



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

Mitchell M. Tsai
Law Firm

139 S. Hudson Ave., Suite 200
Pasadena, California 91101

VIA E-MAIL

May 5, 2026

Martin R. Mendez
Development Project Manager
City of San Diego
Development Services Department
1222 First Ave., MS 501
San Diego, California 92101-4101
Em: MRMendez@sanidiego.gov

RE: City of San Diego, 10509 Vista Sorrento Parkway Notice of Public Hearing

Dear Mr. Mendez,

On behalf of the **Western States Regional Council of Carpenters** (“**Western Carpenters**” or “**WSRCC**”), my Office is submitting these comments for the City of San Diego’s (“**City**”) review for the 10509 Vista Sorrento Parkway Project (“**Project**”). The Project is for, according to the April 22, 2026 Notice of Public Hearing, the demolition of an existing four-story building, an existing trash enclosure, an existing telecommunications structure, an existing mechanical equipment enclosure and associated site improvements and construction of a 112,400-square-foot four-story commercial office building for allowed uses (including Research and Development [R&D], Laboratory and Corporate Headquarters uses), a 189,795-square-foot six-story parking garage, and associated site improvements; and the vacation of an existing easement for a four-foot wide, 4,313.76-square-foot (0.09-acre), Sewer, Water, Drainage and Public Utilities Easement.

The Western States Regional Council of Carpenters is a labor union representing almost 100,000 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.

This proposed project is for the demolition of an existing building and for the construction of a commercial office space and a parking garage. The project includes

a Coastal Development Permit, Neighborhood Development Permit, a Site Development Permit, and a Public Service Easement Vacation for an easement. It also includes a California Environmental Quality Act (CEQA) Consistency Determination under Process Three.

The 5.58-acre site is located at 10509 Vista Sorrento Parkway in the IL-3-1 (Industrial-Light) Zone, the Coastal Overlay Zone (Non-Appealable Area), the Parking Impact Overlay Zone, the Airport Land Use Compatibility Overlay Zone for Marine Corps Air Station (MCAS) Miramar, the Airport Land Use Compatibility Plan (ALUCP) Airport Influence Area (AIA) for MCAS Miramar (Review Area 1), the MCAS Miramar ALUCP Noise Contours (60~65 dB CNEL), the ALUCP Safety Zone for MCAS Miramar (Accident Potential Zone II [APZ-II]), the Federal Aviation Administration (FAA) Part 77 Noticing Area, the Complete Communities Mobility Choices Mobility Zone 2, and a Very High Fire Hazard Severity Zone (VHFSZ) within the Mira Mesa Community Plan.

This project is therefore not eligible for ministerial permitting from the City under the Coastal Plan and the Airport Land Use Compatibility Plan, as there are reviews necessary to be completed prior to approval. Because the project is partially in a Coastal Overlay Zone, environmental review is required and has not yet been done sufficiently. The Project has been erroneously deemed to be categorically exempt from CEQA review, which is not permitted due to the Coastal Overlay Zone. The Airport Land Use Compatibility Plan is strict on height requirements, and these should be adhered to, but in this project's case, the height of the project exceeds the height allowance. These issues must be addressed.

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

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>

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

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

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

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

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

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 work has been defined as a Lower to High-risk activity for COVID-19 spread by the Occupational Safety and Health Administration. Recently, several 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.

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>.

- 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.
- 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

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/>.

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 PROJECT IS INCOMPATIBLE WITH THE CITY'S ZONING AND HEIGHT LIMITATIONS, AS WELL AS THE MIRA MESA COMMUNITY PLAN.

The Planning & Zoning Law, Cal Government Code 65000, et seq (“Planning & Zoning Law”) requires each California city and county must adopt a comprehensive, long-term general plan governing development. *Napa Citizens for Honest Gov. v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 352, citing Gov. Code §§ 65030, 65300. The general plan sits at the top of the land use planning hierarchy (see *DeVita v. County of Napa* (1995) 9 Cal.4th 763, 773), and serves as a “constitution” or “charter” for all future development. *Lesher Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 540.

