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VIA E-MAIL

April 27, 2023

Julia Descoteaux
Community Development Department
City of Moreno Valley
14177 Frederick Street
PO Box 88005
Moreno Valley, California 92552
Em: juiad@moval.org

RE: City of Moreno Valley's Mall Redevelopment Project.

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**”) April 27, 2023, Planning Commission hearing 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.

The Southwest Mountain States Carpenters incorporates by reference all comments raising issues regarding environmental and land use documents submitted prior to approval of 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.

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 a 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.

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

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

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>.

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.

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>.

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. 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 distancing position for when you approach the screening

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>.

area. Please reference the Apex temperature screening site map for additional details.

- There will be clear signage posted at the project site directing you through temperature screening.
- Provide hand washing stations throughout the construction site.

Testing Procedures:

- The temperature screening being used are non-contact devices.
- Temperature readings will not be recorded.
- Personnel will be screened upon entering the testing center and should only take 1-2 seconds per individual.
- Hard hats, head coverings, sweat, dirt, sunscreen or any other cosmetics must be removed on the forehead before temperature screening.
- Anyone who refuses to submit to a temperature screening or does not answer the health screening questions will be refused access to the Project Site.
- Screening will be performed at both entrances from 5:30 am to 7:30 am.; main gate [ZONE 1] and personnel gate [ZONE 2]
- After 7:30 am only the main gate entrance [ZONE 1] will continue to be used for temperature testing for anybody gaining entry to the project site such as returning personnel, deliveries, and visitors.
- If the digital thermometer displays a temperature reading above 100.0 degrees Fahrenheit, a second reading will be taken to verify an accurate reading.
- If the second reading confirms an elevated temperature, DHS will instruct the individual that he/she will not be allowed to enter the Project Site. DHS will also instruct the

individual to promptly notify his/her supervisor and his/her human resources (HR) representative and provide them with a copy of Annex A.

Planning

- Require the development of an Infectious Disease Preparedness and Response Plan that will include basic infection prevention measures (requiring the use of personal protection equipment), policies and procedures for prompt identification and isolation of sick individuals, social distancing (prohibiting gatherings of no more than 10 people including all-hands meetings and all-hands lunches) communication and training and workplace controls that meet standards that may be promulgated by the Center for Disease Control, Occupational Safety and Health Administration, Cal/OSHA, California Department of Public Health or applicable local public health agencies.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 protect themselves and all others during renovation and construction projects in healthcare environments.⁷

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.

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

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.

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

A. Background Concerning the California Environmental Quality Act.

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 Comes* (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 “eliminated or substantially lessened all significant effects on the environment where feasible” and that any unavoidable significant effects on the environment are

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.

“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.

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).

B. The Project Would be Approved in Violation of CEQA as the Final EIR Fails to Support Its Findings With Substantial Evidence.

A lead agency must provide substantial evidence to support their findings, which must be based upon facts, reasonable assumptions based on facts, and expert opinion, rather than mere speculation. CEQA Guidelines § 15384, subd. (a); *Save Our Big Trees v. City of Santa Cruz* (2015) 241 Cal.App.4th 694, 710-711 citing *Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372, 386.

Here, the Project’s Final Supplemental EIR (“**FSEIR**”) fails to support its findings on aesthetics, air quality, hazards and hazardous materials, noise, transportation, utilities and service systems impacts with substantial evidence in violation of CEQA.

i. The FSEIR fails to support its aesthetics findings with substantial evidence.

