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VIA U.S. MAIL & E-MAIL

November 18, 2020

City of Ventura Planning Commission
501 Poli Street
Ventura, CA 93002

Elizabeth Richardson, Principal Planner
City of Ventura
501 Poli Street
Ventura, CA 93002
Em: erichardson@cityofventura.ca.gov

RE: Agenda Item No. 2, PROJ-14017 – Ventura VA Clinic Design Review
and Planned Development Permit at 5250 Ralston Street

Dear Honorable Commissioners and Ms. Richardson,

On behalf of the **Southwest Regional Council of Carpenters** (“**Commenter**” or “**Carpenter**”), my Office is submitting these comments on the City of San Buenaventura’s (“**City**” or “**Lead Agency**”) Initial Study/Mitigated Negative Declaration (“**IS/MND**”) (SCH No. 2020090474) for the Veterans Affairs Community-Based Outpatient Clinic in the City of Ventura which proposes to demolish the existing industrial facility on-site and construct a one-story 51,000 square foot building to serve as a primary care clinic for the local veteran population. (“**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 to mitigate the Project’s environmental impacts and to advance progress towards the State of California’s environmental goals.

I. **EXPERT**

Norman Marshall, President of Smart Mobility, Inc., is a transportation planning and modeling expert who specializes in analyzing the relationships between the built environment and travel behavior, and doing planning that coordinates multi-modal transportation with land use and community needs.

Mr. Marshall helped found Smart Mobility, Inc. in 2001. Prior to this, he was at RSG for 14 years where he developed a national practice in travel demand modeling. He specializes in analyzing the relationships between the built environment and travel behavior, and doing planning that coordinates multi-modal transportation with land use and community needs.

Mr. Marshall's company, Smart Mobility, has completed transportation projects in over 30 states for a wide range of clients including state Departments of Transportation, Metropolitan Planning Organizations, Cities, transit agencies, and public interest groups.

Mr. Marshall graduated from Worcester Polytechnic Institute in 1977 with a B.S. in Mathematics and from Dartmouth College in 1982 with a M.S. in Engineering Sciences. He has many peer-reviewed publications and presentations. Mr. Marshall is co-leader of the Congress for the New Urbanism project for Transportation Modeling Reform. Mr. Marshall's curriculum vitae is provided along with his comment letter regarding the Project's transportation impacts, attached hereto as Exhibit A.

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).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*

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.

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).

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.

For all of the reasons discussed below, significant new information has been raised relating to the Project that requires revision and recirculation of the IS/MND or EIR.

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 Occupations 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.
- 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.

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>.

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.

F. CEQA Bars the Deferred Development of Environmental Mitigation Measures

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

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

³ See also The Center for Construction Research and Training, North America’s Building Trades Unions (April 27 2020) NABTU and CPWR COVID-19 Standards for U.S. Construction 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.

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

Here, the IS/MND defers the development of many its mitigation measures for potentially significant environmental impacts:

- AES-1 (Aesthetics) fails to develop a plan to protect the removal of vegetation and instead merely indicates that a plan will be developed in accordance with the City's Tree Protection Plan (IS/MND, 4.1.2);
- AES-2 fails to develop any plan for impacts of substantial light or glare and instead defers development of a "Outdoor Lighting Plan" to sometime before the issuance of a grading permit that will be submitted to the City (IS/MND, 4.1.4);
- BIO-1 (biological resources) not only fails to provide any performance standards or guidelines to protect bird species, but it is also does not commit to taking any action. The IS/MND only calls for activities to work around the bird breeding season "if feasible" without committing to any action or describing what feasibility means. (IS/MND, 4.4.2);
- CUL-1 (cultural resources) does not put forth any plan to mitigate impacts to cultural resources, and instead defers the development of a plan to after construction commences "[i]f warranted, the archeologist shall develop a plan..." (IS/MND, 4.5.2);

- HAZ-1 (hazards and hazardous materials) defers the development of a plan for safe asbestos removal to sometime prior to demolition activities (IS/MND, 4.9.4); and
- HAZ-2 defers the development of a plan for lead-based removal until demolition activities have commenced.

