

P: (626) 381-9248
F: (626) 389-5414
E: mitch@mitchtsailaw.com



Mitchell M. Tsai
Attorney At Law

155 South El Molino Avenue
Suite 104
Pasadena, California 91101

VIA U.S. MAIL & E-MAIL

January 18, 2021

City of Claremont
Attn: Chris Veirs, Principal Planner
207 Harvard Street
Claremont, CA 91711

Email to: cveirs@ci.claremont.ca.us

RE: Comments on the Draft Environmental Impact Report for the Village South Specific Plan Project (SCH# 2019080072)

Dear Mr. Veirs,

On behalf of the **Southwest Regional Council of Carpenters** (“**Commenter**” or “**Carpenter**”), my Office is submitting these comments on the City of Claremont’s (“**City**” or “**Lead Agency**”) Draft Environmental Impact Report (“**DEIR**”) (SCH No. 2019080072) for the Village South Specific Plan Project (“**Project**”). The Project has been assumed to enable a development capacity of 1,000 residential units, 100,000 sq. ft. of retail space, 45,000 sq. ft. of office and a 50-room hotel. The Project encompasses 24 acres within the City of Claremont bounded by Indian Hill Boulevard on the east, Arrow Highway on the south, Bucknell Avenue on the west, and Santa Fe Street on the north. (“**Project Site**”).

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 reserve 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 reserve 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 incorporate 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, Commenters request 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 use of a skilled and trained workforce to build the Project. The City should require the use of workers 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 or 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 applicable California Green Building Code at the time of building permit application to mitigate the Project’s environmental impacts and to advance progress towards the State of California’s environmental goals. 24 Cal. Code of Regulations § 101.9

(“standards approved by the California Building Standards Commission that are effective at the time an application for a building permit is submitted shall apply”)

I. EXPERTS

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

Matt Hagemann, P.G., C.Hg. (“Mr. Hagemann”) has over 30 years of experience in environmental policy, contaminant assessment and remediation, stormwater compliance, and CEQA review. He spent nine years with the U.S. EPA in the RCRA and Superfund programs and served as EPA’s Senior Science Policy Advisor in the Western Regional Office where he identified emerging threats to groundwater from perchlorate and MTBE. While with EPA, Mr. Hagemann also served as Senior Hydrogeologist in the oversight of the assessment of seven major military facilities undergoing base closer. He led numerous enforcement actions under provisions of the Resource Conservation and Recovery Act (RCRA) and directed efforts to improve hydrogeologic characterization and water quality monitoring.

For the past 15 years, Mr. Hagemann has worked as a founding partner with SWAPE (Soil/Water/Air Protection Enterprise). At SWAPE, Mr. Hagemann has developed extensive client relationships and has managed complex projects that include consultation as an expert witness and a regulatory specialist, and a manager of projects ranging from industrial stormwater compliance to CEQA review of impacts from hazardous waste, air quality, and greenhouse gas emissions.

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

Paul Rosenfeld, Ph.D. (“Dr. Rosenfeld”) is a principal environmental chemist at SWAPE. Dr. Rosenfeld has over 25 years’ experience conducting environmental investigations and risk assessments for evaluating impacts on human health, property, and ecological receptors. His expertise focuses on the fate and transport of environmental contaminants, human health risks, exposure assessment, and ecological restoration. Dr. Rosenfeld has evaluated and modeled emissions from unconventional oil drilling operations, oil spills, landfills, boilers and incinerators, process stacks,

storage tanks, confined animal feeding operations, and many other industrial and agricultural sources. His project experience ranges from monitoring and modeling of pollution sources to evaluating impacts of pollution on workers at industrial facilities and residents in surrounding communities.

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

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

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

¹The 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.

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 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. 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.

Based on the deficiencies noted below, the City must revise and recirculate the Draft EIR for public review and comment.

