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VIA E-MAIL

May 7, 2024

City of Morro Bay
Attn: Kim Fowler, Interim Planning Manager
955 Shasta Avenue
Morro Bay, CA 93442
Em: BESScomments@morrobayca.gov
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RE: City of Morro Bay's 600-MW Morro Bay Battery Energy Storage System Project DEIR Comments (SCH#:2022060083)

Dear Kim Fowler,

On behalf of the **Western States Regional Council of Carpenters** (“**Western Carpenters**” or “**WSRCC**”), my Office is submitting these comments for the City of Morro Bay’s (“**City**”) May 7, 2024 Planning Commission Meeting for the Battery Energy Storage System (BESS) Project (“**Project**”).

The Western States Regional Council of Carpenters is a labor union representing almost 90,000 union carpenters in 12 states, including California, and has a strong interest in well-ordered land use planning and in addressing the environmental impacts of development projects.

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

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

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

Moreover, the Western Carpenters requests that the City provide notice for any and all notices referring or related to the Project issued under the California Environmental Quality Act (**CEQA**) (Pub. Res. Code, § 21000 *et seq.*), and the California Planning and Zoning Law (“**Planning and Zoning Law**”) (Gov. Code, §§ 65000–65010). California Public Resources Code Sections 21092.2, and 21167(f) and California Government Code Section 65092 require agencies to mail such notices to any person who has filed a written request for them with the clerk of the agency’s governing body.

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

The City should require the Project to be built using a local workers who have graduated from a Joint Labor-Management Apprenticeship Program approved by the State of California, have at least as many hours of on-the-job experience in the applicable craft which would be required to graduate from such a state-approved apprenticeship training program, or who are registered apprentices in a state-approved apprenticeship training program.

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

[A]ny local hire requirement that results in a decreased worker trip length from the default value has the potential to result in a reduction of construction-related GHG emissions, though the significance of the reduction would vary based on the location and urbanization level of the project site.

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

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

[L]abor should be considered an investment rather than a cost—and investments in growing, diversifying, and upskilling California’s workforce can positively affect returns on climate mitigation efforts. In other words, well-trained workers are key to delivering emissions reductions and moving California closer to its climate targets.¹

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

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

People who live and work in the same jurisdiction would be more likely to take transit, walk, or bicycle to work than residents of less balanced communities and their vehicle trips would be shorter. Benefits would include potential reductions in both vehicle miles traveled and vehicle hours traveled.³

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

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

In nearly built-out Berkeley, CA, the approach to balancing jobs and housing is to create local jobs rather than to develop new housing. The city's First Source program encourages businesses to hire local residents, especially for entry- and intermediate-level jobs, and sponsors vocational training to ensure residents are employment-ready. While the program is voluntary, some 300 businesses have used it to date, placing more than 3,000 city residents in local jobs since it was launched in 1986. When needed, these carrots are matched by sticks, since the city is not shy about negotiating corporate participation in First Source as a condition of approval for development permits.

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

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

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

Construction work has been defined as a Lower to High-risk activity for COVID-19 spread by the Occupational Safety and Health Administration. Recently, several

⁴ Cervero, Robert and Duncan, Michael (2006) Which Reduces Vehicle Travel More: Jobs-Housing Balance or Retail-Housing Mixing? *Journal of the American Planning Association* 72 (4), 475-490, 482, available at <http://reconnectingamerica.org/assets/Uploads/UTCT-825.pdf>.

construction sites have been identified as sources of community spread of COVID-19.⁵

Western Carpenters recommend that the Lead Agency adopt additional requirements to mitigate public health risks from the Project's construction activities. Western Carpenters 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 Western Carpenters' experience with safe construction site work practices, Western Carpenters 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.

⁵ Santa Clara County Public Health (June 12, 2020) COVID-19 CASES AT CONSTRUCTION SITES HIGHLIGHT NEED FOR CONTINUED VIGILANCE IN SECTORS THAT HAVE REOPENED, available at <https://www.sccgov.org/sites/covid19/Pages/press-release-06-12-2020-cases-at-construction-sites.aspx>.

