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**VIA E-MAIL**

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RE: Supplemental Objections to Project Approvals and Certification of the Final Environmental Impact Report for the Laguna Niguel City Center Mixed Use Project (SCH# 2019110083) – PC Agenda Items 1.A-F.

Dear Chair Brian Fisk, Honorable Commissioners, John Morgan and Deborah Harrington

On behalf of the **Southwest Regional Council of Carpenters** (“**SWRCC**”) or “**Southwest Carpenters**”), my Office is submitting these supplemental comments on the Environmental Impact Report (“**EIR**”) for the Laguna Niguel City Center Mixed Use Project (“**Project**”) and objects to the Project-related approvals by the City of Laguna Niguel (“**City**” or “**Lead Agency**”).

The instant comment supplements SWRCC’s comment submitted on April 29, 2022, which SWRCC incorporate by reference herein. In addition, SWRCC incorporate by

reference all comments raising issues regarding the Project and its CEQA compliance. *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).

As previously noted, the Southwest Carpenters is a labor union representing more than 50,000 union carpenters in six states, including California, and has a strong interest in well-ordered land use planning, addressing the environmental impacts of development projects and equitable economic development. Individual members of the Southwest Carpenters live, work and recreate in the area and surrounding communities and would be directly affected by the Project’s environmental impacts.

B-1 cont.

SWRCC appreciate City’s responses to its prior April 29, 2022 Comment and responds thereto, apart from noting further omissions and violations of CEQA.

**I. THE EIR VIOLATED CEQA BY FAILING TO ACCURATELY DISCLOSE ALL THE PROJECT’S EARTH-MOVING ACTIVITY, AND BY PIECEMEALING HAUL ROUTE, WITH ATTENDANT MORE SEVERE IMPACTS; IT REQUIRES RECIRCULATION.**

The Project approval and its EIR would violate CEQA for failure to accurately disclose, analyze and mitigate the impacts of the earth-moving activity, and for piecemealing and deferring the haul-route and its impacts from the EIR study. (Guidelines §§ 15378(a) & (c) [“whole of an action”], 15126 [“all phases” of the project need to be studied in the EIR]; 15063 [“all phases” need to be studied in the initial study].)

The requirements of CEQA cannot be avoided by piecemeal review which results from ‘chopping a large project into many little ones-each with a minimal potential impact on the environment-which cumulatively may have disastrous consequences.’ (*Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 283–284 [118 Cal.Rptr. 249, 529 P.2d 1017]; *City of Antioch v. City Council* (1986) 187 Cal.App.3d 1325, 1333 [232 Cal.Rptr. 507].)” (*Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal.App.4th 351, 370, 7 Cal.Rptr.2d 307.) For example, “[w]here an individual project is a necessary precedent for action on a larger project, or commits the lead agency to a larger project, with significant environmental effect, an EIR must address itself to the scope of the larger project.” (Guidelines, § 15165.) The prohibition against piecemeal review is the flip side of the requirement that the whole of a project be reviewed under

B-2

CEQA. (See Guidelines, § 15378, subd. (a).)” *Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal.App.4th 1170, 1208–1209.

The EIR and the Staff Report make clear that the haul route for the Project is still to be determined and approved. (Staff Report, p. 4 “A construction hauling plan is required to identify the construction haul routes and traffic control measures to ensure the hauling operation is as least disruptive as possible.”)]

B-2 cont.

Further, the Staff Report mentions significant earth-moving activity:

The project estimates approximately **127,000 cubic yards of net cut and fill grading**. The earthwork would mostly involve lowering the pad elevations from existing conditions for the majority of the site and excavation for the partially subterranean parking structure for Residential Building No. 1. Grading activities would result in approximately **98,000 cubic yards of export**. Approximately **83,000 cubic yards of export** would occur during the site preparation and rough grading phase, and the remaining **15,000 cubic yards** would occur during the fine grading and street paving phase. Utilities for the project (water, sewer, storm drain, gas, and electrical work) would occur concurrently with grading.

(Staff Report, p. 15.)

