



COMMENT LETTER L



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VIA E-MAIL

July 7, 2021

Gabriel Diaz

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RE: Moreno Valley Trade Center Draft Environmental Impact Report

Dear Mr. Diaz,

On behalf of the Southwest Regional Council of Carpenters ("Commenter" or "Carpenters"), my Office is submitting these comments on the City of Moreno Valley's ("City" or "Lead Agency") Draft Environmental Impact Report ("DEIR") (SCI No. 2020039038) for the proposed Moreno Valley Trade Center Project, wherein the applicant proposes to construct and operate a 1,328,853 square foot light industrial building meant for warehouse distribution/logistics or e-commerce/fulfillment uses, in addition to a General Plan Amendment, a Change of Zone, a Plot Plan, and a Tentative Parcel Map to accommodate the construction of the light industrial building ("Project").

The Southwest Carpenters is a labor union representing more than 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.

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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

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reduction would vary based on the location and urbanization level of the project site.

March 8, 2021 SWAPI 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

Recently, on May 7, 2021, the South Coast Air Quality Management District found that that the “[u]se of a local state-certified apprenticeship program or a skilled and trained workforce with a local hire component” can result in air pollutant reductions.²

Cities are increasingly adopting local skilled and trained workforce policies and requirements into general plans and municipal codes. For example, the City of Hayward 2040 General Plan requires the City to “promote local hiring ... to help achieve a more positive jobs-housing balance, and reduce regional commuting, gas consumption, and greenhouse gas emissions.”³

In fact, the City of Hayward has gone as far as to adopt a Skilled Labor Force policy into its Downtown Specific Plan and municipal code, requiring developments in its Downtown area to requiring that the City “[c]ontribute to the stabilization of regional

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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>

² South Coast Air Quality Management District (May 7, 2021) Certify Final Environmental Assessment and Adopt Proposed Rule 2305 – Warehouse Indirect Source Rule – Warehouse Actions and Investments to Reduce Emissions Program, and Proposed Rule 316 – Fees for Rule 2305, Submit Rule 2305 for Inclusion Into the SIP, and Approve Supporting Budget Actions, available at <http://www.aqmd.gov/docs/default-source/Agendas/Governing-Board/2021/2021-May7-027.pdf?sfvrsn=10>

³ City of Hayward (2014) Hayward 2040 General Plan Policy Document at p. 3-99, available at https://www.hayward-ca.gov/sites/default/files/documents/General_Plan_FINAL.pdf



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construction markets by spurring applicants of housing and nonresidential developments to require contractors to utilize apprentices from state-approved, joint labor-management training programs, . . .”⁴ In addition, the City of Hayward requires all projects 30,000 square feet or larger to “utilize apprentices from state-approved, joint labor-management training programs.”⁵

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Locating jobs closer to residential areas can have significant environmental benefits. As the California Planning Roundtable noted in 2008:

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People who live and work in the same jurisdiction would be more likely to take transit, walk, or bicycle to work than residents of less balanced communities and their vehicle trips would be shorter. Benefits would include potential reductions in both vehicle miles traveled and vehicle hours traveled.⁶

In addition, local hire mandates as well as skill training are critical facets of a strategy to reduce vehicle miles traveled. As planning experts Robert Cervero and Michael Duncan noted, simply placing jobs near housing stock is insufficient to achieve VMT reductions since the skill requirements of available local jobs must be matched to those held by local residents.⁷ Some municipalities have tied local hire and skilled and trained workforce policies to local development permits to address transportation issues. As Cervero and Duncan note:

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In nearly built-out Berkeley, CA, the approach to balancing jobs and housing is to create local jobs rather than to develop new housing.” The city’s First Source program encourages businesses to hire local residents, especially for entry and intermediate level jobs, and sponsors vocational training to ensure residents are employment-ready. While the program is voluntary, some 300 businesses have used it to date, placing more than 3,000 city residents in local jobs since it was launched in 1986. When

⁴ City of Hayward (2019) Hayward Downtown Specific Plan at p. 5-24, available at <https://www.hayward-ca.gov/sites/default/files/Hayward%20Downtown%20Specific%20Plan.pdf>.