General plan consistency is “the linchpin of California’s land use and development laws; it is the principle which infused the concept of planned growth with the force of law.” See *Debottari v. Norco City Council* (1985) 171 Cal.App.3d 1204, 1213.

State law mandates two levels of consistency. First, a general plan must be internally or “horizontally” consistent: its elements must “comprise an integrated, internally consistent and compatible statement of policies for the adopting agency.” See Gov. Code § 65300.5; *Sierra Club v. Bd. of Supervisors* (1981) 126 Cal.App.3d 698, 704. A general plan amendment thus may not be internally inconsistent, nor may it cause the general plan as a whole to become internally inconsistent. See *DeVita*, 9 Cal.4th at 796 fn. 12.

Second, state law requires “vertical” consistency, meaning that zoning ordinances and other land use decisions also must be consistent with the general plan. See Gov. Code § 65860(a)(2) [land uses authorized by zoning ordinance must be “compatible with the objectives, policies, general land uses, and programs specified in the [general] plan.”]; see also *Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176, 1184. A zoning ordinance that conflicts with the general plan or impedes achievement

of its policies is invalid and cannot be given effect. See *Lesher*, 52 Cal.3d at 544.

State law requires that all subordinate land use decisions, including conditional use permits, be consistent with the general plan. See Gov. Code § 65860(a)(2); *Neighborhood Action Group*, 156 Cal.App.3d at 1184.

A project cannot be found consistent with a general plan if it conflicts with a general plan policy that is “fundamental, mandatory, and clear,” regardless of whether it is consistent with other general plan policies. See *Endangered Habitats League v. County of Orange* (2005) 131 Cal.App.4th 777, 782-83; *Families Unafraid to Uphold Rural El Dorado County v. Bd. of Supervisors* (1998) 62 Cal.App.4th 1332, 1341-42 (“FUTURE”).

Moreover, even in the absence of such a direct conflict, an ordinance or development project may not be approved if it interferes with or frustrates the general plan’s policies and objectives. See *Napa Citizens*, 91 Cal.App.4th at 378-79; see also *Lesher*, 52 Cal.3d at 544 (zoning ordinance restricting development conflicted with growth-oriented policies of general plan).

Here, the Project is inconsistent with the general plan, and the height limitations, making it inconsistent with statutory requirements.

A. The Project is Inconsistent with the City’s Height Limitations

This Project does not comply with the zoning requirements given its location. One of the comments made regarding the project stated that:

[t]he proposed parking garage appears to be in both the IL-3-1 zone, as well as the RS-1-8 zone. The structure height appears to exceed the 35' maximum in the RS-1-8 zone. Please note the height of the proposed parking structure using the two -part methodology in §113.0270(a)(2) of the SDMC. The structure may have to be re-located so as to not be in the RS-1-8 zone, or a deviation from the structure height limit can be processed through a Process Four Planned Development Permit, pursuant to §126.0602(b) of the SDMC.

(Exhibit D, Page 1). IL is an Industrial Light zone, and RS is a Residential Single-Unit zone. Each zone has different allowances for building height and other project criteria. IL does not have a residential density limit. There was not much analysis conducted of the requirements and limitations for the zones in the PEIR, which then must be done for this individual Project.

The applicant's response to this comment was that "[t]he project is designed in conformance with the updated Mira Mesa Community Plan pending final certification from the CA Coastal Commission." The comment and the response are from the PRA production document our firm received from the City on July 21, 2025, from the document titled "Applicant Response to Issues PRJ-1062368 (1).pdf." (Exhibit D). The Project must meet this height limit. The City notes in their response to our initial comment letter that the zoning for the site has changed as part of the Mira Mesa Community Plan Update that was adopted by the City Council on December 5, 2022, and received final certification by the Coastal Commission on May 7, 2025, and thus no longer has a residential height restriction because it is no longer zoned as residential.

We previously noted that the height restriction for RS-1-8 is a maximum height of 35 feet. The parking structure is described as being five or six stories tall in several documents, which obviously exceeds the maximum height because a single story of a building is typically between 10 to 15 feet tall. Thus, the Project will be at a minimum of 60 feet tall, exceeding the zone height limit for RS zoning, which is 30 feet. (San Diego Municipal Code, §131.0431 Development Regulations Table for Residential Zones).

