COMMENT LETTER G

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VIA E-MAIL

April 10, 2025

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RE: Town Center at Moreno Valley Specific Plan Project – Draft Environmental Impact Report (SCH No. 2022040417)

Dear Planning Division,

On behalf of the Western States Regional Council of Carpenters ("**Western States Carpenters**" or "**WSRCC**"), our firm is submitting these comments in connection with the City of Moreno Valley's ("**City**") Draft Environmental Impact Report ("**DEIR**") for the Town Center Project ("**Project**").

According to the DEIR, the Project Site is located on the northwest corner of the intersection of Nason Street and Alessandro Boulevard; south of Cottonwood Avenue, west of Nason Street, and north of Alessandro Boulevard, and comprises Assessor Parcel Numbers 487-470-030 and 487-470-031 "**Project Site**"). The Project proposes construction of a mixed-use development consisting of residential (including affordable housing units), commercial, civic, and open spaces. The Project will require approval of the following: General Plan Amendment, Zone Change from Public Facilities to TCMV Specific Plan, TCMV Specific Plan, Tentative Tract Map, and Certification of a Final Environmental Impact Report. (DEIR, pp. 3-1–3-7.)

The Western States Carpenters is a labor union representing over 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

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

WSRCC 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.

WSRCC incorporates by reference all comments related to the Project or its CEQA review, including the prior Mitigated Negative Declaration and the Environmental Impact Report. 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).

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Moreover, WSRCC 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 by contractors who participate in a Joint Labor-Management Apprenticeship Program approved by the State of California and make a commitment to hiring a local workforce.

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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]

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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

[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.

> communities and their vehicle trips would be shorter. Benefits would include potential reductions in both vehicle miles traveled and vehicle hours traveled.[3]

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.

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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.

[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

[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.

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.

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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 Occupations Safety and Health Administration. Recently, several construction sites have been identified as sources of community spread of COVID-19.[5]

The Western States Carpenters recommend that the City adopt additional requirements to mitigate public health risks from the Project's construction activities. The Western States Carpenters requests that the City 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 the Western States Carpenters' experience with safe construction site work practices, the Western States Carpenters recommends that the City 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.

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[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.

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

Testing Procedures:

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

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- 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]

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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 City should require that all construction workers undergo COVID-19 Training and Certification before being allowed to conduct construction activities at the Project Site.

The Western States 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

[6] *See also* The Center for Construction Research and Training, North America's Building Trades Unions (April 27 2020) NABTU and CPWR COVIC-19 Standards for U.S Constructions 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.

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.

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III. THE CITY SHOULD EXERCISE ITS AUTHORITY IN NEGOTIATING A DEVELOPMENT AGREEMENT TO OBTAIN ADDITIONAL COMMUNITY BENEFITS, ENVIRONMENTAL MITIGATION, AND PROJECT IMPROVEMENTS

Development agreements are a tool for municipalities to capture and receive community benefits while granting project proponents certainty for project entitlements.[8] The City should exercise its lawful authority to enter into a Development Agreement with the Project applicant to secure additional community benefits (including local hire and apprenticeship requirements to spur local economic development) and additional environmental mitigation for the impacted community as well as project revisions that ameliorate potential environmental impacts consistent with this comment letter.

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IV. THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

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 Regulations ("**CEQA Guidelines**"), § 15002, subd. (a)(1).[9] At its core, its purpose is to "inform the public and its responsible officials of the environmental

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[7] For details concerning the Western States Carpenters' ICRA training program, *see* https://icrahealthcare.com/.

[8] Hanson Hom, Vivian Kahn, and Matt Taecker (2017) *Best Practices for Implementing a Community Benefits Program* California Planning Roundtable, *available at https://cproundtable.org/static/media/uploads/infill/community_benefits_final_07152017.docx.pdf*

[9] 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. 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. Dept. of Fish & Wildlife* (2015) 62 Cal.4th 204, 217.

consequences of their decisions *before* they are made. Thus, the EIR 'protects not only the environment but also informed self-government[.]'" *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564 (internal citation omitted).

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).