C. The DEIR Improperly Defers Mitigation of the Project’s Hazards Impacts

The DEIR acknowledges the potential hazardous materials and hazards exist on the Project site, including but not limited to potential contaminations from underground storage tanks, dry cleaners, and RCRA small quantity generators. DEIR, p. 4.7-15~16. SWAPE’s comment letter also explains the long history of agricultural use, commercial use and service station use on the Project site. Exhibit C, pp. 1-2. Despite these established history of contamination, the DEIR concludes that these hazards impacts are potentially significant and proposes two mitigation measures.

However, the DEIR improperly defers mitigation of these potentially significant hazards impact. The first mitigation measure, MM-HAZ-1, defers the preparation of “a detailed Phase I environmental site assessment to identify if specific areas that will require additional investigation and sampling.” (DEIR, p. 4.7-18.)

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

Rather than conducting further site investigations and consulting with applicable regulatory agencies *before Project approval*, the DEIR allows the deferral of such

measures. Instead, as SWAPE notes, the DEIR concludes that “the true extent of existing levels of contaminants is unknown and would not be fully determined until development activity is proposed and further tests are performed. As such, the potential hazard cannot be determined to be less than significant at this time.” (DEIR, p. 4.7-16.)

In addition, the DEIR’s failure to investigate, disclose and propose remediation for contamination on the Project Site is an unlawful omission of information under CEQA. CEQA requires that an environmental document identify and discuss the significant effects of a Project, alternatives and how those significant effects can be mitigated or avoided. CEQA Guidelines § 15126.2; PRC §§ 21100(b)(1), 21002.1(a). A Court “[w]hen reviewing whether a discussion is sufficient to satisfy CEQA, . . . the EIR (1) includes sufficient detail to enable those who did not participate in its preparation to understand and to consider meaningfully the issues the proposed project raises [citation omitted], and (2) makes a reasonable effort to substantively connect a project’s air quality impacts to likely health consequences.” *Sierra Club v. County of Fresno* (2018) 6 Cal. 5th 502, 510 [citing *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 405.]; see also PRC §§ 21002.1(e), 21003(b). The Court may determine whether a CEQA environmental document sufficiently discloses information required by CEQA de novo as “noncompliance with the information disclosure provisions” of CEQA is a failure to proceed in a manner required by law. PRC § 21005(a); see also *Sierra Club v. County of Fresno* (2018) 6 Cal. 5th 502, 515.

The DEIR’s failure to disclose what contamination exists on the Project Site as well as the cleanup activities that will be necessary to address any contamination eventually found on the Project Site is an unlawful omission of information since it prevents the public and policymakers from meaningfully discussing this issue as part of the Project’s environmental review process.

The hazardous cleanup that may be required prior to beginning construction on this Project Site can, in of itself, have significant environmental impacts. In particular, as SWAPE notes:

- Health effects to construction workers and neighboring residents upon soil disturbance. Construction workers could be exposed to soil or soil vapor contamination when touching or breathing contaminated soils

- Health impacts to future residents who may contact contaminated soil or who may breathe contaminated soil vapors.
- Potential air quality impacts that will occur from emissions associated with investigation, excavation, and transportation of contaminated soil.
- Potential greenhouse gas impacts that will occur from emissions associated with investigation, excavation, and transportation of contaminated soil.

Exhibit C p. 2. The DEIR must be revised and recirculated with information disclosing any current contamination on the Project Site as well as analysis about potential cleanup methods and their associated environmental impacts.

As a result, the DEIR fails to adequately analyze and defers the mitigation of the Project's impacts with the potential for release of hazardous materials.

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

According to SWAPE, the DEIR's air quality impacts analysis is inadequate for several reasons, which are briefly summarized below. SWAPE's comments are provided as Exhibit C in full, which the City must respond to in full. This letter does not capture the entire analysis contained in SWAPE's January 13, 2020 comment letter.