The Applicant responds that since the area is now an Industrial Park, the 35-foot limit should not apply, since a rezoning ordinance to IL-3-1 has been approved by the City but is pending Coastal Commission approval. However, an IL-3-1 zone also has a height limit that must be adhered to, and the height limit for IL-3-1 zoning is 60 feet. If this height requirement is exceeded by the Project being taller than 60 feet, which may be the case due to the Project's current plans and the parking structure's height ambiguity, another permit is required, and thus the Applicant must make clear what the height of the Project will be and if it does comply with the height limit to ensure that the Project will have a compatible height with the zoning requirement and character of the surrounding area of the Project. Additionally, the height limit of a Project in the Coastal Overlay Zone in San Diego is 30 feet, which this Project will be exceeding. This is a height limitation that the Project is not in compliance with and therefore the Project exceeds zoning limitations.

IV. THE PROJECT IS INCOMPATIBLE WITH THE ZONING OF THE PROJECT AREA.

This Project is located in the Coastal Overlay Zone (Non-Appealable Area 1), meaning that there are height limits to preserve the view and other such requirements. The height limit for this zone is 30 feet, which this project exceeds. (San Diego Land Development Code, Section 132.0505). The Project must comply with these restrictions due to its location in a Coastal overlay Zone. Thus, the Project is not eligible for a Class 32 Exemption or for a ministerial exemption under CEQA as the project does not meet the grounds for either and there are applicable exceptions, such as unusual circumstances, cumulative impacts, location, and others. The Project should not have been determined to be categorically exempt from CEQA. The Project must thus be in compliance with all the zoning requirements because it cannot receive any exemption from complying with the zoning requirements. It may not comply with certain zoning requirements, as previously noted, and thus should not receive a CEQA exemption but should undergo appropriate CEQA review. Additionally, Coastal Overlay Zones indicate sensitive environmental factors that must be accounted for in a Project's assessment and approval.

Additionally, the Project is within multiple overlay zones, including the Marine Corps Air Station, Miramar Airport Influence Area, Accident Potential Zone, and Very High Fire Hazard Severity Zone. Additional information is needed to sufficiently address these, but it is worth noting that each of these areas have other requirements that must be adhered to in the development of a project. As discussed below, some of these have not been sufficiently addressed.

V. THE PROJECT WOULD BE APPROVED IN VIOLATION OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

Background Concerning the California Environmental Quality Act

The California Environmental Quality Act 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

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. Cal. Pub. Res. Code, § 21083. The CEQA Guidelines are

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

1. *Background Concerning Environmental Impact Reports*

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 Comes* (2001) 91 Cal.App.4th 1344, 1354; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553; *Laurel Heights Improvement Assn.*, 47 Cal.3d at p. 400. The 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). 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).

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 Jets*, 91 Cal.App.4th at p. 1355 (quoting *Laurel Heights Improvement Assn.*, 47 Cal.3d at pp. 391, 409 fn. 12) (internal quotations omitted). A clearly inadequate or unsupported study is entitled to no judicial deference. *Id.* 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 court stated in *Berkeley Jets*, 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. 91 Cal.App.4th at p. 1355 (internal quotations omitted).

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.

The preparation and circulation of an EIR is more than a set of technical hurdles for agencies and developers to overcome. *Communities for a Better Environment v. Richmond* (2010) 184 Cal.App.4th 70, 80 (quoting *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 449-450). The EIR's function is to ensure that government officials who decide to build or approve a project do so with a full understanding of the environmental consequences and, equally important, that the public is assured those consequences have been considered. *Id.* For the EIR to serve these goals it must present information so that the foreseeable impacts of pursuing the project can be understood and weighed, and the public must be given an adequate opportunity to comment on that presentation before the decision to go forward is made. *Id.*

A strong presumption in favor of requiring preparation of an EIR is built into CEQA. This presumption is reflected in what is known as the “fair argument” standard under which an EIR must be prepared whenever substantial evidence in the record supports a fair argument that a project may have a significant effect on the environment. *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602; *Friends of “B” St. v. City of Hayward* (1980) 106 Cal.3d 988, 1002.