Testing Procedures:

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

Planning

- Require the development of an Infectious Disease Preparedness and Response Plan that will include basic infection prevention measures (requiring the use of personal protection equipment), policies and procedures for prompt identification and isolation of sick individuals, social distancing (prohibiting gatherings of no more than 10

people including all-hands meetings and all-hands lunches) communication and training and workplace controls that meet standards that may be promulgated by the Center for Disease Control, Occupational Safety and Health Administration, Cal/OSHA, California Department of Public Health or applicable local public health agencies.⁶

The United Brotherhood of Carpenters and Carpenters International Training Fund has developed COVID-19 Training and Certification to ensure that Carpenter union members and apprentices conduct safe work practices. The Agency should require that all construction workers undergo COVID-19 Training and Certification before being allowed to conduct construction activities at the Project Site.

Western Carpenters has also developed a rigorous Infection Control Risk Assessment (“**ICRA**”) training program to ensure it delivers a workforce that understands how to identify and control infection risks by implementing protocols to protect themselves and all others during renovation and construction projects in healthcare environments.⁷

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

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

III. THE CITY SHOULD REVISE AND RECIRCULATE THE PROJECT’S DEIR

CEQA is a California statute designed to inform decision makers and the public about the potential, significant environmental effects of a project. 14 California Code of

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

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

Regulations (“**CEQA Guidelines**”) § 15002(a)(1).⁸ At its core, “[i]ts purpose is to inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made.” *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 564.

To achieve this purpose, CEQA mandates preparation of an Environmental Impact Report (“**EIR**”) for projects so that the foreseeable impacts of pursuing the project can be understood and weighed. *Communities for a Better Environment v. Richmond* (2010) 184 Cal. App. 4th 70, 80. The EIR requirement “is the heart of CEQA.” CEQA Guidelines, § 15003(a).

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).

Section 15088.5(a) of the CEQA Guidelines provides that an EIR must be recirculated whenever there is disclosure of significant new information. Significant new information includes: (1) disclosure of a new significant environmental impact resulting from the project or from a new proposed mitigation measure; (2) disclosure of a substantial increase in the severity of an environmental impact unless mitigation measures are adopted that reduce the impact to a level of insignificance; and (3) disclosure of a feasible project alternative or mitigation measure considerably different from others previously analyzed which would clearly lessen the significant

⁸ The CEQA Guidelines, codified in Title 14 of the California Code of Regulations, section 15000 *et seq.*, are regulatory guidelines promulgated by the state Natural Resources Agency for the implementation of CEQA. (Cal. Pub. Res. Code § 21083.) The CEQA Guidelines are given “great weight in interpreting CEQA except when . . . clearly unauthorized or erroneous.” *Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 62 Cal. 4th 204, 217.

environmental impacts of the project which the project proponents decline to adopt.
Id.

Additionally, an EIR must be recirculated when it is so fundamentally inadequate and conclusory in nature that meaningful public review and comment is precluded. *Id.* [citing *Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043].

Here, as discussed both previously and as reiterated below, the DEIR is legally flawed in various parts because it fails to substantiate all of its conclusions to allow meaningful public review and comment, fails to provide adequate mitigation measures, and fails to fully assess all pertinent environmental factors. Accordingly, this comment letter discloses significant new information, necessitating revision and recirculation of the DEIR.

A. The DEIR Must Describe All Feasible Mitigation Measures That Can Minimize the Project’s Significant and Unavoidable Environmental Impacts

A fundamental purpose of an EIR is to identify ways in which a proposed project's significant environmental impacts can be mitigated or avoided. Pub. Res. Code §§ 21002.1(a), 21061. To implement this statutory purpose, an EIR must describe any feasible mitigation measures that can minimize the project's significant environmental effects. PRC §§ 21002.1(a), 21100(b)(3); CEQA Guidelines §§ 15121(a), 15126.4(a).

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”⁹ and find that ‘specific overriding economic, legal, social, technology or other benefits of the project outweigh the significant effects on the environment.’¹⁰ “A gloomy forecast of environmental degradation is of little or no value without pragmatic, concrete means to minimize the impacts and restore ecological equilibrium.” *Environmental Council of Sacramento v. City of Sacramento* (2006) 142 Cal.App.4th 1018, 1039.

⁹ PRC §§ 21002; 21002.1, 21081; CEQA Guidelines §§ 15091, 15092(b)(2)(A).

¹⁰ PRC §§ 21002; 21002.1, 21081; CEQA Guidelines §§ 15091, 15092(b)(2)(B).

