

VIA E-MAIL

July 12, 2021

San Gabriel Planning Commission

Attn: Hearing Comment

425 South Mission Drive

San Gabriel, CA 91776

Em: PC-PublicComment@sgch.org

Matt Chang, Senior Planner

City of San Gabriel Planning Division

425 South Mission Drive

San Gabriel, CA 91776

Em: mchang@sgch.org

Re: Public Hearing Item B, Pacific Square San Gabriel Mixed-Use Project
(SCH No. 2018081085)

Dear Mr. Chang,

On behalf of the Southwest Regional Council of Carpenters (“**Commenter**” or “**Carpenters**”), my Office is submitting these comments on the City of San Gabriel’s (“**City**” or “**Lead Agency**”) Final Environmental Impact Report (“**FEIR**”) (SCH No. 2018081085) for the Pacific Square San Gabriel Mixed-Use Project (“**Project**”). These comments reiterate and supplement comments submitted by Commenter on January 21 and February 8, 2021, concerning the Draft Environmental Impact Report (“**DEIR**”).

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.

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

The City should require the Applicant provide additional community benefits such as requiring local hire and use of a skilled and trained workforce to build the Project. The City should require the use of workers who have graduated from a Joint Labor Management apprenticeship training program approved by the State of California, or have at least as many hours of on-the-job experience in the applicable craft which would be required to graduate from such a state approved apprenticeship training program or who are registered apprentices in an apprenticeship training program approved by the State of California.

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

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

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

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

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

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.

Downtown area to requiring that the City “[c]ontribute to the stabilization of regional 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

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 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:

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

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://cproundtable.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/UTCT-825.pdf>.

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.

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.

I. EXPERTS

This comment letter includes comments from air quality and greenhouse gas experts Matt Hagemann, P.G., C.Hg. and Paul Rosenfeld, Ph.D. concerning the EIR. Their comments, attachments, and Curriculum Vitae ("CV") are attached hereto and are incorporated herein by reference (**Exhibits B and C**).

Matt Hagemann, P.G., C.Hg. ("Mr. Hagemann") has over 30 years of experience in environmental policy, contaminant assessment and remediation, stormwater compliance, and CEQA review. He spent nine years with the U.S. EPA in the RCRA and Superfund programs and served as EPA's Senior Science Policy Advisor in the Western Regional Office where he identified emerging threats to groundwater from perchlorate and MTBE. While with EPA, Mr. Hagemann also served as Senior Hydrogeologist in the oversight of the assessment of seven major military facilities undergoing base closer. He led numerous enforcement actions under provisions of the Resource Conservation and Recovery Act (RCRA) and directed efforts to improve hydrogeologic characterization and water quality monitoring.

For the past 15 years, Mr. Hagemann has worked as a founding partner with SWAPE (Soil/Water/Air Protection Enterprise). At SWAPE, Mr. Hagemann has developed extensive client relationships and has managed complex projects that include consultation as an expert witness and a regulatory specialist, and a manager of projects ranging from industrial stormwater compliance to CEQA review of impacts from hazardous waste, air quality, and greenhouse gas emissions.

Mr. Hagemann has a Bachelor of Arts degree in geology from Humboldt State University in California and a Masters in Science degree from California State University Los Angeles in California.

Paul Rosenfeld, Ph.D. (“Dr. Rosenfeld”) is a principal environmental chemist at SWAPE. Dr. Rosenfeld has over 25 years’ experience conducting environmental investigations and risk assessments for evaluating impacts on human health, property, and ecological receptors. His expertise focuses on the fate and transport of environmental contaminants, human health risks, exposure assessment, and ecological restoration. Dr. Rosenfeld has evaluated and modeled emissions from unconventional oil drilling operations, oil spills, landfills, boilers and incinerators, process stacks, storage tanks, confined animal feeding operations, and many other industrial and agricultural sources. His project experience ranges from monitoring and modeling of pollution sources to evaluating impacts of pollution on workers at industrial facilities and residents in surrounding communities.

Dr. Rosenfeld has investigated and designed remediation programs and risk assessments for contaminated sites containing lead, heavy metals, mold, bacteria, particular matter, petroleum hydrocarbons, chlorinated solvents, pesticides, radioactive waste, dioxins and furans, semi- and volatile organic compounds, PCBs, PAHs, perchlorate, asbestos, per- and poly-fluoroalkyl substances (PFOA/PFOS), unusual polymers, fuel oxygenates (MTBE), among other pollutants, Dr. Rosenfeld also has experience evaluating greenhouse gas emissions from various projects and is an expert on the assessment of odors from industrial and agricultural sites, as well as the evaluation of odor nuisance impacts and technologies for abatement of odorous emissions. As a principal scientist at SWAPE, Dr. Rosenfeld directs air dispersion modeling and exposure assessments. He has served as an expert witness and testified about pollution sources causing nuisance and/or personal injury at dozens of sites and has testified as an expert witness on more than ten cases involving exposure to air contaminants from industrial sources.

Dr. Rosenfeld has a Ph.D. in soil chemistry from the University of Washington, M.S. in environmental science from U.C. Berkeley, and B.A. in environmental studies from U.C. Santa Barbara.

This letter also includes comments from Norman Marshall (“Mr. Marshall”), President of Smart Mobility, Inc., a transportation planning and modeling expert who specializes in analyzing the relationships between the built environment and travel

behavior, and doing planning that coordinates multi-modal transportation with land use and community needs.

Mr. Marshall helped found Smart Mobility, Inc. in 2001. Prior to this, he was at RSG for 14 years where he developed a national practice in travel demand modeling. He specializes in analyzing the relationships between the built environment and travel behavior, and doing planning that coordinates multi-modal transportation with land use and community needs.

Mr. Marshall's company, Smart Mobility, has completed transportation projects in over 30 states for a wide range of clients including state Departments of Transportation, Metropolitan Planning Organizations, Cities, transit agencies, and public interest groups.

Mr. Marshall graduated from Worcester Polytechnic Institute in 1977 with a B.S. in Mathematics and from Dartmouth College in 1982 with a M.S. in Engineering Sciences. He has many peer-reviewed publications and presentations. Mr. Marshall is co-leader of the Congress for the New Urbanism project for Transportation Modeling Reform. Mr. Marshall's curriculum vitae is attached hereto and incorporated herein **(Exhibit F)**.