The fair argument test stems from the statutory mandate that an EIR be prepared for any project that “may have a significant effect on the environment.” PRC, § 21151; see *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.App.3d 68, 75; accord *Jensen v. City of Santa Rosa* (2018) 23 Cal.App.5th 877, 884. Under this test, if a proposed project is not exempt and may cause a significant effect on the environment, the lead agency must prepare an EIR. PRC, §§ 21100 (a), 21151; CEQA Guidelines, § 15064 (a)(1), (f)(1). An EIR may be dispensed with only if the lead agency finds no substantial evidence in the initial study or elsewhere in the record that the project may have a significant effect on the environment. *Parker Shattuck Neighbors v. Berkeley City Council* (2013) 222 Cal.App.4th 768, 785. In such a situation, the agency must adopt a negative declaration. PRC, § 21080, subd. (c)(1); CEQA Guidelines, §§ 15063 (b)(2), 15064(f)(3).

“Significant effect upon the environment” is defined as “a substantial or potentially substantial adverse change in the environment.” PRC, § 21068; CEQA Guidelines, § 15382. A project may have a significant effect on the environment if there is a reasonable probability that it will result in a significant impact. *No Oil, Inc.*, 13 Cal.3d at p. 83 fn. 16; see *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 309. If

any aspect of the project may result in a significant impact on the environment, an EIR must be prepared even if the overall effect of the project is beneficial. CEQA Guidelines, § 15063(b)(1); see *County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1580.

This standard sets a “low threshold” for preparation of an EIR. *Consolidated Irrigation Dist. v. City of Selma* (2012) 204 Cal.App.4th 187, 207; *Nelson v. County of Kern* (2010) 190 Cal.App.4th 252; *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 928; *Bowman v. City of Berkeley* (2004) 122 Cal.App.4th 572, 580; *Citizen Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 754; *Sundstrom*, 202 Cal.App.3d at p. 310. If substantial evidence in the record supports a fair argument that the project may have a significant environmental effect, the lead agency must prepare an EIR even if other substantial evidence before it indicates the project will have no significant effect. See *Jensen*, 23 Cal.App.5th at p. 886; *Clews Land & Livestock v. City of San Diego* (2017) 19 Cal.App.5th 161, 183; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150; *Brentwood Assn. for No Drilling, Inc. v. City of Los Angeles* (1982) 134 Cal.App.3d 491; *Friends of “B” St.*, 106 Cal.App.3d 988; CEQA Guidelines, § 15064(f)(1).

2. Background Concerning CEQA Exemptions

Where a lead agency chooses to dispose of CEQA by asserting a CEQA exemption, it has a duty to support its CEQA exemption findings by substantial evidence, including evidence that there are no applicable exceptions to exemptions. This duty is imposed by CEQA and related case law. CEQA Guidelines, § 15020 (The lead agency shall not knowingly release a deficient document hoping that public comments will correct the defects.); see *Citizens for Environmental Responsibility v. State ex rel. 14th Dist. Agriculture Assn.* (2015) 242 Cal.App.4th 555, 568 (The lead agency has the burden of demonstrating that a project falls within a categorical exemption and must support the determination with substantial evidence.); accord *Association for Protection etc. Values v. City of Ukiah* (1991) 2 Cal.App.4th 720, 732 (The Lead agency is required to consider exemption exceptions where there is evidence in the record that the project might have a significant impact.)

