

**FINAL
INITIAL STUDY/
MITIGATED NEGATIVE DECLARATION
SITE B-2 HOTEL
SCH No. 2022060174**



Lead Agency
City of Garden Grove
Community and Economic Development Department
11222 Acacia Parkway
Garden Grove, CA 92840

Prepared by
AECOM
999 Town & Country Road
Orange, CA 92868

August 2022

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ATTACHMENTS

Attachment A	Exhibits A-C to Comment Letter 5 (Mitchell M. Tsai Attorney for the Southwest Regional Council of Carpenters, June 28, 2022)
Attachment B	Exhibit A to Comment Letter 6 (Mitchell M. Tsai Attorney for the Southwest Regional Council of Carpenters, July 6, 2022)
Attachment C	Updated Traffic Impact Study (Appendix I of the Draft IS/MND)

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1 INTRODUCTION

This section provides responses to the written comments made on the Draft Initial Study/Mitigated Negative Declaration (IS/MND) for the Site B-2 Hotel Project (proposed project) in the City of Garden Grove (City). The Draft IS/MND was circulated for public review for 20 days, from June 9, 2022, to June 28, 2022. The Draft IS/MND and documents incorporated by reference were made available for public review at the City Community and Economic Development Department Planning Services Division and on the City's website at <https://ggcity.org/planning/environmental-documents>.

2 RESPONSE TO COMMENTS

The comment letters received on the Draft IS/MND are numbered, as listed below, and are included on the following pages along with the formal responses prepared to those comments. To assist in referencing comments and responses, each specific comment is numbered and refers to a statement or paragraph in the corresponding letter.

Letter Number	Agency/Organization	Date received
1	Orange County Fire Authority	June 20, 2022
2	City of Anaheim	June 23, 2022
3	Orange County Sanitation District	June 28, 2022
4	California Department of Transportation	June 28, 2022
5	Mitchell M. Tsai Attorney for the Southwest Regional Council of Carpenters (SWRCC)	June 28, 2022
6	Mitchell M. Tsai Attorney for the SWRCC	July 6, 2022
7	GK Law for the UNITE HERE Local 11	July 7, 2022
8	GK Law for the UNITE HERE Local 11	July 27, 2022

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ORANGE COUNTY FIRE AUTHORITY

P. O. Box 57115, Irvine, CA 92619-7115 • 1 Fire Authority Road, Irvine, CA 92602-0125

Brian Fennessy, Fire Chief

(714) 573-6000

www.ocfa.org

June 20, 2022

Maria Parra, Senior Planner
City Garden Grove
Planning Services Division
11222 Acacia Parkway
Garden Grove, CA 92840

Subject: Notice of Intent to Adopt a Mitigated Declaration for Site B2 Hotel Project

Dear Maria Parra,

Thank you for the opportunity to review the subject document. The Orange County Fire Authority (OCFA) provides fire protection and emergency medical services response to the project area. Services include: structural fire protection, emergency medical and rescue services, education and hazardous material response. OCFA also participates in disaster planning as it relates to emergency operations, which includes high occupant areas and schools sites and may participate in community disaster drills planned by others. Resources are deployed based upon a regional service delivery system, assigning personnel and equipment to emergency incidents without regard to jurisdictional boundaries.

1-1

The subject document contains our current fire station and emergency response information. The project is a high-rise resort hotel and parking structure, and is subject to the Fire and Building code requirements for High Rise construction and safety features. The project will have less than significant impact with all of our conditions in place.

1-2

We would like to point out that all standard conditions with regard to development, including water supply, built in fire protection systems, road grades and width, access, building materials, and the like will be applied to this project at the time of plan submittal. Thank you for providing us with this information. Please contact me at 714-573-6253 if you have any questions.

1-3

Sincerely,

Robert J Distaso PE
Fire Safety Engineer
Planning and Development Section
robertdistaso@ocfa.org

Serving the Cities of: Aliso Viejo • Buena Park • Cypress • Dana Point • Garden Grove • Irvine • Laguna Hills • Laguna Niguel • Laguna Woods
Lake Forest • La Palma • Los Alamitos • Mission Viejo • Rancho Santa Margarita • San Clemente • San Juan Capistrano • Santa Ana
Seal Beach • Stanton • Tustin • Villa Park • Westminster • Yorba Linda • and Unincorporated Areas of Orange County

RESIDENTIAL SPRINKLERS AND SMOKE ALARMS SAVE LIVES

Comment Letter 1: Orange County Fire Authority

Response to Comment 1-1

Comment acknowledged.

Response to Comment 1-2

Comment acknowledged.

Response to Comment 1-3

Comment acknowledged.

From: [Chang, Jane](#)
To: [Chang, Jane](#)
Subject: FW: Site B2 Hotel Project- MND Comment
Date: Thursday, June 23, 2022 2:59:33 PM

From: "Amanda Lauffer" <ALauffer@anaheim.net>
To: "Maria Parra" <mariap@ggcity.org>
Cc: "Heather R. Allen" <HAllen@anaheim.net>
Sent: Thursday, June 23, 2022 1:54:19 PM
Subject: Site B2 Hotel Project- MND Comment

Hello Maria,

2-1

Thank you for the opportunity to review the documents for the draft MND for the Site B2 Hotel Project in the City of Garden Grove. Anaheim City staff reviewed the documents and offers the following comment from the Public Works Department regarding the left turn queue analysis:

2-2

For the intersection of Harbor Boulevard/Orangewood Avenue, please coordinate with the City of Anaheim to determine how best to address left-turn capacity at this intersection.

2-3

Should you have any additional questions regarding the comment from Public Works, you may contact Joseph Alcock, Principal Transportation Planner, at 714-765-4657 or at jalcock@anaheim.net.

Thank you,

Amanda Lauffer
Associate Planner | City of Anaheim
[Planning and Building Department](#) | [Planning Services](#)
200 S. Anaheim Boulevard, Suite 162
Anaheim, CA 92805
714.765.4479
alauffer@anaheim.net

Comment Letter 2: City of Anaheim

Response to Comment 2-1

Comment acknowledged.

Response to Comment 2-2

Comment acknowledged. As stated in the following mitigation measure of the Draft IS/MND, the City of Garden Grove will coordinate with the City of Anaheim about the left-turn capacity at the intersection of Harbor Boulevard and Oranewood Avenue.

Left-Turn Queue Mitigation Measure

TR-1 Coordinate with the City of Anaheim to determine if the project is required to make a fair-share contribution to extend the left-turn capacity up to 266 feet at the intersection of Harbor Boulevard and Oranewood Avenue.

Response to Comment 2-3

Comment acknowledged.

June 28, 2022

Maria Parra, Senior Planner
City of Garden Grove
Planning Services Division
11222 Acacia Parkway
Garden Grove, CA 92840
Email: mariap@ggcity.org

SUBJECT: Site B2 Hotel Project - Notice of Intent to Adopt
a Mitigated Negative Declaration

3-1

Thank you for providing the Notice of Intent to Adopt a Mitigated Negative Declaration proposed project "Site B2 Hotel Project" located at 12241, 11261, 12271, 12291, 12311, and 12323 Harbor Boulevard; and 12246, 12252, 12262, 12282, 12292, 12312, 12322, 12251, 12261, 12281, 12291, 12311, and 12321 Thackery Drive in the City of Garden Grove, County of Orange." Orange County Sanitation District (OC San) has reviewed it and would like to bring to your attention a requirement, as it applies to your project.

3-2

This project is proposing to build a five-level parking structure with four-levels above grade and one-level below grade. Please be advised that the OC San does not allow parking structure drains to be connected to the sewer. OC San realizes the connection would be made to a City of Garden Grove sewer. However, City sewers eventually connect to OC San sewers, that lead to the OC San Reclamation Plant in Fountain Valley. If you have any questions regarding this letter, please contact Kevin Hadden at 714 593-7462 or khadden@ocsan.gov.

Adam Nazaroff
Engineering Supervisor
Planning Division
714 593-7854

AN:KH:sa

[https://ocsdgov.sharepoint.com/sites/Planning/CEQA Externally Generated/2022 Comment Letters/City of Garden Grove Response Ltr NOI Adopt a MND 20220628.docx](https://ocsdgov.sharepoint.com/sites/Planning/CEQA%20Externally%20Generated/2022%20Comment%20Letters/City%20of%20Garden%20Grove%20Response%20Ltr%20NOI%20Adopt%20a%20MND%2020220628.docx)

cc: Jason Daniel

Serving:

Anaheim

Brea

Buena Park

Cypress

Fountain Valley

Fullerton

Garden Grove

Huntington Beach

Irvine

La Habra

La Palma

Los Alamitos

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Sanitary District

Midway City
Sanitary District

Irvine Ranch
Water District

Yorba Linda
Water District

*Our Mission: To protect public health and the environment by
providing effective wastewater collection, treatment, and recycling.*

Comment Letter 3: Orange County Sanitation District

Response to Comment 3-1

Comment acknowledged.

Response to Comment 3-2

Comment acknowledged. The parking structure drains would be pumped to the proposed bioretention basins and be treated prior to outletting to the City storm drain system. The amount of drainage going to the parking structure drains is very minimal and therefore no changes would need to be made to the Preliminary Hydrology Report or Preliminary Water Quality Management Plan.

DEPARTMENT OF TRANSPORTATION

DISTRICT 12
1750 EAST 4TH STREET, SUITE 100
SANTA ANA, CA 92705
PHONE (657) 328-6000
FAX (657) 328-6522
TTY 711
www.dot.ca.gov/caltrans-near-me/district12



Making Conservation
California Way of Life.

June 28, 2022

Ms. Maria Parra
Planning Services Division
11222 Acacia Parkway
Garden Grove, California 92840

File: IGR/CEQA
SCH#: 2022060174
LDR LOG #2022-01990

Dear Ms. Parra,

4-1

Thank you for including the California Department of Transportation (Caltrans) in review of the Mitigated Negative Declaration for the Site B-2 Hotel Project. The proposed project involves construction of a full-service high-rise (maximum height of 350 feet) resort hotel with hotel program entertainment/pool deck (height of approximately 61 feet) on a 3.72-acre site. The proposed hotel would include 500 guest suites with balconies; themed pool experience with lazy river; storage and loading area at 8,600 square feet maximum; event space with a 600-person maximum occupancy theater; a grand ballroom at 9,490 square feet; two (2) meeting rooms at 4,194 square feet and 4,031 square feet, respectively; a variety of food and beverage opportunities to be placed throughout the hotel totaling in a maximum area of 22,296 square feet; themed amenities totaling 13,238 square feet; a 7,000-square foot arcade; and a spa and fitness center at 8,532 square feet. All hotel amenities, except for the ballroom, meeting rooms, and 11,148 square feet of restaurant, would be for the hotel guests use only. The proposed project would also include a five-level (approximately 61 feet) parking garage (four levels above grade and one level below grade) with a grand total of 528 spaces to serve the 500 guest suites, event space, commercial and retail uses, food and beverage needs, as well as other amenities such as spa and fitness center. The project site is located at the northwest corner of Harbor Boulevard and Twintree Avenue, along the west and east sides of Thackery Drive, east of Tamerlane Drive in the City of Garden Grove.

The mission of Caltrans is to provide a safe and reliable transportation network that services all people and respects the environment.

"Provide a safe and reliable transportation network that serves all people and respects the environment"

Caltrans is a responsible agency on this project and has the following comments:

Traffic Operations

1. Appendix I, Traffic Impact Study, Page 16

"Int 20 – SR-22 eastbound Ramps / Trask Avenue Eastbound Left-Turn (deficient without and with the project): Existing Left-Turn Capacity: 520 feet Required Left-Turn Capacity without Project: 652 feet Required Left-Turn Capacity with Project: 666 feet. No Improvements are recommended since the eastbound outside left-turn lane storage length is sufficient as it extends west toward Harbor Boulevard".

Any additional queuing on the outside left turn lane that may extend beyond the designated left turn lane could have adverse impact on vehicles exiting the driveway from the shopping center with the following building addresses: 13518, 13512 and 13576 Harbor Boulevard. Vehicles exiting the driveway to Trask Avenue will have difficulty switching from through lane to left turn lane. Therefore, it is recommended that the developer proposes improvement for Int 20-SR-22 EB Ramps/Trask Ave.

2. Appendix I, Table 6-1, 6-2, 6-3 and 6-4 Shows:

ICU as the methodology used for intersections within State Right of Way. All Intersection Analysis within State Right of way shall be based on HCM methodologies. Additionally, a queue analysis should be provided for Caltrans review and comment.

Transportation Planning

3. Caltrans supports the project's efforts to reduce auto-based trips through the inclusion of onsite bicycle racks, bicycle rentals for hotel guests, and information that promotes walking, bicycling, and public transit options to nearby attractions. In addition to CALGreen standards for bicycle parking, please refer to the attached Essentials of Bike Parking which provides examples of secure and functional bike parking that can accommodate a range of bicycle styles, sizes, and weights (e.g. electric bikes, cargo/utility bikes, etc.).

Caltrans acknowledges the project's efforts in providing discussion regarding existing transit services within the project location. • Please consider taking the

"Provide a safe and reliable transportation network that serves all people and respects the environment"

4-4
cont'd

opportunity to include discussion about the multimodal regional connectivity relating to the use of nearby train stations such as the Anaheim Regional Transportation Intermodal Center (ARTIC) and Orange Metrolink Station.

4-5

4. Caltrans acknowledges the project's efforts in providing discussion regarding existing transit services within the project location. • Please consider taking the opportunity to include discussion about the multimodal regional connectivity relating to the use of nearby train stations such as the Anaheim Regional Transportation Intermodal Center (ARTIC) and Orange Metrolink Station.

Encroachment Permits

4-6

5. In the event of any activity in Caltrans right of way an Encroachment Permit will be required. All environmental concerns must be addressed. If the environmental documentation for the project does not meet Caltrans requirements, additional documentation would be required before approval of the Encroachment Permit. For application forms and specific details on Caltrans Encroachment Permits procedure, please refer to Encroachment Permits Manual. The latest edition of the Manual is available on: <http://www.dot.ca.gov/trafficops/ep/apps.html>.

4-7

Please continue to coordinate with Caltrans for any future developments that could potentially impact State transportation facilities. If you have any questions, please do not hesitate to contact at Maryam Molavi at Maryam.Molavi@dot.ca.gov.

Sincerely,

Maryam Molavi for,

Scott Shelley
Branch Chief, Regional-IGR-Transit Planning

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Comment Letter 4: California Department of Transportation

Response to Comment 4-1

Comment acknowledged.

Response to Comment 4-2

Level of service is no longer considered a significant impact. Nonetheless, the requirement for additional eastbound left turn capacity at the intersection of SR-22 Eastbound Ramps at Trask Avenue was reviewed and it was determined that the proposed project would not significantly degrade level of service operations at this location, either within the Caltrans right-of-way or along the local road system, to necessitate additional improvements. Eastbound left turn traffic has capacity to queue within the #2 lane on Trask Avenue, which provides additional storage outside of the left turn pocket. Additionally, based on the latest Highway Capacity Manual (HCM) calculations described in response to comment 4-3 below, the future worst case “with project” HCM 95th percentile design queue is reported to be 195 feet, which is less than what was originally estimated at this location (663 feet). As a result, the expected queue would not exceed the existing left turn storage capacity. Given that this intersection, and specifically the eastbound left turn movement, are forecast to continue to operate at acceptable level of service under all future “with” project scenarios, the proposed project is not expected to significantly impact access to the businesses at 13518, 13512 and 13576 Harbor Boulevard. Therefore, no additional improvements to the intersection of SR-22 Eastbound Ramps at Trask Avenue are recommended.

Response to Comment 4-3

Please also see response to comment 4-2. The Traffic Impact Study has been updated to include HCM level of service and queue reports for intersections within the Caltrans right-of-way, including intersection #7, #8, #18, and #20. Tables 6-1, 6-2, 6-3, and 6-4 of the Traffic Impact Study (see pp. 67-70) have been updated with the summary LOS results and HCM calculation worksheets and queue reports are provided in Appendices C, D, F, and G.

Response to Comment 4-4

Comment acknowledged. The Traffic Impact Study, specifically Active Transportation Recommendation 5 on page 12-19; Draft IS/MND, specifically GHG Mitigation Measure GHG-7, List Number 5 on page 50 (refer to Section 3, Errata); and Mitigation Monitoring Reporting Program have been updated to specify that the hotel management/concierge provide information to guests about the multimodal regional transportation options such as the Anaheim Regional Transportation Intermodal Center (ARTIC) and the Orange Metrolink Station.

Response to Comment 4-5

Comment acknowledged. Please refer to response to comment 4-4.

Response to Comment 4-6

Comment acknowledged.

Response to Comment 4-7

The City and/or the developer will continue to coordinate with Caltrans regarding the proposed project.



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Mitchell M. Tsai
Attorney At Law

139 South Hudson Avenue
Suite 200
Pasadena, California 91101

VIA E-MAIL

June 28, 2022

Maria Parra, Senior Planner
Planning Services Division
City of Garden Grove
11222 Acacia Parkway
Garden Grove, CA 92840
Em: mariap@ggcity.org

RE: Objections to Approval of Site B-2 Hotel Project and Its Mitigated
Negative Declaration

Dear Maria Parra:

5-1

On behalf of the Southwest Regional Council of Carpenters (“**SWRCC**” or “**Southwest Carpenters**”), my Office is submitting these comments on the Site B-2 Hotel project proposed at northwest corner of Harbor Boulevard and Twintree Avenue, along the west and east sides of Thackery Drive, east of Tamerlane Drive in the City of Garden Grove (“**Project**”). The project site is located at 12241, 11261, 12271, 12291, 12311 and 12323 Harbor Boulevard; and 12246, 12252, 12262, 12282, 12292, 12312, 12322, 12251, 12261, 12281, 12291, 12311, and 12321 Thackery Drive in the City of Garden Grove, County of Orange. The Project approval includes various approvals and actions from the City of Garden Grove (“**City**” or “**Lead Agency**”). The Project will be coming before the City’s Planning Commission on **July 7, 2022, at 7:00 pm**, seeking various approvals, including the approval of a mitigated negative declaration (“**MND**”).

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

Individual members of the Southwest Carpenters live, work and recreate in the area and surrounding communities and would be directly affected by the Project’s environmental impacts.

SWRCC expressly reserve 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't 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.)

5-1
cont'd

SWRCC incorporate by reference all comments raising issues regarding the Project and its CEQA compliance, submitted prior to the Project approvals. (*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, SWRCC request that the Lead Agency provide notice for any and all notices referring or related to the Project issued under the California Environmental Quality Act ("CEQA"), Cal. Public Resources Code ("PRC") § 21000 *et seq.*, and the California Planning and Zoning Law ("**Planning and Zoning Law**"), Cal. Gov't Code §§ 65000–65010. California Public Resources Code Sections 21092.2, and 21167(f) and 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.

5-2

The City should require community benefits such as requiring local hire and use of a skilled and trained workforce to build the Project. The City should require the use of workers who have graduated from a Joint Labor Management apprenticeship training program approved by the State of California, or 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 an apprenticeship training program approved by the State of California.

Community benefits such as local hire and skilled and trained workforce requirements 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 providing 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.

(Exhibits A-C [March 8, 2021 SWAPE Letter to Mitchell M. Tsai re Local Hire Requirements and Considerations for Greenhouse Gas Modeling.])

Skilled and trained workforce requirements promote the development of skilled trades that yield sustainable economic development. As the California Workforce Development Board and the UC Berkeley Center for Labor Research and Education concluded:

5-2
cont'd

. . . labor 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

Recently, on May 7, 2021, the South Coast Air Quality Management District found that that the “[u]se of a local state-certified apprenticeship program or a skilled and trained workforce with a local hire component” can result in air pollutant reductions.²

Cities are increasingly adopting local skilled and trained workforce policies and requirements into general plans and municipal codes. For example, the City of Hayward 2040 General Plan requires the City to “promote local hiring . . . to help achieve a more positive jobs-housing balance, and reduce regional commuting, gas consumption, and greenhouse gas emissions.”³

In fact, the City of Hayward has gone as far as to adopt a Skilled Labor Force policy into its Downtown Specific Plan and municipal code, requiring developments in its

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 City of Hayward (2014) Hayward 2040 General Plan Policy Document at p. 3-99, *available at* https://www.hayward-ca.gov/sites/default/files/documents/General_Plan_FINAL.pdf.

Downtown area to require that the City “[c]ontribute to the stabilization of regional construction markets by spurring applicants of housing and nonresidential developments to require contractors to utilize apprentices from state-approved, joint labor-management training programs, . . .”⁴ In addition, the City of Hayward requires all projects 30,000 square feet or larger to “utilize apprentices from state-approved, joint labor-management training programs.”⁵

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

5-2
cont'd

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.⁶

In addition, local hire mandates as well as skill training are critical facets of a strategy to reduce vehicle miles traveled. As planning experts Robert Cervero and Michael Duncan noted, simply placing jobs near housing stock is insufficient to achieve VMT reductions since the skill requirements of available local jobs must be matched to those held by local residents.⁷ Some municipalities have tied local hire and skilled and trained workforce policies to local development permits to address transportation issues. As Cervero and Duncan note:

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

⁴ City of Hayward (2019) Hayward Downtown Specific Plan at p. 5-24, *available at* <https://www.hayward-ca.gov/sites/default/files/Hayward%20Downtown%20Specific%20Plan.pdf>.

⁵ City of Hayward Municipal Code, Chapter 10, § 28.5.3.020(C).

⁶ California Planning Roundtable (2008) Deconstructing Jobs-Housing Balance at p. 6, *available at* <https://cproundtable.org/static/media/uploads/publications/cpr-jobs-housing.pdf>.

⁷ 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>.

5-2
cont'd

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.

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

5-3

Also, the City should require the Project to be built to standards exceeding the current 2019 California Green Building Code and 2020 County of Los Angeles Green Building Standards Code to mitigate the Project's environmental impacts and to advance progress towards the State of California's environmental goals.