CEQA directs public agencies to avoid or reduce environmental damage, when possible, by requiring alternatives or mitigation measures. CEQA Guidelines, § 15002, subds. (a)(2)-(3); see also *Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners of the City of Oakland* (2001) 91 Cal.App.4th 1344, 1354; *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 400. The Environmental Impact Report (EIR) serves to provide public agencies and the public in general with information about the effect that a proposed project is likely to have on the environment and to "identify ways that environmental damage can be avoided or significantly reduced." CEQA Guidelines, § 15002, subd. (a)(2).

A public agency must prepare an EIR whenever substantial evidence supports a "fair argument" that a proposed project "may have a significant effect on the environment." Pub. Res. Code, §§ 21100, 21151; CEQA Guidelines, §§ 15002, subds. (f)(1)-(2), 15063; *No Oil, supra,* 13 Cal.App.3d at p. 75; *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 111-112. If the project has a significant effect on the environment, the agency may approve the project only upon finding that it has "eliminated or substantially lessened all significant effects on the environment where feasible" and that any unavoidable significant effects on the environment are "acceptable due to overriding concerns" specified in Public Resources Code section 21081. See CEQA Guidelines, §§ 15092, subds. (b)(2)(A)-(B).

Essentially, should a lead agency be presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect. CEQA Guidelines, §§ 15064(f)(1)-(2); see *No Oil, supra,* 13 Cal.App.3d at p. 75 (internal citations and quotations omitted). Substantial evidence includes "enough relevant information and reasonable inferences from this

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information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." CEQA Guidelines, § 15384, subd. (a).

The EIR has been described as "an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return." *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm'rs.* (2001) 91 Cal. App. 4th 1344, 1354 ("*Berkeley Jets*"); *County of Inyo v. Yorty* (1973) 32 Cal. App. 3d 795, 810.

The preparation and circulation of an EIR is more than a set of technical hurdles for agencies and developers to overcome. *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). 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. *Id.* 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. *Id.*

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

Further, it is the duty of the lead agency, not the public, to conduct the proper environmental studies. "The agency should not be allowed to hide behind its own failure to gather relevant data." *Sundstrom, supra,* 202 Cal.App.3d at p. 311. "Deficiencies in the record may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences." *Ibid*; see also *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1382 (lack of study enlarges the scope of the fair argument which may be made based on the limited facts in the record).

Thus, refusal to complete recommended studies lowers the already low threshold to establish a fair argument. The court may not exercise its independent judgment on the

omitted material by determining whether the ultimate decision of the lead agency would have been affected had the law been followed. *Environmental Protection Information Center v. Cal. Dept. of Forestry* (2008) 44 Cal.4th 459, 486 (internal citations and quotations omitted). The remedy for this deficiency would be for the trial court to issue a writ of mandate. *Ibid.*

While the courts review an EIR using an 'abuse of discretion' standard, the reviewing court is not to ***uncritically*** rely on every study or analysis presented by a project proponent in support of its position. *Berkeley Keep Jets, supra*, 91 Cal.App.4th at p. 1355 (quoting *Laurel Heights, supra,* 47 Cal.3d at pp. 391, 409 fn. 12) (internal quotations omitted). A clearly inadequate or unsupported study is entitled to no judicial deference. *Ibid.* Drawing this line and determining whether the EIR complies with CEQA's information disclosure requirements presents a question of law subject to independent review by the courts. *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 515; *Madera Oversight Coalition, Inc. v. County of Madera* (2011) 199 Cal.App.4th 48, 102, 131. As the First District Court of Appeal has previously stated, prejudicial abuse of discretion occurs if the failure to include relevant information precludes informed decision-making and informed public participation, thereby thwarting the statutory goals of the EIR process. *Berkeley Keep Jets, supra*, 91 Cal.App.4th at p. 1355 (internal quotations omitted).

Both the review for failure to follow CEQA's procedures and the fair argument test are questions of law, thus, the de novo standard of review applies. *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435. Whether the agency's record contains substantial evidence that would support a fair argument that the project may have a significant effect on the environment is treated as a question of law. *Consolidated Irrigation Dist., supra*, 204 Cal.App.4th at p. 207; Kostka and Zischke, Practice Under the Environmental Quality Act (2017, 2d ed.) at § 6.76.

