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VIA E-MAIL

February 6, 2025

Planning Commission
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RE: February 6, 2025 Planning Commission Meeting –
Agenda Item No. 7.A - City of San Leandro's 880 Doolittle Drive
Project – Final Environmental Impact Report (SCH# 2023110597)

Dear Honorable Commissioners and Cindy Lemaire,

On behalf of the **Carpenters Union Local #713** ("Local 713"), our firm is submitting these comments for Agenda Item No. 7.A of the City of San Leandro's ("City") February 6, 2025, Planning Commission meeting concerning the hearing on the 880 Doolittle Drive Project ("Project") and the Draft Environmental Impact Report ("DEIR") and Final Environmental Impact Report ("FEIR") prepared by the City in connection therewith.

The Project's Notice of Availability ("NOA") for the DEIR contains the following Project Description:

The proposed project consists of consolidating the two parcels comprising the project site into a single parcel, demolishing existing vacant structures, and developing a new industrial shell building on the site. The proposed project also includes a new surface parking lot, internal circulation roadways, landscaping, and new utility connections, including natural gas. The proposed warehouse would be approximately 244,573 square feet, comprised of a 229,573 square-foot of warehouse and 15,000 square feet of associated office space. Approximately 10,000 square feet

of office space would be provided on the ground floor, and approximately 5,000 square feet of office space would be on a mezzanine level. The maximum building height would be 50 feet with an interior clear height of 40 feet. Sixty-four loading docks are proposed. Traditional doors for egress and ingress to the building would also be provided.

Access to the project site would be from the existing driveway on Doolittle Drive in the southwest area of the site, and from an existing driveway the end of Hester Street in the northern area of the site. The proposed project would include reconstruction of the driveways to meet City standards and current ADA requirements. Additionally, a new, second, driveway to the site would be constructed at the end of Hester Street, providing a total of three driveways. A total of 204 parking spaces would be provided on-site for passenger vehicles, which would be located primarily in a new surface parking lot on the west side of the proposed building. Approximately 59 parking spaces sized for tractor trailers would be on the north side of the warehouse. A total of 24 bicycle parking spaces would be provided.

The project would require a Use Permit, Site Plan Review, Height Exception, Building Permit, Grading Permit, and Tree Removal Permit. The project may also require approval(s) from the Federal Aviation Administration and the Department of Toxic Substances Control.

NOA of DEIR, p. 1.

Local 713 represents thousands of union carpenters in Alameda 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 713 live, work, and recreate in the City and surrounding communities and would be directly affected by the Project's environmental impacts.

Local 713 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.

Local 713 incorporates by reference all comments related to the Project or its CEQA review, including the Environmental Impact Report (“**EIR**”). 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 713 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.

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 the “[u]se of a local state-certified apprenticeship program” can result in air pollutant reductions.²

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

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

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

¹ California Workforce Development Board (2020) Putting California on the High Road: A Jobs and Climate Action Plan for 2030 at p. ii, *available at* <https://laborcenter.berkeley.edu/wp-content/uploads/2020/09/Putting-California-on-the-High-Road.pdf>.

² South Coast Air Quality Management District (May 7, 2021) Certify Final Environmental Assessment and Adopt Proposed Rule 2305 – Warehouse Indirect Source Rule – Warehouse Actions and Investments to Reduce Emissions Program, and Proposed Rule 316 – Fees for Rule 2305, Submit Rule 2305 for Inclusion Into the SIP, and Approve Supporting Budget Actions, *available at* <http://www.aqmd.gov/docs/default-source/Agendas/Governing-Board/2021/2021-May7-027.pdf?sfvrsn=10>.

³ California Planning Roundtable (2008) Deconstructing Jobs-Housing Balance at p. 6, *available at* <https://cprroundtable.org/static/media/uploads/publications/cpr-jobs-housing.pdf>

match those held by local residents.⁴ Some municipalities have even tied local hire and other workforce policies to local development permits to address transportation issues. Cervero and Duncan note that:

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

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

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

II. THE 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).⁵ At its core, its purpose is to “inform the public and its responsible officials of the environmental

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>.

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. 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).

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 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.*

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.” Pub. Res. Code, § 21151; see *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.App.3d 68, 75 (hereafter, “*No Oil*”); accord *Jensen v. City of Santa Rosa* (2018) 23 Cal.App.5th 877, 884 (hereafter, “*Jensen*”). 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. Pub. Res. Code, §§ 21100, subd. (a), 21151; CEQA Guidelines, §§ 15064, subds. (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 Cal.App.4th 768, 785. In such a situation, the lead agency *must* adopt a negative declaration. Pub. Res. Code, § 21080, subd. (c)(1); CEQA Guidelines, §§ 15063, subd. (b)(2), 15064, subd. (f)(3).