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

A. Background Concerning the California Environmental Quality Act

CEQA has two basic purposes. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project. (CEQA Guidelines § 15002(a)(1).) "Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made. Thus, the EIR 'protects not only the environment but also informed self-government.' [Citation.]" (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.) The EIR has been described as "an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return." (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 392; *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 503 [same].)

5-4

- **EIR**

Second, CEQA directs public agencies to avoid or reduce environmental damage when possible by requiring alternatives or mitigation measures. (CEQA Guidelines § 15002(a)(2) and (3); *see also*, *Berkeley Keep Jets Over the Bay Committee v. Board of Port Com'rs* (2001) 91 Cal.App.4th 1344, 1354 ("Berkeley Jets"); *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553; *Laurel Heights Improvement Ass'n v. Regents of the University of California* (1988) 47 Cal.3d 376, 400.) The EIR serves to provide public

5-4
cont'd

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(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 CEQA Pub. Res. Code § 21081. (CEQA Guidelines § 15092(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.’ A ‘clearly inadequate or unsupported study is entitled to no judicial deference.’” (*Berkeley Jets*, 91 Cal.App.4th 1344, 1355 (emphasis added) (quoting *Laurel Heights*, 47 Cal.3d at 391, 409 fn. 12).) 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. Cnty. 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*, 91 Cal.App.4th at 1355:

A 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.

“The preparation and circulation of an EIR is more than a set of technical hurdles for agencies and developers to overcome. 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 taken into account. [Citation.] 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.” (*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).)

- **Negative Declaration or Mitigated Negative Declaration.**

Third, CEQA and CEQA Guidelines are strict and unambiguous about when a Negative Declaration (“ND”) or a Mitigated Negative Declaration (“MND”) may be used. A public agency must prepare an EIR whenever substantial evidence supports a “fair argument” that a proposed project “may have a significant effect on the environment.” (Pub. Res. Code §§ 21100, 21151; Guidelines §§ 15002(f)(1) & (2), 15063; *No Oil, Inc. v. City of Los Angeles* (“No Oil”) (1974) 13 Cal.3d 68, 75; *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 111-112.) “Said another way, if a lead agency is presented with a fair argument that a project may” – [not “will”] – “have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect.” (Guidelines §§ 15064(f)(1) & (2) (emph. added); *No Oil, supra*, 13 Cal.3d 68, 75.)

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“Substantial evidence” means “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.” (Guidelines § 15384(a).)

“Substantial evidence is not argument, speculation, unsubstantiated opinion or narrative, evidence that is clearly inaccurate or erroneous....” (Pub. Res. Code § 21080(e)(2); see also Guidelines § 15384(a).)

The fair argument standard is a “low threshold” test for requiring the preparation of an EIR. (*No Oil, supra*, 13 Cal.3d at 84; *County Sanitation Dist. No. 2 of Los Angeles County v. County of Kern* (2005) 127 Cal.App.4th 1544, 1579 (“*County Sanitation*”).) It “requires the preparation of an EIR where ‘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’” (*County Sanitation, supra*, 127 Cal.App.4th at 1580, quoting Guidelines § 15063(b)(1).) A lead agency may adopt an MND only if “there is no substantial evidence that the project will have a significant effect on the environment[.]” (Guidelines § 15074(b) (emphasis added).)

Evidence supporting a fair argument of a significant environmental impact triggers preparation of an EIR regardless of whether the record contains contrary evidence. (*League for Protection of Oakland’s Architectural and Historical Resources v. City of Oakland* (1997) 52 Cal.App.4th 896, 904-905.) “Where the question is the sufficiency of the evidence to support a fair argument, deference to the agency’s determination is not

appropriate” (*County Sanitation*, 127 Cal.App.4th at 1579, (emphasis added), quoting *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1317-1318.)

Further, it is the duty of the lead agency, not the public, to conduct the proper environmental studies. “The agency should not be allowed to hide behind its own failure to gather relevant data.” (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.) “Deficiencies in the record may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences.” (*Id.*) The “lack of study . . . ‘enlarge[s] the scope’ of the fair argument which may be made ‘based on the limited facts in the record’ [Cit. omit.]” (*Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1382.)

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Thus, refusal to complete recommended studies lowers the already low threshold to establish a fair argument. The “court may not exercise its independent judgment on the omitted material by determining whether the ultimate decision of the lead agency would have been affected had the law been followed. . . . The remedy for this deficiency was for the trial court to have issued a writ of mandate” (*Environmental Protection Information Center v. California Dept. of Forestry* (2008) 44 Cal.4th 459, 486.)

Both the review for failure to follow CEQA’s procedures and the fair argument test are questions of law, i.e., *de novo* standard of review applies. (*Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.) “Whether the agency’s record contains substantial evidence that would support a fair argument that the project may have a significant effect on the environment is treated as a **question of law**. (See, e.g., *Consolidated Irrig. Dist. v. City of Selma* (2012) 204 Cal.App.4th 187, 207.” (Kostka and Zischke, *Practice Under the Environmental Quality Act*, (2017, 2d ed.), at § 6.76 (emphasis added).) The Court gives no deference to the agency in the MND context.

In an MND context, the agency or the court should not *weigh* expert testimony or decide on the credibility of evidence; such weighing is for an EIR. As stated in *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 935:

Unlike the situation where an EIR has been prepared, neither the lead agency nor a court may “weigh” conflicting substantial evidence to determine whether an EIR must be prepared in the first instance. Guidelines section 15064, subdivision (f)(1) provides in pertinent part: “if a lead agency is presented with a fair argument that a project may have a

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significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect. (*No Oil* [, *supra*,] 13 Cal.3d 68 [118 Cal.Rptr. 34, 529 P.2d 66]).” Thus, as *Claremont* itself recognized, “Consideration is not to be given contrary evidence supporting the preparation of a negative declaration. (*City of Carmel-by-the Sea v. Board of Supervisors* (1986) 183 Cal.App.3d 229, 244–245 [227 Cal.Rptr. 899]; *Friends of “B” Street v. City of Hayward* (1980) 106 Cal.App.3d 988 [165 Cal.Rptr. 514]).” (*Claremont*, *supra*, 37 Cal.App.4th at p. 1168, 44 Cal.Rptr.2d 288.

(*Pocket Protectors*, 124 Cal.App.4th at 935.)

In cases where it is not clear whether there is substantial evidence of significant environmental impacts, CEQA requires erring on the side of a “preference for resolving doubts in favor of environmental review.” (*Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 332.) “The foremost principle under CEQA is that the Legislature intended the act to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language.” (*Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259.)

- **CEQA Exemptions and Exceptions Thereto.**

Fourth, where the 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. (Guidelines § 15020 [“The Lead Agency shall not knowingly release a deficient document hoping that public comments will correct defects in the document.”]; *see also*, *Citizens for Environmental Responsibility v. State ex rel. 14th Dist. Ag. Assn.* (2015) 242 Cal.App.4th 555, 568 [“The lead agency has the burden to demonstrate that a project falls within a categorical exemption and the agency’s determination must be supported by substantial evidence”]; *Association for Protection etc. Values v. City of Ukiah* (1991) 2 Cal.App.4th 720, 732 [agency is required to consider exemption exceptions “where there is some information or evidence in the record that the project might have a significant impact.”])

The duty to support CEQA (and/or exemption) findings with substantial evidence is also required by the Code of Civil Procedure and case law on administrative or traditional writs. Under Code of Civil Procedure (“CCP”) § 1094.5(b), an abuse of

discretion is established if the decision is not supported by the findings, or the findings are not supported by the evidence. CCP § 1094.5(b). In *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515 (“*Topanga*”), our Supreme Court held that “implicit in [Code of Civil Procedure] 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.” The 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 Ass’n vs. City of Los Angeles* (2011) 198 Cal.App.4th 1506, 1521- 1522. However, “mere conclusory findings without reference to the record are inadequate.” *Id.* at 1521 (finding city council findings conclusory, violating *Topanga*).

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Further, CEQA exemptions must be narrowly construed to accomplish CEQA’s environmental objectives. *California Farm Bureau Federation v. California Wildlife Conservation Bd.* (2006) 143 Cal.App.4th 173, 187 (“*California Farm*”); *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) [dispose of EIR only if “there is no substantial evidence, in light of the *whole record* before the lead agency, that the project *may* have a significant effect on the environment” or “revisions in the project Would avoid the effects or mitigate the effects to a point where *clearly* no significant effect on the environment would occur, *and*” Emph. added.]; 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(h) [need to consider cumulative impacts of past, other current and “probable future” projects]; 15070 [prepare a negative declaration only if “no substantial evidence, *in light of the whole record* before the agency, 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* (2) there is no substantial evidence, in light of the whole

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record before the project, that the project as revised *may* have a significant effect on the environment” emph. added]; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 83-84 [interpret “significant impacts” so as “to afford the fullest possible protection”].)

B. Due to the COVID-19 Crisis, the Lead Agency 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. (Pub. Res. Code § 21083(b)(3); CEQA Guidelines § 15065(a)(4).)

Public health risks related to construction work require 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-19.⁸

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Southwest Carpenters recommend that the Lead Agency adopt additional CEQA mitigation measures to mitigate public health risks from the Project’s construction activities. Southwest Carpenters request 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 Southwest Carpenters’ experience with safe construction site work practices, Southwest Carpenters recommend 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.

⁸ 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>.

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

Testing Procedures:

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

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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.⁹

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 Lead Agency should

⁹ 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.

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require that all construction workers undergo COVID-19 Training and Certification before being allowed to conduct construction activities at the Project Site.

Southwest 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.¹⁰

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.

II. THE PROJECT VIOLATES CEQA SINCE THERE IS SUBSTANTIAL EVIDENCE TO SUPPORT A FAIR ARGUMENT THAT THE PROJECT MAY HAVE SIGNIFICANT IMPACTS, REQUIRING AN EIR AS A MATTER OF LAW.

CEQA allows the lead agency to dispose of an EIR in very limited cases: (1) if there is an applicable CEQA exemption; or (2) if the Project, with certain modifications, will clearly have no significant impacts.

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Thus, under CEQA:

Pub. Res. Code § 21064.5. Mitigated negative declaration

“Mitigated negative declaration” means a negative declaration prepared for a project when the **initial study** has **identified** potentially significant effects on the environment, but (1) **revisions in the project plans or proposals made by, or agreed to by**, the applicant **before** the proposed negative declaration and initial study are **released for public review** would **avoid the effects or mitigate** the effects to a point where **clearly no** significant effect on the environment would occur, and (2) there is **no substantial evidence** in light of

¹⁰ For details concerning Southwest Carpenters’s ICRA training program, *see* <https://icrahealthcare.com/>.

the whole record before the public agency that the project, **as revised**, **may** have a significant effect on the environment.

(Pub. Res. Code § 21064.5, *emph. added*; *see also*, Pub. Res. Code § 21080(c)&(e).)

Similarly, under CEQA Guidelines § 15064(f):

“(f) The decision as to whether a project may have one or more significant effects shall be based on substantial evidence in the record of the lead agency.

(1) If the lead agency determines there is substantial evidence in the record that the **project may have** a significant effect on the environment, the lead agency **shall** prepare an EIR (*Friends of B Street v. City of Hayward* (1980) 106 Cal. App. 3d 988). Said another way, **if a lead agency** is presented with a **fair argument** that a project **may** have a **significant effect** on the environment, the lead agency **shall** prepare an **EIR even though** it may also be presented with other substantial evidence that the project will not have a significant effect (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. 3d 68).

(2) If the lead agency determines there is substantial evidence in the record that the project **may have** a significant effect on the environment **but** the lead agency determines that **revisions** in the project plans or proposals made by, or agreed to by, the applicant **would avoid** the **effects** or **mitigate** the **effects** to a point where **clearly no significant effect** on the environment would occur **and** there is no substantial evidence in light of the whole record before the public agency that the project, **as revised**, **may** have a significant effect on the environment **then a mitigated negative** declaration shall be prepared.

(3) If the lead agency determines there is no substantial evidence that the project may have a significant effect on the environment, the lead agency shall prepare a negative

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5-6 cont'd	<p>declaration (<i>Friends of B Street v. City of Hayward</i> (1980) 106 Cal. App. 3d 988).</p> <p>(4) The existence of public controversy over the environment effects of a project will not require preparation of an EIR if there is no substantial evidence before the agency that the project may have a significant effect on the environment.”</p> <p>(Guidelines § 15064(f), <i>emph. added.</i>)</p>
5-7	<p>Thus, under both CEQA and Guidelines, the agency <i>shall</i> prepare an EIR unless it is <i>clear</i> that the Project <i>will not</i> have any significant impacts. Such is not the case here, since the Project may have significant impacts, including on: air quality, greenhouse gas emissions (“GHG”), land use, transportation, public services, geology, noise, hazards, as well as long-term impacts, cumulative impacts, and adverse impacts on human life.</p>
5-8	<p>Briefly, the MND’s determination of “no impacts” is based on understated and flawed impacts analysis (e.g., hydrology/water, utilities, air quality, transportation, public services, mandatory findings of significance); its determination of “less than significant impacts” is based on the understated and flawed impacts analysis, as well as illusory, unenforceable, or improperly deferred mitigation measures (e.g., GHG emissions, noise, cultural resources, energy). (MND, p. 15.)</p>
5-9	<p>The Project is proposed within 25 meters of residential structures (i.e., 82 feet). (MND, p. 28.) The project site consists of a previously disturbed site that was occupied by former residential and commercial uses, which were demolished between 2004 and 2013. (MND, p. 20.) It is proposed on lots, some of which are zoned <i>single family</i> residential; and it seeks zone change, new zoning designation, and a general plan amendment to accommodate the Project’s proposed non-residential uses. (<i>Ibid.</i>)</p>
5-10	<p>Moreover, the Project proposes high intensity non-residential uses, which, among other things, may occur for 24 hours long, while the MND is silent on that issue.</p>
5-11	<p>As described by the MND itself:</p> <p>The proposed project involves construction of a full-service high-rise (maximum height of 350 feet) resort hotel with hotel program entertainment/pool deck (height of approximately 61 feet) on a 3.72-acre site. The proposed hotel would include 500 guest suites with balconies; themed pool experience with lazy river; storage and</p>

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loading area at 8,600 square feet maximum; event space with a **600-person** maximum occupancy theater; a grand **ballroom at 9,490 square feet**; **two (2) meeting rooms at 4,194 square feet and 4,031 square feet**, respectively; a variety of **food and beverage** opportunities to be placed throughout the hotel totaling a maximum area of **22,296 square feet**; **themed amenities totaling 13,238 square feet**; a **7,000-square foot arcade**; and a **spa and fitness center at 8,532 square feet** (see Table 1). **All hotel amenities**, except for **the ballroom, meeting rooms, and 11,148 square feet of restaurant**, would be for the **hotel guests use** only.

The proposed project would also include a five-level (approximately 61 feet) **parking garage** (four levels above grade and one level below grade) with a grand total of **528 spaces** to serve the **500 guest suites, event space, commercial and retail uses, food and beverage needs**, as well as **other amenities such as spa and fitness center** (see Table 2).

To accommodate the proposed development, the proposed project also includes **vacation of a public street** (Thackery Drive) **and public alley** located entirely within the site.

(MND, p. 9, *emph. added.*)

5-12

The mass and scale and the intensity of the Project speaks for itself and, along with the City's omissions in good faith disclosures, refutes the City's findings that the Project may not have any construction or operational impacts or that those impacts would be *clearly* reduced to the level insignificance, as required for an MND.

Tellingly, the MND provides:

5-13

3.2 CONSTRUCTION The proposed project construction would take approximately **30 months in a single phase**. The construction and grading activities hours would comply with the noise limitation provisions set forth in the City of Garden Grove's Noise Ordinance, Garden Grove Municipal Code Sections 8.47.040 to 8.47.060, except that permitted hours and days of construction and grading will be as follows: **Monday through Saturday – not before 7:00 a.m. and not after 8:00 p.m.** (of the same day); and **Sunday and Federal Holidays – may work the same hours**, but be subject to the restrictions as stipulated in Sections 8.47.040 to 8.47.060 of the Municipal Code. Compliance with the

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permitted hours and days of construction and grading would be imposed as conditions of approval for the proposed project. The maximum number of employees during construction would be **210 toward the last six-month period of construction.**

(MND, p. 11, *emph. added.*)

5-14

The MND is generally silent on the amount of hauling, export, import and fill amounts, despite the fact that the preliminary geological report prepared for the Project in 2018 by GEOCON found that the Project is in liquefaction zone and specifically called for an additional investigation of the Project site to ascertain the stability of the site to withstand the Project's mass and scale. (MND, pp. 45-46.) Instead, the MND engages in pure speculation: "Past building and demolition activities within the project site **likely** removed some overlying soil, and **artificial** or **disturbed** fill **may** be present in the upper levels." (MND, p. 46.)

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Apart from adding the above-described major construction activity and high-intensity uses to what is now a vacant 3.72-acre site (baseline), with its associated traffic circulation impacts, the Project also seeks to *vacate* public street and public alley, claiming it is completely within the Project site. The MND's understatement of this issue is manifest. The vacation of the street and alley by themselves will *add* to the Project's own induced traffic and circulation that will occur on the site, disproving the MND's "no" transportation impacts findings.

5-16

The MND's Water Supply Assessment ("WSA") appears to rely solely on the fact that the Project's significant use was already counted in the City's Urban Water Management Plan and projections through Fiscal Year 2045. The MND states:

The **proposed project's water demand** was included in the projections utilized in the **City's 2020 UWMP** (as it included future planned development of hotels within the International West Resort Area along Harbor Boulevard [Focus Area A] consistent with the City's 2030 General Plan, which the project site is located within). Given this, as stated above, the **City would meet water demand** through **FY 2045**, including the water demand generated by the proposed project.

(MND, p. 89, *emph. added.*)

Yet, the MND and the WSA it relies upon are clearly erroneous, as they do not consider the intensity of the Project's water uses, including its pool and river features,

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and they rely on water demands estimates, if at all, until 2030 or 2045, i.e., for about the first 20 years of operation, while the Project will reasonably continue longer.

Similarly, for wastewater, the MND provides:

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The proposed project would generate approximately **1.4 tons of waste per day** (RK, 2022). **Republic Services would provide solid waste collection** and disposal services to the proposed project, which would include participation in the City's recycling program. The solid waste generated by the proposed project **could be** accommodated by the CVT Regional Material Facility and Transfer Station as well as any of these three Orange County Landfills. Furthermore, the proposed project would **comply with all applicable federal, state, and local management and reduction statutes and regulations** related to solid waste, including the CALGreen waste diversion requirements (International Code Council, 2019) and **mandatory recycling requirements per the GGSD Code of Regulations** (GGSD, 2010). **Given this**, the proposed project **would not generate solid waste in excess of State or local standards, or in excess of the capacity of local infrastructure, or otherwise impair the attainment of solid waste reduction goals**. Therefore, impacts would be less than significant.

(MND, p. 90, emph. added.)

The reasons for the MND's findings of less than significant wastewater and utility impacts are unsupported and unrelated to the Project's *impacts*, but focusing on other issues, such as who will dispose of the waste, how it will be done. The MND's reasons for finding no impacts are also misplaced in an MND context where, unlike an EIR, the City must show that *clearly* no impacts would occur. It is well-established that compliance with plans or regulations is not a guarantee of no significant impacts in an MND context. Thus, the MND's reasoning here is also legally erroneous.

5-18

Lastly, the MND proceeds without a Phase I Environmental Site Assessment and does not disclose if there are any hazards or potential soil contamination on the site, including from the prior residential or commercial uses. The MND only states that the site is not listed on Cortese list. But the hazards analysis under CEQA's Appendix G is not only limited to disclosing the Project's listing on Cortese list, as also evidenced by the MND's respective section and checklist. (MND, p. 52.) Further, CEQA's

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hazards analysis is not only limited to the Project's hazardous *emissions* as the MND suggests (*ibid.*); instead, CEQA's checklist for hazards looks generally if there are any hazards – from both construction or operation – that the Project may expose human beings to hazards or hazardous materials, which includes but is not limited to hazards of disturbing contaminated soils, hazards from hauling or transport of contaminated soil or hazardous materials, hazards of fires, including by the removal of vegetation.

5-19

Tellingly, the MND is silent on the amount of transport or hauling from the Project's site in this section. Neither does the MND or the Project approval include or disclose the haul route, to verify if the Project will indeed be safe for its planned 30 months of construction in a single phase.

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At the same time, the MND admits that there are *three* schools within 0.25 miles from the Project site, without listing the significance of such statement and CEQA's specific requirements related to schools. (MND, p. 53.) The MND simply disregards the impact of the Project on school children, including but not limited to construction hazards, as well as hazards of increased intensity on the site, alcohol uses on the site, with reasonably foreseeable increase in the use of public services, including firefighters, police, and generally increase of traffic and potentially drunk driving.

5-21

In sum, the MND grossly understates the Project's impacts; its analysis and studies contain critical omissions and thereby does not pass CEQA's good faith disclosure requirement or the requirement to support findings with substantial evidence. (CEQA Guidelines § 15384 [Substantial evidence is not argument or speculation, but a fact or a reasonable inference based on facts].) Neither does the MND meet CEQA's requirement that impacts be *clearly* reduced to the level of insignificance, given its illusory, unenforceable, legally erroneous, and/or deferred mitigation measures.¹¹

III. CONCLUSION.

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In view of the aforementioned, there is a fair argument that the Project may have multiple significant impacts, requiring an adequate environmental impact report, to

¹¹ This comment and the above-noted issues do not exhaust all flaws in the MND; they are for illustration only. We reserve the right to supplement this comment further before the Project approval.

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identify the impacts, devise and apply enforceable mitigation measures, and to consider alternatives as well as alternative sites in order to mitigate the Project's impacts.¹²

If the City has any questions or concerns, please feel free to contact my Office.

