



APPLICATIONS:

APPEAL APPLICATION CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA) Instructions and Checklist

Related Code Section: The Los Angeles Municipal Code (LAMC) Section 11.5.13 (Ord. No. 186,338) established the appeal procedure to the City Council for California Environmental Quality Act (CEQA) determinations.

Purpose: *The Appeal* - A CEQA clearance can only be appealed if a non-elected decision-making body (ZA, APC, CPC, DIR) makes a determination for a project that is not further appealable. To initiate appeal of a CEQA document this form must be completely filled out with the required materials attached and filed within 15 calendar days from the final administrative decision, of the entitlement application.

General Information

Appealable CEQA documents:

- Certified Environmental Impact Report (EIR)
- Sustainable Communities Environmental Assessment (SCEA)
- Mitigated Negative Declaration (MND)
- Negative Declaration (ND)
- Categorical Exemption (CE)
- Sustainable Exemption (SE)

NOTE:

- Actions not appealable include an addendum, findings made pursuant to CEQA Guidelines Section 15162, or an action in which the determination does not constitute a project under CEQA.
- All CEQA appeals are heard by the City Council.
- This form is only for the appeal of Department of City Planning determinations: All other CEQA appeals are filed with the City Clerk pursuant to the LAMC Section 197.01.
- A Certified Neighborhood Council (CNC) or a person identified as a member of a CNC or as representing the CNC may not file an appeal on behalf of the Neighborhood Council; persons affiliated with a CNC may only file as an individual on behalf of self.

1. Case Information

Environmental Case Number: ENV-2018-3471-EIR

Related Entitlement Case Number(s): DIR-2018-2713-SPP

Project Address: 21300 - 21320 Califa Street

Date of Final Entitlement Determination: 10/19/2020

The CEQA Clearance being appealed is a(n):

☐ EIR ☐ SCEA ☐ MND ☐ ND ☐ CE ☒ SE

2. Appellant Identity (check all that apply)

- ☒ Representative ☐ Property Owner ☐ Other Person
- ☐ Applicant ☐ Operator of the Use/Site

3. Appellant Information

Appellant Name: Mitchell M. Tsai

Company/Organization: MITCHELL M. TSAI, ATTORNEY AT LAW PC

Mailing Address: 155 South El Molino Avenue, Ste. 104

City: Pasadena State: CA Zip: 91101

Telephone: (626) 381-9248 E-mail: tsai.mitchell@gmail.com

a. Is the appeal being filed on your behalf or on behalf of another party, organization or company?

☐ Self ☒ Other: SOUTHWEST REGIONAL COUNCIL OF CARPENTERS

b. Is the appeal being filed to support the original applicant's position? ☐ Yes ☒ No

4. Representative/Agent Information

Representative/Agent name (if applicable): Mitchell M. Tsai

Company: MITCHELL M. TSAI, ATTORNEY AT LAW

Mailing Address: 155 South El Molino Avenue, Ste. 104

City: Pasadena State: CA Zip: 91101

Telephone: (626) 381-9248 E-mail: mitch@mitchtsailaw.com

5. Appeal Justification

Attach a separate sheet providing your specific reasons for the appeal. Your reasons must state how you believe CEQA was incorrectly applied, providing a legal basis for the appeal.

6. Applicant's Affidavit

I certify that the statements contained in this application are complete and true:

Appellant Signature: Mitchell L. Date: November 2, 2020

ENVIRONMENTAL APPEAL FILING REQUIREMENTS

Note: City Clerk prepares mailing list for CEQA appeals per LAMC Section 11.5.13 E.

- 1. Three (3) sets** - The following documents are required for each appeal filed (1 original and 2 duplicates)
Each case being appealed is required to provide three (3) sets of the listed documents.

- ☒ Environmental Appeal Application (form CP-7840)
- ☒ Justification/Reason for Appeal
- ☒ Copies of the written Determination Letter, from the final appellate body, which must be a non-elected decision-making body

2. Electronic Copy

- ☒ Provide an electronic copy of your appeal documents on a flash drive (planning staff will upload materials during filing and return the flash drive to you) or a CD (which will remain in the file). The following items must be saved as individual PDFs and labeled accordingly (e.g. "Environmental Appeal Application.pdf", "Justification/Reason Statement.pdf", "Final Determination Letter.pdf"). No file should exceed 9.8 MB in size.