“Significant effect upon the environment” is defined as “a substantial or potentially substantial adverse change in the environment.” Pub. Res. Code, § 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*, *supra*, 13 Cal.App.3d at p. 83 fn. 16; see *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 309 (hereafter, “*Sundstrom*”). 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, subd. (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*, *supra*, 202 Cal.App.3d at p. 310; *No Oil*, *supra*, 13 Cal.App.3d at p. 84; *County Sanitation*, *supra*, 127 Cal.App.4th at p. 1579. 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*, *supra*, 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, subd. (f)(1). It “requires the preparation of an EIR where there is substantial evidence that any aspect of the project, either individually or cumulatively, may cause a significant effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial[.]” *County Sanitation*, *supra*, 127 Cal.App.4th at p. 1580 (quoting CEQA Guidelines, § 15063, subd. (b)(1)).

Evidence supporting a fair argument of a significant environmental impact triggers preparation of an EIR regardless of whether the record contains contrary evidence. *League for Protection of Oakland’s Architectural and Historical Resources v. City of Oakland* (1997) 52 Cal.App.4th 896, 904-905. “Where the question is the sufficiency of the evidence to support a fair argument, deference to the agency’s determination is not appropriate[.]” *County Sanitation*, *supra*, 127 Cal.App.4th at p. 1579 (quoting *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1317-1318).

The agency or the court should not weigh expert testimony or decide on the credibility of such evidence—this is the EIR’s responsibility. As stated in *Pocket Protectors v. City of Sacramento* (2004):

Unlike the situation where an EIR has been prepared, neither the lead agency nor a court may “weigh” conflicting substantial evidence to determine whether an EIR must be prepared in the first instance. Guidelines section 15064, subdivision (f)(1) provides in pertinent part: if a lead agency is 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. Thus, as *Claremont* itself recognized, [c]onsideration is not to be given contrary evidence supporting the preparation of a negative declaration.

124 Cal.App.4th 903, 935 (internal citations and quotations omitted).

In cases where it is not clear whether there is substantial evidence of significant environmental impacts, CEQA mandates erring on the side of a “preference for resolving doubts in favor of environmental review.” *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 332 “The foremost principle under CEQA is that the Legislature intended the act to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language. *Friends of Mammoth v. Bd. of Supervisors* (1972) 8 Cal.3d 247, 259.

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.

III. THE EIR IS INADEQUATE UNDER CEQA

A. The FEIR Fails to Support Its Findings with Substantial Evidence

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 EIR 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* (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 (the fact that the 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 EIR fails to comply with the foregoing requirements.

1. The Project's Initial Study and the FEIR's Responses to Comments Omit Critical Supporting Information Regarding the Project's Energy Use Impacts, Fail to Adopt a Correct Threshold of Significance, Improperly Rely on the Project's Purported Regulatory Compliance, and Improperly Find that the Project's Energy Use Impacts Would Be Less Than Significant

Environmental documents must provide technical details, not merely conclusory findings, to support their determinations. [A]n EIR shall include summarized technical data, maps, plot plans, diagrams, and similar relevant information sufficient to permit full assessment of significant environmental impacts by reviewing agencies and

members of the public. CEQA Guidelines § 15147; *San Franciscans for Reasonable Growth v. City & County of San Francisco* (1987) 193 Cal.App.3d 1544, 1549 (“All technical data, however, need not be included in the body of report, but may be relegated to appendices [citation omitted] or may be contained in separate source documents which are not formally a part of the document.”). An EIR shall cite all documents used in its preparation” CEQA Guidelines § 15148. An environmental document may incorporate by reference another document so long as the document is made available for inspection to the public. CEQA Guidelines § 15150.

Here, the Project’s Initial Study (Appendix A to DEIR) concluded that the Project’s energy use impacts will be less than significant and therefore no mitigation is required. See Appendix A to DEIR, pp. 59-65. However, the City appeared to premise this determination regarding the threshold of significance on faulty analysis whereby it compares the Project’s anticipated net increase in energy uses to the estimated energy uses of all of Alameda County. See Appendix A to DEIR at p. 59. Despite the City’s arguments to the contrary in the FEIR’s Response to Comments (FEIR, pp. 503-505), Local 713 submits that the City then applied this improper underlying assumption in making the determination that the proposed Project’s anticipated energy uses will have no significant energy use impacts. *Id.*