Sincerely,



Naira Soghatyan
Attorneys for Southwest Regional
Council of Carpenters

Attached:

March 8, 2021 SWAPE Letter to Mitchell M. Tsai re Local Hire Requirements and Considerations for Greenhouse Gas Modeling (**Exhibit A**);

Air Quality and GHG Expert Paul Rosenfeld CV (**Exhibit B**); and

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

¹² The Project by itself also violates numerous other state laws, which are not detailed here and are not provided to the City at this time, in view of the nature of the instant comment being limited to comments on the Project's MND.

Comment Letter 5: Mitchell M. Tsai Attorney for the Southwest Regional Council of Carpenters (SWRCC)

Response to Comment 5-1

Comment acknowledged. The commenter will be placed on requested public mailing/notification lists related to the proposed project.

Response to Comment 5-2

The comment regarding community benefits such as local hire does not raise a specific concern or issue regarding the adequacy of the environmental analysis contained in the Draft IS/MND. Also, the project impacts related to greenhouse gas (GHG) emissions, air quality, and transportation have been identified and mitigated to a less than significant impact level as set forth in the Draft IS/MND. No additional mitigation is required. This comment is noted for the record and will be forwarded to the decision makers with all other comments. No further response to this comment is required.

Response to Comment 5-3

The proposed project would exceed the current 2019 Green Building Code Standards in several ways, including:

- Providing on-site renewable energy production through the use of solar panels (GHG-2). The 2019 Building Energy Efficiency Standards requires that Hotels provide dedicated rooftop solar zones (Section 110.10), but do not require on-site renewable energy production. Hence, by providing on-site renewables, the proposed project will significantly reduce energy usage compared to what is required in the Building Code.
- Restricting the use of wood burning and natural gas fireplaces and firepits (SCAQMD Rule 445 and GHG-6). Section 5.503 of CALGreen allows the installation of both wood burning and natural gas fireplaces. By restricting the use of fireplaces and fire pits, the proposed project will significantly reduce natural gas and energy usage beyond the requirements of the CA Building Standards.
- Implementing a trip reduction program that encourages multi-modal and active transportation (GHG-7). Sections 5.106.4 and 5.106.5.3 of CALGreen require on-site bicycle parking and EV charging, however, the proposed project will go beyond these requirements to reduce fossil fuel usage by implementing a full trip reduction program. The program will improve the walkability and design of the proposed project, install traffic calming measures, locate near a high-quality transit stop and transit corridor and provide transit/shuttle services to guests. These measures will result in the proposed project exceeding the fossil fuel and VMT reduction requirements in CALGreen.

The 2020 County of Los Angeles Green Building Standards Code would not be applicable to the proposed project as the project site is located in County of Orange.

In addition, as determined in Section 4.3 (Greenhouse Gas Emissions) of the Draft IS/MND, the proposed project would comply with the South Coast Air Quality Management District (SCAQMD)'s five-tiered GHG thresholds of significance and will be in compliance with Assembly Bill 32 (AB 32). In addition, the proposed project would demonstrate it can achieve a 42 percent reduction in long-term operational GHG emissions compared to business as usual (BAU) conditions with Mitigation Measures GHG-1 through GHG-7. Thus, implementation of the proposed project would be in compliance with AB 32 and California Air Resources Board (CARB)'s 2017 Scoping Plan Update. (Draft IS/MND, pp. 48-51).

Response to Comment 5-4

Comment acknowledged. The comment cites various provisions of state law, regulations and cases which speak for themselves. Since this comment does not raise a specific concern or issue regarding the adequacy of the environmental analysis contained in the Draft IS/MND, no further response to this comment is required.

Response to Comment 5-5

Comment acknowledged. The Draft IS/MND provides impact analysis as well as feasible mitigation measures for all required CEQA impact areas. As for the risks associated with construction activities and COVID-19, implementation of the proposed project will comply with all state and local construction guidelines and policies, such as Centers for Disease Control and Prevention guidelines, the Occupational Safety and Health Administration requirements, and contractor policies, to maintain a healthy workplace environment for construction workers at the job site.

Response to Comment 5-6

Comment acknowledged. The comment cites various provisions of state law, regulations and cases which speak for themselves. Since this comment does not raise a specific concern or issue regarding the adequacy of the environmental analysis contained in the Draft IS/MND, no further response to this comment is required.

Response to Comment 5-7

As determined in Section 4.3 (Air Quality) of the Draft IS/MND, the proposed project would result in a less than significant impact as the daily construction and operational emissions would be below the applicable SCAQMD's air quality regional thresholds of significance and Localized Thresholds of Significance (LST). In addition, the proposed project would be in compliance with applicable rules and regulations such as SCAQMD Rules 402 and 403. (Draft IS/MND, pp. 28-31).

As determined in Section 4.3 (Greenhouse Gas Emissions) of the Draft IS/MND, with Mitigation Measures GHG-1 through GHG-7, implementation of the proposed project would not generate GHG emissions, either directly or indirectly, that may have a significant impact on the environment. The proposed project would comply with the SCAQMD's five-tiered GHG thresholds of significance and be in compliance with AB 32. In addition, the proposed project would achieve a 42 percent reduction in long-term operational GHG emissions compared to BAU conditions with Mitigation Measures GHG-1 through GHG-7. Thus, implementation of the proposed project would be in compliance with AB 32 and CARB's 2017 Scoping Plan Update. Therefore, impacts related to GHG would be less than significant with mitigation incorporated. (Draft IS/MND, pp. 48-51).

As determined in Section 4.3 (Land Use and Planning) of the Draft IS/MND, the proposed project would not result in impacts related to physical division of an established community and it would not cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect. (Draft IS/MND, pp. 62-64).

As determined in Section 4.3 (Transportation) of the Draft IS/MND, the proposed project would not conflict with a program, plan, ordinance, or policy addressing the circulation system, including transit, roadway, bicycle and pedestrian facilities; would satisfy the Transit Priority Area screening criteria and therefore would have a less than significant vehicle miles traveled (VMT) impact; and would not result in inadequate emergency access. In addition, to ensure that the proposed project has a less than significant impact on potential safety and hazard issues, the proposed project would follow the standard site plan review requirements and implement Mitigation Measures TR-1 through TR-5. (Draft IS/MND, pp. 83-84)

As determined in Section 4.3 (Public Services) of the Draft IS/MND, the proposed project is a transient use that would not directly introduce new residents that could impact public services. In addition, the proposed project would be in compliance with all standard conditions with regard to development such as water supply, applicable local fire codes, ordinances, California Fire Code regulations, and California Building Code requirements. (Draft IS/MND, pp. 77-79)

As determined in Section 4.3 (Geology and Soils) of the Draft IS/MND, the proposed project would comply with the California Building Code, SCAQMD Rule 403, standard best management practices (BMPs), as well as with

the geotechnical investigation recommendations as a condition of approval. In addition, Mitigation Measure G-1 would apply in the event the fossil specimens are encountered at the project site. Therefore, the impacts related to geology and soils would be less than significant. (Draft IS/MND, pp. 43-47)

As determined in Section 4.3 (Noise) of the Draft IS/MND, the proposed project would comply with the applicable noise standards and thresholds established in the City of Garden Grove's General Plan (Noise Element) and Municipal Code. In addition, implementation of Mitigation Measures N-1 through N-3, in conjunction with Project Design Features (PDF)-13 through PDF-26, would reduce construction noise to below the Federal Transit Administration (FTA) construction noise criteria. The operation of the proposed project would not generate a substantial permanent increase in ambient noise levels in the vicinity of the project site in excess of standards established in the City's General Plan and Municipal Code. Project construction related vibration levels would be under the vibration structural damage and vibration human annoyance thresholds; and the project operation would not generate vibration impacts. As such, the impacts related to noise would be less than significant. (Draft IS/MND, pp. 67-75)

As determined in Section 4.3 (Hazards and Hazardous Materials) of the Draft IS/MND, the proposed project would comply with all federal, state and local requirements related to the transport, storage, use, and disposal of limited quantities of hazardous materials such as paints, solvents, cleaning agents, oils, grease, fuel for construction equipment, and common household hazardous wastes. The proposed project is not located on a site that has been included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and thus would not create a significant hazard to the public or environment. In addition, the proposed project would be designed to ensure adequate emergency access is provided. Therefore, impacts related to hazards and hazardous materials would be less than significant. (Draft IS/MND, pp. 52-55)

The Draft IS/MND is therefore supported by substantial evidence. Further, as explained throughout the responses to comments, there is no substantial evidence supporting a fair argument.

Response to Comment 5-8

Please note that the excerpt of the Draft IS/MND (page 15) referenced in this comment is an introductory (Sections 4.0 and 4.1). There is no impact analysis in these two sections. Please refer to Section 4.3 where the "no impacts" and the "less than significant impacts" are discussed. As determined in Section 4.3 (Hydrology/Water, Utilities, Air Quality, Transportation, Public Services, GHG, Noise, Cultural Resources, Energy, Mandatory Findings of Significance) of the Draft IS/MND, the analysis resulted in the determination of no impacts, less than significant, and less than significant with mitigation incorporated. The Draft IS/MND provides substantial evidence that the proposed project will not result in any significant impacts. It should be noted that the identified PDFs will be conditions of approval and will be enforceable along with mitigation measures which will be part of the Mitigation Monitoring and Reporting Program.

Response to Comment 5-9

This comment quotes the Draft IS/MND. No further response is warranted.

Response to Comment 5-10

The Draft IS/MND does not indicate that the proposed project would include uses that would be 24-hour long. Neither is the Draft IS/MND silent on this issue. As stated on page 13 of the Draft IS/MND, the proposed project includes PDF-15, which limits the hotel themed pool attraction and outdoor pool deck operation to be open only during the daytime hours (7 a.m. – 10 p.m.); and PDF-20, which limits the delivery, loading/unloading activity, and trash pick-up hours to daytime hours (7 a.m. – 10 p.m.).

Response to Comment 5-11

The comment quotes the Draft IS/MND. No further response is warranted.

Response to Comment 5-12

The comment does not identify any specific issue or concern regarding the Draft IS/MND. No further response is warranted.

Response to Comment 5-13

This comment quotes the Draft IS/MND. No further response is warranted.

Response to Comment 5-14

The proposed project anticipates requiring a total export of approximately 60,720 cubic yards of earthwork material for grading purposes (refer to Appendix B of the Draft IS/MND). The analysis in the Draft IS/MND does take into account activities associated with site preparation (hauling, export, etc.) identified in the geotechnical investigation. These activities were included in the air quality/greenhouse gas emissions and traffic modeling, refer to Appendices B and I of the Draft IS/MND. The referenced sentence in this comment (page 46 of the Draft IS/MND, “Past building and demolition activities within the project site likely removed some overlying soil, and artificial or disturbed fill may be present in the upper levels” is related to the potential to encounter fossil specimens within the project site during ground-disturbing activities. It has nothing to do with stability of the site (Draft IS/MND, pp. 46-47).

Response to Comment 5-15

The purpose of the proposed vacation of Thackery Drive and the public alley is to facilitate the development of the proposed project. Once vacated, Thackery Drive and the public alley will be incorporated into the proposed project’s developable land area and will only serve the properties on the project site and thus are not needed to support the circulation needs of the abutting properties. As such, the vacation would not have a detrimental impact on the circulation system. Thackery Drive and the public alley, along with the rest of the project site, are currently secured with a perimeter fence and have no public access. The proposed project would have public street access from Harbor Boulevard and Twintree Avenue. To the extent this comment alleges Level of Service (LOS) impacts, congestion is no longer relevant for CEQA purposes.

Response to Comment 5-16

The proposed project’s water demand estimate (including the proposed pool and lazy river) is detailed in Table 3.1 of the Site B-2 Hotel Water Supply Assessment (WSA). Based on Table 3.1, the proposed project would generate a unit demand of 167 gallons per day (gpd) per room. To test this demand estimate, water use data was gathered from three hotels in Anaheim from meter reads that were averaged over a five-year period totaling 2,350 rooms. These hotels averaged 167 gpd per room with one hotel having a significant amount of conference room and banquet space. This particular hotel had an 11 percent higher demand per room than the next largest hotel with more nominal ancillary uses so it is logical to assume the more typical hotels would average about 10 percent less or 150 gpd. Due to the potential additional demand from the entertainment venues of the proposed project, this demand estimate is supported by substantial evidence. (WSA, pp. 3-1 and 3-4) CEQA does not require perfection. (CEQA Guidelines § 15003(i))

Senate Bill (SB) 610 requires the preparation of a WSA for a proposed hotel with more than 500 rooms. Because of the size of the proposed project, SB 610 requires that a WSA be completed to evaluate the potential effects of the proposed development on current and future water supplies. It mandates that a city or county approving certain projects subject to the California Environmental Quality Act (i) identify any public water system that may supply water for the project, and (ii) request the public water system to prepare a specified water supply assessment. As part of the assessment, the following discussion is required: 1. A discussion of whether the public water system’s total projected water supplies available during normal, single dry, and multiple dry water years during a **20-year projection** will meet the projected water demand associated with the proposed project,

in addition to the public water system's existing and planned future uses, including agricultural and manufacturing. (WSA, p. 2-1)

Response to Comment 5-17

Please note that the excerpt of the Draft IS/MND referenced in this comment is about solid waste, not wastewater.

As determined in Section 4.3 (Utilities and Service Systems) of the Draft IS/MND, the project site is located in a highly urbanized area and the proposed project would be served by the existing water, wastewater treatment, storm drainage, electric power, natural gas, and telecommunication facilities. The WSA prepared for the proposed project concluded that there would be a sufficient water supply for the proposed project and the Orange County Sanitation District (OCSD) confirmed that there is adequate wastewater treatment capacity to serve the proposed project's projected demand in addition to OCSD's existing commitments. The proposed project's projected waste generation of approximately 1.4 tons per day (tpd) would be accommodated by the CVT Regional Material Facility and Transfer Station (permitted 6,000 tpd) as well as any of the three Orange County Landfills: Frank R. Bowerman Landfill (permitted 11,500 tpd); Olinda Alpha Landfill (permitted 8,000 tpd); and Prima Deshecha Landfill (permitted 4,000 tpd). (Draft IS/MND, pp. 87-90)

Based on the discussion/summary above, the Draft IS/MND provides substantial evidence that the proposed project will not result in any potentially significant impacts.

Response to Comment 5-18

The preparation of a Phase I Environmental Site Assessment (ESA) is not required by CEQA. A Phase I ESA is a real estate document. However, a comprehensive search of the project site and vicinity for underground storage tanks, leaks, or hazardous spills was conducted for the project site, as explained in Section 4.3, Hazards and Hazardous Materials, of the Draft IS/MND. Specifically, the search included review of the California Department of Toxic Substances Control (DTSC)'s EnviroStor database, which includes the following hazardous waste facilities and cleanup sites: Permitted Treatment, Storage, and Disposal Facilities (TSDFs); Federal Superfund sites (National Priorities List [NPL]); State Response sites, including military facilities and State Superfund sites; Voluntary Cleanup sites; school sites; and Corrective Action sites. This search also included review of the State Water Resources Control Board (SWRCB)'s GeoTracker database, which provides access to statewide environmental data and tracks regulatory data for the following types of sites: (1) Leaking Underground Storage Tanks (LUST) cleanup sites; (2) Cleanup Program Sites (CPS, also known as Site Cleanups [SC] and formerly known as Spills, Leaks, Investigations, and Cleanups [SLIC] sites); (3) military sites (including military UST sites, military privatized sites, and military cleanup sites [formerly known as Department of Defense (DOD) non-UST]); (4) Land Disposal sites (Landfills, Surface Impoundments, Waste Piles, Land Treatment Units, Mining Units); (5) Permitted Underground Storage Tank (UST) facilities; (6) Composting Operations; (7) Waste Discharge Requirement (WDR) sites; (8) Confined Animal / Concentrated Animal Feed Lots facilities; (9) Irrigated Lands Regulatory Program (ILRP) sites; and (10) Oil and Gas Monitoring sites (Aquifer Exemption, Produced Water Ponds, Underground Injection Control, Well Stimulation Projects). In addition, this search included a review of the California Environmental Protection Agency (CalEPA)'s Cortese List Data Resources, which include the following: a list of solid waste disposal sites identified by SWRCB with waste constituents above hazardous waste levels outside the waste management unit; list of active Cease and Desist Orders and Cleanup and Abatement Orders from the SWRCB; list of hazardous waste facilities subject to corrective action pursuant to Section 25187.5 of the Health and Safety Code identified by DTSC; list of hazardous waste and substances sites from DTSC; and list of LUST sites from SWRCB. No records were found identifying historic or current underground storage tanks, leaks, or hazardous spills on the project site. The nearest LUST site per the search results was located approximately 916 feet south of the project site, which given the distance and current activities (i.e., groundwater well monitoring activities), would not present a hazardous condition to the project site nor would the proposed activities impact this LUST site.

The prior uses at the project site over the years was discussed in Cultural Resources Section of the Draft IS/MND, which helped inform the hazards and hazardous materials background research efforts. Specifically, the prior uses were discussed as follows: “The project site is located within a heavily disturbed urban area. Prior to World War II, the project site was utilized for agricultural purposes, with a grove of trees present on most of the property and one building that was present in the southeast corner for a short period of time. During the housing boom of the 1950s, the project site was developed with a residential tract and commercial buildings which were established by 1963. A review of construction manuals from the period suggests that it is adequate to assume that up to five feet of the soil was disturbed by construction, grading, and the placement of utilities for a 1960s-era tract development. All buildings in the project site were removed between 2004 and 2013, leaving only the cul-de-sac and alley between the dirt lots. The process appears to have consisted of removing building foundations and prior utilities and grading the surface.” (Draft IS/MND, p. 38)

As determined in Section 4.3 (Air Quality) of the Draft IS/MND, the proposed project would result in a less than significant impact related to exposure of sensitive receptors (including children, the elderly, the acutely and chronically ill, and those with cardio-respiratory diseases). Sensitive receptors would not be exposed to substantial pollutant concentrations during construction or operation of the proposed project. In addition, the proposed project would be in compliance with applicable rules and regulations such as SCAQMD Rules 402 and 403. (Draft IS/MND, pp. 28-31).

Construction of the proposed project would involve transport, use, and disposal of limited quantities of hazardous materials such as paints, solvents, cleaning agents, oils, grease, and fuel for construction equipment. However, the proposed project would have to comply with all federal, state, and local requirements related to the transport, storage, use, and disposal of such materials. Operation and maintenance activities of the hotel and restaurant uses would also use limited quantities of non-acutely hazardous materials, such as paints, cleaning agents, and batteries, as well as generate small quantities of common household hazardous wastes (HHW); however, the use, storage, and disposal of such hazardous materials and HHW would be conducted in compliance with all applicable hazardous materials and waste federal, state, and local requirements. Thus, the proposed project would not create a significant hazard to the public or the environment through routine transport, use, or disposal of hazardous materials. Additionally, the proposed project would not require the use or storage of significant quantities of hazardous materials that could become a significant hazard to the public or the environment through an accidental release or upset condition. Though it is not reasonably foreseeable that significant quantities of hazardous materials would be used or stored on site, to the extent any such use or storage would occur, such use and storage would be conducted in compliance with all applicable federal, state, and local requirements. Therefore, impacts would be less than significant. (Draft IS/MND, p. 53).

The project site is located in urbanized area of the City and is not located adjacent to any wildlands or an area where residences are intermixed with wildlands. According to the California Department of Forestry and Fire Protection (CAL FIRE)’s Fire Hazard Severity Zone (FHSZ) Viewer Map, the project site is also not within or near a state responsibility area or a very high fire severity zone (CAL FIRE, 2021). Therefore, implementation of the proposed project would not expose people or structures, either directly or indirectly, to a significant risk of loss, injury or death involving wildland fires. No impact would occur. (Draft IS/MND, pp. 54-55).

The following conditions of approval will be required prior to the issuance of building permits. These conditions of approval will address soil contamination concerns.

- A geotechnical study prepared by a registered geotechnical engineer is required. The report shall analyze the liquefaction potential of the site and make recommendations. The report shall analyze sub-surface issues related to the past uses of the site, including sub-surface tanks and basement and septic facilities. Any soil or groundwater contamination shall be remediated prior to the issuance of a building

permit per the requirements of the Orange County Health Department^{1,2} and the mitigation requirements of governing regulatory requirements. The report shall make recommendations for foundations and pavement structural section design of interior streets and parking spaces. The report shall also test and analyze soil conditions for LID (Low Impact Development) principles and the implementation of water quality for stormwater run-off, including potential infiltration alternatives, soil compaction, saturation, permeability and groundwater levels.

- A soil report complying with CBC Chapter 18 shall be required and shall be submitted for review at time of building permit application.
- A Geo-technical peer review of the soil report shall be required, and shall be completed prior to building permit application.

Based on the discussion/summary above, the Draft IS/MND provides substantial evidence that the proposed project will not result in any significant impacts during construction or operation. In addition, as part of standard practice (conditions of approval) soil contamination would be remediated if necessary. Pursuant to all applicable laws and regulations, the comment does not provide substantial evidence supporting a fair argument.

Response to Comment 5-19

Hauling trips associated with construction of the proposed project were analyzed as part of the Traffic Impact Study (refer to Appendix I of the Draft IS/MND). Table 10-1 of the Traffic Impact Study shows the daily construction trip generation for each of the construction phases. The total daily trips for each construction phase consist of worker trips, vendor trips and hauling trips (whichever apply), with the appropriate passenger car equivalent (PCE) factors applied. Table 10-2 shows the peak hour construction trip generation for each of the construction phases. The maximum construction trip generation occurs during the grading phase, when the proposed project is forecast to generate approximately 813 PCE-adjusted daily construction trips which include approximately 203 PCE-adjusted AM peak hour construction trips and approximately 203 PCE-adjusted PM peak hour construction trips.

