VIA E-MAIL

August 4, 2025

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RE: City of Anaheim's Anaheim Hills Festival Specific Plan Amendment Project – Draft Environmental Impact Report (SCH# 2024010859)

Dear Amanda Lauffer,

B2-1

On behalf of the Western States Regional Council of Carpenters ("**Western Carpenters**" or "**WSRCC**"), our firm is submitting these comments in connection with the City of Anaheim's ("**City**") Anaheim Hills Festival Specific Plan Amendment ("**Project**") and the Draft Environmental Impact Report ("**DEIR**") associated therewith.

The Notice of Availability of the Project's DEIR describes the Project as follows:

> The proposed project would establish a new Development Area (DA 5) within the existing boundaries of the Anaheim Hills Festival Specific Plan to accommodate residential uses in combination with the site's existing commercial development. DA 5 would be created by reallocating land from the existing DA 2, reducing its size from approximately 48 acres to 31.8 acres. The resulting 16.2-acre area would form the new DA 5. All proposed development would be confined to DA 5, which encompasses Assessor's Parcel Numbers (APNs) 354-451-19 and 354-451-32. The overall exterior boundary of the Specific Plan would remain unchanged. The proposed project includes the demolition of an approximately 62,676-square-foot cinema within DA 5 and the development of a new 447-unit

B2-1 cont.

> multiple-family rental residential community. The proposed multiple-family community would consist of a four-story residential building, wrapped around a five-level parking structure with one subterranean level. All residential units are single-story and include one-bedroom, two-bedroom, and three-bedroom options with private patios or balconies. Project amenities include a clubhouse, two swimming pools, courtyards, a fitness center, leasing office, and mail area. In addition to the project amenities, the applicant is proposing an enclosed outdoor public dog park along Festival Drive and public bluff park along the edge of the newly proposed DA 5 and the lower tier of the shopping center, DA 2, which would be open to residents of the community and the general public.

NOA, p. 1.

The Western States Regional Council of Carpenters is a labor union representing almost 90,000 union carpenters in 12 states, including California, and has a strong interest in well-ordered land use planning and in addressing the environmental impacts of development projects.

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

The Western Carpenters 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.

The Western Carpenters incorporates by reference all comments raising issues regarding the Environmental Impact Report (EIR) submitted prior to certification of the EIR for the Project. 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, the Western Carpenters 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.

B2-1 cont.

B2- tex

I. THE CITY SHOULD REQUIRE THE USE OF A LOCAL WORKFORCE TO BENEFIT THE COMMUNITY'S ECONOMIC DEVELOPMENT AND ENVIRONMENT

B2-2

The City should require the Project to be built using a local workers who have graduated from a Joint Labor-Management Apprenticeship Program approved by the State of California, have at least as many hours of on-the-job experience in the applicable craft which would be required to graduate from such a state-approved apprenticeship training program, or who are registered apprentices in a state-approved apprenticeship training program.

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

B2-2 cont.

> can positively affect returns on climate mitigation efforts. In other words, well-trained workers are key to delivering emissions reductions and moving California closer to its climate targets.[1]

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

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

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

[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://cproundtable.org/static/media/uploads/publications/cpr-jobs-housing.pdf

[4] Cervero, Robert and Duncan, Michael (2006) Which Reduces Vehicle Travel More: Jobs-Housing Balance or Retail-Housing Mixing? Journal of the American Planning Association 72 (4), 475-490, 482, *available at* http://reconnectingamerica.org/assets/Uploads/UTCT-825.pdf.

other workforce policies to local development permits to address transportation issues. Cervero and Duncan note that: B2-2 cont.

> 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 CITY SHOULD IMPOSE TRAINING REQUIREMENTS FOR THE PROJECT'S CONSTRUCTION ACTIVITIES TO PREVENT COMMUNITY SPREAD OF COVID-19 AND OTHER INFECTIOUS DISEASES B2-3

Construction work has been defined as a Lower to High-risk activity for COVID-19 spread by the Occupations Safety and Health Administration. Recently, several construction sites have been identified as sources of community spread of COVID-19.[5]

[5] Santa Clara County Public Health (June 12, 2020) COVID-19 CASES AT CONSTRUCTION SITES HIGHLIGHT NEED FOR CONTINUED VIGILANCE IN SECTORS THAT HAVE REOPENED, *available at* https://www.sccgov.org/sites/covid19/Pages/press-release-06-12-2020-cases-at-construction-sites.aspx.

