

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

601 GATEWAY BOULEVARD, SUITE 1000
SOUTH SAN FRANCISCO, CA 94080-7037

TEL: (650) 589-1660
FAX: (650) 589-5062

amcguire@adamsbroadwell.com

SACRAMENTO OFFICE

520 CAPITOL MALL, SUITE 350
SACRAMENTO, CA 95814-4721

TEL: (916) 444-6201
FAX: (916) 444-6209

KEVIN T. CARMICHAEL
CHRISTINA M. CARO
THOMAS A. ENSLOW
KELILAH D. FEDERMAN
RICHARD M. FRANCO
ANDREW J. GRAF
TANYA A. GULESSERIAN
DARION N. JOHNSTON
RACHAEL E. KOSS
AIDAN P. MARSHALL
ALAUURA R. MCGUIRE
TARA C. RENGIFO

Of Counsel
MARC D. JOSEPH
DANIEL L. CARDOZO

December 11, 2024

Via Email and Overnight Mail

Chair Linda Lopez and Commissioners City of Norwalk
Planning Commission City Council Chambers
Norwalk City Hall
12700 Norwalk Boulevard,
Norwalk, CA 90650
Email: planning@norwalkca.gov;

Via Email Only

Attention: Community Development Department
Alexander Hamilton,
Interim Community Development Director **Email:**
AHamilton@norwalkca.gov

Kristy Wong, Associate Planner
Email: kwong@norwalkca.gov

**Re: Agenda Item No. 2: Rexford Industrial Project (14830
Carmenita Road Warehouse Project) (SCH No. 2024101066)**

Dear Chair Lopez, Commissioners, Director Hamilton, and Ms. Wong:

On behalf of the **Coalition for Responsible Equitable Economic Development ("CREED LA")**, we submit these comments on Agenda Item No. 2, the Rexford Industrial Project, also known as the 14830 Carmenita Road Warehouse Project (SCH No. 2024104066) ("Project) proposed by Rexford Industrial ("Applicant"). The Project proposes to demolish two existing multi-tenant industrial warehouse buildings totaling 89,870 square feet (SF) and to construct an approximately 138,972 SF industrial warehouse building with a parking lot, ornamental landscaping, and associated infrastructure on the 7.03-acre lot. The proposed building would include 132,227 SF of warehouse space, 3,715 SF of ground floor office space, and 3,030 SF of mezzanine space.¹ The Project would be located in

¹ IS/MND, pp. 3, 21.
7612-

office space, and 3,030 SF of mezzanine space.¹ The Project would be located in southeastern Los Angeles County at 14830 Carmenita Road, Norwalk, California 90650 and consists of Assessor's Parcel Number 8069-002-085.²

These comments supplement CREED LA's November 12, 2024, preliminary comments on the Project's Initial Study/Mitigated Negative Declaration ("IS/MND") prepared by the City of Norwalk's ("City"). CREED LA's comments explained that the City must prepare an environmental impact report ("EIR") for the Project to comply with the California Environmental Quality Act³ ("CEQA") due to substantial informational and evidentiary defects in the IS/MND, including that there is substantial evidence supporting a fair argument that the Project may result in potentially significant air quality and public health impacts from construction and operational emissions that were not adequately disclosed or fully mitigated by the IS/MND.

Based on their ongoing review of the IS/MND, CREED LA and its experts continue to conclude that the IS/MND fails as an informational document under CEQA and lacks substantial evidence to support its conclusions that the Project's significant impacts would be mitigated to less than significant levels, as asserted in the IS/MND. The IS/MND still lacks an adequate project description and fails to adequately characterize the Project site's environmental setting. There is also substantial evidence to support a fair argument that the Project would have potentially significant environmental impacts on air quality, transportation, energy, and public utilities. CREED LA reviewed the IS/MND with the assistance of the Commenters' expert consultants, including transportation expert, Norm Marshall, and air quality expert, Dr. James Clark, PhD. Mr. Marshall's technical comments and curriculum vitae are attached hereto as Exhibit A.⁴ Dr. Clark's technical comments and curriculum vitae are attached hereto as Exhibit B.⁵

The Agenda and Staff Report recommend that the Planning Commission continue this hearing to the January 8, 2025, Planning Commission meeting, at the Applicant's request.⁶ CREED LA's supports the request for a continuance, and urges the City to comply with CEQA by preparing an EIR for the Project before

¹ IS/MND, pp. 3, 21.

² IS/MND, p. 3.

³ Pub. Resources Code, §§ 21000 et seq.; 14 Cal. Code Regs. §§ 15000 et seq. ("CEQA Guidelines").

⁴ Exhibit A, Norm Marshall, *Comments on the Initial Study/Mitigated Negative Declaration for the Rexford Industrial Project* (hereinafter "Marshall Comments").

⁵ Exhibit B, Dr. James Clark, *Comments on the Initial Study/Mitigated Negative Declaration for the Rexford Industrial Project* (hereinafter "Clark Comments").

⁶ Staff Report, p. 1.

rescheduling the Planning Commission hearing. The City cannot approve the Project until the errors in the IS/MND are remedied by preparing an EIR which fully discloses and mitigates the Project's potentially significant impacts. We reserve the right to supplement these comments at later proceedings and hearings related to the Project.⁷

I. STATEMENT OF INTEREST

CREED LA is an unincorporated association of individuals and labor organizations formed to ensure that the construction of major urban projects in the Los Angeles region proceeds in a manner that minimizes public and worker health and safety risks, avoids or mitigates environmental and public service impacts, and fosters long-term sustainable construction and development opportunities. The coalition includes Norwalk residents Alejandro Lopez, Wilfredo Gutierrez, and Phillip Templeton, **the Sheet Metal Workers Local 105, International Brotherhood of Electrical Workers Local 11, Southern California Pipe Trades District Council 16, and District Council of Iron Workers of the State of California**, along with their members, their families, and other individuals who live and work in the City of Norwalk and Los Angeles County.

Individual members of CREED LA live, work, recreate, and raise their families in the City of Norwalk and surrounding communities. Accordingly, they would be directly affected by the Project's environmental and health and safety impacts. Individual members may also work on the Project itself. They will be first in line to be exposed to any health and safety hazards that exist onsite.

CREED LA has an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for its members. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for business and industry to expand in the region, and by making the area less desirable for new businesses and new residents. Indeed, continued environmental degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduce future employment opportunities.

CREED LA supports the development of commercial, mixed use, and medical office projects where properly analyzed and carefully planned to minimize impacts on public health, climate change, and the environment. These projects

⁷ Gov. Code § 65009(b); PRC § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield* ("Bakersfield") (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.
7612-006j

should avoid adverse impacts to air quality, public health, climate change, noise, and traffic, and must incorporate all feasible mitigation to ensure that any remaining adverse impacts are reduced to the maximum extent feasible. Only by maintaining the highest standards can commercial development truly be sustainable.

