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**VIA E-MAIL**

September 22, 2025

City of Milpitas City Council & City Clerk  
Milpitas City Hall, 3rd floor  
455 E. Calaveras Blvd.  
Milpitas, CA 95035  
Project Planner: Kristina Phung  
Ph: (408) 586-3278  
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**RE: City of Milpitas – Appeal to City Council regarding approval of entitlements and EIR Addendum for the 1000 Gibraltar Project (P-SD24-0006, P-EA24-0002, and P-TR25-0021; SCH#: 2020069024).**

Dear Honorable Councilmembers,

On behalf of **Carpenters Local Union #405** (“**Local 405**”), my Office is submitting this letter in support of the appeal made by Local 405 regarding the recently approved 1000 Gibraltar Project (“**Project**”) and EIR Addendum. The associated project numbers include P-SD24-0006, P-EA24-0002, P-TR25-0021, and SCH#: 2020069024.

The EIR Addendum outlines the changes to the Project as follows:

[T]he demolition of all existing on-site buildings representing 397,009 square feet, parking lots, and associated improvements. The proposed project consists of a 487,564-squarefoot building with 476,864 square feet of warehouse space and 10,700 square feet of office space at the northeast corner of the building, truck docks, trailer parking, passenger vehicle parking, backup generator, landscaping and stormwater facilities (detention basins). The proposed building would be 1 story with a maximum height of 46.5 feet above the ground surface at the top of the parapet and the project would have 0.39 FAR. The proposed building would have a setback of 35 feet from the face of the curb on Gibraltar Drive and South Milpitas Boulevard. An average of 363 employees (accounting for seasonal fluctuations) are expected.

EIR Addendum, pp. 6-7.

These changes are summarized in Table 1, pictured below.

**Table 1: Project Comparisons**

	Existing Conditions	Previously Approved Project	Proposed Project	Difference (Previously Approved vs. Proposed)
Number of Buildings	4	1	1	0
Demolition (square feet)	n/a	397,009	397,009	0
Total Square Footage		491,040	487,564	-3,476
Warehouse	397,009 square feet	486,130 square feet	476,864 square feet	-9,266
Office		4,910 square feet	10,700 square feet	+5,790
Floor Area Ratio (FAR)	0.31	0.38	0.38	+0.01
Impervious Surface Area (square feet)	876,485	928,755 (additional 52,270)	982,012 (additional 105,527)	+53,257
Height (feet)	1 to 2 stories	42	46.5	+4.5
Protected Tree Removal	N/A	88	18 <sup>1</sup>	-63
Employees	N/A	330	363	+33

The Project's most dramatic change is the increase in impervious surface area. Yet, the EIR Addendum provides little analysis on the likely significant impacts associated with the decrease in pervious surface area. As such, the EIR Addendum cannot be relied upon by the City to make the findings associated with the Project's entitlements. Local 405 is requesting the City Council grant this appeal, require additional environmental review of the new project design, either through a subsequent or supplemental EIR, and withdrawal the Notice of Determination.

#### **I. THE CITY SHOULD PREPARE A SUBSEQUENT OR SUPPLEMENTAL EIR FOR THE REVISED PROJECT.**

Under CEQA, a Lead Agency does not need to prepare a supplemental or subsequent EIR when an original EIR has been certified and no substantial changes to the project or the surrounding circumstances and no new information has come to light. (Public Resources Code Sec. 21166.) Here, the Project seems to be relatively similar to the previously reviewed version except for the *dramatic* increase in impervious surface

area. The EIR originally considered there to be no impacts related to hydrology and water quality. As such, there is no real discussion of the potential impacts associated with the increase in impervious surface area on the Project Site in the EIR. The EIR addendum, noted that compliance alone with existing regulations would be sufficient to ensure less than significant impacts related to the Project.

However, “[c]ompliance with the law is not enough to support a finding of no significant impact under . . . CEQA.” (*Californians for Alternatives to Toxics v. Department of Food & Agriculture* (2005) 136 Cal. App. 4th 1, 15 – 17 [finding that a lead agency “abused its discretion by relying on DPR’s regulatory scheme as a substitute for performing its own evaluation of the environmental impacts of using pesticides.”]). Bare conclusions or opinions of the agency are not sufficient to satisfy an agency’s obligation under CEQA to adequately support their environmental determinations. (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal. 3d 376, 403 – 404.) “To facilitate CEQA’s informational role, the EIR must contain facts and analysis, not just the agency’s bare conclusions or opinions. . . . [to] enable[] the decision-makers and the public to make an ‘independent, reasoned judgment’ about a proposed project.” (*Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d 929, 935 | (quoting *Santiago County Water Dist. v. County of Orange* (1981) 118 Cal.App.3d 818, 831.)

