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**VIA E-MAIL AND LACOUNCILCOMMENT.COM ONLY**

March 16, 2021

Planning Land Use Management Committee  
City Council  
City of Los Angeles  
200 N. Spring Street  
Los Angeles, CA 90012

*E-mail Delivery to:* [clerk.plumcommittee@lacity.org](mailto:clerk.plumcommittee@lacity.org)

**Re: Appeal of the “De Soto/Burbank Master Plan Project” of the Warner Center Specific Plan; Case Nos. VTT-74891-1A and DIR-2017-1708-SPP (CEQA No. ENV-2017-1706-MND)**

Dear Chairman Harris Dawson and Honorable Councilmembers,

On behalf of the Southwest Regional Council of Carpenters (“**Commenter**,” “**Appellant**” or “**Carpenters**”), my Office is submitting these comments to respond to the Planning staff’s March 10, 2021 responses to our appeal of the City of Los Angeles’ (“**City**” or “**Lead Agency**”) Planning Commission’s approval of the “De Soto/Burbank Master Plan Project” within the Warner Center Specific Plan, located at 20920 – 20970 W Warner Center Lane, 20935 – 21051 W Warner Center Lane, and 20931 – 21041 W Burbank Boulevard (“**Project**”) (Case Nos. DIR-2017-1708-SPP and VTT-74891-1A; CEQA No. ENV-2017-1706-MND.)

Appellant has filed two (2) separate appeals on or about January 22, 2021, challenging the City’s two January 13, 2021 Letters of Determinations (“**LODs**”) for the DIR-2017-1708-SPP and VTT-74891-1A. Appellant’s two appeals separately challenged (1) the City’s approval of the VTT-74891-1A case and (2) the City’s approval of CEQA No. ENV-2017-1706-MND as related to the DIR-2017-1708-SPP case.

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

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.

Appellant 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.

Appellant incorporates by reference all comments raising issues regarding the MND submitted prior to certification of the MND 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 require 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.

Community benefits such as local hire and skilled and trained workforce requirements can also be helpful to reduce environmental impacts and improve the positive economic impact of the Project. Local hire provisions requiring that a certain percentage of workers reside within 10 miles or less of the Project Site can reduce the length of vendor trips, reduce greenhouse gas emissions and providing localized economic benefits. Local hire provisions requiring that a certain percentage of workers reside within 10 miles or less of the Project Site can reduce the length of vendor trips, reduce greenhouse gas emissions and providing localized economic benefits. As environmental consultants Matt Hagemann and Paul E. Rosenfeld note:

[A]ny local hire requirement that results in a decreased worker trip length from the default value has the potential to result in a reduction of

construction-related GHG emissions, though the significance of the reduction would vary based on the location and urbanization level of the project site.

March 8, 2021 SWAPE Letter to Mitchell M. Tsai re Local Hire Requirements and Considerations for Greenhouse Gas Modeling.

Skilled and trained workforce requirements promote the development of skilled trades that yield sustainable economic development. As the California Workforce Development Board and the UC Berkeley Center for Labor Research and Education concluded:

. . . labor should be considered an investment rather than a cost – and investments in growing, diversifying, and upskilling California’s workforce can positively affect returns on climate mitigation efforts. In other words, well trained workers are key to delivering emissions reductions and moving California closer to its climate targets.<sup>1</sup>

The City should also 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. 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.

Mr. Hagemann and Dr. Rosenfeld’s separately attached comment letter will respond to ESA’s March 1, 2021 Memorandum containing responses to Appellant’s appeals to Case Nos. VIT-74891 and ENV-2017-1706-MND, “Attachment B” responses to SWAPE’s proposed mitigation measures, and the Health Risk Impacts prepared in March 2021 by ESA.

Matt Hagemann, P.G., C.Hg. (“**Mr. Hagemann**”) has over 30 years of experience in environmental policy, contaminant assessment and remediation, stormwater

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<sup>1</sup> California Workforce Development Board (2020) Putting California on the High Road: A Jobs and Climate Action Plan for 2030 at p. ii, available at <https://laborcenter.berkeley.edu/wp-content/uploads/2020/09/Putting-California-on-the-High-Road.pdf>

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 IS INCONSISTENT WITH THE WARNER CENTER 2035 PLAN AND THE LOS ANGELES MUNICIPAL CODE**

### **a. The Project Fails to Comply with the Warner Center 2035 Plan**

Los Angeles Municipal Code (“LAMC”) 11.5.7(C)(2) requires that the Planning Director make written findings prior to granting a Project Permit Compliance for the Project in a specific plan area. However, as explained in full below, the Project as currently proposed and modified does not comply with the Warner Center 2035 Plan. Therefore, the Project fails to comply with the Warner Center 2035 Plan.

#### **1. The City’s Acceptance of Applicant’s Appeal Renders the Project Inconsistent with the Warner Center 2035 Plan**

##### **i. *Revision of DIR Condition 2.d***

As specifically explained below, the City Planning Commission (“CPC”) accepted Applicant’s appeal which rendered the Project inconsistent with the Warner Center 2035 Plan.