B-3

The EIR’s and Staff Report’s estimated 98,000<sup>1</sup> cubic yard of export apparently does not count hauling of the demolition debris from 104,410 sq. ft. buildings or the crushing of same, along with the asphalt and concrete areas of the Project site. (DEIR, p. 5.2-22--23.) The EIR is not clear on whether debris from the demolition will be reused or crushed, as its noise study mentions crushing for library and other buildings (DEIR, p. 5.11-27--29), and yet its demolition plan mentions crushing for only asphalt and concrete (DEIR, p. 3-24 [“The demolition plan includes crushing concrete and asphalt material”]). As such, the EIR provides no definitive and supported number as to how much export, cut/fill, and earth-work is involved in the Project, and hence what their attendant impacts may be.

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<sup>1</sup> DEIR, p. 5.2-26, fn. 12 states: “Soil hauling would involve exporting 98,000 cubic yards of soil off-site to the Brea Olinda Landfill during the site preparation, rough grading, and fine grading phases. Soil hauling during the fine grading phase would also involve import of 10,000 cubic yards of soil into the project site.”

In addition, even if the debris from the demolition of 104,410 sq. ft. of buildings is reused at the Project site, that amount must still be counted towards the cut/fill, export/import, since – based on the EIR and Staff Report – that amount, along with asphalt/concrete to be crushed – needs to be *moved* to the “center” of the Project for crushing and then moved again to the areas where it should be reused.<sup>2</sup> (DEIR, p. 3-24 [“The crushing operation and accompanying stockpile of material are anticipated to be located in the center of the site”].)

B-4

Further, the “127,000 cubic yards of net cut and fill grading” noted in the Staff Report is *not* in the EIR. The omission is significant for at least two reasons: (1) it confirms that the EIR provides no accurate number for cut/fill and export/import in the Project and the Staff Report does not explain how 127,000 cubic yard estimate was generated; (2) it implicates more severe impacts, including but not limited to energy impacts, GHG emissions, and air quality that were not studied in the EIR. (*See*, Guidelines §§ 15126.2(b) [need to study energy impacts]; 15126.4 [need to minimize energy impacts].)

B-5

In sum, the EIR failed to provide an accurate analysis and amount of the export/import, cut/fill associated with the Project and potentially underestimated it and its associated impacts by omitting export/import from the demolition debris, violating CEQA’s good-faith disclosure requirements. In addition, the EIR piecemealed haul route and evaded the analysis/mitigation of its associated impacts for the inaccurately identified export/import amounts, in violation of CEQA.

B-6

The above-mentioned omissions and violations make the EIR fatally inadequate and require recirculation to provide the omitted analysis and mitigation of additional impacts it failed to identify.

## **II. THE EIR IS FATALLY INADEQUATE AS IT UNDERSTATES NOISE IMPACTS.**

The EIR significantly understates the Project’s construction noise impacts for several reasons. The EIR provides, in relevant parts:

“Construction noise levels at sensitive receptors are estimated by modeling the simultaneous use of at least one of each type of construction

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<sup>2</sup> **Cut:** Earth that is removed from an area is considered “cut” or excavated earth; **Fill:** Earth that is brought into an area is considered “fill” or embankment earth.

equipment per activity phase from the construction equipment list provided by the applicant (see Appendix C, AQ/GHG). Equipment is modeled using the RCNM. After modeling construction equipment per activity phase, including overlapping phases, the distances to various sensitive receptors are estimated using Google Earth. Estimating distances from various construction phases to various receptors is explained below, followed by Table 5.11-9 showing the results of construction noise modeling. **Distances** to sensitive receptors **may differ** between **noise** analysis and **air** quality analysis due to **differences** in the **methodologies** for analyzing noise emissions versus air quality and GHG emissions. See the descriptions below of the distances for noise for varying construction activity phases (also see Table 5.11-9).

Distances to the nearest sensitive receptors (residences to southwest) to the activity phases were measured from the **approximate acoustical center** of the project site to the nearest surrounding sensitive receptors, because these activities would occur **throughout** the **entire** site all in one phase.<sup>11</sup> The **center** of the site best represents average noise levels as denoted by the noise descriptor: Leq-time-average sound level. In addition, onsite rock crushing operations from demolition debris, would take place at the center of the site. The Roadway Construction Noise Model does not have reference noise levels for rock **crushing equipment**, however, it has been substituted with a **mounted impact hammer** in the modeling which generates noise levels equivalent to known rock crushing operations.”