The FSEIR claims that the Project’s aesthetic impacts are found to be less than significant, thereby requiring no mitigation measures. Planning Commission Agenda Packet (“**Packet**”), page 51. The MoVal 2040 General Plan identifies scenic resources to include Box Springs Mountains, Mount Russell foothills, Moreno Peak, Moreno Valley, Badlands, San Jacinto Valley, Mystic Lake, San Bernardino Mountains, and San Gabriel Mountains. *Id.* The FSEIR states that “[v]iews north from Town Circle and Heritage Way would be partially obstructed” but continues to render a less than significant impact finding in part because the Project will have sightlines between proposed buildings. *Id.* However, the FSEIR’s conclusion is logically flawed: it presumes that partial obstruction or provision of sightlines between buildings reduces the impacts to less than significant level or avoids impacts. It also fails to address the eyesore mass and scale of the building. To the extent the EIR focuses on the people in the building to conclude that their views will not be obstructed, it fails to consider what CEQA requires: Project’s impact on the environment, including people outside the Project’s envelope.

The FSEIR also renders its less than significant finding because it claims the Project will comport with the SPA Design Guidelines and Development Standards. It also states that because the previously approved SP-200 did not include height restrictions within this area, the Project would be compliant with the Specific Plan and its development standards, and that, as a result, the Project will have a less than significant impact on a scenic vista. This reasoning is erroneous because nowhere did the SP-200

expressly contemplate the large site-specific development associated with the amendment proposed here:

“The Project proposes revitalization and redevelopment of a portion of the existing Moreno Valley Mall (excluding the existing JC Penny and Macy’s parcels). Requested approvals include a Specific Plan Amendment to existing Town Center Specific Plan (Planning Area 2), as well as a Tentative Parcel Map. Key features of the concept plan include remodeling the overall mall site and mall interior, adding four multi-family residential **communities** totaling **1,627DU**, **two new hotel** operations (approximately **270 keys**), a **new three-story office building** of approximately **60,000SF**, **re-purposing** the existing food court into a pavilion style food market, **re-purposing** the existing Sears building to allow for multi-tenant retail and related uses, redesigning the existing Theater area to include **outdoor patio dining**, adding a **central plaza** and **park** integrated into the southeastern multi-family communities, **relocating the existing transit stops**, and providing related infrastructure improvements including off-site traffic improvements.”⁹ (State Clearinghouse Information; emph. added.)⁹

Moreover, the EIR presumes that compliance with design standards automatically renders impacts less than significant. CEQA Guidelines provide differently:

“Compliance with a regulatory permit or other similar process may be identified as mitigation if compliance would result in implementation of measures that would be reasonably expected, based on substantial evidence in the record, to reduce the significant impact to the specified performance standards.” CEQA Guidelines section 15126.4(a)(1)(B).

Similarly, CEQA Guidelines section 15064(b)(1)-(2) provide:

“(b) (1) The determination of whether a project may have a significant effect on the environment calls for careful judgment on the part of the public agency involved, based to the extent possible on scientific and factual data. An ironclad definition of significant effect is not always possible because the **significance of an activity** may **vary** with the

⁹ See, <https://ceqanet.opr.ca.gov/2022040136/6>

setting. For example, an activity which may not be significant in an urban area may be significant in a rural area.

(2) Thresholds of significance, as defined in Section 15064.7(a), may assist lead agencies in determining whether a project may cause a significant impact. **When using a threshold**, the lead agency should **briefly explain** how **compliance** with the threshold means that the project's impacts are less than significant. **Compliance** with the **threshold** does **not** relieve a lead agency of the obligation to consider substantial evidence indicating that the project's environmental effects may still be significant.” (Emph. added.)

Stated differently, the FSEIR's blanket reliance on the design standards – particularly where, as here, there is no evidence that such design standards were intended to and would indeed mitigate the impacts at issue here to the level of insignificance – is misplaced and unsupported by any factual evidence.

Further, neither did the SP 200 contemplate that the site-specific development here will be built as high as 80 feet tall or that it will completely block scenic vista in this particular environmental setting. See, Packet, at 51.

