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VIA U.S. MAIL & E-MAIL

April 26, 2021

Kathleen King, City Planner
City of Los Angeles Planning Department
221 N. Figueroa St., Suite 1350
Los Angeles, CA 90012
Em: Kathleen.king@lacity.org

RE: 1111 Sunset Mixed-Use Project

Dear Ms. King,

On behalf of the Southwest Regional Council of Carpenters ("**Commenter**" or "**Carpenter**"), my Office is submitting these comments on the City of Los Angeles' ("**City**" or "**Lead Agency**") Draft Environmental Impact Report ("**DEIR**") (SCH No. 2018051043) for the 1111 Sunset Mixed-Use Project, a new mixed-use development proposed on a 272,918-square-foot (6.27-acre) site with 994, 982 square feet of floor area under two different development scenarios ("**Project**").

The Southwest Carpenters is a labor union representing 50,000 union carpenters in six states and has a strong interest in well ordered land use planning and addressing the environmental impacts of development projects.

Individual members of the Southwest Carpenters live, work and recreate in the City and surrounding communities and would be directly affected by the Project's environmental impacts.

Commenters expressly reserves the right to supplement these comments at or prior to hearings on the Project, and at any later hearings and proceedings related to this Project. Cal. Gov. Code § 65009(b); Cal. Pub. Res. Code § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.

Commenters expressly reserves the right to supplement these comments at or prior to hearings on the Project, and at any later hearings and proceedings related to this Project. Cal. Gov. Code § 65009(b); Cal. Pub. Res. Code § 21177(a); *Bakersfield Citizens*

for Local Control v. Bakersfield (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.

Commenters incorporates by reference all comments raising issues regarding the EIR submitted prior to certification of the EIR for the Project. *Citizens for Clean Energy v City of Woodland* (2014) 225 Cal. App. 4th 173, 191 (finding that any party who has objected to the Project's environmental documentation may assert any issue timely raised by other parties).

Moreover, Commenter requests that the Lead Agency provide notice for any and all notices referring or related to the Project issued under the California Environmental Quality Act ("**CEQA**"), Cal Public Resources Code ("**PRC**") § 21000 *et seq*, and the California Planning and Zoning Law ("**Planning and Zoning Law**"), Cal. Gov't Code §§ 65000–65010. California Public Resources Code Sections 21092.2, and 21167(f) and Government Code Section 65092 require agencies to mail such notices to any person who has filed a written request for them with the clerk of the agency's governing body.

The City should 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.[1]

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.

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

[1] 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

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).[2] "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

[2] The CEQA Guidelines, codified in Title 14 of the California Code of Regulations, section 15000 *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.

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.

For all of the reasons outlined below, the DEIR should be revised and recirculated for additional public comment.

C. 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.[3]

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

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

Construction Site Design:

- The Project Site will be limited to two controlled entry points.
- Entry points will have temperature screening technicians taking temperature readings when the entry point is open.
- The Temperature Screening Site Plan shows details regarding access to the Project Site and Project Site logistics for conducting temperature screening.
- A 48-hour advance notice will be provided to all trades prior to the first day of temperature screening.

[3] 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 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.[4]

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.

D. The Project Description is Not Stable and Finite

"[A]n accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient" environmental document. (*County of Inyo v. City of Los Angeles* (1977) 71 Cal. App. 3d 185, 200.) "A curtailed or distorted project description

[4] *See also* The Center for Construction Research and Training, North America's Building Trades Unions (April 27 2020) NABTU and CPWR COVIC-19 Standards for U.S Constructions 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.

may stultify the objectives of the reporting process" as an accurate, stable and finite project description is necessary to allow "affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the "no project" alternative) and weigh other alternatives in the balance. (*Id.* at 192 – 93.) Courts determine *de novo* whether an agency proceeded "in a manner required by law" in maintaining a stable and consistent project description. (*Id.* at 200.)

Here, the project description is not stable and finite. The project description in DEIR states that the DEIR contemplates two development scenarios. (DEIR, II-1.) The first Project scenario is a mixed-use development with a hotel use; and the second scenario is a mixed-use development without a hotel use. The DEIR then speculates that under either scenario, the environmental impacts would be the same because the Project would be comprised of a maximum of 994,982 square feet of floor area. This is inaccurate. The DEIR also states no basis for a future decision of which scenario would ultimately be chosen or how a decision would be made.

