

Comment Letter O5 – Southwest Mountain States Carpenters



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Comment Letter O5
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VIA E-MAIL

January 10, 2023

Julia Descoteaux
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14177 Frederick Street
Moreno Valley, CA 92553
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RE: City of Moreno Valley's Moreno Valley Mall Redevelopment Project (SCH#: 2022040136).

Dear Julia Descoteaux,

On behalf of the Southwest Mountain States Regional Council of Carpenters ("Southwest Mountain States Carpenters" or "SWMSRCC"), my Office is submitting these comments for the City of Moreno Valley's ("City") Draft Subsequent Environmental Impact Report for the Moreno Valley Mall Redevelopment Project ("Project").

The Southwest Mountain States Carpenters is a labor union representing 63,000 union carpenters in 10 states, including California, and has a strong interest in well-ordered land use planning and in addressing the environmental impacts of development projects.

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

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

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The Southwest Mountain States Carpenters incorporates by reference all comments raising issues regarding the environmental documents submitted prior to certification of the Subsequent Environmental Impact Report (“**DSEIR**”) for the Project. See *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, the Southwest Mountain States Carpenters requests that the City provide notice for any and all notices referring or related to the Project issued under the California Environmental Quality Act (“**CEQA**”) (Pub. Res. Code, § 21000 *et seq.*), and the California Planning and Zoning Law (“**Planning and Zoning Law**”) (Gov. Code, §§ 65000–65010). California Public Resources Code Sections 21092.2, and 21167(f) and California 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.

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I. THE CITY SHOULD REQUIRE THE USE OF A LOCAL WORKFORCE TO BENEFIT THE COMMUNITY’S ECONOMIC DEVELOPMENT AND ENVIRONMENT.

The City should require the Project to be built using local workers who have graduated from a Joint Labor-Management Apprenticeship Program approved by the State of California, 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 a state-approved apprenticeship training program.

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Community benefits such as local hire 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 provide 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 SWAPE Letter to Mitchell M. Tsai re Local Hire Requirements and Considerations for Greenhouse Gas Modeling.

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

[L]abor 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

Furthermore, workforce policies have significant environmental benefits given that they improve an area’s jobs-housing balance, decreasing the amount and length of job commutes and the associated greenhouse gas (“GHG”) emissions. In fact, on May 7, 2021, the South Coast Air Quality Management District found that that the “[u]se of a local state-certified apprenticeship program” can result in air pollutant reductions.²

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

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

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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>.

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include potential reductions in both vehicle miles traveled and vehicle hours traveled.³

Moreover, local hire mandates and skill-training are critical facets of a strategy to reduce vehicle miles traveled (“VMT”). As planning experts Robert Cervero and Michael Duncan have noted, simply placing jobs near housing stock is insufficient to achieve VMT reductions given that the skill requirements of available local jobs must match those held by local residents.⁴ Some municipalities have even tied local hire and other workforce policies to local development permits to address transportation issues. Cervero and Duncan note that:

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 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.

Recently, the State of California verified its commitment towards workforce development through the Affordable Housing and High Road Jobs Act of 2022, otherwise known as Assembly Bill No. 2011 (“AB2011”). AB2011 amended the Planning and Zoning Law to allow ministerial, by-right approval for projects being built alongside commercial corridors that meet affordability and labor requirements.

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

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³ California Planning Roundtable (2008) Deconstructing Jobs-Housing Balance at p. 6, available at <https://cprroundtable.org/static/media/uploads/publications/cpr-jobs-housing.pdf>

⁴ 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/UTCT-825.pdf>.

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II. THE CITY SHOULD IMPOSE TRAINING REQUIREMENTS FOR THE PROJECT'S CONSTRUCTION ACTIVITIES TO PREVENT COMMUNITY SPREAD OF COVID-19 AND OTHER INFECTIOUS DISEASES.

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-19.⁵

Southwest Mountain States Carpenters recommend that the Lead Agency adopt additional requirements to mitigate public health risks from the Project's construction activities. SWMSRCC 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 Southwest Mountain States Carpenters' experience with safe construction site work practices, SWMSRCC recommends that the Lead Agency require that while construction activities are being conducted at the Project Site:

Construction Site Design:

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

⁵ 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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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.⁶

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.

Southwest Mountain States Carpenters has also developed a rigorous Infection Control Risk Assessment (“ICRA”) training program to ensure it delivers a workforce that understands how to identify and control infection risks by implementing protocols to

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⁶ See also The Center for Construction Research and Training, North America's Building Trades Unions (April 27 2020) NABTU and CPWR COVID-19 Standards for U.S. Construction Sites, available at https://www.cpwr.com/sites/default/files/NABTU-CPWR_Standards_COVID-19.pdf; Los Angeles County Department of Public Works (2020) Guidelines for Construction Sites During COVID-19 Pandemic, available at https://dpw.lacounty.gov/building-and-safety/docs/pw_guidelines-construction-sites.pdf.