First, the Applicant argues in appeal that the last sentence of DIR Condition 2.d should be removed because it would prohibit the concurrent development of multiple phases because it states “No temporary certificate of occupancy shall be issued for a residential building which also contains commercial square footage, unless the commercial component has received a temporary certificate of occupancy prior to, or concurrently with, the residential building component. No building permit shall be

issued for the next sequential development phase prior to compliance with this condition.” 8/13/2020 CPC Staff Report, p. A-12 (emphasis added).

The City planning staff and the CPC accepted the Applicant’s request and removed the last sentence of DIR Condition 2.d, along with a few other revisions, effectively allowing concurrent development of phases. 8/13/2020 CPC Technical Memorandum, pdf pg. 17. The City admits that the newly revised DIR Condition 2.d effectively “allow(s) concurrent development of multiple phases.” *Id.*, pdf pg. 64.

However, the City itself has previously admitted that the previous DIR Condition 2.d is consistent with the Specific Plan and is based on a City policy to ensure that the Specific Plan projects are carried out as intended by the Specific Plan. As the City noted, the Specific Plan was intended to prioritize the commercial aspect of the Project. 8/13/2020 CPC Staff Report; Specific Plan 6.1.2.2. emphasizes that the Commerce District is intended to be the most jobs-rich district. Thus, to carry out the intent of the Specific Plan, the City has previously imposed in another Specific Plan project (ZA-2016-3908-MCUP-DI-SPP) the same condition to prioritize commercial component to achieve the employment / residential balance sought by the Specific Plan.

In the City’s Staff Recommendation Report with Appeal Responses to the PLUM Committee dated March 10, 2021 (“3/10/2021 Appeal Responses”), the City ignores its earlier admission that the original DIR Condition 2.d is consistent with the Specific Plan. Instead, the City now claims that (1) Section 5.3.3.2 does not require phases to be developed sequentially and (2) the allowance of concurrent development of phases is not inconsistent with Section 6.1.2.2 that prioritizes commercial aspect of the Project.

As to the City’s first point, a Multi-Phase Project by definition is to “carry out (something) in gradual stages.” Oxford Languages Dictionary. Section 5.3.3.2.1 does in envision that each phase of a Multi-Phase Project would be developed sequentially, distinguishing initial phases from “the subsequent phases of development.” If the Warner center Specific Plan 2035 assumed concurrent phases would be allowed, there would have been no need to distinguish “subsequent phases” from the earlier ones.

Next, the City ignores its earlier admission that allowing concurrent development of multiple phases would erode the City’s longstanding policy to promote the prioritization of the Commercial District pursuant to Section 6.1.2.2. Moreover, the Project’s phasing does NOT prioritize the commercial aspect of the Project at all;

Phases 1 and 2 which are mixed use buildings with residential components will be built before fully commercial components of the Projects will be built, including Building 6 (hotel and restaurant; Phase 4) Building 7 (office/retail; Phase 7), Buildings 4 and 4a (retail/restaurant/office/community space; Phase 8), Building 8 (office) and Building 9 (office/retail; Phase 3). IS/MND, pp. B-48, 49.

Thus, the revised Condition 2.d does allow concurrent development of residential and commercial components of the Project, eroding the goals of Section 6.1.2.2 to prioritize commercial development.

And what is the significance of revising the Project condition to allow concurrent development of multiple phases? The City's revision of Condition 2.d will have significant new impacts the City has failed to respond to or address. SWAPE's August 27, 2020 comment letter analyzed that the City's allowance of concurrent construction of phases would result in higher emissions and cumulative impacts than each phase would have if carried out sequentially. The City never analyzed the potentially significant impacts of concurrent development of phases and thus, the IS/MND fails to support the Project as revised. The City ignored SWAPE's concerns in its 3/10/2021 Appeal Responses.

Despite these Specific Plan requirements, the City accepts Applicant's appeal to remove Condition 2.d (last sentence) and effectively remove the Project's phasing requirement. 8/13/2020 CPC Staff Report, p. A-12. This is inconsistent with the Specific Plan's clear requirements, will have significant new impacts and renders the Project inconsistent with the Specific Plan.

*ii. Revision of DIR Condition 27 re Mobility Fee*

The Letter of Determination's DIR Condition 27 correctly applied the Mobility Fee using Appendix D of the Specific Plan, which was amended by Ordinance No. 186,498 (effective March 10, 2020). However, upon Applicant's appeal, the City is recommending revision of the Letter of Determination to reflect the pre-amendment Mobility Fee to apply, saying the Mobility Fee will be calculated based on the date on which the application was deemed complete. 8/13/2020 CPC Staff Report, p. A-20. The City's 8/13/2020 Technical Memorandum echoes the rationale contained in the Staff Report. 8/13/2020 CPC Technical Memorandum, pdf p. 29.

However, the City applies the Mobility Fee Update inconsistently. In another Specific Plan case, Case No. DIR-2018-3394-SPP-1A, Project Site 6366-6410 Canoga Avenue, the City refused to apply the Mobility Fee Update, effective March 10, 2020, to that case because the Letter of Determination for the case was issued on January 2, 2020, before the effective date. Case No. DIR-2018-3394-SPP-1A, Staff Report to South Valley Area Planning Commission, A-3. In its CPC Staff Report, the City said the time for determining whether the Mobility Fee Update applies or not is the date when the application was deemed complete.

