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VIA E-MAIL

September 13, 2022

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RE: **City of Pasadena 444 North Fair Oaks Avenue Project**

Dear Mark Jomsky, Beilin Yu and Hayman Tam,

On behalf of the Southwest Regional Council of Carpenters ("**Southwest Carpenters**" or "**SWRCC**"), my office is submitting these comments regarding the 444 North Fair Oaks Avenue Project (the "**Project**") for the City of Pasadena's (the "**City's**") September 14, 2022, Planning Commission meeting.

The Southwest Carpenters is a labor union representing 50,000 union carpenters in six states, including California, 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.

SWRCC 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.

SWRCC incorporates by reference all comments raising issues regarding the EIR submitted prior to certification of the EIR for the Project. *Citizens for Clean Energy v City of Woodland* (2014) 225 Cal.App.4th 173, 191 (finding that any party who has objected to the Project's environmental documentation may assert any issue timely raised by other parties).

Moreover, SWRCC 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.

I. THE CITY SHOULD REQUIRE THE USE OF A LOCAL, SKILLED AND TRAINED WORKFORCE

The City should require the use of a local skilled and trained workforce to benefit the community's economic development and environment. 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.

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: zas

> . . . 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]

Local skilled and trained workforce requirements and policies have significant environmental benefits since they improve an area's jobs-housing balance, decreasing the amount of and length of job commutes and their associated greenhouse gas emissions. 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]

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[1] California Workforce Development Board (2020) Putting California on the High Road: A Jobs and Climate Action Plan for 2030 at p. ii, *available at* https://laborcenter.berkeley.edu/wp-content/uploads/2020/09/Putting-California-on-the-High-Road.pdf.

[2] South Coast Air Quality Management District (May 7, 2021) Certify Final Environmental Assessment and Adopt Proposed Rule 2305 – Warehouse Indirect Source Rule – Warehouse Actions and Investments to Reduce Emissions Program, and Proposed Rule 316 – Fees for Rule 2305, Submit Rule 2305 for Inclusion Into the SIP, and Approve

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

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

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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.haywardca.gov/sites/default/files/documents/General_Plan_FINAL.pdf.

[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.

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 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.

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.

[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.

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).

B. The City Should Prepare an EIR for the Project

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

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

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

This standard sets a "low threshold" for preparation of an EIR. *Consolidated Irrig. Dist. v City of Selma* (2012) 204 Cal.App.4th 187, 207; *Nelson v County of Kern* (2010) 190 Cal.App.4th 252; *Pocket Protectors v City of Sacramento* (2004) 124 Cal.App.4th 903, 928; *Bowman v City of Berkeley* (2004) 122 Cal.App.4th 572, 580; *Citizen Action to Serve All Students v Thornley* (1990) 222 Cal.App.3d 748, 754; *Sundstrom v County of Mendocino* (1988) 202 Cal.App.3d 296, 310. If substantial evidence in the record supports a fair argument that the project may have a significant environmental effect, the lead agency must prepare an EIR even if other substantial evidence before it indicates the project will have no significant effect. See *Jensen v City of Santa Rosa* (2018) 23 Cal.App.5th 877, 886; *Clews Land & Livestock v City of San Diego* (2017) 19 Cal.App.5th 161, 183; *Stanislaus Audubon Soc'y, Inc. v County of Stanislaus* (1995) 33 Cal.App.4th 144, 150; *Brentwood Ass'n for No Drilling, Inc. v City of Los Angeles* (1982) 134 Cal.App.3d 491; *Friends of "B" St. v City of Hayward* (1980) 106 Cal.App.3d 988. See also CEQA Guidelines § 15064(f)(1).

As explained in full below, there is a fair argument that the Project will have a significant effect on the environment. As a result, the "low threshold" for preparation of an EIR has been met and the City must prepare an EIR.

C. <u>CEQA Requires Revision and Recirculation of a Mitigated Negative Declaration When Substantial Changes or New Information Comes to Light</u>

Once a negative declaration has been circulated, it may need to be recirculated for another round of review and comment if it is "substantially revised" after the public notice of the first circulation period has been given. CEQA Guidelines § 15073.5(a).

A substantial revision includes two situations CEQA Guidelines § 15073.5(b)):

- A new, avoidable significant effect is identified, and to reduce that effect to a level of insignificance, mitigation measures or project revisions must be added.
- The lead agency finds that the mitigation measures or project revisions originally included in the negative declaration will not reduce potentially significant impacts to a level of insignificance, and new mitigation measures or project revisions are required.