As concluded in the Traffic Impact Study, the proposed project's short-term construction traffic would not adversely affect the level of service of the study intersections (20 intersections). It is anticipated the haul route would consist of several of these intersections, especially Harbor Boulevard. Therefore, the haul route will be safe during the construction phase of the proposed project. To the extent this comment alleges LOS impacts, congestion is no longer relevant.

Response to Comment 5-20

The Draft IS/MND accounts for the three schools within 0.25 miles from the project site. The Walton Intermediate School is located approximately 0.2 mile northwest of the project site; Warren Elementary School is located approximately 0.25 mile northeast of the project site; and Violette Elementary School is located approximately 0.25 mile southwest of the project site (Google Earth Pro, 2022). While the proposed project would use, store, and dispose limited quantities of hazardous materials during construction and operation, such as paints, solvents, cleaning agents, etc., such materials would be used, stored, and disposed in compliance with all federal, state, and local requirements. Therefore, hazardous material impact would be less than significant. (Draft IS/MND, p. 53).

¹ Orange County Health Care Agency (OCHCA) Local Oversight Program. <https://www.ochealthinfo.com/about-hca/public-health-services/environmental-health-services/more/site-mitigation/local-oversight>

² OCHCA Industrial Cleanup Program: <https://www.ochealthinfo.com/about-hca/public-health-services/environmental-health-services/more/site-mitigation/industrial>

Also, as determined in Section 4.3 (Air Quality) of the Draft IS/MND, the proposed project would result in a less than significant impact related to air pollution exposure of sensitive receptors (including children, the elderly, the acutely and chronically ill, and those with cardio-respiratory diseases). Sensitive receptors would not be exposed to substantial pollutant concentrations during construction or operation of the proposed project. In addition, the proposed project would be in compliance with applicable rules and regulations such as SCAQMD Rules 402 and 403. (Draft IS/MND, pp. 28-31).

The Draft IS/MND provides substantial evidence that the proposed project will not result in any significant impacts related to emitting hazardous emissions or handling hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of a school. The use of alcohol is not an environmental impact, nor is the city required to assume violation of applicable drunk-driving laws. The comment does not provide substantial evidence supporting a fair argument.

Response to Comment 5-21

The Draft IS/MND provides substantial evidence that the proposed project will not result in any significant impacts (Draft IS/MND, Section 4.3). In addition, the identified conditions of approval will be enforceable and mitigation measures will be implemented through Mitigation Monitoring and Reporting Program.

Response to Comment 5-22

Based on the responses to comments above, the Draft IS/MND provides substantial evidence that the proposed project will not result in any significant impacts. Potentially significant impacts that were identified have been reduced to a less than significant level with the incorporation of mitigation measures. Therefore, an EIR is not required. There is no evidence supporting a fair argument.

Exhibit A

The commenter includes a local hire requirements and considerations for greenhouse gas modeling report as an attachment to this comment letter. This comment is noted for the record and no further response to this comment is warranted. Exhibit A is included as Attachment A of this Final IS/MND.

Exhibit B

The comment includes an air quality and GHG expert Paul Rosenfeld CV as an attachment to this comment letter. No further response to this comment is warranted. Exhibit B is included as Attachment A of this Final IS/MND.

Exhibit C

The comment includes an air quality and GHG expert Matt Hagemann CV as an attachment to this comment letter. No further response to this comment is warranted. Exhibit C is included as Attachment A of this Final IS/MND.

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VIA E-MAIL

July 6, 2022

Honorable Chairman John Ramirez and Teresa Pomeroy, City Clerk
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RE: Objections to Approval of Site B-2 Hotel or Nickelodeon Resort Hotel
Project and Its Mitigated Negative Declaration, Garden Grove City
Planning Commission Hearing, July 7, 2022, Agenda Items C.2 and D

Honorable Chairman Ramirez and Planning Commissioners:

On behalf of the Southwest Regional Council of Carpenters (“**SWRCC**” or
“**Southwest Carpenters**”), my Office is submitting these comments on the Site B-2 or
Nickelodeon¹ Resort Hotel project proposed at northwest corner of Harbor Boulevard
and Twintree Avenue, along the west and east sides of Thackery Drive, east of
Tamerlane Drive in the City of Garden Grove (“**Project**”). The project site is located

6-1

¹ For the first time in the 7/7/2022 Staff Report, the Project uses a *different name* and changing from Site B-2 Hotel project into a Nickelodeon Resort Hotel Project. This name change, even if inadvertent, may be prejudicial as it may not associate with the MND or the Project discussed in the MND, which was also circulated only for 20 days, with the hearing set just after the July 4, 2022 holiday weekend.

6-1
cont'd

at 12241, 11261, 12271, 12291, 12311 and 12323 Harbor Boulevard; and 12246, 12252, 12262, 12282, 12292, 12312, 12322, 12251, 12261, 12281, 12291, 12311, and 12321 Thackery Drive in the City of Garden Grove, County of Orange. The Project approval includes various approvals and actions from the City of Garden Grove (“City” or “Lead Agency”). The Project will be coming before the City’s Planning Commission on **July 7, 2022, at 7:00 pm**, seeking various approvals, including the approval of a mitigated negative declaration (“MND”) (Item C2) and a consideration of the street and alley vacation and general plan conformance for same (Item D).

6-2

This comment supplements our prior comment submitted on June 28, 2022 (“Objection to MND”), which we fully incorporate by reference herein.

6-3

As previously noted, the Southwest Carpenters is a labor union representing more than 50,000 union carpenters in six states, including California, and has a strong interest in well-ordered land use planning, addressing the environmental impacts of development projects and equitable economic development.

Individual members of the Southwest Carpenters live, work and recreate in the area and surrounding communities and would be directly affected by the Project’s environmental impacts.

6-4

SWRCC expressly reserve 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’t 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.)

6-5

SWRCC incorporate by reference all comments raising issues regarding the Project and its CEQA compliance, submitted prior to the Project approvals. (*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].)

6-6

SWRCC renews its request that the City should consider utilizing skilled and trained workforce policies and requirements to benefit the local area economically and mitigate greenhouse gas, air quality and transportation impacts.

6-7

Also, the City should require the Project to be built to standards exceeding the current 2019 California Green Building Code and 2020 County of Los Angeles Green Building

6-7
cont'd

Standards Code to mitigate the Project's environmental impacts and to advance progress towards the State of California's environmental goals.

I. THE PROJECT VIOLATES CEQA SINCE THERE IS SUBSTANTIAL EVIDENCE TO SUPPORT A FAIR ARGUMENT THAT THE PROJECT MAY HAVE SIGNIFICANT IMPACTS, REQUIRING AN ENVIRONMENTAL IMPACT REPORT, AS A MATTER OF LAW.

6-8

As previously noted, CEQA allows the lead agency to dispose of an EIR in very limited cases: (1) if there is an applicable CEQA exemption; or (2) if the Project, with certain modifications, will clearly have no significant impacts. (Pub. Res. Code § 21064.5, *emph. added*; *see also*, Pub. Res. Code § 21080(c)&(e); CEQA Guidelines § 15064(f).)

Thus, under both CEQA and Guidelines, the agency *shall* prepare an EIR unless it is *clear* that the Project *will not* have any significant impacts. Such is not the case here, as detailed further below.

A. Biological Resources Impacts.

6-9

The MND concludes that there will be no biological impacts, without conducting a single Project-site study and solely based on speculation. First, the MND states: "Due to the built-out nature of the City and surrounding area, biological resources in the City are almost non-existent (City of Garden Grove, 2021)." (MND, p. 32.) City does not provide any page number for the referenced document, neither does it explain what that reference means. Instead, at the end of the Biological Resources section, it provides a description of the General Plan Update, Land Use Element, Chapter 2 and a link to the City's website which contains numerous *other* links to other documents. However, none of the "Land Use Element" links referenced in the MND contains any reference to "biological resources" at issue here.²

6-10

On the other hand, in the Section of "Public Services" (MND, p. 79), the MND provides a link to a similarly referenced "City of Garden Grove, 2021" document, this time describing it as the Draft EIR for the Focused General Plan Update in the City ("GP DEIR").

² See, e.g., https://ggcity.org/sites/default/files/2021-10/LandUseElement_Redline_10-2021_0.pdf

Upon further search in the GP DEIR through the link provided (GP DEIR, p. 79), it becomes clear that the biological resources were among those studied for potential significant impacts, and the GP DEIR discarded the issue by relying on similar speculations and references to other documents:

6-11

Due to the densely developed urban setting of Garden Grove, primarily consisting of no natural biological communities, sensitive species would have little to no potential to occur within the Planning Area. The existing 2008 General Plan and the proposed 2021 General Plan Update do **not** contain **goals** or **policies** concerning **biological resources** that would negatively impact special-status species. Therefore, it is not expected that any **new impacts** would occur to special-status species as part of implementation of this FGPUZA. It should also be noted that **future development** would have to **comply** with established laws and regulations regarding the **protection** of **biological resources** when proposed (e.g., migratory bird treaty act).

(GP DEIR, p. 4.2-9, emph. added.)

The above-quoted passage shows that the GP DEIR's focus was *new impacts* due to the *new goals or policies* concerning biological resources and further confirms that the "future development," as here, will have to comply with all laws and regulations to protect biological resources. CEQA specifically protects such biological resources, including natural unique resources. "*Special emphasis should be placed on environmental resources that are rare or unique to that region and would be affected by the project.* The EIR must ... permit the significant effects of the project to be considered in the full environmental context." (Guidelines § 15125(c), italics added.)

At the same time, the GP DEIR lists various special status plants and species that have *potential*³ to appear in the GP planning area (DEIR, p. 4.2-2) and provides:

Wildlife and Sensitive Species

Wildlife known to occur within the Planning Area consists of avian, reptile, and mammal species that occupy urban areas. The “sensitive” or “special” label denotes a species as a State or Federally listed threatened or endangered species and/or a potential candidate for threatened or endangered listing. Table 4.2-1 (Federally- and State-Listed Species and other Special Status Species) lists Federally- and State-listed species known to occur in the Planning Area, as identified by the CNDDDB (CNDDDB, 2020). The Planning Area is located on the Anaheim 7.5-minute series United States Geological Survey (USGS) topographic quadrangle map. The United States Fish and Wildlife Service (USFWS), California Department of Fish and Wildlife (CDFW), California Native Plant Society (CNPS), California Natural Diversity Database (CNDDDB) recorded the following species in Table 4.2-1 as historically occurring within 1-mile of the Planning Area (but not within the Planning Area). These species have **low potential** to occur or are not expected to occur within the Planning Area **due to** the marginal suitable habitat available or lack of habitat.

(GP DEIR, p. 4.2-1, emph. added.)

Thus, GP DEIR – on which the MND here relies – does not specifically study the Project’s site or the biological impacts of *this* Project; to the opposite, it suggests that future development itself will have to comply with all applicable laws to protect biological resources, and yet concludes that there is low potential for special plants or animals to occur only due to marginal suitable habitat available *in general in the City*.

³ Figure 2.1 (DEIR, p. 4.2-2) claims that such potential is “low” and in the asterisk provides an explanation for such qualification: “*Due to the densely developed urban setting of Garden Grove, primarily consisting of no natural biological communities, this species would have low potential to occur.” In other words, the GP DEIR solely relies on the *generally* densely developed urban setting of Garden Grove, which speculation is inapplicable to this 3.72-acre vacant land of the Project site.

6-13 The MND here admits that the Project site has been vacant, at least in part, since 2004 and contains some vegetation and ornamental trees. (MND, p. 33.)⁴ It also admits that based on a survey by CDFW in February of 2022, “the California black rail (*Laterallus jamaicensis coturniculus*) is the only sensitive species (State Threatened) with the potential to be found on the project site (CDFW, 2022).” (MND, p. 33.) Thus, there is potential that the Project site may be home to various special status species and there is no specific study in the MND to conclusively and *clearly* negate such potential.

6-14 Further, because the place has been vacant for about 20 years, it is possible that it may be roosting bats in the vacant areas or in the trees, whereas bats are on decline in California and U.S. and require special protection.⁵

6-15 Lastly, the MND provides ineffective, unenforceable, and illusory mitigation measures for the potential impacts on migratory fish. It provides BIO-1 (p. 33-34), which only requires that 3 days prior to the construction, a qualified biologist survey the area to ascertain if there are active nests and, if so:

[T]he qualified biologist shall establish an appropriate buffer and monitor the active nests within the buffers at a minimum of once per week to determine whether the birds are being disturbed. If signs of disturbance or stress are observed, the qualified biologist shall immediately implement adaptive measures to reduce disturbance. These **measures** shall be determined by the qualified biologist and **could include**, without limitation, increasing buffer distance, temporarily halting construction activities until fledging is confirmed, or placing visual screens or sound dampening structures between the nest and construction activity.

(MND, pp. 33-34, *emph. added.*)

6-16 As such, City or the MND does not even require the qualified biologist to *report back* to the City about findings, does not impose the minimum distance for buffers, but leaves all those choices and conclusions to the discretion of a qualified biologist retained by the Applicant itself without any accountability or oversight. This is far worse than the practice of requiring an Applicant to retain a qualified biologist and provide a post-

⁴ The MND makes no reference of any specific Project study for this conclusion and therefore the MND’s statement is only an assertion, without any factual support that can be verified. It does not pass muster as substantial evidence under CEQA.

⁵ See, <https://wildlife.ca.gov/Conservation/Mammals/Bats/Report-Colony>

approval study, which was ruled to be improper mitigation in an MND context. (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 307 [a post-approval study found to be improperly deferred mitigation and a post hoc rationalization].) As the Court noted in *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 93

6-16
cont'd

We find this proposal is no different than the deferred mitigation rejected by the appellate court in *San Joaquin Raptor, supra*, 149 Cal.App.4th 645, 57 Cal.Rptr.3d 663. There, the EIR required “a management plan” to be prepared “by a qualified biologist to ‘maintain the integrity and mosaic of the vernal pool habitat.’ ” (*Id.* at p. 669, 57 Cal.Rptr.3d 663.) The court held that this measure was deficient because it merely included a “generalized goal of maintaining the integrity of the vernal pool habitats,” placing the onus of mitigation to the future plan and leaving the public “in the dark about what land management steps will be taken, or what specific criteria or performance standard will be met...” (*Id.* at p. 670, 57 Cal.Rptr.3d 663.)

6-17

In sum, the MND contains no substantial evidence that the 3.72-acre vacant site contains or breeds no protected or rare species and will not have any impact on biological resources; further, its offered mitigation measures are illusory and unenforceable. For all the reasons mentioned above, there is potential that the Project may impact biological resources, which requires an EIR and disqualifies an MND.

B. Energy Impacts.

The MND’s energy impacts analysis is fatally flawed. It concludes that the Project will have less than significant impact, based on *generalized goals* or *aspirations* in the Municipal Code and CON-4 and CON-5 goals in the General Plan, which provide:

6-18

- Goal CON-4: Reduce per-capita non-renewable energy waste and city-wide peak electricity demand through energy efficiency and conservation.
- Goal CON-5: Reduce dependency on non-renewable energy resources through the use of local and imported alternative energy sources.

(MND, p. 40.)

6-18
cont'd

There is no substantial evidence as to how these generalized goals would reduce the Project's energy impacts.

Further, the MND's analysis construction energy impacts is unsupported and is based on an unquantified, incoherent, and illogical conclusion:

6-19

Construction and operation of the proposed project would result in **the consumption of energy resources**. Energy consumption during construction would consist of electricity providing temporary power to lighting and equipment as well as fuel for construction vehicles. Per PDF-8, construction-related activities would minimize the use of non-renewable diesel by minimizing the use of diesel-powered equipment or generators, **where feasible**. **Construction-related energy consumption** would be **minimal in comparison** to the **operational** consumption once the proposed hotel is occupied.

(MND, p. 40, *emph. added*.)

As such, the MND only provides for minimization of use of diesel-powered equipment or generators "where feasible," making this minimization essentially unenforceable. It also appears to conclude the construction energy impacts will be less than significant just because those will be less than the operational energy impacts. The conclusion lacks any logical link.

Lastly, for *operational* energy impacts, the MND provides the significant amount of energy usage of the Project and yet relies on the *same generalized goals* adopted by the City, as well as the *greenhouse gas* ("GHG") mitigation measures to *energy* impacts. But reduction of GHG impacts is not the same as reduction of energy impacts and the City's conclusion that implementation of GHG mitigation measures will necessarily result in less than significant energy impacts is therefore unsupported. The MND provides:

6-20

Energy usage for operation of the proposed project would include **both electricity and natural gas**, where total electricity usage would be approximately **4,956,901 kilowatt hours per year**, and total natural gas usage would be approximately 15,780,088 thousand British thermal units per year (RK, 2022a). Per PDF-11, the proposed project would be designed **in compliance** with the California Building **Energy Efficiency Standards** and Garden Grove **Municipal Code** Section 18.04.0101,

6-20
cont'd

including the provisions for **bicycle parking, electric vehicle charging stations, energy efficiency, material conservation, and water/waste reduction**. To further ensure the operation of the proposed project would not result in inefficient or wasteful energy consumption or conflict with the City's energy goals CON-4 and CON-5, Mitigation Measures **GHG-2 through GHG-6** (provided below in Section VIII, Greenhouse Gas Emissions, of this IS/MND), which would require the use of **renewable energy sources and increase energy efficiency**, such as installing **onsite renewable energy sources** capable of generating **up to 25 percent** of the proposed project's total electricity demand, implementing water conservation strategies, and implementing waste management, recycling, and composting programs **to divert 50 percent** of waste away from a landfill. Thus, with Mitigation Measures GHG-2 through GHG-6, implementation of the proposed project **would not result** in a potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources, during **project construction or operation**, nor would it conflict with or obstruct a state or local plan for renewable energy or energy efficiency. Therefore, impacts would be less than significant with mitigation incorporated.

(MND, p. 41, *emph. added.*)

Yet, GHG-2 through GHG-6 (MND, pp. 49-50) only require that "up to" 25% of the Project's energy use be supported by solar and only 50% of waste be diverted. In view of the Project's *mass, scale and intensity*, there is no substantial evidence or expert opinion that the Project's *remaining* energy use and waste will be non-significant and will have no significant impacts.

Further, even in an EIR context, CEQA Guidelines require a *project-specific* energy consumption analysis and far more than reliance on energy guidelines, as here:

6-21

- (b) Energy Impacts. If analysis of the project's energy use reveals that the project may result in significant environmental effects due to **wasteful, inefficient, or unnecessary consumption** use of energy, or **wasteful use** of energy resources, the **EIR shall mitigate** that energy use. This analysis should include the **project's energy use for all project phases and components**, including **transportation-related energy**, during **construction** and

6-21
cont'd

operation. In addition to building code compliance, other relevant considerations may include, among others, the **project's size, location, orientation, equipment use** and any **renewable energy features** that could be incorporated into the project. (Guidance on information that may be included in such an analysis is presented in Appendix F.) This analysis is subject to the rule of reason and shall focus on **energy use** that is **caused by the project**. This analysis may be included in related analyses of air quality, greenhouse gas emissions, transportation or utilities in the discretion of the lead agency.

(CEQA Guidelines § 15126.2(b), emph. added)

6-22

The MND fails to adequately disclose the Project's energy impacts and makes an unsupported conclusion that those impacts will necessarily be reduced to the level of insignificance through generalized goals or GHG mitigation measures. As such, there is a fair argument that the Project may have energy impacts, requiring an EIR.

C. Geology/Soils Impacts.

As also noted in our prior Comment letter, the MND's geology impacts assessment of no impacts is unsupported.

First, the MND admits that the Project site is located in the liquefaction area and contains unstable soils. (MND, pp. 44-45.) Yet, it concludes:

6-23

Furthermore, as a **condition of approval**, per Section 8.1.2 of the geotechnical investigation, **prior to obtaining building permits** from the City, **additional site exploration and laboratory testing** will be required to **confirm the existing conditions** throughout the project site and provide **final** design recommendations, which **would be** incorporated into an updated geotechnical investigation and implemented as a condition of approval (Geocon, 2018). **Given this**, implementation of the proposed project **would not directly or indirectly** cause potential substantial adverse effects, including the risk of loss, injury, or death involving seismic-related ground failure, including liquefaction. Therefore, impacts would be less than significant.

(MND, p. 44, emph. added.)

6-23
cont'd

The MND's conclusion is unsupported and relies solely on unenforceable and also improperly deferred "additional site exploration and laboratory testing to confirm the existing conditions." There is no reason why the 2022 MND failed to include such site exploration, which appeared to have been required or necessary at least since 2018, per the 2018 Geocon's report. CEQA forbids deferred mitigation, absent some practical or legal hardship to conduct testing or devise mitigation measures. Per the MND, the Project site has been vacant for years and there is no information that the Applicant was not permitted access on the Project site in any way.

6-24

Further, the MND is chronologically incorrect. It claims that as a condition of *approval now*, some *yet-to-be developed* final recommendations would be implemented and would thereby necessarily reduce any impacts to the level of insignificance. And yet, just because an additional site exploration and laboratory testing will occur and final design recommendations, if at all, would be incorporated into the Project, the MND cannot make the absolute claim that those final design recommendations will indeed *clearly* reduce any geology impacts to the level of *insignificance*, as required by CEQA.

Lastly, the MND references 2018 Geocon's report and concludes that the Project site has no expansive soils and thereby no associated impacts. Yet, it admits that Geocon recommended that the upper 6 feet of existing site soils be excavated and properly compacted. The MND provides:

6-25

No Impact. Based on the geotechnical investigation performed for the proposed project, **it is recommended**, at a minimum, that the **upper 6 feet of existing site soils** within the proposed on-grade building footprint areas **be excavated** and **properly compacted** for foundation and slab support. The **upper 5 feet of existing soils encountered** at the project site during **this investigation** are **considered** to have a "very low" expansive potential and are classified as "non-expansive" per the California Building Code (Geocon, 2018). **Given this**, the proposed project would **not be located on expansive soil**. No impact would occur.