Absent statutory exceptions under federal, state or local law, the City's decision as to whether to grant land use entitlements for the Project, are subject to the legal requirements at the time of approval. *Avco Community Developers, Inc. v. South Coast Regional Com.* (1976) 17 Cal. 3d 785, 793; 793 [stating “the government cannot be estopped to enforce the laws in effect when the permit is issued.”]; *Alameda County Land Use Assn. v. City of Hayward* (1995) 38 Cal. App. 4th 1716, 1724 [finding that “A local legislative body cannot surrender or impair its delegated governmental power or that of successor legislative bodies either by ordinance or contract.”]; *Trancas Property Owners Assn. v. City of Malibu* (2006) 138 Cal. App. 4th 172, 181 [finding that a City cannot agree not to enforce its current land use and zoning laws, since it would amount to an abdication of a City's “police powers.”].

The City's 3/10/2021 Appeal Responses completely ignores Appellant's point that all current land use and zoning laws at the time of approval must apply to the Project. Then the City attempts to distinguish the City's evolving justification of the relevant date in determining whether the Mobility Fee Update applies. 3/10/2021 Appeal Responses, p. 2. However, such justification does not resolve the fact that the City has given shifting “timing” of when the Mobility Fee Update applies and why the City applied the Mobility Fee Update at the outset but changed its position later.

Moreover, by continuing to approve projects as part of the Warner Center 2035 Plan without ensuring that the revised requirements, like the Mobility fees, will equally apply to all projects as part of the Specific Plan, the City fails to safeguard that the projects within the Specific Plan will be carried out appropriately and consistently.

In sum, the City's revision of DIR Condition 27 to remove the applicability of the Mobility Fee Update renders the Project inconsistent with the Specific Plan.



2. The Project Does Not Comply with the Specific Plan’s Cultural Amenities Trust Fund Requirements

The Warner Center 2035 Plan requires that projects with values of over \$500,000.00 pay into the Warner Center Cultural Amenities Trust Fund. Warner Center 2035 Plan at pp. 15, 43, 111. The Warner Center 2035 Plan defines “Warner Center Cultural Amenities Fee,” in part, as “[a] fee designed to specify that the cultural arts fees collected into a specific fund, known as the Warner Center Cultural Amenities Trust Fund, to be used for cultural arts and amenities with the Plan area only....” Warner Center 2035 Plan, pg. 15.

However, the Project’s Condition of Approval No. 29 merely references the conditional requirements. Exhibit B to 8/13/2020 CPC Staff Report. Since the Letter of Determination admits that this Project would exceed the \$500,000 threshold and the estimated total Cultural Amenities fee will be \$1,982,631.05, the Condition of Approval No. 29 should be revised to state that the Applicant will be assessed Cultural Amenities fees under the Specific Plan because the Project meets the \$500,000 minimum threshold. The current conditional language is confusing.

The CPC’s Staff Report responds by merely reiterating the Project’s Conditions of Approval and argues that it was sufficient to meet the Warner Center 2035 Plan requirements despite the conditional requirement. (8/13/2020 CPC Staff Report, p. A-23.) The 3/10/2021 Appeal Responses ignores the confusing conditional language noted by Appellant but assures that the Applicant is required to comply with the requirement anyway. 3/10/2021 Appeal Responses, pp. 2-3.

However, as explained above, the conditional language is unclear and it should be determined at the Project approval stage whether the Project will be required to pay the Cultural Amenities fees definitively.

3. The Project Violates the Warner Center 2035 Plan’s Publicly Accessible Open Space Requirements

Warner Center 2035 Plan Section 5.2.2 requires that the Project shall provide a minimum of 15 percent of the net site area as Publicly Accessible Open Space (PAOS) based on a lot size of 1,042,301 square feet. Thus, the minimum required PAOS for the Project is 156,345.15 square feet.

However, the LOD states that the minimum PAOS requirement is only 78,173 square feet on the erroneous basis that the Project will provide a new street, which purportedly qualifies the Project for a 50% reduction of the PAOS requirement. 3/23/2020 DIR LOD, p. 19-20. And based on this erroneous assumption, the Project will only provide 11%, not 15%, of the Project site as PAOS. *Id.* at p. 18.

At the June 25, 2020 City Planning Commission meeting, Commissioner Ambroz accurately noted that the Project is not actually providing a new street that would warrant the 50% reduction of the PAOS requirement under the Warner Center 2035 Plan.

The City's 8/13/2020 Technical Memorandum later rationalized the reduction by stating the new Warner Center Lane is considered a new private street because “[p]er the Subdivision Map Act, the Bureau of Engineering considers this a merger and re-subdivision of the entire site.” 8/13/2020 CPC Technical Memorandum, pdf pg. 5. And the City also responded that the new Warner Center Lane will be considered to be a new lane because it will be modified and partially realigned. *Id.*, pdf. pg. 65.

However, the Specific Plan does not define what qualifies as “new street” in that way. Specific Plan section 6.2.2.3.2 provides: “A Project that includes the creation of new streets, including the portion of Variel Avenue dedicated and improved for the extension between Burbank Boulevard and Califa Street, shall be credited fifty (50%) of such Project's PAOS requirement....” To be clear, Variel Avenue between Burbank Boulevard and Califa Street did not exist prior to the Specific Plan whereas Warner Center Lane is an actually existing street prior to the implementation of this Project.