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protect themselves and all others during renovation and construction projects in healthcare environments.⁷

ICRA protocols are intended to contain pathogens, control airflow, and protect patients during the construction, maintenance and renovation of healthcare facilities. ICRA protocols prevent cross contamination, minimizing the risk of secondary infections in patients at hospital facilities.

The City should require the Project to be built using a workforce trained in ICRA protocols.

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

A. Background Concerning Environmental Impact Reports.

The California Environmental Quality Act is a California statute designed to inform decision-makers and the public about the potential significant environmental effects of a project. 14 California Code of Regulations (“CEQA Guidelines”), § 15002, subd. (a)(1).⁸ At its core, its purpose is to “inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made.” *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.

CEQA directs public agencies to avoid or reduce environmental damage, when possible, by requiring alternatives or mitigation measures. CEQA Guidelines, § 15002, subds. (a)(2)–(3); see also *Berkeley Keep Jets Over the Bay Committee v. Board of Port Coms* (2001) 91 Cal.App.4th 1344, 1354; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553; *Laurel Heights Improvement Assn.*, 47 Cal.3d at p. 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, subd. (a)(2). If the project has a significant effect on the environment, the agency may approve the project only upon finding that it has

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⁷ For details concerning Southwest Carpenters’s ICRA training program, see <https://icrahealthcare.com/>.

⁸ 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. Dept. of Fish & Wildlife* (2015) 62 Cal.4th 204, 217.

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“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 Public Resources Code section 21081. See CEQA Guidelines, § 15092, subds. (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. *Berkeley Jets*, 91 Cal.App.4th at p. 1355 (quoting *Laurel Heights Improvement Assn.*, 47 Cal.3d at pp. 391, 409 fn. 12) (internal quotations omitted). A clearly inadequate or unsupported study is entitled to no judicial deference. *Id.* 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. County 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*, 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. 91 Cal.App.4th at p. 1355 (internal quotations omitted).

The preparation and circulation of an EIR is more than a set of technical hurdles for agencies and developers to overcome. *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). 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. *Id.* 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. *Id.*

A strong presumption in favor of requiring preparation of an EIR is built into CEQA. This presumption is reflected in what is known as the “fair argument” standard under which an EIR must be prepared whenever substantial evidence in the record supports a fair argument that a project may have a significant effect on the environment. *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602; *Friends of “B” St. v. City of Hayward* (1980) 106 Cal.3d 988, 1002.

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The fair argument test stems from the statutory mandate that an EIR be prepared for any project that “may have a significant effect on the environment.” PRC, § 21151; see *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.App.3d 68, 75; accord *Jensen v. City of Santa Rosa* (2018) 23 Cal.App.5th 877, 884. Under this test, if a proposed project is not exempt and may cause a significant effect on the environment, the lead agency must prepare an EIR. PRC, §§ 21100 (a), 21151; CEQA Guidelines, § 15064 (a)(1), (f)(1). An EIR may be dispensed with only if the lead agency finds no substantial evidence in the initial study or elsewhere in the record that the project may have a significant effect on the environment. *Parker Shattuck Neighbors v. Berkeley City Council* (2013) 222 Cal.App.4th 768, 785. In such a situation, the agency must adopt a negative declaration. PRC, § 21080, subd. (c)(1); CEQA Guidelines, §§ 15063 (b)(2), 15064(f)(3).

“Significant effect upon the environment” is defined as “a substantial or potentially substantial adverse change in the environment.” PRC, § 21068; CEQA Guidelines, § 15382. A project may have a significant effect on the environment if there is a reasonable probability that it will result in a significant impact. *No Oil, Inc.*, 13 Cal.3d at p. 83 fn. 16; see *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 309. If any aspect of the project may result in a significant impact on the environment, an EIR must be prepared even if the overall effect of the project is beneficial. CEQA Guidelines, § 15063(b)(1); see *County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1580.

This standard sets a “low threshold” for preparation of an EIR. *Consolidated Irrigation Dist. v. City of Selma* (2012) 204 Cal.App.4th 187, 207; *Nelson v. County of Kern* (2010) 190 Cal.App.4th 252; *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 928; *Bowman v. City of Berkeley* (2004) 122 Cal.App.4th 572, 580; *Citizen Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 754; *Sundstrom*, 202 Cal.App.3d at p. 310. If substantial evidence in the record supports a fair argument that the project may have a significant environmental effect, the lead agency must prepare an EIR even if other substantial evidence before it indicates the project will have no significant effect. See *Jensen*, 23 Cal.App.5th at p. 886; *Clews Land & Livestock v. City of San Diego* (2017) 19 Cal.App.5th 161, 183; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150; *Brentwood Assn. for No Drilling, Inc. v. City of Los Angeles* (1982) 134 Cal.App.3d 491; *Friends of “B” St.*, 106 Cal.App.3d 988; CEQA Guidelines, § 15064(f)(1).

