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VIA E-MAIL

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**RE: City of Anaheim's November 17, 2025, Planning Commission
Meeting – Agenda Item No. 4 – Anaheim Hills Festival Specific
Plan Amendment Project – Final Environmental Impact Report
(SCH# 2024010859)**

Dear Chair Walker, Honorable Commissioners, and Amanda Lauffer,

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**”) November 17, 2025, Planning Commission hearing for the Anaheim Hills Festival Specific Plan Amendment (“**Project**”) (Agenda Item No. 4), and the Final Environmental Impact Report (“**FEIR**”) associated therewith.

The Notice of Availability of the Project’s Draft EIR (“**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 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.

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 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 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

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

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

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>.

construction sites have been identified as sources of community spread of COVID-19.⁵

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.

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.

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>.

- 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.
- 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

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.

⁶ See also The Center for Construction Research and Training, North America’s Building Trades Unions (April 27 2020) NABTU and CPWR COVID-19 Standards for U.S Construction 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/>

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

III. 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).⁸ 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. 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

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 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.

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.

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.

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.*

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 FEIR for the Project 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 Project's EIR.

IV. THE PROJECT'S EIR IS INADEQUATE UNDER CEQA AND SHOULD BE REVISED AND RECIRCULATED

A. The FEIR 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 EIR but found to be insignificant with or without mitigation in the EIR’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.

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

- 1. The EIR Fails to Conduct Adequate Study, Analysis, and Mitigation of the Project’s Potentially Significant Noise Impacts***

The EIR for the Project concludes that the Project will result in less than significant noise and vibration impacts to surrounding sensitive receptors based, in part, on its conclusion that receiver locations R3 and R4 would be the “nearest receiver locations” for purposes of its analysis of the Project’s construction noise impacts. (DEIR, pp. 4.13-11 – 4.13-13, Tables 4.13-6 and 4.13-7.) However, in reaching this conclusion, the DEIR, by its own studies, determined that the sensitive receptors in R3 and R4 would be exposed to construction noise levels in excess of the City’s 65 dBA CNEL threshold of significance. See DEIR, p. 4.13-13, Tables 4.13-6 and 4.13-7. Moreover, the DEIR’s receiver locations R3 and R4 are positioned at nearly the furthest edges of the Overlook at Anaheim Hills Apartments development – senior apartment homes (“**the Overlook**”) – located directly across S. Festival Drive from the proposed Project, which accounts for the nearest sensitive receptors to the Project site.

Notably, the DEIR finds that the most significant anticipated construction noise impacts presented by the Project will be attributable to noise from demolition activity carrying to the R3 and R4 receiver locations at the easternmost and northernmost perimeters of the Overlook. However, by selecting noise study locations R3 and R4 to calculate the anticipated noise exposure values for the residents of the Overlook, the DEIR assessed the only furthest potential locations at the Overlook property from the core of the demolition work that will need to occur at the existing movie theater structure on the Project site. Thus, the DEIR failed to properly position receiver locations to account for the full scope of the Project's potential construction noise impacts, in addition to admitting that, notwithstanding that failure, the Project will exceed the City's significance threshold for noise impacts. Thus, the EIR has underreported the Project's potential noise impacts based on the improper placement of noise measurement equipment at L3/R3 and L4/R4. To accurately characterize the Project's potential noise impacts, the DEIR should have studied and assessed potential noise impacts for a receiver location at the Overlook that is substantially more proximate to the existing movie theater structure and the demolition to occur to it, as depicted below:



In its response to WSRCC’s comments on potential noise impacts, the FEIR takes the position that the Project’s exceedances of the City’s noise significance thresholds “would be short-term, intermittent, and restricted to the City’s allowed construction hours under Anaheim Municipal Code Section 6.70.010. Therefore, construction noise impacts were determined to be less than significant, and no mitigation is required.” FEIR, p. 16.

Thus, the FEIR appears to rest its conclusion regarding the Project’s construction noise impacts being less than significant primarily on the City’s Municipal Code section 6.70.010 exempting daytime construction activities from the City’s Noise Ordinance. However, 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 v. Department of Food & Agric.* (2005) 136 Cal. App. 4th 1; see also *Ebbetts Pass Forest Watch v Department of Forestry & Fire Protection* (2008) 43 Cal. App. 4th 936, 956. Here, the EIR provides no supporting study, documentation, or analysis for its apparent conclusion that, because the City’s Municipal Code contains an exemption from its Noise Ordinance for construction noise, construction noise during daytime hours would not be subject to any thresholds of significance whatsoever, and by extension, that no mitigation is required for noise impacts that would otherwise be significant under the City’s enacted significance threshold.