II. LEGAL BACKGROUND

CEQA is designed to inform decision-makers and the public about the potential, significant environmental effects of a project.⁸ “CEQA’s fundamental goal [is] fostering informed decision-making.”⁹

The EIR is the very heart of CEQA because it acts as an “environmental ‘alarm bell’ whose purpose is to alert the public and its responsible officials to environmental changes before they have reached the ecological points of no return.”¹⁰ The EIR aids an agency in identifying, analyzing, disclosing, and, to the extent possible, avoiding a project’s significant environmental effects through implementing feasible mitigation measures.¹¹ The EIR also serves “to demonstrate to an apprehensive citizenry that the Agency has analyzed and considered the ecological implications of its action.”¹² Thus, an EIR “protects not only the environment but also informed self-government.”¹³

In limited circumstances, an agency may avoid preparing an EIR. However, because “[t]he adoption of a negative declaration...has a terminal effect on the environmental review process” by allowing the agency to dispense with the duty to prepare an EIR, negative declarations are allowed only in cases that satisfy the fair argument standard.¹⁴

⁸ CEQA Guidelines § 15002.

⁹ *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 406; Public Resources Code § 21100.

¹⁰ *Dunn-Edwards v. Bay Area Air Quality Management Dist.* (1992) 9 Cal.App.4th 644, 652; *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1220.

¹¹ Pub. Resources Code § 21002.1(a); CEQA Guidelines § 15002(a), (f).

¹² *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 86.

¹³ *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.

¹⁴ *Citizens of Lake Murray v. San Diego* (1989) 129 Cal.App.3d 436, 440; Pub. Res. Code §§ 21100, 21064.

The “fair argument” standard is an exceptionally “low threshold” favoring environmental review in an EIR rather than a negative declaration.¹⁵ Under the fair argument standard, a lead agency “shall” prepare an EIR whenever substantial evidence in the whole record before the agency supports a fair argument that a project may have a significant effect on the environment.¹⁶ The phrase “significant effect on the environment” is defined as “a substantial, or potentially substantial, adverse change in the environment.”¹⁷ “Substantial evidence” required to support a fair argument is defined as “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.”¹⁸ As a matter of law, substantial evidence includes both expert and lay opinion.¹⁹

Accordingly, a mitigated negative declaration may be prepared only when, after preparing an initial study, a lead agency determines that a project may have a significant effect on the environment, but:

- (1) Revisions in the project plans or proposals made by, or agreed to by, the applicant before the proposed negative declaration and initial study are released for public review ***would avoid the effects or mitigate the effects to a point where clearly no significant effect on the environment would***, and (2) there is ***no substantial evidence*** in light of the whole record before the public agency that the project, as revised, ***may*** have a significant effect on the environment.²⁰

With respect to this Project, the IS/MND fails to satisfy the basic purposes of CEQA. The IS/MND fails to adequately disclose, investigate, and analyze the Project’s potentially significant impacts during construction and operation, and fails to provide substantial evidence to support its conclusions that impacts will be

¹⁵ *Consolidated Irrigation District v. City of Selma* (2012) 204 Cal.App.4th 187, 207; *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 928.

¹⁶ Pub. Resources Code §§21080(d), 21082.2(d); 14 Cal. Code Reg. §§ 15002(k)(3), 15064(f)(1), (h)(1); *Laurel*

Heights Improvement Assn. v. Regents of the Univ. of Cal. (1993) 6 Cal.4th 1112, 1123; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75, 82; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150-151; *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1601-1602.

¹⁷ Pub. Resources Code, § 21068.

¹⁸ CEQA Guidelines § 15384(a).

¹⁹ Pub. Resources Code, § 21080, subd. (e)(1); CEQA Guidelines, § 15064, subd. (f)(5).

²⁰ Pub. Resources Code § 21064.5 (emphasis added).

mitigated to a less than significant level.²¹ Because substantial evidence shows that the Project may result in potentially significant impacts, a fair argument can be made that the Project may cause significant impacts requiring the preparation of an EIR.

III. THE PROJECT DESCRIPTION IS INADEQUATE

The IS/MND does not meet CEQA's requirements because it fails to include an accurate and complete Project description, rendering the entire analysis inadequate. California courts have repeatedly held that "an accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR."²² CEQA requires that a project be described with enough particularity that its impacts can be assessed.²³ Without a complete project description, the environmental analysis under CEQA is impermissibly limited, thus minimizing the project's impacts and undermining meaningful public review.²⁴ Accordingly, a lead agency may not hide behind its failure to obtain a complete and accurate project description.²⁵

CEQA Guidelines section 15378 defines "project" to mean "the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment."²⁶ "The term "project" refers to the activity which is being approved and which may be subject to several discretionary approvals by governmental agencies. The term project does not mean each separate governmental approval."²⁷ Courts have explained that a complete description of a project must "address not only the immediate environmental consequences of going forward with the project, but also all "*reasonably foreseeable* consequence[s] of the initial project."²⁸ "If a[n]...EIR...does not adequately apprise all interested parties of the true scope of

²¹ Pub. Res. Code § 21064.5.

²² *Stopthemillenniumhollywood.com v. City of Los Angeles* (2019) 39 Cal.App.5th 1, 17; *Communities for a Better Environment v. City of Richmond* ("CBE v. Richmond") (2010) 184 Cal.App.4th 70, 85–89; *County of Inyo v. City of Los Angeles* (3d Dist. 1977) 71 Cal.App.3d 185, 193.

²³ CEQA Guidelines § 15124; *see, Laurel Heights I, supra*, 47 Cal.3d 376, 192-193.

²⁴ *Id.*

²⁵ *Sundstrom v. County of Mendocino* ("Sundstrom") (1988) 202 Cal.App.3d 296, 311.

²⁶ CEQA Guidelines § 15378.

²⁷ *Id.*

²⁸ *Laurel Heights I*, 47 Cal. 3d 376, 398 (emphasis added); *see also Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal. 4th 412, 449-50.

the project for intelligent weighing of the environmental consequences of the project, informed decision-making cannot occur under CEQA, and the final EIR is inadequate as a matter of law.”²⁹

A. The Project Description Is Unstable and Inconsistent

The IS/MND does not comply with CEQA because it fails to include an accurate, complete, and stable description of the Project’s size and use allocations, rendering the IS/MND’s impact analysis inaccurate. By varying the Project description from section to section, the IS/MND’s impact analysis contains inconsistent (and in some cases, substantially underestimated) measurements of the severity of the Project’s impacts.