(MND, p. 46, *emph. added*.)

6-26

As for the referenced 2018 Geocon report, it references the word "expansive" only twice, at p. 15 and p. 28, and provides:

8.2.4 The upper 5 feet of existing site soils **encountered** during this investigation are **considered** to have a "**very low**" expansive potential (EI

6-26
cont'd

= 0); and are classified as “non-expansive” based on the 2016 California Building Code (CBC) Section 1803.5.3. **Recommendations** presented herein **assume** that the building foundations and slabs **will derive support** in these materials.

(2018 Geocon, p. 15, emph. added.)

8.16.2 **Swimming pool foundations and walls** may be designed in accordance with the foundation design recommendations below and *Retaining Wall Design* section of this report (see Section 8.13). The proposed pools should be constructed utilizing an **expansive soils** design, and a hydrostatic relief valve should be considered as part of the swimming pool design unless a gravity drain system can be placed beneath the pool shell.

(2018 Geocon, p. 28.)

6-27

Further, Geocon provides only one sample “B1 @ 0-5” which appears to have been tested for expansiveness; yet, it discloses that it took *three* samples from three different sites “excavating **three** 8-inch diameter borings to depths of approximately 40½ and 75½ feet below.” (2018 Geocon, p. 1, emph. added.) The Project site is 3.72 acres and should have required more testing to make a supported conclusion as to the entire site’s condition. In addition, the fact that the upper 5 feet of soil sample showed no expansive soils, even if true as to the entire site, is irrelevant where the recommendation is to excavate the upper 6 feet of soil and in view of the fact that the Project will have to accommodate up to 350-foot high constructions and include an underground parking (MND, p. 9.) A deeper and broader site investigation should have been conducted and its results should have been included in this 2022 MND. They were not, without any justification.

6-28

As such, because there is no evidence that the entire 3.72-acre site was tested for expansive soils, because the Project involves numerous structures as tall as 350 feet, and because Geocon’s recommendations *assume* that the soils are not expansive and will provide support for the Project’s development and yet propose to excavate 6 feet of the upper layer of soil, there is no support for the MND’s conclusion that the entire Project site contains no expansive soils and will have no associated impacts.

6-29

Lastly, among its limitations, Geocon itself provides that its 2018 Report cannot be relied upon in 2022:

6-29
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The findings of **this report** are **valid as of the date of this report**. However, **changes** in the conditions of a property **can occur** with the passage of time, whether they are due to **natural processes** or the **works of man** on this or adjacent properties. In addition, **changes in applicable or appropriate standards** may occur, whether they result from legislation or the broadening of knowledge. **Accordingly**, the findings of this report **may be invalidated** wholly or partially by changes outside our control. Therefore, **this report** is subject to review and **should not** be relied upon **after a period of three years**.

(August 15, 2018, Geocon Report, p. 41, emph. added.)

Similarly, Geocon's report may not be trusted for geology impacts since it contains several discrepancies. First, it claims the Project site is **9.55 acres**, whereas it is only 3.72 acres, per the MND. (2018 Geocon, p. 1.) Further, the 2018 Geocon report was based on significantly *understated* Project mass and scale and without final design plans:

6-30

Based on the information provided by the Client, It is our understanding that the proposed project consists of **an 18-story hotel** tower with a roof deck; a **16-story hotel tower**; an **8-story** timeshare tower; and **parking structures**. The proposed hotel complex will include **on-grade structures** and also **two levels of subterranean space** extending to depths of up to **25 feet below** the ground surface. The proposed development is depicted on the Site Plan (see Figure 2A).

(2018 Geocon, p. 2, emph. added.) This description is at odds with the MND's project description: "The proposed project involves construction of a full-service high-rise (maximum height of **350 feet**) resort hotel with hotel program entertainment/pool deck (height of approximately 61 feet) on a **3.72-acre** site." (MND, p. 9, emph. added.)

As such, the 2018 Geocon's report has not studied the stability of soil on the site to support a 350-foot hotel structures and numerous other tall buildings.

6-31

To the extent the MND relies on the 2018 Geocon's outdated report with flawed assumptions, such reliance is misplaced, and there is a fair argument the Project – with its unstudied mass and scale and undisputed liquefaction potential – may have significant geology impacts.

D. GHG Impacts.

6-32

The Project may have significant GHG impacts and the MND's conclusion to the contrary is unsupported. (MND, pp. 48-50.) First, the MND *understates* the Project's impacts overall, since its estimated Project's GHG impacts already *assume* certain project design features (PDFs) were incorporated: "The total estimated GHG emissions of the proposed project were **5,756.97 MTCO₂e** per year (which **assumed** incorporation of PDF-1 through PDF-12, provided previously in Section 3.3 of this IS/MND)." (MND, p. 49, *emph. added.*) Also, PDF-1 through PDF-12 (MND, pp. 11-12) are non-enforceable measures and non-binding (e.g., PDF-6, 8, and 9 provide for specific measures, "if" or "as" or "where" feasible). Further, the MND provides no estimate *without* the PDFs, which is an error. As such, the MND fails to disclose the Project's GHG impacts *without* the application of mitigation measures, as required by CEQA.

6-33

Second, the MND relies on GHG mitigation measures and concludes that those further reduce the 5,756.97 MTCO₂e by 51%: "[T]he total estimated GHG emissions generated by the proposed project would be **3,583.53 MTCO₂e/year**, reflecting a 51 percent reduction." (MND, p. 49.) Yet, there is no evidence or discussion as to how or whether the GHG measures that the MND relies upon will indeed reach the 51 percent reduction, particularly where GHG measures include compliance with certain codes, generation of renewable energy for up to 25% energy demand, and diversion of only 51 percent of waste. Lastly, the MND provides no clear significance threshold for GHG emissions and only concludes that the 51% reduction of GHG impacts to 3,583.53 MTCO₂e/year will amount to non-significant impacts. Yet, even if the MND follows some unspecified threshold, it is well-settled that a Project's compliance with a significance threshold does not mean the Project will have no impacts:

- (2) Thresholds of significance, as defined in Section 15064.7(a), may assist lead agencies in determining whether a project may cause a significant impact. When using a threshold, the lead agency should briefly explain how compliance with the threshold means that the project's impacts are less than significant. Compliance with the threshold **does not** relieve a lead agency of the obligation to consider substantial evidence indicating that the project's environmental effects may still be significant.

(CEQA Guidelines § 15064(b)(2), *emph. added.*)

6-34

Lastly, to the extent the Project may be larger than the 3.72 acres (per Geocon’s investigated 9.55-acre site area [2018 Geocon, p. 1]) and its haul route is not calculated in the MND’s GHG analysis (see, *infra*), and also to the extent the Project may have cumulative GHG impacts, those are not studied or disclosed in the MND.

6-35

In sum, the MND understates the Project’s GHG impacts overall and through the use of unenforceable and non-binding PDFs and ineffective and illusory mitigation measures, and the MND erroneously assumes, without support, that a claimed 51% reduction, even if practicable, will indeed *clearly* result in less than significant impacts to warrant an MND. As such, the Project may have significant GHG impacts, requiring an EIR to adequately study and mitigate those.

E. Hazards Impacts.

6-36

The MND’s discussion of hazards (MND, p. 52-53) is manifestly flawed. First, it combined two very important questions about routine transport of hazardous materials or their release into the air, which can have impact on people and limits such discussion to only construction materials to be stored on the site, and provides a cursory and limited analysis for those. For example, nowhere does the MND disclose if the soil that will be excavated (e.g., 6 feet on the 3.72-acre site, as recommended by 2018 Geocon’s report) contains contamination or if the buildings that existed on the Project’s site and were demolished starting in 2004 did not leave any contamination or hazardous materials on the site.

6-37

Moreover, in an unprecedented manner, the Project provides no Phase I Environmental Site Assessment (“ESA”) that could have performed a search of the site for underground storage tanks, leaks, or hazardous spills. Phase I ESA would have also listed all prior uses at the Project site over the years and the potential that those uses handles hazardous materials (e.g., dry-cleaning,⁶ car repair shops). Further, the Project site has been subject to significant demolition, which could have included various hazardous materials, including asbestos and lead that can be still present on the Project site. Yet, the MND appears to rely on just DTSC general records and EPA online records (MND, p. 55) and provides just general links to the searches conducted; there is no indication that a more thorough inquiries were made to DTSC or EPA

⁶ See, e.g., active hazardous site at 13020 Chapman Ave., Garden Grove, which is a block away from the Project and which used to be a dry cleaners place from 1966 to 2006.
https://www.envirostor.dtsc.ca.gov/public/profile_report?global_id=60002907

6-37
cont'd about all 3.72 acres of the Project site or if the entire 3.72 acres were ever considered in searching DTSC or EPA databases.

6-38 The MND only claims that the site is not listed on a hazardous site. (MND, p. 53.)
However, whether the site is or is not listed in a database is not conclusive proof that the site contains no hazardous materials or contamination that could harm human beings during excavation or their routing transportation.

6-39 Further, Geocon's 2018 report provides, among limitations: "The evaluation or identification of the potential presence of hazardous or corrosive materials was not part of the scope of services provided by Geocon West, Inc." (2018 Geocon, p. 41.) It begs the question: Why?

6-40 In sum, the MND's manifest lack of study of these hazardous conditions on the Project's site which was previously occupied by residential and commercial uses, as well as its cursory and limited analysis focusing on solely *construction* phase (construction materials) and completely ignoring the transport of hazardous materials, including soil and debris during *pre-construction* phase (e.g., grading and excavation) supports a fair argument that the Project may have significant impacts.

F. Hydrology/Water Quality – no impact

6-41 In addition to the flaws pointed out in our prior Comment and related to the Project's impacts on water supply and waste impacts, the MND also understates the Project's hydrology and water quality impacts. First, the MND relies on *preliminary* reports; there is no explanation why the MND could not provide a *final* stormwater and drainage management report, which, per the MND, will be provided only after the Project approval and before the permits are issued.

6-42 Second, the MND admits that the Project will be adding *new impervious surfaces* increasing them from 28% to 68% after the Project is built. This means that the Project will directly or indirectly impede the *natural* drainage patterns that exist on the site since it was gradually vacated starting in 2004. The MND's focus on only *adjacent* buildings' drainage flows in this analysis and ignoring the drainage patterns that exist on the 3.72 acre site now (covered with dirt and vegetation) is erroneously limited. There is a fair argument that the Project *will* impede and redirect the existing drainage flows on the vacant land at least because it will add 40% more impervious surfaces.

Third, the MND admits that it would be *redirecting* the drainage from the adjacent Sheraton hotel and *reroute* it. (MND, p. 57.) It further states that the drainage on the site will be “similar” to pre-development, i.e., admittedly *not* the “same”:

6-43

As mentioned above, the project site currently consists of **28 percent** of impervious area; and with the construction of the proposed project, the impervious area **would increase to 68 percent**. However, the post development drainage would be **similar** to the pre-development drainage. With the proposed project, the offsite drainage would be **routed** to the **new drive aisle** along the west property line and continue to flow west onto Twintree Avenue to **match** the **existing** condition.

(MND, p. 59, *emph. added.*)

6-44

In view of the above-noted admissions that the Project will increase impervious areas and redirect the existing flows, there is a fair argument that the Project may also increase the rate, amount, and depth of the existing drainage flows, due to redirection of existing flows on the vacant land, as well as by creating more impervious areas, altering the current natural flood patterns, and most importantly significantly adding to the drainage flows due to the significant mass and scale of the Project.

Lastly, the MND improperly relies on deferred mitigation and creation of post-approval plans to mitigate impacts and yet concludes that the Project will have “less than significant impacts.” This conclusion is unsupported, since it provides no binding or enforceable mitigation measures to support it. The MND states:

6-45

The incorporation of **BMPs** [best management practices] prescribed in the **WQMP** would **minimize** impervious areas in addition to reducing potential pollutants that enter the surface flows as a result of project implementation, to the **maximum extent practicable**, as required by the Regional Water Quality Control Board. **Prior to the commencement of grading and construction** activities, **a final WQMP would be prepared**. With **implementation** of the **SWPPP**, **WQMP**, and **BMPs**, the construction and operation of the proposed project would not violate any water quality standards or waste discharge requirements, provide substantial additional sources of polluted runoff or otherwise substantially degrade water quality, nor would it substantially alter the existing drainage

6-45
cont'd

pattern of the project site or area. **Therefore**, impacts would be **less than significant**.

(MND, p. 58, emph. added.)

6-46

The MND's above-quoted analysis is illusory, conclusory, and unsupported. First, it is unclear how a new BMP can "minimize" the amount of impervious surfaces in the Project after it gets entitled and approved. Second, it is unclear how a BMP that will only *minimize* the amount of impervious surfaces "to the maximum extent practicable" will indeed amount to *less than significant* impacts. Third, it is unclear why a final WQMP (water quality management program) should be prepared and timed only after Project approval and only before the commencement of construction activities.

6-47

In sum, the MND's conclusion that the Project will have no hydrology or water quality impacts is unsupported and also contains non-binding and improperly deferred mitigation measures. Its findings of less than significant impact before mitigation is also unsupported because the MND clearly relies on post-approval studies and water quality management programs to mitigate water impacts.

G. Land Use Impacts

6-48

The MND understates the Project's *land use* impacts. First, its 2-page land use impact analysis (MND, pp. 62-63) fails to note the Project's *inconsistencies* with the General Plan and zoning. For example, the analysis fails to note that, under the current General Plan, there is a *street* and an *alley* which traverse the Project's site and which the Project proposes to vacate. This, by itself, is an inconsistency with the General Plan's transportation element. Moreover, this will divide the established community, which currently uses the street and alley to be vacated. In addition, such vacation of the street and alley will have significant impacts on traffic and circulation.

6-49

Second, while the MND's analysis mentions the residential zoning on the Project's site in the beginning, it fails to note that the residential zoning R-1-7 is for *single-family* development. (See, MND, pp. 3 & 65.) Instead, the MND's land use impact analysis focuses on "[t]he IW designation [that] allows a maximum floor area ratio (FAR) of up to 5.0 for hotel resorts" (MND, p. 63), which it later admits to apply to only PUD *commercial* – and not R-1-7 *residential* zoning – and yet presents that because the Project will have 4.27 FAR, it necessarily conforms to the General Plan as to land use designation:

6-49
cont'd

The **IW designation** allows a **maximum floor area ratio (FAR)** of up to **5.0** for hotel resorts and entertainment venues. FAR results from dividing the total gross floor area of all buildings on a lot by the total area of that lot. The proposed project would develop **approximately 691,693** square feet of hotel uses on the **3.72-acre** (162,043.20 square feet) site, which would result in a **FAR of 4.27**, and be **within the allowable FAR**. Thus, the proposed project would **be consistent with the IW designation**.

The **IW designation** of the proposed project is implemented by the **PUD zoning**. Section 9.18.160.010 (Planned Unit Developments) of the Garden Grove Municipal Code states that planned unit developments may be permitted in any Mixed Use zone subject to the provisions of Section 9.16.030.020 (Planned Unit Development) of the Garden Grove Municipal Code.

(MND, p. 63, *emph. added.*)

6-50

In other words, the Project *transfers* the 5.0 FAR of the PUD mixed-use zoned lots to the R-1-7 single-family residential zoned lots and the MND fails to note either about such FAR transfer or about the inconsistency of *both* building a hotel on the single-family residential lots, the *applicable* FAR on the residential R-1-7 lots, and the inconsistency of such 5.0 FAR on the residential R-1-7 zoned lots.

6-51

Lastly, the MND inconspicuously admits that it seeks to *change* the zoning for the entire site and thereby make the Project conform to the General Plan's IW designation:

As previously mentioned, the project site is currently zoned PUD-141-01 and R-1-7. As part of the proposed project, the entire project site would be rezoned to create a subzone, PUD-141-01(A), which would be consistent with the existing General Plan land use designation of IW and would facilitate the development of the proposed project. With this modification, no conflict with the property's zoning would occur. Therefore, impacts would be less than significant.

(MND, p. 63.)

6-52

The above-noted zoning amendment to ensure the Project's conformance with the General Plan underscores the *existing conflict* of the Project with the applicable land use

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plans and the Project site's density and intensity designations and refutes the MND's finding that the Project is consistent with land use plans and will have no land use impacts.

6-53

In sum, the MND's analysis of land use impacts critically omits inconsistencies and understates the Project's scope or associated land use impacts. In view of the above-noted changes proposed by the Project, there is a fair argument that the Project, with its mass, scale and proposed solely commercial uses, is inconsistent with the applicable land use plans and may have significant impacts, requiring an EIR.

H. Noise Impacts.

6-54

The MND's noise impact analysis is flawed. (MND, pp. 67-71.) First, the MND erroneously assumes that since the Project will comply with the noise regulations, it is necessarily "exempt" from any additional construction restrictions, such as hours, days, and times of construction starting at 7am and extending to 8pm (i.e., 13 hours/day) from Monday through Friday, and even on holidays and Sundays. In an MND context, the City's conclusion of no construction impacts here is unsupported, especially where the MND admits that construction noise may reach 80 dBA for an 8-hour limit, whereas the hours of construction noise far exceed 8. (MND, p. 69.)

6-55

Second, the MND admits that the construction noise will exceed the 80 dBA, and yet claims that the implementation of mitigation measures will reduce those impacts to the level of insignificance. Among those mitigation measures, the MND requires to build a masonry wall *barrier* on the western and eastern borders of the Project, as well as place a temporary barrier on the northern and southern borders. Yet, the MND does not state the proximity of sensitive uses to the Project site. It was also found that noise barriers are most efficient if they are moveable and placed next to the noise area. (**Exhibit A**, pp. 19-20 [*Aids Healthcare Foundation v. City of Los Angeles*, Case Number: 19STCP05445, April 5, 2021]) As stated in *Aids Healthcare Foundation*:

Effective mitigation to sensitive receptors requires the noise barrier systems to be moved. The City argues MM 1-2 is effective because "the noise barriers are *moveable*, meaning that they move in concert with any piece of construction equipment to ensure the equipment does not operate with an unobstructed line of sight to a receptor." [citation omitted] The City recognizes the barriers must be moveable "to shield construction activities, no matter where they occur onsite." [citation omitted]

(Exhibit A, p. 20.)

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As such, the barriers proposed by the Project and the MND do not meet that description, to ensure efficacy of noise reduction and lack substantial evidence that such noise reduction will indeed occur.

In addition, as described in an analogous lower court case, the noise analysis here does not consider the fact that the Project will be built at 350 feet height; so its noise insulation barriers extending to a maximum of 8 feet are further non efficient as a mitigation measure:

6-56

To the extent sound attenuation is to be measured at the sensitive receptor, it may allow measurement from street level ignoring impacts at higher floors. Higher floor sound attenuation is important as the efficacy of sound barriers to shield higher floors in a building is questionable.

Fn. 22 Sound is most audible when it travels by direct line of sight. Sound barriers are largely ineffective if they do not break the line of sight between the source and receiver....

Fn. 23 [S]ound barriers are most effective when they are very close to either the source or the receiver and become less effective with greater distance from the noise producing equipment.

(Exhibit A, p. 19, and fns. 22-23.)

6-57

In addition, unlike in the *EIR* case cited above, the MND here does not provide how much sound reduction will those barriers provide. Yet, it concludes that the impacts will be reduced to the level of *insignificance*.

6-58

Further, the MND sets very high thresholds of significance for construction noise (80 dBA per 8 hours) and ignores the fact that the Project's construction noise will exceed the 8-hour mark (will be almost 13 hours, from 7am to 8pm).

6-59

Lastly, similar to the construction noise impacts, the MND and the City set high thresholds for *operational* noise impacts and fail to note that the Project site is now completely vacant and part of it is zoned residential. The MND also appears to conclude that just because noise increases will not exceed 3 dBA (a conclusion not supported by any evidence), then the Project will have no operational noise impacts. (MND, p. 71.) And yet, particularly in an MND context, it is settled that compliance

6-59
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with thresholds should not foreclose the study of the Project's impacts since it is not conclusive proof that the Project may not have impacts.

Also, the MND erroneously assumes that unless the Project *doubles* the amount of traffic, it will not cause more than 3dBA noise increase:

In addition, **typically**, it takes a **doubling** of **traffic** volumes along a roadway to cause a **significant increase** in ambient noise levels of more than **3 dBA**. The proposed project is projected to generate approximately **5,122 average daily trips** (ADT). The current ADT along Harbor Boulevard is approximately **27,585**. Hence, the proposed project would not double the amount of traffic volume along Harbor Boulevard. Also, the proposed project would restrict access to the project site along Twintree Avenue to emergency vehicles, maintenance, and trash/delivery trucks. Daily truck deliveries are expected to be less than 20 trucks per day whereas existing ADT along Twintree Avenue, west of Harbor Boulevard, is approximately 2,000 vehicles per day. The proposed project would not cause a doubling of traffic along Twintree Avenue. **Thus**, operation of the proposed project's **would not cause a significant increase** (i.e., an increase of 3 dBA or more) in **roadway noise** at Harbor Boulevard and Twintree Avenue.

6-60

(MND, p. 71, emph. added.)

The MND provides no legal or acceptable authority for its assumptions quoted above.

Lastly, the MND erroneously includes *future* conditions as part of the MND's baseline and noise analysis, stating:

Lastly, based on the City's noise/land use compatibility per the **City's Noise Element**, the **project site** is **expected** to experience **future noise** levels ranging from **60 dBA to 70 dBA CNEL**, which would fall within **normally acceptable to conditionally accepted noise** and land use zone.

6-61

(MND, p. 71, emph. added.)

