

P: (626) 314-3821
F: (626) 389-5414
E: info@mitschtsailaw.com



139 South Hudson Avenue
Suite 200
Pasadena, California 91101

VIA PERSONAL DELIVERY

February 20, 2025

City Clerk
City of San Leandro
San Leandro City Hall
835 East 14th Street
San Leandro, CA

**RE: City of San Leandro, 880 Doolittle Drive Project (SCH#
2023110597) – Appeal of Planning Commission Approval of Project**

Dear Mayor González and Distinguished Councilmembers,

On behalf of the **Carpenters Local Union #713** (“**Local 713**”), our firm is submitting this appeal justification letter in connection with the February 6, 2025, approval by the City of San Leandro’s (“**City**”) Planning Commission of the 880 Doolittle Drive Project (“**Project**”) and its certification of the Final Environmental Impact Report (“**FEIR**”) 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. 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).

This appeal is filed pursuant to San Leandro Zoning Code §§ 5.08.132 and 5.20.100, *et seq.* and San Leandro Municipal Code § 1-3-415. This appeal letter, Local 713's attached February 6, 2025, comment letter to the Planning Commission (attached hereto as **Exhibit A**), and its prior written comments concerning the Project, demonstrate that the Planning Commission's decision to approve the Project and certify the EIR violated CEQA. To that end, the decisions/resolutions adopted by the Planning Commission are not supported by evidence in the record, as the FEIR for the Project remains subject to numerous deficiencies that violate CEQA and it cannot permissibly be certified by the City in its current form. As discussed in greater detail below, those deficiencies include, but are not limited to, the EIR's failures (1) to adequately analyze the Project's energy use impacts, (2) to adequately mitigate the Project's significant and unavoidable greenhouse gas emissions impacts to the maximum extent feasible, (3) to adequately mitigate the Project's impacts on biological resources, and (4) to provide adequate analysis to support one of the Project's proposed noise/vibration mitigation measures.

The prior comments by Local 713 and other concerned parties identified various flaws in the City's environmental analysis, and provided new information and substantial evidence demonstrating that the FEIR fails as an informational document under CEQA.

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

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>.

include potential reductions in both vehicle miles traveled and vehicle hours traveled.³

Moreover, local hire mandates and skill training are critical facets of a strategy to reduce vehicle miles traveled (VMT). As planning experts Robert Cervero and Michael Duncan have noted, simply placing jobs near housing stock is insufficient to achieve VMT reductions given that the skill requirements of available local jobs must match those held by local residents.⁴ Some municipalities have even tied local hire and other workforce policies to local development permits to address transportation issues. Cervero and Duncan note that:

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

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.

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>

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>

II. THE PLANNING COMMISSION APPROVED THE PROJECT IN VIOLATION OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

A. Background Concerning the California Environmental Quality Act

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 consequences of their decisions *before* they are made.” *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.

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.*

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).

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.

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.

1. *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.)

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. The FEIR Fails to Include Necessary Information, Analysis, and Mitigation Requested in Past Comment Letters.

In the FEIR, the City declined, without adequate justification, to address the concerns raised by Local 713 and other interested parties regarding the Project’s DEIR. Most notably, the FEIR dismissed and downplayed the EIR’s obligation to mitigate the Project’s significant and unavoidable impacts related to greenhouse gas emissions. To that end, the FEIR failed and refused to incorporate additional mitigation measures to account for and offset the fact the Project was determined to have significant and unavoidable greenhouse gas impacts resulting from the construction and inclusion of natural gas infrastructure in the Project. The FEIR has engaged in an illogical and unreasonable calculus that, because the Project was under a purported legal requirement to include natural gas supply infrastructure in its construction, there would be no further means of limiting the Project’s greenhouse gas emissions impacts because other mitigation measures could not reduce the amount of natural gas consumed by the Project. This rationale betrays an apparent lack of understanding

regarding the nature of greenhouse gas emissions impacts and the concept of offsetting such emissions. Indeed, at bottom, the Project could even do as little purchase reputable carbon credits to offset (i.e., mitigate) the anticipated added greenhouse gas emissions posed by the inclusion of natural gas infrastructure at the Project in pursuit of achieving the regulatory goal of net-zero. However, the FEIR inexplicably declined to do so, treating the impacts of the Project's anticipated natural gas combustion, and the mitigation thereof, in complete isolation from other greenhouse gas mitigation strategies. This approach flies directly in the face of the CEQA requirement that an EIR mitigate any significant and unavoidable impacts to the maximum extent feasible, and as such, the FEIR as currently constituted violates CEQA.

Additionally, the FEIR failed to address and resolve Local 713's concerns regarding the Project's energy use impacts and the lack of appropriate analysis demonstrating that the Project's anticipated regulatory compliance would yield less than significant energy use impacts. To the extent that the City claims regulatory compliance will reduce the Project's energy use impacts to less than significant levels, it must base that determination on Project-specific analysis of the potential impacts and the effect that regulatory compliance will have on those impacts. (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.) Again, it will amount to a violation of CEQA for the City to certify the FEIR on the bare conclusion, without additional analysis, that the Project's compliance with state and local policies and regulations will categorically reduce energy use impacts below the threshold of significance.