The IS/MND needs to be amended to include specific mitigation measures that explain in detail how they will comply with applicable rules and regulations. Every mitigation measure listed above in the IS/MND merely states a plan will be developed that complies with the applicable code. The IS/MND needs to specify what the plan is and what performance standard or measure will be used that complies with any rule or regulation cited.

F. 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 only 100 feet north of the Project site. (IS/MND, p. 4.13-7.)

The IS/MND admits that noise levels from heavy constructions vehicles will reach 90 dBA at 50 feet from the vehicles, and the Project will generate hundreds of trips from workers and vendors vehicles. (IS/MND, p 4.13-7.) However, the IS/MND concludes that construction-related noise levels would not have the potential to cause a significant impact because construction would take place during permitted hours and some of the noise may be masked by local traffic. This claim is unsubstantiated and not supported by substantial evidence. The City of Ventura General Plan – Noise Element establishes noise standards for acceptable conditions which are laid out in the IS/MND noise analysis.⁴ Any noise levels over 70 dBA are considered normally and clearly unacceptable for residential land uses. The City of Ventura Municipal Code Chapter 10.650, Sec. 10.650.130 also establishes acceptable noise levels at

⁴ City of Ventura General Plan – Noise Element, IS/MND p. 4.13-3.

residential sites.⁵ Exterior noise levels at residential properties should not exceed 50 dBA even during permitted hours.

If construction equipment will reach levels of 90 dBA only 100 feet from residential sites, it is not supported that nearby road noise from a local street will somehow “mask” noise levels to such an extent that no mitigation measures or a finding of significant impact is required. The IS/MND needs to be amended to include a significant impact finding and include all feasible mitigation measures to reduce these noise impacts.

G. The IS/MND 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

⁵ IS/MND, pp. 4.13-3-4.

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 and Fails to Adopt All Feasible Mitigation Measures.*

Diesel particulate matter health risk emissions were inadequately evaluated. As previously mentioned, there are nearby sensitive receptors at residential sites a mere 100 feet from the Project site. (IS/MND, 4.3-8.) 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 that health impacts to nearby sensitive receptors associated with DPM exposure from construction activities would be “expected to occur well below the 30-year exposure period used in health risk assessments...” but the IS/MND failed to conduct an HRA to properly assess the risks, as is required by the most recent relevant guidance on this issue. (IS/MND, p. 4.3.9.)

First, 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. Second, 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, through the

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

exhaust stacks of construction equipment over a construction period of many months. 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.

There is also no evidence in Appendix A or the IS/MND 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.

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

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.

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 largely because the Project is consistent with the goals and policies of SCAG's 2016-2040 RTP/SCS Plan and CARB's 2017 Scoping Plan. (IS/MND, pp. 4.8.6-4.8.9.) However, these plans do not qualify as adequate GHG reduction plans or Climate Action Plans ("CAP"). CEQA Guidelines sections 15064.4(b)(3) and 15183(b) allows a lead agency to consider a project's consistency with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of GHG emissions. When read in conjunction, CEQA Guidelines §§ 15064.4(b)(3) and 15183.5(b)(1) make clear qualified GHG reduction plans or CAPs should include the following features:

- (1) **Inventory:** Quantify GHG emissions, both existing and projected over a specified time period, resulting from activities (e.g., projects) within a defined geographic area (e.g., lead agency jurisdiction);
- (2) **Establish GHG Reduction Goal:** Establish a level, based on substantial evidence, below which the contribution to GHG emissions from activities covered by the plan would not be cumulatively considerable;
- (3) **Analyze Project Types:** Identify and analyze the GHG emissions resulting from specific actions or categories of actions anticipated within the geographic area;
- (4) **Craft Performance Based Mitigation Measures:** Specify measures or a group of measures, including performance standards, that substantial evidence demonstrates, if implemented on a

project-by-project basis, would collectively achieve the specified emissions level;

- (5) **Monitoring:** Establish a mechanism to monitor the CAP progress toward achieving said level and to require amendment if the plan is not achieving specified levels;

Collectively, the above-listed features tie qualitative measures to quantitative results, which in turn become binding via proper monitoring and enforcement by the jurisdiction—all resulting in real GHG reductions for the jurisdiction as a whole, and substantial evidence demonstrating that a project's incremental contribution is not cumulatively considerable. Here, however, the IS/MND fails to demonstrate that these plans and policies include the above-listed requirements to be considered qualified GHG Reduction Plans for the City. As such, the IS/MND leaves an analytical gap showing that compliance with said plans can be used for a project-level significance determination for the Project. Thus, the IS/MND's GHG analysis regarding SCAG's 2016-2040 RTP/SCS Plan and CARB's Scoping Plan should not be relied upon to determine Project significance.