In this regard, the EIR fails to provide substantial evidence to support comparison of the Project’s energy use with the estimated energy use of the entirety of Alameda County. Thresholds of significance are “identifiable, quantitative, qualitative or performance level of a particular environmental effect.” (CEQA Guidelines 15064.7.) While a lead agency has discretion to set thresholds of significance to determine whether an adverse environmental impact should be classified as “significant” or “less than significant”, a lead agency’s choice of an appropriate threshold must be based upon scientific and factual data to the extent possible and supported by substantial evidence *Mission Bay Alliance v. Office of Community Inv. & Infrastructure* (2016) 6 Cal.App.5th 160, 206; CEQA Guidelines § 15064.) When there is evidence that an impact may be significant, an EIR may not find the impact to be less than significant without an adequate explanation and supporting evidence. (*East Sacramento Partnership for a Livable City v. City of Sacramento* (2016) 5 Cal. App.5th 281, 300 – 02.) A threshold of significance may not be “impermissibly lenient.” (*Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.5th 777, 791.)

In this case, the comparison of the Project's anticipated energy use impacts to the energy use of all of Alameda County (as an apparent threshold of significance) is unjustified and of no evidentiary value. Local 713 resubmits that the more pertinent, legally appropriate, and proportional analysis in assessing the Project's energy use impacts would be for the ***EIR to consider the percentage increase in energy use that the Project presents compared to the current, existing energy uses within the Project site.*** It is notable that City's responses to comments in the FEIR fail to address this reasonable proposal for shoring up the EIR's analysis of the Project's energy use impacts. Moreover, Local 713 reiterates that the EIR should analyze and present the Project's proportional contribution to the City's overall energy use, which it also fails to do.

The foregoing statistical calculations, and the City's demonstrated lack of analysis of them, amounts to significant new information associated with the Project's energy use impacts. This analysis must be performed for the City to properly assess the Project's anticipated energy use impacts and to thereby determine whether implementation of mitigation measures is warranted.

In the FEIR's Response to Comments, the City asserts that its determination of no significant energy use impacts was not based on the DEIR's comparison of the Project's anticipated energy use to Alameda County's energy use. (FEIR, pp. 503-505.) Rather, the City contends that its determination of no significant energy use impacts is based solely on the Project's compliance with applicable regulations and building planning guidance concerning building energy use and efficiency. (*Id.*) However, to meet CEQA requirements, a determination that regulatory compliance is sufficient to prevent significant adverse impacts must be based on a project-specific analysis of potential impacts and the effect of regulatory compliance. (See *Californians for Alternatives to Toxics v. Department of Food & Agric.* (2005) 136 Cal. App. 4th 1; *Ebbetts Pass Forest Watch v. Department of Forestry & Fire Protection* (2008) 43 Cal. App. 4th 936, 956.) Here, the FEIR's bald assertion that the Project's compliance with state and local policies and regulations will categorically reduce energy use impacts below the threshold of significance, without supporting analysis, violates CEQA.

Ultimately, as set forth in *Sundstrom*, on this issue, the City "should not be allowed to hide behind its own failure to gather relevant data." 202 Cal.App.3d at p. 311. The City's wholesale reliance on purported regulatory compliance as its basis for finding no significant energy use impacts lacks legal justification, and is therefore arbitrary and

capricious. The inadequate study conducted by the City on this issue will be entitled to no judicial deference in any CEQA challenge brought against the Project's DEIR/FEIR. See *Laurel Heights, supra*, 47 Cal.3d at pp. 391, 409 fn. 12) (internal quotations omitted).

Based on the foregoing, and in spite of the conclusions set forth in the EIR, there is substantial evidence of the potential for the Project's energy use to present a significant environmental impact. As such, the EIR must, at a minimum, be revised and recirculated consider and resolve this conflict in the evidence. See *Visalia Retail, supra*, 20 Cal. App. 5th at 17; see also *Amador Waterways, supra*, (2004) 116 Cal. App. 4th at 1109.

Furthermore, and as discussed below in connection with the Project's Greenhouse Gas Emissions impacts, there are a litany of additional mitigation measures that could be incorporated in the Project in order to curb its GHG emissions impacts, many of which would also reduce the Project's Energy Use (and Air Quality) impacts as well. Incorporating the energy use mitigation measures proposed below is feasible and justified for the Project. The DEIR's failure to do so, in conjunction with its faulty energy use impact analysis, violates CEQA.