The 3/10/2021 Appeal Responses completely ignore Appellant's point as to the City's shifting definition of what is considered a New Street under the specific plan. If the City were to similarly exclude the PAOs requirement from all of the Specific Plan projects, the PAOS requirement would be significantly eroded as existing roads within projects under the Subdivision Map Act would now be counted as new roads.

Moreover, the 3/10/2021 Appeal Responses also ignored the point Commissioner Ambroz made that the Project will receive a development bonus for any additional PAOS exceeding the incorrectly discounted minimum of 7.5%. So not only is the Project not consistent with the 15% minimum PAOS requirement but also provides additional incentives in spite of not meeting the requirements based on the erroneous assumption that the applicant would be providing a new street (when in fact the new

street already exists). The City fails to explain how the additional discount of 7.5% was appropriately awarded.

Finally, Commissioner Ambroz also raised concerns that the existing PAOS on the Project site were fractured and were tailored to benefit the residents, not the general public. To that end, the Project violates Specific Plan's PAOS standards 6.2.2.2 which require PAOS, at a minimum, to be contiguous, internally and externally integrated, accessible to the public, open to the sky, landscaped and provide seating. The 3/10/2021 Appeal Responses again failed to explain how the fractured PAOS on the Project Site complies with Section 6.2.2.2.

Therefore, because the Project fails to provide at least 15% of its net site area as PAOS and fails to conform to the minimum standards of the Specific Plan, the Project is inconsistent with the Warner Center 2035 Plan.

4. The Project Should Be Stayed Until the City Implements City Council's Direction to Implement Additional Labor Standards, Local Hire, Prevailing Wage, Mobility Fee and Affordable Housing Requirements

The City has recently approved a number of changes to the Warner Center 2035 Plan, including measures to implement labor standards, local hire, prevailing wage, mobility fee and affordable housing requirements (Council Files 13-0197-S4, 13-0197-S9, 13-0197-S6), all of which are currently being ignored as part of the City's Warner Center 2035 Plan implementation process.

Here, the City initially got it right by applying the calculations from Mobility Fee Update (Ordinance No. 186, 498), with the effective date of March 10, 2020. (Letter of Determination.) However, the City then accepted Applicant's appeal to apply the pre-amendment Mobility Fee, saying the Mobility Fee will be calculated based on the date on which the application was deemed complete. 8/13/2020 CPC Staff Report, p. A-20.

However, as explained in full above, a project is subject to all legal requirements, including the Mobility Fee update, which is in effect at the time of the Project approval. By failing to apply the Mobility Fee update which has been in effect prior to the Letter of Determination in this case, the City has erred and the Project is now inconsistent with the Specific Plan.

The 3/10/2021 Appeal Responses claims these additional requirements are not adopted but fail to explain why the City initially applied the Mobility Fee Update to the Project but later revised it. Moreover, by continuing to approve projects as part of the Warner Center 2035 Plan without ensuring that the revised requirements, like the Mobility fees, will consistently apply to all projects as part of the Specific Plan, the City fails to safeguard that the projects within the Specific Plan will be carried out appropriately and consistently.

Therefore, the Project is inconsistent with the Warner Center 2035 Plan.

**b. The Project is Inconsistent with the Canoga Park-Winnetka-Woodland Hills-West Hills Community Plan**

Canoga Park-Winnetka-Woodland Hills-West Hills (“CPWWHWH”) Community Plan Objective 1-4 requires that projects “[p]rovide a diversity of housing opportunities capable of accommodating all persons regardless of income, age or ethnic background.” CPWWHWH Community Plan, p. III-4.

However, the Project was initially proposed with zero affordable or low income housing units. The 3/10/2021 Appeal Responses claim the City has no authority to require the Applicant to provide affordable housing. 3/10/2021 Appeal Responses, p. 5. The Appeal Responses ignores that Community Plan Objective 1-4 requires a diversity of housing opportunities regardless of INCOME, age, or ethnic background. By definition, providing only market rate housing units only cater to a small segment of the population who could afford it. Thus, the City fails to establish the Project’s consistency with Community Plan Objective 1-4.

The Appeal Response appears to suggest that the Applicant’s reservation of ten person of the units to “workforce housing” somehow renders the Project consistent with the Community Plan. However, the workforce housing the applicant might have added at the CPC’s behest is still insufficient (and are not even considered as “affordable housing”) given the enormity of this Project and the 1,009 multi-family residential units the Project will ultimately construct.

The Applicant, through the 3/1/2021 ESA Memo, essentially claims that Objective 1-4’s requirement of diversity of housing “regardless of income” has no weight because the Objective’s Policies do not contain express affordable housing language. 3/1/2021 ESA Memo, pp. 2-3. However, the Applicant fails to cite to any law that mandates that

a Community Plan's Objectives are overridden by the lack of specificity in the Policies regarding said Objectives.

Therefore, the Project fails to establish that the Project is consistent with the Canoga Park-Winnetka-Woodland Hills-West Hills Community Plan Objective 1-4.