Western Carpenters recommend that the Lead Agency adopt additional requirements to mitigate public health risks from the Project's construction activities. Western Carpenters requests that the Lead Agency require safe on-site construction work practices as well as training and certification for any construction workers on the Project Site. B2-3 cont.

In particular, based upon Western Carpenters' experience with safe construction site work practices, Western Carpenters recommends that the Lead Agency require that while construction activities are being conducted at the Project Site:

Construction Site Design:

- The Project Site will be limited to two controlled entry points.
- Entry points will have temperature screening technicians taking temperature readings when the entry point is open.
- The Temperature Screening Site Plan shows details regarding access to the Project Site and Project Site logistics for conducting temperature screening.
- A 48-hour advance notice will be provided to all trades prior to the first day of temperature screening.
- The perimeter fence directly adjacent to the entry points will be clearly marked indicating the appropriate 6-foot social distancing position for when you approach the screening area. Please reference the Apex temperature screening site map for additional details.
- There will be clear signage posted at the project site directing you through temperature screening.
- Provide hand washing stations throughout the construction site.

Testing Procedures:

- The temperature screening being used are non-contact devices.
- Temperature readings will not be recorded.

B2-3 cont.

- Personnel will be screened upon entering the testing center and should only take 1-2 seconds per individual.
- Hard hats, head coverings, sweat, dirt, sunscreen or any other cosmetics must be removed on the forehead before temperature screening.
- Anyone who refuses to submit to a temperature screening or does not answer the health screening questions will be refused access to the Project Site.
- Screening will be performed at both entrances from 5:30 am to 7:30 am.; main gate [ZONE 1] and personnel gate [ZONE 2]
- After 7:30 am only the main gate entrance [ZONE 1] will continue to be used for temperature testing for anybody gaining entry to the project site such as returning personnel, deliveries, and visitors.
- If the digital thermometer displays a temperature reading above 100.0 degrees Fahrenheit, a second reading will be taken to verify an accurate reading.
- If the second reading confirms an elevated temperature, DHS will instruct the individual that he/she will not be allowed to enter the Project Site. DHS will also instruct the individual to promptly notify his/her supervisor and his/her human resources (HR) representative and provide them with a copy of Annex A.

Planning

- Require the development of an Infectious Disease Preparedness and Response Plan that will include basic infection prevention measures (requiring the use of personal protection equipment), policies and procedures for prompt identification and isolation of sick individuals, social distancing (prohibiting gatherings of no more than 10 people including all-hands meetings and all-hands lunches)

communication and training and workplace controls that meet standards that may be promulgated by the Center for Disease Control, Occupational Safety and Health Administration, Cal/OSHA, California Department of Public Health or applicable local public health agencies.[6]

B2-3 cont.

The United Brotherhood of Carpenters and Carpenters International Training Fund has developed COVID-19 Training and Certification to ensure that Carpenter union members and apprentices conduct safe work practices. The Agency should require that all construction workers undergo COVID-19 Training and Certification before being allowed to conduct construction activities at the Project Site.

Western Carpenters has also developed a rigorous Infection Control Risk Assessment ("**ICRA**") training program to ensure it delivers a workforce that understands how to identify and control infection risks by implementing protocols to protect themselves and all others during renovation and construction projects in healthcare environments.[7]

ICRA protocols are intended to contain pathogens, control airflow, and protect patients during the construction, maintenance and renovation of healthcare facilities. ICRA protocols prevent cross contamination, minimizing the risk of secondary infections in patients at hospital facilities.

The City should require the Project to be built using a workforce trained in ICRA protocols.

III. THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

B2-4

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).[8] At its core, its purpose

[6] *See also* The Center for Construction Research and Training, North America's Building Trades Unions (April 27 2020) NABTU and CPWR COVIC-19 Standards for U.S Constructions Sites, *available at* https://www.cpwr.com/sites/default/files/NABTU_CPWR_Standards_COVID-19.pdf; Los Angeles County Department of Public Works (2020) Guidelines for Construction Sites During COVID-19 Pandemic, *available at* https://dpw.lacounty.gov/building-and-safety/docs/pw_guidelines-construction-sites.pdf.

[7] For details concerning Western Carpenters' ICRA training program, *see* https://www.swmsctf.org/courses/icra-best-practices-in-health-care-construction/

[8] 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

B2-4 cont.