⁵ City of Hayward Municipal Code, Chapter 10, § 28.5.3.020(C).

⁶ California Planning Roundtable (2008) Deconstructing Jobs Housing Balance at p. 6, available at <https://cprooundtable.org/static/media/uploads/publications/cpr-jobs-housing.pdf>.

⁷ Cervero, Robert and Duncan, Michael (2006) Which Reduces Vehicle Travel More: Jobs-Housing Balance or Retail-Housing Mixing? Journal of the American Planning Association 72 (4), 475-490, 482, available at <http://reconnectingamerica.org/assets/Uploads/LTCT-825.pdf>.



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needed, these carrots are matched by sticks, since the city is not shy about negotiating corporate participation in First Source as a condition of approval for development permits.

The City should consider utilizing skilled and trained workforce policies and requirements to benefit the local area economically and mitigate greenhouse gas, air quality and transportation impacts.

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.

1. 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).⁸ "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. Yarry* (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.*

⁸ The CEQA Guidelines, codified in Title 14 of the California Code of Regulations, section 150000 *et seq.*, are regulatory guidelines promulgated by the state Natural Resources Agency for the implementation of CEQA. (Cal. Pub. Res. Code § 21082.) 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.

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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. City 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).

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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. *Cudiz 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.

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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(n)(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 Occupational Safety and Health Administration. Recently, several construction sites have been identified as sources of community spread of COVID-19.⁹

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.

⁹ 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>.

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- 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

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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.¹⁹

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 DEIR's Project Description is Not Accurate, 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 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,

¹⁹ See also The Center for Construction Research and Training, North America's Building Trades Unions (April 27, 2020) NABTU and CPWR COVID-19 Standards for U.S. Construction Sites, available at https://www.cpwr.com/sites/default/files/NABTU_CPWR_Standards_COVID-19.pdf; Los Angeles County Department of Public Works (2020) Guidelines for Construction Sites During COVID-19 Pandemic, available at <https://dpsw.lacounty.gov/building-and-safety/docs/pw-guidelines-construction-sites.pdf>.

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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.)

A project description fails for not including sufficient detail when there is not enough information provided to accurately evaluate the project's environmental impacts. Here, the DEIR's project description is not accurate, stable, or finite, thus undermining much of the subsequent analysis in the DEIR. The DEIR's project description states that the future tenants of the Project are as-yet unknown. (DEIR, 3-8.) The project description states that depending upon the eventual future occupant, the building may be a 48 foot-tall warehouse (without or without cold storage facilities) a 48-foot tall e-commerce/fulfillment facility (again, with or without cold storage facilities), or a 100 foot-tall e-commerce/fulfillment facility. (DEIR, 3-9.)

Specificity is crucial when evaluating the environmental impacts of a warehouse project because the type of warehousing generally dictates the project's air quality, greenhouse gas emissions, and transportation impacts. In this case, the DEIR notes that if the ultimate use of the building is a e-commerce/fulfillment facility, the Project would consume an additional 1,349,289 gallons of fuel and 202,860 kWh of electricity per year (1,299,869 gallons of fuel and 202,860 kWh of electricity per year if cold storage is involved). (DEIR, 4.5-8 through 4.5-9.) The consumption numbers are further exacerbated when cold storage facilities are considered. Comparing the DEIR's analysis of a warehouse without cold storage to an e-commerce facility with cold storage results in an additional 1,346,618 gallons of fuel, 2,468,000 kBtu of natural gas, 2,053,860 kWh of electricity per year. (*See* DEIR 4.5-8 through 4.5-9). The increased level of consumption results in a significant increase in GHG emissions, (DEIR 4.7-19 through 4.7-20), and should merit consideration of the e-commerce fulfillment facility a completely different project.

The number of truck trips and vehicle miles travelled will substantially change depending on whether the warehouse will be utilized as high cube transload and short term storage warehousing, high-cube fulfillment and short-term storage warehousing, high-cube fulfillment center warehousing, high-cube parcel hub warehousing, or high-cube cold storage warehousing.¹¹ Vehicle trip generation rates can change dramatically

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¹¹ ITE Trip General Manual, 10th Ed., Land Use Codes, available at <https://www.ite.org/pub/3d=794f62d6%2Df31f%2Dca7%2D4506%2De5d811dc8f6>.