2. The FEIR Improperly Fails to Deploy All Feasible Mitigation Measures for the Project's Greenhouse Gas Emissions Impacts

Similar to the deficiencies identified above regarding the EIR's faulty analysis of the Project's projected energy use, the EIR fails to properly analyze and mitigate the impacts associated with the Project's projected greenhouse gas ("GHG") emissions. Indeed, despite concluding that the Project will lead to significant and unavoidable GHG impacts in operation, the EIR still does not supply any estimated calculations of the GHG emissions that the Project will produce, either in the construction phase or the operation phase. Further, based on the appendices to the EIR, no GHG impact technical study for the Project has been conducted. Thus, the EIR provides no demonstrable analysis of the threshold of significance applicable to the Project's increase in GHG emissions. Rather, the EIR arbitrarily and summarily concludes that the Project's GHG impacts in its operation are significant and unavoidable (and less than significant in the construction phase). After initially claiming in the DEIR that no GHG mitigation measures were feasible, in response to comments submitted concerning the Project, the City has added a single GHG mitigation measure (GHG-1)

apparently aimed at curbing the amount of natural gas to be consumed/combusted during the course of the Project's operation. (FEIR, pp. 41-42.)

As stated in the Office of Planning Research's ("OPR") technical advisory in 2018:

VMT and Greenhouse Gas Emissions Reduction. Senate Bill 32 (Pavley, 2016) requires California to reduce greenhouse gas (GHG) emissions 40 percent below 1990 levels by 2030, and Executive Order B-16-12 provides a target of 80 percent below 1990 emissions levels for the transportation sector by 2050.

Despite the Project's clear GHG emissions impact in direct contravention of SB 32's GHG reduction goals, the EIR draws the conclusion that the Project's GHG impacts are significant and cannot be further mitigated because of the 9th Circuit's recent decision in *California Restaurant Association v. City of Berkeley*. However, other than the recent addition of mitigation measures GHG-1, the EIR makes no effort to otherwise reduce the Project's GHG impacts through other specific project design features aimed at reducing GHG emissions. In this regard, the EIR mistakes a federal court ruling concerning federal preemption of natural gas supply regulations as grounds to excuse the City from the CEQA requirement of endeavoring to ensure that the Project's otherwise significant and unavoidable GHG emissions impacts are reduced **to the maximum extent feasible**. To that end, the City inexplicably argues in its responses to comments that, because other proposed GHG mitigation measures would not reduce the amount of natural gas consumed by the project, those other mitigation measures are not worthy of implementation to reduce the Project's otherwise significant and unavoidable GHG emissions impacts. (FEIR, pp. 38-44.) The City's FEIR even contends, without evidentiary or legal support, that any effort to offset the Project's GHG emissions impacts (through on-site or offsite measures) would not be appropriate or feasible in reducing the Project's significant and unavoidable GHG impacts. (FEIR, pp. 45-46.) The City's determinations in this regard are contrary to and violate CEQA, which does not constrain the scope of mitigation measures that may be implemented in order to reduce a project's individual and cumulative environmental impacts, and particularly those associated with significant and unavoidable GHG emissions.

Additionally, the Project remains inconsistent with the CARB 2022 Scoping Plan. Indeed, the first action item in the Scoping Plan is reduce GHG emissions "40%

below 1990 levels by 2030.”⁶ The CARB Scoping Plan also sets forth the action item that new residential and commercial buildings will have “[a]ll electric appliances beginning 2026 (residential) and 2029 (commercial), contributing to 6 million heat pumps installed statewide by 2030.”⁷

Despite the clear path presented by the CARB Scoping Plan for reducing GHG emissions, the EIR declines to hold the Project to that standard, and instead deflects its responsibility to identify and mitigate GHG emissions impacts pursuant to CEQA’s mandate.

It is the City’s obligation, as lead agency, to ensure that the Project’s environmental impacts have first been properly analyzed and then mitigated to a less than significant level wherever possible. Local 713 resubmits that the Project’s implementation of the additional potential mitigation measures set forth below (where applicable), as delineated by the California Air Pollution Control Officers Association’s *Quantifying Greenhouse Gas Mitigation Measures*, would contribute toward the goal of reducing the Project’s significant and unavoidable GHG emission impacts to the maximum extent possible:

Energy						
Category	Measure Number	Strategy	BMP	Grouped With #	Range of Effectiveness	
					Percent Reduction in GHG Emissions	Basis
Building Energy Use	BE-1	Buildings exceed Title 24 Building Envelope Energy Efficiency Standards by X% (X is equal to the percentage improvement selected for the project)			For a 10% improvement over 2008 Title 24: Non-Residential electricity use: 0.2-5.5%; natural gas use: 0.7-10% Residential electricity use: 0.3-2.6%; natural gas use: 7.5-9.1%	
	BE-2	Install Programmable Thermostat Timers	x		BMP	
	BE-3	Obtain Third-party HVAC Commissioning and Verification of Energy Savings	x	BE-1	BMP	
	BE-4	Install Energy Efficient Appliances			Residential building: 2-4% Grocery Stores: 17-22%	Appliance Electricity Use
	BE-5	Install Energy Efficient Boilers			1.2-18.4%	Fuel Use