First, SWAPE states that the DEIR's air quality analysis using CalEEMod relies on unsubstantiated input parameters to estimate the Project's emissions, including the use of (1) underestimated land use sizes, (2) unsubstantiated existing land use sizes and types, (3) unsubstantiated changes to individual construction phase lengths, (4) unsubstantiated changes to gas fireplace values, (5) use of incorrect operational vehicle trip rates, (6) use of overestimated existing vehicle trip rates, (7) incorrect application of Tier 4 Final and Level 3 DPF Mitigation, (8) incorrect application of construction-related mitigation measures, and (9) incorrect application of operational mitigation measures. (Exhibit C, pp. 3-14.)

In fact, SWAPE determined that an updated CalEEMod models using the Project-specific information provided by the DEIR and excluding the unsubstantiated changes the DEIR made to the modeling. The corrected modeling actually shows that the Project would result in a potentially significant air quality impacts that were not previously disclosed in the DEIR. As a result, the City must rerun the DEIR's CalEEMod analysis, revise the DEIR and mitigate the significant impacts to the extent feasible.

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

According to SWAPE, the DEIR fails to adequately evaluate diesel particulate matter health risk emissions and inaccurately concludes that the Project will have a less than significant health risk impact without even conducting a quantified construction or operational risk assessment (“HRA”). (Exhibit C, p. 15; DEIR, p. 4.2-23.)

The DEIR’s health risk impacts analysis is inadequate and unsupported for four reasons, which are detailed in SWAPE’s comments in full: (1) The DEIR failed to analyze health risk impacts from exposure to toxic air contaminants (TACs), specifically diesel particulate matter (“DPM”); (2) the DEIR’s claim that “it is not scientifically feasible at this time to substantively connect the proposed Project’s air quality impacts to likely health consequences” is unsupported and is inconsistent with the most recent guidance published by the Office of Environmental Health Hazard Assessment (“OEHHA”); (3) the DEIR fails to prepare a quantified operational HRA; and (4) the DEIR fails to compare the excess health risk impact to the SCAQMD’s specific numeric threshold of 10 in one million. (Exhibit C, pp. 16-17.)

In fact, SWAPE’s screening-level HRA indicates the Project will have a significant health risk impacts undisclosed by the DEIR. (Exhibit C, p. 18-21.) The results of SWAPE’s screening-level HRA demonstrates the link between the Project’s emissions and the potential health risk and informs us that the Project will have a potentially significant impact. As a result, the City must prepare a revised, quantified air pollution model as well as an updated refined health risk assessment to accurately and adequately analyze the Project’s health risk impacts.

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

The DEIR concludes that the Project’s greenhouse gas (GHG) impacts are less than significant. According to SWAPE, the DEIR’s GHG analysis, along with its conclusion that the Project will have less than significant GHG impacts, are flawed and unsupported for several reasons. (Exhibit C, pp. 22-25.)

First, SWAPE states that the DEIR’s quantitative GHG analysis is unsupported and unreliable as it is based on incorrect and unsubstantiated quantitative GHG analysis and underestimates the GHG impacts. (Exhibit C, p. 23.) As such, SWAPE

recommends that the DEIR be revised to adequately assess the Project's potential GHG impacts

Second, SWAPE notes that the DEIR improperly relied on CARB'S 2017 Scoping Plan, SCAG's 2016-2040 RTP/SCS, and the City's General Plan to reach a conclusion that the Project's GHG impacts would be less than significant. (Exhibit C, p. 23.) CEQA Guidelines § 15064.4(b)(3) and § 15183.5(b)(1) make clear that 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.

However, SWAPE concludes that the plans the DEIR relied on for its qualitative GHG analysis do not qualify as GHG reduction plans under CEQA. Consistency with plans that do not qualify as GHG reduction plans fails to carry any relevance or significance as to whether the Project would have significant GHG impacts. As such, the DEIR's conclusion of less than significant GHG impact is unsupported and improper.