This description is also unstable because the DEIR precludes a full environmental analysis of both scenarios. A scenario with additional residential units and no hotel use would not have the same impacts as a scenario with a hotel use and a reduction in residential uses. There is insufficient information in the DEIR to analyze and evaluate both development scenarios.

E. The DEIR's Mitigation Measures are Impermissibly Vague and Defer Critical Details

The DEIR improperly defers critical details of mitigation measures. Feasible mitigation measures for significant environmental effects must be set forth in an EIR for consideration by the lead agency's decision makers and the public before certification of the EIR and approval of a project. The formulation of mitigation measures generally cannot be deferred until after certification of the EIR and approval of a project. CEQA Guidelines § 15126.4(a)(1)(B) ("…[f]ormulation of mitigation measures should not be deferred until some future time.").

Deferring critical details of mitigation measures undermines CEQA's purpose as a public information and decision-making statute. "[R]eliance on tentative plans for future mitigation after completion of the CEQA process significantly undermines CEQA's goals of full disclosure and informed decisionmaking; and[,] consequently,

these mitigation plans have been overturned on judicial review as constituting improper deferral of environmental assessment." *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal. App. 4th 70, 92 ("*Communities"*). As the Court noted in *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 307, "[a] study conducted after approval of a project will inevitably have a diminished influence on decision-making. Even if the study is subject to administrative approval, it is analogous to the sort of post hoc rationalization of agency actions that has been repeatedly condemned in decisions construing CEQA."

A lead agency's adoption of an EIR's proposed mitigation measure for a significant environmental effect that merely states a "generalized goal" to mitigate a significant effect without committing to any specific criteria or standard of performance violates CEQA by improperly deferring the formulation and adoption of enforceable mitigation measures. *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 670; *Communities*, 184 Cal.App.4th at 93 ("EIR merely proposes a generalized goal of no net increase in greenhouse gas emissions and then sets out a handful of cursorily described mitigation measures for future consideration that might serve to mitigate the [project's significant environmental effects."); cf. *Sacramento Old City Assn. v. City Council* (1991) 229 Cal.App.3d 1011, 1028-1029 (upheld EIR that set forth a range of mitigation measures to offset significant traffic impacts where performance criteria would have to be met, even though further study was needed and EIR did not specify which measures had to be adopted by city).].

Here, the DEIR features several mitigation measures which are impermissibly vague and defer critical details:

- *AIR-MM-4-6*: AIR-MM-4 specifies that construction equipment will be maintained and operated to minimize exhaust emissions but no plans or details are included other than minimization of idling times which lack enforcement. AIR-MM-5 specifies that "to the extent possible" diesel/gasoline power generator use should be minimized and should be placed 100 feet from sensitive land uses. AIR-MM-6 states that the Project "would include…to the extent commercially available and feasible…"solar-powered generators for construction use.
- *CUL-MM-1*: States that a qualified archaeologist will be retained to prepare a Cultural Resource Monitoring and Treatment Plan but fails to include details of

that plan in the DEIR or include any performance standards by which a future plan would be prepared.

- *GEO-MM-1*: Calls for a paleontologist to develop a site-specific Paleontological Resource Mitigation and Treatment Plan but fails to specify any details of that plan or any performance standard by which a future plan would be prepared.

Particularly problematic is the DEIR's analysis, findings and subsequent mitigation of the Project's hazards and hazardous materials impacts. As found by SWAPE in their April 23 letter regarding this Project[5], the DEIR and Phase I ESA describe six abandoned oil wells which were abandoned before modern standards were even published. (Ex. D, 1-2.) There are also onsite contaminations from oilfield operations with impacts to soil and vapor with methane present. Yet, MM-HAZ-1 calls for all wells to be abandoned in accordance with the California Geologic Energy Management Division standards—which will not be done until prior to the issuance of a building permit. (DEIR, I-24.)