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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

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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 below, the DEIR fails to substantiate all of its conclusions to allow meaningful public review and comment, provide adequate mitigation measures, and fully assess all pertinent environmental factors. Accordingly, this comment letter discloses significant new information, necessitating revision and recirculation of the DEIR.

G-6 (CONT.)

V. THE DEIR IS INADEQUATE UNDER CEQA AND SHOULD BE REVISED AND RECIRCULATED

A. The DEIR Fails to Support Various Findings Regarding Environmental Impacts with Substantial Evidence

CEQA requires that an EIR identify and discuss the significant effects of a Project, and how those significant effects can be mitigated or avoided. CEQA Guidelines § 15126.2; PRC §§ 21100(b)(1), 21002.1(a). If a project has a significant effect on the environment, an agency may approve the project only upon finding that it has "eliminated or substantially lessened all significant effects on the environment where feasible" and that any unavoidable significant effects on the environment are "acceptable due to overriding concerns." CEQA Guidelines § 15092(b)(2) (A–B). Such findings must be supported by substantial evidence. CEQA Guidelines § 15091(b).

When new information is brought to light showing that an impact previously discussed in the DEIR but found to be insignificant with or without mitigation in the DEIR's analysis has the potential for a significant environmental impact supported by substantial evidence, the DEIR must consider and resolve the conflict in the evidence. See *Visalia Retail, L.P. v. City of Visalia* (2018) 20 Cal. App. 5th 1, 13, 17; see also *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal. App. 4th 1099, 1109. While a lead agency has discretion to formulate standards for determining significance and the need for mitigation measures—the choice of any standards or thresholds of significance must be "based to the extent possible on scientific and factual data and an exercise of reasoned judgment based on substantial evidence. CEQA Guidelines § 15064(b); *Cleveland Nat'l Forest Found. v. San Diego Ass'n of Gov'ts*

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(2017) 3 Cal. App. 5th 497, 515; *Mission Bay Alliance v. Office of Community Inv. & Infrastructure* (2016) 6 Cal. App. 5th 160, 206. And when there is evidence that an impact could be significant, an EIR cannot adopt a contrary finding without providing an adequate explanation along with supporting evidence. *East Sacramento Partnership for a Livable City v. City of Sacramento* (2016) 5 Cal. App. 5th 281, 302.

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

Here, for the reasons discussed in detail below, the DEIR fails to comply with the foregoing requirements.

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1. Air Quality, including Greenhouse Gas Emissions and Diesel Use

While the DEIR acknowledges the Project's potentially significant impacts on Air Quality, it fails to provide sufficient evidence or supporting analysis for the public to adequately discern and evaluate those impacts. For instance, while the DEIR acknowledges that the Project "could result in or cause NAAQS or CAAQS violations because operational-source emissions would exceed the applicable SCAQMD thresholds," it fails to describe with sufficient specificity how the Project would contribute to exceeding those thresholds, and further fails to provide sufficient analysis regarding the sources of those emissions. (DEIR, p. S-10). Without fully understanding the Project's potential impacts on air quality, it may be practically impossible to determine the adequacy of the Project's proposed mitigation measures regarding air quality impacts.

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Regarding Greenhouse Gas (GHG) emissions specifically, the DEIR only cursorily acknowledges and evaluates these impacts instead of providing detailed analysis and evidence as required by the CEQA Guidelines. For instance, the DEIR does not provide a comprehensive analysis of potential GHG emissions. Instead, the DEIR merely acknowledges that "the Project would exceed the SCAQMD significance threshold of 3,000 MTCO2e/yr," but does not provide a thorough breakdown of how that projection is calculated. (DEIR, p. S-26).

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

Here, the DEIR appears to invoke both qualitative and quantitative analyses. However, the DEIR does not rely on any quantitative analysis to determine compliance with any numerical thresholds and instead relies on the Project's purported consistency with various land use plans and regulatory schemes, in making a determination that the Project's GHG impacts are less than significant.

