energy-related, transportation-related, water-related feasible mitigation measures and project design features as listed on Pages 20-21 of Exhibit 3.

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G. The DEIR Fails to Adequately Analyze the Project's Cumulative Impacts

The CEQA Guidelines define cumulative impacts as "two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts." (CEQA Guidelines §15355.) The individual effects may be changes resulting from a single project or more than one project. (CEQA Guidelines §15355(a).) Cumulative impacts may result from individually minor but collectively significant projects taking place over a period of time. (CEQA Guidelines §15355(b).) Even if the Project's impacts may not be significant, its incremental effects, when added to other past, present, and probable future projects, can be cumulatively significant. (CEQA Guidelines §§15065(a)(3), 15130(b)(1)(A), 15355(b).) Thus, in analyzing a Project's cumulative impacts, it's important to analyze not just impacts of the Project itself, but also consider impacts from all other related projects as well.

8.36

The DEIR fails to adequately analyze the Project's cumulative impacts across many disciplines. For example, for Population and Housing, the DEIR concludes, based on the fact that the Project would not have substantial numbers of existing people from housing, that there are no significant cumulative impacts. However, even a small incremental impact could be cumulatively considerable. Therefore, without analyzing whether other related Projects in combination with the Project could cause significant cumulative impacts, the DEIR's cumulative impacts analysis is deficient.

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Similarly, the DEIR, without analysis of whether the Project, combined with related projects in the vicinity, would have cumulative impacts, concludes that "the aesthetic impacts associated with the change of land use will not represent any cumulative impact to aesthetics." DEIR, 4.2-20. The DEIR's hazards cumulative impacts analysis does not even take into consideration the impacts of pesticide residue combined with hazards impacts from related projects in the vicinity at all, only Project's impacts. *Id.*, 4.6-20. Then the DEIR concludes, without analysis, that "no cumulative impacts will occur." *Id.*, 4.6-21.

8.38

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The DEIR's cumulative impact analyses focus solely on the Project level impacts that the DEIR simply repeats and renders the cumulative impacts analysis requirement redundant. As a result, the DEIR violates CEQA. 8.39

H. The Project's DEIR Fails to Disclose and Analyze the Project's Significant and Unavoidable Impacts on Land Use

The DEIR concludes, without analysis, that the Project will have no significant land-use impacts. DEIR, 4.8-8~9. In fact, while listing a host of General Plan Goals and Policies that are relevant to the Project, the DEIR did not discuss whether the Project is consistent or not consistent with each of those Goals and Policies. 8.40

The DEIR provides a brief description of the proposed amendments with SP260, A3 and cites to Table 3.1, SPA260, A3 Land Use Summary as providing "detailed descriptions of each change that is proposed by SP 260..." DEIR, 4.8-8~9. However, the description of the proposed Project is NOT an analysis of the Project's consistency with the City's General Plan. 8.41

CEQA requires that an environmental document analyze whether a Project would "[c]onflict with any applicable land use plan . . . adopted for the purpose of avoiding or mitigating an environmental effect." CEQA Guidelines Appdx. G. 8.42

By failing to provide any consistency analysis, the DEIR fails to disclose significant and unavoidable environmental impacts from the Project's inconsistency with the City's General Plan. Most glaringly, the Project's violates the following Goals and Policies of the City of Menifee's General Plan:

- Policy LU-1.4 requires that the City "[p]reserve, protect, and enhance established rural, estate, and residential neighborhoods by providing sensitive and well-designed transitions (building design, landscape, etc.) between these neighborhoods and adjoining areas." However, increasing the Project density by 721 dwelling units is antithetical to preserving, protecting and enhancing established rural areas near the Project Site. 8.43
- Goal CD-4 requires that the City "[r]ecognize, preserve, and enhance the aesthetic value of the city's enhanced landscape corridors and scenic corridors." Again, the City has failed to explain how increasing the Project density by 721 dwelling units does not controvert the City's obligation to preserve and enhance the landscape and scenic corridors in and near the Project Site.