Furthermore, HAZ-MM-3 calls for a soil and management plan to address on-site contaminated soil which will also be deferred until such time that a building permit will issue for the Project. (DEIR, I-25.) But any soil contamination plan should be included in the DEIR with a full site characterization and evaluation of the potential risks with a cleanup certified by DTSC.

As a result of the above deficiencies in the DEIR's analysis and mitigation efforts, the DEIR needs to be revised and recirculated with a full site characterization and cleanup plans that are subjected to public comment and an appropriate level of specificity to ensure adequacy and enforceability.

E. The DEIR Fails to Support Its Findings with Substantial Evidence

When new information is brought to light showing that an impact previously discussed in the DEIR but found to be insignificant with or without mitigation in the DEIR's analysis has the potential for a significant environmental impact supported by substantial evidence, the EIR must consider and resolve the conflict in the evidence. See *Visalia Retail, L.P. v. City of Visalia* (2018) 20 Cal. App. 5th 1, 13, 17; see also *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal. App. 4th 1099, 1109. While a lead agency has discretion to formulate standards for determining

[5] April 23, 2021 SWAPE Letter to Greg Sonstein re Comments on 1111 Sunset Project. Attached hereto as Exhibit D.

significance and the need for mitigation measures—the choice of any standards or thresholds of significance must be "based to the extent possible on scientific and factual data and an exercise of reasoned judgment based on substantial evidence. CEQA Guidelines § 15064(b); *Cleveland Nat'l Forest Found. v. San Diego Ass'n of Gov'ts* (2017) 3 Cal. App. 5th 497, 515; *Mission Bay Alliance v. Office of Community Inv. & Infrastructure* (2016) 6 Cal. App. 5th 160, 206. And when there is evidence that an impact could be significant, an EIR cannot adopt a contrary finding without providing an adequate explanation along with supporting evidence. *East Sacramento Partnership for a Livable City v. City of Sacramento* (2016) 5 Cal. App. 5th 281, 302.

In addition, a determination that regulatory compliance will be sufficient to prevent significant adverse impacts must be based on a project-specific analysis of potential impacts and the effect of regulatory compliance. In *Californians for Alternatives to Toxics v. Department of Food & Agric.* (2005) 136 Cal. App. 4th 1, the court set aside an EIR for a statewide crop disease control plan because it did not include an evaluation of the risks to the environment and human health from the proposed program but simply presumed that no adverse impacts would occur from use of pesticides in accordance with the registration and labeling program of the California Department of Pesticide Regulation. *See also Ebbetts Pass Forest Watch v Department of Forestry & Fire Protection* (2008) 43 Cal. App. 4th 936, 956 (fact that Department of Pesticide Regulation had assessed environmental effects of certain herbicides in general did not excuse failure to assess effects of their use for specific timber harvesting project).

1. *The DEIR Fails to Support its Findings on Greenhouse Gas Impacts with Substantial Evidence.*

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

CEQA Guidelines sections 15064.4(b)(3) and 15183.5(b) allow a lead agency to consider a project's consistency with regulations or requirements adopted to

implement a statewide, regional, or local plan for the reduction or mitigation of GHG emissions.

CEQA Guidelines §§ 15064.4(b)(3) and 15183.5(b)(1) make clear qualified GHG reduction plans or CAPs should include the following features:

> (1) **Inventory**: Quantify GHG emissions, both existing and projected over a specified time period, resulting from activities (e.g., projects) within a defined geographic area (e.g., lead agency jurisdiction);
>
> (2) **Establish GHG Reduction Goal**: Establish a level, based on substantial evidence, below which the contribution to GHG emissions from activities covered by the plan would not be cumulatively considerable;
>
> (3) **Analyze Project Types**: Identify and analyze the GHG emissions resulting from specific actions or categories of actions anticipated within the geographic area;
>
> (4) **Craft Performance Based Mitigation Measures**: Specify measures or a group of measures, including performance standards, that substantial evidence demonstrates, if implemented on a project-by-project basis, would collectively achieve the specified emissions level;
>
> (5) **Monitoring**: Establish a mechanism to monitor the CAP progress toward achieving said level and to require amendment if the plan is not achieving specified levels;

Collectively, the above-listed CAP features tie qualitative measures to quantitative results, which in turn become binding via proper monitoring and enforcement by the jurisdiction—all resulting in real GHG reductions for the jurisdiction as a whole, and the substantial evidence that the incremental contribution of an individual project is not cumulatively considerable.