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

A. Background Concerning the California Environmental Quality Act

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

Second, CEQA directs public agencies to avoid or reduce environmental damage when possible by requiring alternatives or mitigation measures. CEQA Guidelines § 15002(a)(2) and (3). *See also, Berkeley Jets*, 91 Cal. App. 4th 1344, 1354; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553; *Laurel Heights Improvement Ass’n v. Regents of the University of California* (1988) 47 Cal.3d 376, 400. The EIR serves to provide public agencies and the public in general with information about the effect that a proposed project is likely to have on the environment and to “identify ways that environmental damage can be avoided or significantly reduced.” CEQA Guidelines § 15002(a)(2). If the project has a significant effect on the environment, the agency may approve the project only upon finding that it has “eliminated or substantially lessened all significant effects on the environment where feasible” and that any unavoidable significant effects on the environment are “acceptable due to overriding concerns” specified in CEQA section 21081. CEQA Guidelines § 15092(b)(2)(A–B).

While the courts review an EIR using an “abuse of discretion” standard, “the reviewing court is not to ‘uncritically rely on every study or analysis presented by a project proponent in support of its position.’ A ‘clearly inadequate or unsupported study is entitled to no judicial deference.’” *Berkeley Jets*, 91 Cal.App.4th 1344, 1355 (emphasis added) (quoting *Laurel Heights*, 47 Cal.3d at 391, 409 fn. 12). Drawing this line and determining whether the EIR complies with CEQA’s information disclosure requirements presents a question of law subject to independent review by the courts. *Sierra Club v. Cnty. of Fresno* (2018) 6 Cal. 5th 502, 515; *Madera Oversight Coalition, Inc. v. County of Madera* (2011) 199 Cal.App.4th 48, 102, 131. As the court stated in *Berkeley Jets*, 91 Cal. App. 4th at 1355:

A prejudicial abuse of discretion occurs “if the failure to include relevant information precludes informed decision-making and informed public participation, thereby thwarting the statutory goals of the EIR process.

The preparation and circulation of an EIR is more than a set of technical hurdles for agencies and developers to overcome. The EIR’s function is to ensure that government officials who decide to build or approve a project do so with a full understanding of the environmental consequences and, equally important, that the public is assured those consequences have been considered. For the EIR to serve these goals it must present information so that the foreseeable impacts of pursuing the project can be understood and weighed, and the public must be given an adequate opportunity to comment on that presentation before the decision to go forward is

made. *Communities for a Better Environment v. Richmond* (2010) 184 Cal. App. 4th 70, 80 (quoting *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 449–450).

B. CEQA Requires Revision and Recirculation of an Environmental Impact Report When Substantial Changes or New Information Comes to Light

Section 21092.1 of the California Public Resources Code requires that “[w]hen significant new information is added to an environmental impact report after notice has been given pursuant to Section 21092 ... but prior to certification, the public agency shall give notice again pursuant to Section 21092, and consult again pursuant to Sections 21104 and 21153 before certifying the environmental impact report” in order to give the public a chance to review and comment upon the information. CEQA Guidelines § 15088.5.

Significant new information includes “changes in the project or environmental setting as well as additional data or other information” that “deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative).” CEQA Guidelines § 15088.5(a). Examples of significant new information requiring recirculation include “new significant environmental impacts from the project or from a new mitigation measure,” “substantial increase in the severity of an environmental impact,” “feasible project alternative or mitigation measure considerably different from others previously analyzed” as well as when “the draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.” *Id.*

An agency has an obligation to recirculate an environmental impact report for public notice and comment due to “significant new information” regardless of whether the agency opts to include it in a project’s environmental impact report. *Cadiz Land Co. v. Rail Cycle* (2000) 83 Cal.App.4th 74, 95 [finding that in light of a new expert report disclosing potentially significant impacts to groundwater supply “the EIR should have been revised and recirculated for purposes of informing the public and governmental agencies of the volume of groundwater at risk and to allow the public and governmental agencies to respond to such information.”]. If significant new information was brought to the attention of an agency prior to certification, an agency is required to revise and recirculate that information as part of the environmental impact report.

In response to Carpenters comments on the DEIR, the City created or updated seven technical appendices and attached them to the FEIR. The City also included substantive and significant updates to the EIR analysis as reflected in the FEIR. What's more, this letter describes and contains substantial information concerning outstanding legal and technical issues with the FEIR. Individually and collectively, these additions, updates, and issues constitute significant new information. Consequently, to comply with CEQA, the City must revise and broadly recirculate the FEIR to fulfill its obligation to properly inform the public and governmental agencies of that new information.

C. 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 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).

1. *The EIR Defers Mitigation for Noise Impacts.*

As noted in our Commenter's first comment letter concerning the Project's DEIR, the EIR defers the development of mitigation measure NOI-MM-1 to reduce potentially significant impacts relating to Project construction noise impacts. The EIR acknowledges a potentially significant noise impact based upon the standard provided in the City's General Plan – Noise Element. (DEIR, 3.10-23.) The Noise Element limits daytime exterior noise to 45dB for noise-sensitive areas and 50dB for residential properties. (*Id.*) The EIR acknowledges that construction noise will exceed this standard and would be potentially significant. (*Id.*) However, mitigation measures MM-NOI-1 and MM-NOI-2 constitute deferred mitigation because their terms and provision vague and unenforceable, providing no performance standards and no mechanisms for their enforcement. In response to comments on this issue, the FEIR includes modified language in MM-NOI-1 and MM-NOI-2. Unfortunately, those modifications do not address the issue. They primarily provide conclusory statements about the presumed effect of implementing MM-NOI-1 and MM-NOI-2, but no performance standards by which their effect would be evaluated and their implementation enforced.

Both mitigation measures must be updated to ensure the Project's significant noise impacts will in fact be adequately address through specific, measurable, and enforceable mitigation measures.