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

To achieve this purpose, CEQA mandates preparation of an Environmental Impact Report ("**EIR**") for projects so that the foreseeable impacts of pursuing the project can be understood and weighed. *Communities for a Better Environment v. Richmond* (2010) 184 Cal. App. 4th 70, 80. The EIR requirement "is the heart of CEQA." CEQA Guidelines, § 15003(a).

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

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

Essentially, should a lead agency be presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR

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.

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).

B2-4 cont.

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.

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).

B2-4 cont.

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.

Section 15088.5(a) of the CEQA Guidelines provides that an EIR must be recirculated whenever there is disclosure of significant new information. Significant new information includes: (1) disclosure of a new significant environmental impact resulting from the project or from a new proposed mitigation measure; (2) disclosure

of a substantial increase in the severity of an environmental impact unless mitigation measures are adopted that reduce the impact to a level of insignificance; and (3) disclosure of a feasible project alternative or mitigation measure considerably different from others previously analyzed which would clearly lessen the significant environmental impacts of the project which the project proponents decline to adopt. *Id.*

B2-4 cont.

Additionally, an EIR must be recirculated when it is so fundamentally inadequate and conclusory in nature that meaningful public review and comment is precluded. *Id.* [citing *Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043].

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

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

B2-5

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

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

When new information is brought to light showing that an impact previously discussed in the DEIR but found to be insignificant with or without mitigation in the DEIR's analysis has the potential for a significant environmental impact supported by substantial evidence, the DEIR must consider and resolve the conflict in the evidence. See *Visalia Retail, L.P. v. City of Visalia* (2018) 20 Cal.App.5th 1, 13, 17; see also *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal. App. 4th 1099, 1109. While a lead agency has discretion to formulate standards for determining significance and the need for mitigation measures—the choice of any standards or

thresholds of significance must he "based to the extent possible on scientific and factual data and an exercise of reasoned judgment hased on suhstantial 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 he 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.

B2-5 cont.

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

1. The DEIR Fails to Conduct Adequate Study and Analysis of the Project's Noise Impacts

The DEIR for the Project concludes that the Project will result in less than significant noise and vihration impacts based, in part, on its finding that: "[t]he closest noise sensitive receptors near the site are multi-family residences approximately 300 feet south of the southernmost project boundary along North La Brea Avenue." (DEIR, pp. 4.10-4 – 5; see also DEIR, p. 4.10-12.) However, in reaching this conclusion the DEIR misstates and misapplies the City's Noise Ordinance as the threshold of significance for noise impacts, claiming that the Noise Ordinance "estahlishes a noise level limit of 60 dBA." DEIR, p. 4.13-13. The standard that the DEIR should have considered and analyzed as a its threshold of significance for the Project's anticipated noise impacts is set forth by Anaheim Municipal Code section 18.40.090, which provides an exterior construction noise limit of 65 dBA CNEL for exterior yards and common areas of existing residential developments. Meanwhile, the DEIR, by its own studies (and which appear to have further underreported the Project's noise impacts hased on the improper placement of noise measurement equipment L3/R3 and L4/R4), determined that the sensitive receptors in R3 and R4 would he exposed to construction noise levels in excess of 65 dBA CNEL. See DEIR, p. 4.13-13, Tahles 4.13-6 and 4.13-7.

B2-6

Accordingly, the DEIR admits that the Project's noise impacts are potentially significant, and yet, it improperly does not provide for any mitigation to reduce its anticipated significant noise impacts. As such, and ahsent revision and recirculation of the DEIR to include added noise mitigation measures that demonstrably reduce the

Project's construction noise impacts below the threshold of significance, the Project will continue to violate CEQA with regard to its noise impacts.

B2-6 cont.

B. The DEIR Improperly Relies Exclusively on Regulatory Compliance in Its Assessment of Biological Resources Impacts

B2-7

The DEIR notes that construction of the Project would require removal of 211 existing on-site trees located throughout the Project site. (IS, p. 30.) While the DEIR notes the potential for the removal of these trees to affect nesting and/or special status bird species (see DEIR p. 4.4-9 – "The existing trees have the potential to support nesting migratory birds that are protected by the MBTA and CFGC."), the DEIR for the Project then proceeds to conduct ***no study or analysis whatsoever*** of the Project's Biological Resources impacts, while inexplicably determining that the Project's haseline Biological Resources impacts will he "Less Than Significant" before mitigation. See DEIR, p. ES-9. The DEIR goes on to rely entirely upon its purported Regulatory Compliance Measure RCM BIO-1 (Nesting Migratory Birds) to dispose of any potential concerns over such impacts, concluding that no actual mitigation is required to achieve less than significant impacts. See DEIR pp. 4.4-8 – 9.