In any event, the IS/MND has not demonstrated that the Project is actually consistent with these plans. The Southern California Association of Government's ("SCAG") 2016-2040 Regional Transportation Plan/Sustainable Communities Strategy ("2016 RTP/SCS") and the California Air Resources Board ("CARB") 2017 Climate Change Scoping Plan ("2017 Scoping Plan") outline numerous project-specific measures for reducing Project GHG emissions which the IS/MND fails to consider.

In September 2008, SB 375 (Gov. Code § 65080(b) et seq.) was instituted to help achieve AB 32 goals through strategies including requiring regional agencies to prepare a Sustainable Communities Strategy ("SCS") to be incorporated into their Regional Transportation Plan ("RTP"). The RTP links land use planning with the regional transportation system so that the region can grow smartly and sustainably, while also demonstrating how the region will meet targets set by CARB that reduce the per capita GHG emission from passenger vehicles in the region.

In April 2012, SCAG adopted its 2012-2035 RTP/SCS ("2012 RTP/SCS"), which proposed specific land use policies and transportation strategies for local governments to implement that will help the region achieve GHG emission reductions of 9 percent

per capita in 2020 and 16 percent per capita in 2035. In April 2016, SCAG adopted the 2016-2040 RTP/SCS (“2016 RTP/SCS”)¹⁰, which incorporates and builds upon the policies and strategies in the 2012 RTP/SCS¹¹, that will help the region achieve GHG emission reductions that would reduce the region’s per capita transportation emissions by eight percent by 2020 and 18 percent by 2035.¹² SCAG’s RTP/SCS plan is based upon the same requirements outlined in CARB’s 2017 Scoping Plan and SB 375.

For both the 2012 and 2016 RTP/SCS, SCAG prepared Program Environmental Impact Reports (“PEIR”) that include Mitigation Monitoring and Reporting Programs (“MMRP”) that list project-level environmental mitigation measures that directly and/or indirectly relate to a project’s GHG impacts and contribution to the region’s GHG emissions.¹³ These environmental mitigation measures serve to help local municipalities when identifying mitigation to reduce impacts on a project-specific basis that can and should be implemented when they identify and mitigate project-specific environmental impacts.¹⁴

The sections below outline applicable land use policies, transportation strategies, and project-level GHG measures identified in the 2012 and 2016 RTP/SCS and PEIRs which the RDEIR should consider (note that this is not an exhaustive list):

Land Use and Transportation

- Providing transit fare discounts¹⁵;
- Implementing transit integration strategies¹⁶; and
- Anticipating shared mobility platforms, car-to-car communications, and automated vehicle technologies.¹⁷

¹¹ SCAG (Apr. 2016) 2016 RTP/SCS, p. 69, 75-115, <http://scagrtpscsc.net/Documents/2016/final/f2016RTPSCS.pdf>.

¹² *Id.*, p. 8, 15, 153, 166.

¹³ *Id.*, p. 116-124; see also SCAG 2012 RTP/SCS, *supra* fn. 38, p. 77-86.

¹⁴ SCAG 2012 RTP/SCS, *supra* fn. 38, p. 77; see also SCAG 2016 RTP/SCS, *supra* fn. 41, p. 115.

¹⁵ SCAG 2012 RTP/SCS, *supra* fn. 38, Tbls. 4.3 – 4.7; see also SCAG 2016 RTP/SCS, *supra* fn. 41, p. 75-114.

