Communication from Public

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Comments for Public Posting:	Please find attached our comment letter for item number 6 on the 11/1/23 City Council agenda.

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VIA ELECTRONIC SUBMISSION

October 31, 2023

City of Los Angeles
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Em: Kristine.Jegalian@lacity.org; CityClerk@lacity.org

RE: Agenda Item No. 6: 8141 Van Nuys Blvd. Project

Dear Honorable Councilmembers,

On behalf of the Southwest Mountain States Regional Council of Carpenters ("**The Carpenters**" or "**SWMSRCC**"), my Office is submitting these comments to the City of Los Angeles ("**City**") for the November 1, 2023 City Council meeting to reiterate its concerns with the Sustainable Communities Environmental Assessment ("**SCEA**") for the 8141 Van Nuys project ("**Project**").

The Project involves the construction of a new 7-story mixed-use building with 200 residential units, approx. 2,060 square feet of ground floor commercial space, a 3-level 504 space parking structure, and a 10,674 square foot warehouse space.

SWMSRCC is a labor union representing 90,000 union carpenters in twelve states, including California, and has a strong interest in well ordered land use planning and addressing the environmental impacts of development projects. Individual members of the Southwest Carpenters live, work and recreate in the City and surrounding communities and would be directly affected by the Project's environmental impacts.

SWMSRCC 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.

SWMSRCC incorporates by reference all comments raising issues regarding the Project's environmental review submitted prior to approval of the Project. *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).

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

As noted in our previous letter, 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.

Workforce requirements promote the development of skilled trades that yield sustainable economic development. 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.[1]

Locating jobs closer to residential areas can have significant environmental benefits. 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] 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.

match those held by local residents.[2] Some municipalities have even tied local hire and other workforce policies to local development permits to address transportation issues.

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 construction sites have been identified as sources of community spread of COVID-19.[3]

Southwest Mountain States Carpenters recommend that the City adopt additional requirements to mitigate public health risks from the Project's construction activities, as specified in its previous letter. SWMSRCC 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.

Southwest Mountain States Carpenters has also developed a rigorous Infection Control Risk Assessment ("**ICRA**") training program to ensure it delivers a workforce that

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[2] 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.

[3] 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.

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.[4]

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 CITY SHOULD PREPARE AN ENVIRONMENTAL IMPACT REPORT FOR THE PROJECT

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(a)(1).[5] At its core, "[i]ts purpose is to inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made." *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 564.

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).

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 agency must prepare an EIR whenever substantial evidence in the record

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[4] For details concerning Southwest Carpenters's ICRA training program, *see* https://icrahealthcare.com/.

[5] The CEQA Guidelines, codified in Title 14 of the California Code of Regulations, section 15000 *et seq*, are regulatory guidelines promulgated by the state Natural Resources Agency for the implementation of CEQA. (Cal. Pub. Res. Code § 21083.) The CEQA Guidelines are given "great weight in interpreting CEQA except when . . . clearly unauthorized or erroneous." *Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 62 Cal. 4th 204, 217.

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." Public Resources Code ("**PRC**") § 21151; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. App. 3d 68, 75*; 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(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. v. City of Los Angeles*, 13 Cal. 3d at 83 fn. 16; *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 Irrig. 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 v. County of Mendocino* (1988) 202 Cal. App. 3d 296, 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 v. City of Santa Rosa* (2018) 23 Cal. App. 5th 877, 886; *Clews Land & Livestock v. City of San Diego* (2017) 19

Cal. App. 5th 161, 183; *Stanislaus Audubon Soc'y, Inc. v. County of Stanislaus* (1995) 33 Cal. App. 4th 144, 150; *Brentwood Ass'n for No Drilling, Inc. v. City of Los Angeles* (1982) 134 Cal. App. 3d 491; *Friends of "B" St. v. City of Hayward* (1980) 106 Cal. App. 3d 988; CEQA Guidelines § 15064(f)(1).

As there is a fair argument that the Project may cause significant environmental impacts, as explained below, the low threshold is met and the City should prepare an EIR for the Project.

IV. THE CITY MUST REVISE AND RECIRCULATE THE SCEA

In light of the SCEA's failure to substantiate all of its findings, provide adequate mitigation measures, and fully assess all relevant factors, the City must revise and recirculate the SCEA, at the very least, to ensure that the SCEA in fact complies with the requirements set forth in PRC section 21155.2.

A. The SCEA Fails to Support its Greenhouse Gas Findings with Substantial Evidence

SCEA findings must be supported by "substantial evidence in light of the whole record. PRC § 21155.2(b)(1). Further, determinations 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; *Ebbetts Pass Forest Watch v Department of Forestry & Fire Protection* (2008) 43 Cal. App. 4th 936, 956.