B. Air Quality Mitigation Fails to Include All Required Mitigations

The SLO County APCD requires Fugitive Dust Mitigation Measures for all projects with grading areas that are greater than 4-acres or are within 1,000 feet of any sensitive receptor. As this Project is within 1,000 feet of sensitive receptors, these mitigation measures must be included. (DEIR Appendix B, p. 27). SLO County APCD’s Fugitive Dust Mitigation Measures, expanded list, calls for:

- a. Reduce the amount of the disturbed area where possible;
- b. Use of water trucks or sprinkler systems, in sufficient quantities to prevent airborne dust from leaving the site and from exceeding the APCD’s limit of 20% opacity for greater than 3 minutes in any 60-minute period. Increased watering frequency would be required whenever wind speeds exceed 15 mph. Reclaimed (non-potable) water should be used whenever possible. Please note that during drought conditions, water use may be a concern and the contractor or builder shall consider the use of an APCD-approved dust suppressant where feasible to reduce the amount of water used for dust control.
- c. All dirt stock pile areas should be sprayed daily as needed;
- d. Permanent dust control measures identified in the approved project revegetation and landscape plans should be implemented as soon as possible following completion of any soil disturbing activities;
- e. Exposed ground areas that are planned to be reworked at dates greater than one month after initial grading should be sown with a fast germinating, non-invasive grass seed and watered until vegetation is established;
- f. All disturbed soil areas not subject to revegetation should be stabilized using approved chemical soil binders, jute netting, or other methods approved in advance by the APCD;
- g. All roadways, driveways, sidewalks, etc. to be paved should be completed as soon as possible. In addition, building pads should be laid as soon as possible after grading unless seeding or soil binders are used;
- h. Vehicle speed for all construction vehicles shall not exceed 15 mph on any unpaved surface at the construction site;
- i. All trucks hauling dirt, sand, soil, or other loose materials are to be covered or should maintain at least two feet of freeboard (minimum vertical distance between top of load and top of trailer) in accordance with CVC Section 23114;
- j. “Track-Out” is defined as sand or soil that adheres to and/or agglomerates on the exterior surfaces of motor vehicles and/or equipment (including tires) that may then fall onto any highway or street as described in California Vehicle Code Section 23113 and California Water Code 13304. To prevent Track Out, designate access points and require all employees, subcontractors, and others to use them. Install and operate a “track-out prevention device” where

- vehicles enter and exit unpaved roads onto paved streets. The track-out prevention device can be any device or combination of devices that are effective at preventing track out, located at the point of intersection of an unpaved area and a paved road. Rumble strips or steel plate devices require periodic cleaning to be effective. If paved roadways accumulate tracked out soils, the track-out prevention device may need to be modified.
- k. Sweep streets at the end of each day if visible soil material is carried onto adjacent paved roads. Water sweepers with reclaimed water should be used where feasible;
 - l. All of these fugitive dust mitigation measures shall be shown on grading and building plans; and
 - m. The contractor or builder shall designate a person or persons to monitor the fugitive dust emissions and enhance the implementation of the measures as necessary to minimize dust complaints, reduce visible emissions below 20% opacity, and to prevent transport of dust offsite. Their duties shall include holidays and weekend periods when work may not be in progress. The name and telephone number of such persons shall be provided to the APCD Compliance Division prior to the start of any grading, earthwork or demolition. (SLO County APCD CEQA Air Quality Handbook, pp. 2-10 - 2-11).

Further, the Project Site is within the areas noted as containing naturally occurring asbestos. “While Project construction activities would occur outside of the buffer area, demolition activities would partially occur within the buffer area; therefore, the Proposed Project is subject to the [Naturally Occurring Asbestos Airborne Toxics Control Measure].” (DEIR Appendix B, p. 12.) The Air Quality Study notes that the Project Applicant would be required to comply with the following mitigation measures before any grading activities:

- For grading projects qualifying for NOA ATCM exemption:
 - Submit NOA Exemption form with geologic evaluation.
- For grading projects in serpentine rock less than 1 acre:
 - Submit Project Form with geologic evaluation.
 - Mini Dust Control Measures in Section 93105(e)(A-F)
- For grading projects in serpentine rock greater than 1 acre:
 - Submit Project Form with geologic evaluation
 - Asbestos Dust Mitigation Plan

Per the Air Quality Study, the fugitive dust and naturally occurring asbestos mitigation measures “were incorporated into CalEEMod as project design features in the unmitigated scenario to ensure that potential dust-related emissions would be lower than limits presented in Table 3 of Section 4.4, and that construction air quality impacts of the Proposed Project would be less than significant.” (DEIR Appendix B, p. 27.) Importantly, these mitigations measures are improperly reflected in DEIR as project design features.