D. The FEIR Fails to Support its Findings with Substantial Evidence and Include All Feasible Mitigation Measures to Mitigate Potentially Significant Environmental Impacts

When new information is brought to light showing that an impact previously discussed in the EIR or IS/MND but found to be insignificant with or without mitigation in the EIR or IS/MND's analysis has the potential for a significant environmental impact supported by substantial evidence, the EIR or IS/MND 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.)

1. *The FEIR's Air Quality Analysis is Not Supported by Substantial Evidence.*

Experts Dr. Hagemann and Mr. Rosenfeld of SWAPE submitted detailed comments outlining numerous deficiencies with the DEIR's air quality analysis.⁸ Despite those detailed comments, the City has failed to sufficiently respond to or address SWAPE's air quality concerns through the FEIR. As reflected in the SWAPE's July 9, 2021, letter concerning the FEIR, which is attached hereto as **Exhibit D** and incorporated herein, the FEIR's air quality analysis and conclusions remains inadequate and unsupported by substantial evidence. Commenters directs the City to review Exhibit D in full, but provides the following summary:

- The EIR's air analysis is undermined by emission modeling issues, like the use of incorrect or unsubstantiated modeling inputs, that artificially reduced the Project's construction and operational emissions. Those issues include:

⁸ See January 21, 2021, Carpenters Comment Letter, Exhibit C, January 20, 2021 SWAPE GHG and Air Quality Comments on Pacific Square San Gabriel Mixed-Use Project.

- Unsubstantiated reductions to CO₂, CH₄, and N₂O emissions;
 - Unsubstantiated changes to individual construction phase lengths;
 - Unsubstantiated change to number of construction days per week;
 - Unsubstantiated changes to off-road construction equipment unit amounts;
 - Unsubstantiated reductions to worker, vendor, and hauling trip numbers;
 - Incorrect analysis of mobile-source operational emissions;
 - Incomplete application of construction-related mitigation measures; and
 - Incorrect application of waste-related operational mitigation measures.
- The EIR's consideration of the Project's emissions-related health risk impacts is inadequate because:
 - The health risk assessment relies on flawed air modeling; and
 - The EIR fails to provide the calculations or specific input and output files utilized to compute the Project's operational cancer risk, which prevents meaningful review of the health risk assessment.

In total, these expert comments reveal how the FEIR fails to accurately estimate the Project's criteria air pollutant emissions and the significance of those emissions. They also demonstrate how the Project's emission-related health risk impacts were not adequately evaluated. To ensure the Project's emissions are accurately estimated, and the impact of those emissions—including health risk impacts—are accurately disclosed and mitigated, the FEIR must be revised and recirculated.

2. *The FEIR's GHG Analysis is Not Supported by Substantial Evidence.*

Like the FEIR's consideration of criteria pollutant emissions, the FEIR's analysis of Greenhouse Gas (GHG) emissions is inadequate and not supported by substantial evidence. SWAPE's prior letter concerning the DEIR detailed the City's inadequate

consideration of the Project's GHG emissions. Despite SWAPE highlighting specific issues and necessary improvements, the City has failed to adequately address GHG concerns in the FEIR. As described by SWAPE in their letter on the FEIR (Exhibit D), the City's GHG remains inadequate for three primary reasons:

- (1) The FEIR's quantitative GHG analysis relies upon an incorrect and unsubstantiated air model;
- (2) The FEIR incorrectly relies on the Project's alleged consistency with applicable regulatory plans and policies, such as SCAG's outdated RTP/SCS and the City's General Plan, despite the Project's consistency not being demonstrated and despite the inappropriateness of relying on those plans and policies as thresholds sources and emission-mitigating factors; and
- (3) The FEIR fails to acknowledge the significant GHG impact when evaluated against the service population efficiency threshold.

These primary issues are not the only issues with the EIR's GHG analysis. Commenter directs the City to review both SWAPE's DEIR and FEIR comment letters in full for details concerning the inadequacies of the FEIR's GHG analysis. These issues must be addressed through a revised FEIR that includes accurate GHG impact estimates, discloses the currently overlooked significant GHG impact of the Project, and includes necessary mitigation measures. The revised FEIR must be recirculated for public review and comment.

3. *The DEIR Fails to Support its Hazards and Hazardous Materials Analysis with Substantial Evidence.*

The FEIR fails to adequately disclose or analyze environmental impacts relating to hazards and hazardous materials. The EIR indicates that there are offsite facilities within the area listed on local and state databases due to hazardous substances contamination. The EIR concludes that none of these sites pose a potential hazards risk to future occupants of the Project site without providing *any* detail or analysis on how this conclusion was reached. (*See* DEIR, 3.7-6.) The EIR's Hazards and Hazardous Materials appendix also fails to shed any light on the issue. (*See* DEIR, Appendix F, sec. 3.3.3.)

The sum of the EIR's analysis in Appendix F, page 13, is that none of the sites in the surrounding area pose any risk based on one of any of the following factors without

including any analysis on why or how a factor was used with respect to any offsite area, where the factors came from, or how they can be used to determine a less than significant impact finding based upon accepted performance standards:

- Reported distance of the facility from the subject property;
- The nature of the database on which the facility is listed, and/or whether the facility was listed on a database reporting unauthorized releases of hazardous materials, petroleum products, or hazardous wastes;
- Reported case type (e.g., soil only, failed UST test only);
- Reported substance released (e.g., chlorinated solvents, gasoline, metals);
- Reported regulatory agency status (e.g., case closed, “no further action”); and
- Location of the facility with respect to the reported groundwater flow direction (discussed in the “Hydrogeology” of this Report).

The EIR lists the above factors but does not apply them to any offsite area. Thus, there is no evidence, let alone substantial evidence, for its conclusion that no offsite parcels in the surrounding area pose a hazards risk. Furthermore, what performance standard is being used to make the determination and how were these factors chosen? The EIR fails to give any explanation. The FEIR fails to rectify this issue.

E. The FEIR Fails to Adequately Analyze the Project’s Impacts to Transportation

Commenters letters concerning the Project highlighted the inadequacy of the DEIR’s transportation analysis. Those concerns were confirmed, reiterated, and supplemented by transportation expert Mr. Marshall’s a technical analysis of the DEIR’s transportation analysis, which was incorporated into Commenter’s February 15, 2021 letter. None of those inadequacies were addressed in the FEIR. Furthermore, as described by Mr. Marshall in his July 9, 2021, letter provide expert comments on the FEIR’s transportation analysis, which is attached hereto as Exhibit E and incorporated herein, the City’s FEIR responses to comments did not resolve noted issues and transportation impacts concerns remain unaddressed and inadequately evaluated.