Further still, the FEIR has declined to provide adequate analysis to support its attempted mitigation of the Project's biological resources impacts. In that regard, as a basis for refusing to modify the nature and extent of biological surveys included in its mitigation measures, the FEIR asserts that the street trees to be removed at the Project Site are not suitable candidates for raptor nesting without providing any evidence, studies, or other documentation to support that notion. To the extent that the FEIR is inclined to dismiss the applicability of certain CDFW guidance as to bird/raptor nesting season on the Project, the City must do more to substantiate that position. CEQA requires that the City provide substantial evidence to support such a

notion where, as here, it is faced with significant new information regarding the Project's biological resources impacts.

Finally, the FEIR completely fails and refuses to address the concerns raised by Local 713 concerning the Project's noise/vibration mitigation measure, MM-NOI-2. Indeed, Local 713 resubmits that the mitigation measure is not supported by adequate evidence and study to demonstrate that use of a vibratory roller at 16-25 feet of distance from neighboring structures will not cause structural damage. Thus, as currently crafted, the mitigation measure leaves open the significant possibility of neighboring structural damage via the nature of vibratory roller use that the FEIR has sanctioned for the Project. The FEIR was required to perform further analysis and study to confirm that such vibration impacts would be mitigated to the maximum extent possible, but it has maintained its failure to do so in violation of CEQA.

Accordingly, and for the reasons set forth herein and in the attached Exhibit A, the City Council should grant this appeal, reversing the approvals of the Planning Commission for the Project, and rejecting the Planning Commission's certification of the Project's EIR, pending the revision and recirculation of it to address these issues, and others identified by the commenting parties.

III. CONCLUSION

Based on the foregoing, Local 713 requests that the City Council grant this appeal, thereby reversing the Planning Commission's approval for the Project, pending the required revision and recirculation of the FEIR to first address the areas of concern including the Project's greenhouse gas emissions mitigation, analysis of energy use impacts, biological resources mitigation measures, and noise/vibration impact analysis and mitigation. Thank you for your consideration. If the City has any questions, please do not hesitate to contact our 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:

February 6, 2025, Mitchell M. Tsai Law Firm Letter to City of San Leandro Planning Commission (**Exhibit A**)



APPEAL APPLICATION FORM – APPEAL TO CITY COUNCIL

City Clerk's Office | 835 East 14th Street, San Leandro, CA 94577 | (510) 577-3367

General Info – Decisions of the Planning Commission may be appealed to City Council.

Deadline to File – This appeal application must be submitted **within fifteen (15) calendar days** of the decision, and **within ten (10) calendar days** of a Tentative Map approval. If the appeal period ends on a weekend or holiday, the appeal period ends the next business day.

Fees – An appeal by the project applicant requires either a Planning Deposit (if the appeal is made by the project applicant) or a fixed Planning Fee (if the appeal is made by any other party). Planning fees also includes a tech fee. Appeals are also subject to a City Clerk Fee. Credit/Debit Card fees apply, if any fees are paid by credit/debit card.

How to Submit an Appeal Application –

- 1) Appeals must be filed in person at San Leandro City Hall, 835 East 14th Street, during business hours. To file an appeal, please bring:
 - a) Payment for Planning and City Clerk appeal fees
 - b) Signed and completed Appeal Application Form (front side).
 - c) Signed and completed Agreement for Payment of Planning Fees (back side) (for appeals filed by the project applicant only).
- 2) Check in at the Permit Center on the 1st floor and indicate you are filing an appeal. A planner will assist you in verifying your appeal application is complete.
- 3) Pay the City Clerk Fee and the Planning Deposit/Fee. Obtain a copy of both receipts.
- 4) Planning staff will escort you to the City Clerk's Office, at 835 E 14th St, 2nd floor to complete the process. Do not go directly to the City Clerk's Office.

OFFICIAL USE ONLY	
DATE RECEIVED: RECEIVED FEB 21 2025 CITY CLERK'S OFFICE	
APPEAL RECEIVED BY:	
CITY CLERK FEE RECEIPT NUMBER:	
FY 2024-2025 City Clerk fee amount: \$556.00	
PLANNING FEE RECEIPT NUMBER:	
☐ DEPOSIT (FY 2024-2025 amount: \$5,000) ☐ FIXED FEE (FY 2024-2025 amount: \$604.13) ☐ TECH FEE (FY 2024-2025 amount: 6% of fees)	
AGREEMENT FOR PAYMENT OF PLANNING FEES:	
☐ SIGNED ☐ NOT REQUIRED	
CC: ☐ PLANNING ☐ CAO ☐ FINANCE	

I wish to appeal the decision of the Planning Commission.

I am: ☐ The Project Applicant (fill out back side too) ☐ A Resident ☐ A Business Owner ☒ Other: Local Labor Organization

The decision I am appealing was made on: 02/06/2025 and the decision was to ☒ Approve ☐ Deny the project below:
(date decision was made)

Project Number: Project Address (or APN if address has not been issued):

PLN 2 2 0 0 3 9 880 Doolittle Drive

Reasons for Appeal (List all grounds relied upon in making this appeal. Attach additional sheets if necessary.)

Planning Commission's certification of FEIR violated CEQA because FEIR failed to adequately:

1. analyze energy use impacts, 2. mitigate GHG and biological resources impacts, and
3. analyze and support noise/vibration mitigation measures

PLEASE SEE ATTACHED LETTER

Print Full Name:

Mitchell M. Tsai Law Firm / Carpenters Local Union #713

Mailing Address:

139 S. Hudson Avenue, Suite 200

Address

Pasadena

CA

91101

City

State

Zip

Phone Number:

(626) 314-3821

Email:

jeremyh@mitsailsaw.com ; info@mitsailsaw.com

Signature of Appellant:

[Handwritten Signature]

Date Signed:

February 21, 2025