The duty to support CEQA and exemption findings with substantial evidence is also required by the Code of Civil Procedure (“CCP”) and case law on administrative or traditional writs. Under the CCP, an abuse of discretion is established if the decision is unsupported by the findings, or the findings are unsupported by the evidence. CCP,

§ 1094.5(b). In *Topanga Assn. for a Scenic Community v. County of Los Angeles*, our Supreme Court held that implicit in CCP section 1094.5 is a requirement that the agency which renders the challenged decision must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order. (1977) 11 Cal.3d 506, 515 (internal citations and quotations omitted). The lead agency’s findings may be determined to be sufficient if a court has no trouble under the circumstances discerning the analytic route the administrative agency traveled from evidence to action. *West Chandler Blvd. Neighborhood Assn. vs. City of Los Angeles* (2011) 198 Cal.App.4th 1506, 1521-1522 (internal citations and quotations omitted). However, “mere conclusory findings without reference to the record are inadequate.” *Id.* at p. 1521 (finding city council findings conclusory, violating *Topanga Assn. for a Scenic Comm.*).

Further, CEQA exemptions must be narrowly construed to accomplish CEQA’s environmental objectives. *Cal. Farm Bureau Federation v. Cal. Wildlife Conservation Bd.* (2006) 143 Cal.App.4th 173, 187; accord *Save Our Carmel River v. Monterey Peninsula Water Management Dist.* (2006) 141 Cal.App.4th 677, 697 (“These rules ensure that in all but the clearest cases of categorical exemptions, a project will be subject to some level of environmental review.”)

Finally, CEQA procedures reflect a preference for resolving doubts in favor of environmental review. See Pub. Res. Code, § 21080(c) (an EIR may be disposed of only if there is no substantial evidence, in light of the entire record before the lead agency, that the project may have a significant effect on the environment or revisions in the project); CEQA Guidelines §§ 15061(b)(3) (common sense exemption only where it can be seen *with certainty*); 15063(b)(1) (prepare an EIR if the agency determines that there is substantial evidence that any aspect of the project, either individually or cumulatively, may cause a significant effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial]; 15064, subd. (h) (the agency must consider cumulative impacts of past, current, and probable future projects); 15070 (a negative declaration may be prepared only if there is no substantial evidence, in light of the whole record, that the project may have a significant effect on the environment, or project revisions would avoid the effects or mitigate the effects to a point where clearly no significant effects would occur, and there is no substantial evidence, in light of the whole record, that the project as revised may have a significant effect on the environment); *No Oil, Inc., supra*, 13 Cal.3d

at p. 83-84 (significant impacts are to be interpreted so as to afford the fullest possible protection).

VI. THE CEQA CLEARANCE HAS NOT YET BEEN DETERMINED.

Based on our inquiries, the City has not yet determined the CEQA clearance, and yet, at the same time, the City is expecting a Notice of Decision any minute now. As such, to the extent that the City seeks to proceed with the minimum CEQA review in the form of either a ministerial exemption, or a statutory or categorical exemption, such exemptions would be improper under CEQA in light of the Project's potential impacts, including but not limited to air, greenhouse gas, traffic, noise, aesthetics, land use, energy, seismic, and others. To the extent that the City considers categorical exemptions, such exemptions are also inapplicable in light of the exceptions, such as unusual circumstances, cumulative impacts, historic impacts, and adverse impacts to human beings. Additionally, the CEQA review must be done in one document to assess the potential impacts in their entirety, rather than piecemeal. Therefore, appropriate and additional CEQA review are necessary prior to issuing a Notice of Decision on the Project.

VII. SIGNIFICANT NEW INFORMATION REQUIRES PROJECT-LEVEL ENVIRONMENTAL REVIEW AND THE ADEQUATE ANALYSIS OF CERTAIN PROJECT IMPACTS HAS NOT BEEN COMPLETED.

A proposed activity that is not within the scope of the project, program, or plan described in a EIR is treated as a project that has not previously been reviewed under CEQA and must be evaluated in another EIR if it may have a significant impact on the environment. See *Sierra Club v County of Sonoma* (1992) 6 Cal.App.4th 1307, 1320-21. In appropriate circumstances, such as when the project involves a proposed amendment to the plan described in the EIR, this can include a tiered EIR. *Sierra Club* at 1321. See also *Eller Media Co. v Community Redev. Agency* (2003) 108 Cal.App.4th 25. A lead agency may, in some circumstances, prepare a tiered negative declaration for a later project rather than a tiered EIR. 14 Cal Code Regs §15152(a)–(b).