3. Appeal Fee

- ☐ Original Applicant - A fee equal to 85% of the original application fee of the Environmental case; provide a copy of the original application receipt(s) to calculate the fee per LAMC Section 19.01B 1.
- ☒ Other Persons - The fee charged shall be in accordance with the LAMC Section 19.01B 1.

This Section for City Planning Staff Use Only		
Base Fee:	Reviewed & Accepted by (DSC Planner):	Date:
Receipt No:	Deemed Complete by (Project Planner):	Date:
☐ Determination authority notified		☐ Original receipt and BTC receipt (if original applicant)

P: (626) 381-9248
F: (626) 389-5414
E: mitch@mitchtsailaw.com



155 South El Molino Avenue
Suite 104
Pasadena, California 91101

VIA ELECTRONIC FILING

November 2, 2020

CITY OF LOS ANGELES CITY COUNCIL
JOHN FERRARO COUNCIL CHAMBER
Room 340, City Hall
200 North Spring Street
Los Angeles, CA 90012

**RE: JUSTIFICATION LETTER FOR APPEAL OF SEPTEMBER 10,
2020 SOUTH VALLEY PLANNING COMMISSION DECISION
REGARDING CASE NO. DIR-2018-2713-SPP; 21300 CALIFA
STREET, ENV-2018-3471-EIR**

Dear President Martinez and Honorable Councilmembers,

On behalf of the Southwest Regional Council of Carpenters (“**Commenter**” or “**Carpenters**”), my Office is submitting these comments regarding our appeal of the City of Los Angeles’ (“**City**” or “**Lead Agency**”) South Valley Area Planning Commission’s (“**South Valley Planning Commission**” or “**Commission**”) September 10, 2020 decision to deny the Carpenter’s appeal of the June 18, 2020 Planning Director’s Determination, approving the “Warner Center 2035 Specific Plan and Warner Center 2035 Specific Plan Sign District Project Permit Compliance Review” for Case No. DIR-2018-2713-SPP, located at 21300 Califa Street (“**Project**”), and exempting the Project from environmental review under the California Environmental Quality Act, Cal. Public Resources Code section 21000 *et seq* (“**CEQA**”).

On June 18, 2020, the Director approved the Project by finding that the Project is within the scope of the Warner Center 2035 Program EIR (“**Program EIR**”), the environmental effects of the Project were covered in the Program EIR, no new environmental effects will occur, no new mitigation is required; and the City has incorporated all feasible mitigation measures from the Program EIR on the Project. (6/18/2020 LOD.)

Subsequently on July 6, 2020, the Carpenters appealed the Director’s approval of the Project to the South Valley Planning Commission. On September 10, 2020, the Commission heard the Carpenter’s appeal and voted to deny the appeal, approve the project with modification and exempt the Project from CEQA environmental review.

On October 19, 2020, the City issued a Letter of Determination (“**LOD**”) finalizing the Commission’s September 10, 2020 decision (“**10/19/2020 LOD**”). Carpenters now appeal the Commission’s September 10, 2020 decision to exempt the Project from CEQA to the City Council within 15 days of the City’s issuance of the LOD.

The Southwest Carpenters is a labor union representing 50,000 union carpenters in six states, including in southern California, and has a strong interest in well-ordered land use planning and addressing the environmental impacts of development projects.

Commenters expressly reserves the right to supplement these comments at or prior to hearings on the Project, and at any later hearings and proceedings related to this Project. Cal. Gov. Code § 65009(b); Cal. Pub. Res. Code § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.

Commenters expressly reserves the right to supplement these comments at or prior to hearings on the Project, and at any later hearings and proceedings related to this Project. Cal. Gov. Code § 65009(b); Cal. Pub. Res. Code § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.