Here, the DEIR's analysis of greenhouse gas emissions impacts is not supported by substantial evidence for all of the reasons outlined in SWAPE's April 23, 2021 letter regarding their review of the DEIR:

- The DEIR utilized an incorrect and unsubstantiated quantitative analysis of emissions;

- The DEIR incorrect relied upon GHG reduction measures and project design features (PDFs);
- The DEIR failed to identify a potentially significant GHG impact when applying a 2.6 MT CO_2e/SP/year threshold per AEP guidance[6]; and
- The DEIR incorrectly relied upon SCAG's Outdated RTP/SCS, and failed to consider performance-based standards under SCAG's latest RTP/SCS plan.

(Exhibit D, 30-36.)

2. *The DEIR Fails to Support its Findings on Air Quality Impacts with Substantial Evidence.*

Second, the DEIR's Air Quality analysis is fundamentally flawed and not supported by substantial evidence for all the reasons outlined in SWAPE's comments, including:

- Use of unsubstantiated input parameters to estimate project emissions,
    - Unsubstantiated reduction to default CO2 intensity factor;
    - Unsubstantiated changes to individual construction phase lengths;
    - Unsubstantiated changes to number of construction days per week;
    - Unsubstantiated changes to off-road construction equipment unit amounts;
    - Unsubstantiated changes to hauling, vendor, and worker trip lengths and numbers;
    - Unsubstantiated operational vehicle trip rates;
    - Unsubstantiated reduction to energy use value;
    - Unsubstantiated changes to stationary generator emissions factors;
    - Incorrect application of Tier 4 Final mitigation for construction, coating, and paving phases;
    - Incorrect application of operational mitigation measures; and
    - Failing to adequately analyze diesel particulate matter health risk emissions and identify a potentially significant health risk impact.

(Exhibit D, 1-30.)

Additionally, as noted above, the DEIR fails to consider or include many feasible mitigation measures proposed by SWAPE to reduce significant air quality impacts.

[6] "Beyond Newhall and 2020: A Field Guide to New CEQA Greenhouse Gas Thresholds and Climate Action Plan Targets for California." Association of Environmental Professionals (AEP), October 2016, available at: https://califaep.org/docs/AEP-2016_Final_White_Paper.pdf, p. 40.

(DEIR, 24-31.) The DEIR needs to be revised and recirculated with a substantiated air quality analysis that includes all feasible mitigation measures to reduce impacts.

3. The DEIR Fails to Support its Findings on Transportation Impacts with Substantial Evidence.

CEQA Guidelines § 15064.3(b) requires analysis of a Project's vehicle miles traveled (VMT) impacts as part of the environmental document's transportation impacts analysis. The OPR technical guidance suggests that projects which have a VMT per capita of 15% or more below existing conditions may indicate a less than significant transportation impact relating to VMT.[7] Assuming then this is the proper methodology, the DEIR fails to demonstrate a less than significant impact with respect to VMT.

The DEIR utilizes the East LA APC impact thresholds for a significance determination which underestimates resident and worker trips for the Project site and is unsubstantiated. The proper Project baseline should be the existing conditions at the site and the DEIR needs to demonstrate a 15% or below reduction in VMT to demonstrate a less than significant impact.

F. The DEIR Improperly Labels Mitigation Measures as "Project Design Features"

The DEIR improperly labels mitigation measures for "Project Design Features" or "PDFs" which the DEIR purports will "reduce the potential for environmental effects." (DEIR, I-14~19.)

Relying on the PDFs, the DEIR concludes in many instances that the Project's impacts are less than significant and that no mitigation is required.

However, it is established that "'[a]voidance, minimization and / or mitigation measure' . . . are not 'part of the project.' . . . compressing the analysis of impacts and mitigation measures into a single issue . . disregards the requirements of CEQA." *Lotus v. Department of Transportation* (2014) 223 Cal. App. 4th 645, 656.