⁶ California Air Resources Board 2022 Scoping Plan at p. 72;
<https://ww2.arb.ca.gov/sites/default/files/2023-04/2022-sp.pdf>

⁷ *Id.* at p. 75

Alternative Energy Generation	AE-1	Establish Onsite Renewable Energy Systems-Generic			0-100%	
	AE-2	Establish Onsite Renewable Energy Systems-Solar Power			0-100%	
	AE-3	Establish Onsite Renewable Energy Systems-Wind Power			0-100%	
	AE-4	Utilize a Combined Heat and Power System			0-46%	
	AE-5	Establish Methane Recovery in Landfills			73-77%	
	AE-6	Establish Methane Recovery in Wastewater Treatment Plants			95-97%	
Lighting	LE-1	Install Higher Efficacy Public Street and Area Lighting			16-40%	Outdoor Lighting Electricity Use
	LE-2	Limit Outdoor Lighting Requirements	x		BMP	
	LE-3	Replace Traffic Lights with LED Traffic Lights			90%	Traffic Light Electricity Use

Transportation						
Category	Measure Number	Strategy	BMP	Grouped With #	Range of Effectiveness	
					Percent Reduction in GHG Emissions	Basis
Land Use / Location	LUT-1	Increase Density			1.5-30.0%	VMT
	LUT-2	Increase Location Efficiency			10-65%	VMT
	LUT-3	Increase Diversity of Urban and Suburban Developments (Mixed Use)			9-30%	VMT
	LUT-4	Incr. Destination Accessibility			6.7-20%	VMT
	LUT-5	Increase Transit Accessibility			0.5-24.6%	VMT
	LUT-6	Integrate Affordable and Below Market Rate Housing			0.04-1.20%	VMT
	LUT-7	Orient Project Toward Non-Auto Corridor			NA	
	LUT-8	Locate Project near Bike Path/Bike Lane			NA	
	LUT-9	Improve Design of Development			3.0-21.3%	VMT

Neighborhood / Site Design	SDT-1	Provide Pedestrian Network Improvements			0-2%	VMT
	SDT-2	Traffic Calming Measures			0.25-1.00%	VMT
	SDT-3	Implement a Neighborhood Electric Vehicle (NEV) Network			0.5-12.7%	VMT
	SDT-4	Urban Non-Motorized Zones		SDT-1	NA	
	SDT-5	Incorporate Bike Lane Street Design (on-site)		LUT-9	NA	
	SDT-6	Provide Bike Parking in Non-Residential Projects		LUT-9	NA	
	SDT-7	Provide Bike Parking in Multi-Unit Residential Projects		LUT-9	NA	
	SDT-8	Provide EV Parking		SDT-3	NA	
	SDT-9	Dedicate Land for Bike Trails		LUT-9	NA	
Parking Policy / Pricing	PDT-1	Limit Parking Supply			5-12.5%	
	PDT-2	Unbundle Parking Costs from Property Cost			2.6-13%	
	PDT-3	Implement Market Price Public Parking (On-Street)			2.8-5.5%	
	PDT-4	Require Residential Area Parking Permits		PDT-1, 2 & 3	NA	
Trip Reduction Programs	TRT-1	Implement Voluntary CTR Programs			1.0-6.2%	Commute VMT
	TRT-2	Implement Mandatory CTR Programs – Required Implementation/Monitoring			4.2-21.0%	Commute VMT
	TRT-3	Provide Ride-Sharing Programs			1-15%	Commute VMT
	TRT-4	Implement Subsidized or Discounted Transit Prog.			0.3-20.0%	Commute VMT
	TRT-5	Provide End of Trip Facilities		TRT-1, 2 & 3	NA	
	TRT-6	Telecommuting and Alternative Work Schedules			0.07-5.50%	Commute VMT
	TRT-7	Implement Commute Trip Reduction Marketing			0.8-4.0%	Commute VMT
	TRT-8	Implement Preferential Parking Permit Program		TRT-1, 2 & 3	NA	
	TRT-9	Implement Car-Sharing Program			0.4-0.7%	VMT
	TRT-10	Implement School Pool Program			7.2-15.8%	School VMT