As a result, the FSEIR erroneously concludes the Project will not have a significant environmental impact to aesthetics, but renders such conclusion without providing substantial evidence to support its finding. The City and its EIR should conduct a project-specific analysis and mitigate the impacts of the inevitable view obstruction of the scenic vista here.

ii. *The FSEIR fails to support its air quality findings with substantial evidence.*

The FSEIR claims that the Project's air quality environmental impacts are found to be less than significant, thereby requiring no mitigation measures. Packet, at 52. The FSEIR nonetheless concedes that “[d]uring construction, emissions from construction equipment, such as diesel exhaust, and volatile organic compounds from architectural coatings and paving activities may generate odors.” *Id.*

In rendering its less than significant finding, the City provides a conclusory statement asserting “these odors would be temporary, are not expected to affect a substantial number of people and would disperse rapidly” and that “[t]herefore, impacts related to odors associated with the Project's construction-related activities would be less than significant.” *Id.*

The FSEIR fails to account for the sensitive receptors that not only abut the Project site but that are also within a close proximity and that will be impacted by the Project's construction and operational activities.

In addition, the FSEIR fails to state that “breathing [volatile organic compounds] can irritate the eyes, nose and throat, can cause difficulty breathing and nausea, and can damage the central nervous system and other organs. Some volatile organic compounds can cause cancer.” American Lung Association, November 17, 2022, *Volatile Organic Compounds*, available at <https://www.lung.org/clean-air/at-home/indoor-air-pollutants/volatile-organic-compounds>.

Furthermore, in its findings discussion, the FSEIR wholly bypasses any discussion of air quality impacts that would result from the Project's operations, as its less than significant finding only covered “impacts related to odors associated with the Project's construction-related activities[.]” Packet, at 51. As such, the FSEIR and its analysis is fatally and legally flawed, incomplete, and inadequate, as a matter of law.

As a result, the FSEIR erroneously concludes the Project will not have significant air quality impacts, but renders such conclusion without providing substantial evidence to support the finding. It is also fatally lacking, as a matter of law, for failure to account for the operational air quality impacts, including as a result of the dramatic increase in the intensity and density of land uses the Project proposes.

iii. The FSEIR fails to support its hazards and hazardous materials or emergency/evacuation plan findings with substantial evidence or adequate analysis.

The FSEIR 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 FSEIR 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 incidents of hazards exposure due to accidents or unsafe conditions involving the release of hazardous materials into the environment especially when part of the mall appears to be continuing its operations and serving the public and visitors.

It concedes that “[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 used during construction.” Packet, at 56. It also admits that

“[a]ccident conditions involving the release of hazardous materials into the environment could reasonably occur during the construction phase of the Project, especially due to the use of oils and fuels on-site.” *Id.*

The FSEIR fails to address any Project-specific protocols for addressing the transport or use of such materials or for any reasonably foreseeable accidents or upsets, and instead states that “[s]hould on-site refueling occur during construction, spill kits shall be located on-site as required by the Project-specific SWPPP” and that “with the preventative measures and BMPs required under NPDES stormwater regulations and Project-specific SWPPP” the use of hazardous materials during the construction phase would have a less than significant impact. *Id.* at 56. It states that “[o]ther preventative measures and BMPs are similarly required under NPDES stormwater regulations;” however, the FSEIR fails to address what such protocols are at the outset. *See id.* As such, the FSEIR improperly relies on vague and unenforceable mitigation measures and fails to either specify those or explain how will those mitigate the Project’s impacts. It also fails to show that the NPDES stormwater regulations or BMPs were adopted for the very purpose of mitigating the hazards impacts at issue here. Regulatory compliance may be inadequate to mitigate impacts for CEQA purposes. *California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, 210. (“*California Clean*”).

In addition, the FSEIR states that the Project is not anticipated to interfere or impair an adopted emergency response or evacuation plan because the Project will be implemented in compliance with the California Fire Code to address fire hazard concerns and will be conditioned on review by the Moreno Valley Fire Department and the Moreno Valley Department of Public Works to ensure adequate emergency access. Here again, the FSEIR relies on regulatory compliance where there is no evidence that such compliance or regulatory measures were intended and will indeed reduce the hazards impacts at issue here, especially where part of the mall will arguably be in operation at the time of the Project’s construction.