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B. The DSEIR Omits Information and Fails to Support its Findings on Traffic Impacts with Substantial Evidence.

The DSEIR states that the Project would not result in inadequate emergency access and concludes that any such impacts would be less than significant. DSEIR at 4.7-21. It supports this conclusion simply by stating that during construction, “[v]ehicles and equipment throughout the Project site would not be parked or placed in a manner that would impede access for emergency response vehicles.” *Id.* It states that site conditions during construction “would be either maintained or left in a condition that adheres to Division of Occupational Safety and Health (OSHA) safety standards to prevent any hazardous condition that may affect construction staff and emergency responders.” *Id.* It also states that the Project design will be reviewed by the City Police and Fire Departments to ensure that the Project is designed and operated in a manner that maximizes the potential for responsive police and fire services. *Id.* During the Project’s operations, the DSEIR supports its less than significant finding by stating that “[t]he Project would be required to have design plans reviewed by the City of Moreno Valley and associated agencies to ensure that adequate access to-and-from the Project site for emergency vehicles would be provided” and that “the City and associated agencies would determine whether or not Project implementation would impact or interfere with the circulation of emergency vehicles along public streets that abut the Project site.” *Id.*

The DSEIR erroneously concludes that the Project’s impacts to emergency access are less than significant by deferring such analysis for after the Project is approved and the Applicant applies for approval of the Project’s design concept from various local agencies. The DSEIR claims that the Project will comport with the safety standards set forth by the Division of Occupational Safety and Health but fails to specify which standards are applicable and how such standards will ensure adequate emergency access at this specific site. It provides little to no information to adequately conclude that there will be a “less than significant impact” and deferring such critical analysis to after the Project is approved does not comport with CEQA. *See San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal. App. 4th 645 (mitigation measures requiring future surveys and management plans for listed wildlife species improperly deferred analysis and rendered an EIR inadequate); *see also Preserve Wild Santee v. City of Santee* (2012) 210 Cal. App. 4th 260 (found an impermissible deferral of mitigation to

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address a protected species, the Quino checkerspot butterfly). The City should be required to provide such information before the Project can proceed.

C. The DSEIR Omits Information and Fails to Support its Findings on Utilities and Service Systems.

The Eastern Municipal Water District (“**EMWD**”) will be responsible for providing water to the Project site. DSEIR at 4.8-1. “Water supplied by EMWD is imported by the Metropolitan Water District of Southern California and comes principally from two sources – Colorado River water sourced via the Colorado River Aqueduct, and water sourced from northern California via the State Water Project.” *Id.* The DSEIR states that water demands for the EMWD service area are anticipated to continue increasing but that it will meet those demands because it projects additional water resource allocations through the year 2045. DSEIR at 4.8-13. It concludes that there will be a less than significant impact to water supplies available to serve the Project. *Id.* The City must further analyze water resource allocations given the current state of our climate. The State Water Project and Colorado River water supply are drastically decreasing. California is in a state of severe drought, and as the Director of California’s Department of Water Resources (“**DWR**”) stated, “[w]e are experiencing climate change whiplash in real time” and “[w]hile we had hoped for more rain and snow, DWR has been preparing for a third consecutive year of drought” by reducing State Water Project allocation to 5% of requested supplies for 2022, which is 10% less than the 15% allocation previously set by DWR. The Colorado River is also in an extreme state of drought, with water supply at historically low levels. The U.S. Department of Interior stated that “[p]rolonged drought and low runoff conditions accelerated by climate change have led to historically low water levels in Lakes Powell and Mead,” and in August 2021, federal officials cut Colorado River water allocations to several southwestern states.

Interestingly, the DSEIR forgoes any discussion of the current state of the Colorado River and State Water Project water supply and simply claims that there is a “surplus” of water without providing any basis to support such claim. DSEIR at 4.8-13. Without a detailed assessment of the Project’s water resources, it is unclear whether the City will be able to meet the Project’s water demands in a reliable and sustainable manner.

Furthermore, the DSEIR states that the Project will require improvements and upgrades to existing infrastructure on the Project site in order to adequately serve the

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buildout of the Project. *Id.* That is, “the proposed Project would relocate two water laterals and a portion of the water mainline to accommodate future development of which location shall be determined as part of the plot plan development.” *Id.* It also states that “some water infrastructure would be relocated to accommodate the proposed development program... the existing water main and easements dedicated to EMWD along the southeast of the property would be relocated to avoid conflict with proposed developments.” *Id.* The DSEIR fails to state where such infrastructure will be located and what it will entail to relocate it. It also fails to address the specific upgrades that are necessary in order to adequately serve the buildout of the Project. Such critical information is necessary to comport with CEQA and to adequately inform decisionmakers and the public of the full breadth of a development *before* a Project is approved.