Third, SWAPE states that the DEIR fails to apply a quantitative GHG threshold to evaluate the Project's GHG emissions. (Exhibit C, p. 24.) While there are recommended significance thresholds widely accepted and available, such as AEP's

“2030 Land Use Efficiency Threshold” of 2.6 metric tons of CO₂ equivalents per service population per year, the DEIR chose to ignore them in favor of concluding a less than significant impact.

Last, and related to the previous point, SWAPE’s analysis revealed that the DEIR fails to identify a potentially significant GHG impact, especially by underestimating the service population. (Exhibit C, p. 25.) When SWAPE adjusted the service population pursuant to CAPCOA’s CEQA & Climate Change report, the Project’s service population efficiency will exceed the threshold and will be significant. Because the DEIR failed to account for this significant impact, the City must revise the DEIR to reflect this new information.

Furthermore, the DEIR fails to adopt all available feasible mitigation measures, including implementing a local hire provision to reduce GHG emissions that would benefit the City and its surrounding area both economically as well as environmentally by reducing greenhouse gas emissions related to construction worker trips by 17%.. Exhibit C, p. 26. SWAPE recommends the adoption of additional measures to mitigate the Project’s emissions, which are specifically listed in Exhibit C, pp. 26-34.

G. The DEIR Fails to Adequately Disclose, Analyze and Mitigate the Project’s Vehicle Miles Traveled (VMT) Impacts

California passed SB743 requiring lead agencies to conduct VMT analyses from July 2020. SB743 added Section 21099 to the CEQA statute, shifting the focus of transportation analysis from driver delay to reduction in vehicle miles traveled.

The DEIR concludes that the Project is “screened out” from conducting VMT analysis and concludes that the Project will have less than significant VMT related impacts. (DEIR, p. 4.13-3.) The DEIR further states that “[t]o confirm this, staff conducted an in-house VMT screening analysis for the project, and found to be consistent with the screening criteria stated above.” *Id.*

The DEIR fails to adequately explain the basis of its conclusion that VMT analysis is not needed. Moreover, the DEIR fails to provide the “in-house VMT screening analysis for the project” in more detail. DEIR, p. 4.13-3. DEIR’s Appendix I (“Traffic Impact Analysis”) merely provides that the existence of Metrolink station and the future Gold Line station qualify as major transit stops, qualifying the Project area as a Transit Priority Area (TPA). DEIR Appx, p. 11. DEIR’s Appendix I claims that “the

entire Specific Plan Area is within the TPAs around the rail stations” and therefore, the Project is exempt from further VMT analyses. *Id.* at pp. 11-12.

According to PRC section 21099(a)(7), “ ‘transit priority area’ means an area within one-half mile of a major transit stop that is existing or planned....” However, Figure 3 of Appendix I depicts a TPA that grossly exceeds the ½ mile range and incorrectly shows that more than ½ mile within the existing and planned train stations fall within the definition of a TPA. Based on the 24-acre size of the Project site, it is questionable that the entirety of the Project site actually falls within the TPA. Thus, the City’s TPA screening analysis is unsupported and wrong. Especially where there is a question of whether a project could be screened out of a VMT analysis, as there is here, the City should never use screening tools to avoid complying with CEQA.

In conclusion, the DEIR fails to adequately analyze and disclose the Project’s VMT impacts because it determined, incorrectly, that such analysis was not required. Such failure violated CEQA.

H. The DEIR Fails to Adequately Disclose, Analyze and Mitigate the Project’s Land Use Impacts

1) *The DEIR Fail to Demonstrate Consistency with SCAG’s RTP/SCS Plan*

Senate Bill No. 375 requires regional planning agencies to include a sustainable communities strategy in their regional transportation plans. Gov. Code § 65080, sub.(b)(2)(B). CEQA Guidelines § 15125(d) provides that an EIR “shall discuss any inconsistencies between the proposed project and...regional plans. Such regional plans include...regional transportation plans.” Thus, CEQA requires analysis of any inconsistencies between the Project and the relevant RTP/SCS plan.