¹⁶ *Id.*

¹⁷ *Id.*

GHG Emissions Goals¹⁸

- Reduction in emissions resulting from a project through implementation of project features, project design, or other measures, such as those described in Appendix F of the State CEQA Guidelines,¹⁹ such as:
 - o Potential measures to reduce wasteful, inefficient and unnecessary consumption of energy during construction, operation, maintenance and/or removal. The discussion should explain why certain measures were incorporated in the project and why other measures were dismissed.
 - o The potential siting, orientation, and design to minimize energy consumption, including transportation energy.
 - o The potential for reducing peak energy demand.
 - o Alternate fuels (particularly renewable ones) or energy systems.
 - o Energy conservation which could result from recycling efforts.
- Off-site measures to mitigate a project's emissions.
- Measures that consider incorporation of Best Available Control Technology (BACT) during design, construction and operation of projects to minimize GHG emissions, including but not limited to:
 - o Use energy and fuel-efficient vehicles and equipment;
 - o Deployment of zero- and/or near zero emission

¹⁸ SCAG 2012 RTP/SCS (Mar. 2012) Final PEIR MMRP, p. 6-2—6-14 (including mitigation measures (“MM”) AQ3, BIO/OS3, CUL2, GEO3, GHG15, HM3, LU14, NO1, POP4, PS12, TR23, W9 [stating “[l]ocal agencies can and should comply with the requirements of CEQA to mitigate impacts to [the environmental] as applicable and feasible ... [and] may refer to Appendix G of this PEIR for examples of potential mitigation to consider when appropriate in reducing environmental impacts of future projects.” (Emphasis added)]),

<http://rtpscscscag.ca.gov/Documents/peir/2012/final/>

Final2012PEIR.pdf; see also id., Final PEIR Appendix G (including MMs AQ1-23, GHG1-8, PS1-104, TR1-83, W1-62),

http://rtpscscscag.ca.gov/Documents/peir/2012/final/2012fPEIR_AppendixG_Example

Measures.pdf; SCAG 2016 RTP/SCS (Mar. 2016) Final PEIR MMRP, p. 11–63 (including MMs AIR-2(b), AIR-4(b),

EN- 2(b), GHG-3(b), HYD-1(b), HYD-2(b), HYD-8(b), TRA-1(b), TRA-2(b), USS-4(b), USS-6(b)),

http://scagrtpscscscag.net/Documents/2016/peir/final/2016fPEIR_ExhibitB_MMRP.pdf.

¹⁹ CEQA Guidelines, Appendix F-Energy Conservation, http://resources.ca.gov/ceqa/guidelines/Appendix_F.html.

- technologies;
- o Use cement blended with the maximum feasible amount of flash or other materials that reduce GHG emissions from cement production;
- o Incorporate design measures to reduce GHG emissions from solid waste management through encouraging solid waste recycling and reuse;
- o Incorporate design measures to reduce energy consumption and increase use of renewable energy;
- o Incorporate design measures to reduce water consumption;
- o Use lighter-colored pavement where feasible;
- o Recycle construction debris to maximum extent feasible;
- Adopting employer trip reduction measures to reduce employee trips such as vanpool and carpool programs, providing end-of-trip facilities, and telecommuting programs.
- Designate a percentage of parking spaces for ride-sharing vehicles or high-occupancy vehicles, and provide adequate passenger loading and unloading for those vehicles;
- Land use siting and design measures that reduce GHG emissions, including:
 - o Measures that increase vehicle efficiency, encourage use of zero and low emissions vehicles, or reduce the carbon content of fuels, including constructing or encouraging construction of electric vehicle charging stations or neighborhood electric vehicle networks, or charging for electric bicycles; and
 - o Measures to reduce GHG emissions from solid waste management through encouraging solid waste recycling and reuse.