**c. The Project Fails to Comply with LAMC 11.5.7(C)**

Before granting a Project Permit Compliance request, LAMC 11.5.7(C)(2) requires the Director to make written findings that the Project satisfies each of the following requirements:

- (a) That the project substantially complies with the applicable regulations, findings, standards and provisions of the specific plan; and
- (b) That the project incorporates mitigation measures, monitoring measures when necessary, or alternatives identified in the environmental review which would mitigate the negative environmental effects of the project, to the extent physically feasible

For reasons stated above, the Project is inconsistent with the Warner Center 2035 Plan. Thus, the Director's finding under LAMC 11.5.7(C)(2)(a) is unsupported by substantial evidence. Moreover, due to the failure of the City to disclose and analyze what revisions were to the Project, the Director's finding under both (a) and (b) are unsupported, especially because it is unclear whether the revised Project was adequately analyzed by the IS/MND and can still tier off of the earlier Programmatic EIR.

The City's Appeal Response reiterates its position that the Director's findings were properly made. However, the Appeal Responses still fail to disclose what Project re-designs were made and when. As to LAMC 11.5.7(C)(2)(b), Appellant explains in detail below why the MND was inadequate and inappropriate despite the existence of a fair argument that the Project will have significant impacts.

Therefore, the Project fails to adequately comply with the Warner Center 2035 Plan's requirements.

### III. THE PROJECT VIOLATES THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

#### a. Background Regarding the California Environmental Quality Act

The California Environmental Quality Act, Cal. Pub. Res. Code § 21100 *et seq* (“**CEQA**”) has two basic purposes. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project. (14 California Code of Regulations [“**CCR**” or “**CEQA Guidelines**”] § 15002(a)(1).) “Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made. Thus, the EIR ‘protects not only the environment but also informed self-government.’ [Citation.]” *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 564. The EIR has been described as “an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.” *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm’rs.* (2001) 91 Cal. App. 4th 1344, 1354 [“*Berkeley Jets*”]; *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

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. 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.<sup>2</sup>

SWRCC recommended that the City adopt additional CEQA mitigation measures to mitigate public health risks from the Project's construction activities. SWRCC requests that the City require safe on-site construction work practices as well as training and certification for any construction workers on the Project Site.

The City, in its Appeal Response, dismisses Appellant's request by stating that effects of the environment on a project are not subject to CEQA review, citing to *California Bldg. Indus. Assn. v. Bay Area Air Quality Mgmt. Dist.* (2015) 62 Cal.4th 369, 378. 3/10/2021 Appeal Responses, p. 6. However, the City is wrong because COVID-19 is not an existing environmental hazard of the Project site. And even if it were an existing condition, but it is exacerbated by the Project construction itself, putting construction workers at grave risk.

Based upon SWRCC's experience with safe construction site work practices, SWRCC recommends that the Lead Agency require that while construction activities are being conducted at the Project Site:

**Construction Site Design:**

- The Project Site will be limited to two controlled entry points.
- Entry points will have temperature screening technicians taking temperature readings when the entry point is open.
- The Temperature Screening Site Plan shows details regarding access to the Project Site and Project Site logistics for conducting temperature screening.
- A 48-hour advance notice will be provided to all trades prior to the first day of temperature screening.
- The perimeter fence directly adjacent to the entry points will be clearly marked indicating the appropriate 6-foot social distancing position for when you approach the screening area. Please reference the Apex temperature screening site map for additional details.

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<sup>2</sup> 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>.



- 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.<sup>3</sup>

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.

#### **c. The City Committed Prejudicial Error by Omitting Information Regarding the Project's Significant Impacts**

Under PRC §21005, noncompliance with the information disclosure provisions of CEQA, "which precludes relevant information from being presented to the public agency," and noncompliance with the "substantive requirements" of CEQA may be found by a reviewing court to be a prejudicial abuse of discretion whether or not a different outcome would have resulted if the agency had complied. PRC §21005(a).

When applying PRC §21005 in deciding whether a failure to comply with CEQA is prejudicial error, courts do not determine whether the agency's ultimate decision would

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<sup>3</sup> 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](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](https://dpw.lacounty.gov/building-and-safety/docs/pw_guidelines-construction-sites.pdf).

have been different if the law had been followed. Instead, they focus on whether the violation of CEQA prevented informed decision making or public participation. *Neighbors for Smart Rail v Exposition Metro Line Constr. Auth.* (2013) 57 Cal.4th 439 (plurality opinion); *Environmental Protection Info. Ctr. v Department of Forestry & Fire Protection* (2008) 44 Cal.4th 459, 485; *Poet, LLC v State Air Resources Bd.* (2017) 12 Cal.App.5th 52, 84.

First, the City abused its discretion by omitting information required by CEQA. The environmental analysis the City provided in the IS/MND and the Programmatic EIR omits information that establish that the Project will indeed have significant unmitigated impacts. In its June 22, 2020, August 19, 2020 and August 27, 2020 letters, SWAPE provided scientific analysis, including modeling, that establish that the Project will have (1) significant construction and operational air quality emissions and impacts, (2) significant health risk impacts based on screening level assessment, and (3) significant greenhouse gas impacts.

The Appeal Responses counter SWAPE's points in a separate memorandum by Applicant's attorney, Shepard Mullin, and consultant, ESA, dated March 1, 2021. SWAPE's responses to the points raised in the ESA memo, as well as ESA's new Health Risk Assessment and Attachment regarding mitigation measures, is attached hereto as Exhibit A. As explained full in Exhibit A, there is no question that the City omitted such significant information about the Project's potentially significant impacts. Most damningly, the Applicant's submission of a new Health Risk Assessment dated March 2021 is in and of itself clear evidence that establishes that the Applicant and the City themselves agreed they omitted critical information about the Project's potentially significant impacts.

