Letter 84

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VIA E-MAIL

January 2, 2025

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RE: City of Sacramento Airport South Industrial Project (P21-017; SCH #2022030181).

Dear Scott Johnson,

On behalf of the Carpenters Union Local #46 ("**Local 46**"), my Office is submitting these comments for the City of Sacramento's ("**City**") Draft Environmental Impact Report ("**Draft EIR**" or "**DEIR**") for the Sacramento Airport South Industrial Project ("**Project**").

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The Project, if the annexation is approved, would include development of an industrial park, that would allow for construction of up to 6,609,300 square feet (sf) of industrial uses and approximately 100,000 sf of retail/commercial uses, including approximately hotel/hospitality and associated parking lot uses. Each industrial building would also include associated parking areas. (*See* Notice of Availability, Project Description).

Local 46 represents thousands of union carpenters in Sacramento County and has a strong interest in well-ordered land use planning and in addressing the environmental impacts of development projects.

Individual members of Local 46 live, work, and recreate in the City and surrounding communities and would be directly affected by the Project's environmental impacts.

Local 46 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*

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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.

Local 46 incorporates by reference all comments related to the Project or its CEQA review, including 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).

Moreover, Local 46 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

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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.

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.

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

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

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

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

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

> People who live and work in the same jurisdiction would be more likely to take transit, walk, or bicycle to work than residents of less balanced communities and their vehicle trips would be shorter. Benefits would

[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.

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> 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:

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

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

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

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[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.

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II. THE PROJECT WOULD BE APPROVED IN VIOLATION OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

A. Background Concerning the California Environmental Quality Act

The California Environmental Quality Act 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).[5] At its core, its purpose is to "inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made." *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.

1. Background Concerning Environmental Impact Reports

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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 Comes* (2001) 91 Cal.App.4th 1344, 1354; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553; *Laurel Heights Improvement Assn.*, 47 Cal.3d at p. 400. The EIR serves to provide public agencies and the public in general with information about the effect that a proposed project is likely to have on the environment and to "identify ways that environmental damage can be avoided or significantly reduced." CEQA Guidelines, § 15002, subd. (a)(2). If the project has a significant effect on the environment, the agency may approve the project only upon finding that it has "eliminated or substantially lessened all significant effects on the environment where feasible" and that any unavoidable significant effects on the environment are "acceptable due to overriding concerns" specified in Public Resources Code section 21081. See CEQA Guidelines, § 15092, subds. (b)(2)(A)-(B).

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 Jets*, 91 Cal.App.4th at p. 1355 (quoting *Laurel Heights Improvement Assn.*, 47 Cal.3d at pp. 391, 409 fn. 12) (internal quotations omitted). A clearly inadequate or unsupported study is entitled to no judicial

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

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deference. *Id.* 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 court stated in *Berkeley Jets*, 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. 91 Cal.App.4th at p. 1355 (internal quotations omitted).

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.*

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.

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

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Cal.App.4th 768, 785. In such a situation, the agency must adopt a negative declaration. PRC, § 21080, subd. (c)(1); CEQA Guidelines, §§ 15063 (b)(2), 15064(f)(3).

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

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

2. CEQA Requires Subsequent or Supplemental Environmental Review When Substantial Changes or New Information Comes to Light

Section 21092.1 of the California Public Resources Code requires that "[w]hen significant new information is added to an environmental impact report after notice has been given pursuant to Section 21092 … but prior to certification, the public agency shall give notice again pursuant to Section 21092, and consult again pursuant to Sections 21104 and 21153 before certifying the environmental impact report" in order to give the public a chance to review and comment upon the information. (CEQA Guidelines § 15088.5.)