Hydrology & Water Quality Goals

- Incorporate measures consistent in a manner that conforms to the standards set by regulatory agencies responsible for regulating water quality/supply requirements, such as:
 - o Reduce exterior consumptive uses of water in public areas, and should promote reductions in private homes and businesses, by shifting to drought-tolerant native landscape plantings(xeriscaping), using weather-based irrigation systems, educating other public agencies about water use, and installing related water pricing incentives.
 - o Promote the availability of drought-resistant landscaping options and provide information on where these can be purchased. Use of reclaimed water especially in median landscaping and hillside landscaping can and should be implemented where feasible.
 - o Implement water conservation best practices such as low-flow toilets, water-efficient clothes washers, water system audits, and leak detection and repair.
 - o Ensure that projects requiring continual dewatering facilities implement monitoring systems and long-term administrative procedures to ensure proper water management that prevents degrading of surface water and minimizes, to the greatest extent possible, adverse impacts on groundwater for the life of the project. Comply with appropriate building codes and standard practices including the Uniform Building Code.
 - o Maximize, where practical and feasible, permeable surface area in existing urbanized areas to protect water quality, reduce flooding, allow for groundwater recharge, and preserve wildlife habitat. Minimized new impervious surfaces to the greatest extent possible, including the use of in-lieu fees and off-site mitigation.
 - o Avoid designs that require continual dewatering where

feasible.

- o Where feasible, do not site transportation facilities in groundwater recharge areas, to prevent conversion of those areas to impervious surface.
- Incorporate measures consistent in a manner that conforms to the standards set by regulatory agencies responsible for regulating and enforcing water quality and waste discharge requirements, such as:
 - o Complete, and have approved, a Stormwater Pollution Prevention Plan (“SWPPP”) before initiation of construction.
 - o Implement Best Management Practices to reduce the peak stormwater runoff from the project site to the maximum extent practicable.
 - o Comply with the Caltrans stormwater discharge permit as applicable; and identify and implement Best Management Practices to manage site erosion, wash water runoff, and spill control.
 - o Complete, and have approved, a Standard Urban Stormwater Management Plan, prior to occupancy of residential or commercial structures.
 - o Ensure adequate capacity of the surrounding stormwater system to support stormwater runoff from new or rehabilitated structures or buildings.
 - o Prior to construction within an area subject to Section 404 of the Clean Water Act, obtain all required permit approvals and certifications for construction within the vicinity of a watercourse (e.g., Army Corps § 404 permit, Regional Waterboard § 401 permit, Fish & Wildlife § 401 permit).
 - o Where feasible, restore or expand riparian areas such that there is no net loss of impervious surface as a result of the project.
 - o Install structural water quality control features, such as

drainage channels, detention basins, oil and grease traps, filter systems, and vegetated buffers to prevent pollution of adjacent water resources by polluted runoff where required by applicable urban stormwater runoff discharge permits, on new facilities.

- o Provide structural stormwater runoff treatment consistent with the applicable urban stormwater runoff permit where Caltrans is the operator, the statewide permit applies.
- o Provide operational best management practices for street cleaning, litter control, and catch basin cleaning are implemented to prevent water quality degradation in compliance with applicable stormwater runoff discharge permits; and ensure treatment controls are in place as early as possible, such as during the acquisition process for rights-of-way, not just later during the facilities design and construction phase.
- o Comply with applicable municipal separate storm sewer system discharge permits as well as Caltrans' stormwater discharge permit including long-term sediment control and drainage of roadway runoff.
- o Incorporate as appropriate treatment and control features such as detention basins, infiltration strips, and porous paving, other features to control surface runoff and facilitate groundwater recharge into the design of new transportation projects early on in the process to ensure that adequate acreage and elevation contours are provided during the right-of-way acquisition process.
- o Design projects to maintain volume of runoff, where any downstream receiving water body has not been designed and maintained to accommodate the increase in flow velocity, rate, and volume without impacting the water's beneficial uses. Pre-project flow velocities, rates, volumes must not be exceeded. This applies not only to increases in

stormwater runoff from the project site, but also to hydrologic changes induced by flood plain encroachment. Projects should not cause or contribute to conditions that degrade the physical integrity or ecological function of any downstream receiving waters.