Meanwhile, upon failing to adequately support its study, analysis, and improper reliance on regulatory compliance in determining that the Project would not result in significant construction noise impacts, the EIR then proceeds to offer absolutely nothing in the way of any mitigation measures for the Project’s admittedly potentially significant noise impacts. Indeed, the EIR does not even include basic noise mitigation measures such as the implementation of temporary and moveable noise barriers along the southwestern edge of the proposed Project site to dampen construction noise and shield the sensitive receptors residing at the Overlook from potentially significant impacts. The failure of the EIR to account for these impacts and mitigate them renders it deficient and in violation of CEQA.

Accordingly, WSRCC maintains that 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 absent revision and recirculation of the EIR to include added noise mitigation measures that

demonstrably reduce the Project’s construction noise impacts below the threshold of significance, most particularly for the senior citizens residing at the Overlook, the Project will continue to violate CEQA with regard to its noise impacts.

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

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 baseline Biological Resources impacts will be “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 disturbance to potential nesting migratory birds, a qualified biologist shall be 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 feasible, all demolition, clearing, grubbing, and grading activities shall be conducted outside of the state-identified nesting season for migratory birds (i.e., typically February 1 through August 31). If not feasible, a Pre-Construction Nesting Bird Survey within and adjacent to the Project site shall be conducted by a qualified biologist no more than three days before beginning these activities. If active nests are found during the Pre-Construction Nesting Bird Survey, a Nesting Bird Plan (NBP) shall be 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 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.

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/z076RgD7dUdj5BLJTEhEMdf74g6f100RrKiWBQSquhFFe5l0X53rLsbLSGMPRXgXM4AaYnJSTfZB6lpY0>

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

Fish and Game Code Section 3503 makes it unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto.

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.])

In response to WSRCC’s prior comments on this issue, the FEIR claims only that RCM-BIO 1 “does not preclude surveys or protections” for nesting birds for construction work performed outside of the purported typical nesting season of February to August. Additionally, the FEIR completely fails to address the concerns identified by WSRCC regarding the Project site’s close proximity to undeveloped wildland and conservation areas such as Deer Canyon Park, the Weir Canyon Nature Preserve, the Oak Canyon Nature Center, and the Fremont Canyon Nature Preserve, which increases the potential for the use of the Project’s ornamental trees by nesting and migratory birds, including raptors. The City’s responses in the FEIR wholly fail to address the core concerns WSRCC has raised regarding the adequacy of the EIR’s study, analysis, and mitigation measures, applicable to the Project’s biological resources impacts.

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.

Accordingly, WSRCC resubmits that the nesting period and survey plan set forth in the RCM BIO-1 remains inadequate based on CDFW’s own guidance, and the EIR 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, WSRCC maintains that the EIR must, at a minimum, 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 EIR 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 EIR will remain 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

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 EIR once again improperly conflates the Project’s regulatory compliance for purposes of 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 FEIR perpetuates the DEIR’s failure 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.]) WSRCC’s concerns regarding the Project’s potential biological resources impacts and the City’ study and analysis of them have remained wholly unaddressed by the FEIR and its responses to prior comments, with the City continuing to rely upon mere regulatory compliance for the proposition that no potentially significant biological resources impacts will arise from the removal of the 211 trees. The deficiency of the EIR 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. Additionally, and once again, the Project is sited

in close proximity to various undeveloped wildland and conservation areas, including Deer Canyon Park, the Weir Canyon Nature Preserve, the Oak Canyon Nature Center, and the Fremont Canyon Nature Preserve, which increases the likelihood of the use of the Project's ornamental trees by nesting and migratory birds, including raptors, as habitat. The potential impacts in the form of bird habitat loss, as well as the loss of the trees themselves, warrants and requires further study and mitigation of the biological impacts presented by the removal of the Project's sites trees. Despite this acknowledgement in the impact study, and WSRCC's prior comments emphasizing this unaddressed concern, the Project and its EIR still fail to commit to any types or quantities of trees to be replanted as part of the Project's development.

Accordingly, the FEIR has perpetuated the Project's failure 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 EIR is now required under CEQA.