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With respect to fiber optic networks, the Project site does currently not have such connections. DSEIR at 4.8-16. The DSEIR states that individual projects would deliver these services as the infrastructure needed is made accessible in the future. “Additional conduits and infrastructure will be included with future development for future connections. Public gas and electric utilities in private drives would be relocated in the proposed private roadway, within the Project site, with appropriate easements. Service lines for new buildings would be extended from the existing and new public lines. Additionally, new developments will connect to the existing fiber optic cable network.” DSEIR at 4.8-17. Again, there is no discussion about where the new public lines will be located or any environmental assessment addressing its potential impacts to the surrounding communities.

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D. The DSEIR Omits Information and Fails to Support its Finding on Hazards and Hazardous Materials with Substantial Evidence

The DSEIR lacks an adequate analysis of whether the Project would create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials. The DSEIR also lacks the necessary analysis to adequately determine whether the Project would create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment. During the Project’s construction, “[i]mpacts related to the routine transport, use, or disposal of hazardous materials on the Project site would most likely come from motor oils, gasoline, and diesel fuel.” DSEIR at 7-8. The DSEIR concludes that there will be a

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less than significant impact to the public or the environment through the routine transport, use or disposal of such materials because “[s]hould on-site refueling occur during construction, spill kits shall be located on-site as required by the Project-specific SWPPP. Other preventative measures and BMPs are similarly required under NPDES stormwater regulations.”

The DSEIR’s analysis and corresponding conclusion related to hazardous materials is insufficient and does not comport with CEQA. While the Project is under construction, the mall will still be operational and visited by patrons. The DSEIR does not clearly lay out the methods it will take to shield and guard patrons from any potential mishaps while it uses hazardous materials during construction. The DSEIR relies solely upon required regulatory measures in rendering its less than significant finding. However, determinations 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. *See Californians for Alternatives to Toxics v. Department of Food & Agric.* (2005) 136 Cal. App. 4th 1; *Ebbetts Pass Forest Watch v. Department of Forestry & Fire Protection* (2008) 43 Cal. App. 4th 936, 956. Therefore, the DSEIR cannot rely upon regulatory compliance in making its less than significant impact determination without assessing and providing this Project specific information as to its anticipated use of hazardous materials and the specific safeguards it intends to adopt.

E. The DSEIR Omits Information and Fails to Support its Finding on Public Services Impacts with Substantial Evidence.

The DSEIR concludes that the Project will have a less than significant impact to public services. For example, it states that the Project would not adversely impact police protection in the area because “[t]he MoVal 2040 GP anticipates the expansion of the Civic Center, the existing headquarters of the Moreno Valley Police Department, as well as an increase in police personnel to accommodate future development that would include the Project.” DSEIR at 7-20. Similarly, with respect to fire protection services, the DSEIR turns to the MoVal 2040 Final EIR impact analysis to cover the need for such services. DSEIR at 7-19. It reads: “it should be assumed that impacts to fire protection services as a result of the Project are currently considered under the purview of the MoVal 2040 Final EIR impact analysis.” *Id.* The Project anticipates that approximately 6,329 persons will be added to the City as a direct result of this redevelopment. DSEIR at 5-5. The DSEIR concedes that

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population increases as a result of this redevelopment would result in an increase in crime. DSEIR at 7-19. “To mitigate this impact, the SP-200 EIR anticipates that a private security service would alleviate an increase in crime.” *Id.* It is not clear how adding private security would help alleviate the crime associated with such a drastic population increase of 6,329 people. The DSEIR also improperly evades analyzing the amount of public services it will need in order to safeguard mall patrons and the corresponding increase in persons that are anticipated to be added to the City by punting such critical analysis to the the MoVal 2040 GP.

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F. The DSEIR Improperly Labels Mitigation Measures as “Project Design Features”

The DSEIR improperly labels mitigation measures for “Project Design Features” (“PDFs”). Relying on the PDFs, the DSEIR 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 following a finding of significance.” *Lotus, supra*, 223 Cal.App.4th at 652 [citing CEQA Guidelines § 15091(a)(1) and PRC § 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.” PRC § 21081.5; CCR § 15093; *Village Laguna of Laguna Beach, Inc. v. Board of Supervisors* (1982) 134 Cal.App.3d 1022, 1035 (citing *Topanga Assn for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515). The DSEIR’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; CCR § 15091(d). Therefore, using Project Design Features in lieu of mitigation measures violates CEQA.

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Sincerely,



Armita Ariano
Attorneys for Southwest Mountain
States 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); and
Air Quality and GHG Expert Matt Hagemann CV (Exhibit C).

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cont.