- Provide culverts and facilities that do not increase the flow velocity, rate, or volume and/or acquiring sufficient storm drain easements that accommodate an appropriately vegetated earthen drainage channel.
- Upgrade stormwater drainage facilities to accommodate any increased runoff volumes. These upgrades may include the construction of detention basins or structures that will delay peak flows and reduce flow velocities, including expansion and restoration of wetlands and riparian buffer areas. System designs shall be completed to eliminate increases in peak flow rates from current levels.
- Encourage Low Impact Development (“LID”) and incorporation of natural spaces that reduce, treat, infiltrate and manage stormwater runoff flows in all new developments, where practical and feasible.
- Incorporate measures consistent with the provisions of the Groundwater Management Act and implementing regulations, such as:
 - For projects requiring continual dewatering facilities, implement monitoring systems and long-term administrative procedures to ensure proper water management that prevents degrading of surface water and minimizes, to the greatest extent possible, adverse impacts on groundwater for the life of the project, Construction designs shall comply with appropriate building codes and standard practices including the Uniform Building Code.
 - Maximize, where practical and feasible, permeable surface area in existing urbanized areas to protect water quality,

reduce flooding, allow for groundwater recharge, and preserve wildlife habitat. Minimize to the greatest extent possible, new impervious surfaces, including the use of in-lieu fees and off-site mitigation.

- o Avoid designs that require continual dewatering where feasible.
- o Avoid construction and siting on groundwater recharge areas, to prevent conversion of those areas to impervious surface.
- o Reduce hardscape to the extent feasible to facilitate groundwater recharge as appropriate.
- Incorporate mitigation measures to ensure compliance with all federal, state, and local floodplain regulations, consistent with the provisions of the National Flood Insurance Program, such as:
 - o Comply with Executive Order 11988 on Floodplain Management, which requires avoidance of incompatible floodplain development, restoration and preservation of the natural and beneficial floodplain values, and maintenance of consistency with the standards and criteria of the National Flood Insurance Program.
 - o Ensure that all roadbeds for new highway and rail facilities be elevated at least one foot above the 100-year base flood elevation. Since alluvial fan flooding is not often identified on FEMA flood maps, the risk of alluvial fan flooding should be evaluated and projects should be sited to avoid alluvial fan flooding. Delineation of floodplains and alluvial fan boundaries should attempt to account for future hydrologic changes caused by global climate change.

Transportation, Traffic, and Safety

- Institute teleconferencing, telecommute and/or flexible work hour programs to reduce unnecessary employee transportation.
- Create a ride-sharing program by designating a certain percentage

of parking spaces for ride sharing vehicles, designating adequate passenger loading and unloading for ride sharing vehicles, and providing a web site or message board for coordinating rides.

- Provide a vanpool for employees.
- Provide a Transportation Demand Management (TDM) plan containing strategies to reduce on-site parking demand and single occupancy vehicle travel. The TDM shall include strategies to increase bicycle, pedestrian, transit, and carpools/vanpool use, including:
 - Inclusion of additional bicycle parking, shower, and locker facilities that exceed the requirement.
 - Direct transit sales or subsidized transit passes.
 - Guaranteed ride home program.
 - Pre-tax commuter benefits (checks).
 - On-site car-sharing program (such as City Car Share, Zip Car, etc.).
 - On-site carpooling program.
 - Distribution of information concerning alternative transportation options.
 - Parking spaces sold/leased separately.
 - Parking management strategies; including attendant/valet parking and shared parking spaces.
- Promote ride sharing programs e.g., by designating a certain percentage of parking spaces for high-occupancy vehicles, providing larger parking spaces to accommodate vans used for ride-sharing, and designating adequate passenger loading and unloading and waiting areas.
- Encourage the use of public transit systems by enhancing safety and cleanliness on vehicles and in and around stations, providing shuttle service to public transit, offering public transit incentives

and providing public education and publicity about public transportation services.

- Build or fund a major transit stop within or near transit development upon consultation with applicable CTCs.
- Work with the school districts to improve pedestrian and bike access to schools and to restore or expand school bus service using lower-emitting vehicles.
- Purchase, or create incentives for purchasing, low or zero-emission vehicles.
- Provide the necessary facilities and infrastructure to encourage the use of low or zero-emission vehicles.
- Promote ride sharing programs, if determined feasible and applicable by the Lead Agency, including:
 - o Designate a certain percentage of parking spaces for ride-sharing vehicles.
 - o Designate adequate passenger loading, unloading, and waiting areas for ride-sharing vehicles.
 - o Provide a web site or message board for coordinating shared rides.
 - o Encourage private, for-profit community car-sharing, including parking spaces for car share vehicles at convenient locations accessible by public transit.
 - o Hire or designate a rideshare coordinator to develop and implement ridesharing programs.
- Support voluntary, employer-based trip reduction programs, if determined feasible and applicable by the Lead Agency, including:
 - o Provide assistance to regional and local ridesharing organizations.
 - o Advocate for legislation to maintain and expand incentives for employer ridesharing programs.