	TRT-11	Provide Employer-Sponsored Vanpool/Shuttle			0.3-13.4%	Commute VMT
	TRT-12	Implement Bike-Sharing Program		SDT-5, LUT-9	NA	
	TRT-13	Implement School Bus Program			38-63%	School VMT
	TRT-14	Price Workplace Parking			0.1-19.7%	Commute VMT
	TRT-15	Implement Employee Parking "Cash-Out"			0.6-7.7%	Commute VMT
Transit System Improvements	TST-1	Provide a Bus Rapid Transit System			0.02-3.2%	VMT
	TST-2	Implement Transit Access Improvements		TST-3, TST-4	NA	
	TST-3	Expand Transit Network			0.1-8.2%	VMT
	TST-4	Increase Transit Service Frequency/Speed			0.02-2.5%	VMT
	TST-5	Provide Bike Parking Near Transit		TST-3, TST-4	NA	
	TST-6	Provide Local Shuttles		TST-3, TST-4	NA	
Road Pricing / Management	RPT-1	Implement Area or Cordon Pricing			7.9-22.0%	VMT
	RPT-2	Improve Traffic Flow			0-45%	VMT
	RPT-3	Require Project Contributions to Transportation Infrastructure Improvement Projects		RPT-2, TST-1 to 6	NA	
	RPT-4	Install Park-and-Ride Lots		RPT-1, TRT-11, TRT-3, TST-1 to 6	NA	
Vehicles	VT-1	Electrify Loading Docks and/or Require Idling-Reduction Systems			26-71%	Truck Idling Time
	VT-2	Utilize Alternative Fueled Vehicles			Varies	
	VT-3	Utilize Electric or Hybrid Vehicles			0.4-20.3%	Fuel Use

Water						
Category	Measure Number	Strategy	BMP	Grouped With #	Range of Effectiveness	
					Percent Reduction in GHG Emissions	Basis
Water Supply	WSW-1	Use Reclaimed Water			up to 40% for Northern California up to 81% for Southern California	Outdoor Water Use
	WSW-2	Use Gray Water			0-100%	Outdoor Water Use
	WSW-3	Use Locally-Sourced Water Supply			0-60% for Northern and Central California; 11-75% for Southern California	Indoor and Outdoor Water Use
Water Use	WUW-1	Install Low-Flow Water Fixtures.			Residential: 20% Non-Residential: 17-31%	Indoor Water Use
	WUW-2	Adopt a Water Conservation Strategy.			varies	
	WUW-3	Design Water-Efficient Landscapes			0-70%	Outdoor Water Use
	WUW-4	Use Water-Efficient Landscape Irrigation Systems			6.1%	Outdoor Water Use
	WUW-5	Reduce Turf in Landscapes and Lawns			varies	
	WUW-6	Plant Native or Drought-Resistant Trees and Vegetation			BMP	

Area Landscaping						
Category	Measure Number	Strategy	BMP	Grouped With #	Range of Effectiveness	
					Percent Reduction in GHG Emissions	Basis
Area Landscaping	A-1	Prohibit Gas Powered Landscape Equipment.			LADWP: 2.5-46.5% PG&E: 64.1-80.3% SCE: 49.5-72.0% SDGE: 38.5-66.3% SMUD: 56.3-76.0%	Fuel Use
	A-2	Implement Lawnmower Exchange Program			BMP	
	A-3	Electric Yard Equipment Compatibility		A-1 or A-2	BMP	

Solid Waste						
Category	Measure Number	Strategy	BMP	Grouped With #	Range of Effectiveness	
					Percent Reduction in GHG Emissions	Basis
Solid Waste	SW-1	Institute or Extend Recycling and Composting Services			BMP	
	SW-2	Recycle Demolished Construction Material			BMP	

Vegetation						
Category	Measure Number	Strategy	BMP	Grouped With #	Range of Effectiveness	
					Percent Reduction in GHG Emissions	Basis
Vegetation	V-1	Urban Tree Planting		GP-4	varies	
	V-2	Create new vegetated open space.			varies	

Construction						
Category	Measure Number	Strategy	BMP	Grouped With #	Range of Effectiveness	
					Percent Reduction in GHG Emissions	Basis
Construction	C-1	Use Alternative Fuels for Construction Equipment			0-22%	Fuel Use
	C-2	Use Electric and Hybrid Construction Equipment			2.5-80%	Fuel Use
	C-3	Limit Construction Equipment Idling beyond Regulation Requirements			varies	
	C-4	Institute a Heavy-Duty Off-Road Vehicle Plan		Any C	BMP	
	C-5	Implement a Vehicle Inventory Tracking System		Any C	BMP	