Here, the IS/MND’s Project Description states that “the proposed Project is requesting approval...to construct an approximately 138,972 SF industrial warehouse building.”³⁰ This total includes 132,227 SF of warehouse space, 3,715 SF of ground floor office space, and 3,030 SF of mezzanine space.³¹ However, the IS/MND’s trip generation analysis assumes 115,921 square feet of warehouse space and 28,902 square feet of light industrial space for a total of 144,901 square feet.³² This is 5,929 square feet larger than the warehouse described in the Project Description section. This violates CEQA, as the project description must be consistent throughout the IS/MND. If the project description is inconsistent, these shifts prevent the CEQA document from serving as a vehicle for intelligent public participation in the decision-making process.³³ An unstable or shifting project description is also an indicator that an IS/MND is minimizing the project’s impacts by not discussing reasonably foreseeable aspects of the project.³⁴

Interestingly, the IS/MND acknowledges (but does not correct) these discrepancies by stating that the trip generation analysis was “modeled on a previous site plan with a larger building square footage.”³⁵ This is not permitted by CEQA. The IS/MND must “examine the changes to existing environmental conditions that would occur in the affected area if the proposed project were

²⁹ *Riverwatch v. Olivenhain Municipal Water Dist.* (2009) 170 Cal. App. 4th 1186, 1201.

³⁰ IS/MND, p. 21.

³¹ IS/MND, p. 21.

³² Marshall Comments, p. 5.

³³ *County of Inyo v. City of Los Angeles* (1977) 71 Cal.3d 185, 197.

³⁴ *See, e.g., San Joaquin Raptor Rescue Ctr. v. County of Merced* (2007) 149 Cal.App.4th 645, 655; *City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1450.

³⁵ IS/MND, p. 109.

implemented.”³⁶ Using a warehouse with larger square feet in its analysis of trip generation, but not for other associated impacts from air emissions, noise, and GHGs, for example, the IS/MND does not accurately quantify the actual changes in environmental and public impacts expected to result from the Project, impermissibly skewing the analysis in violation of CEQA. As Mr. Marshall explains, using the number from the previous site plan is inappropriate because it fails to accurately assess the Project’s actual impacts.”³⁷

Accordingly, the City must prepare an EIR that includes analysis properly based on the IS/MND’s project description.

B. The IS/MND Fails to Analyze Reasonably Foreseeable Warehouse Uses

The IS/MND explains that the Project is proposed as a speculative warehouse without specific end uses or tenants.³⁸ Yet the IS/MND fails to describe or analyze the Project’s reasonably foreseeable end uses, in violation of CEQA. In the absence of more specific information or restrictions on the types of warehouse uses that will occur after Project buildout, the City has a duty to analyze the impacts of *all* reasonably foreseeable uses of the Project site.³⁹ Instead, the IS/MND limits its analysis to low-intensity categories of warehouse use, thereby omitting an analysis of impacts from common warehouse uses that would result in more severe air quality, transportation, energy, and noise impacts.

In order to determine the trips generated by the proposed Project, the IS/MND utilizes statistics published in the Institute of Transportation Engineers (“ITE”) Trip Generation Manual for the proposed Project’s land uses.⁴⁰ The IS/MND derived the daily trip generation rate for this Project by applying two different trip generation rates: warehousing and general light industrial.⁴¹ Warehousing is one of the lowest trip generation rates among several trip generation rates available for warehouses.⁴² Mr. Marshall explains that because this Project is proposed as a speculative warehouse, actual trip generation could be significantly higher than

³⁶ CEQA Guidelines § 15126.2(a); *San Joaquin Raptor Rescue Ctr. v. County of Merced* (2007) 149 CA4th 645.

³⁷ Marshall Comments, p. 7.

³⁸ IS/MND, p. 21.

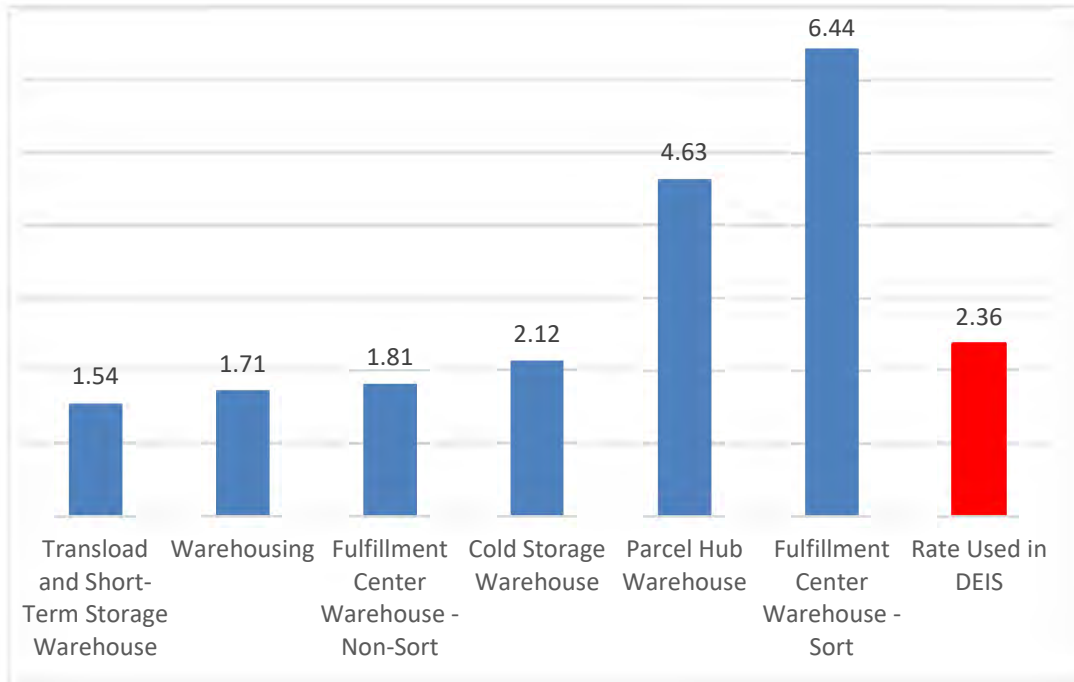
³⁹ *Sundstrom*, 202 Cal.App.3d 296, 311.

⁴⁰ IS/MND, p. 111.

⁴¹ IS/MND, p. 111; Marshall Comments, p. 5.

⁴² Marshall Comments, p. 6.

assumed in the IS/MND.⁴³ Because of this, in the absence of definitive information about the Project’s future tenants and end uses, Mr. Marshall recommends a higher trip generation rate be applied for a conservative traffic analysis.⁴⁴ The figure below shows other warehousing land use codes and compares trips generated by each land use.



Furthermore, the IS/MND lacks evidence to support its claim that “no more than 20 percent of the total building square footage (27,793 SF) would be used for cold storage.”⁴⁵ There are no mitigation measures restricting cold storage (refrigerated) uses at the Project site. Courts have held in situations such as this that “the identity of a tenant is irrelevant to CEQA review.”⁴⁶ In *Maintain Our Desert Environment v. Town of Apple Valley*, petitioners argued that an EIR should disclose the identity of the expected end user and evaluate that end user’s specific environmental impacts. The court explained that an EIR does not generally need to disclose the specific end user of a project because “land use entitlements such as conditional use permits and development approvals run with the land and do not

⁴³ Marshall Comments, p. 7.