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The City violated CEQA by failing to analyze whether the Project is consistent with its General Plan's Goals and Policies. 8.44

In addition, the DEIR's analysis of the Project's consistency with RTP/SCS Goals (Regional Transportation Plan/Sustainable Communities Strategy) is inaccurate and misleading. For example, Goal 6 of RTP/SCS, the City is required to "[p]rotect the environment and health of our residents by improving air quality and encouraging active transportation (non-motorized transportation, such as bicycling and walking)." DEIR, 4.8-10~11. The DEIR states rather simply that the Project offers opportunities for vehicular and non-vehicular modes of transportation and thus protects the environment and health of residents in concluding that the Project is consistent with the goal of improving air quality. *Id.* However, the DEIR also admits that air quality will worsen by amending the Specific Plan to make the Project denser by 721 dwelling units. Thus, the DEIR's consistency analysis regarding RTP/SCS Goals is inaccurate and incomplete. 8.45

The DEIR fails to adequately disclose and analyze the Project's potentially significant impacts on land use. 8.46

I. 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. 8.47

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 8.48

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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.* 8.48
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. 8.49

After the City revises and adds information offered by these comments, the City must recirculate the EIR before approval. 8.50

III. THE PROJECT WOULD BE APPROVED IN VIOLATION OF THE STATE PLANNING AND ZONING LAW

A. Background Concerning the State Planning & Zoning Law

California’s Planning & Zoning Law, Cal. Government Code § 65000 *et seq* (“Planning & Zoning Law”) requires California cities and counties to 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. 8.51

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. 8.52

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. 8.53

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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. 8.53 cont.

In addition, the Planning & Zoning 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 the achievement of its policies is invalid and cannot be given effect. *See Lesher*, 52 Cal.3d at 544. 8.54

Finally, the Planning & Zoning 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. 8.55

A project cannot be found consistent with a general plan if it conflicts with a general 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 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 the general plan). 8.56

B. The Project is inconsistent with the City of Menifee General Plan

The DEIR lists numerous Goals and Policies of the City of Menifee General Plan that it purports are relevant to the Project. However, as discussed above, the DEIR fails to analyze whether the Project is consistent with each Goal and Policy of the General Plan. 8.57

The Project is inconsistent is at least two Goals and Policies of the General Plan. Land Use Policy LU-1.4 requires that the City “[p]reserve, protect, and enhance established rural, estate, and residential neighborhoods by providing sensitive and well-designed 8.58

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transitions (building design, landscape, etc.) between these neighborhoods and adjoining areas.” However, increasing the Project density by 721 dwelling units is antithetical to preserving, protecting and enhancing established rural areas near the Project Site.

8.58
cont.

The Project is inconsistent with Community Development Goal CD-4 requires that the City “[r]ecognize, preserve, and enhance the aesthetic value of the city's enhanced landscape corridors and scenic corridors.” Again, increasing the Project density by 721 dwelling units directly contradicts the City’s obligation to preserve and enhance the landscape and scenic corridors in and near the Project Site.

8.59

C. The Project Is Inconsistent with the Regional Transportation Plan/Sustainable Communities Strategy Goals

The Project is also inconsistent with Goal 6 of RTP/SCS (Regional Transportation Plan/Sustainable Communities Strategy) is inaccurate and misleading. Goal 6 requires the City to “[p]rotect the environment and health of our residents by improving air quality and encouraging active transportation (non-motorized transportation, such as bicycling and walking).” DEIR, 4.8-10~11. The DEIR states rather simply that the Project offers opportunities for vehicular and non-vehicular modes of transportation and thus protects the environment and health of residents in concluding that the Project is consistent with the goal of improving air quality. *Id.* However, the DEIR’s air quality analysis also admits that air quality will worsen by amending the Specific Plan to make the Project denser by 721 dwelling units. Therefore, based on the information provided in the DEIR, the Project is inconsistent with the RTP/SCS.

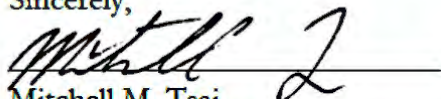
8.60

IV. CONCLUSION

Commenter requests 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.

8.61

Sincerely,


Mitchell M. Tsai

Attorneys for Southwest Regional
Council of Carpenters

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Attached:

Air Quality and GHG Expert, Matt Hagemann, P.G., C.Hg. – C.V. (Exhibit 1);

Air Quality and GHG Expert, Paul Rosenfeld, Ph.D. – C.V. (Exhibit 2);

Letter from Hagemann and Rosenfeld to Mitchell M. Tsai re Comments on the Draft Environmental Impact Report for the Palomar Crossings Project with Exhibits (January 21, 2020) (Exhibit 3)

EXHIBIT 1

| 8.62

EXHIBIT 2

| 8.63