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based upon the type of warehousing that is operated at a site.¹² For example, cold-storage uses generate significantly higher average daily vehicle trip rates than non-cold-storage uses.¹³ High-cube sort and non-sort fulfillment centers may also generate dramatically different trip rates but the DEIR fails to justify its assumptions for future tenants. Here, use as a e-commerce/fulfillment facility would generate an additional 4,286 vehicle trips. (DEIR, 4.12-10.)

The DEIR confines its environmental analysis based upon a 50,000 square foot cold storage limit, but otherwise fails to explain or analyze how the Project plans would limit unknown future tenants to this specific cold storage metric. (DEIR, 3-26.) The DEIR should take a more conservative approach as required by CEQA and assume that additional square footage could be used for cold storage purposes or any other uses that may generate higher average daily trip rates than the DEIR's current environmental analyses indicate.

The DEIR needs to be revised to include a stable and finite description and worst case scenario land use projections as cold storage to accurately reflect the potential environmental impacts of future tenants.

II. CEQA Bars the Deferred Development of Environmental Mitigation Measures

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

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¹² *High-Cube Warehouse Truck Trip Generation Analysis* (Oct. 2016), Institute of Transportation Engineers, available at <https://www.ite.org/pub/?id=a3e6679a%2DDe3a8%2Ddbf38%2D7f29%2D2961becdd498>.

¹³ *Id.* at 26-8.



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measure is identified and described in the EIR. *Sacramento Old City Ass'n v. City Council* (1991) 229 Cal.App.3d 1011.

Impermissible deferral can occur when an EIR calls for mitigation measures to be created based on future studies or describes mitigation measures in general terms but the agency fails to commit itself to specific performance standards. *Preserve Wild Santee v. City of Santee* (2012) 210 Cal. App. 4th 260, 281 [city improperly deferred mitigation to butterfly habitat by failing to provide standards or guidelines for its management]; *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal. App. 4th 645, 671 [EIR failed to provide and commit to specific criteria or standard of performance for mitigating impacts to biological habitats]; see also *Cleveland Nat'l Forest Found. v. San Diego Ass'n of Gov'ts* (2017) 17 Cal. App. 5th 413, 442 [generalized air quality measures in the EIR failed to set performance standards]; *California Clean Energy Comm. v. City of Woodland* (2014) 225 Cal. App. 4th 173, 195 [agency could not rely on a future report on urban decay with no standards for determining whether mitigation required]; *POET, LLC v. State Air Resources Bd.* (2013) 218 Cal. App. 4th 681, 740 [agency could not rely on future rulemaking to establish specifications to ensure emissions of nitrogen oxide would not increase because it did not establish objective performance criteria for measuring whether that goal would be achieved]; *Gray v. County of Madera* (2008) 167 Cal. App. 4th 1099, 1119 [rejecting mitigation measure requiring replacement water to be provided to neighboring landowners because it identified a general goal for mitigation rather than specific performance standard]; *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal. App. 4th 777, 794 [requiring report without established standards is impermissible delay].

Here, the DEIR defers the development of the following mitigation measures for potentially significant environmental impacts:

- Cultural Resources Mitigation Measures 4.4-1 through 4.4-5 propose to retain a qualified archaeologist to conduct monitoring duties without detailing any specific plan for resource monitoring that would be established using a generally accepted performance criteria or standard.
- Geology and Soils Mitigation Measures 4.6-1 through 4.6-3 proposes mitigation for paleontological resources that relies on retention of a qualified paleontologist without specifying any

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specific plan for mitigation established using generally accepted performance criteria or standards.