Commenters incorporates by reference all comments raising issues regarding the EIR submitted prior to certification of the EIR for the Project. *Citizens for Clean Energy v. City of Woodland* (2014) 225 CA4th 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, Commenter requests that the Lead Agency provide notice for any and all notices referring or related to the Project issued under the CEQA and the California Planning and Zoning Law (“**Planning and Zoning Law**”), Cal. Gov’t Code §§ 65000–65010. PRC Sections 21092.2, and 21167(f) and Gov’t 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 AREA PLANNING COMMISSION WAS REQUIRED TO GRANT THE APPEAL IN PART TO MODIFY CONDITIONS OF APPROVAL NOS. 24 AND 26 AS RECOMMENDED BY STAFF

Pursuant to LAMC 11.5.7(C)(4), the Director’s Project Permit Compliance decision “shall become effective after an elapsed period of 15 calendar days from the date of mailing of the written decision, unless an appeal is filed on the decision....” (LAMC 11.5.7(C)(4).) LAMC 11.5.7(C)(6) provides that filing a timely appeal gives the Area Planning Commission with jurisdiction to consider the Director’s decision. (*Id.* at (C)(6).)

The Appeal Recommendation Report proposes modifications to the Director’s determination in response to this appeal. Since the instant appeal provides the SVPC with jurisdiction to consider this matter, it cannot modify the Director’s decision unless the SVPC grants the appeal in part. Without granting the appeal, the SVPC lacks jurisdiction to modify the Director’s decision. Appellant herein requests that the SVPC grants this appeal in part in order to make said modifications.

II. THE PROJECT IS INCONSISTENT WITH THE WARNER CENTER 2035 PLAN AND THE LOS ANGELES MUNICIPAL CODE AND THEREFORE CANNOT BE STATUTORILY EXEMPTED FROM CEQA

a. The Director’s Findings Under LAMC 11.5.7(C)(2) Are Unsupported.

The primary purpose of the June 18, 2020 LOD is to approve the Project with the determination that it is compliant with the Warner Center 2035 Specific Plan. Los Angeles Municipal Code (“LAMC”) 11.5.7(C)(2) requires that the Director make written findings prior to granting a Project Permit Compliance for Project in a specific plan area. The LOD then analyzes and concludes that the Project is consistent with the applicable general and specific plans, including the Warner Center 2035 Specific Plan. (*Id.* pp. 33-56.)

Specifically, before granting a Project Permit Compliance request, LAMC 11.5.7(C)(2) requires the Director to make written findings that the Project satisfies each of the following requirements:

- (a) That the project substantially complies with the applicable regulations, findings, standards and provisions of the specific plan; and

(b) That the project incorporates mitigation measures, monitoring measures when necessary, or alternatives identified in the environmental review which would mitigate the negative environmental effects of the project, to the extent physically feasible

For reasons stated below, the Project is inconsistent with the Warner Center 2035 Plan and the applicable Community Plan. And as explained in full below, the City fails to adequately respond to and/or resolve each issue previously raised by Commenter's appeal.

Thus, the Director's findings under LAMC 11.5.7(C)(2) are unsupported by substantial evidence.

1. *The Project Fails to Comply with the Warner Center 2035 Plan*

(a) The Project Does Not Comply with the Specific Plan's Cultural Amenities Trust Fund Requirements

The Warner Center 2035 Plan requires that projects with values of over \$500,000.00 pay into the Warner Center Cultural Amenities Trust Fund. (Warner Center 2035 Plan at pp. 15, 43, 111.) However, the Project's Condition of Approval No. 26 original Condition of Approval merely referenced the conditional requirements. (6/18/2020 LOD, P. 13.) Since the LOD admits that this Project would exceed the \$500,000 threshold and the estimated total Cultural Amenities fee will be \$1,982,631.05, the Condition of Approval No. 26 should be revised to state that the Applicant will be assessed Cultural Amenities fees under the Specific Plan because the Project meets the \$500,000 minimum threshold. The current conditional language is confusing and ambiguous.

Instead of clarifying the Condition of Approval, the City renders it more ambiguous by revising it. The Appeal Recommendation Report revised the Condition by deleting the entirety of the prior language and replacing it with a new one. (9/10/2020 Appeal Recommendation Report, p. A-2~3.) Most glaringly, the City's revised Condition removes all language about the amount of the estimated cultural amenities fees. (*Id.*)

The revised Condition 26 still fails to provide a simple statement that the Project's valuation will exceed \$500,000 and that the Project will be required to pay cultural amenities fees, or provide on-site cultural amenities in-lieu of fees, with an estimate of how much the amount would be would clarify this Condition. Without this clarification, the Project is inconsistent with the Warner Center 2035 Specific Plan.