Here, the SCEA provides that the City "is not required to use a numerical GHG threshold or another methodology that relies on a quantitative analysis. As such, the Project's GHG emissions have been estimated and disclosed to comply with CEQA Guidelines Section 15064.4(a) [based on] evidence that the implementation of the plans, policies, and regulations adopted to reduce GHG emissions will result in actual GHG reductions." SCEA at 5-85. However, as noted above, consistency with plans and regulations must be based on project-specific information.

Although the SCEA provides qualitative information regarding the Project's GHG emissions, it does not rely on such information and instead relies entirely on regulatory consistency in determining less than significant impacts. As such, the analysis is neither in compliance with CEQA Guidelines Section 15064.4(b) [noting that an agency should consider, amongst other factors, the extent to which the project may increase

or reduce greenhouse gas emissions as compared to the existing environmental setting and whether a project emissions exceed a threshold of significance] nor supported by substantial evidence.

B. The SCEA Defers its Transportation Mitigation Measures

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).

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.

Here, the SCEA improperly defers it transportation mitigation measures without providing any assertion or explanation as to why the measures cannot be formed at this time. For example, the SCEA provides that "[p]rior to the start of construction, a Construction Traffic Management Plan (CTMP) *shall be submitted to LADOT for review.* SCEA at 4-60. Thus, the SCEA's transportation mitigation measure is deferred as the plan has yet to be prepared nor circulated for public review and comment.

C. The SCEA Fails to Assess Its Tree Removal Impacts

The SCEA notes that as part of the Project, up to 141 trees may be removed. SCEA at 5-39. However, the SCEA fails to note with any specificity exactly how many trees will be removed, what types of tree will be removed, and whether such trees provide habitat for nesting birds. Such removal may result not only in significant biological resource impacts but also significant air quality impacts stemming from the removal of trees providing air quality benefits.

Although the SCEA attempts to rectify such omission in analysis by noting that "[a]ny tree removal will comply with the City's Tree Replacement Program (Urban Forestry Division, Bureau of Street Services for the street tree)", such assertion cannot overcome the SCEA's lack of analysis given that it is well established that regulatory

compliance must be based on a project-specific analysis, as noted above. The SCEA must be revised to provide an in depth analysis of the quantity and types of trees which will be removed and what impacts such removal will result in.

D. The SCEA Fails to Adequately Analyze the Project's Hazards and Hazardous Material Impacts

Although the SCEA concludes that the Project will have less than significant hazards and hazardous material impacts (SCEA at 5-112), it fails to take into account the hazardous impacts associated with the 10,674 square foot warehouse space which the Project will include. Rather, the SCEA merely provides that the Project "includes the development of residential, commercial, and parking uses. . . . [which[do not involve the routine use of hazardous materials." SCEA at 5-106.

Warehouses can contain numerous hazards and hazardous material impacts, including but not limited to: electrical hazards, chemical hazards, and hazards associated with warehouse equipment.[6] Given that the SCEA fails to assess the impacts associated with the Project's warehouse, or even specify what exactly will be stored in the warehouse, the SCEA fails to adequately analyze the Project's hazards and hazardous impacts and must be revised to do so.

E. The SCEA Fails to Specify That It Will Comply with the 2022 Building Code Solar Requirements

Section 110.10 of the 2022 Building Energy Efficiency Standards ("BEES") requires residential buildings less than 10 stories high to designate 15% of their roof area for future solar panel installation. Additionally, section 1040.10 of the BEES requires high rise multifamily buildings to install photovoltaic ("PV") systems and battery storage systems.

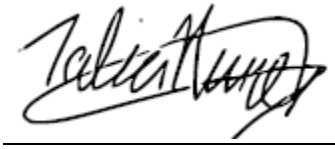
Here, although the SCEA acknowledges that 15% of the Project roof area will be set aside for future solar panels (SCEA at 5-53), it fails to specify that it will include PV and battery storage systems in compliance with the 2022 BEES. For this reason too, the SCEA must be revised and recirculated.

[6] See Occupational Safety and Health Administration Warehousing Hazards and Solutions, available at https://www.osha.gov/warehousing/hazards-solutions.

V. CONCLUSION

In sum, SMSWRCC requests that the City require a local workforce, that the City impose training requirements for the Project's construction activities to prevent community spread of COVID-19 and other infectious diseases, and that the City prepare an EIR for the Project or, at the very least, revise the SCEA to address the aforementioned concerns. If the City has any questions, feel free to contact my Office.

Sincerely,



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