Yet, the fact the MND's above-noted statement admits the Project's impacts may far exceed the 55 dBA thresholds and the MND appears to rely on *future* conditions to understate the Project's impacts based on its compatibility under the Noise Element

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underscores the MND's erroneous legal assumptions. CEQA is clear that the the Project's baseline is the existing conditions and the compatibility or conformance with the General Plan is not part of the baseline analysis for purposes of impacts and does not foreclose CEQA's impacts analysis. (*Oro Fino Gold Mining Corp. v. County of El Dorado* (1990) 225 Cal.App.3d 872, 881–882 [“Initially, we note that conformity with a general plan does not insulate a project from EIR review where it can be fairly argued that the project will generate significant environmental effects. (*City of Antioch v. City Council*, supra, 187 Cal.App.3d at p. 1332, 232 Cal.Rptr. 507.)”])

6-62

In sum, the MND performs a curtailed analysis of the Project's construction and operational impacts, relies on unsupported and flawed assumptions and erroneous baseline to measure the acceptable limits, and proposes inefficient mitigation measures, including barriers, to reduce the noise limits without any specific performance standards to ensure such noise reductions. As such, there is a fair argument that the Project may have significance noise impacts, requiring an EIR to study, disclose and mitigate those.

I. Transportation Impacts.

6-63

The MND's transportation analysis is critically flawed and its conclusion of no impacts is unsupported. First, the MND omits the *elephant in the room*: vacating of a public street and alley. As such, its analysis of whether the Project will “[c]onflict with a program, plan, ordinance, or policy addressing the circulation system, including transit, roadway, bicycle and pedestrian facilities” and its ultimate conclusion of “no impacts” (MND, p. 81) is clearly erroneous and unsupported.

6-64

Second, the MND's analysis of vehicle-miles-traveled is erroneous. It fails to acknowledge the dramatic increase of circulation in the Project site, the fact that vacation of the street and alley under the Project may create spill-over traffic and cause various travelers to change their travel patterns, as well as the fact that it is reasonably foreseeable that hotel guests will use Lyft, Uber or other transportation means thereby doubling the amount of trips to/from the Project site as compared with traveling to the Project site in one's own car. Further, the Project's proximity to transit, on which the MND relies, appears to be irrelevant in view of the fact that the Project – a high-rise hotel – may operate during night hours and perhaps more intensely during those night hours and yet there is typically no public transit available at night.

6-65

Third, and similarly, the MND’s analysis of whether the Project will “d) Result in inadequate emergency access” and its ultimate conclusion of less than significant impact is unsupported. The MND admits that the Project will be “sharing” the road access with another hotel, which will also provide guest and employee access for buses and shuttles. It admits that the second access to the Project will be via an “unsignalized” driveway on Twintree Avenue and only for emergency vehicles, maintenance, and trash/delivery trucks only. And yet, it concludes that there will be less than significant impacts on emergency access, including on Harbor Boulevard because the *existing* access on Harbor Boulevard “would follow the standard site plan review requirements to ensure that the proposed project would not have a significant impact on safety and hazard issues.” (MND, p. 84.) Here again, the MND fails to note that not only will the Project dramatically increase the circulation in the area and will *add* to the Sheraton Hotel’s circulation amounts and intensity, but it will also *vacate* a public street and an alley, thereby increasing the potential of traffic congestion and delays, in case of an emergency, and *reducing* or *impeding* the emergency access.

6-66

J. Mitigation Monitoring and Reporting Program.

For all reasons mentioned above, the Mitigation Monitoring and Reporting Program may not be approved since it provides unenforceable, illusory, and improperly deferred mitigation measures.

6-67

K. The MND May Not Be Approved Since There Has Been No Consultation with the School District.

The MND admits that the Project is within 0.25 miles of three schools.

6-68

The MND also fails to do an adequate study or even a Phase I ESA (*supra*), to confirm if the Project site contains any hazardous materials or contaminated soils that will be hauled away and transported potentially next to schools. The MND fails to include a haul route analysis or even disclose the amount of excavation at the Project site. At the same time, the MND admits that the Project site previously included residential and commercial uses, which were demolished. As such, those buildings could have contained asbestos, lead, or used various other chemicals, such as lead, or paint, that is harmful. In sum, there is no substantial evidence the Project site contains no

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recognized environmental conditions (“REC”) (including but not limited to release or leak of hazardous materials, spills, oil, or vapor intrusion).⁷

6-69

Yet, such manifest absence of study of the site’s hazardous conditions should not excuse the City’s or MND’s failure to comply with CEQA’s school consultation requirement, in view of the *potential* of RECs on the Project site, the Project’s significant traffic increase within close proximity to those schools, as well as the existence of three schools within 0.25 miles of the Project site, of which two are elementary schools.

Under CEQA Guidelines § 15186, a special consultation with the school district needs to occur **30 days** before the approval of a negative declaration, as here:

15186. SCHOOL FACILITIES

6-70

(a) CEQA establishes a special requirement for certain school projects, as well as certain projects near schools, to ensure that potential health impacts resulting from exposure to hazardous materials, wastes, and substances will be carefully examined and disclosed in a **negative declaration** or EIR, and that the lead agency will consult with other agencies in this regard.

(b) **Before** certifying an EIR or adopting a **negative declaration** for a **project** located within **one fourth mile** of a **school** that involves the construction or alteration of a facility that **might reasonably be anticipated to emit hazardous air emissions, or that would handle an extremely hazardous substance or a mixture containing extremely hazardous substances** in a quantity equal to or greater than the state threshold quantity specified in subdivision (j) of Section 25532 of the Health and Safety code, that may impose a health or safety hazard to persons who would attend or would be employed at the school, the lead agency must do both of the following:

(1) **Consult** with the **affected school district** or **districts** regarding the potential impact of the project on the school; and

⁷ See, <https://www.geoforward.com/recognized-environmental-condition-rec/>

6-70 cont'd	<p>(2) Notify the affected school district or districts of the project, in writing, not less than 30 days prior to approval or certification of the negative declaration or EIR. ...</p> <p>....</p> <p>(d) When the lead agency has carried out the consultation required by paragraph (2) of subdivision (b), the negative declaration or EIR shall be conclusively presumed to comply with this section, notwithstanding any failure of the consultation to identify an existing facility.</p> <p>(Emph. added.)</p>
6-71	<p>The MND does not adequately disclose or address the <i>health</i> risks of the Project and its hazards on children of the nearby three schools.</p>
6-72	<p>The above-noted issues about the potential of hazards on the Project site, the haul route of the Project and its proximity to the three schools need to be disclosed to the school district and the Project's impacts on schools must be respectively addressed.</p>
6-73	<p>L. <u>The MND May Not Be Approved and is Flawed for Lack of Consideration of the Haul Route, which is Improperly Piecemealed.</u></p> <p>CEQA requires to consider all phases of the Project, including the planning, implementation and operation, both during the initial study and even before. CEQA Guidelines § 15063(a)(1) provides: “(1) All phases of project planning, implementation, and operation must be considered in the initial study of the project.” (Emph. added.) (See also, CEQA Guidelines § 15126 [“All phases of a project must be considered when evaluating its impact on the environment: planning, acquisition, development, and operation.” (Emph. added)])</p>
6-74	<p>Here, the MND does not analyze the haul route. It is critically silent on the amount of the export/import or fill that would need to be transported to or from the Project site, the number of trucks that will be involved, how far they will be driving, how many times each day for round trips, how close those will be to the children in nearby schools, and thereby leaves the public in the dark about the related impacts. Yet, CEQA places the duty to thoroughly investigate upon the lead agency, not the public.</p>
6-75	<p>Because of this piecemealing of the haul route and failure to adequately disclose, study, or mitigate its impacts and because of the mass and scale of the 6-foot excavation of the Project's 3.72 feet site and the site's liquefaction potential, suggesting the need for</p>

6-75
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more reinforcement to accommodate the 350 feet high development thereon, there is a fair argument that the Project may have significant impacts associated with the haul route, including but not limited to air quality, GHG, hazards, and noise. The lack of study of this issue in the MND enlarges the scope of the fair argument as to the named impacts. Such lack of study also violates CEQA's piecemealing requirement.

M. There is a Fair Argument that the Project May Have Significant Impacts due to Cumulative Impacts and Direct or Indirect Impacts on Human Beings, and Long-Term Impacts on the Environment Requiring Mandatory Findings of Significance and an EIR.

6-76

For all reasons above – including but not limited to the MND's understated analysis of various impacts and the Project's potentially significant impacts on human beings in light of air quality, GHG emissions, noise, geology, hazards, as well as the fact that the Project is within 0.25 miles of schools with particularly vulnerable children and youth – the Project will have impacts requiring mandatory findings of significance and an EIR under Guidelines § 15065.

N. The MND Must Be Recirculated.

6-77

The MND here must be recirculated to include the omitted analysis which implicates more significant impacts than disclosed or studied in the MND. (CEQA Guidelines §§ 15073.5 [MND recirculation]; 15088.5 [EIR recirculation]; *see also, We Advocate Through Environmental Review v. County of Siskiyou* (2022) 78 Cal.App.5th 683, 695-696. [need to recirculate if more severe impacts].)

II. **THE PROJECT'S APPROVAL VIOLATES THE HIGHWAY AND STREET CODE'S PROCEDURAL AND SUBSTANTIVE REQUIREMENTS.**

6-78

The Project involves vacating of a public street and alley; as such, it is subject to the Highway and Street Code ("H&S") procedural and substantive requirements. There is no information that such requirements have been met here. The MND provides: "To accommodate the proposed development, the proposed project also includes **vacation of a public street** (Thackery Drive) **and public alley** located entirely within the site." (MND, p. 9, *emph. added.*)

The City's attempt to approve vacating of two streets all in one action/hearing of approving the Project and without the specific findings disclosed in the MND violates the procedures of Streets and Highways ("S&H") Code sections 8300, *et. seq.*

S&H Code Sec. 8313 requires the agency to consider the General Plan and obviously consistency therewith when planning to vacate the street. As mentioned above, the City inconspicuously and illegally plans to amend the General Plan to effectuate the vacating of the street and alley, since the General Plan amendment is not included among the discretionary actions, listed in the MND:

3.4 DISCRETIONARY ACTIONS AND APPROVALS

The following discretionary actions and other non-discretionary approvals are required to implement the proposed project.

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- Approval of the MND Adoption of Mitigation Monitoring and Reporting Program
- Approval of Zone Change to subzone Planned Unit Development No. PUD-141-01(A)
- Approval of Site Plan No. SP-107-2022
- Approval of a Street Vacation
- Approval of a Tentative Tract Map
- Approval of a Development Agreement
- Approval of Grading
- Approval of Building and Occupancy Permits
- Approval of a Conditional Use Permit⁸

⁸ Separately, nowhere does the MND explain what the “Conditional Use Permit” is for. Actually, the MND references “Conditional Use Permit” only once – at p. 14, in the above-quoted list of discretionary actions.

Similarly, nowhere does the MND mention that the Project proposes on- and off-site alcohol sale and use; nowhere does the MND even use the word “alcohol,” but only generally refers to beverages. Yet, the 7/7/2022 PC Staff Report, and its findings, *for the first time*, notes conditional use permits for alcohol sale and use among *future* entitlements that will be sought by the Project (e.g., Conditions 33 and 73). Also, the Permitted Uses for the Project, listed in the Staff Report, include on- and off-site alcohol sales. As such, the MND violates CEQA in that it failed to adequately disclose the “whole of an action” and the MND’s omission of this critical aspect of the Project failed CEQA’s mandate of good faith disclosure.

Further, this piecemealed future approval of a conditional use permit (or, permits) for alcohol use and sale also violates CEQA’s piecemealing prohibition.

- Approval of Final Water Quality Management Plan and Stormwater Pollution Prevention Plan (SWPPP)

(MND, p. 14.)

The S&H Code defines “vacation” as “the complete or partial abandonment or termination of the public right to use a street, highway, or public service easement.” (S&H Code § 8309.) The code defines a “street” and “highway” as “all or part of, or any right in, a state highway or other public highway, road, **street**, avenue, **alley**, lane, driveway, place, court, trail, or other public right-of-way or easement, or purported public street or highway, and rights connected therewith, including, but not limited to, restrictions of access or abutters’ rights, sloping easements, or other incidents to a street or highway.” (S&H Code § 8308, *emph. added.*)

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The Code also provides that “[t]his part shall be liberally construed in order to effectuate its purposes.” (*Id.* § 8310.) Thus, both the street and alley vacation in this case are subject to the H&S Code requirements.

“The authority to vacate a street rests with the city legislative body and may occur only after a hearing is held and evidence presented to the city council and a resolution of vacation adopted. (S&H §§ 8312, 8320–8325; *City of Los Angeles v. Fiske* (1953) 117 Cal.App.2d 167, 172 [“The act of vacating can be done only upon a finding that the property in question is unnecessary for present or future uses as a street”].)” (*County of Amador v. City of Plymouth* (2007) 149 Cal.App.4th 1089, 1106–1107.)

Before the City vacates a street, it must engage in prescribed procedures, such as *noticing* and *holding an evidentiary hearing* after which the legislative body may find “from all the evidence submitted, that the street, highway, or public service easement described in the notice of hearing or petition is unnecessary for present or prospective public use,” and thereafter vacate the street. (S&H Code §§ 8320, 8324.)

Lastly, the MND’s failure to adequately disclose the whole of the Project and its alcohol use and sale both on- and off-site resulted in inadequate CEQA review of the Project’s impacts in that the MND is silent on impacts of alcohol sale and use, including but not limited to increased potential for crime, drunk driving, and the associated increased use for public services, including police, firefighters, emergency vehicles.

In addition, because of this piecemealed approval, the MND fails to inform about the impacts of the Project’s alcohol use on the surrounding single family residential structures, as well as on the *three* schools located within 0.25 miles of the Project site.

The City failed the S&H Code’s procedural requirements and the City’s inclusion of the street vacation as a separate Item D in the Planning Commission’s Agenda, posted only on July 1, 2022, for the hearing to occur on July 7, 2022, is procedurally improper. Also, in view of all the General Plan inconsistencies noted above and not disclosed or analyzed in the MND, the Planning Commission has no substantial evidence to recommend that the City Council find the street and alley vacation to be conforming and consistent with the General Plan. Neither does the City’s Staff Report and information at the end of same (7/7/2022 PC Staff Report, pdf pp. 289-299) cure the public notice requirement under the S&H code.

Further, it is well-settled that a street may not be vacated for exclusive private use. (*Citizens Against Gated Enclaves v. Whitley Heights Civic Assn.*, *supra*, 23 Cal.App.4th 812, 820, citing *Constantine v. City of Sunnyvale* (1949) 91 Cal.App.2d 278, 282.)

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In this case, the MND openly and improperly claims that the street and alley are “located entirely within the site.” (MND, p. 9.) The statement is legally erroneous. Just because the Project extends several blocks, it does not mean that the streets therein automatically become the property of the private Applicant and can be terminated for their private use.

Here, the public street and alley will become essentially a private development. The Real Party apparently needs the space in question to make the project more inviting to the public or to increase its buildable area and thereby maximize its profits. As part of maintaining the Project site, the owner will deploy cleaning crews, private security, and other services. Even if the Project site will be open to the general public, the public will be deprived of the street and alley use, since it will turn into a completely private use.

Apart from the public-private issue, the vacation procedure requires findings that a street “is no longer needed for vehicular traffic.” (*Zack’s, Inc. v. City of Sausalito* (2008) 165 Cal.App.4th 1163, 1188 (*Zack’s*)). In *Zack’s*, a city leased portions of a public street to a private company to use for boat storage. When the city argued that certain statutes relating to reclaimed tidelands allowed the city to lease the land, the Court of Appeal held that “[i]t cannot reasonably be supposed that the Legislature intended that governments holding these streets can summarily close them to vehicular traffic, even if they are heavily trafficked major thoroughfares, but can close nearby nontideland streets, even those of marginal use, only on the basis of a resolution or ordinance made

upon a formal finding that the street is no longer needed for vehicular traffic after a noticed hearing on the issue.” [Citation.] (*Id.* at p. 1188.)

In addition, the Streets and Highways Code includes specific provisions for the conversion of a street from vehicular use to a pedestrian mall. (See S&H Code § 11200.) A “pedestrian mall” is defined as “one or more ‘city streets,’ or portions thereof, on which vehicular traffic is or is to be restricted in whole or in part and which is or is to be used exclusively or primarily for pedestrian travel.” (*Id.* § 11006.)

While City in this case did not make such S&H Code findings, did not check the consistency of the General Plan with the proposed street and alley vacation, and did not provide the specific separate public notice as required under S&H Code, there is no substantial evidence that the City can find that the public street and alley are no longer necessary for vehicular traffic, especially now when the 3.72-acre Project site will be put to a more high intensity use, as compared to the baseline conditions of a vacant land.

In sum, the City violated S&H Code’s substantive and procedural requirements and made no specific findings; further no such findings can be reasonably made or supported, in view of the mass, scale, and intensity of the Project.

III. THE PC AGENDA VIOLATES THE BROWN ACT.

As yet another violation of the law, the City’s 7/7/2022 Planning Commission Agenda and Staff Report related to the Project at issue here violate the Brown Act. First, the Agenda itself mentions a *separate* Item D on the vacation of the street and alley (for purposes of the Project) and its conformity with the General Plan as merely a “Consideration” item; it does not mention about any approval or resolution to be taken by the Planning Commission.

Yet, the Staff Report (at pdf p. 210) mentions a *concurrent action* and *finding* on Agenda Item D (vacating of the street and alley), as follows:

Concurrently with the adoption of this Resolution, the Planning Commission adopted Resolution No. 6045-2022 approving Site Plan No. SP-107-2022 for the construction of the proposed hotel resort, and **Resolution No. 6046-22 finding** and **reporting** to City Council that Street Vacation No. SV-002-2022 for the vacation of Thackery Drive and a public alley **is consistent** with the City’s General Plan. The **facts** and

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findings set forth in Planning Commission Resolution No. 6045-22 and **6046-22** are hereby incorporated into this Resolution by reference.

(7/7/2022 PC Agenda and Staff Report, pdf p. 210, emph. added.)

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Brown Act provides that meeting agendas must contain a brief general description of each item of business to be transacted or discussed at the meeting. (Govt. Code § 54954.2(a)). The Agenda's defined scope of "consideration" of Item D is not consistent with the "resolution" and findings that the Planning Commission should make, as noted in the Staff Report. In other words, the Agenda's description of the Item D is misleading and, as such, amounts to no fair notice required by law. (*San Diegans for Open Gov't v. City of Oceanside* (2016) 4 Cal.App.5th 637, 643. ["agenda drafters must give the public a fair chance to participate in matters of particular or general concern by providing the public with more than mere clues from which they must then guess or surmise the essential nature of the business to be considered by a local agency."])

Second, the Agenda's description of Item C.2 was also misleading and amounts to no notice. The Project at issue here was consistently described as "Site B-2" Project, including in the Notice of Intent to Adopt the MND, as well as in the MND itself. Nowhere did the City reference the Project by the name of "Nickelodeon Resort Hotel." The City's 7/7/2022 PC Agenda Item C.2, however, does not reference "Site B-2 Hotel Project" at all and instead introduces a *new* name for the Project: "Nickelodeon Hotel Resort" Project. The Agenda's changing of the Project's name by which it was initially introduced to the public in less than a month (MND and NOI circulated on June 9, 2022) and introducing a new name for the Project in the PC Agenda for the hearing where the MND and the Project will be approved fails to provide public with the fair notice as required by the Brown Act, to apprise them of the Project and allow them to participate in the discussion of it.

As such, the City violated the Brown Act and cannot take action unless it re-notices Items D and C.2, especially in view of their correlation and concurrent actions.

6-80

IV. THE PROJECT'S APPROVAL VIOLATES THE GENERAL PLAN CONSISTENCY REQUIREMENT UNDER THE STATE PLANNING AND ZONING LAWS AND DERIVATIVELY CEQA.

In view of the proposed vacation of street and alley and undisclosed inconsistencies of the Project proposed on single-family residential zoning, the Project is not consistent

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with the goals and policies of the General Plan, violating the state planning and zoning law. In addition, in view of the MND's failure to disclose future alcohol sale and use at the Project site, its MND's discussion of the General Plan consistency and conformity is inadequate, especially since the Project is proposed on lots zoned for single family residential and is also adjacent to residential developments.

Derivatively, the MND's failure to disclose such GP inconsistency also violates CEQA.

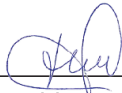
V. CONCLUSION.

6-81

In view of the aforementioned, we respectfully request you to deny the Project and its MND and to require full and adequate compliance with all applicable laws, as detailed above.

If the City has any questions or concerns, please feel free to contact my Office.

Sincerely,



Naira Soghatyan
Attorneys for Southwest Regional
Council of Carpenters

Attached:

Trial Court Ruling in *Aids Healthcare Foundation v. City of Los Angeles*, Case Number: 19STCP05445, April 5, 2021 (**Exhibit A**)

Comment Letter 6: Mitchell M. Tsai Attorney for the SWRCC

Response to Comment 6-1

Comment acknowledged.

Response to Comment 6-2

Comment acknowledged.

Response to Comment 6-3

Comment acknowledged.

Response to Comment 6-4

Comment acknowledged.

Response to Comment 6-5

Comment acknowledged.

Response to Comment 6-6

The comment regarding community benefits such as local hire does not raise a specific concern or issue regarding the adequacy of the environmental analysis contained in the Draft IS/MND. Also, the project impacts related to greenhouse gas (GHG) emissions, air quality, and transportation have been identified and mitigated to a less than significant impact level as set forth in the Draft IS/MND. No additional mitigation is required. This comment is noted for the record, will be forwarded to the decisionmakers, and no further response to this comment is required.