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

A public agency cannot apply a threshold of significance or regulatory standard “in a way that forecloses the consideration of any other substantial evidence showing there may be a significant effect.” (*Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322,

342.) Where comments from a responsible sister agency, such as the Water District, disclose new or conflicting data or opinions that cause concern that the agency may not have fully evaluated the project and its alternatives, these comments may not simply be ignored based on a conclusory statement about compliance with regulatory standards; there must be a good faith, reasoned analysis. (*Berkeley Keep Jets Over the Bay Com. v. Board of Port Comrs.* (2001) 91 Cal. App. 4th 1344, 1367.) The District's approach fails to meet its obligation to engage in good faith reasoned analysis to provide the public, public agencies and decisionmakers with detailed information about the effects that the Project will have on the environment, ways to mitigate those effects, as well as alternatives. (PRC § 21061)

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

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).

Here, there is a clear lack of evidence to support a finding that the Project will not have any significant impacts relating to the impediment or redirection of flood flows. Specifically, the EIR addendum writes of the likelihood of flooding by stating that “[t]he site is not located within a FEMA Special Flood Hazard Area; as such, there is a low risk of flooding at the site.” (EIR Addendum, p. 117.) Yet, this is an inherent mischaracterization of the site's flood hazard designation. The project site is located in a shaded Zone X area, which equates to moderate flooding risk. The significant increase in impervious surface area added by the revised project, combined with the existing

moderate flooding risk and nearby off-site significant flooding risks raises significant concerns about the Project's likely flooding hazard impacts. The certified EIR for the original project noted that a significant impact could occur if a project:

- Substantially alters the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river or through the addition of impervious surfaces, in a manner which would result in substantial erosion or siltation on- or off-site
- Substantially alters the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river or through the addition of impervious surfaces, in a manner which would substantially increase the rate or amount of surface runoff in a manner which would result in flooding on- or off- site
- Substantially alters the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river or through the addition of impervious surfaces, in a manner which would create or contribute runoff water that would exceed the capacity of existing or planned storm water drainage systems or provide substantial additional sources of polluted runoff
- Substantially alters the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river or through the addition of impervious surfaces, in a manner which would impede or redirect flood flows

Yet, the EIR and EIR Addendum seem to only focus on the concerns for potential stormwater related pollution rather than the increased likelihood of flooding. No drainage studies were conducted or included in the original EIR or the EIR Addendum, and no analysis was provided to establish how these regulatory requirements would reduce the flooding risks associated with the increase in impervious surface area on site. Without any supporting data, the City cannot conclude with the necessary substantial evidence that the Project would not have significant flooding related impacts. As such, the EIR and EIR Addendum are clearly deficient under CEQA and further environmental review is necessary.

## **II. CONCLUSION**

Based on the foregoing concerns, Local 405 respectfully requests that the City grant this appeal, revoke the approved Project entitlements, withdrawal the filed Notice of

Determination, and require further environmental review of the Project's significant hydrological impacts through a subsequent or supplemental EIR. If the City should have any questions related to this appeal, please contact my office.

Sincerely,

A handwritten signature in black ink, appearing to read "Grace M. Holbrook", is written over a horizontal line.

Grace M. Holbrook  
Attorneys for Carpenters Local Union #405

# City of Milpitas

455 E. Calaveras Blvd.  
Milpitas, CA 95035

File with: Milpitas City Clerk  
Milpitas City Hall, 3<sup>rd</sup> floor  
455 E. Calaveras Blvd.  
Milpitas, CA 95035

If questions, call:

PLANNING: 408-586-3279  
CITY CLERK: 408-586-3001



## APPEAL FORM

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1. APPELLANT(S):

Name: Mitchell M. Tsai/ Carpenters Local Union #405  
Company: Mitchell M. Tsai Law Firm  
Address: 139 S. Hudson Ave. Suite 200  
City/State/Zip: Pasadena, CA 91101

2. DECISION BEING APPEALED:

I (we), the undersigned, do hereby appeal a decision of the Planning Commission's  
(or other body's) approval of:

New Industrial Building (Warehouse and Distribution)

PROJECT: P-SD24-0006, P-EA24-0002, and P-TR25-0021

LOCATION: 1000 Gibraltar, Milpitas, CA

DATE OF DECISION BEING APPEALED: September 10, 2025

3. STATE THE SPECIFIC RELIEF WHICH THE APPELLANT SEEKS:

The Project will result in significant and unmitigated impacts related to  
flood hazards. The adopted addendum is insufficient to provide the  
necessary environmental review for the project. See attached .

4. SUMMARY OF REASONS WHY THE APPELLANT CLAIMS ENTITLEMENT TO THE RELIEF SOUGHT:

Denial of adopted entitlements and withdrawal of the published  
Notice of Determination for the project's addendum. Additional environmental  
review should be required and circulated for public comment  
prior to any new project approvals. See attached.

Attach additional pages, if more space is needed.

I, the undersigned, acknowledge the procedures for filing an appeal, including the responsibilities of public notices in accordance with the Milpitas Municipal Codes Title XI 10-64.04, as prescribed for zoning related hearings, and Title I 20-2.02 for Notices provided by mail.

DATE: September 22, 2025

SIGNATURE

Mitchell M. Tsai

PRINT NAME: Mitchell M. Tsai

☐ PAID Filing Fee \$2135.00

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FORM & FEE RECEIVED BY: \_\_\_\_\_  
(City staff name)

DATE RECEIVED: \_\_\_\_\_