It is established that “[a]voidance, minimization and / or mitigation measure’ . . . are not ‘part of the project.’ . . . compressing the analysis of impacts and mitigation measures into a single issue . . . disregards the requirements of CEQA.” (*Lotus v. Department of Transportation* (2014) 223 Cal. App. 4th 645, 656.)

When “an agency decides to incorporate mitigation measures into its significance determination, and relies on those mitigation measures to determine that no significant effects will occur, that agency must treat those measures as though there were adopted following a finding of significance.” (*Lotus, supra*, 223 Cal. App. 4th at 652 [citing CEQA Guidelines § 15091(a)(1) and Cal. Public Resources Code § 21081(a)(1).])

By labeling mitigation measures as project design features, the City violates CEQA by failing to disclose “the analytic route that the agency took from the evidence to its findings.” (Cal. Public Resources Code § 21081.5; CEQA Guidelines § 15093; *Village Laguna of Laguna Beach, Inc. v. Board of Supervisors* (1982) 134 Cal. App. 3d 1022, 1035 [quoting *Topanga Assn for a Scenic Community v. County of Los Angeles* (1974) 11 Cal. 3d 506, 515.]

The DEIR’s use of “Project Design Features” further violates CEQA because such measures would not be included in the Project’s Mitigation Monitoring and Reporting Program (“**MMRP**”) CEQA requires lead agencies to adopt mitigation measures that are fully enforceable and to adopt a monitoring and/or reporting program to ensure that the measures are implemented to reduce the Project’s significant environmental effects to the extent feasible. (PRC § 21081.6; CEQA Guidelines § 15091(d).)

Therefore, using Project Design Features in lieu of mitigation measures violates CEQA.

The City must revise and recirculate the DEIR to include these mandatory mitigation measures within the Project’s MMRP.

C. The Project Must Implement Noise Mitigation Measures to Conform With the City’s Noise Element.

The Project’s construction noise impacts are analyzed under a one-hour suggested threshold from the World Health Organization (“**WHO**”) (85 dB Leq). (DEIR Appendix J, p. 10.) This threshold, however, is substantially higher than the numerical thresholds used for stationary or transportation sources under the City’s noise element. To adequately capture the noise impacts on nearby sensitive users, a lower threshold should be used to calculate the Project’s noise impacts. Additionally, the City’s noise element addresses construction impacts under the heading of “Stationary and Construction Noise Sources” (Plan Morro Bay, p. 3-129.) As such, a more applicable threshold for the construction noise impacts would be those identified under the noise element’s stationary noise sources table.

Table NOI-5:
Maximum Allowable Exterior Noise Exposure – Stationary Noise Sources^a

	Daytime (7:00 a.m. to 10:00 p.m.)	Nighttime (10:00 p.m. to 7:00 a.m.)
Hourly Leq, dBA ^b	50	45
Maximum Level (Lmax), dBA ^b	70	65
Maximum Level, Impulse Noise (Lmax), dBA ^c	65	60

^a As determined at the property line of the receiving land use. When determining the effectiveness of noise mitigation measures, the standards may be applied on the receptor side of noise barrier or other property line noise mitigation measures.

Plan Morro Bay, P. 3-132

By using these lower thresholds, the Project would better conform with the goals outlined in the noise element.

Importantly, the Acoustical Analysis also recommended the implementation of six mitigation measures to reduce the Project’s noise impacts. These mitigation measures include:

1. Per the City of Morro Bay Municipal Code, construction activities should not occur outside the hours of 7:00 a.m. to 7:00 p.m.
2. All construction equipment shall be properly maintained and muffled as to minimize noise generation at the source.

3. Noise-producing equipment shall not be operating, running, or idling while not in
4. immediate use by a construction contractor.
5. All noise-producing construction equipment shall be located and operated, to the extent possible, at the greatest possible distance from any noise-sensitive land uses.
6. Locate construction staging areas, to the extent possible, at the greatest possible distances from any noise-sensitive land uses.
7. Signs shall be posted at the construction site and near adjacent sensitive receptors displaying hours of construction activities and providing the contact phone number of a designated noise disturbance coordinator. (DEIR Appendix J, p. 19.)

These mitigation measures, however, were not included in the Project’s listed mitigation measures. These mitigation measures should be included in the Project’s MMRP to ensure the impacts on the nearby sensitive users are limited, in conformance with the goals of the City’s noise element.