RCM BIO-1 provides as follows:

> To prevent inadvertent disturhance to potential nesting migratory birds, a qualified biologist shall he contracted by the Property Owner/Developer prior to the issuance of any demolition permits to perform biological monitoring during all demolition, clearing, grubbing, and grading activities.
>
> To the extent feasihle, all demolition, clearing, gruhhing, and grading activities shall he conducted outside of the state-identified nesting season for migratory hirds (i.e., typically February 1 through August 31). If not feasihle, a Pre-Construction Nesting Bird Survey within and adjacent to the Project site shall he conducted by a qualified biologist no more than three days before heginning these activities. If active nests are found during the Pre-Construction Nesting Bird Survey, a Nesting Bird Plan (NBP) shall he prepared by a qualified biologist and implemented during construction with approval from the City. At a minimum, the NBP shall include guidelines for addressing the active nest(s), proposed protective buffers, proposed monitoring approach, and proposed reporting

B2-7 cont.

> approach. The size and location of all buffer zones, if required, shall be based on the nesting species, nesting sage, nest location, its sensitivity to disturbance, and intensity and duration of the disturbance activity. A memorandum describing the results of the Pre-Construction Nesting Bird Survey shall be submitted to the Planning and Building Department for verification prior to proceeding with demolition, clearing, grubbing, and/or grading activities subject to this measure. Any NBP developed pursuant to this measure shall be submitted to the City for review and approval prior to implementation.

Id.

Notably, the RCM defines the nesting period as February-August, contrary to the California Department of Fish and Wildlife's ("**CDFW**") finding that **raptor** nesting may commence before and/or after this timeframe.[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]

Furthermore, as noted by the California Department of Fish and Wildlife in a November 18, 2021, letter to the City of Adelanto concerning a similar preconstruction nesting bird survey mitigation measure:

> CDFW is concern[ed] that [the mitigation measure] is conditioned to only require surveys during the peak bird nesting season considering that birds, such as hummingbirds may nest year-round. Furthermore, [the mitigation measure] defines bird nesting season as February 1 to August 31. Please note that nesting may commence before and/or after this timeframe. For example, some species of raptors (e g. owls, hawks, etc.) may commence nesting activities in January, and passerines may nest later than August 31. Fish and Game Code Section 3503 makes it unlawful to take, possess, or

[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/zo76RgD7dUdj5BLJTEhEMdf74g6f100RrKiWBQSquhFFe5l0X53rLsbLSGMPRXgXM4AaYnJSTfZB6JpY0

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

needlessly destroy the nest or eggs of any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto.

B2-7 cont.

These added qualifications by CDFW regarding bird nesting season are consistent with, and underscore, CDFW's separate finding that birds and raptor nesting in the Project's geographic region can and does occur outside the more general bird nesting period of February-August sought by the DEIR in RCM BIO-1. Moreover, CDFW's collective findings on this issue, coupled with the Project site's adjacency and/or very close proximity to undeveloped wildland and conservation areas (e.g., Deer Canyon Park, the Weir Canyon Nature Preserve, the Oak Canyon Nature Center, and the Fremont Canyon Nature Preserve) confirm the inadequacy of both the City's analysis of the Project's potential biological resources impacts to nesting and migratory birds and the exclusive regulatory reliance as a basis for disposing of the potential for any such impacts.

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, the DEIR does not set forth any analysis or study demonstrating the Project's baseline potential impacts on biological resources, juxtaposed with an analysis of how the Project's purported regulatory compliance would reduce potential impacts on nesting bird species to a less than significant level, such that no further study or analysis would be warranted. Rather, the DEIR bases its conclusion regarding the mitigating effects of regulatory compliance simply on assumptions regarding the Project Site and the surrounding urbanized areas. Under CEQA, such unsupported assumptions are improper. To that end, the RCM violates CEQA, as its use here

results in the DEIR failing to disclose "the analytic route that the agency took from the evidence to its findings." (Cal. Public Resources Code § 21081.5; CEQA Guidelines § 15093; *Village Laguna of Laguna Beach, Inc. v. Board of Supervisors* (1982) 134 Cal. App. 3d 1022, 1035 [quoting *Topanga Assn for a Scenic Community v. County of Los Angeles* (1974) 11 Cal. 3d 506, 515.])