(DEIR, p. 5.11-27—28, emph. added.)

The above-noted passage reveals several flaws. First, the DEIR acknowledges that the distances to sensitive receptors in the noise study and air study differ, but attributes that to the *methodology* used in the noise study, apparently the “acoustical center” of the Project. Yet, the DEIR does not define *where* – on the 25 acres of the Project site – that “acoustical center” or “center” is located. Moreover, the EIR shows that the library and other buildings – where the demolition will occur – is far from the “center” of the Project, where the debris from demolition will be moved and where crushing will occur. (Compare DEIR, p. 3-25 [new plan and library allegedly in the “center” of the Project] and DEIR, p. 4-9 [existing baseline showing all buildings to be demolished

located along the streets and away from the “center”].) In addition, paving activity – with its attendant noise – reasonably occurs throughout the Project site, and not just at the “center.”

At the same time, the EIR identifies that the noise levels are highest from the demolition activity and paving activity. (DEIR, p. 5.11-29 [73 (library, 74 (modular and justice support buildings), 75 [paving].)

And based on those noise estimates from the “acoustical center,” the EIR concludes:

“As shown in Table 5.11-9, construction noise would occur within 500 feet of a noise-sensitive receptor. Construction noise levels, however, would not exceed the City’s construction noise threshold of 80 dBA Leq at noise sensitive receptors.”

(DEIR, p. 5.11-28.)

As is evident from the above-noted analysis, the EIR understates noise impacts by simply choosing the unidentified “center” of the Project site as the measurement point, whereas most of the noisy activities occur on the sides of the Project and potentially closer to the sensitive receptors. In view of the fact that the noise levels from demolition and paving (73-74 dBA) were close to the thresholds of 80dBA, and the fact that those noise levels were improperly measured from the unidentified “center” of the Project rather than where actually the noise would occur, the noise impact analysis was defective and the Project’s no noise impacts finding is clearly erroneous.

Further, the exact site of measurements is also critical in order to identify where the noise buffers, if at all, must be placed to minimize noise impacts.

Second, the DEIR notes that, for noise impacts, the noise study “substituted [rock **crushing equipment**] with a **mounted impact hammer** in the modeling which generates noise levels **equivalent to known rock** crushing operations.” The DEIR at p. 3-24 provides: “The demolition plan includes crushing concrete and asphalt material (using a Powerscreen Trakpactor 320SR or similar impact crusher) and stockpiling it for use as engineered fill or pavement base.” The EIR apparently claims that the noise from the **mounted impact hammer** is equivalent to that from the “**Powerscreen Trakpactor 320SR**” but there is no substantial evidence to support that assertion. In view of the fact that the demolition and crushing noise impacts are close to the 80dBA threshold, the fact that the EIR substituted the noise levels of the heavy-duty crushing equipment with those of a mounted impact hammer, and the fact that the distance to

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B-8

the sensitive receptors was improperly calculated from the center show that the noise impacts of crushing involved in the demolition was heavily understated.

B-8 cont

Third, the EIR assumes that – since the Project’s center will be away from the residential uses – those noise impacts would be necessarily attenuated. However, the Staff Report acknowledges that the Project is located at *lower* elevations from the residential uses:

“The hillside residences adjacent to the project site are located substantially above the project site, and are set back a substantial distance from project buildings. The proposed buildings are approximately 110 to 220 feet from the closest nearby residential buildings. These offset distances and the elevated location of residences reduce the perception of height and any limited projections associated with project buildings.”

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(Staff Report, p. 2-73.)

The fact that the residential buildings and sensitive receptors are located at higher elevations suggests that the Project’s noise impacts may be audible and significant and not attenuated by the distance as the EIR assumed. The EIR’s noise study does not show that it considered the topography or elevations of the Project site in its noise/distance calculations. Thus, the EIR’s noise study is defective as it fails to adequately study the noise impacts to the adjacent residential buildings.

In view of the aforementioned, the EIR’s traffic analysis must be revised and the EIR must be recirculated to address the noted omissions and mitigate noise impacts.