⁴⁴ Marshall Comments, p. 7.

⁴⁵ IS/MND, p. 21.

⁴⁶ *Maintain Our Desert Environment v. Town of Apple Valley* (2004) 124 Cal.App.4th 430, 443–449) (cited by *Am. Canyon Cmty. United for Responsible Growth v. City of Am. Canyon* (2006) 145 Cal. App. 4th 1062, 1074).

belong to the permittee.... had [the developer] developed the Project and then held it out for sale to any interested buyer, no additional CEQA review would have been necessary for the new owner so long as the use was consistent with that that had already been approved.”⁴⁷ Rather, “CEQA is concerned solely with the potential environmental impacts of a project.”⁴⁸

Here, the Project analyzed in the IS/MND is not a specific type of warehouse project – it is a Site Plan Review and Precise Development Plan to develop a *speculative* warehouse, which could be used for many potential warehousing end uses. As such, without binding mitigation measures, the IS/MND’s claim that no more than 20% of the buildings total square footage would be used for cold storage improperly limits the IS/MND’s analysis to a subset of end users expected for the Project, an approach that was disapproved of in *Maintain Our Desert*. As explained in *Maintain Our Desert*, even if a particular use is unexpected, it must be analyzed if it is a use that is authorized by the entitlements and permits that are the subject of the IS/MND. Because the IS/MND fails to analyze the full range of uses that would be authorized under these entitlements, the IS/MND’s project description is inadequate.

The defects in the Project Description underestimate the Project’s true impacts, rendering the Project’s impact analysis inaccurate. An EIR must be prepared that either (1) analyzes the Project’s reasonably foreseeable uses by using higher trip generation rates or (2) including a binding mitigation measure or condition of approval ensuring that the property cannot be used for certain uses.⁴⁹

IV. THE IS/MND’S DESCRIPTION OF THE ENVIRONMENTAL SETTING IS INADEQUATE

The IS/MND fails to adequately describe the environmental setting against which the Project’s environmental impacts are to be measured for several critical aspects of the Project. This contravenes the fundamental purpose of the environmental review process, which is to determine whether there is a potentially

⁴⁷ *Maintain Our Desert Environment v. Town of Apple Valley*, *supra*, 124 Cal.App.4th at 444.

⁴⁸ *Id.* 445.

⁴⁹ *Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act (Updated September 2022)*, pg. 9, available at <https://oag.ca.gov/system/files/media/warehouse-best-practices.pdf> (“Unless the owner of the facility records a covenant on the title of the underlying property ensuring that the property cannot be used to provide refrigerated warehouse space, constructing electric plugs for electric transport refrigeration units at every dock door and requiring truck operators with transport refrigeration units to use the electric plugs when at loading docks.”).

substantial, adverse change compared to the existing setting.⁵⁰ CEQA requires that a lead agency include a description of the physical environmental conditions, or “baseline,” in the vicinity of the project as they exist at the time environmental review commences.⁵¹ As the courts have repeatedly held, the impacts of a project must be measured against the “real conditions on the ground.”⁵² The description of the environmental setting constitutes the “baseline” physical conditions against which the lead agency assesses the significance of a project’s impacts.⁵³ An environmental setting is required “to give the public and decision makers the most accurate and understandable picture practically possible of the project’s likely near-term and long-term impacts.”⁵⁴

A. The IS/MND Fails to Accurately Describe the Existing Environmental Setting Related to Trip Generation

The IS/MND fails to adequately describe the existing uses on the Project site, rendering the Project’s trip generation analysis inaccurate.

The Project site is currently developed with two multi-tenant industrial warehouse buildings totaling 89,870 SF, which are currently occupied by RV Storage Depot, an RV storage company.⁵⁵ The IS/MND estimates that the existing use generates 154 daily trips.⁵⁶ However, Mr. Marshall’s comments describe several problems with this estimate.⁵⁷

For example, the IS/MND incorrectly states that the existing use operate 24 hours a day.⁵⁸ The IS/MND also improperly uses the ITE warehousing trip generation rate, category 150, to estimate the number of daily trips the existing use generates.⁵⁹ As Mr. Marshall explains, the existing use at the Project site does not

⁵⁰ CEQA Guidelines § 15063(d).

⁵¹ CEQA Guidelines § 15125(a); *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal. 4th 310, 321.

⁵² *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal. 4th 310, 321.; *Save Our Peninsula Com. V. Monterey County Bd. Of Supervisors* (2001) 87 Cal.App.4th 99, 121-22; *City of Carmel-by-the-Sea v. Bd. Of Supervisors of Monterey County* (986) 183 Cal.App.3d 229, 246.

⁵³ CEQA Guidelines § 15125(a); *Communities for a Better Environment v. South Coast Air Quality Management Dist.*, 48 Cal. 4th at 321.

⁵⁴ CEQA Guidelines § 15125(a).

⁵⁵ IS/MND, p. 3.

⁵⁶ Marshall Comments, p. 2.

⁵⁷ Marshall Comments, pp. 2-5.

⁵⁸ Marshall Comments, p. 5.

⁵⁹ Marshall Comments, p. 2.

store materials, and therefore does not fall under the list of uses defined for the warehousing category.⁶⁰ In fact, Mr. Marshall comments that the current use of the Project as a self-storage facility does not match any of the categories in the *ITE Trip Generation Manual* that matches the existing use at the Project site.⁶¹ Because of this, Mr. Marshall comments that the correct way of assessing the Project's trip generation would be to count traffic at the Project site.⁶² Furthermore, the IS/MND incorrectly states that the existing use operates 24 hours a day.⁶³

By failing to accurately describe the existing conditions at the Project site, the IS/MND's impacts analysis is unsupported. An EIR must be prepared that adequately describes the existing uses on the Project site.

B. The IS/MND Fails to Accurately Establish the Project's Baseline Emissions of Diesel Particulate Matter

The IS/MND fails to accurately establish the Project's baseline emissions of diesel particulate matter ("DPM"), a toxic air contaminant ("TAC"), during the Project's construction phase. Here, the City calculated an emission rate for DPM in 2025 of .6888 pounds per day (lbs/day).⁶⁴ Dr. Clark comments that this rate is severely underestimated.⁶⁵ By using the same input values from the City's CalEEMod analysis, Dr. Clark calculates a daily emission rate of DPM in 2025 that is .90 lbs/day.⁶⁶ This is 31% higher than the City's emission rate for DPM.⁶⁷ As Dr. Clark explains, this discrepancy results from the City's failure to include the demolition phase emissions in the Annual DPM Emissions.⁶⁸

As a result of this incorrect baseline calculation, Dr. Clark explains that the City significantly underreports the Project's mitigated emissions of DPM.⁶⁹ The City calculated an emission rate for DPM in 2025 of .002573 lbs/day and a rate of .004477 lbs/day in 2026.⁷⁰ By using the same input values from the City's CalEEMod analysis, Dr. Clark calculates a daily emissions rate of DPM in 2025

⁶⁰ Marshall Comments, p. 2.