- Require the development of Transportation Management Associations for large employers and commercial/ industrial complexes.
- Provide public recognition of effective programs through awards, top ten lists, and other mechanisms.
- Implement a “guaranteed ride home” program for those who commute by public transit, ridesharing, or other modes of transportation, and encourage employers to subscribe to or support the program.
- Encourage and utilize shuttles to serve neighborhoods, employment centers and major destinations.
- Create a free or low-cost local area shuttle system that includes a fixed route to popular tourist destinations or shopping and business centers.
- Work with existing shuttle service providers to coordinate their services.
- Facilitate employment opportunities that minimize the need for private vehicle trips, such as encourage telecommuting options with new and existing employers, through project review and incentives, as appropriate.
- Organize events and workshops to promote GHG-reducing activities.
- Implement a Parking Management Program to discourage private vehicle use, including:
 - Encouraging carpools and vanpools with preferential parking and a reduced parking fee.
 - Institute a parking cash-out program or establish a parking fee for all single-occupant vehicles.

Utilities & Service Systems

- Integrate green building measures consistent with CALGreen (Title 24, part 11), U.S. Green Building Council’s Leadership in Energy

- o Integrate reuse and recycling into residential industrial, institutional and commercial projects.
- o Provide recycling opportunities for residents, the public, and tenant businesses.
- o Provide education and publicity about reducing waste and available recycling services.
- o Implement or expand city or county-wide recycling and composting programs for residents and businesses. This could include extending the types of recycling services offered (e.g., to include food and green waste recycling) and providing public education and publicity about recycling services.

There is no evidence in the IS/MND that mentions or demonstrates consistency with the above listed measures and strategies of the SCAG RTP/SCS Plan. Thus, the IS/MND fails to demonstrate that the Project is consistent with that Plan or CARB's Scoping Plan. The only thing the IS/MND actually does is claim consistency with cherry-picked broad goals and policies of those plans—not any specific project applicable goals.

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 Fails to Support Findings on Hazards and Hazardous Materials with Substantial Evidence.*

CEQA Guidelines, Appendix G Sec. VII (b) specifies that a potentially significant impact should be found where it is reasonably foreseeable that a hazard to the public might be created due to release of hazardous materials into the environment. The IS/MND discloses that the Coca-Cola Bottling Company site which adjoins the Project site to the southeast at 5335 Walker Street is listed on Geotracker as a completed cleanup site. (IS/MND, 4.9.3.)

Elevated levels of hydrocarbons were found from four USTs which were removed from the property between 1992 and 1996. As a result of the removal of the USTs, the IS/MND concludes that the Project site is “not anticipated” to be impacted from those USTs. However, it is well known that hydrocarbons from USTs can migrate laterally and cause adverse health effects at adjoining sites. The IS/MND has not provided any evidence that any site assessments or characterizations of the Project site or adjoining site ruled out migration to the Project site.

The Project site was also used for agriculture until the mid-1970s, and although the site was since cleared and graded for construction, the IS/MND provides no evidence that rules out possible soil contamination from the use of pesticides.

The IS/MND needs to include a significant impact finding and a Phase I and II ESA with soil and groundwater sampling to rule out any possible significant environmental impacts and mitigation measures that may be needed to address this hazard. This also constitutes deferred mitigation under the CEQA Guidelines.