### **III. THE EIR MUST BE RECIRCULATED IN LIGHT OF NEW BAAQMD’S GUIDELINES ON DECREASING GREENHOUSE GAS (“GHG”) EMISSIONS AND AVAILABILITY OF FEASIBLE GHG MITIGATION MEASURES WHICH THE EIR DISREGARDED.**

The EIR finds that the Project will have significant and unavoidable GHG emissions and further City prepared a statement of overriding considerations (“SOC”) which overrides those impacts, considering those “acceptable.”

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The EIR and the proposed SOC disregard the State Mandates and goals for reducing greenhouse gas emissions by 40% (SB32 and AB32). As such, the SOC is improper since City may not override applicable regulations. Pub. Res. Code § 21002.1(c). That the GHG issue may not be disregarded is also underscored by the new CEQA

thresholds of significance (hereinafter, “Guidance”) from the Bay Area Air Quality Management District (“BAAQMD”).

On April 20, 2022, the BAAQMD adopted updated CEQA thresholds of significance that it recommends for public agencies’ use in evaluating the environmental impacts of land use projects and general plans.<sup>3</sup> BAAQMD reaffirms the need for all projects to make their “fair share” contribution to GHG reduction and recommends an approach where projects and plans may be deemed to have less than significant GHG impacts under CEQA if they contribute their “fair share” of what will be required to achieve CA’s long-term climate goals (i.e. achieving carbon neutrality by 2045).

Per the BAAQMD Guidance, a land use project should qualify as doing its fair share if it either: (a) includes certain minimum design elements; or (b) is consistent with a local GHG reduction strategy which meets the criteria specified in section 15183.5(b) of the CEQA Guidelines.

To qualify as doing its fair share based on its design elements, a land use project must incorporate specified building and transportation design elements. The required building design elements include: (1) not using natural gas appliances or natural gas plumbing in an effort to retrofit natural gas infrastructure and replace it with electrical power; and (2) not resulting in any wasteful, inefficient, or unnecessary energy usage (as determined by CEQA section 15126.2(b) [assessing the project’s location, orientation, equipment use, renewable energy features, and GHG emissions]) in an effort to maximize energy efficiency.

The required transportation design elements include: (1) achieving a reduction in projected vehicle miles traveled (“VMT”) below the 15% regional average or meeting a locally adopted Senate Bill 743 VMT target (i.e. Residential projects: 15% below existing VMT per capita; Office projects: 15% below existing VMT per employee; Retail projects: no net increase in existing VMT); and (2) achieving compliance with off-street electric vehicle charging infrastructure requirements in the most recently adopted version of CALGreen Tier 2.

Alternatively, a land use project may qualify as doing its fair share if is consistent with a local GHG reduction strategy meeting the criteria specified in section 15183.5(b) of the CEQA Guidelines (i.e. quantifying the GHG emissions, establishing a level based

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<sup>3</sup> [https://www.baaqmd.gov/~/\\_media/files/planning-and-research/ceqa/ceqa-thresholds-2022/justification-report-pdf.pdf?la=en](https://www.baaqmd.gov/~/_media/files/planning-and-research/ceqa/ceqa-thresholds-2022/justification-report-pdf.pdf?la=en)



on substantial evidence below which contribution would not be cumulatively considerable; specifying measures which if implemented would achieve the specified emissions level; establishing a monitoring system; and adopting the strategy in a public process.)

In justifying the fair share approach, BAAQMD relies heavily on the *Center for Biological Diversity v. Department of Fish and Wildlife* (2015) 62 Cal.4th 221 case, where the CA Supreme Court endorsed the approach. Specifically, BAAQMD asserts that the fair share approach is consistent with the principle inherent in CEQA that an individual project would make a less than significant cumulative contribution to GHG emissions if it would do its part to address the cumulative problem.

Additionally, BAAQMD notes that CA’s goal to achieve carbon neutrality by 2045 is its articulation of what will be required to achieve long term climate stabilization at a sustainable level and that the CA Supreme Court in *Cleveland National Forest Foundation v. SANDAG* (2017) 3 Cal.5th 497, 513 recognized the necessity and appropriateness of using long-term goals as the touchstone for CEQA analysis, finding that long-term goals express “what scientific research has determined to be the level of emissions reductions necessary to stabilize the climate by midcentury and thereby avoid catastrophic effects of climate change.”