To summarize, the FEIR has failed to support its conclusion of a less than significant impact relating to transportation under CEQA Guidelines sec. 15064.3 for the reasons summarized below.

- 1) The total vehicle miles traveled (VMT) per service area metric used to exempt the project from vehicle miles traveled VMT analysis is invalid.
- 2) The project Transportation Analysis Zone (TAZ) fails to satisfy the non-residential VMT screening test.
- 3) The project is not located in a low residential VMT area.
- 4) The project is not located in an area well served by transit.
- 5) The EIR should have done a valid VMT estimate and mitigated significant impacts as necessary.

Commenter directs the City to review Exhibit E and Commenter's prior letters for full explanation of these unaddressed transportation evaluation inadequacies. But in essence, the City has erroneously avoided performing a detailed transportation analysis as required by law. In so doing, the FEIR EIR's fails to provide substantial evidence to support its finding that the Project would not have significant transportation impacts

In addition, the FEIR's omission of a VMT analysis for this Project unlawfully omits information required by CEQA. CEQA requires that an environmental document identify and discuss the significant effects of a Project, alternatives and how those significant effects can be mitigated or avoided. (CEQA Guidelines § 15126.2; PRC §§ 21100(b)(1), 21002.1(a).) A Court "[w]hen reviewing whether a discussion is sufficient to satisfy CEQA, . . . the EIR (1) includes sufficient detail to enable those who did not participate in its preparation to understand and to consider meaningfully the issues the proposed project raises [citation omitted], and (2) makes a reasonable effort to substantively connect a project's air quality impacts to likely health consequences."

(*Sierra Club v. County of Fresno* (2018) 6 Cal. 5th 502, 510 [citing *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 405.]; see also PRC §§ 21002.1(e), 21003(b).) The Court may determine whether a CEQA environmental document sufficiently discloses information required by CEQA de novo as "noncompliance with the information disclosure provisions" of CEQA is a failure to proceed in a manner required by law. (PRC § 21005(a); see also *Sierra Club v. County of Fresno* (2018) 6 Cal. 5th 502, 515.)

The omission of a VMT analysis renders the EIR fundamentally and basically inadequate so as to preclude meaningful public review. The EIR must be revised and recirculated to include a VMT analysis with a significance determination and all feasible mitigation measures if necessary.

F. Due to the COVID-19 Crisis, the City Must Adopt a Mandatory Finding of Significance that the Project May Cause a Substantial Adverse Effect on Human Beings and Mitigate COVID-19 Impacts

CEQA requires that an agency make a finding of significance when a Project may cause a significant adverse effect on human beings. PRC § 21083(b)(3); CEQA Guidelines § 15065(a)(4).

Public health risks related to construction work requires a mandatory finding of significance under CEQA. Construction work has been defined as a Lower to High-risk activity for COVID-19 spread by the Occupational Safety and Health Administration. Recently, several construction sites have been identified as sources of community spread of COVID-19.

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.

- The perimeter fence directly adjacent to the entry points will be clearly marked indicating the appropriate 6-foot social distancing position for when you approach the screening area. Please reference the Apex temperature screening site map for additional details.
- There will be clear signage posted at the project site directing you through temperature screening.
- Provide hand washing stations throughout the construction site.

Testing Procedures:

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

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

Planning

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

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.

The FEIR's glib dismissal of this important issue is an error. In its response to this comment, the City describes COVID-19 as being outside the scope of its CEQA review because CEQA does not require consideration of the environment's impact on the Project, but only the Project's impact on the environment. However, as described by the Supreme Court in *California Building Industry Assn. v. Bay Area Air Quality Management Dist.* (2015) 62 Cal.4th 369 at 388, CEQA does require such considerations for the purpose of evaluating "a project's potentially significant exacerbating effects on existing environmental hazards...." This Project would both cause and exacerbate significant COVID-19 health risks by introducing workers and the community to increased exposure and transmission risk. Consequently, Commenter maintains that the City must adopt a mandatory finding of significance and address this issue in a revised and recirculated FEIR.

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

A. Background Regarding the State Planning and Zoning Law

Each California city and county must adopt a comprehensive, long-term general plan governing development. *Napa Citizens for Honest Gov. v. Napa County Bd. of Supervisors* (2001) 91 Cal. App.4th 342, 352, citing Gov. Code §§ 65030, 65300. The general plan sits at the top of the land use planning hierarchy (See *DeVita v. County of Napa* (1995) 9 Cal. App. 4th 763, 773), and serves as a “constitution” or “charter” for all future development. *Lesher Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal. App. 3d 531, 540.

General plan consistency is “the linchpin of California’s land use and development laws; it is the principle which infused the concept of planned growth with the force of law.” See *Debottari v. Norco City Council* (1985) 171 Cal. App. 3d 1204, 1213.

State law mandates two levels of consistency. First, a general plan must be internally or “horizontally” consistent: its elements must “comprise an integrated, internally consistent and compatible statement of policies for the adopting agency.” (See Gov. Code § 65300.5; *Sierra Club v. Bd. of Supervisors* (1981) 126 Cal. App. 3d 698, 704.) A general plan amendment thus may not be internally inconsistent, nor may it cause the general plan as a whole to become internally inconsistent. See *DeVita*, 9 Cal. App. 4th at 796 fn. 12.

Second, state law requires “vertical” consistency, meaning that zoning ordinances and other land use decisions also must be consistent with the general plan. (See Gov. Code § 65860(a)(2) [land uses authorized by zoning ordinance must be “compatible with the objectives, policies, general land uses, and programs specified in the [general] plan.”]; see also *Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal. App. 3d 1176, 1184.) A zoning ordinance that conflicts with the general plan or impedes achievement of its policies is invalid and cannot be given effect. See *Lesher*, 52 Cal. App. 3d at 544.