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Significant new information includes "changes in the project or environmental setting as well as additional data or other information" that "deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative)." (CEQA Guidelines § 15088.5(a).) Examples of significant new information requiring recirculation include "new significant environmental impacts from the project or from a new mitigation measure," "substantial increase in the severity of an environmental impact," "feasible project alternative or mitigation measure considerably different from others previously analyzed" as well as when "the draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded." (*Id.*)

An agency has an obligation to recirculate an environmental impact report for public notice and comment due to "significant new information" regardless of whether the agency opts to include it in a project's environmental impact report. (*Cadiz Land Co. v. Rail Cycle* (2000) 83 Cal.App.4th 74, 95 [finding that in light of a new expert report disclosing potentially significant impacts to groundwater supply "the EIR should have been revised and recirculated for purposes of informing the public and governmental agencies of the volume of groundwater at risk and to allow the public and governmental agencies to respond to such information."].) If significant new information was brought to the attention of an agency prior to certification, an agency is required to revise and recirculate that information as part of the environmental impact report.

B. DEIR Fails to Analyze the Project's Consistency with the Natomas Basin Habitat Conservation Plan

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CEQA Guidelines section 15125(d) requires that an environmental impact report "discuss any inconsistencies between the proposed project and applicable general plans, specific plans and regional plans. *See also Golden Door Properties, LLC v. County of San Diego* (2020) 50 Cal. App. 5th 467, 543.

The DEIR should thoroughly evaluate the Project's consistency with the Natomas Basin Habitat Conservation Plan. However, the DEIR has avoided a thorough consistency analysis with the Natomas Basin Habitat Conservation Plan ("NBHCP") by noting that "[a]s Sacramento County is not a permittee under the Natomas Basin HCP, urban development within the unincorporated portions of the County is not covered under the Natomas Basin HCP." (DEIR, p. 4.4-35.) Yet, the City intends to

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annex the unincorporated portions into their Sphere of Influence as the Project's first step. The DEIR itself notes that "[b]ecause LAFCo must act first on a Sphere of Influence (SOI) Amendment request by the City, under CEQA Guidelines Section 15051, subdivision (c), LAFCo is the Lead Agency for that action. . . the City is the Lead Agency for the action for Prezoning and other related development entitlements for the proposed project." (DEIR, p. 1-1.) Meaning, consistency with the NBHCP is an issue that the City should be examining as it becomes applicable once the Project Site has been successfully annexed and the City becomes the lead agency.

As the NBHCP is clearly applicable to the Project, a revised and recirculated EIR must provide a full consistency analysis with the requirements of the management plan.

C. The DEIR Improperly Incorporates Deferred Mitigation

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CEQA mitigation measures proposed and adopted into an environmental impact report 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, but such exception is narrowly proscribed to situations where "measures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way." (*Id.*) Courts have also recognized a similar exception to the general rule against deferral of mitigation measures where the performance criteria for each mitigation measure is identified and described in the EIR. (*Sacramento Old City Ass'n v. City Council* (1991) 229 Cal.App.3d 1011.)

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]; *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 671 [EIR failed to provide and commit to specific criteria or standard of performance for mitigating impacts to biological habitats]; *see also Cleveland Nat'l Forest Found. v San Diego Ass'n of Gov'ts* (2017) 17 Cal.App.5th 413, 442 [generalized air quality measures in the EIR failed to set performance standards]; *California Clean Energy Comm. v City of*

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Woodland (2014) 225 Cal.App.4th 173, 195 [agency could not rely on a future report on urban decay with no standards for determining whether mitigation required]; *POET, LLC v. State Air Resources Bd.* (2013) 218 Cal.App.4th 681, 740 [agency could not rely on future rulemaking to establish specifications to ensure emissions of nitrogen oxide would not increase because it did not establish objective performance criteria for measuring whether that goal would be achieved]; *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1119 [rejecting mitigation measure requiring replacement water to be provided to neighboring landowners because it identified a general goal for mitigation rather than specific performance standard]; *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 794 [requiring report without established standards is impermissible delay].)

Here, the Project engages in deferred mitigation in numerous areas, including water, noise, biological resources, and compliance with FAA guidance.