B2-7 cont.

Additionally, RCM BIO-1 as framed, presents as a commonplace biological mitigation measure implemented as part of CEQA review for a development project. The language and requirements included in the measures are indicative of an overall finding that the Project has the potential to result in significant impacts on biological resources. However, because of the methodology being applied by the City in the DEIR for this Project, the RCM will not be enforceable in the same manner as standard mitigation measures incorporated in the Project's Mitigation Monitoring and Reporting Plan. A mitigation measure must be enforceable through conditions of approval, contracts or other means that are legally binding. (PRC § 21081.6; CEQA Guidelines § 15126.4(a)(2).) Mitigation measures should be implemented, not adopted and ignored (*Federation of Hillside & Canyon Ass'ns v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261.) The DEIR for the Project currently provides no concrete assurance that RCM BIO-1 (even in its current in adequate form) will in fact be implemented in connection with the construction of the Project.

Accordingly, the nesting period and survey plan set forth in the RCM BIO-1 is inadequate based on CDFW's own guidance, and the DEIR cannot permissibly rely exclusively on regulatory compliance without a greater showing and analysis, based on substantial evidence, that the Project's biological resources impacts will be less than significant based on said regulatory compliance. Given that, at a minimum, the DEIR must be revised and recirculated to demonstrate sufficient analysis and study of the Project's biological resources impacts and substantial evidence to indicate that the Project's compliance with the Fish and Game Code and Migratory Bird Treaty Act will sufficiently mitigate any such impacts. Based on the positions set forth by CDFW in its guidance, the DEIR should further be revised to require that prior to construction of the Project, a sweep should be conducted verifying the absence of any nesting birds during both nesting and non-nesting seasons in order to account for CDFW's findings pertaining to the bird/raptor nesting season within the Project's geographic region. Absent such revision, the proposed RCM and, by extension, the DEIR will be in direct violation of the CEQA Guidelines.

1. *The DEIR Fails to Study and Mitigate the Project's Biological Resources Impacts Due to Planned Tree Removal*

B2-8

As stated above, the Project, as proposed, plans and intends to remove 211 mature trees currently present on the Project site, with some as tall as 65 feet and/or having trunk circumferences as large as 57 inches and crown widths of 30 feet across. See DEIR Appendix 4.4-1, pp. 2-3. Despite its removal of a large number of established trees, the proposed Project does not contemplate or provide specifics on any new replacement trees that will be planted as part of the development process. Instead, the Project's DEIR and its associated Specimen Tree Report (Appendix 4.4-1) hides behind the notion that the City's Tree Ordinance does not require any replacement trees to be planted as mitigation for the tree removal. In this regard, the DEIR improperly conflates the Project's regulatory compliance as to the contemplated tree removal with a less than significant biological resources impact.

Again, 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. See *Californians for Alternatives to Toxics, supra,* (2005) 136 Cal.App.4th 1. Here, the DEIR improperly fails to disclose "the analytic route that the agency took from the evidence to its findings." (Cal. Public Resources Code § 21081.5; CEQA Guidelines § 15093; *Village Laguna of Laguna Beach, Inc. v. Board of Supervisors* (1982) 134 Cal. App. 3d 1022, 1035 [quoting *Topanga Assn for a Scenic Community v. County of Los Angeles* (1974) 11 Cal. 3d 506, 515.]) The deficiency of the DEIR and its mitigation of the impacts of the planned tree removal is underscored by the fact that the DEIR's Specimen Tree Report recommends that "...trees be incorporated be incorporated into the redeveloped landscape..." for the Project. DEIR, Appendix 4.4-1, p. 3. Despite this acknowledgement in the impact study, the Project and its DEIR fail to commit to any types or quantities of tree to be replanted as part of the development.

Accordingly, the DEIR further fails to properly study, analyze, and mitigate the Project's biological resources impacts, despite the substantial evidence of potentially significant impacts, such that revision and recirculation of the DEIR is now required under CEQA.

C. The DEIR's Mitigation Measures Are Insufficient

B2-9

A fundamental purpose of an EIR is to identify ways in which a proposed project's significant environmental impacts can he mitigated or avoided. Puh. Res. Code §§ 21002.1(a), 21061. To implement this statutory purpose, an EIR must describe any feasihle mitigation measures that can minimize the project's significant environmental effects. PRC §§ 21002.1(a), 21100(b)(3); CEQA Guidelines §§ 15121(a), 15126.4(a).