- Air Quality Mitigation Measures 4.2-1, 4.2-2, 4.2-3, 4.2-4, and 4.2-5 simply call for compliance with various SCAQMD Rule 403 (“Fugitive Dust”); Rule 1186 (“PM₁₀ Emissions from Paved and Unpaved Roads and Livestock Operations”); Rule 1113 (re: architectural coatings); and CARB construction equipment air quality and anti-idling regulations.
- Hazards and Hazardous Materials Measures 4.8-1 through 4.8-3 call for survey of the buildings existing on the property, and disposal of hazardous materials “according to applicable laws and regulations.” (DEIR, 4.8-16 through 4.8-17.)

These are deferred mitigation because the City is merely making a conclusory statement about future compliance with the law and does not commit itself to any specific or binding course of action which is project specific. 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. There is no analysis in the DEIR connecting the effect of compliance with regulatory requirements such that the impacts could be determined to be less than significant. The City is essentially requesting a good faith assumption that regulatory compliance will serve as a backstop without developing any mitigation measures.

The DEIR needs to be amended to include specific mitigation measures with any applicable performance standards. The DEIR needs to be revised to specify what the plan to relocate or replant the heritage trees will look like—sufficiency cannot be assumed.

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

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When new information is brought to light showing that an impact previously discussed in the DEIR but found to be insignificant with or without mitigation in the DEIR's analysis has the potential for a significant environmental impact supported by substantial evidence, the EIR must consider and resolve the conflict in the evidence. See *Visalia Retail, L.P. v. City of Visalia* (2018) 20 Cal. App. 5th 1, 13, 17; see also *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal. App. 4th 1099, 1109. While a lead agency has discretion to formulate standards for determining significance and the need for mitigation measures—the choice of any standards or thresholds of significance must be “based to the extent possible on scientific and factual data and an exercise of reasoned judgment based on substantial evidence. CEQA Guidelines § 15064(b); *Cleveland Nat'l Forest Found. v. San Diego Ass'n of Gov'ts* (2017) 3 Cal. App. 5th 497, 515; *Mission Bay Alliance v. Office of Community Inv. & Infrastructure* (2016) 6 Cal. App. 5th 160, 206. And when there is evidence that an impact could be significant, an EIR cannot adopt a contrary finding without providing an adequate explanation along with supporting evidence. *East Sacramento Partnership for a Livable City v. City of Sacramento* (2016) 5 Cal. App. 5th 281, 302.

In addition, a determination that regulatory compliance will be sufficient to prevent significant adverse impacts must be based on a project-specific analysis of potential impacts and the effect of regulatory compliance. *Californians for Alternatives to Toxics v. Department of Food & Agric.* (2015) 136 Cal. App. 4th 1; 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's Air Quality and Greenhouse Gas Emissions Analyses are Not Supported by Substantial Evidence.

i. The DEIR Fails to Substantiate Proposed Warehousing Uses.

According to SCAQMD's Warehouse Truck Trip Study Data Results and Usage report, warehouse cold storage uses significantly increase truck trip rates.⁴ As noted above, the DEIR states the proposed Project may include cold storage facilities and, depending on who the future tenants will be, may be used either for

⁴ SCAQMD, Warehouse Truck Trip Study Data Results and Usage (June 2014). Available at https://www.aqmd.gov/docs/default-source/ceqa/handbook/high-cube-warehouse-trip-rate-study-for-air-quality-analysis/final-iclc_6-19-2014.pdf?sfvrsn=2.

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warehousing/logistics purposes or e-commerce/fulfillment purposes. Vehicle trip generation rates and trip lengths can change dramatically based upon the type of warehousing that is operated at a site.¹⁵ For example, cold-storage uses generate significantly higher average daily vehicle trip rates than non-cold-storage uses.¹⁶ SCAQMD's recommended air quality analysis approach, following the CEQA requirement to use a conservative analysis, is to *utilize the cold storage trip rates* when the tenant(s) is unknown and when the proposed warehousing may accommodate that use.¹⁷

Here, the DEIR's air quality and greenhouse gas emissions analyses are flawed and not based upon substantial evidence because they fail to use a conservative analysis which utilizes the highest daily emissions rates for cold storage or any other possible warehousing uses that were not considered.