On March 12, 2021, merely 2 full business days prior to the PLUM Hearing, the City uploaded a brand new analysis submitted by the Applicant, entitled "De Soto/Burbank Master Plan Project City of Los Angeles, California – Health Risk Assessment." The Applicant's consultant, ESA, prepared the Health Risk Assessment ("HRA") in March 2021. However, this critical information was neither contained in the IS/MND nor presented to the Planning Commission and thus, otherwise omitted from public review and meaningful review by the City. This type of last-minute dumping of information precludes informed decisionmaking and vetting to ensure that the information contained in the HRA is accurate.

The City must revise the HRA while preparing an EIR to ensure that the analysis of the Project's significant HRA impacts are fully disclosed, analyzed, and mitigated.

Next, the City's omission was prejudicial because "it deprived the public and decision makers of substantial relevant information about the project's likely adverse impacts." *Neighbors for Smart Rail, supra*, 57 Cal.4th at 463. Because of the omitted information, the City arrived at an erroneous conclusion that the Project will not have significant impacts. As explained by SWAPE in Exhibit A, if such information had not been omitted, the City could not and would not have been able to adopt an IS/MND and would have had to prepare an EIR. The City's Appeal Response ignores Appellant's point that the City's omission of significant information deprived the public and decision makers of such substantial relevant information.

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, supra*, 6 Cal. 5th at 515.)

Based on the foregoing, the City committed prejudicial error by omitting critical information establishing that the Project will have significant impacts on the environment.

**a. The Project Requires a Site Specific EIR, Not an IS/MND**

1. There is a Fair Argument That the Project May Have Significant Impacts Requiring an EIR

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 CA4th 1597, 1602; *Friends of "B" St. v City of Hayward* (1980) 106 CA3d 988, 1002. See also *Georgetown Preservation Soc'y v County of El Dorado* (2018) 30 CA5th 358, 371 (citing this text).

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 C §21151; *No Oil, Inc. v City of Los Angeles* (1974) 13 C3d 68, 75; *Jensen v City of Santa Rosa* (2018) 23 CA5th 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 C §§21100(a), 21151; 14 Cal Code Regs §15064(a)(1), (f)(1).

According to SWAPE's analysis in its June 22, 2020, August 19, 2020 and August 27, 2020 letters, there is substantial evidence, based upon scientific modeling, that the Project will have significant environmental impacts, including (1) significant construction and operational air quality emissions and impacts, (2) significant health risk impacts based on screening level assessment, and (3) significant greenhouse gas impacts. As explained in its responses as attached as Exhibit A, SWAPE explains why the City and ESA's responses do not alter its analyses that there is a fair argument that the Project may have significant impacts. In fact, neither the Appeal Responses and the ESA Memo provides any response regarding the low bar established by the "fair argument" standard under CEQA.

SWAPE's analysis establishing significant air quality, health risk and greenhouse gas impacts is substantial evidence that there is a fair argument that the Project may have a significant impact on the environment. In conclusion, the City must prepare an EIR for the Project.

2. The Project's Inconsistencies with the Warner Center Specific Plan and Project Revisions Render Tiering Improper

As explained above, the Project must be consistent with the Warner Center 2035 Plan to rely on the prior Initial Study/Mitigated Negative Declaration (IS/MND) and tier off of a prior Programmatic EIR. See IS/MND for De Soto/Burbank Master Plan Project [ENV-2017-1706-MND]; see Warner Center Regional Core Comprehensive Specific Plan EIR [ENV-2008-3471-EIR].

Tiering is only appropriate when an EIR has been certified for a program, plan, policy, or ordinance under PRC § 21904(a) and the later project is consistent with the program, plan, policy, or ordinance pursuant to PRC § 21904(b)(1) and CEQA Guidelines § 15152(d). Moreover, the later project must be consistent with the applicable general plan pursuant to PRC § 21904(b)(2) and CEQA Guidelines § 15152(e).

Here, not only is the Project inconsistent with the Warner Center 2035 Plan, it also has been revised which rendered it different from how it was envisioned and analyzed in the Programmatic EIR.

The City's Appeal Responses ignores this point entirely.

More critically, revisions were made to the Project which were not amply analyzed or discussed in the IS/MND and the 3/23/2020 LOD. Moreover, these revisions negate the City's ability to tier off of the earlier Programmatic EIR, which the City fails to explain fully.

With undeterminable revisions made for the Project, substantial evidence no longer supports the City's reliance on the IS/MND and the Programmatic EIR in approving the Project.

**b. The IS/MND is Inadequate and Violates CEQA**

A negative declaration may be adopted only when there is no substantial evidence that the project will have a significant environmental effect. 14 Cal Code Regs §§15070, 15074(b). For tiered negative declarations like the MND in this case, it is appropriate if the City determines that an environmental effect not examined in the prior EIR is identified, and the new effect is found to be less than significant or a new significant effect is identified, but the new significant effect can be mitigated to a less than significant level. See 14 Cal Code Regs §§15070, 15152(d), (f).