The FSEIR also claims that the implementation of the Project would not impact major access roads, and that, as a result, any impacts would be less than significant and mitigation is not necessary. However, this is not the case. The “[p]roposed Project will be served by the existing loop road (Town Circle), which provides access to existing surrounding streets such as Heritage Way and Centerpoint Drive.” Packet,

at 9. With the increase of density and intensity at the Project site and the associated dramatic increase of people that will be utilizing the road and that the Project will attract, which will inevitably result from the Project implementation, the streets will become more congested and block emergency access, especially considering there is only one street that serves the entire Project site. Also, the fact that the Project will not impact any major access road is not conclusive as to whether the Project may have significant impacts, since traffic may increase on non-major roads and thereby have traffic and other related impacts. As such, additional infrastructure and improvements may be necessary in order to ensure adequate emergency access, and any environmental impacts resulting therefrom should be adequately addressed at the outset before the Project is approved.

Finally, as shown below and on a separate ground, the FSEIR is also flawed as it provided little to no information, analysis, or substantial evidence to support its conclusion of “less than significant impact” on hazards and hazardous materials and instead improperly deferred such critical analysis until after the Project is approved, in violation of 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.

In sum, the City’s FSEIR is fatally flawed as to the hazards impacts and emergency plans and improperly defers adequate studies until after approval. The FSEIR should be required to provide such information, study, and mitigation before the Project can proceed.

iv. *The FSEIR fails to support its noise findings with substantial evidence.*

Construction for the Project will include site preparation, grading, building construction, paving, and architectural coating which will require graders, scrapers, and tractors during site preparation; graders, dozers, and tractors during grading; cranes, forklifts, generators, tractors, and welders during building construction; pavers, rollers, mixers, tractors, and paving equipment during paving; and air compressors during architectural coating. Packet at 61. All of these activities will undoubtedly cause noise.

The FSEIR relies solely upon required regulatory measures in concluding that the Project’s construction-related noise impacts would be less than significant. *Id.* at 61. 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 FSEIR cannot rely upon regulatory compliance in making its less than significant impact determination without assessing and providing Project-specific information as to its construction noise impacts. This is more so where, as here, the Project's construction will proceed in close proximity to sensitive receptors, including visitors to the Mall's other retailers who will continue to operate during the construction period.

In addition, the FSEIR failed to conduct adequate analysis of the individual or cumulative noise impacts generated from the Project's operations. CEQA Guidelines, section 15130(b)(1)(A) provides that an EIR's discussion of cumulative impacts should include "past, present, and probable future projects producing related or cumulative impacts". This is because "consideration of the effects of a project or projects as if no others existed would encourage the piecemeal approval of several projects that, taken together, could overwhelm the natural environment and disastrously overburden the man-made infrastructure and vital community services." *Golden Door Properties, LLC v. Cnty. of San Diego* (2020) 50 Cal. App. 5th 467, 527.

The Project is anticipated to "generate 11,076 daily trips, which would result in noise increases on Project area roadways." Packet, at 62. However, the FSEIR makes clear that "[t]he analysis of operational noise impacts presented in Draft SEIR Section 4.6, Noise only focuses on new source of noise associated with Project improvements." *Id.* at 61. By failing to include the existing noise levels from the existing operations at the Project site, the FSEIR fails to accurately consider that the neighborhood will experience considerable growth and development which may very well result in cumulative noise impacts. In addition, the FSEIR fails to consider the Project's impacts along with other related development projects. As a result, the FSEIR must be revised and recirculated to accurately reflect the individual and cumulative noise impacts.

The FSEIR also concludes that there is a less than significant impact with respect to groundborne vibration and noise levels without providing substantial evidence. In rendering its finding, City states: "Once operational, the Project would not be a significant source of groundborne vibration." *Id.* at 62. The conclusion is unsupported

since groundborne vibration by definition is about the construction phase and the fact that once operational the Project would not produce groundborne vibration is incomplete and insufficient to conclude the Project will have no groundborne vibration noises.