⁶¹ Marshall Comments, p. 4.

⁶² Marshall Comments, p. 4.

⁶³ Marshall Comments, p. 5.

⁶⁴ Clark Comments, p. 7.

⁶⁵ Clark Comments, p. 7.

⁶⁶ Clark Comments, p. 7.

⁶⁷ Clark Comments, p. 7.

⁶⁸ Clark Comments, p. 7.

⁶⁹ Clark Comments, p. 8.

⁷⁰ Clark Comments, p. 8.

that is .118 lbs/day.⁷¹ This is 96% higher than the value used by the City.⁷² Dr. Clark also calculated a daily emission rate of DPM in 2026 that is .098 lbs/day.⁷³ This is 136% higher than the value used by the City.⁷⁴ Dr. Clark's comments provide substantial evidence supporting a fair argument that the Project's DPM emissions are substantially higher than disclosed in the IS/MND and potentially significant.

These errors also impact the City's air dispersion model and HRA for the Project by underestimating the potential health impacts that would result from the Project's DPM emissions.⁷⁵ CEQA requires that these impacts be disclosed to the public. Therefore, the City must correct these errors and disclose the Project's potential health impacts from DPM emissions in an EIR.

V. AN EIR IS REQUIRED BECAUSE THERE IS SUBSTANTIAL EVIDENCE SUPPORTING A FAIR ARGUMENT THAT THE PROJECT MAY HAVE SIGNIFICANT UNMITIGATED IMPACTS

An IS/MND is improper, and an EIR must be prepared, whenever it can be fairly argued on the basis of substantial evidence that the project may have a significant environmental impact.⁷⁶ "[S]ignificant effect on the environment" is defined as "a substantial, or potentially substantial, adverse change in the environment."⁷⁷ An effect on the environment need not be "momentous" to meet the CEQA test for significance; it is enough that the impacts are "not trivial."⁷⁸ Substantial evidence, for purposes of the fair argument standard, includes "fact, a reasonable assumption predicated upon fact, or **expert opinion** supported by fact."⁷⁹

Moreover, the failure to provide information required by CEQA is a failure to proceed in the manner required by CEQA.⁸⁰ Challenges to an agency's failure to proceed in the manner required by CEQA, such as the failure to address a subject

⁷¹ Clark Comments, p. 8.

⁷² Clark Comments, p. 8.

⁷³ Clark Comments, p. 8.

⁷⁴ Clark Comments, p. 8.

⁷⁵ Clark Comments, p. 7.

⁷⁶ Pub. Res. Code § 21151; CEQA Guidelines § 15064(f)(1); *Citizens for Responsible Equitable Env't'l Dev. V. City of Chula Vista* (2011) 197 Cal.App.4th 327, 330-31; *Communities for a Better Env't v. South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 319.

⁷⁷ Pub. Res. Code § 21068; CEQA Guidelines § 15382.

⁷⁸ *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 83.

⁷⁹ Pub. Res. Code § 21080(e)(1) (emphasis added).

⁸⁰ *Sierra Club v. State Bd. of Forestry*(1994) 7 Cal.4th 1215, 1236.

required to be covered in an IS/MND or to disclose information about a project's environmental effects or alternatives, are subject to a less deferential standard than challenges to an agency's factual conclusions.⁸¹ Even when the substantial evidence standard is applicable to agency decisions to certify an IS/MND and approve a project, reviewing courts will not "uncritically rely on every study or analysis presented by a project proponent in support of its position. A clearly inadequate or unsupported study is entitled to no judicial deference."⁸²

A. The IS/MND Fails to Adequately Analyze the Project's Air Quality Impacts

The IS/MND's analysis of the Project's air quality impacts are inadequate because it fails to provide substantial evidence that Project emissions will be mitigated to a less than significant level. The IS/MND also fails to adequately analyze the Project's cancer risk exposure and the cumulative air quality emissions.

1. The IS/MND Fails to Provide Substantial Evidence The Project Emissions Will Be Mitigated to a Less Than Significant Level

The IS/MND lacks substantial evidence to support its conclusion that the Project's impacts on air quality will be less than significant.⁸³

The IS/MND concludes, without support, that the incorporation of mitigation measure AQ-1 ("MM AQ-1") would reduce the emissions of DPM from the Project's construction phase to a level below the SCAQMD's threshold of significance for carcinogens.⁸⁴ MM AQ-1 requires Tier 4 Final or superior equipment for engines exceeding 50 horsepower.⁸⁵ CEQA requires an agency to set forth the bases for its findings on a project's environmental impacts; a bare conclusion without an explanation of its factual and analytical basis is not a sufficient analysis of an environmental impact.⁸⁶

⁸¹ *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.

⁸² *Berkeley Keep Jets Over the Bay Committee v. Board of Port Com'rs* (2001) 91 Cal.App.4th 1344, 1355 [internal citations omitted].

⁸³ IS/MND, p. 41.

⁸⁴ Clark Comments, p. 5.

⁸⁵ Clark Comments, p. 5.

⁸⁶ *Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.* (1988) 47 C3d 376, 404; *Sierra Watch v. County of Placer* (2021) 69 CA5th 86, 101; *City of Maywood v. Los Angeles Unified Sch. Dist.* (2012) 208 CA4th 362, 393.

Here, as Dr. Clark explains, the analysis of the Project's construction phase in the IS/MND fails to include the use of Tier 4 final technology.⁸⁷ Additionally, none of the files included in the air quality analysis include the use of Tier 4 final technology.⁸⁸ Without this information, there is no evidence to support the IS/MND's assertion that the DPM emissions from the Project's construction phase will be reduced to a less than significant level and not exceed the SCAQMD's threshold of significance.⁸⁹

Furthermore, the Project relies on inconsistent data to support its air quality significance determination.⁹⁰ Dr. Clark's comments demonstrate that the City's air dispersion model is not internally consistent with the air quality analysis of sources of DPM onsite.⁹¹ First, the stationary sources listed in the HRA's input table for the Operational phase of the Project do not match the sources listed in the air quality analysis.⁹² For the air quality analysis, the CalEEMod model assumed only one stationary source of DPM emissions on site – the emergency back-up generator.⁹³ The HRA on the other hand, includes two stationary sources in its source input file – a fire pump along with the emergency back-up generator.⁹⁴ Dr. Clark explains that the City's omission of fire pump emissions in the CalEEMod analysis results in an underestimation of the Project's air quality impacts.⁹⁵ Therefore, the City must correct these errors, reanalyze the Project's air quality impacts, and present the accurate results in an EIR.

2. The IS/MND Fails to Adequately Analyze the Project's Cancer Risk Exposure

The City fails to disclose the Project's actual cancer risk exposure.⁹⁶ Dr. Clark's comments demonstrate that the assumptions utilized in the City's HRA⁹⁷ do not match the input values listed in the text of the HRA.⁹⁸ Specifically, the HRA improperly uses FAHs lower than what is listed in Table 1 of the HRA.⁹⁹ Dr. Clark

⁸⁷ Clark Comments, p. 6.