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”)², which incorporates and builds upon the policies and strategies in the 2012 RTP/SCS³, that will help the region achieve GHG emission reductions that would reduce the region’s per capita transportation emissions

³ SCAG (Apr. 2016) 2016 RTP/SCS, p. 69, 75-115,
<http://scagrtpscs.net/Documents/2016/final/f2016RTPSCS.pdf> (attached as Exhibit D).

by eight percent by 2020 and 18 percent by 2035.⁴ 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.⁵ 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.⁶

Here, the DEIR claims the Project is consistent with SCAG’s 2016-2040 RTP/SCS Plan⁷ (“RTP/SCS Plan”) through the analysis of seven general goals or policies of that plan. DEIR, pp. 4.6-27~28. However, the goals that the DEIR analyzes for Project consistency are not applicable at the project level, only at a plan level to inform implementation of the RTP/SCS Plan. Thus, the DEIR incorrectly relies upon plan level goals outlined in the RTP/SCS. In the 2016 RTP/SCS Plan, SCAG states that:

The RTP/SCS is a long-range visioning plan that balances future mobility and housing needs with goals for the environment, the regional economy, social equity and environmental justice, and public health. Ultimately, the Plan is intended to help guide transportation and land use decisions and public investments... This Plan’s goals are intended to help carry out our vision for improved mobility, a strong economy and sustainability.”⁸

The DEIR simply does not demonstrate that it is consistent with many of the RTP/SCS Plan’s *project-level* goals, including:

Land Use and Transportation

- Providing transit fare discounts⁹;

⁴ *Id.*, p. 8, 15, 153, 166.

⁵ *Id.*, p. 116-124; see also SCAG 2012 RTP/SCS, *supra* fn. 38, p. 77-86.

⁶ SCAG 2012 RTP/SCS (attached as Exhibit E), p. 77; see also SCAG 2016 RTP/SCS, fn. 41, p. 115.

⁸ SCAG 2016-2040 RTP/SCS Plan, pp. 63, 65 (emphasis added)

⁹ SCAG 2016 RTP/SCS, pp. 75-114

- Implementing transit integration strategies¹⁰; and
- Anticipating shared mobility platforms, car-to-car communications, and automated vehicle technologies.¹¹

GHG Emissions Goals¹²

- 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,¹³ 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

¹⁰ *Id.*

¹¹ *Id.*

¹² 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://rtpscs.scag.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://rtpscs.scag.ca.gov/Documents/peir/2012/final/2012fPEIR_AppendixG_ExampleMeasures.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://scagrtpscs.net/Documents/2016/peir/final/2016fPEIR_ExhibitB_MMRP.pdf.

¹³ CEQA Guidelines, Appendix F-Energy Conservation, http://resources.ca.gov/ceqa/guidelines/Appendix_F.html.

(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 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.
- o 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.
- o 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.
- o 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:
 - o 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.

- 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. 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:
 - o Inclusion of additional bicycle parking, shower, and locker facilities that exceed the requirement.
 - o Direct transit sales or subsidized transit passes.
 - o Guaranteed ride home program.
 - o Pre-tax commuter benefits (checks).
 - o On-site car-sharing program (such as City Car Share, Zip Car, etc.).
 - o On-site carpooling program.
 - o Distribution of information concerning alternative transportation options.
 - o Parking spaces sold/leased separately.
 - o 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.
 - o Require the development of Transportation Management Associations for large employers and commercial/ industrial complexes.
 - o 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:
 - o Encouraging carpools and vanpools with preferential parking and a reduced parking fee.
 - o 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 and Environmental Design, energy Star Homes, Green Point Rated Homes, and the California Green Builder Program into project design including, but not limited to the following:
 - o Reuse and minimization of construction and demolition (C&D) debris and diversion of C&D waste from landfills to recycling facilities.
 - o Inclusion of a waste management plan that promotes maximum C&D diversion.
 - o Development of indoor recycling program and space.
 - o Discourage exporting of locally generated waste outside of the SCAG region during the construction and implementation of a project. Encourage disposal within the county where the waste originates as much as possible. Promote green technologies for long-distance transport of waste (e.g., clean engines and clean locomotives or electric rail for waste-by-rail disposal systems) and consistency with SCAQMD and 2016 RTP/SCS policies can and should be required.
 - o Develop ordinances that promote waste prevention and recycling activities such as: requiring waste prevention and recycling efforts at all large events and

venues; implementing recycled content procurement programs; and developing opportunities to divert food waste away from landfills and toward food banks and composting facilities.