New information will require recirculation when it amounts to a substantial revision of the negative declaration, which is defined to mean the identification of new significant environmental impacts or the addition of new mitigation that is required to avoid a significant environmental impact. CEQA Guidelines §15073.5(b). If the new information reveals a new significant impact that cannot be mitigated or avoided, then the lead agency must prepare an EIR before approving the project. CEQA Guidelines § 15073.5(d).

Revisions to a project to mitigate potentially significant environmental effects must be included in the negative declaration that is circulated for public review. PRC § 21080(c)(2); CEQA Guidelines §§ 15070(b), 15071(e).

Based on the arguments set forth below, in the alternative, Commenter requests that the City recirculate the IS/MND upon making any revisions. This is especially important considering the lack of ambient noise impact analysis.

D. The IS/MND Fails to Support Its Findings with Substantial Evidence

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

In addition, a determination that regulatory compliance will be sufficient to prevent significant adverse impacts must be based on a project-specific analysis of potential impacts and the effect of regulatory compliance. In *Californians for Alternatives to Toxics v. Department of Food & Agric.* (2005) 136 Cal.App.4th 1, the court set aside an EIR for a statewide crop disease control plan because it did not include an evaluation of the risks to the environment and human health from the proposed program but simply presumed that no adverse impacts would occur from use of pesticides in accordance with the registration and labeling program of the California Department of Pesticide Regulation. *See also Ebbetts Pass Forest Watch v Department of Forestry & Fire Protection* (2008) 43 Cal.App.4th 936, 956 (fact that Department of Pesticide Regulation had assessed environmental effects of certain herbicides in general did not excuse failure to assess effects of their use for specific timber harvesting project).

The issues here are especially egregious because the City found that there would be ***no*** significant impacts across any metric, and frequently provided circular or inadequate analysis for the various factors.

1. *The IS/MND Fails to Support its Land Use Analysis with Substantial Evidence.*

The IS/MND claims that the Project would have a less than significant impact concerning conflicts with any land use plan, policy, or regulation. (IS/MND 56). However, the conclusion of less than significant is reached by prematurely concluding that the Project is consistent with the General Plan when it adoption is being sought in the very meeting that is seeking its adoption. This is putting the cart before the horse. The IS/MND's shortcut land use analysis is not adequate. *See*, *e.g., Friends of Lagoon Valley v. City of Vacaville* (2007) 154 Cal.App.4th 807, 815 (upholding overall consistency finding even though project deviated from some plan provisions because plan allowed for balancing of competing policies). A clear and direct conflict with a mandatory provision of a general or specific plan usually amounts to an inconsistency that will preclude project approval. See *Families Unafraid v. County of El Dorado* (1998) 62 Cal.App.4th 1332, 1341 (project must satisfy

mandatory general plan policy that is fundamental and unambiguous and does not allow discretion in interpretation and application).

The IS/MND should be revised to include a more specific analysis of consistency to support its land use conclusion.

2. *The IS/MND Fails to Support its Findings on Greenhouse Gas Impacts with Substantial Evidence.*

CEQA Guidelines § 15064.4 allow a lead agency to determine the significance of a project's GHG impact via a qualitative analysis (e.g., extent to which a project complies with regulations or requirements of state/regional/local GHG plans), and/or a quantitative analysis (e.g., using model or methodology to estimate project emissions and compare it to a numeric threshold). So too, CEQA Guidelines allow lead agencies to select what model or methodology to estimate GHG emissions so long as the selection is supported with substantial evidence, and the lead agency "should explain the limitations of the particular model or methodology selected for use." CEQA Guidelines § 15064.4(c).

Here, the IS/MND included both qualitative and quantitative analyses. However, the IS/MND does not rely on any quantitative analysis to determine compliance with any numerical thresholds and instead relies solely on consistency with the City's General Plan in making a determination that the Project's GHG impacts are less than significant without mitigation (IS/MND, pp. 3-45-49).

CEQA Guidelines sections 15064.4(b)(3) and 15183.5(b) allow a lead agency to consider a project's consistency with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of GHG emissions.