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

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

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

(2) **Establish GHG Reduction Goal**: Establish a level, based on substantial evidence, below which the contribution to GHG emissions from activities covered by the plan would not be cumulatively considerable;

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

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

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

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

Second, it is not enough for an environmental document to conclude there are no significant GHG emissions impacts based upon a determination of consistency with a GHG Reduction Plan, without also making a determination based upon substantial evidence of the project's actual cumulative contributions to GHG emissions. In other words, a determination of consistency is only a starting point.[10] Compliance or non-compliance is merely one factor to be considered. The lead agency must explain how reliance on any particular plan or regulation addresses a potential impact.

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Here, however, the DEIR fails to demonstrate that the GHG Reduction Plan includes the above-listed requirements to be considered a qualified CAP or GHG Reduction Plan for the City. As such, the DEIR leaves an analytical gap showing that compliance with said plans can be used for a project-level significance determination for the Project. The DEIR also fails to explain how compliance with the GHG Reduction Plan leads to a less than significant impact.[11]

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

[11] Natural Resources Agency (Nov. 2018) Final Statement of Reasons For Regulatory Action: Amendments To The State CEQA Guidelines ("2018 Final Statement of Reason"), p. 19 (adding

Lastly, the DEIR does not contain sufficient analysis regarding air quality impacts stemming from the use of ***diesel trucks*** and other ***diesel-operated vehicles and equipment*** during construction and operation. Instead, it provides only estimations and projections of potential diesel use without much further analysis on resulting environmental impacts. While the DEIR acknowledges the Project's "consumption of approximately 187,803 gallons of diesel fuel," it does not go much further in analyzing any environmental impacts flowing therefrom. (DEIR, p. 4.6-10; App. E, Table 4-5). Instead, the DEIR suggests that "compliance with anti-idling and emission regulations would result in a more efficient use of construction-related energy and the minimization or elimination of wasteful or unnecessary consumption of energy," but does not provide additional analysis to support its claim. (DEIR, p.

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G-9 (CONT.)

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reference to section 15183.5 to section 15064.4(b)(3) because it was "needed to clarify that lead agencies may rely on plans prepared pursuant to section 15183.5 in evaluating a project's greenhouse gas emissions[,] … [which] is consistent with the Agency's Final Statement of Reasons for the addition of section 15064.4, which states that 'proposed section 15064.4 is intended to be read in conjunction with . . . proposed section 15183.5. Those sections each indicate that local and regional plans may be developed to reduce GHG emissions.'"), http://resources.ca.gov/ceqa/docs/2018_CEQA_Final_Statement_of%20Reasons_111218.pdf; see also Natural Resources Agency (Dec. 2009) Final Statement of Reasons for Regulatory Action ("2009 Final Statement of Reason"), p. 27 ("Those sections each indicate that local and regional plans may be developed to reduce GHG emissions. If such plans reduce community-wide emissions to a level that is less than significant, a later project that complies with the requirements in such a plan may be found
to have a less than significant impact."), http://resources.ca.gov/ceqa/docs/Final_Statement_of_Reasons.pdf; 2009 Final Statement of Reason, pp. 14-17 (To qualify, the plan "must … include *binding* requirements to address a cumulative problem[;] … such plans contain *specific requirements* with respect to resources that are *within the agency's jurisdiction* to avoid or substantially lessen the agency's contributions to GHG emissions … consistency with plans that are *purely aspirational* (i.e., those that include only *unenforceable goals without mandatory reduction measures*), and provide no assurance that emissions within the area governed by the plan will actually address the cumulative problem[;] … by *requiring that lead agencies draw a link* between the project and the specific provisions of a binding plan or regulation, section 15064(h)(3) would ensure that cumulative effects of the project are actually addressed by the plan or regulation in question.") 35 SCAG (Dec. 2015) 2016 RTP/SCS Program EIR ("PEIR"), p. 3.8-12 – 3.8-13 ("SB 375 provides that the SCS developed as part of the RTP *does not regulate the use of land or dictate local land use policies*, and *further expressly provides that a city's or county's* land use policies and regulations, including its general plan, are *not required to be consistent with the SCS*. Rather, SB 375 is intended to provide a regional policy foundation that local government may build upon, *if they so choose*." Emphasis added), http://scagrtpscs.net/Documents/2016/peir/draft/2016dPEIR_3_8_GreenhouseGases.pdf.