(b) The LOD Fails to Apply the Fees from the Mobility Fee Update

The Letter of Determination applies Mobility Fees from the 2019 table and not from the recent Mobility Fee Update, Appendix D to the Specific Plan, which was amended by Ordinance No. 186,498 (effective March 10, 2020.) (June 18, 2020 LOD, pp. 43-44.) This is wrong and must be revised to reflect the fees from the Mobility Fee Update.

The Appeal Recommendation Report proposes to revise Condition of Approval No. 24 to merely “refer to” the 2020 Mobility Fee Ordinance but still maintains that the most recent Mobility Fees from the 2020 Mobility Fee Ordinance will not apply (referring to “the final determination to pay a Mobility Fee will be calculated using the appendix D Mobility Fee Table in effect at time application was deemed complete.”). (9/10/2020 Appeal Recommendation Report, p. A-4.)

But the City’s refusal to determine the Mobility Fees at the time of approval, rather than the time of when the application was deemed complete, is wrong. Absent statutory exceptions under federal, state or local law, the City’s decision as to whether to grant land use entitlements for the Project, are subject to the legal requirements at the time of approval. (*Avco Community Developers, Inc. v. South Coast Regional Com.* (1976) 17 Cal. 3d 785, 793; 793 [stating “the government cannot be estopped to enforce the laws in effect when the permit is issued.”]; *Alameda County Land Use Assn. v. City of Hayward* (1995) 38 Cal. App. 4th 1716, 1724 [finding that “A local legislative body cannot surrender or impair its delegated governmental power or that of successor legislative bodies either by ordinance or contract.”]; *Trancas Property Owners Assn. v. City of Malibu* (2006) 138 Cal. App. 4th 172, 181 [finding that a City cannot agree not to enforce its current land use and zoning laws, since it would amount to an abdication of a City’s “police powers.”].)

As Staff acknowledges, Condition No. 24 as stated in the Director’s Determination incorrectly states that the Warner Center 2035 Plan would be calculated “using the Appendix D Mobility Fee Table in effect at time application was deemed complete. Section 7.3.1 of the Warner Center 2035 Plan states that “[t]he Mobility Fee rate shall be based upon those rates in effect at the time of building permit issuance.”

Moreover, the modifications proposed by Staff still misstate other portions of the 2020 Mobility Fee Ordinance (Ord. No. 186,498). The 2020 Mobility Fee Ordinance

amended Warner Center 2035 Specific Plan to include that after “a maximum period of seven years following the effective date of this ordinance...the project shall be subject to the most current fee and credit rates.” (Ord. No. 186,498, section 7.3.1.) Thus, the most current fees and credit rates must apply after 7 years, i.e. March 10, 2027.

Finally, the modified language for Condition of Approval Number 24 assumes that the 2020 Mobility Fee Ordinance (Ord. No. 186,498) would still be in place at the time that the Project’s building permits would be issued and therefore unlawfully constricts the City’s legislative authority to modify the Warner Center 2035’s mobility fee provisions to apply towards projects that were deemed complete prior to March 10, 2020. Moreover, by continuing to approve projects as part of the Warner Center 2035 Plan without ensuring that the revised requirements, like the Mobility fees, will equally apply to all projects as part of the Specific Plan, the City fails to safeguard that the projects within the Specific Plan will be carried out appropriately and consistently.

Furthermore, the City applies the Mobility Fee Update inconsistently to various cases within the Warner Center 2035 Specific Plan. In another Specific Plan case, Case No. DIR-2018-3394-SPP-1A, Project Site 6366-6410 Canoga Avenue, the City refused to apply the Mobility Fee Update, effective March 10, 2020, to that case because the Letter of Determination for the case was issued on January 2, 2020, before the effective date. (Case No. DIR-2018-3394-SPP-1A, Staff Report to South Valley Area Planning Commission, A-3.) In a different Specific Plan case, Case No. DIR-2017-1708-SPP, while the City correctly applied the Mobility Fee Update to the project, the Project Applicant appealed to apply the older Mobility Fees, but the City Planning Commission at the most recent appeal hearing expressed it would require the recent fees from the Mobility Fee Update.