CEQA Guidelines §§ 15064.4(b)(3) and 15183.5(b)(1) make clear qualified GHG reduction plans or CAP should include the following features:

(1) **Inventory**: Quantify GHG emissions, both existing and projected over a specified time period, resulting from activities (e.g., projects) within a defined geographic area (e.g., lead agency jurisdiction);

(2) **Establish GHG Reduction Goal**: Establish a level, based on substantial evidence, below which the contribution to GHG

emissions from activities covered by the plan would not be cumulatively considerable;

(3) **Analyze Project Types**: Identify and analyze the GHG emissions resulting from specific actions or categories of actions anticipated within the geographic area;

(4) **Craft Performance Based Mitigation Measures**: Specify measures or a group of measures, including performance standards, that substantial evidence demonstrates, if implemented on a project-by-project basis, would collectively achieve the specified emissions level;

(5) **Monitoring**: Establish a mechanism to monitor the CAP progress toward achieving said level and to require amendment if the plan is not achieving specified levels;

Collectively, the above-listed features tie qualitative measures to quantitative results, which in turn become binding via proper monitoring and enforcement by the jurisdiction—all resulting in real GHG reductions for the jurisdiction as a whole, and the substantial evidence that the incremental contribution of an individual project is not cumulatively considerable.

Second, it is not enough for an environmental document to conclude there is no significant GHG emissions impacts based upon a determination of consistency with a GHG Reduction Plan, without also making a determination based upon substantial evidence of the project's actual cumulative contributions to GHG emissions. In other words, a determination of consistency is only a starting point.[8] Compliance or non-compliance is merely one factor to be considered. The lead agency must explain how reliance on any particular plan or regulation addresses a potential impact.

Here, however, the IS/MND fails to demonstrate that the GHG Reduction Plan includes the above-listed requirements to be considered a qualified CAP or GHG Reduction Plan for the City. As such, the IS/MND leaves an analytical gap showing

[8] Cal. Nat. Res. Agency, Final Statement of Reasons for Regulatory Action, Amendments to the State CEQA Guidelines, OAL Notice File No. Z-2018-0116-12 (Nov. 2018), at p. 95; see also *Lighthouse Field Beach Rescue v. City of Santa Cruz* (2005) 131 Cal. App. 4th 1170, 1207 ("[A]n inconsistency between a project and other land use controls does not in itself mandate a finding of significance. [Citations.]")

that compliance with said plans can be used for a project-level significance determination for the Project. Second, the IS/MND fails to explain how compliance with the GHG Reduction Plan leads to a less than significant impact.

i. *The GHG Reduction Plan is Not a Qualified CAP or GHG Reduction Plan.*

First, there is no evidence that the General Plan meets any of the five goals listed above as a qualified CAP or GHG Reduction Plan under CEQA Guidelines §§ 15064.4(b)(3) and 15183.5(b)(1). In fact, even though the Los Angeles General Plan is available on the City's website for review, the IS/MND does not make those plans readily available for review. It is also unclear where or how, and what sections the IS/MND is consistent with the General Plan or the CAP revised in 2020. The IS/MND or EIR should explain how the GHG Reduction Plan qualifies for consistency analysis under CEQA Guidelines §§ 15064.4(b)(3) and 15183.5(b)(1) and provide a copy that plan for public review, instead of making only one reference to California Air Pollution Control (IS/MND pp. 3-45-49).

ii. *The IS/MND Fails to Demonstrate Compliance Will Lead to a Less than Significant Impact.*

Second, the IS/MND fails to explain or analyze how compliance with the General Plan, even if it qualified for a consistency evaluation, will lead to a less than significant impact. The lead agency should explain how implementing the particular requirements in the plan, regulation or program ensure that the project's incremental contribution to the cumulative effect is not cumulatively considerable" (emphasis added).[9]

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[9] Natural Resources Agency (Nov. 2018) Final Statement of Reasons For Regulatory Action: Amendments To The State CEQA Guidelines ("2018 Final Statement of Reason"), p. 19 (adding reference to section 15183.5 to section 15064.4(b)(3) because it was "needed to clarify that lead agencies may rely on plans prepared pursuant to section 15183.5 in evaluating a project's greenhouse gas emissions[,] … [which] is consistent with the Agency's Final Statement of Reasons for the addition of section 15064.4, which states that 'proposed section 15064.4 is intended to be read in conjunction with . . . proposed section 15183.5. Those sections each indicate that local and regional plans may be developed to reduce GHG emissions.'"), https://files.resources.ca.gov/ceqa/docs/2018_CEQA_Final_Statement_of%20Reasons_111218.pdf; see also Natural Resources Agency (Dec. 2009) Final Statement of Reasons for Regulatory Action ("2009 Final Statement of Reason"), p. 27 ("Those sections each indicate that local and regional plans may be developed to reduce GHG emissions. If such plans reduce community-wide emissions to a level that is less than significant, a later project that complies with the requirements in such a plan may be found to have a less than significant impact."), http://resources.ca.gov/ceqa/docs/