⁸⁸ Clark Comments, p. 6.

⁸⁹ Clark Comments, p. 7.

⁹⁰ Clark Comments, p. 12-13.

⁹¹ Clark Comments, p. 12-13.

⁹² Clark Comments, p. 12.

⁹³ Clark Comments, p. 12.

⁹⁴ Clark Comments, p. 12.

⁹⁵ Clark Comments, p. 13.

⁹⁶ Clark Comments, p. 10.

⁹⁷ IS/MND, Appendix D.1.

⁹⁸ Clark Comments, p. 10.

⁹⁹ Clark Comments, p. 10.

explains that this results in the HRA underestimating the cancer risk by 15%.¹⁰⁰ Dr. Clark's comments provide substantial evidence supporting a fair argument that the IS/MND underestimates health risk and that actual health risk may be significant.

Without full disclosure of the Project's cancer risk, "the general public and its responsible officials cannot make an informed decision on whether to approve the project."¹⁰¹ The City lacks substantial evidence to support the IS/MND's conclusion that health risk would be less than significant. Therefore, the City must correct this error and disclose the Project's actual cancer risk in an EIR.

3. The IS/MND Fails to Adequately Analyze the Significance of the Project's Cumulative Air Quality Emissions

The IS/MND's cumulative air emissions analysis does not comply with CEQA or Attorney General Warehouse Guidance.

A CEQA document must evaluate a cumulative impact if the project's incremental effect combined with the effects of other projects is "cumulatively considerable."¹⁰² This determination is based on an assessment of the project's incremental impacts "viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects."¹⁰³ Proper cumulative impact analysis is vital because "the full environmental impact of a proposed project cannot be gauged in a vacuum. One of the most important environmental lessons that has been learned is that environmental damage often occurs incrementally from a variety of small sources. These sources appear insignificant when considered individually, but assume threatening dimensions when considered collectively with other sources with which they interact."¹⁰⁴

Here, the IS/MND asserts that any projects that result in daily emissions that exceed any SCAQMD thresholds would have both an individually (project-level) and cumulatively significant air quality impact, while emissions that fall below those thresholds are considered less-than-significant.¹⁰⁵ The IS/MND concludes that this Project's construction and operational emissions would be less-than-significant

¹⁰⁰ Clark Comments, p. 12.

¹⁰¹ *Santa Clarita Org. v. County of Los Angeles* (2003) 106 Cal.App.4th 715, 724.

¹⁰² CEQA Guidelines § 15130(a).

¹⁰³ CEQA Guidelines §§ 15065(a)(3), 15355(b).

¹⁰⁴ *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 114.

¹⁰⁵ IS/MND, p. 124.

because they would not exceed the project-level thresholds.¹⁰⁶ This approach is inadequate because it fails to analyze the Project’s cumulative effects with the existing and proposed warehouses surrounding the Project site.

The IS/MND’s “drop in the bucket” approach has been rejected by the courts for failing to comply with CEQA’s requirement that a project mitigate impacts that are “cumulatively considerable.”¹⁰⁷ A leading case on this issue is *Kings County Farm Bureau v. City of Hanford*.¹⁰⁸ In *Kings County*, the city prepared an EIR for a 26.4-megawatt coal-fired cogeneration plant. Notwithstanding the fact that the EIR found that the project region was out of attainment for PM₁₀ and ozone, the city failed to incorporate mitigation for the project’s cumulative air quality impacts from project emissions because it concluded that the Project would contribute “less than one percent of area emissions for all criteria pollutants.”¹⁰⁹ The city reasoned that, because the project’s air emissions were small in ratio to existing air quality problems, that this necessarily rendered the project’s “incremental contribution” minimal under CEQA. The court rejected this approach, finding it “contrary to the intent of CEQA.” The court stated:

We find the analysis used in the EIR and urged by GWF avoids analyzing the severity of the problem and allows the approval of projects which, when taken in isolation, appear insignificant, but when viewed together, appear startling. Under GWF's "ratio" theory, the greater the over-all problem, the less significance a project has in a cumulative impacts analysis. We conclude the standard for a cumulative impacts analysis is defined by the use of the term "collectively significant" in Guidelines section 15355 and the analysis must assess the collective or combined effect of energy development. The EIR improperly focused upon the individual project's relative effects and omitted facts relevant to an analysis of the collective effect this and other sources will have upon air quality.¹¹⁰

¹⁰⁶ IS/MND, p. 124.

¹⁰⁷ Pub. Res. Code § 21083(b)(2); CEQA Guidelines § 15130; *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 719-21.

¹⁰⁸ *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal. App. 3d 692 (“Kings County”); see also, *Friends of Oroville v. City of Oroville* (2013) 219 Cal. App. 4th 832, 841-42.

¹⁰⁹ *Kings County*, *supra*, at 719.

¹¹⁰ *Id.* at 721; see also *People of the State of California v. City of Fontana*, Case No. CIVSB2121829, Petition for Writ of Mandate, available at https://climatecasechart.com/wp-content/uploads/case-documents/2021/20210723_docket-CIVSB2121829_petition-for-writ-of-mandate.pdf (“The MND’s cumulative air quality impact analysis does not account for—or even acknowledge—the multitude of 7612-006j

The IS/MND's analysis is similarly flawed because it improperly focuses on the individual project's relative effects and omits facts relevant to an analysis of the collective effect this and other sources will have upon air quality. Dr. Clark identifies 19 existing warehouse projects within 10 kilometers of the Project, covering 1,390,130 square feet.¹¹¹ Data from the Redford Conservancy at Pitzer College and Radical Research LLC shows that the existing projects generate 1,000 daily truck trips, producing 1.4 pounds (lbs) of DPM per day and 156 lbs of oxides of nitrogen (NO_x) per day.¹¹² Dr. Clark calculates that this would contribute .2 tons of DPM, doubling the amount of DPM being released in the community.¹¹³ This constitutes a significant cumulative impact that is not disclosed in the IS/MND, in violation of the principles articulated in *Kings County*.

The IS/MND attempts to argue that pursuant to CEQA Guidelines Section 15130(d)¹¹⁴, additional cumulative impacts analysis is not required because the City of Norwalk General Plan EIR thoroughly analyzed "areawide cumulative impacts related to industrial development in the City."¹¹⁵ However, the Proposed Project analyzed in the City's General Plan EIR included "only the unincorporated area of Los Angeles County."¹¹⁶ Here, the proposed Project is located within Norwalk, CA, which is an incorporated area of Los Angeles County.¹¹⁷ Therefore, the Norwalk General Plan EIR did not analyze the areawide cumulative impacts of the area that encompasses the proposed Project site and must conduct a separate cumulative impacts analysis for the Project as required by CEQA.

other warehouses near the Project. Rather than consider the environmental setting within which the Project will be situated, the MND simply states that the Project will not result in a cumulatively considerable increase in emissions because the Project's individual air quality impacts will be less than significant. The MND even applies this reasoning to its analysis of health impacts from localized emissions, despite making no attempt to determine or disclose the severity of the existing health impacts from localized emissions in the community")

¹¹¹ Clark Comments, p. 9.