- o Develop alternative waste management strategies such as composting, recycling, and conversion technologies.
- o Develop and site composting, recycling, and conversion technology facilities that have minimum environmental and health impacts.
- o Require the reuse and recycle construction and demolition waste (including, but not limited to, soil, vegetation, concrete, lumber, metal, and cardboard).
- 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.

The DEIR fails to mention or demonstrate consistency with the above listed measures and strategies of the SCAG RTP/SCS Plan. The DEIR should be revised to indicate what *specific project-level* mitigation measures that will be followed to demonstrate consistency with the RTP/SCS Plan.

2) The Project Fails to Establish its Consistency with the Housing Element and the City's RHNA Goals

As explained in full below, the DEIR fail to establish the Project's consistency with General Plan policies pertaining to the promotion of affordable housing and whether the Project will help the City meet its RHNA goals and allocations.

The DEIR completely ignores whether any of the approximately 1,000 residential units will be required to be set aside for affordable housing. In light of the fact that the City has woefully fallen behind in meeting its Regional Housing Needs Assessment

(RHNA) allocations and goals, the DEIR’s failure to incorporate affordable housing is extremely puzzling. Housing Element 2018-2021, p. 8-85 (showing that as of June 2017, the City has met ZERO of its extremely low-income, very low-income and low-income RHNA allocations).

Without more, the City has failed to establish the Project’s consistency with the Housing Element and RHNA goals.

I. 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-19.¹⁴

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.

¹⁴ Santa Clara County Public Health (June 12, 2020) COVID-19 CASES AT CONSTRUCTION SITES HIGHLIGHT NEED FOR CONTINUED VIGILANCE IN SECTORS THAT HAVE REOPENED, available at <https://www.sccgov.org/sites/covid19/Pages/press-release-06-12-2020-cases-at-construction-sites.aspx>.

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

Testing Procedures:

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

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

Planning

- Require the development of an Infectious Disease Preparedness and Response Plan that will include basic infection prevention measures (requiring the use of personal protection equipment), policies and procedures for prompt identification and isolation of sick individuals, social distancing (prohibiting gatherings of no more than 10 people including all-hands meetings and all-hands lunches) communication and training and workplace controls that meet standards that may be promulgated by the Center for Disease Control, Occupational Safety and Health Administration, Cal/OSHA, California Department of Public Health or applicable local public health agencies.¹⁵

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.

¹⁵ 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.

II. THE PROJECT IS INCONSISTENT WITH THE GENERAL PLAN AND THE ZONING CODE.

A. The Background on the State Planning and Zoning Law

Each California city and county must adopt a comprehensive, long-term general plan governing development. *Napa Citizens for Honest Gov. v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 352, citing Gov. Code §§ 65030, 65300. The general plan sits at the top of the land use planning hierarchy, and serves as a “constitution” or “charter” for all future development. *DeVita v. County of Napa* (1995) 9 Cal.4th 763, 773; *Lesher Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 540.

General plan consistency is “the linchpin of California’s land use and development laws; it is the principle which infused the concept of planned growth with the force of law.” See *Debottari v. Norco City Council* (1985) 171 Cal.App.3d 1204, 1213.

State law mandates two levels of consistency. First, a general plan must be internally or “horizontally” consistent: its elements must “comprise an integrated, internally consistent and compatible statement of policies for the adopting agency.” See Gov. Code § 65300.5; *Sierra Club v. Bd. of Supervisors* (1981) 126 Cal.App.3d 698, 704. A general plan amendment thus may not be internally inconsistent, nor may it cause the general plan as a whole to become internally inconsistent. See *DeVita*, 9 Cal.4th at 796 fn. 12.