The Mobility Fee Update went into effect on March 10, 2020 and the LOD was issued June 18, 2020. There is no excuse for to apply an outdated Mobility Fee here and the latest Mobility Fee Update must be applied.

(c) The Project Should Be Stayed Until the City Implements City Council’s Direction to Implement Additional Labor Standards, Local Hire, Prevailing Wage, and Affordable Housing Requirements

The City has recently approved a number of changes to the Warner Center 2035 Plan, including measures to implement labor standards, local hire, prevailing wage, and affordable housing requirements (Council Files 13-0197-S4, 13-0197-S9, 13-0197-S6), all of which are currently being ignored as part of the City’s Warner Center 2035 Plan implementation process.

The City, in the Appeal Recommendation Report, rebuffs that no ordinances have been finalized regarding labor and affordable housing requirements for the Warner Center 2035 Specific Plan. (9/10/2020 Appeal Recommendation Report, p. A-6.) However, the City acknowledges that the City Council has directed the City departments and staff to draft and present an ordinance mandating affordable housing on projects within the Warner Center 2035 Specific Plan, failing to mention the other ordinances regarding local standards, hire, prevailing wage. (*Id.* [citing Council File 13-0197-S9.]

This City has dragged its feet for over 2 years in failing to implement the community benefits that were promised many years ago as part of approval of the Warner Center 2035 Plan. Now the City is approving and implementing projects within the Specific Plan without imposing any of said benefits. The City is failing its duties and the members of its community by reneging on its promises by now saying it can’t do anything about it. This is simply wrong and the City, especially the City Council, must act to rectify these very issues prior to approving any projects within the Specific Plan.

2. The Project is Inconsistent with the Canoga Park-Winnetka-Woodland Hills-West Hills Community Plan

Canoga Park-Winnetka-Woodland Hills-West Hills Community Plan Objective 1-4 requires that projects “[p]rovide a diversity of housing opportunities capable of accommodating all persons regardless of income, age or ethnic background.” (CPWWHWH Community Plan, p. III-4.) However, the Project proposes zero affordable or low income housing units. Therefore, the LOD fails to establish that the Project is consistent with the Canoga Park-Winnetka-Woodland Hills-West Hills Community Plan Objective 1-4.

The City responds that LAMC section 11.5.7.C.2 merely requires a determination regarding compliance with the Specific Plan itself. (9/10/2020 Appeal Recommendation Report, p. A-6.) The City claims that consistency with the General Plan including the Community Plan is not a relevant issue anymore because the Specific Plan is deemed to be consistent with those plans based on the Government Code 65454's requirement that "no specific plan may be adopted or amended unless the proposed plan or amendment is consistent with the general plan." (*Id.*, p. A-6.)

The City is wrong. LAMC section 11.5.7.C.2 also requires compliance with CEQA, which means that the Project is required to determine whether the Project will conflict with any applicable land use plan, policy or regulation. Moreover, PRC section 21094 of CEQA allows tiering off prior EIRs only if the later project is (1) consistent with the program, plan, policy, or ordinance for which an environmental impact report has been prepared and certified and (2) consistent with applicable local land use plans and zoning of the city, county, or city and county in which the later project would be located. (PRC § 21094(b).) Therefore, the City is still required to determine the Project's consistency with the Community Plan's affordable housing requirements.

Moreover, Gov't Code section 65454 merely requires local agencies to ensure that they not adopt specific plans that are inconsistent with the general plan. It in no way goes as far as the City claims, that the adoption of a specific plan deems it to be consistent with the general plan and including the community plan.

The City must establish the Project's consistency with the Community Plan, especially its requirement to "[p]rovide a diversity of housing opportunities capable of accommodating all persons regardless of income, age or ethnic background." (Canoga Park-Winnetka-Woodland Hills-West Hills Community Plan Objective 1-4.)