Based on the EIR, Staff Report, and SOC, City has not analyzed the Project under either alternative proposed by BAAQMD: Design Elements or GHG strategy. Neither is the EIR’s assumption of less than significant impacts of GHG upon some unidentified reduction of development proper or supported by substantial evidence. Instead, the EIR simply documents GHG emissions and assumes that there are no feasible mitigation measures to reduce those; City, in turn, offers an SOC for same. BAAQMD Guidance above shows that the State has specific goals to reduce GHG emissions and that each project – including the Project at issue here – must do its fair share to achieve the state’s goal rather than seek to override such GHG impacts considering those “acceptable.” BAAQMD’s Guidance and new CEQA threshold analysis is all the more important where, as here, the Project is proposed on public land and is allegedly for public benefit.

Further, BAAQMD Guidance is significant for this Project and EIR since it offers new ways to minimize GHG impacts, e.g., requirement to eliminate gas appliances and unnecessary energy use, etc.

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BAAQMD’s Guidance is also important here, in light of the EIR’s and Project’s proposed crushing operations: thus, while the EIR suggests that crushing will help minimize hauling amounts (and apparently minimizes costs for the Applicant to haul away debris from demolition of 104,410 sq. ft. of buildings), the EIR does not consider the *impacts* of such crushing, including its additional energy use and GHG emissions from the heavy-duty crushing trucks that will be operating on the site.

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The aforementioned BAAQMD Guidance was adopted *after* the EIR circulation and constitutes new significant information showing the Project may have more significant impacts than analyzed in the EIR (including impacts from crushing of demolition debris) and there are feasible mitigation measures to reduce GHG emissions than included or analyzed in the EIR.

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The EIR must be recirculated to analyze the Project’s GHG impacts and feasible alternatives or mitigation measures in light of BAAQMD’s Guidance. And an SOC may not be properly approved for GHG impacts under CEQA and applicable rules.

**IV. SWRCC’S PARTIAL RESPONSES TO THE CITY.**

SWRCC appreciates the City’s responses (starting at pp. 2-55 (pdf p. 159) in the May 24, 2022 Staff Report) to SWRCC’s April 29, 2022 Comment letter and provides its partial responses thereto.

Comment #	SWRCC Response
O3-9	In response to SWRCC’s comment that the EIR’s project description is not finite as it does not provide specific square footages for the “commercial” component, City relies on <i>Citizens for a Sustainable Treasure Island v. City and County of San Francisco</i> (2014) 227 Cal.App.4th 1036, 1055 and states that it provided a “fair assessment.” However, as City acknowledges, there may be different impacts associated with different uses and such impacts cannot be identified and mitigated without providing specific square footages. The issue here is not that the EIR did not provide a “breakdown” of uses, but rather, as SWRCC mentioned (at p. 13 of its April 29, 2022 comment), the EIR provided a

B-14

Comment #	SWRCC Response
	<p>“a mix of incompletely identified uses, making it impossible to determine their impacts.”</p> <p>City’s response that the hours of operation or square footage of restaurant space was identified in the project description is inaccurate. City relies on Moulton Niguel Water District’s estimates and claims those estimates already include the estimate of hours for various uses; the response misses the point that the uses are not <i>completely</i> identified and that they allow for flexibility with potential impacts.</p> <p>Further, to the extent City suggests that readers must read <i>other</i> sections of the EIR (e.g., public services) to “cobbl[e] together” the information about the hours of operation and square footage of restaurants or various commercial uses as part of the <i>adequate project description</i>, it is wrong: public is not required to ferret out information in the EIR. (<i>County of Amador v. El Dorado County Water Agency</i> (1999) 76 Cal.App.4th 931, 954–956 [“But such an effort should not be necessary. An adequate EIR requires more than raw data”]; <i>Communities for a Better Environment v. City of Richmond</i> (2010) 184 Cal.App.4th 70, 85 (“[<i>San Joaquin Raptor, supra</i>, 149 Cal.App.4th at p. 659, 57 Cal.Rptr.3d 663 [“decision makers and general public should not be forced to ... ferret out the fundamental baseline assumptions that are being used for purposes of the environmental analysis”].)”)</p>
03-10	<p>In response to SWRCC’s comment that the EIR does not adequately analyze or disclose impacts from various events, City responds: (1) municipal permits would be required and the Project itself does not cause impacts but merely accommodates those uses; (2) GHG is a global problem and City analyzed it based on the City’s methodology; (3) the traffic impacts of the Project under VMT methodology are lower than the baseline; and (4) the Project was vetted by certain agencies, included the fire department. City’s response fails CEQA’s purposes and mandates, including that the agency must provide a reasoned good-faith response rather than sweep the concerns under the</p>