When a tiered negative declaration is adopted to address environmental impacts that were not examined in a prior EIR, the validity of the negative declaration is reviewed under the "fair argument" standard, where an EIR must be prepared if there is any substantial evidence in the record that would support a fair argument that the project might have a significant effect on the environment. See *Center for Sierra Nev. Conserv. v County of El Dorado* (2012) 202 CA4th 1156, 1173. Under the fair argument test, "deference to the agency's determination is not appropriate and its decision not to

require an EIR can be upheld only when there is no credible evidence to the contrary." *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1318.

As explained in full below, the MND identified many environmental impacts that were not previously analyzed in the PEIR. Moreover, there is substantial evidence that the Project will have significant impacts that have not been adequately analyzed in either the MND or the PEIR.

1. The MND Fails to Adequately Describe the Approved Project

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

The IS/MND describes the Project as including “the *phased* demolition of the Existing Buildings and other improvements and the *phased* construction of a mixed-use development consisting of ten new buildings (New Buildings), varying in height...” IS/MND, p. A-1 (emphasis added). The Project construction would be constructed in eight phases. *Id.*; also see IS/MND, pp. A-44~A-46. The 3/26/2020 LODs purported to approve the phased Project, as described in the IS/MND.

However, upon appeal by the applicant, the City revised the Project’s phasing requirement to allow the applicant to disregard the strict phasing requirement and even allow concurrent development of multiple phases. 8/13/2020 CPC Staff Report, pp. A-12~13; 8/13/2020 CPC Technical Memorandum [deleting the last sentence of DIR Condition 2.d which would prohibit concurrent development of multiple phases].

Now, the approved Project significantly deviates from the strictly sequenced version of the Project described in the IS/MND. As a result, the foundation upon which the IS/MND’s conclusion of no significant impact has dissolved. Allowing concurrent development of multiple phasing could mean much more intense and concentrated air quality and transportation impacts as explained in full below. The impacts that the phasing could have dispersed temporally would now be allowed to be compounded.

The 3/1/2021 ESA Memo falsely claims that the IS/MND already analyzed impacts from concurrent development of multiple phases, citing to the IS / MND’s “Project Description analysis. 3/1/2021 ESA Memo, p. 4. While the IS / MND modeled partial overlap between phases 1 and 2 as well as phases 5 and 6, the IS / MND did not

consider the possibility that the City could allow concurrent non-sequential development of all phases of the Project.

Moreover, the City attempts to punt on this issue by claiming that the City would review any modification to the phasing of the Project described in the IS / MND to determine if any subsequent of supplemental environmental analysis is required. However, the City's pledge to review any changes in sequencing amount to nothing more than an empty, unenforceable promise. The Project's conditions of approval require no such thing. Condition of Approval 2.c does not require any subsequent or supplemental environmental review of any finding as to whether subsequent or supplemental environmental review is appropriate. It merely notes that "[a]ny changes in sequencing . . . **may** require a modification to the Project Permit Compliance **at the discretion** of the Department of City Planning, Plan Implementation Division."

Here, revising the Project to allow concurrent development of multiple phases of the Project is a significant project description problem with a significant consequence. Simply put, the approved Project was not analyzed in the IS/MND and the City is approving the Project based on an erroneous conclusion that the revised Project will have less than significant impacts.

2. The Approved Project Will Have More Intensified Air Quality and Transportation Impacts

As described above, the approved Project deviates from the Project described in the IS/MND because it effectively does away with the Project's construction phasing requirement.

As a result, the Project's air quality, health risk, greenhouse gas and even transportation impacts can now be infinitely intensified. The 8 Phases of construction described in the IS/MND contemplated the detailed grading and amount of soil to be exported for each phase. These activities are directly related to additional construction equipment being operated simultaneously and additional haul trucks being operated simultaneously, significantly intensifying the Project's impacts. However, the City never analyzed the impacts of allowing the concurrent development of multiple phases. As stated above, the City never analyzed the compounded and cumulative environmental impacts of changing the Project condition to allow concurrent phasing of the Project. By removing the prohibition against concurrent phasing, the City could



allow concurrent non-sequential development of all phases of the Project, the impacts of which have not been analyzed at all in the IS/MND.

In conclusion, the City must analyze the significant impacts arising from the revision of the Project prior to approval.

3. The MND Fails to Adequately Analyze the Project's Air Quality, Health Risk and Greenhouse Gas Impacts

According to SWAPE, the IS/MND fails to adequately evaluate the Project's air quality, health risk and greenhouse gas impacts. As a result, SWAPE concludes that the Project's emissions and health risk impacts associated with construction and operation are underestimated and inadequately addressed by the IS/MND and the PEIR.

SWAPE's full analyses as raised in its June 22, 2020, August 19, 2020 and August 27, 2020 letters are briefly summarized below:

- Incorrectly relies on and tiers off of the Warner Center 2035 Specific Plan's PEIR by (1) failing to adopt all air quality mitigation measures from the PEIR, (2) the PEIR fails to take into account project-specific information, (3) MND's own CalEEMod model demonstrates that the Project's VOC/ROG emissions also exceed thresholds of significance. Moreover, the MND's conclusion that the Project's operational air quality, construction-related GHG and operational GHG impacts will be significant and unavoidable is incorrect because it fails to adopt all feasible mitigation measures.
- Used unsubstantiated input parameters to estimate project emissions. Specifically, based on the Project's air modeling, the MND underestimates emissions associated with Project activities by changing the model inputs.
- Used incorrect land use types and sizes in the CalEEMod. SWAPE points out several ways the phases of the Project incorrectly describe the Project. In effect, the MND's modeling underestimated the floor surface area and failed to model the proposed land use types as described in the MND.
- Failed to include the total amount of material export during Phases 1 through 8. As SWAPE describes in full in its letter, the MND

underestimated the amount of material export required for Phases 3, 4, 7, and 8 by a total of 39,155 cy. As a result, the MND's models and analyses underestimate the Project's construction and should not be relied upon.