1. Water Mitigations

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The DEIR notes that "the proposed project is not anticipated to result in the impediment or redirection of flood flows such that on- or off-site structures would be exposed to flood risk. However, a Conditional Letter of Map Revision (CLOMR) would be required prior to grading permit approval in order to ensure the project's compliance with existing regulations. . . in the absence of a CLOMR submitted to FEMA, a ***significant*** impact could occur . . . ." (DEIR, p. 4.8-28.) The DEIR proposed Mitigation Measure 4.8-5 to reduce the Project's impacts, which would require the applicant to obtain a CLOMR prior to the approval of any grading permits.

However, the proposed Mitigation Measure would result in deferred mitigation as a Conditional Letter of Map Revision exists to identify how a Project would modify existing floodway. The CLOMR must be included in the DEIR and submitted to FEMA prior to the adoption of the EIR. By deferring the CLOMR until the EIR has already been adopted, the Project's DEIR fails to actually analyze the Project's impacts on flood risks. As such, a significant impact could occur related to alteration of the existing drainage pattern of the site, but the EIR would have no sufficient mitigations in place to actually reduce said risk.

Rather, the CLOMR should be prepared concurrently with the DEIR to properly identify the Project's impacts on the floodplain. The DEIR should be revised and

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recirculated with the inclusion of additional mitigation that would result in the actual decrease in the Project's flooding impacts.

2. Noise Mitigations

The Project has significant impacts on nighttime noise levels, as reflected in the Noise Study.

> As shown on Figure 5, the proposed project, along with the future phase, is predicted to exceed the City's nighttime 50 dBA L50 (10:00 p.m. to 7:00 a.m.) noise level standard without any additional noise control measures. Therefore, impacts resulting from operational noise would be considered potentially significant and mitigation would be required.
>
> A six-foot sound wall was assumed to enclose the single family residentials to the north of the proposed project, across I-5. It is likely that a much taller wall could be required here to shield noise from Interstate 5. Therefore, a 6-foot wall is considered conservative.

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> (Appendix J, p. 26.)

To reduce the Project's impacts, Mitigation Measure 4.10-2 was proposed. The measure requires:

> An eight-foot-tall sound wall shall be constructed along the eastern project boundary . . ., in order to achieve the City's nighttime 50 dBA L50 noise level standards; Noise barrier walls shall be constructed of concrete panels, concrete masonry units, earthen berms, or any combination of these materials that achieve the required total height. Wood is not recommended due to eventual warping and degradation of acoustical performance. (DEIR, p. 4.10-23.)

While this measure helps to address the impacts on the users to the East of the Project, the impacts on the users to the North are unaddressed. The assumption of a 6-foot sound wall was ***conservative***. As noted above, a much taller wall was

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recommended to shield the users to the North. The DEIR fails to include mitigations to reduce the Project's noise impacts on the users to the North. If no mitigations are possible, the DEIR must note that the Project has significant and unavoidable impacts.

Even if the noise impacts to the North were resolved, the DEIR's proposed noise

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mitigation is still improper. As written, the noise reduction methods must be included in the improvement plans submitted to the Public Works Department for approval. The proposed mitigation measure is illusory, since it only requires the Project

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Applicant to prepare improvement plans and requires the City to review the plan. The mitigation does not provide for any *discretionary approval or hearing*. The mitigation merely states that the plan shall be subject to the City's review and approval but lacks necessary specifics and performance criteria.

84-10

CEQA forbids deferred mitigation. Guidelines § 15126.4(a)(1)(B). CEQA allows deferral of details of mitigation measures 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). The City failed all of these preconditions and requirements, as its DEIR failed to show why the development of the improvement plan cannot be developed before the certification of the DEIR, what impacts they will have individually or cumulatively, if those would indeed be feasible, and the specific performance criteria the Applicant will have to meet. Moreover, the City clearly did not commit to mitigation, since all it would do, per the mitigation measure, is review and approve the proposed plans of the Applicant. Accordingly, the proposed mitigation measure is improperly deferred and vague as it defers the formulation of mitigation measures or the construction noise management plan to a later time, shifts the burden to the Applicant, and further does not explain how the proposed plan will clearly reduce the noise impact to a level of insignificance.