Here, the IS/MND merely indicates its consistency with the 2016 RTP/SCS IS/MND, p. 3-10. This is the extent of the analysis. This fails to demonstrate how compliance will in fact lead to a less than significant impact. It is not enough to state some goals or policies and then state the Project will comply with those goals or policies. For example, there are no specific references to tangible measures of consistency with the city and state goals. The IS/MND does not conduct this analysis and relies wholly on compliance statements with an unverified or non-compliant GHG Reduction Plan.

iii. *The IS/MND Fails to Evaluate Cumulative Project GHG Impacts.*

An IS/MND must discuss cumulative impacts when they are significant and the project's incremental contribution is "cumulatively considerable." CEQA Guidelines §15130(a). A project's incremental contribution is cumulatively considerable if the incremental effects of the project are significant "when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects." CEQA Guidelines § 15065(a)(3).

Here, there is no evidence that the IS/MND's Air Quality, Energy, Greenhouse Gas Emissions, and Health Risk Assessment Impact Analysis evaluated the Project's cumulative project GHG emissions. *See* IS/MND, Appendix A. Throughout the IS/MND's GHG analysis (IS/MND pp. 3-45-49), it states that the total projected GHG emissions for the Project are in compliance with the South Coast Air Management District's ("SCAQMD's") adopted 2016 AQMP, yet there is no analysis

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Final_Statement_of_Reasons.pdf; 2009 Final Statement of Reason, pp. 14-17 (To qualify, the plan "must … include *binding* requirements to address a cumulative problem[;] … such plans contain *specific requirements* with respect to resources that are *within the agency's jurisdiction* to avoid or substantially lessen the agency's contributions to GHG emissions … consistency with plans that are *purely aspirational* (i.e., those that include only *unenforceable goals without mandatory reduction measures*), and provide no assurance that emissions within the area governed by the plan will actually address the cumulative problem[;] … by *requiring that lead agencies draw a link* between the project and the specific provisions of a binding plan or regulation, section 15064(h)(3) would ensure that cumulative effects of the project are actually addressed by the plan or regulation in question.") 35 SCAG (Dec. 2015) 2016 RTP/SCS Program EIR ("PEIR"), p. 3.8-12 – 3.8-13 ("SB 375 provides that the SCS developed as part of the RTP *does not regulate the use of land or dictate local land use policies*, and *further expressly provides that a city's or county's* land use policies and regulations, including its general plan, are *not required to be consistent with the SCS*. Rather, SB 375 is intended to provide a regional policy foundation that local government may build upon, *if they so choose*." Emphasis added), https://scag.ca.gov/sites/main/files/file-attachments/2016dpeir_3_8_greenhousegases.pdf?1624321146.

of a potential cumulative impact anywhere in the Appendix or as it concerns the 2020-2045 RTP / SCS.

The IS/MND needs to conduct a cumulative GHG impacts analysis, and if there is a potentially significant impact, impose adequate and all feasible measures.

3. *The IS/MND Fails to Analyze Cumulative Project Air Quality Impacts.*

The IS/MND (pp. 3-16-22) indicates no potentially significant impacts for air quality that is mitigated to less than significant levels with Mitigation Measures 1 and 2 identified as such in Appendix A (low-VOC applications and Tier 4 Final construction equipment)—yet, as with the IS/MND GHG analysis, there is no evidence in Appendix A that any cumulative impacts analysis was conducted that included other projects. Thus, there is no substantial evidence upon which to base the IS/MND's conclusion of no significant cumulative impacts with the aforementioned mitigation measures.

The IS/MND needs to conduct a cumulative air quality impacts analysis, and if there is a potentially significant impact, impose adequate and all feasible measures.

4. *The IS/MND Fails to Adequately Disclose, Analyze the Project's Significant Noise Impacts*

The IS/MND discloses that the Project will not have less than significant or no noise impacts and proposes no mitigation measures based on those conclusions (IS/MND pp. 3).