¹¹² Clark Comments, p. 9.

¹¹³ Clark Comments, p. 9.

¹¹⁴ CEQA Guidelines § 15130(d) ("No further cumulative impacts analysis is required when a project is consistent with a general...plan where the lead agency determines that the regional or areawide cumulative impacts of the proposed project have already been adequately addressed.").

¹¹⁵ IS/MND, p. 123-124.

¹¹⁶ City of Norwalk General Plan EIR (2014), p. 1-5.

¹¹⁷ Auditor-Controller: Los Angeles County, *Incorporated Areas Cities*, available at: <https://auditor.lacounty.gov/incorporated-areas-cities/>; County of Los Angeles, *Cities within the County of Los Angeles*, available at: https://redistricting.lacounty.gov/wp-content/uploads/2021/01/1043530_09-10CitiesAlpha.pdf.

In addition to violating CEQA, the SCAQMD approach used in the IS/MND also directly conflicts with the recent Attorney General guidance document setting forth best practices for evaluating the environmental impacts of warehouse projects, like this one, under CEQA.¹¹⁸ With respect to cumulative air quality and GHG emissions analysis, the Attorney General’s guidance states that best practices include “[w]hen analyzing cumulative impacts, thoroughly considering the project’s incremental impact in combination with past, present, and reasonably foreseeable future projects, *even if the project’s individual impacts alone do not exceed the applicable significance threshold.*”¹¹⁹

Therefore, the IS/MND’s cumulative air quality impacts analysis fails to comply with CEQA and the Attorney General Warehouse guidance. The City must prepare a revised EIR that properly evaluates and mitigates such impacts.

B. The IS/MND Fails to Adequately Analyze the Project’s Impacts on Vehicle Miles Traveled

The City improperly concludes that a full transportation vehicle miles travelled (“VMT”) analysis does not need to be prepared for the Project.¹²⁰

Section 3.1.2.3 of the Los Angeles County guidelines states that non-retail projects that generate fewer than 110 net daily passenger trips are generally exempt from preparing a full VMT analysis.¹²¹ The IS/MND claims that the Project screens out of a VMT analysis because the Project would only generate 99 net new trips per day.¹²² This calculation is based on the assumption that the existing land use on the Project site generates 112 passenger trips per day.¹²³ However, as discussed more fully above and in Mr. Marshall’s comments, the IS/MND overestimates the trip generation from the existing land uses on the Project site.¹²⁴ Mr. Marshall explains that if a traffic count was conducted at the existing land use, the real trip generation rate would likely be much lower than assumed in the

¹¹⁸ *Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act* (Updated September 2022), available at <https://oag.ca.gov/system/files/media/warehouse-best-practices.pdf> .

¹¹⁹ *Id.* at 7 (emphasis added).

¹²⁰ IS/MND, p. 110.

¹²¹ IS/MND, p. 110.

¹²² IS/MND, p. 110.

¹²³ Marshall Comments, p. 7.

¹²⁴ Marshall Comments, p. 7.

IS/MND, and the proposed Project would generate more than the threshold of 110 net new trips day, exceeding the VMT threshold.¹²⁵ Thus, a full VMT analysis is required.¹²⁶

The City should prepare an EIR that analyzes the Project's VMT impacts and mitigates for any significant impacts.

C. The IS/MND Fails to Adequately Analyze the Project's Potentially Significant Energy Impacts

The IS/MND analysis of the Project's energy impacts is inadequate because it fails to analyze energy conservation measures that might be available or appropriate for the Project, in violation of CEQA.

CEQA requires an environmental document to discuss mitigation measures for significant environmental impacts, including "measures to reduce the wasteful, inefficient, and unnecessary consumption of energy."¹²⁷ The CEQA Guidelines require discussion of energy conservation measures when relevant, and provide the following examples in Appendix F:

- Potential measures to reduce wasteful, inefficient and unnecessary consumption of energy during construction, operation, maintenance and/or removal. The discussion should explain why certain measures were incorporated in the project and why other measures were dismissed.
- The potential of siting, orientation, and design to minimize energy consumption, including transportation energy, increase water conservation and reduce solid waste.
- The potential for reducing peak energy demand.
- Alternate fuels (particularly renewable ones) or energy systems.
- Energy conservation which could result from recycling efforts.¹²⁸

Courts have rejected CEQA documents that fail to include adequate analysis investigation into energy conservation measures that might be available or appropriate for a project.¹²⁹ In *California Clean Energy Commission v. City of*

¹²⁵ Marshall Comments, p. 7.

¹²⁶ Marshall Comments, p. 7.

¹²⁷ Pub. Resources Code § 21100(b)(3); *Tracy First v. City of Tracy* (2009) 177 Cal.App.4th 912, 930.

¹²⁸ CEQA Guidelines § 15126.4(a)(1)(C) (stating "Energy conservation measures, as well as other appropriate mitigation measures, shall be discussed when relevant.").

¹²⁹ *Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 CA4th 256; *Spring Valley Lake Ass'n v. City of Victorville* (2016) 248 CA4th 91.

Woodland (“*CCEC*”), the Court of Appeal reviewed an EIR for a shopping center on undeveloped agricultural land.¹³⁰ Similar to the IS/MND here, the EIR in *CCEC* concluded that, due to the proposed project’s compliance with Title 24 guidelines and regulations, the project would be expected to have a less-than-significant impact regarding the wasteful, inefficient, or unnecessary consumption of energy.¹³¹ But the lead agency’s EIR did not include discussion regarding the different renewable energy options that might be available or appropriate for the project.¹³² The Court held “the City’s EIRs failed to comply with the requirements of Appendix F to the Guidelines by not discussing or analyzing renewable energy options.”¹³³ The lead agency argued that compliance with the Building Code sufficed to address energy impact concerns for the project.¹³⁴ But the Court explained:

Although the Building Code addresses energy savings for components of a new commercial construction, it does not address many of the considerations required under Appendix F of the CEQA Guidelines... These considerations include whether a building should be constructed at all, how large it should be, where it should be located, whether it should incorporate renewable energy resources, or anything else external to the building’s envelope. Here, a requirement that Gateway II comply with the Building Code does not, by itself, constitute an adequate assessment of mitigation measures that can be taken to address the energy impacts during construction and operation of the project.¹³⁵

The Supreme Court of California agreed with the *CCEC* court’s decision in *League to Save Lake Tahoe Mtn. Area Preservation Found. v County of Placer* (“*League to Save Lake Tahoe*”), holding that even projects that find a less-than-significant energy impact must “discuss whether any renewable energy features could be incorporated into the project.”¹³⁶ In *Save Lake Tahoe*, the Court considered an EIR for a land use specific plan and rezoning to permit residential and commercial development and preserve forest land near Truckee and Lake Tahoe.¹³⁷ The EIR did not consider whether it was feasible to power the project on 100 percent renewable electrical energy or some lesser percentage, nor evaluate strategies for reducing reliance on fossil fuels, increasing reliance on renewable

¹³⁰ *CCEC* (2014) 225 CA4th 173.