3. Biological Resources Mitigations

84-11

The DEIR has failed to analyze the impacts associated with the removal of 18 mature onsite trees, including *seven protected trees*. (DEIR, p. 4.4-27.) While the project plans to plant new trees, the exact replacement amount is unclear. There is the strong possibility that many of the trees will not survive. As noted by Lara Roman, a U.S. Forest Service researcher who studies tree mortality, "planting a massive number of trees is not necessarily a positive investment if not enough of them survive to become mature plants."[6] Further, "there's also a carbon cost to tree-planting, meaning that

[6] Bloomberg, The Darker Side of Tree-Planting Pledges (June 30 2021), available at https://www.bloomberg.com/news/features/2021-07-30/what-happens-after-pledges-to-plant-millions-of-trees?srnd=citylab.

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trees have to survive years before they offset that cost. The largest environmental gain comes when trees mature, sometimes decades after they're planted."[7]

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As such, the replacement rate of the removed trees is, alone, an insufficient mitigation measure against the impacts on biological resources. The removed trees play a key role in providing habitat for the sensitive species at the site and nearby. Thus, the tree removals should include a monitoring component to ensure that the replacement trees grow to maturity and that any trees that do not survive are adequately replaced.

4. *The Project Fails to Incorporate FAA Guidance.*

As planned, the Project has inadequate separation from hazardous wildlife attractants. The FAA Advisory Circular recommends a separation distance of 10,000 feet from airports serving turbine-powered aircraft to any hazardous wildlife attractants. (**Exhibit D**, p. 1-2.) Importantly, the Project proposes detention basins, which are considered hazardous wildlife attractants under the advisory circular. (*Id.* at 2.6.) The Project, however, currently lacks any details as to how and where the basin(s) will be built.

The DEIR recognizes that the proposed Project would exist in the recommended separation area.

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> The proposed project is located within the 10,000-foot FAA Separation Area for Wildlife Attractants, as shown in Map 5 of the ALUCP. Therefore, the proposed project would be required to comply with ALUCP Policy 3.4.3, which would require that the proposed project document consideration of current FAA or other federal regulations and guidelines pertaining to hazardous wildlife attractants. Because the final design of the stormwater retention features has not yet been determined, the proposed project could introduce stormwater drainage features on the project site that could attract birds to the site. Thus, ***the proposed project has the potential to result in airspace safety hazards from birds***. (DEIR, p. 4.7-22.)(Emphasis added.)

The DEIR proposes Mitigation Measure 4.7-5(a) to minimize the hazards impact associated with the development in this area through a management and design plan that has yet to be prepared. CEQA allows deferral of details of mitigation measures only "when it is impractical or infeasible to include those details during the project's environmental review." (Guidelines § 15126.4(a)(1)(B)). CEQA includes requirements on any deferred mitigation when it has been determined that it would be impractical

[7] *Id.*

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or infeasible to include during environmental review, including, "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). The City failed all of these preconditions and requirements, as its DEIR failed to show why the management and design plan cannot be developed before the certification of the DEIR, what impacts they will have individually or cumulatively, if those would indeed be feasible, and the specific performance criteria the Applicant will have to meet. As such, the proposed mitigation is wholly insufficient to reduce the Project's impacts.

Local 46 requests the City and LAFCo revise and recirculate the DEIR to address the concerns surrounding the Project's impermissibly deferred and insufficient mitigation.

II. CONCLUSION

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Based on the foregoing, the City and LAFCo must revise and recirculate the DEIR to address the areas of concern including the lack of a consistency analysis with the NBHCP and impermissibly deferred and insufficient mitigation measures proposed. If the City and LAFCo have any questions, please reach out to my office.

Sincerely,

Grace Holbrook
Attorneys for Carpenters Local Union #46

Attached:

84-14

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);

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

FAA Advisory Circular, *Hazardous Wildlife Attractants on or near Airports* (Exhibit D).