When "an agency decides to incorporate mitigation measures into its significance determination, and relies on those mitigation measures to determine that no significant effects will occur, that agency must treat those measures as though there were adopted

[7] OPR Technical Advisory, On Evaluating Transportation Impacts in CEQA (Dec. 2018), available at https://opr.ca.gov/docs/20190122-743_Technical_Advisory.pdf.

following a finding of significance." *Lotus, supra*, 223 Cal. App. 4th at 652 [citing CEQA Guidelines § 15091(a)(1) and Cal. Public Resources Code § 21081(a)(1).

By labeling mitigation measures as project design features, the City violates CEQA by failing to disclose "the analytic route that the agency took from the evidence to its findings." Cal. Public Resources Code § 21081.5; CEQA Guidelines § 15093; *Village Laguna of Laguna Beach, Inc. v. Board of Supervisors* (1982) 134 Cal. App. 3d 1022, 1035 (quoting *Topanga Assn for a Scenic Community v. County of Los Angeles* (1974) 11 Cal. 3d 506, 515).

The DEIR's use of "Project Design Features" further violates CEQA because such measures would not be included in the Project's Mitigation Monitoring and Reporting Program CEQA requires lead agencies to adopt mitigation measures that are fully enforceable and to adopt a monitoring and/or reporting program to ensure that the measures are implemented to reduce the Project's significant environmental effects to the extent feasible. PRC § 21081.6; CEQA Guidelines § 15091(d). Therefore, using Project Design Features in lieu of mitigation measures violates CEQA.

II. THE PROJECT VIOLATES THE STATE PLANNING AND ZONING LAW AS WELL AS THE CITY'S GENERAL PLAN

A. Background Regarding the State Planning and Zoning Law

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 (See *DeVita v. County of Napa* (1995) 9 Cal. App. 4th 763, 773), and serves as a "constitution" or "charter" for all future development. *Lesher Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal. App. 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. App. 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. App. 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. App. 3d at 544 (zoning ordinance restricting development conflicted with growth-oriented policies of general plan).

B. <u>The DEIR is Required to Review the Project's Consistency with Regional Housing Plans, Sustainable Community Strategy and Regional Transportation Plans</u>

CEQA Guidelines section 15125(d) requires that an environmental impact report "discuss any inconsistencies between the proposed project and applicable general plans, specific plans and regional plans. *See also Golden Door Properties, LLC v. County of San Diego* (2020) 50 Cal. App. 5th 467, 543.

1. *The DEIR Fails 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")[8], which incorporates and builds upon the policies and strategies in the 2012 RTP/SCS[9], that will help the region achieve GHG emission reductions that would reduce the region's per capita transportation emissions by eight percent by 2020 and 18 percent by 2035.[10] SCAG's RTP/SCS plan is based upon the same requirements outlined in CARB's 2017 Scoping Plan and SB 375.

On September 3, 2020, SCAG adopted the 2020 – 2045 RTP / SCS titled Connect SoCal ("2020 RTP/ SCS").[11] The 2020 RTP / SCS adopts policies and strategies aimed at reducing the region's per capita greenhouse gas emissions by 8% below 2005 per capita emissions levels by 2020 and 19% below 2005 per capita emissions levels by 2035. [12]

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

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[9] SCAG (Apr. 2016) 2016 RTP/SCS, p. 69, 75-115 (attached as Exhibit D).
[10] *Id.*, p. 8, 15, 153, 166.
[11] SCAG (Sept 2020) Connect Socal: The 2020 – 2045 Regional Transportation Plan / Sustainable Communities Strategy of the Southern California Association of Governments, *available at* https://scag.ca.gov/sites/main/files/file-attachments/0903fconnectsocal-plan_0.pdf?1606001176
[12] *Id.* At xiii.