Response to Comment 6-7

The proposed project would exceed the current 2019 Green Building Code Standards in several ways, including:

- Providing on-site renewable energy production through the use of solar panels (GHG-2). The 2019 Building Energy Efficiency Standards requires that Hotels provide dedicated rooftop solar zones (Section 110.10), but do not require on-site renewable energy production. Hence, by providing on-site renewables, the proposed project will significantly reduce energy usage compared to what is required in the Building Code.
- Restricting the use of wood burning and natural gas fireplaces and firepits (SCAQMD Rule 445 and GHG-6). Section 5.503 of CALGreen allows the installation of both wood burning and natural gas fireplaces. By restricting the use of fireplaces and fire pits, the proposed project will significantly reduce natural gas and energy usage beyond the requirements of the CA Building Standards.
- Implementing a trip reduction program that encourages multi-modal and active transportation (GHG-7). Sections 5.106.4 and 5.106.5.3 of CALGreen require on-site bicycle parking and EV charging, however, the proposed project will go beyond these requirements to reduce fossil fuel usage by implementing a full trip reduction program. The program will improve the walkability and design of the proposed project, install traffic calming measures, locate near a high-quality transit stop and transit corridor and provide transit/shuttle services to guests. These measures will result in the proposed project exceeding the fossil fuel and VMT reduction requirements in CALGreen.

The 2020 County of Los Angeles Green Building Standards Code would not be applicable to the proposed project as the project site is located in County of Orange.

In addition, as determined in Section 4.3 (Greenhouse Gas Emissions) of the Draft IS/MND, the proposed project would comply with the South Coast Air Quality Management District (SCAQMD)'s five-tiered GHG thresholds of

significance and be in compliance with Assembly Bill 32 (AB 32). In addition, the proposed project would demonstrate it can achieve a 42 percent reduction in long-term operational GHG emissions compared to business as usual (BAU) conditions with Mitigation Measures GHG-1 through GHG-7. Thus, implementation of the proposed project would be in compliance with AB 32 and California Air Resources Board (CARB)'s 2017 Scoping Plan Update. (Draft IS/MND, pp. 48-51).

Response to Comment 6-8

The comment cites and characterizes various provisions of state law which speak for themselves.

Response to Comment 6-9

The project site is located in a highly urbanized area with commercial uses along Harbor Boulevard and residential uses along Twintree Avenue, with little to no biological resources of value. In addition, the project site had been fully developed in the past with residential and commercial uses which were demolished between 2004 and 2013. Since then, the project site continued to be disturbed over time. The north/northeastern parcels of the project site are paved and are used for parking by the adjacent Sheraton Hotel, and the remaining parcels are comprised of dirt pads with limited vegetation (i.e., non-native grass and two ornamental trees on Twintree Avenue along the sidewalk near Harbor Boulevard) that are mostly vacant except for the southeastern parcels that are used for temporary construction storage. A records search was conducted of the California Department of Fish and Wildlife (CDFW)'s California Natural Diversity Database (CNDDB) for sensitive plant, natural community, and wildlife species occurrence data. As stated in the Draft IS/MND, the California black rail is the only sensitive species (State Threatened) that came up through the records search that had the potential to be found on the project site. However, the project site does not provide suitable habitat for the California black rail which is a wetlands habitat. Additionally, the California black rail was last sighted in December 1986 in the City of Orange. On this basis, it is not reasonably foreseeable that there would be an occurrence of this species at the project site. Therefore, it was concluded that no sensitive plants or wildlife exist on the project site. This conclusion is also supported by the Garden Grove General Plan 2030 Conservation Element (p. 10-3) which states, biological resources in Garden Grove are almost non-existent due to the urban nature of the City and surrounding areas. A similar statement regarding biological resources is also stated in the General Plan Draft EIR (p. 4.2-1). Links to these referenced documents have been added to the Final IS/MND (refer to Section 3, Errata).

As stated in the Draft IS/MND, there is a potential for impacts to occur to raptors and other nesting birds protected under the federal Migratory Bird Treaty Act (MBTA) that could nest within the two trees that will be removed. Therefore, Mitigation Measure BIO-1 was included to protect biological resources and further confirms that the proposed project will have to comply with laws and regulations to protect biological resources. The language in Mitigation Measure BIO-1 has been acceptable to regulatory agencies and has been implemented by many lead agencies to protect raptors and other nesting birds. Pre-construction nesting bird surveys are standard practice. All mitigation measures in the Draft IS/MND will be part of Mitigation Monitoring and Reporting Program which will be enforced by the City. It will be the City's responsibility to monitor and verify that all mitigation measures are implemented properly and will be documented in the Mitigation Monitoring and Reporting Program.

Additionally, city staff is familiar with the project site and its condition. City staff has not concluded that it is reasonably foreseeable that the project site has any biological resources other than those described above.

Based on the discussion above, the Draft IS/MND provides evidence that the project site does not have sensitive plant, natural community, and wildlife species and will not impact biological resources directly or through habitat modifications.

Response to Comment 6-10

Comment acknowledged. Refer to response to comment 6-9.

Response to Comment 6-11

Comment acknowledged. Refer to response to comment 6-9.

Response to Comment 6-12

Comment acknowledged. Refer to response to comment 6-9.

Response to Comment 6-13

Refer to response to comment 6-9. Even though the California black rail is the only sensitive species (State Threatened) that came up through the records search (not a survey by CDFW) that had the potential to be found on the project site, it does not mean that it will be present at the project site. This records search is based on historical data and it covers a very large area (Anaheim topographic quadrangle map). The project site is located within the Anaheim topographic quadrangle map (approximately 90 square miles) but is not in close proximity to the sighting from December 1986. According to the CNDDDB, the exact location of the sighting is unknown but the California black rail possibly occupied the Santa Ana River and Santiago Creek within the City of Orange. The reason for this is that the California black rail is known to occupy riparian/wetland habitats which the project site lacks. In addition, the CNDDDB states that this sighting is likely not a representative of a breeding population but a migrating individual. Based on the discussion above and the fact that the project site does not have suitable habitat for the California black rail, the project site will not be the home to various special status species including the California black rail.

Response to Comment 6-14

Refer to response to comment 6-9 and 6-13. The records search of the CNDDDB did not identify any bats within the Anaheim topographic quadrangle map. There are a few scattered ornamental trees in the project vicinity but these tree canopies are relatively small and do not provide sufficient roosting habitat for bats. The closest record for bats (western mastiff bat) is in the Orange topographic quadrangle map which is several miles from the project site. This species occurs in many open, semi-arid to arid habitats, including conifer and deciduous woodlands, coastal scrub, annual and perennial grasslands, palm oases, chaparral, and desert scrub. These bats typically forage at great heights, approximately 195 feet above ground. They need this height to drop off to take flight. Therefore, due to the lack of sufficient roosting habitat, it is very unlikely that bats are present at the project site.

Response to Comment 6-15

Refer to response to comment 6-9, 6-13, 6-14, 6-15, and 6-16. The commenter is incorrect in stating that the Draft IS/MND provides ineffective, unenforceable, and illusory mitigation measures for the potential impacts on migratory fish. There are no impacts to migratory fish that would require mitigation measures. As stated in the Draft IS/MND, there are no rivers, creeks, or open drainages near the project site or vicinity. Therefore, implementation of the proposed project would not interfere with resident or migratory fish. The Draft IS/MND identified Mitigation Measure BIO-1 which minimizes potential impacts to raptors and other nesting birds protected under the MBTA. Mitigation Measure BIO-1 requires that a pre-construction nesting bird survey shall be conducted by a qualified biologist within three days prior to the start of construction activities to determine whether active nests are present within or directly adjacent to the construction zone. Three days prior to construction is common practice and is acceptable by regulatory agencies to identify active nests and protecting nesting birds. It should be noted that birds typically take longer than three days to establish their nests so by conducting pre-construction surveys three days prior to construction, we would be able to detect active nests if they are present. In addition, by waiting no more than three days after a survey before the onset of construction, birds do not have enough time to establish a nest before the disturbance. All mitigation measures including BIO-1 in the Draft IS/MND will be part of Mitigation Monitoring and Reporting Program which will be

enforced by the City. It will be the City's responsibility to monitor and verify that all mitigation measures are implemented properly and will be documented in the Mitigation Monitoring and Reporting Program.

Response to Comment 6-16

Refer to response to comment 6-9. The mitigation measure does not result in prohibited deferral. The City has committed to the mitigation. Nothing further is required. All mitigation measures including BIO-1 in the Draft IS/MND will be part of Mitigation Monitoring and Reporting Program which will be enforced by the City. It will be the City's responsibility to monitor and verify that all mitigation measures are implemented properly and will be documented in the Mitigation Monitoring and Reporting Program.

Response to Comment 6-17

Comment acknowledged. Refer to response to comment 6-9.

Response to Comment 6-18

The commenter inaccurately alleges that the analysis of energy impacts is flawed because the Draft IS/MND utilizes goals out of the City's General Plan Conservation Element for measuring energy impacts and suggests that no substantial evidence has been provided to show how meeting these goals would reduce the proposed project's energy impact.

First, it is important to note that neither the City of Garden Grove, the County of Orange, nor the State of California have formally established quantifiable thresholds of significance for measuring energy impacts. The CEQA Guidelines, Appendix F: Energy Conservation, recommends measuring impacts based on whether the project would result in wasteful, inefficient, or unnecessary consumption of energy resources, during project construction or operation or conflict with or obstruct a state or local plan for renewable energy or energy efficiency.

It is appropriate to use the City's General Plan Conservation Element as a metric to evaluate the proposed project's energy impact, as it highlights energy conservation goals within the City—however, this is not the only metric used to evaluate project impacts. The Draft IS/MND also takes into consideration consistency with the State's broader energy reduction goals, and the application of the proposed project's energy reduction measures.

The Conservation Element goals require the reduction of non-renewable energy through energy efficiency and conservation measures and through the use of alternative energy sources. These goals directly align with CEQA Guidelines, Appendix F: Energy Conservation goals, which identify decreasing overall per capita energy consumption, decreasing reliance on fossil fuels, and increasing reliance on renewable energy as key metrics for measuring energy impacts.

The proposed project meets both the City's and CEQA goals by providing numerous project design features (PDFs) and mitigation measures aimed at reducing energy usage and promoting alternative energy sources. Examples of these PDFs and mitigation measures include:

Project Design Features

- Utilizing construction best practices, such as using the latest clean diesel engines (PDF-3)
- Maintaining equipment in proper tune (PDF-4)
- Limiting excessive idling (PDF-5)
- Establishing electricity power supply to the site (PDF-8)

- Complying with the latest California Title 24 Energy Efficiency Code, which would result in about 30 percent less energy usage³, and compliance with CALGreen, which requires on-site electric vehicle charging stations (PDF-11)
- Limiting idling time at loading docks (PDF-12 & 21)

Mitigation Measures

- Limiting the number of heavy-duty trucks visiting the site (GHG-1)
- Providing on-site renewable energy sources, such as solar panels (GHG-2)
- Implementing water conservation strategies (GHG-3)
- Implementing recycling and composting programs (GHG-4)
- Utilizing electric landscaping equipment (GHG-5)
- Prohibiting natural gas fireplaces (GHG-6)
- Providing vehicle trip reduction measures to promote walking, bicycling and public transit (GHG-7)

Response to Comment 6-19

Refer to response to comment 6-18. The commenter wrongfully claims that the Draft IS/MND's analysis of construction energy impacts is unsupported and is based on an unquantified, incoherent, and illogical conclusion. The Draft IS/MND identifies multiple PDFs that are known to reduce energy usage and promote alternative energy sources. Implementation of these measures will ensure the proposed project aligns with the City's Conservation Element and CEQA guidelines for measuring energy impacts. As highlighted in response to comment 6-18 above, PDF-3, PDF-4, PDF5, and PDF-8 all contribute to reduce energy usage during construction. Additionally, the Draft IS/MND notes that construction-related energy consumption would be minimal in comparison to the operational consumption once the hotel is occupied. Hence, through the implementation of these measures, it is concluded that the proposed project's construction impact would be less than significant.

Furthermore, all PDFs will be conditions of approval of the proposed project and will be enforced by the City. In addition, all mitigation measures will be enforceable and will be part of the Mitigation Monitoring and Reporting Program. The proposed project will provide electricity to the project site during construction, which will reduce reliance on non-renewable energy sources; however, the proposed project will still require the use of many different types of off-road construction equipment (i.e., tractors, excavators, cranes, etc.) that are not yet available with electric powertrain.

Response to Comment 6-20

Refer to response to comment 6-18 for discussion regarding the use of the City's General Plan Conservation Element as a metric for assessing energy impacts. The commenter is incorrect in stating that the "reduction of GHG impacts is not the same as reduction of energy impacts". In fact, reduction in GHG emissions is a direct result of reductions in energy usage, and these reductions have been quantified and reported in the proposed project's Air Quality and Greenhouse Gas Impact Study⁴ (refer to Appendix B of the Draft IS/MND). Among other energy reduction measures, the proposed project is being required to install solar panels which will increase usage of renewable energy. Electricity not supplied by onsite solar will be supplied by Southern California Edison, which per the requirements of Senate Bill (SB) 100, has a 2045 goal of powering all retail

³ The California Energy Commission. 2019 Building Energy Efficiency Standards, Frequently Asked Questions. "How much energy with the 2019 standards save?" March 2018. Website: https://www.energy.ca.gov/sites/default/files/2020-03/Title_24_2019_Building_Standards_FAQ_ada.pdf

⁴ RK Engineering Group, Inc. Garden Grove Hotel Site B-2, Air Quality and Greenhouse Gas Impact Study, City of Garden Grove. April 26, 2022. Appendix C & D.

electricity sold in California with renewable and zero-carbon resources⁵, thus meeting the CEQA requirements for increased reliance on renewable energy sources.

Response to Comment 6-21

Comment acknowledged. The Draft IS/MND utilizes the California Emissions Estimator Model (CalEEMod) to quantify, report and evaluate energy usage. In addition to building code compliance, the Draft IS/MND considers the project's size, location, equipment usage, and renewable energy features in the assessment of energy impacts. Each of these factors are key input parameters within the Air Quality and Greenhouse Gas Impact Study modeling analysis provided in Appendix B of the Draft IS/MND.

Response to Comment 6-22

Refer to response to comment 6-18. The Draft IS/MND follows the CEQA Guidelines, Appendix F: Energy Conservation requirements for the evaluation of energy impacts. The Draft IS/MND discloses and quantifies the proposed project's energy usage and supports the conclusions with facts that show the proposed project will reduce energy consumption, and promote renewable energy usage. Therefore, an EIR is not required. There is no evidence supporting a fair argument.

Response to Comment 6-23

The Geotechnical Investigation Report prepared in 2018 (Appendix E of the Draft IS/MND) was for a larger 9.55-acre site (including the 3.72-acre project site), a portion of which was inaccessible for geotechnical exploration which was the basis for indicating that additional site exploration would be required. However, the project site consists solely of vacant land which has been explored by eight (8) geotechnical borings: three (3) borings performed by Geocon West, Inc. and five (5) borings performed by Cal Land Engineering, Inc. It is the opinion of the signing engineer that the geotechnical site exploration performed for the project site was sufficient to support the findings of the Draft IS/MND that the proposed project would not result in significant impacts related to geology and soils.

As such, the conclusion in the Draft IS/MND related to geology and soils are supported by the Geotechnical Investigation (Appendix E of the Draft IS/MND). The Geotechnical Investigation has identified site conditions that would need to be addressed through proper design. For example, the alluvial soils below the historic high groundwater level at the project site could be susceptible to settlement (ranging from 0.3 inches to 2.6 inches) and would be required to be addressed through implementation of the Geotechnical Investigation's design recommendations provided in Section 8. Some of these design recommendations are related to the following:

- Soil and Excavation Characteristics
- Minimum Resistivity, pHm, Water-Soluble Sulfate
- Grading
- Foundation Design
- Conventional Foundation Design
- Mat Foundation Design-Tower Care
- Foundation Settlement
- Concrete Slabs-on-Grade
- Preliminary Pavement Recommendations
- Retaining Wall Design
- Dynamic (Seismic) Lateral Forces
- Elevator Pit Design

⁵ California Energy Commission. SB 100 Joint Agency Report. Website:

<https://www.energy.ca.gov/sb100#:~:text=Senate%20Bill%20100&text=Sets%20a%202045%20goal%20of,emit%20climate%20altering%20greenhouse%20gases>. (Accessed July 2022).

- Temporary Excavation
- Shoring – Soldier Pile Design and Installation
- Temporary Tie-Back Anchors
- Anchor Installation
- Anchor Testing
- Surface Drainage

With implementation of the design recommendations and compliance with the California Building Code seismic requirements, impacts related to geology and soils would be considered less than significant. It should be noted that prior to issuance of building permits, an updated geotechnical report with final design recommendations (based on the final project design) will be submitted to the City for review and approval. As standard practice, this updated geotechnical report will be a condition of approval and the final design recommendations will be enforceable. Based on the discussion above, the Draft IS/MND provides substantial evidence that the proposed project will not result in significant impacts related to geology and soils.

Response to Comment 6-24

Comment acknowledged. Refer to response to comment 6-23.

Response to Comment 6-25

The recommendation from the Geotechnical Investigation (Appendix E of the Draft IS/MND) regarding the upper 6 feet of existing soils to be excavated is associated with proper foundation and slab support. It is not related to expansive soils. The discussion that follows under item d) states that the upper 5 feet of existing soils encountered at the project site are considered to have a “very low” expansive potential and are classified as “non-expansive” per the California Building Code (Geocon, 2018). Therefore, it was concluded that the proposed project would not be located on expansive soil (No Impact).

Response to Comment 6-26

Comment acknowledged. Refer to response to comment 6-25.

Response to Comment 6-27

The project site has been evaluated based on a total of eight (8) borings: three (3) borings performed by Geocon West, Inc. and five (5) borings performed by Cal Land Engineering, Inc. (Appendix E of the Draft IS/MND). The depth of the borings ranged from 21 ½ to 75 ½ feet in depth. The licensed engineer and geologist responsible for preparation of the project geotechnical report have determined, based on their professional experience and judgement, that the number of borings and depths are sufficient to characterize the site for the proposed project. Therefore, the results of the borings support the findings of the Draft IS/MND that the proposed project would not result in significant impacts related to geology and soils.

Response to Comment 6-28

The near-surface conditions in the eight (8) borings performed within the project site indicate predominately granular materials, typically described as silty sand. The recommendation is to excavate, stockpile, and reuse the upper 6 feet of existing non-expansive site soils for support of the on-grade components of the proposed structures. Finished grade testing can be performed following the completion of the site grading to confirm that the near-surface conditions remain non-expansive. Where subterranean, due to the depth of embedment, foundations would not be susceptible to the effects of expansive soils, if any.

Response to Comment 6-29

Comment acknowledged. For this reason, it is why an updated geotechnical report with final design recommendations (based on the final project design) will be submitted to the City for review and approval. It will need to be reviewed and approved by the City prior to issuance of building permits. As standard practice,

this updated geotechnical report will be a condition of approval and the final design recommendations will be enforced to ensure site conditions are addressed and are consistent with applicable or appropriate standards.

Response to Comment 6-30

Comment acknowledged. For this reason, it is why an updated geotechnical report with final design recommendations (based on the final project design) will be submitted to the City for review and approval. It will need to be reviewed and approved by the City prior to issuance of building permits. As standard practice, this updated geotechnical report will be a condition of approval and the final design recommendations will be enforced to ensure site conditions are addressed and are consistent with applicable or appropriate standards.

Response to Comment 6-31

Comment acknowledged. Refer to response to comment 6-23 through 6-30.

Response to Comment 6-32

The Draft IS/MND provides an in-depth GHG technical analysis⁶ that analyzes and discloses the proposed project's impact to GHG emissions. The Draft IS/MND does not underestimate emissions by assuming project design features (PDFs) will be incorporated into the proposed project. All PDFs are part of the proposed project's conditions of approval and therefore, must be implemented. Thus, it is appropriate to include them as part of the proposed project. Furthermore, by mandating PDFs be implemented as part of the conditions of approval, the City will be able to enforce them through plan check and inspections. Lastly, since PDFs are part of the proposed project, and are not considered mitigation, it would not be appropriate to analyze the proposed project without the PDFs.

Response to Comment 6-33

As previously stated in response to comment 6-32, an in-depth analysis was performed that quantifies and discloses the GHG emissions and reductions achieved by the required mitigation measures. The GHG analysis utilizes the CalEEMod software and methodologies consistent with the California Air Pollution Control Officers Association (CAPCOA) for quantifying GHG reduction measures.

Additionally, the comment stating that the Draft IS/MND does not provide a clear significance threshold is also not accurate. The GHG analysis utilizes the recommended thresholds of significance from the SCAQMD Draft Guidance Document – Interim CEQA Greenhouse Gas (GHG) Significance Thresholds, 2008. This is described on pages 5-2, 5-3 and Table 19 of the Air Quality and Greenhouse Gas Impact Study (refer to Appendix B of the Draft IS/MND). The SCAQMD significance thresholds have been established for purposes of CEQA compliance and to ensure project impacts to GHG are less than significant.

Response to Comment 6-34

The project site is 3.72 acres. The GHG analysis is based on the emissions from a 3.72-acre site. The Draft IS/MND adequately addresses activities associated with the hauling of export/fill. The analysis in the Draft IS/MND does take into account activities associated with all phases of the proposed project, construction (site preparation, hauling, export, etc.) and operations. These activities were included in the air quality/GHG emissions and traffic modeling (refer to Appendices B and I of the Draft IS/MND). Furthermore, the cumulative GHG impact of the proposed project is analyzed and disclosed as part of the proposed project's overall GHG impact. CEQA Guidelines generally address GHG emissions as a cumulative impact due to the global nature of climate change (Public Resources Code, § 21083, subd. (b)(2)). As the California Supreme Court explained, "because of the global scale of climate change, any one project's contribution is unlikely to be significant by itself." (Cleveland National Forest Foundation v. San Diego Assn. of Governments [2017] 3 Cal.5th 497, 512.)

⁶ RK Engineering Group, Inc. Garden Grove Hotel Site B-2, Air Quality and Greenhouse Gas Impact Study, City of Garden Grove. April 26, 2022.