Miscellaneous						
Category	Measure Number	Strategy	BMP	Grouped With #	Range of Effectiveness	
					Percent Reduction in GHG Emissions	Basis
Miscellaneous	Misc-1	Establish a Carbon Sequestration Project			varies	
	Misc-2	Establish Off-Site Mitigation			varies	
	Misc-3	Use Local and Sustainable Building Materials	x		BMP	
	Misc-4	Require Best Management Practices in Agriculture and Animal Operations	x		BMP	
	Misc-5	Require Environmentally Responsible Purchasing	x		BMP	
	Misc-6	Implement an Innovative Strategy for GHG Mitigation	x		BMP	

General Plan Strategies						
Category	Measure Number	Strategy	BMP	Grouped With #	Range of Effectiveness	
					Percent Reduction in GHG Emissions	Basis
General Plans	GP-1	Fund Incentives for Energy Efficiency	x		BMP	
	GP-2	Establish a Local Farmer's Market	x		BMP	
	GP-3	Establish Community Gardens	x		BMP	
	GP-4	Plant Urban Shade Trees	x	V-1	BMP	
	GP-5	Implement Strategies to Reduce Urban Heat-Island Effect	x		BMP	

(See *Quantifying Greenhouse Gas Mitigation Measures*, Tables 6-1 to 6-9, California Air Pollution Control Officers Association (CAPCOA), August 2010.⁸)

Again, it is entirely feasible for the EIR to incorporate a substantial proportion of the foregoing measures for the Project as mandatory forms of mitigation against the

⁸ Available at: <http://www.aqmd.gov/docs/default-source/ceqa/handbook/capcoa-quantifying-greenhouse-gas-mitigation-measures.pdf>

Project's potentially significant greenhouse gas impacts (as well as energy use and air quality impacts). The EIR cannot permissibly deflect its obligations to mitigate such impacts merely by hiding behind the 9th Circuit's ruling in *California Restaurant Association v. City of Berkeley*. More is required, and as currently constituted, the EIR's improper analysis and lack of appropriate mitigation on GHG impacts violates CEQA.

3. The FEIR's Biological Resources Mitigation Measure Remains Insufficient.

The Project's Initial Study and DEIR notes that up to 5 city street trees may require removal at the north edge of the Project site at the terminus of Hester Street. (Appendix A to DEIR, Initial Study, p. 51.) In order to mitigate the Project's potentially significant impacts to nesting birds in said street trees, the Initial Study imposes mitigation measure BIO-1, which requires, among other things, that pre-construction nesting surveys be conducted during the nesting season. *Id.* at p. 52. However, the mitigation measure defines the nesting period as February-September, contrary various findings by the California Department of Fish and Wildlife ("CDFW") concerning bird nesting season.⁹

Further investigation of the information contained on the CDFW's "California Outdoors Q&A" webpage reveals that the boundaries of bird nesting season in California are broad and variable: "[N]esting season can vary based on location and species of bird, and in some parts of the state, birds nest year-round."¹⁰

This added qualification by CDFW regarding bird nesting season is consistent with, and underscores, CDFW's separate finding that raptor nesting in the Project's geographic region can and does occur outside the more general bird nesting period of February-September sought by the DEIR in BIO-1. Moreover, CDFW's collective findings on this issue confirm the inadequacy of the City's proposed mitigation measure for the Project.

⁹ "...[S]ome species of raptors (e.g. owls, hawks, etc.) may commence nesting activities in January." See CDFW November 18, 2021 letter to City of Adelanto, available at <https://files.ceqanet.opr.ca.gov/273819-1/attachment/zo76RgD7dUdj5BJJTfEhEMdf74g6f100RrKiWBQsqhFFe5l0X53rL.sbl.SGMPRXgXM4AaYnJSTfZB6lpY0>

¹⁰ See CDFW California Outdoors Q&A – Nesting Birds <https://wildlife.ca.gov/COQA/ArticlePage/2/tag/conflict#gsc.tab=0>

In the FEIR's responses to comments, the City indicates that the street trees subject to potential impacts by the Project are not suitable candidates for raptor nesting, and that therefore, no further mitigation efforts (and/or modifications to the Project's existing biological mitigation measures set forth in the DEIR) are required. (FEIR, p. 508.) However, the City has failed to provide any evidence whatsoever to support its assertions regarding the suitability of the impacted trees for raptor nesting, let alone substantial evidence. Indeed, the City cites no authority or studies whatsoever that are supportive of the position that raptors would be highly unlikely to nest in the 30-40 foot tall street trees currently located on the Project Site.