GHG emissions.[13] These environmental mitigation measures serve to help local municipalities when identifying mitigation to reduce impacts on a project-specific basis that can and should be implemented when they identify and mitigate project-specific environmental impacts.[14]

Here, the Original FEIR claims the Project is consistent with SCAG's 2016-2040 RTP/SCS Plan ("RTP/SCS Plan") through the analysis of nine general goals or policies of that plan. (FEIR, pp. 257-259.) However, the goals that the FEIR 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 FEIR 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."[15]

The City's Responses to Comments merely dispute that Commenter has failed to present evidence to refute the conclusions of the Original FEIR. (Responses to Comments, p. 157.) As stated in our initial comment letter, which is reiterated here below, neither the RFEIR nor the Original FEIR demonstrates that it is consistent with many of the RTP/SCS Plan's *project-level* goals, including:

Land Use and Transportation

- Providing transit fare discounts[16];
- Implementing transit integration strategies[17]; and
- Anticipating shared mobility platforms, car-to-car communications, and

[13] *Id.*, p. 116-124; see also SCAG (April 2012) Regional Transportation Plan 2012 – 20135, fn. 38, p. 77-86 (attached as Exhibit E).
[14] SCAG 2012 RTP/SCS (attached as Exhibit E), p. 77; see also SCAG 2016 RTP/SCS, fn. 41, p. 115.
[15] SCAG 2016-2040 RTP/SCS Plan, pp. 63, 65 (emphasis added)
[16] SCAG 2016 RTP/SCS, pp. 75-114
[17] *Id.*

automated vehicle technologies.[18]

GHG Emissions Goals[19]

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

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[18] *Id.*

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

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

- 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.

<u>Hydrology & Water Quality Goals</u>

- 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.

<u>Transportation, Traffic, and Safety</u>

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

1) The City fails to review the Project's consistency with the 2020 RTP/SCS

CEQA Guidelines section 15125(d) requires that an environmental impact report "discuss any inconsistencies between the proposed project and applicable general plans, specific plans and regional plans. *See also Golden Door Properties, LLC v. County of San Diego* (2020) 50 Cal. App. 5th 467, 543.

The Project's environmental documents fail as an informational document since the Project' RFEIR fails to discuss consistency with the 2020 RTP / SCS.

2) The DEIR Fails to Demonstrate Consistency with the State Housing Law's Regional Housing Needs Assessment Requirements and the City's Obligations to Fulfill those Requirements in its Housing Element

State law requires that jurisdictions provide their fair share of regional housing needs and adopt a general plan for future growth (California Government Code Section 65300). The California Department of Housing and Community Development (HCD) is mandated to determine state-wide housing needs by income category for each Council of Governments (COG) throughout the state. The housing need is determined based on four broad household income categories: very low (households making less than 50 percent of median family income), low (50 to 80 percent of median family income), moderate (80 to 120 percent of median family income), and above moderate (more than 120 percent of median family income). The intent of the future needs allocation by income groups is to relieve the undue concentration of very low and low-income households in a single jurisdiction and to help allocate resources in a fair and equitable manner.

CEQA requires the DEIR analyze the Project's consistency with the State's housing goals. CEQA Guidelines section 15125(d) requires that an environmental impact report "discuss any inconsistencies between the proposed project and applicable general plans, specific plans and regional plans. *See also Golden Door Properties, LLC v. County of San Diego* (2020) 50 Cal. App. 5th 467, 543.

The City fails to conduct any consistency analysis with SCAG's 6th Cycle RHNA Allocation Plan.[21]

The DEIR should be revised and recirculated with an analysis of how the Project is consistent with the City of Los Angeles' 6th Cycle RHNA allocation.

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,

[21] Available at https://scag.ca.gov/sites/main/files/file-attachments/6th-cycle-rhna-final-allocation-plan.pdf?1616462966.

Mitchell M. Tsai
Attorneys for Southwest Regional
Council of Carpenters

Attached:

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

Air Quality and GHG Expert Paul Rosenfeld CV (Exhibit B);

Air Quality and GHG Expert Matt Hagemann CV (Exhibit C);

SCAG (Apr. 2016) 2016 RTP/SCS (Exhibit D);

SCAG (April 2012) Regional Transportation Plan 2012 – 20135 (Exhibit E);

SCAG (Sept 2020) Connect Socal: The 2020 – 2045 Regional Transportation Plan / Sustainable Communities Strategy of the Southern California Association of Governments (Exhibit F); and

April 23, 2021 letter from SWAPE to Greg Sonstein re 1111 Sunset Project (Exhibit G).