3. The Project Fails to Adopt All Mitigation Measures from the Program EIR.

As explained in the appeal justification letter, the LOD fails to require the Project to implement all of the mitigation measures adopted by the Program EIR. (6/18/2020 LOD, pp. 16-30.) The LOD excludes the following mitigation measures: AES-5, 6, 21, 22, 23, 24, 25, 26; AQ-2, 10, 11, 12, 13, 14, 16, 17, 18; BIO-2, 4, 5; CUL-1 and 2; GEO-13; HYDRO-1, 4, 12, 13; NOI-1, 2, 8, 9; TRS-1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60,

61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, and 101.

As listed above, the LOD excludes 130 mitigation measures adopted by the Program EIR. And most shockingly, the LOD excludes ALL but one of the transportation/traffic mitigation measures adopted by the Program EIR (LOD only adopted TRS-100 out of a total of 101 mitigation measures). Despite excluding 130 mitigation measures from the Project, the LOD fails to explain why such exclusion was necessary. As such, the Director and the City failed to provide substantial evidence to support its decision to exclude a huge bulk of the mitigation measures adopted by the Program EIR, the only environmental document that supports this Project.

The City responds that “the Letter of Determination includes all mitigations that are applicable to the Project, and excludes those mitigation measures that are deemed infeasible either because they are not applicable to the Project because of its specific parameters or qualify as regulatory compliance measures that are applicable to the Project.” (9/10/2020 Appeal Recommendation Report, A-6.) However, the City never explained the rationale behind why it excluded certain mitigation measures from the Program EIR as “infeasible.” There is no evidence to support the exclusion of 130 mitigation measures and not applying them to the Project.

According to LAMC 11.5.7(C)(2)(b), the Director must find that the project incorporates mitigation measures to the extent physically feasible. Here, the Director’s finding that “the City has incorporated all feasible mitigation measures from the Program EIR on the Project” is unsupported and unreasonable.

II. THE PROJECT VIOLATES THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

a. The Program EIR is Insufficient

PRC section 21094 allows a prior program EIR to be used for a later project but only if the City determines all of the following:

- (1) Consistent with the program, plan, policy, or ordinance for which an environmental impact report has been prepared and certified.
- (2) Consistent with applicable local land use plans and zoning of the city, county, or city and county in which the later project would be located.
- (3) Not subject to Section 21166 .

As explained above, the Project must be consistent with the Warner Center 2035 Plan to rely on a prior Program EIR. (See Warner Center Regional Core Comprehensive Specific Plan EIR [ENV-2008-3471-EIR].) And for reasons explained above, the Project is inconsistent with the Warner Center 2035 Plan and the applicable Community Plan and therefore the City cannot rely on the prior Program EIR for the Project.

Moreover, the City fails to incorporate all relevant mitigation measures and fails to justify why some were excluded as infeasible. See PRC § 21094(a)(1).

Therefore, the City fails to provide substantial evidence to support its determination that the Program EIR sufficiently analyzed the environmental effects of the Project and the Project does not require any site-specific environmental review.

- b. Due to the COVID-19 Crisis, the City Must Adopt a Mandatory Finding of Significance that the Project May Cause a Substantial Adverse Effect on Human Beings and Mitigate COVID-19 Impacts

CEQA requires that an agency make a finding of significance when a Project may cause a significant adverse effect on human beings. PRC § 21083(b)(3); CEQA Guidelines § 15065(a)(4).

PRC section 21166 of CEQA requires the City to conduct supplemental environmental review under three circumstances:

- (a) Substantial changes are proposed in the project which will require major revisions of the environmental impact report.
- (b) Substantial changes occur with respect to the circumstances under which the project is being undertaken which will require major revisions in the environmental impact report.
- (c) New information, which was not known and could not have been known at the time the environmental impact report was certified as complete, becomes available.

The public health crisis presented by COVID-19 qualifies as substantial changes to circumstances and new information that were not known at the time the Program EIR was prepared for the Warner Center 2035 Specific Plan. The City must prepare an EIR or a supplemental Program EIR to analyze the Project's impacts on human beings due to COVID-19.