C. The DEIR's Mitigation Measures Are Insufficient

A fundamental purpose of an EIR is to identify ways in which a proposed project's significant environmental impacts can be mitigated or avoided. Pub. Res. Code §§ 21002.1(a), 21061. To implement this statutory purpose, an EIR must describe any feasible 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 feasible” PRC §§ 21002; 21002.1, 21081; CEQA Guidelines §§ 15091, 15092(b)(2)(A); and find that ‘specific overriding economic, legal, social, technology or other benefits 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 be taken to reduce or avoid an environmental impact. (CEQA Guidelines § 15126.4(a)(1)(B) [providing “[f]ormulation of mitigation measures should not be

deferred until some future time.”].) While the same Guidelines section 15126.5(a)(1)(B) acknowledges an exception to the rule against deferrals, such exception is narrowly proscribed to situations where it is impractical or infeasible to include those details during the project's environmental review.

According to CEQA Guidelines, “[w]hen an EIR has been prepared for a project, the Responsible Agency shall not approve the project as proposed if the agency finds any feasible alternative or feasible 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

CEQA forbids deferred mitigation. Guidelines § 15126.4(a)(1)(B). CEQA allows deferral of details of a mitigation measure only “when it is impractical or infeasible to include those details during the project's environmental review.” (*Id.*) CEQA further requires: “that the agency (1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) identifies the type(s) of potential action(s) that can feasibly achieve that performance standard...” Guidelines § 15126.4(a)(1)(B). 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.

i. Cultural Resources Mitigation Measures

The Project's Cultural Resources Mitigation Measure MM CUL-1 provides as follows, in relevant part:

Archaeologist Monitoring: Prior to the issuance of the grading permit, the Property Owner/Developer shall provide written evidence to the City

that the Property Owner/Developer has retained a qualified archaeologist to observe grading activities within previously undisturbed soils and to salvage and catalog archaeological resources, as necessary. The archaeologist shall be present at the pre-grade conference, shall establish procedures for archaeological resource surveillance within previously undisturbed soils, and shall establish, in cooperation with the Property Owner/Developer, procedures for temporarily halting or redirecting work to permit the sampling, identification, and evaluation of the artifacts as appropriate.

DEIR at p. 4.5-11.

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. WSRCC maintains that 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 been adequately mitigated, while the general public has also been denied the opportunity to assess and comment upon the associated impacts and the adequacy of the mitigation plans. The FEIR contends that, "CEQA does not require that all implementation details be known or finalized at the time of EIR certification." FEIR, p. 19. However, for purposes of the mitigation measure in question, there is no rational or credible basis for the City's attempts to defer the preparation of the archaeologist's procedures for conducting surveillance for artifacts in the previously undisturbed soils or the Project procedures for halting and redirecting work to permit further archaeological exploration in the event of a potential find. The City and FEIR have not pointed to any unique site characteristics that would justify the deferment of preparation of these otherwise standard planning measures.

Thus, in the context of MM CUL-1, the City has continued its failure to meet CEQA's preconditions and requirements concerning mitigation, as the EIR 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 be completed or achieved at this time prior to adoption of the EIR. The deferment of this study and analysis also improperly constrains the EIR'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

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 during excavation and grading activities of any future development project, the contractor shall immediately cease all earth-disturbing activities within a 50-foot radius of the discovery area. *The qualified paleontologist shall be contacted to evaluate the significance of the finding and determine an appropriate course of action.*

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 actual 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 does not adequately and clearly commit to the mitigation necessary to combat the Project’s potential geology and soils impacts, which is required by CEQA. At minimum, and to the extent the City will otherwise be required to ensure their implementation prior to the issuance of building and grading permits for the Project, the recommendations from the Project’s Geotechnical Report must be incorporated as mandatory mitigation measures in the Project’s MMRP to ensure they will be adequately noted, completed, and enforced. The FEIR’s responses to WSRCC’s comments on this issue evade discussion of the core deficiency identified – namely, that the recommendations of the Geotechnical Report for the Project have not been expressly incorporated into the Project’s MMRP, leaving the City to search in the guidance documents for the mitigation measures it will be required to complete. In this regard, FEIR has failed to address the technical deficiencies of MM GEO-1, and the EIR for the Project therefore remains deficient, in violation of CEQA, and subject to revision and recirculation.

With regard to MM GEO-2, the formulation of the mitigation measure remains partially deferred, in that the FEIR provides no rationale or basis for why the mitigation plan to be formulated by the retained paleontologist in the event of a find cannot be developed to the maximum extent possible prior to the Project’s approval. Indeed, the City’s decisionmakers and the general public are entitled to a full and fair opportunity to assess whether the mitigation efforts to be deployed on the Project in protecting paleontological resources are adequate and complete. As framed, MM GEO-2 continues to deny the City and the public of that opportunity by deferring its specific formulation to a later time.