State law requires that all subordinate land use decisions, including conditional use permits, be consistent with the general plan. See Gov. Code § 65860(a)(2); *Neighborhood Action Group*, 156 Cal. App. 3d at 1184.

A project cannot be found consistent with a general plan if it conflicts with a general plan policy that is “fundamental, mandatory, and clear,” regardless of whether it is

consistent with other general plan policies. See *Endangered Habitats League v. County of Orange* (2005) 131 Cal. App. 4th 777, 782-83; *Families Unafraid to Uphold Rural El Dorado County v. Bd. of Supervisors* (1998) 62 Cal. App. 4th 1332, 1341-42 (“FUTURE”).

Moreover, even in the absence of such a direct conflict, an ordinance or development project may not be approved if it interferes with or frustrates the general plan’s policies and objectives. See *Napa Citizens*, 91 Cal. App. 4th at 378-79; see also *Lesher*, 52 Cal. App. 3d at 544 (zoning ordinance restricting development conflicted with growth-oriented policies of general plan).

B. The FEIR Fails to Demonstrate Consistency with SCAG’s RTP/SCS Plan

First, while the EIR conducts a consistency analysis between the Project and SCAG’s 2016 RTP/SCS Plan, it fails to consider *many* of that plan’s other goals and policies which apply at the project level, specifically those addressing the reduction of greenhouse gas emissions. The Southern California Association of Government’s (“SCAG”) 2016-2040 Regional Transportation Plan/Sustainable Communities Strategy (“2016 RTP/SCS”) and the California Air Resources Board (“CARB”) 2017 Climate Change Scoping Plan (“2017 Scoping Plan”) outline numerous measures for reducing Project GHG emissions which the EIR fails to consider.⁹

In September 2008, SB 375 (Gov. Code § 65080(b) et seq.) was instituted to help achieve AB 32 goals through strategies including requiring regional agencies to prepare a Sustainable Communities Strategy (“SCS”) to be incorporated into their Regional Transportation Plan (“RTP”). The RTP links land use planning with the regional transportation system so that the region can grow smartly and sustainably, while also demonstrating how the region will meet targets set by CARB that reduce the per capita GHG emission from passenger vehicles in the region.

In April 2012, SCAG adopted its 2012-2035 RTP/ SCS (“2012 RTP/SCS”), which proposed specific land use policies and transportation strategies for local governments to implement that will help the region achieve GHG emission reductions of 9 percent per capita in 2020 and 16 percent per capita in 2035. In April 2016, SCAG adopted the 2016-2040 RTP/SCS (“2016 RTP/SCS”)¹⁰, which incorporates and builds upon

the policies and strategies in the 2012 RTP/SCS¹¹, 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 2035.¹²

For both the 2012 and 2016 RTP/SCS, SCAG prepared Program Environmental Impact Reports ("PEIR") that include Mitigation Monitoring and Reporting Programs ("MMRP") that list project-level environmental mitigation measures that directly and/or indirectly relate to a project's GHG impacts and contribution to the region's GHG emissions.¹³ These environmental mitigation measures serve to help local municipalities when identifying mitigation to reduce impacts on a project-specific basis that can and should be implemented when they identify and mitigate project-specific environmental impacts.¹⁴

The sections below outline applicable land use policies, transportation strategies, and project-level GHG measures identified in the 2012 and 2016 RTP/SCS and PEIRs which the EIR should consider in a revised consistency analysis (note that this is not an exhaustive list):

Land Use and Transportation

- Providing transit fare discounts¹⁵;
- Implementing transit integration strategies¹⁶; and
- Anticipating shared mobility platforms, car-to-car communications, and automated vehicle technologies.¹⁷

GHG Emissions Goals¹⁸

¹¹ SCAG (Apr. 2016) 2016 RTP/SCS, p. 69, 75-115, <http://scagrtpscs.net/Documents/2016/final/f2016RTPSCS.pdf> (attached as Exhibit B).

¹² *Id.*, p. 8, 15, 153, 166.

¹³ *Id.*, p. 116-124; see also SCAG 2012 RTP/SCS, *supra* fn. 38, p. 77-86.

¹⁴ SCAG 2012 RTP/SCS, *supra* fn. 38, p. 77; see also SCAG 2016 RTP/SCS, *supra* fn. 41, p. 115.

¹⁵ SCAG 2012 RTP/SCS, *supra* fn. 38, Tbls. 4.3 – 4.7; see also SCAG 2016 RTP/SCS, *supra* fn. 41, p. 75-114.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ SCAG 2012 RTP/SCS (Mar. 2012) Final PEIR MMRP, p. 6-2—6-14 (including mitigation measures ("MM") AQ3, BIO/OS3, CUL2, GEO3, GHG15, HM3, LU14, NO1, POP4, PS12, TR23, W9 [stating "[l]ocal agencies can and should comply with the requirements of CEQA to mitigate impacts to [the environmental] as applicable and feasible ... [and] may

- 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,¹⁹ 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

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, TR1-83, W1-62), http://rtpscs.scag.ca.gov/Documents/peir/2012/final/2012fPEIR_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://scagrtpscs.net/Documents/2016/peir/final/2016fPEIR_ExhibitB_MMRP.pdf.

¹⁹ CEQA Guidelines, Appendix F-Energy Conservation, http://resources.ca.gov/ceqa/guidelines/Appendix_F.html.

technologies;

- o Use cement blended with the maximum feasible amount of flash or other materials that reduce GHG emissions from cement production;
 - o Incorporate design measures to reduce GHG emissions from solid waste management through encouraging solid waste recycling and reuse;
 - o Incorporate design measures to reduce energy consumption and increase use of renewable energy;
 - o Incorporate design measures to reduce water consumption;
 - o Use lighter-colored pavement where feasible;
 - o Recycle construction debris to maximum extent feasible;
- Adopting employer trip reduction measures to reduce employee trips such as vanpool and carpool programs, providing end-of-trip facilities, and telecommuting programs.
- Designate a percentage of parking spaces for ride-sharing vehicles or high-occupancy vehicles, and provide adequate passenger loading and unloading for those vehicles;
- Land use siting and design measures that reduce GHG emissions, including:
 - o Measures that increase vehicle efficiency, encourage use of zero and low emissions vehicles, or reduce the carbon content of fuels, including constructing or encouraging construction of electric vehicle charging stations or neighborhood electric vehicle networks, or charging for electric bicycles; and
 - o Measures to reduce GHG emissions from solid waste management through encouraging solid waste recycling and reuse.