Also, groundborne vibration surrounding the Project is identified as resulting from heavy-duty vehicular travel on the nearby local roadways, but the FSEIR states that such vibration is “rarely perceptible beyond the roadway right-of-way” and “rarely results in vibration levels that cause damage to buildings in the vicinity.” *Id.* As a result, the FSEIR concludes, “vibration impacts associated with Project construction and operation would be less than significant, and no mitigation is necessary.” *Id.*

The findings here are conclusory and omit necessary information to support the finding, including the fact that the Project and its vibration impacts will occur when another part of the mall will arguably be in full operation and, as such, more people and sensitive receptors at close proximity will be subject to such vibration/noise impacts. The FSEIR renders a finding that no construction-related impacts will result in vibration, but wholly omits any discussion about construction related activities. That is, the analysis only covers the Project’s operational activities but fails to discuss what potential ground borne vibration or sounds will result from the Project’s construction activities. Furthermore, the finding only concludes ground borne vibrations will be less than significant, and wholly omits a finding on ground borne noises.

The FSEIR is fatally flawed and inadequate on the noise impacts analysis and must be recirculated to provide adequate and complete study and mitigation of noise/groundborne vibration impacts.

- v. *The FSEIR fails to support its transportation impacts findings with substantial evidence.*

The FSEIR states 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.” Packet, at 67. It concludes that “[b]ased on the proposed Project design and with required adherence to City requirements for emergency vehicle access, impacts would be less than significant.” *Id.* Yet, as stated above, the “[p]roposed Project will be served by the existing loop road (Town Circle), which provides access to existing surrounding streets such as Heritage Way and Centerpoint Drive.” *Id.* at 9. With the increase in

density and intensity of land uses at the Project's site and the associated increase of people and visitors that will be utilizing the road, which will inevitably result from the Project implementation, the streets will become more congested and block emergency access, especially considering there is only one street that serves the entire Project site. Furthermore, additional improvements and infrastructure may be necessary in order to accommodate adequate emergency access, and such improvements and any environmental impacts resulting therefrom should be adequately addressed at the outset before the Project is approved.

Furthermore, the FSEIR relies solely upon required regulatory measures in concluding that the Project's traffic impacts would be less than significant. *Id.* at 61. 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 FSEIR cannot rely upon regulatory compliance in making its less than significant impact determination without assessing and providing Project-specific information as to its transportation impacts.

- vi. *The FSEIR fails to support its utilities and service systems findings with substantial evidence.*

Existing utilities at the Project site will need to be extended and upgraded during construction in order to adequately serve the anticipated demands of the Project and to accommodate operation of the residential, hospitality, office, and commercial structures. *Id.* at 68. The FSEIR concludes that impacts related to the expansion of utilities to serve the Project would be less than significant and no mitigation is required because all developments would be required to follow the City's standard development review process. *Id.*

However, here too, 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. Here, the FSEIR fails to specify which utilities will require expansion and what

such expansion and construction will entail and what impacts they will have. As such, as a matter of law, the FSEIR cannot claim that utility impacts will be mitigated where there is no evidence the FSEIR quantified such impacts, to begin with. This is particularly the case where, as here, the Mall will be arguably partially operating during the entire Project construction and therefore may raise serious concerns and issues, including but not limited to the adequate water supply to serve the mall's operation or in the event of fire emergency, as well as adequate and uninterrupted sewage operation.

Therefore, the FSEIR cannot rely upon regulatory compliance in making its less than significant impact determination without assessing and providing Project-specific information as to its utilities and service systems impacts.

IV. CONCLUSION.

In view of the above-noted concerns, SWMSRCC respectfully requests to deny the Project and its EIR certification and to require that the EIR be revised and recirculated in order to comply with CEQA.

Sincerely,



Armita A. Ariano, Esq.

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).