4.6-10). The DEIR should be revised in accordance with CEQA Guidelines to adequately identify and address any potential impacts stemming from diesel use.

G-10 (CONT.)

B. The DEIR's Mitigation Measures Are Insufficient

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" PRC §§ 21002; 21002.1, 21081; CEQA Guidelines §§ 15091, 15092(b)(2)(A); and find that 'specific overriding economic, legal, social, technology or other benefits of the project outweigh the significant effects on the environment." PRC §§ 21002; 21002.1, 21081; CEQA Guidelines §§ 15091, 15092(b)(2)(B). "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.

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CEQA mitigation measures proposed and adopted are required to describe what actions will be taken to reduce or avoid an environmental impact. (CEQA Guidelines § 15126.4(a)(1)(B) [providing "[f]ormulation of mitigation measures should not be deferred until some future time."].) While the same Guidelines section 15126.5(a)(1)(B) acknowledges an exception to the rule against deferrals, such exception is narrowly proscribed to situations where it is impractical or infeasible to include those details during the project's environmental review.

According to CEQA Guidelines, "[w]hen an EIR has been prepared for a project, the Responsible Agency shall not approve the project as proposed if the agency finds any feasible alternative or feasible mitigation measures within its powers that would substantially lessen or avoid any significant effect the project would have on the environment." CEQA Guidelines Section 15096(g)(2).

Here, the EIR's mitigation measures for the Project are inadequate as described below.

G-11 (CONT.)

1. *The DEIR's Mitigation Measures Are Improperly Deferred Long Term for Various Impact Categories*

CEQA forbids deferred mitigation. Guidelines § 15126.4(a)(1)(B). CEQA allows deferral of details of a mitigation measure only "when it is impractical or infeasible to include those details during the project's environmental review." (*Id.*) CEQA further requires: "that the agency (1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) identifies the type(s) of potential action(s) that can feasibly achieve that performance standard…" Guidelines § 15126.4(a)(1)(B). Deferring formulation of a Project's actual mitigation measures to some undefined time after the Project's approval is improper and cannot be used as a substitute for proper mitigation under CEQA. Impermissible deferral can occur when an EIR calls for mitigation measures to be created based on future studies or describes mitigation measures in general terms but the agency fails to commit itself to specific performance standards. (*Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 281 [city improperly deferred mitigation to butterfly habitat by failing to provide standards or guidelines for its management].)

Here, the EIR improperly defers critical details of the Project's mitigation measures for various environmental impacts. Specifically, various mitigation measures are deferred *until after* the City's approval of the Project. For instance, the DEIR's proposed mitigation measure for air quality impacts requires that "prior to the issuing of each building permit," but after Project approval, the project applicant "provide plans and specifications to the City that demonstrate electrical service is provided to each of the areas in the vicinity…" (DEIR, p. S-10). Similarly, as a potential mitigation measure to address impacts to biological resources, the DEIR would require that "prior to the issuance of grading permits," but after Project approval, "the Property Owner/Developer shall provide the City with proof of retention of a qualified biologist to implement this mitigation measure." (DEIR, p. S-13). Similarly, the DEIR suggests mitigating any impacts to cultural resources by requiring that the project applicant retain a "professional archaeologist," after project approval, but "prior to issuance of a grading permit." (DEIR, p. S-19). Notably, the DEIR does not sufficiently analyze the impacts that said paleontologist would eventually be required to evaluate pursuant to this mitigation measure. Further, the DEIR also

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proposes a similar mitigation measure for impacts regarding geology and soils because it requires the Project application to retain "a qualified Paleontologist to observe grading activities," after project approval, but "prior to issuance of grading permits and/or action that would permit Project site disturbance." (DEIR, p. S-24). Lastly, the project proposes mitigating any significant impacts from GHG emissions by requiring that the applicant "shall design and build *future* non-residential to meet" certain requirements, but notably after Project approval. (DEIR, p. S-26) (emphasis added).