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Comment #	SWRCC Response
	<p>rug. “Rather than sweep disagreements under the rug, the City must fairly present them in its EIR. It is then free to explain why it declined to accept commission staff suggestions.” (<i>Banning Ranch Conservancy v. City of Newport Beach</i> (2017) 2 Cal.5th 918, 940–941)</p> <p>First, that municipal permits would be required for events does not mean the EIR should not analyze noise or other impacts from such events. The EIR must analyze not only the <i>direct</i> but also reasonable foreseeable <i>indirect</i> impacts of the Project.</p> <p>Second, the Project’s GHG’s analysis is inadequate in the EIR, as noted in Section IV, <i>supra</i>. It cannot be relied upon. Neither is it a justification that GHG is a global issue; in fact, as noted in Section IV, <i>supra</i>, City must be the <i>solution</i> of that global issue, not further aggravate it.</p> <p>Third, the EIR’s traffic analysis is clearly erroneous as it concludes that the baseline VMT – on the now mostly vacant 25 acres of land – is more than the VMT with the Project of intensive land uses, including residential and commercial. Moreover, the traffic analysis is erroneous as it clearly omits the impacts of events. As such, City’s response is also circular: it refers to the traffic impacts, which failed to analyze events.</p> <p>Fourth, that the Project was vetted by fire department and related agencies does not confirm the Project may have no impacts; the EIR <i>is</i> the document to disclose the impacts of the Project and to <i>inform</i> such agencies, including the fire department, of the potential impacts of the Project and to help them meaningfully assess the Project. Where the EIR fails to fulfil its purpose or raising the alarm bell, the approval of the project by decisionmakers or other departments is a “nullity.” “[T]he ultimate decision of whether to approve a project, be that decision right or wrong, is a nullity if based upon an EIR that does not provide the decision-makers, and the public, with the information about the project that is required by CEQA.” (<i>Santiago County Water Dist. v. County of Orange</i> (1981) 118 Cal.App.3d 818, 829, 173 Cal.Rptr. 602.)”</p>

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Comment #	SWRCC Response
	<i>(RiverWatch v. Olivenhain Municipal Water Dist. (2009) 170 Cal.App.4th 1186, 1201.)</i>
03-12	<p>City’s response about the library and its relocation is unavailing for several reasons. It claims listing benefits of the library are appropriate under CEQA Guidelines, Section 15124; the response misses the point. The issue is not the <i>expansion</i> or existence of the library, but rather its <i>relocation</i> to a place where it may be inaccessible to people or unsafe for library patrons, including elderly and children.</p> <p>Further, City’s vague and unspecified response that parking impacts are exempt from CEQA is not accurate: while Pub. Res. Code § 21099, subdivision (d) exempts consideration of aesthetic and parking impacts for certain projects, its subdivision (b)(3) makes clear that <i>secondary</i> impacts of parking are still an issue, including but not limited to safety of transportation, air quality, and others. City may not evade consideration of the secondary impacts of failure to provide parking for library patrons, where such impacts and concerns were expressed.</p> <p>Further, City’s assumption that the Project’s “internal project street” is safe is completely unsupported. To the extent the internal project street allows vehicles passing, it presents a safety issue for people that needs to be disclosed, analyzed and mitigated.</p>
03-15 & 03-32	<p>City’s analysis of alternatives is legally inadequate. First, in addition to the points noted in the April 29, 2022 SWRCC Comment letter, City’s alternatives analysis is also inadequate in view of its overly narrow objectives and the infeasibility determination, as reasoned under <i>We Advocate Through Environmental Review v. County of Siskiyou</i> (Cal. Ct. App., Apr. 20, 2022, No. C090840) 2022 WL 1499576, at *8 (“<i>WATER</i>”).</p> <p>Specifically, as in <i>WATER</i>, the EIR’s objectives for the Project mirror the proposed Project including its residential component. This overly narrow range of project objectives precluded the EIR’s consideration of a no-residential alternative.</p>