Thus, in the context of MM GEO-1 and MM GEO-2, WSRCC maintains that the City has failed to meet CEQA’s preconditions and requirements concerning mitigation, as the EIR has failed to make the “recommendations” of the Geotechnical Exploration and Feasibility Report a mandatory and express 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, WSRCC resubmits that the proposed mitigation measures, as currently constituted, violate CEQA and must be appropriately revised and recirculated.

iii. Hazards and Hazardous Materials Mitigation Measures

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.

In response to WSRCC’s prior comments on this issue, the FEIR asserts that the City is permitted under CEQA to finalize the details of MM HAZ-1 after the EIR for the Project has been certified. However, the FEIR and the City still have not provided any justification or explanation for why it would be infeasible to develop, formulate, and circulate the CMP for the Project for the public’s review at this time. The FEIR’s citation to the legal proposition that all details of a mitigation measure need not be circulated prior to an EIR’s certification does not dispose of the principle that a project’s mitigation measures must be developed to the fullest extent feasible prior to an EIR’s certification. Arguably, the specifications of the Project are sufficiently known at this time, as are the requirements set forth in the Manual on Uniform Traffic Control Devices (MUTCD). WSRCC maintains that the EIR’s failure to prepare and provide the CMP at this time once again violates CEQA, and the FEIR and the City have demonstrated no cognizable basis for why it cannot now be prepared for public review.

Thus, with respect to MM HAZ-1, the EIR has continued its failure 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 EIR'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 EIR has violated CEQA by deferring the formulation of critical aspects of its hazards mitigation to a later time, and the FEIR has failed to properly address and resolve concerns raised on these matters, such that revision and recirculation of the EIR to supply this necessary study and information remains required.

D. The EIR Improperly Mischaracterizes its Transportation and Hazards Mitigation Measure as “Project Design Features”

The FEIR also perpetuates the DEIR's improper recasting of what would otherwise be essential Transportation and Hazards impact mitigation measures as “Project Design Features” or “PDFs.” Relying in part on these PDFs for the Project, the EIR has concluded that the Project's Transportation impacts will be significant, despite failing to deploy any bona fide mitigation measures on that impact category, 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 mitigated 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).])

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 EIR’s mislabeling and disguising of what are otherwise a mitigation measures for the Project. Here, the EIR has premised its analysis regarding the allegedly “less than significant impact” on Hazards on the incorporation of the so-called PDFs. It has also declined to incorporate bona fide mitigation measures against the Project’s significant and unavoidable Transportation impacts. To that end, the Transportation and Hazards

impacts analysis put forth in the EIR is demonstrably tainted and flawed by the improper application and incorporation of these PDFs.

In its response to WSRCC’s comments on these issues, the FEIR misconstrues the application of the PDFs and attempts to validate their improper use. The FEIR makes plain that the PDFs, which are, by all accounts, mitigation measures, have been incorporated and applied as aspects of the Project’s baseline, rather than being correctly characterized and attributed as impact-reducing mitigation measures. See FEIR, pp. 20-21. The FEIR continues to tout the PDFs as “voluntary design elements,” when in fact, for example, a Construction Fire Prevention Plan and a Wildfire Evacuation and Awareness Plan, cannot be credibly characterized as a part of a Project’s physical design and specifications. Indeed, such plans amount to planning documents necessary for the City and the Applicant to develop and comply with in order to ensure against otherwise significant hazards impacts arising from the Project.

Further still, the EIR appears to use the Project’s Transportation PDFs in order to attempt to relieve itself from the requirement under CEQA to formulate and deploy all feasible mitigation measures to combat the Project’s significant and unavoidable Transportation impacts in the form of exceeding CEQA VMT requirements. The DEIR’s conclusion that “[n]o feasible mitigation measures were identified that would reduce the significant [Transportation] impact to a level less than significant,” (DEIR, p. ES-24) is irrelevant and inapplicable to the City’s obligation under CEQA to deploy all available, feasible mitigation measures when faced with an otherwise significant and unavoidable impact resulting from a project. Certainly, other measures such as increased bicycle parking and associated facilities, or payment into a local or state-sponsored VMT fund, could be incorporated into the Project to further reduce the significant impacts it presents. The City has an obligation under CEQA to develop and incorporate all such feasible mitigation measures for the Project.

By recasting its transportation and hazards mitigation measures as PDFs, the EIR has attempted to skirt its responsibilities to fully analyze and mitigate 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 EIR cannot permissibly be certified unless and until this deficiency is rectified.

V. CONCLUSION

Based on the foregoing concerns, the City should require revision and recirculation of 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,



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).