¹³¹ *Id.* at 184.

¹³² *Id.* at 213.

¹³³ *Id.* at 213.

¹³⁴ *Id.* at 210, 211.

¹³⁵ *Id.* at 211.

¹³⁶ *League to Save Lake Tahoe* (2022) 75 CA5th 63, 167–68.

¹³⁷ *Id.* at 70.

resources, reducing peak loads, and reducing the impacts of relying on remote generation facilities.¹³⁸ The lead agency reasoned that this analysis was not required because energy impacts would be less than significant.¹³⁹ Citing CEQA Guidelines Section 15126.2, subdivision (b) and the decision in *CCEC*, the Court held that when an EIR analyzes the project's energy use to determine if it creates significant effects, it should discuss whether any renewable energy features could be incorporated into the project.¹⁴⁰ The Court found that the EIR violated CEQA for not discussing whether the project could increase its reliance on renewable energy sources to meet its energy demand.¹⁴¹

Here, the IS/MND concludes that the operational and construction impacts of the Project would be less than significant without quantifying them, based on the assumption that the building would be designed and constructed in accordance with the State's Title 24 guidelines and regulations.¹⁴² The IS/MND states that implementation of Title 24's energy conservation measures will reduce impacts to peak energy usage periods and impacts on statewide and regional energy needs.¹⁴³ However, as the case's above demonstrate, compliance with Title 24 regulations alone does not support a conclusion that energy impacts are less than significant.¹⁴⁴

Similar to *League to Save Lake Tahoe*, the City does not discuss whether any renewable energy features could be incorporated into the Project. For example, the IS/MND failed to consider installing solar facilities, use of alternative fuel sources, or passive energy efficiency measures—beyond the Title 24 mandatory standards—to ensure the Project's energy consumption would not be wasteful, inefficient, or unnecessary. This lack of analysis violates CEQA.

In sum, the IS/MND's energy analysis fails to adequately analyze measures that would reduce the wasteful, inefficient, and unnecessary consumption of energy, and fails to meaningfully address Appendix F's considerations of whether a building should be constructed at all, how large it should be, where it should be located,

¹³⁸ *Id.* at 165-166.

¹³⁹ *Id.* at 166.

¹⁴⁰ *Id.* at 167-168.

¹⁴¹ *Id.* at 168.

¹⁴² IS/MND, pp. 59-60.

¹⁴³ IS/MND, p. 59.

¹⁴⁴ *Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 CA4th 256, 264; *California Clean Energy Comm. v. City of Woodland* (2014) 225 CA4th 173, 208.

whether it should incorporate renewable energy resources, or anything else external to the building's envelope.¹⁴⁵ This analysis must be provided in a revised and recirculated EIR.

D. The Project May Result in Potentially Significant, Unmitigated Public Utilities Impacts

The IS/MND fails to adequately analyze whether the Project meets applicable fire flow requirements. Fire flow refers to the rate of a water supply that is available at surrounding fire hydrants for firefighting purposes.

Under CEQA, a public utilities impact is considered significant if a project would “[r]equire or result in the relocation or construction of new or expanded water, wastewater treatment or storm water drainage, electric power, natural gas, or telecommunications facilities the construction or relocation of which could cause significant environmental effects.”¹⁴⁶

Here, the IS/MND states that “the Project would install 590 linear feet of a 12-inch water line from the street connection in Carmenita Road through the adjacent property to the west of the Project site to the site property line for fire water service.”¹⁴⁷ The IS/MND claims that “[t]he analysis of the construction activities related to the proposed water service line is included as a part of the Project and would not result in any physical environmental effects beyond those identified throughout this [IS/MND].”¹⁴⁸ This conclusion is not supported by substantial evidence because the IS/MND fails to analyze the Project's fire flow requirement or the ability of existing infrastructure to supply adequate fire flow.

The IS/MND also states that the 12-inch water line for fire water service has been approved by the Los Angeles County Fire Department (“LACoFD”)¹⁴⁹ However, the IS/MND fails to provide any evidence of the LACoFD's approval or that this approval involved a finding that the Project will satisfy its fire flow requirements. This information is important because if the 12-inch water line planned for the Project is inadequate to provide the requisite fire flow, it may need to be upsized. These improvements would result in construction-related impacts greater than analyzed in the IS/MND. Additionally, inadequate fire flow would result in increased fire severity, limited firefighting capabilities, increased loss of life and property, and increased risk of fire spread – a significant impact under CEQA.

¹⁴⁵ *Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 CA4th 256, 264.

¹⁴⁶ CEQA Guidelines, Appendix G (“Utilities and Service Systems”).

¹⁴⁷ IS/MND, pp. 89, 115.

¹⁴⁸ IS/MND, p. 115.

¹⁴⁹ IS/MND, p. 89, 105.

Furthermore, Norwalk General Plan Utility Policy 3-3, requires “the provision of adequate fire flow rates in all new development.”¹⁵⁰ Failure to ensure adequate fire flow at the Project site would be inconsistent with the General Plan, which would constitute a significant impact under CEQA.

Without an evaluation of the Project’s fire flow, this Project’s public utility impact remains unanalyzed and potentially significant.

VI. CONCLUSION

The City lacks substantial evidence to find that the Project will have less than significant impacts. Moreover, substantial evidence supports a fair argument that the Project’s impacts may be significant and unmitigated. Due to the IS/MND’s deficiencies, the City cannot conclude that the Project’s impacts have been mitigated to a less than significant level. The IS/MND also fails to contain the basic information and analysis required by CEQA, deficiencies which “cannot be dismissed as harmless or insignificant defects.”¹⁵¹

The CEQA Guidelines require that an EIR be prepared if there is substantial evidence supporting a fair argument that any aspect of a project, either individually or cumulatively, may cause a significant effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial.¹⁵² As discussed in detail above, there is a fair argument based on substantial evidence that the Project would result in significant adverse impacts not identified in the IS/MND. We urge the City to fulfill its responsibilities under CEQA by withdrawing the IS/MND and preparing an EIR to address the issues raised in this preliminary comment letter.

Thank you for your attention to these comments. Please place them in the record of proceedings for the Project.

Sincerely,



Alaura McGuire
Aidan Marshall

ARM:lj1

¹⁵⁰ IS/MND, p. 89.

¹⁵¹ *Bakersfield Citizens for Local Control v. Bakersfield* (“*Bakersfield*”) (2004) 124 Cal. App. 4th 1184, 1220.

¹⁵² CEQA Guidelines § 15063(b)(1).
7612-006j