2. Compliance with Regulations is Not Enough to Support a Finding of Less-than-Significant Impacts

The DEIR's analysis of Aesthetic Threshold d refers to municipal requirements for exterior lighting on buildings found in Moreno Valley Municipal Code, section 9.08.100. (DEIR, 4.1-14). The DEIR concludes that the exterior lighting, which would be running throughout the night, would have a less-than significant impact. Similarly, the analysis of Hydrology and Water Quality Threshold c refers to the requirement to obtain an NPDES permit, and the requirement to prepare a Storm Water Pollution Prevention Plan, erosion control plan, and Water Quality Management Plan. The DEIR concludes that these would ensure that Project construction activities would result in less-than-significant impacts on soil erosion, sedimentation, stormwater drainage, and polluted runoff.

However, "[c]ompliance with the law is not enough to support a finding of no significant impact under . . . CEQA." (*Californians for Alternatives to Toxics v. Department of Food & Agriculture* (2005) 136 Cal. App. 4th 1, 15 – 17 [finding that a lead agency "abused its discretion by relying on DPR's regulatory scheme as a substitute for performing its own evaluation of the environmental impacts of using pesticides."]).

¹⁵ *High-Cube Warehouse Vehicle Trip Generation Analysis* (Oct. 2016), Institute of Transportation Engineers, available at <https://www.ite.org/pub/?id=a3e6679a%2De3a8%2Dbf38%2D7f29%2D29%1becdd498>.

¹⁶ *Id.* at 26-8.

¹⁷ *Id.*

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Bare conclusions or opinions of the agency are not sufficient to satisfy an agency's obligation under CEQA to adequately support their environmental determinations. (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal. 3d 376, 403 – 404.) "To facilitate CEQA's informational role, the EIR must contain facts and analysis, not just the agency's bare conclusions or opinions. . . . [to] enable[] the decision-makers and the public to make an 'independent, reasoned judgment' about a proposed project." (*Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 935 | (quoting *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 831.)

As the Court noted in *East Sacramento Partnerships for a Livable City v. City of Sacramento* (2016) 5 Cal. App. 5th 281, 301, compliance with a regulatory scheme "in and of itself does not insulate a project from the EIR requirement, where it may be fairly argued that the project will generate significant environmental effects." (Internal quotations omitted.) A project's effects can be significant even if they are not greater than those deemed acceptable in a general plan or other regulatory law. (*Gentry v. City of Merrieta* (1995) 36 Cal.App.4th 1359, 1416; see also *Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714, 732 | finding that a full environmental impact report is required "if substantial evidence supports a fair argument that the Project may have significant unmitigated noise impacts, even if other evidence shows the Project will not generate noise in excess of the County's noise ordinance and general plan."].)

A public agency cannot apply a threshold of significance or regulatory standard "in a way that forecloses the consideration of any other substantial evidence showing there may be a significant effect." (*Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 342.) Where comments from a responsible sister agency, such as the Water District, disclose new or conflicting data or opinions that cause concern that the agency may not have fully evaluated the project and its alternatives, these comments may not simply be ignored based on a conclusory statement about compliance with regulatory standards; there must be a good faith, reasoned analysis. (*Berkeley Keep Jets Over the Bay Com. v. Board of Port Comrs.* (2001) 91 Cal. App. 4th 1344, 1367.) The District's approach fails to meet its obligation to engage in good faith reasoned analysis to provide the public, public agencies and decisionmakers with detailed information about the effects that the Project will have on the environment, ways to mitigate those effects, as well as alternatives. (PRC § 21061)

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An agency must “explain how the particular requirements of that environmental standard reduce project impacts, including cumulative impacts, to a level that is less than significant, and why the environmental standard is relevant to the analysis of a project that is less than significant. CEQA Guidelines § 15067.7.

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

A. Background Regarding the State Planning and Zoning Law

An EIR must identify, fully analyze and mitigate any inconsistencies between a proposed project and the general, specific, regional, and other plans that apply to the project. CEQA Guidelines § 15125(d); *Pfaffner v. City of Sunnyvale City Council* (2011) 200 Cal.App.4th 1552, 1566; *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 881. There does not need to be a direct conflict to trigger this requirement; even if a project is “incompatible” with the “goals and policies” of a land use plan, the EIR must assess the divergence between the project and the plan, and mitigate any adverse effects of the inconsistencies. *Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 378-79; see also *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903 (holding under CEQA that a significant impact exists where project conflicts with local land use policies); *Friends of “B” Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 998 (held county development and infrastructure improvements must be consistent with adopted general plans) (citing Gov. Code 65302).