- Made unsubstantiated changes to off-road construction equipment unit amounts and usage hours, which resulted in the underestimation of the Project's construction related emissions.
- Made unsubstantiated increases to the construction schedule, which underestimated the Project's construction-related emissions.
- Made unsubstantiated reductions to acres of grading, which resulted in the underestimation of the Project's construction-related emissions.
- Made unsubstantiated changes to architectural coating areas, underestimating the Project's emissions.
- Incorrectly modeled tier 4 final mitigation, underestimating the Project's construction-related emissions.
- Incorrectly applied construction mitigation measures, underestimating the Project's construction-related emissions.
- Included operational mitigation measures without substantiating why such measures were utilized in the CalEEMod model.
- Failed to adequately evaluate diesel particulate matter health risk emissions with an unsupported conclusion that the Project will have less than a significant health risk impacts without conducting a quantified HRA.
- Failed to adopt all feasible mitigation measures to reduce the Project's emissions, as listed in full in Exhibit A.

The City, through its consultant ESA, dismisses SWAPE's arguments. SWAPE's reply to the City's responses to SWAPE's comments are being submitted separately, as Exhibit A.

Based on the foregoing, and based on the analyses provided in SWAPE's full report, the IS/MND fails to adequately analyze, disclose and mitigate the Project's air quality, health risk and greenhouse gas impacts.

4. The Project Fails to Adopt All Mitigation Measures from the Program EIR

The Project fails to require the Project to implement all of the mitigation measures adopted by the Program EIR. The LOD excludes the following mitigation measures:

**AQ-17-21**

- The MND briefly notes that AQ-17 through 21 were not included because they were stated obligations of the City, not a private developer. MND, B-22. And ESA merely reiterates the same point in the Appeal Responses. 3/1/2020, ESA Memo, p. 5. However, this reasoning is problematic since the mitigation measures adopted for the Project must be enforceable. Neither the City nor the Applicant fails to explain why mitigation measures were included in the PEIR in the first place if they would later be ignored anyway. How and who will ensure that AQ-17 through 21 for the Project will be adhered to? If the Project wants to tier off of the PEIR, it cannot exclude the mitigation measures adopted by the PEIR without adequate reasoning of why such exclusion was warranted.

**CUL-1 and 2**

- The MND fails to explain why CUL-1, 2 are inapplicable to the Project.
- The Applicant responds that such mitigation measures were inapplicable because the Project site does not contain historical resources. 3/1/2021 ESA Memo, p. 5. However, the Applicant admits a cultural resources assessment was conducted pursuant to WC-CUL-2 anyway which undermines its own argument that these mitigation measures aren't applicable. *Id.* The City must revise the IS/MND to include these mitigation measures.

**TRS-101**

- The MND states that TRS-101 doesn't apply because the implementation of this mitigation measure is the City's responsibility.

- The Applicant reiterates this point in the ESA Memo. 3/1/2021 ESA Memo, p. 5. However, it is curious why such a mitigation measure was adopted in the PEIR in the first place if it would never be required to be implemented at the Project level. Thus, without including all relevant mitigation measures adopted by the PEIR, the Project's MND cannot tier off of the PEIR without violating CEQA.
- The City later changed its position by stating that the mobility fees allow the City to implement the Neighborhood Protection Program through the Specific Plan. 8/13/2020 CPC Technical Memorandum, pdf p. 73. However, the City has failed to establish how such Program will be implemented for the Project to mitigate the Project's significant transportation impacts.

As explained above, the MND fails to adequately explain why the listed mitigation measures were not included in the MND for the Project.


**c. The Project Facially Does Not Qualify for a Statutory Exemption from CEQA**

The 3/23/2020 LOD mistakenly cited to California Government Code Section 65457 as "California Public Resources Code (California Environmental Quality Act) in an effort to claim an exemption from CEQA. The Staff Report admits that the Project is not subject to a statutory exemption and states that the Project documents will be reflected to not include any mention of a CEQA exemption.

**IV. CONCLUSION**

For aforementioned reasons, Appellant requests that the City grant its appeal and send the Project back to be re-analyzed and considered for its consistency with the Warner Center 2035 Plan and compliance with CEQA.

Regards,

  
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Mitchell M. Tsai

Attorneys for Southwest Regional Council of Carpenters

Exhibit A – Letter from Hagemann and Rosenfeld from SWAPE to Mitchell M. Tsai, Mitchell M. Tsai, Attorney At Law re: Response to Comments on the De Soto/Burbank Master Plan Project (Case No. ENV-2017-1706-MND) March 15, 2021); Curriculum Vitae of Matthew F. Hagemann, P.G. C.Hg, QSD, QSP and Paul Rosenfeld, Ph.D included.

Exhibit B - March 8, 2021 SWAPE Letter to Mitchell M. Tsai re Local Hire Requirements and Considerations for Greenhouse Gas Modeling