If the project has a significant effect on the environment, the agency may approve the project only upon finding that it has "eliminated or substantially lessened all significant effects on the environment where feasihle" PRC §§ 21002; 21002.1, 21081; CEQA Guidelines §§ 15091, 15092(b)(2)(A); and find that 'specific overriding economic, legal, social, technology or other henefits of the project outweigh the significant effects on the environment." PRC §§ 21002; 21002.1, 21081; CEQA Guidelines §§ 15091, 15092(b)(2)(B). "A gloomy forecast of environmental degradation is of little or no value without pragmatic, concrete means to minimize the impacts and restore ecological equilibrium." *Environmental Council of Sacramento v. City of Sacramento* (2006) 142 Cal.App.4th 1018, 1039.

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

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

Here, the EIR's mitigation measures for the Project are inadequate as follows:

1. The DEIR's Mitigation Measures Are Improperly Deferred

B2-10

CEQA forhids deferred mitigation. Guidelines § 15126.4(a)(1)(B). CEQA allows deferral of details of a mitigation measure only "when it is impractical or infeasihle to include those details during the project's environmental review." (*Id.*) CEQA further

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

Here, the EIR improperly defers details of the Project's mitigation measures as discussed in detail below.

B2-10 cont.

i. Cultural Resources Mitigation Measures

B2-11

The Project's Cultural Resources Mitigation Measure CUL-2 provides as follows, in relevant part:

> **Archaeologist Monitoring:** Prior to the issuance of the grading permit, the Property Owner/Developer shall retain a qualified archaeologist to observe grading activities within previously undisturbed soils and to salvage and catalog archaeological resources, as necessary. The archaeologist will establish procedures for surveillance and for temporarily halting or redirecting work for artifact sampling, identification, and evaluation.

DEIR at p. ES-10.

The above mitigation measure, on its face, defers the preparation of the required procedures for monitoring and halting/redirecting construction activities based on the presence and/or discovery of protected cultural resources at the project site. The postponement of the preparation of the substance of this mitigation measure denies the public and the City's decisionmakers of the opportunity to assess the adequacy of the Project's cultural resources mitigation and monitoring plan, and the Project's overall impact on cultural resources with respect to ensuring such impacts are adequately mitigated and minimized. Indeed, because of this deferment, the City's decisionmakers have been denied the opportunity to fully consider the scope of the

Project's potential impacts to cultural resources and whether such impacts have heen adequately mitigated, while the general public has also heen denied the opportunity to assess and comment upon the associated impacts and the adequacy of the mitigation plans. B2-11 cont.

Thus, in the context of MM CUL-1, the City has failed to meet CEQA's preconditions and requirements concerning mitigation, as the DEIR has failed to show why the Project's cultural resources response plan, and a comprehensive analysis of the Project's anticipated impacts on such cultural resources, cannot he completed or achieved at this time prior to adoption of the EIR. The deferment of this study and analysis also improperly constrains the DEIR's assessment of the impacts that the measure will have individually or cumulatively, and the specific performance criteria the Applicant will have to meet with regard to the measures. Accordingly, the proposed mitigation measure is improperly deferred as it defers the formulation of components of the mitigation to a later time and further does not explain how the measure will clearly reduce the Project's cultural resources impacts to a level of insignificance.

ii. Geology and Soils Mitigation Measures B2-12

The Project's Geology and Soils Mitigation Measure MM GEO-1 provides as follows, in relevant part:

> Prior to the issuance of grading and building permits, the City of Anaheim Building Division and Public Works Department shall review all Project plans for grading, foundation, structural, infrastructure, and all other relevant construction permits to ensure compliance with the recommendations contained in the Project's Geotechnical Exploration and Feasibility Report.

DEIR at p. ES-13.

Moreover, MM GEO-2 provides as follows, in relevant part:

> If paleontological resources are inadvertently unearthed, the contractor shall immediately cease all earth-disturbing activities within a 50-foot radius. ***The paleontologist will evaluate the finding and determine an appropriate course of action,*** including salvage operations if avoidance is not feasible.

DEIR at p. ES-14 (emphasis added).

Much like the Project's MM CUL-1, the above mitigation measures impermissibly defer the preparation of any actual mitigation associated with the Project's geological impacts. Worse yet, MM GEO-1 vaguely attempts to incorporate by reference the "recommendations" of the Project's Geotechnical Exploration and Feasibility Report as potential mitigation measures for the Project. The deferment of the preparation of these mitigation measures, coupled with MM GEO-1's lack of specificity and certainty regarding what mitigation will in fact be deployed to combat impacts associated with potential seismic ground shaking and/or unstable/expansive soils, render the mitigation measures improperly deferred and uncertain. In this regard, the mitigation measure makes no commitment whatsoever to mitigation on this issue, which is required by CEQA.