The IS/MND fails to adequately analyze all of the Project's significant noise impacts. For example, the Project's analysis excludes the impacts of the nearby sensitive receptors, including but not limited to all the nearby single-family residences in all directions, the Fun-Zone Reading Club 4 Homeless, Pacific Oaks College, Saybrook University, Villa Raymond Apartments, Philadelphia Church, St. Andrew Catholic Church, Marriott Residences, Avila Apartments, New Revelation Church, Iglesa Nueva Vida, The Villas Apartments, and others. The IS/MND acknowledges that construction activity is allowable between 7:00 am and 7:00 pm, times when the schools and businesses will certainly be in session and susceptible to disturbance from excessive noise levels that will almost certainly impact the schools, learning, business operations of the nearby businesses, and work productivity of those many residents who work from home in the hundreds of homes surrounding the Project site. Yet none of these details are attended to in the IS/MND. An agency may not avoid its

responsibility to prepare proper environmental analysis by failing to gather relevant data. *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.

5. *The IS/MND Fails to Adequately Analyze Hazards and Hazardous Materials Impacts*

The IS/MND's analysis of Hazards and Hazardous Materials Impacts is deficient. It concludes either that impacts would be less than significant, or that there would be no impact (IS/MND pp. 3-50-58). This is inappropriate given the hazardous or potentially hazardous materials that need to be transported adjacent to sensitive receptors, such as all the nearby single-family residences in all directions, the Fun-Zone Reading Club 4 Homeless, Pacific Oaks College, Saybrook University, Villa Raymond Apartments, Philadelphia Church, St. Andrew Catholic Church, Marriott Residences, Avila Apartments, New Revelation Church, Iglesa Nueva Vida, The Villas Apartments, and others. The IS/MND improperly concludes that hazardous materials likely to be utilized, such as , petroleum-based fuels, hydrocarbons, hydraulic fluid and their derivatives (e.g., gasoline, diesels, oils, and lubricants), soil exported off-site, vehicle fuels, unidentified hazardous chemicals, chemical waste, existing evidence of leakage and spillage of chemical and waste storage over compromised concrete surfaces, and general debris, and assumes that the 30-month timeframe would constitute "short-term" use of these hazards and hazardous materials, or that they would be localized to the project site without explaining how they would not radiate to the nearby sensitive receptors (IS/MND p. 3-51). There is no further analysis tailored to the specific needs of the Project both for the sensitive receptors and the nearby major intersection of the 134 and 210 freeways, and so there is no analysis conducted on the specific hazards or hazardous materials as to any of the sections that require further detail when such mitigation is implemented and supported by substantial evidence in accordance with CEQA Guideline § 15091. And, an agency may not avoid its responsibility to prepare proper environmental analysis by failing to gather relevant data. *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.

6. *The IS/MND Fails to Adequately Analyze the Project's Significant Biological Impacts*

The IS/MND discloses that the Project will have no biological impacts and proposes no mitigation measures for those conclusions (IS/MND pp. 3-19-22).

The IS/MND recognizes the potential for special-status plant or animal species or sensitive natural communities within the Project site (IS/MND p. 3-20) but only cites to prior rough grading and circular logic that it would not contain any suitable habitats for special-status species. The analysis cites to no survey at all, let alone a recent one, that could indicate whether the Project site is occupied by special status plant or animal species. The IS/MND is obligated to provide information germane to determining whether there are recent occupations of special status flora and fauna via a survey or equivalent evidence. Furthermore, the IS/MND improperly concludes that there would be no significant biological impacts in part because migratory birds only nest seasonally and therefore only attend to these seasonal fluctuations (IS/MND p. 3-20), but there are many bird species who nest year-round pursuant to the California Department of Fish and Wildlife[10] that were not recognized or accounted for in the IS/MND.

Because of this, the IS/MND should be replaced with a more substantive EIR that adequately analyzes and mitigates these significant impacts to the local fauna. An agency may not avoid its responsibility to prepare proper environmental analysis by failing to gather relevant data. *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.

7. *The IS/MND Fails to Adequately Analyze the Project's Significant Transportation and Traffic Impacts*

The IS/MND inadequately analyzes potential transportation and traffic impacts relating to the Project (IS/MND pp. 3-86-92). It recognizes some of the existing street network but concludes that there would be no significant impacts. It also fails to analyze the Project's proximity to the major intersection of the 134 and 210 freeways. Despite this, the IS/MND provides insufficient analysis of transportation and traffic impacts caused by the Project.