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B. 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.

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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



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the 2016-2040 RTP/SCS (“2016 RTP/SCS”)¹⁸, which incorporates and builds upon the policies and strategies in the 2012 RTP/SCS¹⁹, 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 2035.²⁰ SCAG’s RTP/SCS plan is based upon the same requirements outlined in CARB’s 2017 Scoping Plan and SB 375.

For both the 2012 and 2016 RTP/SCS, SCAG prepared Program Environmental Impact Reports (“PEIR”) that include Mitigation Monitoring and Reporting Programs (“MMRP”) that list project-level environmental mitigation measures that directly and/or indirectly relate to a project’s GHG impacts and contribution to the region’s GHG emissions.²¹ 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.²²

Here, the DEIR claims the Project is consistent with SCAG’s 2016-2040 RTP/SCS Plan²³ (“RTP/SCS Plan”) through the analysis of nine general goals or policies of that plan. However, the goals that the DEIR analyzes for Project consistency are not applicable at the project level, only at a plan level to inform implementation of the RTP/SCS Plan. Thus, the DEIR incorrectly relies upon plan level goals outlined in the RTP/SCS. In the 2016 RTP/SCS Plan, SCAG states that:

The RTP/SCS is a long-range visioning plan that balances future mobility and housing needs with goals for the environment, the regional economy, social equity and environmental justice, and public health. Ultimately, the Plan is intended to help guide transportation and land use decisions and public investments. . . . This Plan’s goals are intended to help carry out our vision for improved mobility, a strong economy and sustainability.”²⁴

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

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¹⁸ SCAG (Apr. 2016) 2016 RTP/SCS, p. 69, 75-115, <http://scagtrtpscs.net/Documents/2016/final/f2016RTPSCS.pdf>.

²⁰ *Id.*, p. 8, 15, 153, 166.

²¹ *Id.*, p. 116-124; see also SCAG 2012 RTP/SCS, *supra* fn. 38, p. 77-86.

²² SCAG 2012 RTP/SCS, p. 77; see also SCAG 2016 RTP/SCS, fn. 41, p. 115.

²³ SCAG 2016-2040 RTP/SCS Plan, pp. 63, 65 (emphasis added).



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GHG Emissions Goals²⁵

- 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,²⁶ 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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²⁵ SCAG 2012 RTP/SCS (Mar. 2012) Final PEIR MMRP, p. 6-2—6-14 (including mitigation measures ("MM") AQ3, BIO/OS3, CUL2, GHG3, GHG15, HMM3, LUL4, NOI, POP4, PS12, TR23, W9 [stating "[l]ocal agencies can and should comply with the requirements of CEQA to mitigate impacts to [the environment] as applicable and feasible ... [and] may refer to Appendix G of this PEIR for examples of potential mitigation to consider when appropriate in reducing environmental impacts of future projects." (Emphasis added)]).

<http://rtpscs.scag.ca.gov/Documents/peir/2012/final/Final2012PEIR.pdf>; see also id., Final PEIR Appendix G (including MMs AQ1-23, GHG1-8, PS1-104, TRI-83, W1-62),

http://rtpscs.scag.ca.gov/Documents/peir/2012/final/2012PEIR_AppendixG_ExampleMeasures.pdf; SCAG 2016 RTP/SCS (Mar. 2016) Final PEIR MMRP, p. 11-63 (including MMs AIR-2(b), AIR-4(b), EN- 2(b), GHG-3(b), HYD-1(b), HYD-2(b), HYD-8(b), TRA-1(b), TRA-2(b), USS-4(b), USS-6(b)).

http://scagtrtpscs.net/Documents/2016/peir/final/2016PEIR_ExhibitB_MMRP.pdf.

²⁶ CEQA Guidelines, Appendix F-Energy Conservation,

http://resources.ca.gov/ceqa/guidelines/Appendix_F.html.



