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VIA U.S. MAIL & E-MAIL

January 11, 2021

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RE: Agenda Item No. 12, PROJ-14017 – Appeal of the Planning Commission's Planned Development Permit, Design Review and Mitigated Negative Declaration approval for the VA Clinic Project (Case No. APL-12-20-58015)

Dear Mayor Rubalcava, Honorable Council Members, and Ms. Richardson,

On behalf of the Southwest Regional Council of Carpenters ("**Commenter**" or "**Carpenter**"), my Office is submitting these comments to supplement its November 27, 2020 Appeal to the City Council regarding the City of San Buenaventura's ("**City**" or "**Lead Agency**") Initial Study/Mitigated Negative Declaration ("**IS/MND**") (SCH No. 2020090474) and subsequent approvals by the Planning Commission of project entitlements or other discretionary actions for the Veterans Affairs Community-Based Outpatient Clinic in the City of Ventura ("**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).

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

A. Background Concerning the California Environmental Quality Act

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

Second, CEQA directs public agencies to avoid or reduce environmental damage when possible by requiring alternatives or mitigation measures. CEQA Guidelines § 15002(a)(2) and (3). *See also, Berkeley Jets,* 91 Cal. App. 4th 1344, 1354; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553; *Laurel Heights Improvement Ass'n v. Regents of the University of California* (1988) 47 Cal.3d 376, 400. The EIR serves to provide public agencies and the public in general with information about the effect that a proposed project is likely to have on the environment and to "identify ways that environmental damage can be avoided or significantly reduced." CEQA Guidelines § 15002(a)(2). If the project has a significant effect on the environment, the agency may approve the project only upon finding that it has "eliminated or substantially lessened all significant effects on the environment where feasible" and that any unavoidable significant effects on the environment are "acceptable due to overriding concerns" specified in CEQA section 21081. CEQA Guidelines § 15092(b)(2)(A–B).

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

[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.

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]

The City's Appeal Response fails to address Commenters' concerns that a lack of a mandatory finding under CEQA violates PRC § 21083(b)(3) and CEQA Guidelines § 15065(a)(4). While Cal/OSHA may have published relevant guidance on workplace safety relating to COVID-19, the IS/MND has not adopted any such mitigation measures or made any of the necessary CEQA findings as the City believes this is not a CEQA issue.

E. 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

[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.

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 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-2 (aesthetics) 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;
    - Appeal Response fails to address these concerns and merely iterates that the City has established performance criteria and a plan will be developed in conformance with the Code requirements.
- 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;

- Appeal Response fails to address these concerns that BIO-1 does not commit to a specific action, does not define feasibility, and still does not include any performance standards.

- 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;
  - The Appeal Response fails to address Commenters' concerns. The Response in fact notes that no plan has been put forth and doing so would be speculative due to the highly unlikely possibility that resources will be located—yet that does not excuse deferred mitigation. There are no considerations that would prevent formulation of plan for a commonly mitigated impact.
- 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 Appeal Response fails to address Commenters' concerns. Again, the City states that existing standards and regulations will be followed to ensure safe removal of asbestos and lead, but it does not apply these standards to the Project or develop a Project-specific plan that adheres to these standards/regulations, deferring plans until demolition.

F. <u>The IS/MND Fails to Adequately Disclose, Analyze and Mitigate the Project's Significant Noise Impacts</u>

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 City's Appeal Response merely states that construction activities are allowed during daytime hours and therefore the City's General Plan – Noise Element, or any noise standards or regulations in the Code do not apply to the Project. This explanation and analysis then concedes no level or duration of noise would require mitigation measures or a significance finding as long as construction occurs during permitted hours. This is erroneous and does not follow CEQA requirements that clearly require mitigation measures for noise impacts that exceed applicable standards or thresholds.

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

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.) The Appeal Response merely reiterates the IS/MND.

Second, by claiming a less than significant impact without conducting a quantified HRA to nearby, existing sensitive receptors as a result of Project construction and operation, the IS/MND fails to compare the excess health risk to the SCAQMD's specific numeric threshold of 10 in one million.[3] The Appeal Response does not address the fact that 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.* And as stated before, 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. The OEHHA document recommends that all short-term projects lasting at least two months be evaluated for cancer risks to

[3] "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

nearby sensitive receptors.[4] 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 does not limit evaluation to the most significant source emissions sites such as railyards or ports.

And again, there is 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.

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

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

Here, the IS/MND concludes that the Project will have a less than significant impact relating to greenhouse gas emissions 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.) The Appeal Response does not address Commenters' concerns *that these plans do not qualify as adequate GHG reduction plans or Climate Action Plans ("CAP")*.

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[4] "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.

Second, the IS/MND has not demonstrated that the Project is actually consistent with these plans despite the Appeal Response's statement that Commenters' failed to show inconsistency with the few goals or strategies the IS/MND selected. Consistency with a handful of general, or even specific, goals or policies of statewide or regional plans does not substantiate a valid CEQA finding on greenhouse gas emissions for the reasons already mentioned. Furthermore, the IS/MND ignored or failed to analyze the vast majority of *project*-specific plans, goals, and policies that could apply to the Project. Commenters refer the City to its previous comments attached to this letter.

The City's Appeal Response also appears to concede that it failed to conduct a cumulative impacts analysis for greenhouse gas emissions because such emissions are by nature cumulative. However, this is not what CEQA requires for a cumulative impacts analysis and is deficient. The IS/MND should have taken account of other nearby projects and their emissions, together with the emissions of the Project.

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 Geotraccker 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 Appeal Response concedes that no investigation has been conducted as to whether prior agricultural use may present significant hazards issues requiring mitigation. Second, case closure letters or reference to a previous soil study regarding prior use of USTs does not foreclose the possibility of existing contamination on the Project site. The City should have provided any previous studies or letters where such remedial work or investigations could be analyzed as part of the IS/MND. Otherwise, mere reference to such studies does not serve as substantial evidence.

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

Norm Marshall, a transportation expert, 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 mispresents 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.

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 to Planning Commission Comment Letter, 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. Mr. Marshall suggested that 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. The City also 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.

The City's Appeal Response does not demonstrate that the Project will reduce VMT over the existing Oxnard VA Clinic due to a broader array of services provided obviating the need for commutes to Los Angeles. The IS/MND offers no evidence for this statement. Second, only the baseline VMT is relevant for the CEQA analysis, not another VA clinic. Lastly, the Appeal Response does not address Mr. Marshall's suggestion that a bus stop in close proximity to the Project site would greatly reduce the Project's VMT.

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.[5] Any noise levels over 70 dBA are considered normally and clearly unacceptable for residential land uses.

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

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 uphold its Appeal, revise and recirculate the Project's IS/MND and/or prepare an environmental impact report which addresses the aforementioned concerns. If the City has any questions or concerns, feel free to contact my Office.

Sincerely,

Mitchell M. Tsai
Attorneys for Southwest Regional Council of Carpenters

Attachments

Southwest Regional Council of Carpenters October 26, 2020 Comments to the Initial Study/Mitigated Negative Declaration; November 18, 2020 Comments to the City Planning Commission on Agenda Item No. 2, PROJ-14017 (**Ex. A**).