Hydrology & Water Quality Goals

- Incorporate measures consistent in a manner that conforms to the standards set

by regulatory agencies responsible for regulating water quality/supply requirements, such as:

- o Reduce exterior consumptive uses of water in public areas, and should promote reductions in private homes and businesses, by shifting to drought-tolerant native landscape plantings(xeriscaping), using weather-based irrigation systems, educating other public agencies about water use, and installing related water pricing incentives.
- o Promote the availability of drought-resistant landscaping options and provide information on where these can be purchased. Use of reclaimed water especially in median landscaping and hillside landscaping can and should be implemented where feasible.
- o Implement water conservation best practices such as low-flow toilets, water-efficient clothes washers, water system audits, and leak detection and repair.
- o Ensure that projects requiring continual dewatering facilities implement monitoring systems and long-term administrative procedures to ensure proper water management that prevents degrading of surface water and minimizes, to the greatest extent possible, adverse impacts on groundwater for the life of the project. Comply with appropriate building codes and standard practices including the Uniform Building Code.
- o Maximize, where practical and feasible, permeable surface area in existing urbanized areas to protect water quality, reduce flooding, allow for groundwater recharge, and preserve wildlife habitat. Minimized new impervious surfaces to the greatest extent possible, including the use of in-lieu fees and off-site mitigation.
- o Avoid designs that require continual dewatering where feasible.
- o Where feasible, do not site transportation facilities in groundwater recharge areas, to prevent conversion of those areas to impervious surface.
- Incorporate measures consistent in a manner that conforms to the standards set by regulatory agencies responsible for regulating and enforcing water quality and waste discharge requirements, such as:
 - o Complete, and have approved, a Stormwater Pollution Prevention Plan (“SWPPP”) before initiation of construction.

- o Implement Best Management Practices to reduce the peak stormwater runoff from the project site to the maximum extent practicable.
- o Comply with the Caltrans stormwater discharge permit as applicable; and identify and implement Best Management Practices to manage site erosion, wash water runoff, and spill control.
- o Complete, and have approved, a Standard Urban Stormwater Management Plan, prior to occupancy of residential or commercial structures.
- o Ensure adequate capacity of the surrounding stormwater system to support stormwater runoff from new or rehabilitated structures or buildings.
- o Prior to construction within an area subject to Section 404 of the Clean Water Act, obtain all required permit approvals and certifications for construction within the vicinity of a watercourse (e.g., Army Corps § 404 permit, Regional Waterboard § 401 permit, Fish & Wildlife § 401 permit).
- o Where feasible, restore or expand riparian areas such that there is no net loss of impervious surface as a result of the project.
- o Install structural water quality control features, such as drainage channels, detention basins, oil and grease traps, filter systems, and vegetated buffers to prevent pollution of adjacent water resources by polluted runoff where required by applicable urban stormwater runoff discharge permits, on new facilities.
- o Provide structural stormwater runoff treatment consistent with the applicable urban stormwater runoff permit where Caltrans is the operator, the statewide permit applies.
- o Provide operational best management practices for street cleaning, litter control, and catch basin cleaning are implemented to prevent water quality degradation in compliance with applicable stormwater runoff discharge permits; and ensure treatment controls are in place as early as possible, such as during the acquisition process for rights-of-way, not just later during the facilities design and construction phase.
- o Comply with applicable municipal separate storm sewer system discharge permits as well as Caltrans' stormwater discharge permit including long-term sediment control and drainage of roadway runoff.

- o Incorporate as appropriate treatment and control features such as detention basins, infiltration strips, and porous paving, other features to control surface runoff and facilitate groundwater recharge into the design of new transportation projects early on in the process to ensure that adequate acreage and elevation contours are provided during the right-of-way acquisition process.
- o Design projects to maintain volume of runoff, where any downstream receiving water body has not been designed and maintained to accommodate the increase in flow velocity, rate, and volume without impacting the water's beneficial uses. Pre-project flow velocities, rates, volumes must not be exceeded. This applies not only to increases in stormwater runoff from the project site, but also to hydrologic changes induced by flood plain encroachment. Projects should not cause or contribute to conditions that degrade the physical integrity or ecological function of any downstream receiving waters.
- o Provide culverts and facilities that do not increase the flow velocity, rate, or volume and/or acquiring sufficient storm drain easements that accommodate an appropriately vegetated earthen drainage channel.
- o Upgrade stormwater drainage facilities to accommodate any increased runoff volumes. These upgrades may include the construction of detention basins or structures that will delay peak flows and reduce flow velocities, including expansion and restoration of wetlands and riparian buffer areas. System designs shall be completed to eliminate increases in peak flow rates from current levels.
- o Encourage Low Impact Development (“LID”) and incorporation of natural spaces that reduce, treat, infiltrate and manage stormwater runoff flows in all new developments, where practical and feasible.
- Incorporate measures consistent with the provisions of the Groundwater Management Act and implementing regulations, such as:
 - o For projects requiring continual dewatering facilities, implement monitoring systems and long-term administrative procedures to ensure proper water management that prevents degrading of surface water and minimizes, to the greatest extent possible, adverse impacts on groundwater for the life of the

project, Construction designs shall comply with appropriate building codes and standard practices including the Uniform Building Code.

- o Maximize, where practical and feasible, permeable surface area in existing urbanized areas to protect water quality, reduce flooding, allow for groundwater recharge, and preserve wildlife habitat. Minimize to the greatest extent possible, new impervious surfaces, including the use of in-lieu fees and off-site mitigation.
- o Avoid designs that require continual dewatering where feasible.
- o Avoid construction and siting on groundwater recharge areas, to prevent conversion of those areas to impervious surface.
- o Reduce hardscape to the extent feasible to facilitate groundwater recharge as appropriate.
- Incorporate mitigation measures to ensure compliance with all federal, state, and local floodplain regulations, consistent with the provisions of the National Flood Insurance Program, such as:
 - o Comply with Executive Order 11988 on Floodplain Management, which requires avoidance of incompatible floodplain development, restoration and preservation of the natural and beneficial floodplain values, and maintenance of consistency with the standards and criteria of the National Flood Insurance Program.
 - o Ensure that all roadbeds for new highway and rail facilities be elevated at least one foot above the 100-year base flood elevation. Since alluvial fan flooding is not often identified on FEMA flood maps, the risk of alluvial fan flooding should be evaluated and projects should be sited to avoid alluvial fan flooding. Delineation of floodplains and alluvial fan boundaries should attempt to account for future hydrologic changes caused by global climate change.