The FEIR's responses to comments also fail to address Local 713's comments regarding the broad and variable nature of bird nesting season in California, as noted by CDFW, and the propensity for some birds in some locales to nest year-round. This failure to address this issue, in the form of added analysis and revised mitigation efforts, perpetuates the EIR's deficiencies on this issue.

Accordingly, Local 713 resubmits that the nesting period and survey plan set forth in the MM-BIO-1 must, at a minimum, be revised to account for CDFW's findings pertaining to the variable and/or year-round bird nesting season within the Project's geographic region, and that the FEIR must provide the requisite support for its conclusions regarding raptor nesting being improbable in the impacted street trees. Absent such revision, the proposed mitigation measure and, by extension, the EIR will remain in direct violation of the CEQA Guidelines.

4. The FEIR's Noise/Vibration Mitigation Measures Remain Inadequate and Fail to Incorporate Requisite Analysis

The Project's DEIR finds that construction of the Project will result in a potentially significant impact with respect to groundborne vibration. Specifically, the DEIR indicates that the Project's construction would generate groundborne vibration that would exceed thresholds of structural damage at nearby existing buildings. (DEIR at p. 4.3-18.) In an effort to address these potential significant impacts, the DEIR implements Mitigation Measure NOI-2, which states as follows:

Static Roller Requirement. The project applicant and/or its construction contractors shall use of [*sic*] a static roller in lieu of a vibratory roller for paving activities within 15 feet of the existing off-site buildings to the north and west of the project site. City staff shall verify

that this requirement is incorporated into construction plans prior to issuance of a building permit and verified in the field.

DEIR at p. 4.3-20.

However, Local 713 resubmits that the calculations associated with MM-NOI-2 do not include any analysis of the impacts of vibratory roller use between 10 feet and 25 feet of distance from existing off-site buildings. (See Appendix F to DEIR at pp. 3-5, Table 1.) Meanwhile, MM-NOI-2 only requires use of a static (non-vibratory) roller *within 15 feet* of neighboring sensitive receptors. Thus, the EIR's analysis with regard to MM-NOI-2 remains inadequate to support the measure, in that the DEIR does not clearly indicate that the vibration caused by use a vibratory roller starting at 15 feet of distance from neighboring structures would be less than the prescribed threshold of 0.5 in/sec PPV for vibration-induced structural damage. Moreover, the DEIR also does not otherwise provide a clear delineation for the minimum safe distance for use of a vibratory roller in the context of proximity to off-site structures.

The City's responses to comments in the FEIR on this issue do not address Local 713's concern. (See FEIR, pp. 508-509.) In that regard, the FEIR focuses on the fact that a static, non-vibratory roller used at a distance of 15 from nearby structures will not exceed the threshold for structural damage at those structures. (*Id.*) While that may ultimately be true, Local 713's concern on this issue is that the DEIR and MM-NOI-2 would permit the Project's use of vibratory rollers at distances of greater than 15 feet from neighboring structures, and the DEIR's analysis does not adequately confirm that the use of a vibratory roller at a distance of 16-25 feet from neighboring structures does not present a significant risk of structural damage (i.e., significant vibration impact). Based on the current requirements of MM-NOI-2, the EIR must still conduct further analysis of the potential vibration that would result from the use of a vibratory roller between the distances of 15 feet and 25 feet from neighboring structures, and assess whether the use of a vibratory roller at that range of distances would exceed the vibration-induced structural damage threshold of 0.5 in/sec. To the extent that Project is likely to exceed the vibration-induced structural damage threshold at those distances, further mitigation measures will be required for the Project to comply with CEQA.

Accordingly, further analysis is required to demonstrate that no significant impact will occur to neighboring industrial structures via use of vibratory roller starting at 15 feet distance away and greater. The EIR must be revised and recirculated to reflect this

appropriate analysis, and MM-NOI-2 should be adjusted accordingly, if necessary, in order to protect neighboring structures from damage.

IV. CONCLUSION

Based on the foregoing concerns, the City cannot permissibly certify the EIR for the Project in its current form, and, at a minimum must revise and recirculate the EIR for the Project pursuant to CEQA. Absent doing so, the EIR in its current form directly violates CEQA in multiple respects. If the City should have any questions or concerns, please do not hesitate to contact this office.

Sincerely,

A handwritten signature in blue ink, appearing to read 'J. Herwitt', is written over a horizontal line.

Jeremy Herwitt
Attorneys for Carpenters Local Union #713

Attached:

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

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

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