4. *The IS/MND Transportation Analysis is Not Supported by Substantial Evidence and a Significant Transportation Impact is Indicated Without any Mitigation*

Mr. Marshall made the following findings in his review of the IS/MND’s transportation analysis, indicating that it has failed to support its conclusion of a less than significant impact relating to transportation (vehicle miles traveled) under CEQA Guidelines sec. 15064.3:

- 1) The MND documents that the average Home-Based-Work VMT per employee for the transportation analysis zone (TAZ) where the proposed clinic would be located is too high to meet the 15%

reduction screening threshold relative to the regional average established by the Office of Policy and Research;

- 2) The reductions taken from the TAZ average in the MND are invalid. Therefore, the estimated HBW VMT per employee is unmitigated and remains at the TAZ 3441 average of 11.5. It is above the regional threshold of 10.3 and the proposed clinic would result in a greater than significant VMT impact;
- 3) The MND misrepresents the proposed clinic as augmenting an existing VA clinic in Oxnard. Instead, it would replace it and the Oxnard clinic, and the proposed Ventura clinic would be much larger than the Oxnard clinic – suggesting it is intended to draw from a much larger geographic area;
- 4) The MND should not have just asserted “a net reduction in VMT” for patients, but instead have included data on a) the expected geographic patient distribution of the proposed clinic, and b) estimated VMT change for this population relative to their current clinics. The MND fails to adequately disclose the patient VMT impacts and does not prove that they are not significant;
- 5) The proposed clinic has an excess of somewhere between 84 and 169 parking spaces which further undermines the MND’s contention that there would be no significant VMT impacts; and
- 6) Unlike the Oxnard and Santa Barbara VA clinics referenced in the MND, the proposed Ventura clinic has no bus access. Access to transit would be valuable to employees and especially to patients. It could have a significant impact on VMT. These benefits are not present at the proposed clinic site.

We refer the City to Mr. Marshall comments in full attached hereto as Ex. A. To summarize his findings however, they clearly indicate that the City has not demonstrated with substantial evidence that there are no substantial transportation impacts. The IS/MND admits that there would be a significant transportation impact, but for the application of three VMT reduction strategies which Mr. Marshall has conclusively demonstrated are “invalid” or “misapplied” and do not actually demonstrate any VMT reduction due to the Project’s typicality. (Ex. A, 2-6.)

Furthermore, the one meaningful VMT reduction strategy for a project of this type would be close access to a major transit stop. The Project did not qualify to “screen-out” its VMT analysis because the site is located ¾ mile from the nearest bus stop which may or may not have 15 minute headways to qualify as a major transit stop under the CEQA Guidelines. The City needs to seriously consider coordinating with Caltrans and the Ventura County Transportation Commission to provide a bus route with sufficient service that is easily accessible to patients and employees. Mr. Marshall noted that the current Oxnard VA Clinic, which this Project will replace, provides a bus stop directly in front of the facility. Many veterans and future employees will no doubt rely upon transit to reach this destination and may not be able to do so without an accessible bus route. The City currently relies upon an excessive amount of parking and private automobiles to serve the needs of its employees and patients which will promote even further increased VMT impacts.

At a minimum, the IS/MND needs to be revised and recirculated as an EIR to reflect the significant and unmitigated transportation impacts this Project will cause.

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 IS/MND is Inconsistent with the City's General Plan Noise Element

CEQA requires that an environmental document determine if a project would result in “[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.” (CEQA Guidelines Appdx. G.)

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 only 100 feet north of the Project site. (IS/MND, p. 4.13-7.) The City of Ventura General Plan – Noise Element establishes noise standards for acceptable conditions which are laid out in the IS/MND noise analysis.²⁰ Any noise levels over 70 dBA are considered normally and clearly unacceptable for residential land uses.

The IS/MND admits that noise levels from heavy constructions vehicles will reach 90 dBA at 50 feet from the vehicles, and the Project will generate hundreds of trips from workers and vendors vehicles. (IS/MND, p 4.13-7.) However, the IS/MND concludes that construction-related noise levels would not have the potential to cause a significant impact because construction would take place during permitted hours and some of the noise may be masked by local traffic. This claim is unsubstantiated and not supported by substantial evidence. Approval of the Project would violate the State Planning and Zoning Law as well as CEQA.

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

²⁰ City of Ventura General Plan – Noise Element, IS/MND p. 4.13-3.

Attachments

Smart Mobility Nov. 17, 2020 Comments on the Ventura Veterans Affairs
Community-Based Outpatient Clinic and resume of Normal L. Marshall (Ex. A).