Transportation, Traffic, and Safety

- Institute teleconferencing, telecommute and/or flexible work hour programs to reduce unnecessary employee transportation.
- Create a ride-sharing program by designating a certain percentage of parking spaces for ride sharing vehicles, designating adequate

passenger loading and unloading for ride sharing vehicles, and providing a web site or message board for coordinating rides.

- Provide a vanpool for employees.
- Provide a Transportation Demand Management (TDM) plan containing strategies to reduce on-site parking demand and single occupancy vehicle travel. The TDM shall include strategies to increase bicycle, pedestrian, transit, and carpools/vanpool use, including:
 - o Inclusion of additional bicycle parking, shower, and locker facilities that exceed the requirement.
 - o Direct transit sales or subsidized transit passes.
 - o Guaranteed ride home program.
 - o Pre-tax commuter benefits (checks).
 - o On-site car-sharing program (such as City Car Share, Zip Car, etc.).
 - o On-site carpooling program.
 - o Distribution of information concerning alternative transportation options.
 - o Parking spaces sold/leased separately.
 - o Parking management strategies; including attendant/valet parking and shared parking spaces.
- Promote ride sharing programs e.g., by designating a certain percentage of parking spaces for high-occupancy vehicles, providing larger parking spaces to accommodate vans used for ride-sharing, and designating adequate passenger loading and unloading and waiting areas.
- Encourage the use of public transit systems by enhancing safety and cleanliness on vehicles and in and around stations, providing shuttle service to public transit, offering public transit incentives and providing public education and publicity about public

transportation services.

- Build or fund a major transit stop within or near transit development upon consultation with applicable CTCs.
- Work with the school districts to improve pedestrian and bike access to schools and to restore or expand school bus service using lower-emitting vehicles.
- Purchase, or create incentives for purchasing, low or zero-emission vehicles.
- Provide the necessary facilities and infrastructure to encourage the use of low or zero-emission vehicles.
- Promote ride sharing programs, if determined feasible and applicable by the Lead Agency, including:
 - o Designate a certain percentage of parking spaces for ride-sharing vehicles.
 - o Designate adequate passenger loading, unloading, and waiting areas for ride-sharing vehicles.
 - o Provide a web site or message board for coordinating shared rides.
 - o Encourage private, for-profit community car-sharing, including parking spaces for car share vehicles at convenient locations accessible by public transit.
 - o Hire or designate a rideshare coordinator to develop and implement ridesharing programs.
- Support voluntary, employer-based trip reduction programs, if determined feasible and applicable by the Lead Agency, including:
 - o Provide assistance to regional and local ridesharing organizations.
 - o Advocate for legislation to maintain and expand incentives for employer ridesharing programs.
 - o Require the development of Transportation Management

Associations for large employers and commercial/ industrial complexes.

- o Provide public recognition of effective programs through awards, top ten lists, and other mechanisms.
- Implement a “guaranteed ride home” program for those who commute by public transit, ridesharing, or other modes of transportation, and encourage employers to subscribe to or support the program.
- Encourage and utilize shuttles to serve neighborhoods, employment centers and major destinations.
- Create a free or low-cost local area shuttle system that includes a fixed route to popular tourist destinations or shopping and business centers.
- Work with existing shuttle service providers to coordinate their services.
- Facilitate employment opportunities that minimize the need for private vehicle trips, such as encourage telecommuting options with new and existing employers, through project review and incentives, as appropriate.
- Organize events and workshops to promote GHG-reducing activities.
- Implement a Parking Management Program to discourage private vehicle use, including:
 - o Encouraging carpools and vanpools with preferential parking and a reduced parking fee.
 - o Institute a parking cash-out program or establish a parking fee for all single-occupant vehicles.

Utilities & Service Systems

- Integrate green building measures consistent with CALGreen (Title 24, part 11), U.S. Green Building Council’s Leadership in Energy and Environmental Design, energy Star Homes, Green Point Rated

Homes, and the California Green Builder Program into project design including, but not limited to the following:

- O Reuse and minimization of construction and demolition (C&D) debris and diversion of C&D waste from landfills to recycling facilities.
- o Inclusion of a waste management plan that promotes maximum C&D diversion.
- o Development of indoor recycling program and space.
- o Discourage exporting of locally generated waste outside of the SCAG region during the construction and implementation of a project. Encourage disposal within the county where the waste originates as much as possible. Promote green technologies for long-distance transport of waste (e.g., clean engines and clean locomotives or electric rail for waste-by-rail disposal systems) and consistency with SCAQMD and 2016 RTP/SCS policies can and should be required.
- o Develop ordinances that promote waste prevention and recycling activities such as: requiring waste prevention and recycling efforts at all large events and venues; implementing recycled content procurement programs; and developing opportunities to divert food waste away from landfills and toward food banks and composting facilities.
- o Develop alternative waste management strategies such as composting, recycling, and conversion technologies.
- o Develop and site composting, recycling, and conversion technology facilities that have minimum environmental and health impacts.
- o Require the reuse and recycle construction and demolition waste (including, but not limited to, soil, vegetation, concrete, lumber, metal, and cardboard).
- o Integrate reuse and recycling into residential industrial,

institutional and commercial projects.

- o Provide recycling opportunities for residents, the public, and tenant businesses.
- o Provide education and publicity about reducing waste and available recycling services.
- o Implement or expand city or county-wide recycling and composting programs for residents and businesses. This could include extending the types of recycling services offered (e.g., to include food and green waste recycling) and providing public education and publicity about recycling services.