The postponement of these mitigation measures, and their corresponding analyses, denies the public and the City's decisionmakers the opportunity to assess the adequacy of analyses to be conducted, and the Project's overall impact on various environmental media. Indeed, because of this deferment, coupled with the lack of clarity in the DEIR regarding environmental impacts, the City's decisionmakers may be denied the opportunity to fully consider the scope of the Project's impacts to these environmental media and whether such impacts have been adequately mitigated, while the general public has also been denied the opportunity to assess and comment upon the associated impacts and the adequacy of the mitigation plans.

G-12 (CONT.)

Thus, the City has failed to meet CEQA's preconditions and requirements concerning mitigation, as the DEIR has failed to show why the Project's mitigation measures, and a comprehensive analysis of the Project's anticipated environmental impacts, cannot be completed or achieved at this time prior to adoption of the EIR. The deferment of this study and analysis also improperly constrains the DEIR's assessment of the impacts that the measure will have individually or cumulatively, and the specific performance criteria the Applicant will have to meet with regard to the measures. Accordingly, the proposed mitigation measures are improperly deferred because they defer the formulation of components of the mitigation to a later time and further does not explain how the measures will clearly reduce the Project's environmental impacts to a level of insignificance.

2. The DEIR Fails to Consider and Deploy All Feasible Mitigation Measures

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

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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" PRC §§ 21002; 21002.1, 21081.

Mitigation measures, under CEQA proposed and adopted, are required to describe what actions will be taken to reduce or avoid an environmental impact. (CEQA Guidelines § 15126.4(a)(1)(B) [providing "[f]ormulation of mitigation measures should not be deferred until some future time."].) While the same Guidelines section 15126.5(a)(1)(B) acknowledges an exception to the rule against deferrals, such exception is narrowly proscribed to situations where it is impractical or infeasible to include those details during the project's environmental review.

G-13 (CONT.)

According to CEQA Guidelines, "[w]hen an EIR has been prepared for a project, the Responsible Agency shall not approve the project as proposed if the agency finds any feasible alternative or feasible mitigation measures within its powers that would substantially lessen or avoid any significant effect the project would have on the environment." CEQA Guidelines Section 15096(g)(2).

However, an impact can only be labeled as significant-and-unavoidable after all available, feasible mitigation is considered and the EIR lacks substantial evidence to support a finding that no other feasible mitigation existed to mitigate the Project's significant impacts.

3. The DEIR Improperly Mischaracterizes Mitigation Measures as "Project Design Features"

The DEIR improperly labels mitigation measures as "Project Design Features" or "PDFs," which the DEIR purports will minimize any potentially significant environmental impacts.

Relying on the PDFs, the DEIR concludes in many instances that the Project's impacts are less than significant and that no mitigation is required.

However, 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.)

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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 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 DEIR is laden with mitigation measures that are improperly characterized as PDFs. The DEIR should be revised to adequately address and analyze impacts from any proposed mitigation measures.

G-14 (CONT.)

4. Similarly, the Project Improperly Relies on Model or Optional Rules that are Not Legally Enforceable or Binding Rather Than Mandatory Mitigation Measures

CEQA Guidelines generally require that mitigation measures for significant impacts be mandatory or legally enforceable on a project applicant rather than permissive or voluntary. However, in several instances, the DEIR merely invokes model or optional rules that the project applicant *may* comply with to address potentially significant environmental impacts. For example, regarding mitigation of GHG emissions, the DEIR proposes incorporating "measures to reduce overall use of portable water within the building by 12%... as oudined [in] Nonresidential Voluntary Measures, of the 2022 California Green Building Standards Code." Yet, these Measures are likely voluntary by the Project applicant whereas mitigation measures are typically

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mandatory. (DEIR, p. 4.8-20). Thus, the DEIR avoids requiring strict compliance with mandatory mitigation measures by instead requiring voluntary compliance with optional or model rules, potentially contravening the CEQA Guidelines.

G-15 (CONT.)