Significantly, the Project is adjacent to a major thoroughfare in Pasadena, which acts as a major east/west and north/south transportation artery through the city via the 134 and 210 freeways, of which the Project is adjacent. Despite this, the IS/MND nonetheless finds that there would be less-than-significant impacts to all transportation and traffic metrics, and never mentions proximity to and likely effect on the 134 and

[10] https://files.ceqanet.opr.ca.gov/273819-1/attachment/zo76RgD7dUdj5BLJTEhEMdf74g6f100RrKiWBQSquhFFe5l0X53rLsbLSGMPRXgXM4AaYnJSTfZB6JpY0.

210 freeway interchange. The road is surrounded and utilized by the hundreds of nearby single-family homes and several nearby apartment complexes, schools, churches, and hotels. The IS/MND already indicated the use of heavy construction equipment and machinery, as well as the transportation of hazardous materials. Construction is allowable between the hours of 7 AM and 7:00 PM Monday through Friday and some Saturdays, which would likely involve simultaneous traffic congestion from construction. Furthermore, with an increased propensity for work-from-home schedules, business, residential, and construction travel could each be impacted by the other and the Project's Development, making rush-hour times less-predictable. There is also no attendance to the impact to the nearby businesses, churches, especially considering how important the 134 and 210 freeways are to not only Pasadena, but the freeways generally as a gateway between major cities nearby. Despite these considerations, the IS/MND acknowledges few, if any of them. An agency may not avoid its responsibility to prepare proper environmental analysis by failing to gather relevant data. *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311. The IS/MND is obligated to attend to these considerations but does not do so. SWRCC requests the City reconsider and incorporate deeper analysis as it pertains to transportation and traffic.

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

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

county development and infrastructure improvements must be consistent with adopted general plans) (citing Gov. Code 65302).

B. The Proposed Land Use Amendments and Entitlements Conflict with SB 375 and SCAG's 2020 Regional Transportation Plan and Sustainable Communities Strategy

In 2008, Senate Bill 375 amended CEQA and empowered metropolitan planning organizations (MPOs) to enact regional plans to reduce GHG emissions from passenger vehicles. MPOs are required to prepare regional transportation plans (RTP) and sustainable community strategies (SCS) in an effort to meet CARB's GHG reduction goals under SB 375. (Gov. Code § 65080(b)(2)(B).) SB 375 specifically targets GHG emissions from passenger vehicles by linking land use decisions to transportation planning. (*Id.*) If the regional SCS/RTP plan does not achieve CARB's GHG reduction targets, then the MPO is required to create an alternative planning strategy (APS) that shows how the targets can be achieved through other mechanism such as alternative development patterns, infrastructure decisions, or other alternative transportation measures or policies that can still achieve CARB's reduction targets. (Gov. Code § 65080(b)(2)(I).)

For this Project, the applicable plan is SCAG's 2020-2045 RTP/SCS plan adopted on September 3, 2020.

The IS/MND fails to analyze the Project's consistency with SCAG's 2020-2045 RTP/SCS plan, outright. But it also fails to adequately analyze consistency with the 2016 plan. For example, SCAG's 2016 RTP/SCS requires or suggests the following that the Project fails to consider or adopt in the IS/MND:

- Land Use Policies: pursuing affordable housing or providing more transportation options for short trips;[11]
- Transportation Network Strategies: providing transit fare discounts; providing transit integration strategies such as integration of active transportation and transit by improving pedestrian access and bicyclist access;[12]

[11] SCAG (Apr. 2016) 2016 RTP/SCS, pp. 75-114.
[12] *Id.*

- Transportation Demand Management Strategies: encourage use and implementation of TDM strategies such as rideshare incentives, parking management, parking subsidies for carpoolers, incentives for telecommuting, integrated mobility hubs, or additional investments in active transportation infrastructure;[13] and
- Clean Vehicle Technology Strategies: use of neighborhood electric vehicles (NEVs), and anticipating shared mobility platforms, car-to-car communication or automated vehicle technologies.[14]

The IS/MND fails to demonstrate consistency with the most recent SCAG 2020-2045 RTP / SCS and should be revised to meet its goals and policies.

SWRCC also notes that the City did not respond to its prior submissions of this comment letter and as such is resubmitting the same for comment.

IV. CONCLUSION

SWRCC requests that the City revise and recirculate the Project's Initial Study/Mitigated Negative Declaration, or submit an environmental impact report, to address the aforementioned concerns.

If the City has any questions or concerns, feel free to contact my office.
Sincerely,

Jason A. Cohen, Esq.
Attorneys for Southwest Regional
Council of Carpenters

Attachments:

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

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

[13] *Id.*
[14] *Id.*

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