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- 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.
- 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.

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

C. The DEIR Fails to Analyze the Project's Consistency with Connect SoCal

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.

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Here, the DEIR includes insufficient analysis of compliance with SCAG's Connect SoCal regional RTP/SCS plan which includes specific warehouse project mitigation strategies that apply to the Project.²⁷ SoCal Connect specifies that industrial warehouses and other "goods movement" activities need to integrate sustainable strategies to reduce emissions to near-zero because the SCAG region "does not meet federal ozone and fine particulate air quality standards, and goods movement is a major source of greenhouse gas emissions...the region will need to aggressively pursue the reduction of freight emissions that contributes to regional air pollution problems and localized 'hot spots' that have adverse health impacts...**Connect SoCal proposes an environmental strategy to address the air quality impacts of goods movements...**"

Connect SoCal's Goods Movement Technical Report outlines specific steps that lead agencies should take to ensure that goods movement projects comply with the goals and strategies of Connect SoCal.²⁸ Some of these steps include:

- Use of heavy-duty vehicles that are model year 2010 or newer;
- Use of low NO_x engines in heavy-duty vehicles;
- Use of electric, hybrid-electric and near-zero emissions trucks;
- Operating time limits on TRUs and transition to use of zero emission TRUs;
- Extended truck warranties and improved maintenance protocols on diesel after treatment systems; and
- Increase fleet fuel emissions standards.

The DEIR fails to consider any of these steps or strategies that directly apply to this Project. Connect SoCal requires that the Project incorporate concrete strategies to reduce its GHG emissions impacts, regardless of its overall emissions outputs. Connect SoCal does not exempt projects from its requirements. As such, the DEIR

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²⁷ SCAG Connect SoCal Plan, p. 78. Available at https://scag.ca.gov/sites/main/files/file-attachments/0903fconnectsocial-plan_0.pdf?1606001176.

²⁸ SCAG Connect SoCal Goods Movement Technical Report, pp. 57-69, available at https://scag.ca.gov/sites/main/files/file-attachments/0903fconnectsocial_goods-movement.pdf.



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fails to demonstrate consistency with Connect SoCal and needs to incorporate a consistency analysis with that plan in a revised and recirculated EIR for the Project.

III. **FAILURE TO INCLUDE CONSULTATION AND PREPARATION SECTION**

CEQA requires all EIRs contain certain contents. *See* CEQA Guidelines §§ 15122 – 15131. CEQA expressly requires an EIR “identify all federal, state, or local agencies, other organizations, and private individuals consulted in preparing the draft EIR, and the persons, firm, or agency preparing the draft EIR, by contract or other authorization.” CEQA Guidelines § 15129. This information is critical to demonstrating a lead agency fulfilled its obligation to “consult with, and obtain comments from, each responsible agency, trustee agency, any public agency that has jurisdiction by law with respect to the project, and any city or county that borders on a city or county within which the project is located” PRC § 21104(a).

Failure to provide sufficient information concerning the lead agency’s consultation efforts could undermine the legal sufficiency of an EIR. Courts determine *de novo* whether a CEQA environmental document sufficiently discloses information required by CEQA as “noncompliance with the information disclosure provisions” of CEQA is a failure to proceed in a manner required by law. PRC § 21005(a); *see also Sierra Club v. County of Fresno* (2018) 6 Cal. 5th 502, 515.

Here, the DEIR fails to identify which federal agencies, state agencies, local agencies, or other organizations, if any, that were consulted in the preparation of this DEIR other than individuals from T&B Planning, Inc. (DEIR, 7-1). The DEIR should be revised to identify the organizations the City consulted with in the preparation of the DEIR in compliance with Section 21104(a) of the Public Resources Code.

IV. **CONCLUSION**

Commenters request that the City revise and recirculate the Project’s DEIR and/or prepare an environmental impact report which addresses the aforementioned concerns. If the City has any questions or concerns, feel free to contact my Office.

Sincerely,

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Mitchell M. Tsai

Attorneys for Southwest Regional Council of Carpenters

Attached:

March 8, 2021 SWAPIE 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);