5. DEIR Relies on Speculative Segmentation of Construction Phases that are Not Mandatory or Legally Enforceable

Additionally, the DEIR relies on, and assumes that, the Project will be implemented via sequential construction phases, even though these phases are not mandatory or legally enforceable. For instance, it is conceivable that an earlier construction phase may be delayed due to unforeseen reasons, and therefore delay or impact subsequent phases. In that case, the DEIR's analysis of impacts and other project aspects would be brought into question because the construction phases it currently anticipates may not materialize as expected. As a potential resolution, the City should adopt a project schedule or description that is binding on the project applicant, specifically as to the timing and completion of each construction phase.

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C. ***The DEIR Fails to Adequately Evaluate the Project's Cumulative Impacts.***

A DEIR must discuss cumulative impacts when they are significant and the project's incremental contribution is "cumulatively considerable." CEQA Guidelines §15130(a). A project's incremental contribution is cumulatively considerable if the incremental effects of the project are significant "when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects." 14 Cal Code Regs §15065(a)(3).

An EIR must discuss a cumulative impact if the project's incremental effect combined with the effects of other projects is "cumulatively considerable." 14 C.C.R. §15130(a). This determination is based on an assessment of the project's incremental effects "viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects." 14 C.C.R. §15065(a)(3)(emphasis added); *Banning Ranch Conservancy v City of Newport Beach* (2012) 211 CA4th 1209, 1228. See also 14 C.C.R. §15355(b).

The CEQA Guidelines require that an EIR implement the provisions of Pub. Res. Code §21083(b)(2), which specifies that the Guidelines must include criteria requiring

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public agencies to find that a project may have a significant effect on the environment if its possible effects "are individually limited but cumulatively considerable."

The purpose of the cumulative impacts analysis is to avoid considering projects in a vacuum, because failure to consider cumulative harm may risk environmental disaster. *Whitman v. Board of Supervisors* (1979) 88 Cal.App.3d 397, 408 (*citing Natural Resources Defense Council v. Callaway* (2d Cir 1975) 524 F2d 79). Without this analysis, piecemeal approval of several projects with related impacts could lead to severe environmental harm. *Golden Door Props., LLC v. County of San Diego* (2020) 50 Cal.App.5th 467, 527; *San Joaquin Raptor/Wildlife Rescue Ctr. v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 720; *Las Virgenes Homeowners Fed'n v County of Los Angeles* (1986) 177 Cal.App.3d 300, 306. An adequate analysis of cumulative impacts is particularly important when another related project might significantly worsen the project's adverse environmental impacts. *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 CA4th 859.

CEQA mandates that a project's impacts be evaluated in a holistic context, including impacts from other nearby projects. While the DEIR currently acknowledges other "related projects," it contains little to no analysis on their independent impacts, and therefore little to no analysis on any potential cumulative impacts as required by CEQA. Thus, the DEIR contains insufficient evidence regarding the Project's cumulative impacts, especially in light of other nearby projects. Without an adequate analysis of cumulative impacts as required by CEQA, the public's ability to understand and meaningfully address such impacts is significantly undermined. The DEIR should be revised to adequately address the Project's cumulative impacts, with careful regard and analysis of impacts stemming from other nearby projects.

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Despite the wide scope of significant impacts presented by the Project both individually and cumulatively, the DEIR contains no reference to or consideration whatsoever of nearby past development projects (as required by 14 C.C.R. §15065(a)(3)) that have already been completed. Further, the DEIR may omit a number of previously completed large-scale projects within the 6-mile radius of the Project, and therefore their associated environmental impacts.

These significant omissions taint and effectively undermine the validity of much of the cumulative impacts analysis set forth in the DEIR. Indeed, the failure to consider these previously-completed, significant, large-scale, industrial development projects in the immediate vicinity of the proposed Project calls into question the DEIR's cumulative impacts analysis in various impact categories. The DEIR must now be revised with

respect to each of the foregoing impact categories (and potentially others) to incorporate any significant past projects within the 6-mile cumulative projects radius in its cumulative impacts analysis. Absent such revision, the DEIR in its current form violates CEQA and cannot permissibly be certified by the City.