Public health risks related to construction work requires a mandatory finding of significance under CEQA. Construction work has been defined as a Lower to High-risk activity for COVID-19 spread by the Occupations Safety and Health Administration. Recently, several construction sites have been identified as sources of community spread of COVID-19.¹

SWRCC recommend that the City adopt additional CEQA mitigation measures to mitigate public health risks from the Project's construction activities. SWRCC requests that the City require safe on-site construction work practices as well as training and certification for any construction workers on the Project Site.

The City, in its Technical Memorandum, dismiss the Commenters' request by stating that effects of the environment on a project are not subject to CEQA review, citing to *California Bldg. Indus. Assn. v. Bay Area Air Quality Mgmt. Dist.* (2015) 62 Cal.4th 369, 378. (8/13/2020 CPC Technical Memorandum, pdf pg. 29.) However, the City is wrong because COVID-19 is not an existing environmental hazard of the Project site. And even if it were an existing condition, but it is exacerbated by the Project construction itself, putting construction workers at grave risk.

Based upon SWRCC's experience with safe construction site work practices, SWRCC 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.

¹ 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>.

- The perimeter fence directly adjacent to the entry points will be clearly marked indicating the appropriate 6-foot social distancing position for when you approach the screening area. Please reference the Apex temperature screening site map for additional details.
- There will be clear signage posted at the project site directing you through temperature screening.
- Provide hand washing stations throughout the construction site.

Testing Procedures:

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

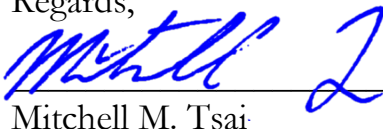
- Require the development of an Infectious Disease Preparedness and Response Plan that will include basic infection prevention measures (requiring the use of personal protection equipment), policies and procedures for prompt identification and isolation of sick individuals, social distancing (prohibiting 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.²

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.

III. CONCLUSION

For aforementioned reasons, Commenter requests that the City grant its appeal and send the Project back to be re-analyzed and considered for its consistency with the Warner Center 2035 Plan and compliance with CEQA.

Regards,



Mitchell M. Tsai

Attorneys for Southwest Regional Council of Carpenters

² 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.

Applicant Copy
Office: West LA
Application Invoice No: 68167

City of Los Angeles
Department of City Planning



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City Planning Request

NOTICE: The staff of the Planning Department will analyze your request and accord the same full and impartial consideration to your application, regardless of whether or not you obtain the services of anyone to represent you.

This filing fee is required by Chapter 1, Article 9, L.A.M.C.

If you have questions about this invoice, please contact the planner assigned to this case. To identify the assigned planner, please visit <https://planning.lacity.org/pdiscaseinfo/> and enter the Case Number.

Receipt Number:2020311002-4, Amount:\$109.47, Paid Date:11/06/2020

Applicant: MITCHELL M. TSAI, ATTORNEY AT LAW PC - TSAI, MITCHELL (626-3819248)
Representative:
Project Address: 21320 W CALIFA ST, 91367

NOTES: Appeal pursuant to LAMC 11.5.13 of the determination that the project is Statutorily Exempt from CEQA pursuant to Public Resources Code, section 21155.4.

DIR-2018-2713-SPP-2A			
Item	Fee	%	Charged Fee
Appeal by Aggrieved Parties Other than the Original Applicant *	\$89.00	100%	\$89.00
Case Total			\$89.00

Item	Charged Fee
*Fees Subject to Surcharges	\$89.00
Fees Not Subject to Surcharges	\$0.00
Plan & Land Use Fees Total	\$89.00
Expediting Fee	\$0.00
Development Services Center Surcharge (3%)	\$2.67
City Planning Systems Development Surcharge (6%)	\$5.34
Operating Surcharge (7%)	\$6.23
General Plan Maintenance Surcharge (7%)	\$6.23
Grand Total	\$109.47
Total Invoice	\$109.47
Total Overpayment Amount	\$0.00
Total Paid (this amount must equal the sum of all checks)	\$109.47

Council District: 3
Plan Area: Canoga Park - Winnetka - Woodland Hills - West Hills
Processed by MCCOY, NOAH on 11/06/2020

Signature: _____



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