B2-12 cont.

Thus, in the context of MM GEO-1 and MM GEO-2, the City has failed to meet CEQA's preconditions and requirements concerning mitigation, as the DEIR has failed to make the "recommendations" of the Geotechnical Exploration and Feasibility Report a mandatory component of mitigation on the Project and has failed to present a clear response plan in the event that paleontological resources are discovered during construction. Accordingly, the proposed mitigation measures, as currently constituted, violate CEQA and must be appropriately revised and recirculated.

iii. Hazards and Hazardous Materials Mitigation Measures

B2-13

The Project's Hazards and Hazardous Materials Mitigation Measure MM HAZ-1 provides as follows, in relevant part:

> **Construction Management Plan:** Prior to the issuance of grading permits, a Construction Management Plan shall be prepared by the Property Owner/Developer for review and approval by Anaheim Fire and Rescue, in accordance with MUTCD. It must identify emergency access points and routes throughout all construction phases.

DEIR at p. ES-17.

The Project's Mitigation Measure MM HAZ-1 improperly and unjustifiably defers preparation of the Construction Management Plan (CMP) until after the Project has been approved by the City and shortly before construction is to commence. The preparation of the CMP in connection with the Project's hazards mitigation efforts has been established as a required, unconditional mitigation effort in connection with

the Project. As such, there is simply no valid explanation for the DEIR's failure to prepare and include the required CMP the as part of the appendices for the Project's environmental review, thereby providing the City and the general public with an full and appropriate opportunity to assess the adequacy of the Project's hazards mitigation plans in this regard. The DEIR's failure to prepare and provide this information at this time once again violates CEQA.

B2-13 cont.

Thus, with respect to MM HAZ-1, the DEIR has once again failed to meet CEQA's preconditions and requirements concerning mitigation by deferring the further study, analysis and preparation of mitigation measures and plans to address the Project's anticipated Hazards impacts. The DEIR's cannot permissibly constrain its assessment of the individual and cumulative impacts of these measures, or withhold reporting of the specific performance criteria the Applicant will have to meet with regard to the measures, particularly when there is nothing to prevent current further study of these impacts and the preparation of the required mitigation plan vis-à-vis the CMP. Once again, the DEIR has violated CEQA by deferring the formulation of critical aspects of its hazards mitigation to a later time, such that revision and recirculation of the DEIR to supply this necessary study and information is now required.

D. The DEIR Improperly Mischaracterizes its Transportation and Hazards Mitigation Measure as "Project Design Features"

B2-14

In this instance, the DEIR also improperly recasts what would otherwise be essential Transportation and Hazards impact mitigation measures as a "Project Design Features" or "PDF." Relying in part on these PDFs for the Project, the DEIR then concludes that the Project's Transportation impacts will be less than significant, and that no further mitigation is required, while also improperly leveraging the PDFs aimed at the Project's Hazards impacts in conjunction with the Project's lone Hazards mitigation measure, MM HAZ-1, to conclude that the Project's otherwise significant hazards impacts have been to a less than significant level.

It is established that "'[a]voidance, minimization and / or mitigation measure' . . . are not 'part of the project.' . . . compressing the analysis of impacts and mitigation measures into a single issue . . . disregards the requirements of CEQA." (*Lotus v. Department of Transportation* (2014) 223 Cal. App. 4th 645, 656.)

When "an agency decides to incorporate mitigation measures into its significance determination, and relies on those mitigation measures to determine that no

significant effects will occur, that agency must treat those measures as though they were adopted following a finding of significance." (*Lotus, supra*, 223 Cal. App. 4th at 652 [citing CEQA Guidelines § 15091(a)(1) and Cal. Public Resources Code § 21081(a)(1).])

B2-14 cont.

By mischaracterizing the Transportation and Hazards mitigation measures as PDFs, the City violates CEQA by failing to disclose "the analytic route that the agency took from the evidence to its findings." (Cal. Public Resources Code § 21081.5; CEQA Guidelines § 15093; *Village Laguna of Laguna Beach, Inc. v. Board of Supervisors* (1982) 134 Cal. App. 3d 1022, 1035 [quoting *Topanga Assn for a Scenic Community v. County of Los Angeles* (1974) 11 Cal. 3d 506, 515.])