The City finds that the Project is within the scope of the original Mira Mesa Community Plan Update Program Environmental Impact Report / SCH No. 2022090061 (PEIR) certified by the San Diego City Council on December 14, 2022, per Resolution No. R-314479, finding that there are no “change in circumstances,

additional information, or project changes to warrant additional review for this action.” (Exhibit E, Page 2).

However, as outlined earlier in this letter, the Project is inconsistent with both the Mira Mesa Community Plan and the Project’s significant project level impacts were not analyzed in the Mira Mesa Community Plan Update.

A. The PEIR failed to Analyze the Project’s Aesthetic Impacts as it Exceeds Previously Analyzed Height Limitations

The PEIR does not include sufficient information about this specific project’s impacts and considerations. There are mentions of Native Grassland (PEIR pg. 2-14), Visual Setting (PEIR pg. 2-89), Segment Improvements (PEIR 5.12-5), and Transit Signal Priority (PEIR pg. 5.12-13) in regards to this Project location, but no clear information on addressing potential Project impacts to these areas. There is insufficient information and consideration regarding the Coastal Overlay Zone and how to mitigate the Project’s impacts in such sensitive areas, as discussed above. The Plan’s lack of consideration for the location and attributes of this project make the PEIR insufficient at addressing its potential impacts, and thus need to be addressed in project-specific analysis and impacts. There are inadequate mitigation measures in the PEIR and due to the reliance on the PEIR, there are insufficient mitigation measures developed for this Project. This issue must be addressed to sufficiently address impacts to a sensitive coastal area.

B. The Project is in a Very High Fire Hazard Severity Zone, and This Has Not Been Sufficiently Addressed.

Additionally, though the Project is in a Very High Fire Hazard Severity Zone within the Mira Mesa Community Plan, there is little information in either the PEIR or in this Project’s description and analysis to address this hazard. The PEIR mentions the following in regards to the fire hazard:

The potential for wildland fires represents a hazard, particularly on undeveloped properties or where development exists (or could potentially exist in the future) adjacent to open space areas or within proximity to wildland fuels. Much of the CPU area is urbanized, but includes areas mapped as Very High Fire Hazard Severity Zones, as shown on Figure 2-9 of this PEIR. The mapped Very High Fire Hazard Severity Zone exists primarily in undeveloped open space areas such as Los Peñasquitos

Canyon, Lopez Canyon, Carroll Canyon, and Flanders Canyon (CAL FIRE 2009). Future development under the proposed CPU within or adjacent to these areas could potentially be subject to wildland fire hazards. Such development, however, would be subject to applicable state and City regulatory requirements related to fire hazards and prevention, as outlined in Section 4.6 of this PEIR. Specifically, these City regulatory requirements encompass standards associated with vegetative (brush) management, such as selective removal/thinning and planting of fire-resistant plantings to create appropriate buffer zones around development, as well as incorporating applicable fire related design elements, including fire-resistant building materials, fire/ember/smoke barriers, automatic alarm and sprinkler systems, and provision of adequate water flow for fire protection and emergency access. These requirements would be implemented as part of individual project design elements of future development projects under the proposed CPU and may entail the preparation of fire protection plans and/or other technical analyses. Therefore, impacts associated with wildfire hazards would be less than significant.

(PEIR pgs. 5.6-2 – 5.6-3). However, even the section cited in this PEIR excerpt does not contain adequate information to address the fire hazard risk. Additionally, there is a lack of Project specific information to address this risk sufficiently. Because the PEIR does not adequately address the fire hazard risk, the Project's individual analysis must be bolstered to sufficiently do so. This area requires additional analysis and must be addressed prior to the Project's approval.

VIII. CONCLUSION

There are numerous issues with this Project that must be addressed, as discussed above. If the City should have any questions or concerns, please do not hesitate to contact this office.

Sincerely,



Mitchell M. Tsai

Ananya Raghavan
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);

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

Applicant Response to Issues PRJ-1062368 (1).pdf (Exhibit D); and

Hearing Notice, April 22, 2026 (Exhibit E).