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Comment #	SWRCC Response
	<p>Second, City’s vague response that CEQA no longer requires consideration of transportation congestion (apparently, for the residential component) is inaccurate. Pub. Res. Code § 21099(b)(2) does not eliminate the need to analyze and mitigate traffic impacts but only the analysis based on level of service. Traffic impacts caused by residential component remain a concern for CEQA. In addition, as acknowledged or claimed by the EIR, reduction of residential uses may increase GHG emissions. Hence, City’s response that commenter failed to provide reasons for considering a no-residential alternative is improper.</p> <p>Third, City’s response as to the “economic feasibility” lacks merit. While feasibility includes economic consideration, that is only <i>one</i> factor and is part of the balancing. Moreover, the “profitability” of the Project – which is at issue here – is not part of such “economic feasibility” analysis. “The fact that an alternative may be more expensive or less profitable is not sufficient to show that the alternative is financially infeasible. What is required is evidence that the additional costs or lost profitability are sufficiently severe as to render it impractical to proceed with the project.” (<i>Citizens of Goleta Valley v. Board of Supervisors</i> (1988) 197 Cal.App.3d 1167, 1181 (“<i>Goleta I</i>”).) “The mere fact that an alternative might be less profitable does not itself render the alternative infeasible unless there is also evidence that the reduced profitability is ‘sufficiently severe as to render it impractical to proceed with the project.’” (<i>Preservation Action Council v. City of San Jose</i> (2006) 141 Cal.App.4th 1336, 1353–1358 (“<i>Preservation</i>”), citing to <i>Goleta I, supra.</i>) As in <i>Preservation</i>, the EIR here does not show any evidence that the Project’s reduced profitability without the residential component would be so severe as to render the Project impractical to proceed with.</p> <p>In view of the EIR’s flawed assumption of infeasibility and overly narrow objectives, the infeasibility of the no-project alternative is unsupported under <i>WATER, supra.</i> (<i>We Advocate Through Environmental Review v. County of Siskiyou</i> (Cal. Ct. App., Apr. 20, 2022, No. C090840)</p>

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Comment #	SWRCC Response
	<p>2022 WL 1499576, at *9 [“Appellants contend that all the County's stated reasons fail to “demonstrate[ ] that the no project alternative is infeasible,” reasoning, it appears, that the County’s stated reasons are flawed because they are premised on the EIR's unreasonably narrow project objectives. We agree, as mentioned, that the offered project objectives were unreasonably narrow. We also agree that this affected the County's analysis of the no-project alternative and that the County, for this reason, will need to redo its analysis.”)]</p> <p>Fourth, for the above-stated reasons and actual feasibility to mitigate impacts, including GHG emissions (also, under BAAQMD’s Guidance), City’s response to SWRCC’s comment on the feasibility to mitigate GHG emissions is unavailing.</p> <p>SWRCC respectfully requests City to re-evaluate the EIR’s alternatives and mitigation measures based on <i>WATER, Preservation</i>, and BAAQMD Guidance, and to ensure that the EIR’s project objectives and its infeasibility conclusions, including for the no-project (no residential component) alternative, as well as mitigation measures for GHG impacts, are adequate under CEQA and applicable legal authority.</p>

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While SWRCC disagrees with the City’s responses, it provides only a *partial* response thereto in *this* supplemental comment. SWRCC reserves the right to express its objections to the City’s *other* responses through further supplemental comments.

**V. CONCLUSION.**

In view of the above-noted concerns, SWRCC respectfully request that the EIR be revised and recirculated to comply with CEQA and applicable legal and legislative authority.

If the City has any questions or concerns, please feel free to contact my Office.

Sincerely,



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Naira Soghatyan  
Attorneys for Southwest Regional  
Council of Carpenters