As the above tables indicate, the EIR fails to mention or demonstrate consistency with any of the above listed measures and strategies of the SCAG RTP/SCS Plan. Thus, the EIR fails to demonstrate the Project is consistent with the applicable RTP/SCS plan.

The extent of the EIR's analysis of consistency can be found beginning on page 3.9-5 of the DEIR wherein nine general regional planning-level goals of the RTP/SCS Plan are selected for a consistency analysis with the proposed Project. Unsurprisingly, the EIR finds that the Project is 100% consistent with all of these goals or strategies. (*See* DEIR, 3.9-12.) However, the most basic and fundamental goal of the RTP/SCS Plan from which all of the others stem is greenhouse gas emissions reduction through expansion of mobility choices and locating jobs, housing, and employment closer together.²⁰ The EIR does not demonstrate, through implementation of real programs or strategies, that it will encourage use of alternative modes of transit or promote walkability.

At most, the EIR explains that future occupants may use a nearby bus line to connect to the Metro Gold Line. (DEIR, 3.9-8.) However, the Project is not located in a high-quality transit area or a transit priority area as those areas are defined by SCAG, and does not include any affordable housing units. Most or all of the future occupants of the Project will be of above-moderate income and will utilize a private automobile for transportation needs. The EIR also does not include any uniquely pedestrian-friendly

²⁰ Connect SoCal, 2020-2045 SCAG RTP/SCS Plan, Core Vision statement. Available at https://scag.ca.gov/sites/main/files/file-attachments/0903fconnectsocial-plansummary_0.pdf?1606000989.

design features or connections to bicycle nodes or networks that would encourage walking or bicycle use to and from the Project site. Thus, the EIR fails to demonstrate consistency with the few selected and inapplicable regional planning-level goals of the RTP/SCS Plan that it those for analysis.

Lastly, the EIR should have evaluated the Project's consistency with SCAG's current RTP/SCS Plan—Connect SoCal.²¹ Evaluation of consistency with outdated and inapplicable regional plans is insufficient.

An amended and recirculated EIR needs to include a consistency analysis, not only with general goals and planning level policies of the RTP plan, but all goals and policies which apply to this Project.

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

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

CEQA requires the EIR analyze the Project's consistency with the State's housing goals. CEQA requires that an environmental document identify and discuss the significant effects of a Project, alternatives and how those significant effects can be mitigated or avoided. (CEQA Guidelines § 15126.2; PRC §§ 21100(b)(1), 21002.1(a).) A Court "[w]hen reviewing whether a discussion is sufficient to satisfy CEQA, . . . the EIR (1) includes sufficient detail to enable those who did not participate in its

²¹ SCAG's Connect SoCal RTP/SCS Plan, 2020. Available at <https://scag.ca.gov/connect-socal>.

preparation to understand and to consider meaningfully the issues the proposed project raises [citation omitted], and (2) makes a reasonable effort to substantively connect a project's air quality impacts to likely health consequences.” (*Sierra Club v. County of Fresno* (2018) 6 Cal. 5th 502, 510 [citing *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 405.]; see also PRC §§ 21002.1(e), 21003(b).) The Court may determine whether a CEQA environmental document sufficiently discloses information required by CEQA de novo as “noncompliance with the information disclosure provisions” of CEQA is a failure to proceed in a manner required by law. (PRC § 21005(a); see also *Sierra Club v. County of Fresno* (2018) 6 Cal. 5th 502, 515.)

SCAG is the COG for Los Angeles County and has determined that San Gabriel’s RHNA for the 1/1/2014 - 10/1/2021 planning periods is 930 housing units including 118 units for extremely-low income residents, 118 units for very-low income residents, 142 units for low-income residents, and 154 units for moderate income residents.²² According to the City’s latest available RHNA Progress Report, the City has only constructed 1 housing unit for very-low income residents, 2 housing units for low-income residents, and 103 housing units for moderate income residents.²³ The City is thus woefully behind schedule meeting its requirements for the planning period that ends this year. The Project must incorporate an adequate number of affordable housing units across all income categories if the City has any hope in meeting its RHNA obligations under state housing law.

The EIR should be revised and recirculated with an affordable housing component.

Second, the EIR also fails to otherwise demonstrate consistency with goals and policies of the City’s General Plan – Housing Element that encourages and requires construction of affordable housing within the City. Specifically the General Plan’s Housing Action Plan requires expansion of the supply of housing to meet the requirements of the RHNA allocation, facilitation of construction of housing units for

²² San Gabriel General Plan – Housing Element, II-28. Available at https://www.sangabrielcity.com/DocumentCenter/View/2081/San-Gabriel-2013-Housing-Element_2013-9-17_adopted-final?bidId=.

²³ May 7, 2019 City of San Gabriel Staff Report re General Plan Housing Element Annual Progress Report for the 2018 Calendar Year, available at <https://www.sangabrielcity.com/DocumentCenter/View/11140/Item-6B---General-Plan-Housing-Element-Annual-Progress-Report-for-the-2018-Calendar-Year?bidId=>.

lower and moderate income households, encouraging housing for a broad range of income categories by private developers, and inclusion of affordable housing units as part of private housing developments.²⁴ Because the Project fails to include a single affordable housing unit—it is not consistent with the goals and policies of the City's General Plan Housing Element.

IV. **CONCLUSION**

Commenters request that the City deny the Project's proposed Planned Development (PD), Zone Map Amendment to change the zoning of Project site to PD, Development Agreement, Tentative Tract Map, Precise Plan of Design, Master Sign Program, and Certification of the EIR.

Please contact my Office if you have any questions or concerns.

Sincerely,



Mitchell M. Tsai

Attorneys for Southwest Regional
Council of Carpenters

Attached:

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

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

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

July 9, 2021 SWAPE Letter to Mitchell M. Tsai Law re FEIR for Pacific Square San Gabriel Mixed-Use Project (Exhibit D);

July 9, 2021 Letter to Mitchell M. Tsai Law re FEIR for Pacific Square San Gabriel Mixed-Use Project.(Exhibit E); and

Transport and Planning Expert Norm Marshall CV (Exhibit F)

²⁴ City of San Gabriel General Plan – Housing Element, Housing Action Plan, pp. V-1~V-4.