D. Hazards and Hazardous Materials Concerns

The DEIR improperly concludes that the Project will have a less than significant hazards impact based on regulatory compliance alone. “The BESS Facility would be constructed in accordance with FEMA Zone X requirements and would include stormwater detention and infiltration components in accordance with Regional Water Quality Control Board requirements. Therefore, the potential impact from flooding would be less than significant.” (DEIR, p. 4.7-39).

However, “[c]ompliance with the law is not enough to support a finding of no significant impact under . . . CEQA.” (Californians for Alternatives to Toxics v. Department of Food & Agriculture (2005) 136 Cal. App. 4th 1, 15 – 17 [finding that a lead agency “abused its discretion by relying on DPR’s regulatory scheme as a substitute for performing its own evaluation of the environmental impacts of using pesticides.”]). Bare conclusions or opinions of the agency are not sufficient to satisfy an agency’s obligation under CEQA to adequately support their environmental determinations. (Laurel Heights Improvement Assn. v. Regents of University of California (1988) 47 Cal. 3d 376, 403 – 404.) “To facilitate CEQA’s informational role, the EIR must contain facts and analysis, not just the agency’s bare conclusions or opinions. . . . [to] enable[] the decision-makers and the public to make an ‘independent,

reasoned judgment’ about a proposed project." (Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn. (1986) 42 Cal.3d 929, 935 [(quoting Santiago County Water Dist. v. County of Orange (1981) 118 Cal.App.3d 818, 831.)

As the Court noted in *East Sacramento Partnerships for a Livable City v. City of Sacramento* (2016) 5 Cal. App. 5th 281, 301, compliance with a regulatory scheme “in and of itself does not insulate a project from the EIR requirement, where it may be fairly argued that the project will generate significant environmental effects.” (Internal quotations omitted.) A project's effects can be significant even if they are not greater than those deemed acceptable in a general plan or other regulatory law. (*Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1416; see also *Keep Our Mountains Quiet v. County of Santa Clara* (2015) 236 Cal.App.4th 714, 732 [finding that a full environmental impact report is required “if substantial evidence supports a fair argument that the Project may have significant unmitigated noise impacts, even if other evidence shows the Project will not generate noise in excess of the County's noise ordinance and general plan.”].)

A public agency cannot apply a threshold of significance or regulatory standard “in a way that forecloses the consideration of any other substantial evidence showing there may be a significant effect.” (*Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 342.) Where comments from a responsible sister agency, such as the Water District, disclose new or conflicting data or opinions that cause concern that the agency may not have fully evaluated the project and its alternatives, these comments may not simply be ignored based on a conclusory statement about compliance with regulatory standards; there must be a good faith, reasoned analysis. (*Berkeley Keep Jets Over the Bay Com. v. Board of Port Cmrs.* (2001) 91 Cal. App. 4th 1344, 1367.) The District’s approach fails to meet its obligation to engage in good faith reasoned analysis to provide the public, public agencies and decisionmakers with detailed information about the effects that the Project will have on the environment, ways to mitigate those effects, as well as alternatives. (PRC § 21061)

An agency must “explain how the particular requirements of that environmental standard reduce project impacts, including cumulative impacts, to a level that is less than significant, and why the environmental standard is relevant to the analysis of a project that is less than significant. CEQA Guidelines § 15067.7.

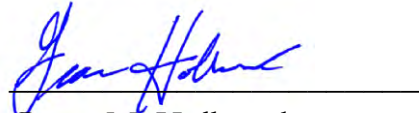
As portions of the Project Site are situated within high flood risk zones, the City must demonstrate how the regulatory measures will actually result in reduced risks

associated with potential flooding. This issue is especially pertinent considering the Project's hazardous materials and proximity to the water. Therefore, the DEIR should be revised to include the Project's specific plans for regulatory compliance and recirculated so the public may have the opportunity to review and comment on their sufficiency.

IV. CONCLUSION

The WSRCC requests that the City require a local workforce and impose training requirements for the Project's construction activities to prevent community spread of COVID-19 and other infectious diseases. WSRCC further requests that the City revise and recirculate the DEIR to properly mitigate the Project's Air Quality, Noise, and Hazards impacts. If the City has any questions, please feel free to contact my Office.

Sincerely,



Grace M. Holbrook

Attorneys for Western States Regional Council of Carpenters

Attached:

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

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

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