Specifically, the DEIR delineates the following Transportation and Hazards PDFs to be applied to the project, which are tantamount to (and otherwise routinely adopted as) mitigation measures under CEQA:

> **PDF HAZ-1 Construction Fire Prevention Plan:** Prior to commencement of construction activities, the Property Owner/Developer shall prepare and implement a Construction Fire Prevention Plan that identifies fire safety measures to be followed by the Project's contractor throughout all phases of construction. The Plan shall be submitted to Anaheim Fire & Rescue for review and approval prior to the start of construction activities.
>
> **PDF HAZ-2 Wildfire Evacuation and Awareness Plan:** Prior to issuance of a certificate of occupancy for the first multiple-family residential unit, the Property Owner/Developer shall prepare and implement a Project-specific Wildfire Evacuation and Awareness Plan. The Plan shall be subject to review and approval by the City of Anaheim Planning Department, Anaheim Police Department, and Anaheim Fire & Rescue. The Plan shall include, at a minimum, the following components: (1) The Plan shall be provided to all tenants along with all lease agreements for development and dissemination of wildfire evacuation outreach materials. These materials shall be provided to residents and employees within the Project annually. The outreach materials shall depict evacuation routes to use in case of a wildfire event and will provide other practical wildfire preparedness information; (3) The Plan shall include requirements for annual emergency evacuation drills for residents and employees in the

Project site; and (4) The Plan shall include the development, implementation, and ongoing maintenance of a method for the Property Owner/Developer to quickly and effectively communicate emergency alerts to individuals at the Project site, such as through the installation and maintenance of a wireless Public Address (PA) system and/or wireless texting services, or other equivalent systems or methods approved by Anaheim Fire & Rescue.

…

PDF TRANS-1 Affordable Housing (CAPCOA Measure T-4): The Project shall include 45 moderate-income level housing units, representing 10 percent of the total 447 dwelling units. This measure is estimated to reduce project-generated VMT by approximately 2.86 percent or 1,621 VMT.

PDF TRANS-2 Limit Residential Parking Supply (CAPCOA Measure T-15): The Project shall provide a total of 893 parking spaces, which is 70 spaces fewer than the 963 spaces required by the City's development standards. This reduction in parking supply is expected to reduce project-generated VMT by 1.0 percent, or 567 VMT.

DEIR, pp. ES-15 – 17, ES-24.

Notably, the DEIR acknowledges that, absent the incorporation of the foregoing PDFs in the Project, the Project is anticipated to have both significant Hazards and Transportation impacts with respect to (i) impairing the implementation of or physically interfering with an adopted emergency response plan or emergency evacuation plan, (ii) conflicting or being inconsistent with State CEQA Guidelines Section 15064.3(b), and (iii) resulting in inadequate emergency access . *Id.* According to the DEIR, these significant impacts of the Project will purportedly be cured, either in whole or in part, via the incorporation of PDF HAZ-1, PDF HAZ-2, PDF TRANS-1, and PDF TRANS-2.

However, implementing a Wildfire Evacuation and Awareness Plan, ensuring minimum levels of affordable housing, and limiting residential parking are not bona fide features of "project design." Rather, the PDFs amount to the DEIR's mislabeling and disguising of what are otherwise a mitigation measures for the Project. Here, the DEIR has premised it analysis regarding the allegedly "less than significant impact" on

B2-14 cont.

Transportation and Hazards on the incorporation of the so-called PDFs. To that end, the Transportation and Hazards impacts analysis put forth in the DEIR is demonstrably tainted and flawed by the improper application and incorporation of these PDFs.

By recasting its transportation and hazards mitigation measures in this manner, the DEIR has attempted to skirt its responsibilities to fully analyze the various environmental impacts implicated by the PDFs. Such an attempt to evade accountability for addressing the Project's transportation and hazards impacts directly violates CEQA, and the DEIR cannot permissibly be certified unless and until this deficiency is rectified.

B2-14 cont.

V. CONCLUSION

Based on the foregoing concerns, the City should require revision and recirculation of the DEIR for the Project pursuant to CEQA. Absent doing so, the DEIR in its current form directly violates CEQA in multiple respects. If the City should have any questions or concerns, please do not hesitate to contact this office.

B2-15

Sincerely,

Jeremy Herwitt
Attorneys for Western States Regional Council of Carpenters

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); and

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