Second, state law requires “vertical” consistency, meaning that zoning ordinances and other land use decisions also must be consistent with the general plan. See Gov. Code § 65860(a)(2) [land uses authorized by zoning ordinance must be “compatible with the objectives, policies, general land uses, and programs specified in the [general] plan.”]; see also *Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176, 1184. A zoning ordinance that conflicts with the general plan or impedes achievement of its policies is invalid and cannot be given effect. See *Lesher*, 52 Cal.3d at 544.

State law requires that all subordinate land use decisions, including conditional use permits, be consistent with the general plan. See Gov. Code § 65860(a)(2); *Neighborhood Action Group*, 156 Cal.App.3d at 1184.

A project cannot be found consistent with a general plan if it conflicts with a general plan policy that is “fundamental, mandatory, and clear,” regardless of whether it is consistent with other general plan policies. See *Endangered Habitats League v. County of*

Orange (2005) 131 Cal.App.4th 777, 782-83; *Families Unafraid to Uphold Rural El Dorado County v. Bd. of Supervisors* (1998) 62 Cal.App.4th 1332, 1341-42 (“FUTURE”).

Moreover, even in the absence of such a direct conflict, an ordinance or development project may not be approved if it interferes with or frustrates the general plan’s policies and objectives. *See Napa Citizens*, 91 Cal.App.4th at 378-79; *see also Lesher*, 52 Cal.3d at 544 (zoning ordinance restricting development conflicted with growth-oriented policies of general plan).

As explained in full below, the Project is inconsistent with the General Plan. As such, the Project violates the State Planning and Zoning law.

B. The Project is Inconsistent with the General Plan’s Housing Element and its Regional Housing Needs Allocation Goals

The DEIR fail to establish the Project’s consistency with General Plan policies pertaining to the promotion of affordable housing. Mainly, City’s General Plan Housing Element Goal 8-3 and its related Policies require the City to meet its housing needs of its residents, especially affordable housing:

Goal 8-3: Provide opportunities throughout the City for adequate and affordable housing in a wide range of housing types to meet the needs of all socioeconomic segments of the community.

Policy 8-3.4: Promote economically diverse neighborhoods by encouraging mixed-income housing developments.

Policy 8-3.8: Conserve existing affordable housing for lower-income renters.

Policy 8-3.9: Use financial incentives and regulatory concessions to encourage the development of lower- and moderate-income housing.

Policy 8-3.11: Encourage affordable housing to be distributed throughout the City to create economically diverse neighborhoods and to minimize concentrated impacts on the schools in areas of the City with existing affordable housing.

Moreover, as of June 2017, the City had not fulfilled any of the 49 extremely low-income, 49 very low-income, and 59 low-income Regional Housing Needs Assessment (RHNA) allocation. Instead, most, if not all, of the housing units built were for above moderate-income. (Housing Element 2018-2021, p. 8-85.)

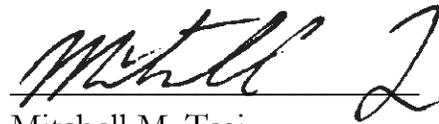
Especially given that the City has made zero strides toward meeting its own General Plan's Housing Element's Goals and Policies along with its RHNA goals of providing more affordable housing, the City must incorporate these very goals at the early stage of planning such a large Specific Plan project like the current one.

Without more, the City has failed to establish the Project's consistency with the Housing Element and RHNA goals.

III. CONCLUSION

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

Sincerely,



Mitchell M. Tsai

Attorneys for Southwest Regional Council of Carpenters

Attached:

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

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

Letter from Hagemann and Rosenfeld to Cathy Lee and Mitchel M. Tsai re Comments on the Draft Environmental Impact Report for the Village South Specific Plan (January 13, 2021) (**Exhibit C**)