G-17 (CONT.)

D. *The Project is Inconsistent and in Conflict with Land Use Plans for the Project Site, including the General Plan, Housing Element, etc.*

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

General plan consistency is "the linchpin of California's land use and development laws; it is the principle which infused the concept of planned growth with the force of law." *Debottari v. Norco City Council* (1985) 171 Cal.App.3d 1204, 1213. It is well established that development projects may not be approved if they interfere with, or frustrate, the general plan's policies and objectives. *See Napa Citizens*, 91 Cal.App.4th at 378-79; *see also, Lesher*, 52 Cal.3d at 544. Thus, CEQA requires EIRs to analyze the consistency of a project with the general plan. CEQA Guidelines § 15125(d); *see also, Families Unafraid to Uphold Rural El Dorado County v. El Dorado County Bd. of Sup'rs* (1998) 62 Cal.App.4th 1332, 1336. Because an EIR must analyze inconsistencies with the general plan, deficiencies in the plan may affect the legal adequacy of the EIR. If the general plan does not meet state standards, an EIR analysis based on the plan may also be defective.

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CEQA also mandates "good faith effort in full disclosure." Guidelines § 15204. An agency is not acting in good faith when "it gives conflicting signals to decision makers and the public about the nature and scope of the activity being proposed." *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 655–656.

Here, despite the importance of ensuring that the Project is consistent with the General Plan, as noted above, the DEIR fails to support its consistency finding with substantial evidence as required. (CEQA Guidelines § 15384 [requiring agency findings be supported by substantial evidence, i.e. "enough relevant information and

reasonable inferences from this information that a fair argument can be made to support a conclusion"]).

Specifically, although the DEIR acknowledges that the Project seeks to modify various land use plans relating to the Project site, the DEIR overall fails to analyze eligibility for these proposed modifications and instead offers only conclusory statements.

These blanket statements are inadequate because the Project cannot rely upon approval of its requested changes to conclude that the Project is consistent with the General and Specific Plans given that approval of the changes has not yet occurred and is speculative at this stage. Simply put, there is a logical disconnect in the finding that future amendments establish that the Project is consistent with the existing plans absent some sort of analysis or explanation as to why the future change is consistent and warranted. In the words of the Court, "The Planning and Zoning Law does not contemplate that general plans will be amended to conform to zoning ordinances. The tail does not wag the dog. The general plan is the charter to which the ordinance must conform." *Napa Citizens for Honest Government v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 389.

G-18 (CONT.)

Thus, the DEIR's land use consistency analysis is not supported by substantial evidence and is based on the flawed assumption that general plan consistency can be achieved by amending the General Plan itself. The DEIR must be revised to provide sufficient analysis and good faith disclosures about the General Plan consistencies as well as mitigate the impacts of the acknowledged land use inconsistencies before any Project approvals occurred.

E. *The DEIR Improperly Relies on Future Compliance with Regulatory Standards to Support its Findings Regarding Lack of Significant Impacts*

In many instances, the DEIR relies on downstream and speculative compliance with various regulatory rules and standards to support its conclusory determinations, including as to significant impacts. 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

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scheme as a substitute for performing its own evaluation of the environmental impacts of using pesticides."].).

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.)

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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.

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

The City should require that the DEIR be revised to avoid over relying on purported compliance with regulatory requirements to achieve necessary mitigation. G-19 (CONT.)

VI. CONCLUSION

Based on the foregoing concerns, the City should require revision and recirculation of the DEIR for the Project pursuant to CEQA. Absent doing so, the DEIR in its current form may violate CEQA in multiple respects. G-20

If the City should have any questions or concerns, please do not hesitate to contact this office.

Sincerely,

Omar Corona
Attorneys for Western States Regional
Council of Carpenters

Attachments:

March 8, 2021 SWAPE Letter to Mitchell M. Tsai re Local Hire Requirements and Considerations for Greenhouse Gas Modeling (Exhibit A);
Air Quality and GHG Expert Paul Rosenfeld CV (Exhibit B); and
Air Quality and GHG Expert Matt Hagemann CV (Exhibit C). G-21