Also, refer to response to comment 6-68 for additional hauling discussion.

Response to Comment 6-35

The alleged comment that the Draft IS/MND understates project GHG impacts ignores the analysis in the Draft IS/MND and is not based on facts. The Draft IS/MND includes a comprehensive GHG technical study and utilizes statewide emissions modeling standards and methodology for the quantification and reporting of emissions. All PDFs will be enforced through the proposed project's conditions of approval and all mitigation measures will be enforced through the Mitigation Monitoring and Reporting Program. The GHG reduction achieved through the required mitigation is substantial and is consistent with the significance thresholds established by SCAQMD. Therefore, the conclusions related to GHG in the Draft IS/MND are supported by substantial evidence.

Response to Comment 6-36

In Section 4.3 (Hazards and Hazardous Materials) of the Draft IS/MND, although the first two questions were addressed together, the discussion fully addresses both questions and does not solely focus on the construction materials to be stored on site. For example, the type and quantity of hazardous materials anticipated to be transported, used, and disposed of during construction and operation are discussed in this section (e.g., limited quantities of non-acutely hazardous materials such as paints, solvents, cleaning agents, oils, grease, and fuel for construction equipment, and limited quantities of non-acutely hazardous materials such as paints, cleaning agents, and batteries, as well as small quantities of common household hazardous wastes during operation and maintenance activities). It is also noted that the proposed project would be required to comply with all federal, state, and local requirements related to the transport, storage, use, and disposal of such materials and thus would not create a significant hazard to the public or the environment through the routine transport, use, or disposal of such materials. Furthermore, as discussed in this section, it is noted that the proposed project would not require the use or storage of significant quantities of hazardous materials that could become a significant hazard to the public or the environment through an accidental release or upset condition. Though it is not reasonably foreseeable that significant quantities of hazardous materials would be used or stored on site, to the extent any such use or storage would occur, such use and storage would be conducted in compliance with all applicable federal, state, and local requirements.

In addition, based on a review of the prior uses at the project site, a comprehensive search of the project site and vicinity for underground storage tanks, leaks, or hazardous spills (discussed in greater detail in response to comment 6-37, below), and review of prior demolition activities' compliance with SCAQMD Rule 1403 and California Health & Safety Code requirements (also discussed in greater detail in response to comment 6-37, below), the project site is not listed on a hazardous site and no hazardous materials or contaminants are expected to occur on the project site. However, per Condition of Approval No. 10 for the proposed project, a geotechnical study is required, which shall analyze sub-surface issues related to the past uses of the site; any soil or groundwater contamination discovered shall be remediated prior to the issuance of a building permit per the requirements of the Orange County Health Department and the mitigation requirements of governing regulatory requirements. Accordingly, construction and operation activities will not present a hazardous material risk.

Response to Comment 6-37

The preparation of a Phase I Environmental Site Assessment (ESA) is not required by CEQA. A Phase I ESA is a real estate document. However, a comprehensive search of the project site and vicinity for underground storage tanks, leaks, or hazardous spills was conducted for the project site, as explained in Section 4.3, Hazards and Hazardous Materials, of the Draft IS/MND. Specifically, the search included review of the California Department of Toxic Substances Control (DTSC)'s EnviroStor database, which includes the following hazardous waste facilities and cleanup sites: Permitted Treatment, Storage, and Disposal Facilities (TSDFs); Federal Superfund sites (National Priorities List [NPL]); State Response sites, including military facilities and State Superfund sites; Voluntary Cleanup sites; school sites; and Corrective Action sites. This search also included review of the State Water Resources Control Board (SWRCB)'s GeoTracker database, which provides access to statewide

environmental data and tracks regulatory data for the following types of sites: (1) Leaking Underground Storage Tanks (LUST) cleanup sites; (2) Cleanup Program Sites (CPS, also known as Site Cleanups [SC] and formerly known as Spills, Leaks, Investigations, and Cleanups [SLIC] sites); (3) military sites (including military UST sites, military privatized sites, and military cleanup sites [formerly known as Department of Defense (DOD) non-UST]); (4) Land Disposal sites (Landfills, Surface Impoundments, Waste Piles, Land Treatment Units, Mining Units); (5) Permitted Underground Storage Tank (UST) facilities; (6) Composting Operations; (7) Waste Discharge Requirement (WDR) sites; (8) Confined Animal / Concentrated Animal Feed Lots facilities; (9) Irrigated Lands Regulatory Program (ILRP) sites; and (10) Oil and Gas Monitoring sites (Aquifer Exemption, Produced Water Ponds, Underground Injection Control, Well Stimulation Projects). In addition, this search included a review of the California Environmental Protection Agency (CalEPA)'s Cortese List Data Resources, which include the following: a list of solid waste disposal sites identified by SWRCB with waste constituents above hazardous waste levels outside the waste management unit; list of active Cease and Desist Orders and Cleanup and Abatement Orders from the SWRCB; list of hazardous waste facilities subject to corrective action pursuant to Section 25187.5 of the Health and Safety Code identified by DTSC; list of hazardous waste and substances sites from DTSC; and list of LUST sites from SWRCB. No records were found identifying historic or current underground storage tanks, leaks, or hazardous spills on the project site. The nearest LUST site per the search results was located approximately 916 feet south of the project site, which given the distance and current activities (i.e., groundwater well monitoring activities), would not present a hazardous condition to the project site nor would the proposed activities impact this LUST site. In response to footnote 6 on page 15 of the comment letter, it should be noted that the active hazardous site at 13020 Chapman Avenue in Garden Grove noted by the commenter is more than a block away from the project site (it is over half a mile to the northwest of the project site) and would not present a hazardous condition to the project site nor would the proposed activities impact this hazardous site.

The prior uses at the project site over the years was discussed in Cultural Resources Section of the Draft IS/MND, which helped inform the hazards and hazardous materials background research efforts. Specifically, the prior uses were discussed as follows: "The project site is located within a heavily disturbed urban area. Prior to World War II, the project site was utilized for agricultural purposes, with a grove of trees present on most of the property and one building that was present in the southeast corner for a short period of time. During the housing boom of the 1950s, the project site was developed with a residential tract and commercial buildings which were established by 1963. A review of construction manuals from the period suggests that it is adequate to assume that up to five feet of the soil was disturbed by construction, grading, and the placement of utilities for a 1960s-era tract development. All buildings in the project site were removed between 2004 and 2013, leaving only the cul-de-sac and alley between the dirt lots. The process appears to have consisted of removing building foundations and prior utilities and grading the surface." (Draft IS/MND, p. 38)

Regarding the demolition of the buildings on project site that occurred between 2004 and 2013, the demolition activities were subject to the SCAQMD's Rule 1403, which establishes survey requirements, notification, and work practice requirements to prevent asbestos emissions from emanating during building renovation and demolition activities. Compliance with SCAQMD Rule 1403 for these demolition activities are documented on the building permits issued by the City, which are on file with the City's Building Services Division. The demolition activities were also subject to the California Health & Safety Codes 6717 to 6717 for lead-related activities in construction work. As such, that the City is not required to assume that any asbestos and lead that were removed from the demolished buildings are still present in the soil on the project site. However, per Condition of Approval No. 10 for the proposed project, a geotechnical study is required, which shall analyze sub-surface issues related to the past uses of the site; any soil or groundwater contamination discovered shall be remediated prior to the issuance of a building permit per the requirements of the Orange County Health Department and the mitigation requirements of governing regulatory requirements. Thus, per Condition of Approval No. 10, the soil and groundwater will be analyzed for potential contamination and, if confirmed, would

be remediated accordingly prior to the issuance of a building permit for the proposed project, thus ensuring construction and operation activities will not present a hazardous material risk.

Response to Comment 6-38

Comment acknowledged. Refer to responses to comments 6-36 and 6-37.

Response to Comment 6-39

As discussed in Appendix E, Geotechnical Investigation, of the Draft IS/MND, the scope of Geocon's 2018 report was solely "the geotechnical aspects of proposed design and construction." Thus, the note that an evaluation of the potential presence of hazardous or corrosive materials was not part of the scope of services provided by Geocon was simply to acknowledge it was not part of the scope of this specific investigation. However, as noted above in response to comment 6-36 and 6-37, a geotechnical study that will analyze sub-surface issues related to the past issues of the project site, which would include an evaluation for the potential presence of hazardous or corrosive materials in the soil and groundwater, will be required for the proposed project as a condition of approval prior to the issuance of building permits.

Response to Comment 6-40

Comment acknowledged. Refer to responses to comments 6-36, 6-37, and 6-39. The comment does not provide substantial evidence supporting a fair argument.

Response to Comment 6-41

The Preliminary Water Quality Management Plan (pWQMP) complies with the requirements of the local National Pollutant Discharge Elimination System (NPDES) Stormwater Program and with the requirements of the California Environmental Quality Act. The Final WQMP may differ from the pWQMP as a result of final design which has not yet occurred. For the proposed project, the Final WQMP would be amended as appropriate to reflect up-to-date conditions on the project site consistent with the current Orange County Drainage Area Management Plan and the non-point source NPDES Permit for Waste Discharge Requirements for the County of Orange, Orange County Flood Control District and the incorporated Cities of Orange County within the Santa Ana region as applicable at that time.

Response to Comment 6-42

The Draft IS/MND does not solely focus on adjacent buildings' drainage flow in the analysis. Specifically, the analysis presented in Section 4.3, Hydrology and Water Quality, of the Draft IS/MND, as well as the Preliminary Hydrology Report and pWQMP (refer to Appendices F1 and F2 of the Draft IS/MND), address the existing on- and off-site drainage patterns at the project site (pre- and post-development). For example, as discussed in Section 4.3 and Appendices F1 and F2 of the Draft IS/MND, it is noted that the project site consists of 28 percent of impervious area; it also noted that the project site is predominantly flat and drainage surface flows to Thackery Drive, then west onto Twintree Avenue, and south onto Buaro Street where it flows into a curb opening catch basin and enters the public storm drain system. The drainage ultimately flows through city and county owned facilities to Anaheim Bay. There are no streams or rivers on the project site. Also, as discussed in Section 4.3 and Appendices F1 and F2 of the Draft IS/MND, it is noted that off-site existing drainage from the Sheraton Hotel property just north of the project site currently surface flows through a culvert onto Thackery Drive and ultimately leaves the project site flowing west onto Twintree Avenue.

Furthermore, as determined in Section 4.3 and Appendices F1 and F2 of the Draft IS/MND, while impervious surfaces would be increased to 68 percent with implementation of the proposed project, no alteration of a course or stream would occur and the post development drainage would be similar to the pre-development drainage (thus, the proposed project would maintain a similar drainage pattern compared to existing conditions). There is one drainage management area and runoff flows in the southern direction in both the pre- and post-development. All flows beyond the full design capture volume would follow the pre-development

drainage pattern to leave the project site. Specifically, the proposed project would implement the Best Management Practices (BMPs) prescribed in the pWQMP which would ensure no substantial alteration of the existing drainage pattern at the project site occurs. For example, per the pWQMP, bioretention BMPs with no underdrains would be used to treat runoff and site drainage from the proposed project given the soils on the project site have been determined to have adequate infiltration capacity. In particular, runoff from the proposed hotel would be collected using roof downspouts that would either flow directly into the top of the bioretention BMPs or outlet at grade and surface flow to the bioretention BMPs, where it would be filtered, then infiltrated on-site. Retained flows would be treated and metered prior to direction to off-site storm drains and the public storm drain system. In addition, as part of the proposed project, the off-site drainage from the adjacent Sheraton Hotel would be routed to the new drive aisle along the west property line and continue to flow west onto Twintree Avenue to match the existing condition. These flows would not be mixed with the runoff of the proposed project. As such, the proposed project would not substantially increase the rate or amount of surface runoff in a manner that would impede or redirect flood flows. The proposed project would also not substantially increase the rate, amount, or depth of surface runoff in a manner which would result in flooding on- or offsite.

Response to Comment 6-43

As described in response to comment 6-42 above, Section 4.3 and Appendices F1 and F2 of the Draft IS/MND, it is noted that off-site existing drainage from the Sheraton Hotel property just north of the project site currently surface flows through a culvert onto Thackery Drive and ultimately leaves the project site flowing west onto Twintree Avenue. With the vacation of Thackery Drive under the proposed project, the off-site drainage from the adjacent Sheraton Hotel would be routed to the new drive aisle along the west property line; however, from the new drive aisle, it would continue to leave the site flowing west onto Twintree Avenue to match the existing condition. While the post development drainage pattern would not be the same as the existing drainage pattern, it would be similar and this would not be a substantial alteration. As determined in Section 4.3 of the Draft IS/MND, the proposed project would not result in a substantial alteration of the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river or through the addition of impervious surfaces, in a manner which would: result in substantial erosion or siltation on- or off-site; substantially increase the rate, amount, or depth of surface runoff in a manner which would result in flooding on- or offsite; create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff; or, impede or redirect flood flows.

Response to Comment 6-44

Comment acknowledged. Refer to response to comment 6-42 and 6-43.

Response to Comment 6-45

Pursuant to CEQA Guidelines Section 15126.4(a)(1)(A), the “the discussion of mitigation measures shall distinguish between the measures which are proposed by project proponents to be included in the project and other measures proposed by the lead, responsible or trustee agency or other persons which are not included but the lead agency determines could reasonably be expected to reduce adverse impacts if required as conditions of approving the project.” The proposed project is required to implement the measures of the WQMP (pWQMP and final WQMP) as well as the (SWPPP) per regulatory requirements and conditions of approval for the proposed project. Hence, the BMPs identified to be implemented are not deferred mitigation but rather are binding and enforceable requirements pursuant to regulatory requirements (e.g., requirements of NPDES Permit for Waste Discharge Requirements for the County of Orange, Orange County Flood Control District, and incorporated cities of Orange County within the Santa Ana Region; Orange County Drainage Area Management Plan [DAMP] requirements, City of Garden Grove Municipal Code Section 6.40.050, and project conditions of approval nos. 10 and 29, etc.). The WQMP is a binding document that is tied to the property; if there is a change in land ownership, the new owner will bear the responsibility to continue implementing the WQMP per City

requirements, as discussed in the pWQMP in Appendix F2 of the Draft IS/MND. Also refer to response to comment 6-41.

Response to Comment 6-46

Comment acknowledged. Refer to response to comment 6-41 through 6-43, and 6-45.

Additionally, the purpose of the BMPs is to treat the increased runoff from the project site and to ensure that the post development flows exiting the project site do not exceed the pre-development flows exiting the project site. The final WQMP and drainage study will be reviewed and approved by the authority having jurisdiction during the design plan check process to ensure all of these requirements are equally met.

Response to Comment 6-47

Comment acknowledged. Refer to response to comment 6-42 and 6-43.

Response to Comment 6-48

The commenter states that the vacation of a street and alley that traverse the project site is inconsistent with the General Plan's "transportation element", will divide an established community, which currently uses the street and alley to be vacated, and will have a significant effect on traffic and circulation. There is no "transportation element" in the General Plan, and the street proposed to be vacated, Thackery Drive, is not mentioned in the Circulation Element of the General Plan. Under the City's Circulation Element, local residential streets such as Thackery Drive serve adjacent land uses only, allowing access to residential driveways and providing on-street parking for neighborhoods. The purpose of the proposed vacation of Thackery Drive and the public alley is to facilitate the development of the proposed project. Once vacated, Thackery Drive and the public alley will be incorporated into the proposed project's developable land area and will only serve the properties that encompasses the project site. Thackery Drive and the public alley are not needed to support the circulation needs of the abutting properties, and the vacation would not have a detrimental impact on the circulation system. Thackery Drive and the public alley, along with the rest of the project site, are currently secured with a perimeter fence and have no public access. As such, the vacation of Thackery Drive and the public alley would not divide the established community or impact existing traffic or circulation. The proposed project would have public street access from Harbor Boulevard and Twintree Avenue.

Response to Comment 6-49

Both pages 3 and 65 of the Draft IS/MND state that R-1-7 is *Single-Family Residential Zone*. The entire project site has a General Plan land use designation of International West Mixed Use (IW). The IW designation is intended to provide for a mix of uses, including resort, entertainment, retail, hotel, and some higher density residential that are appropriate for a major entertainment and tourism destination. To facilitate the proposed hotel resort, the proposed project includes zone change of the project site from Planned Unit Development (PUD-141-01) and Single-Family Residential Zone (R-1-7) to a sub-area PUD, PUD-141-01(A).

Response to Comment 6-50

To facilitate the proposed hotel resort, the proposed project includes zone change of the project site from PUD-141-01 and R-1-7 to a sub-area PUD, PUD-141-01(A). This proposed PUD amendment would place the entire project site parcels into a PUD sub-area with specific development standards established to facilitate the development of the proposed hotel resort that will regulate the number of hotel rooms, building height, building setbacks, landscaping, permitted uses, required parking, site circulation and access, signage, utilities, storage and refuse collection.

Response to Comment 6-51

The proposed zone change from PUD-141-01 and R-1-7 to a sub-area PUD, PUD-141-01(A) are mentioned throughout the Draft IS/MND: Section 3.4, Discretionary Actions and Approvals (Draft IS/MND, p. 14); Section I. Aesthetics c) (Draft IS/MND, p. 20); and Section XI. Land Use and Planning a) and b) (Draft IS/MND, pp. 62-63).

Response to Comment 6-52

The current zoning of the project site is outdated, is partially inconsistent with the General Plan, and would not accommodate the proposed project. The City has not adopted new generally applicable zoning and development standards to implement the IW designation, and the General Plan contemplates and provides for the establishment of such standards through the PUD process. To facilitate the development of the proposed project, and to continue to further the goals of the City's General Plan to expand and enhance the City's resort area, establishment of a sub-area PUD, PUD-141-01(A), on the project site is necessary. This PUD sub-area will establish specific development standards to the project site that will regulate the number of hotel rooms, building height, building setbacks, landscaping, permitted uses, required parking, site circulation and access, and signage.

The project site is located in the City's Grove District Anaheim Resort, which is designated as a resort destination that encourages hotels, restaurants, and entertainment uses. The resort area is developed with existing hotels, restaurants, and retail uses. As such, the proposed project would be compatible with the existing hotel developments in the area, and would expand and enhance the hospitality services currently available in the resort district.

The project site directly abuts the Sheraton Hotel to the north, and residential uses to the northwest and west. The proposed project would incorporate specific mitigation measures and PDFs to minimize impacts to the adjacent residential uses from noise generated from the hotel, including from the parking structure and the pool deck. Implementation of the mitigation measures and PDFs would ensure that the adjacent residential uses are adequately screened and buffered from the proposed hotel site.

The Draft IS/MND analyzes the potential impacts of the proposed project as a whole. The proposed project is consistent with the goals and policies of the General Plan Land Use Element, the Community Design Element, and the Economic Development Element, including:

- Policy LU-1.4 to encourage a wide variety of retail and commercial uses, such as restaurant and cultural arts/entertainment, in appropriate locations and Policy LU-6.2 to encourage a mix of retail and commercial services along major corridors and in centers to meet the community needs.
- Policy LU-1.5 to encourage active and inviting pedestrian-friendly street environments that include a variety of uses within commercial and mixed-use areas.
- Goal LU-4 that seeks to develop uses that are compatible with one another and Policy LU 4.5 that requires that commercial developments adjoining residential uses be adequately screened and buffered from residential areas.
- Goal LU-9 Creation of tourism and entertainment-related destination area that will benefit all residents, businesses, and visitors and Policy LU-9.6 Locate tourist or entertainment related uses with adequate access to freeway or major arterials to encourage both local and regional patronage.
- Policy CD-7.1 Encourage future development and redevelopment projects to reinforce district scale, identity, and urban form.
- Policy ED-1.1 Continue to encourage the development and expansion of hotel facilities in key corridors of the City (i.e., Harbor Boulevard).

Response to Comment 6-53

Based on the response to comment 6-49 through 6-52, the proposed project would result in less than significant impacts related to land use. The comment does not provide substantial evidence supporting a fair argument.

Response to Comment 6-54

The Draft IS/MND does not assume that simply because the proposed project will comply with the noise regulations that it is exempt from any additional construction restrictions. The Draft IS/MND includes an in-depth technical Noise Study⁷ that not only analyzes the proposed project's compliance with the City of Garden Grove Municipal Code requirements, but also utilizes thresholds of significance established by the Federal Transit Administration (FTA) for assessing construction noise impacts⁸ (refer to Appendix H of the Draft IS/MND). The Noise Study includes detailed noise modeling, utilizing the FHWA Roadway Construction Noise Model (RCNM), to demonstrate noise level impacts during construction (see Appendix D of the Noise Study). The Draft IS/MND finds that a less than significant impact would occur with mitigation measures incorporated. The commenter has not provided any facts to dispute the findings of technical study.

Response to Comment 6-55

The Draft IS/MND shows that construction noise levels may exceed 80 dBA and would require mitigation (including masonry block walls and temporary construction noise barriers) to reduce impacts to a level of insignificance. However, the commenter is incorrect in stating that the Draft IS/MND does not identify the proximity to sensitive receptors. Section 4.3 (Air Quality) of the Draft IS/MND (pp. 28-30) and the Noise Study identifies the proximity of all surrounding sensitive receptors (pp. 1-1 and 1-2) (refer to Appendix H of the Draft IS/MND). Furthermore, the Noise Study analyzes noise impacts at the surrounding communities and discloses the results in Table 17 of the Noise Study (Appendix H of the Draft IS/MND). The commenter then suggests that moveable barriers would be more effective based on an obscure excerpt from an unrelated project. However, for the proposed project, the combination of the permanent block walls and the temporary noise barriers effectively enclose the project site from all surrounding noise sensitive receptors. The permanent block wall will shield sensitive receptors to the west of the project site, and the temporary barriers, which will be installed in fixed locations along the north, south and east property lines of the project site throughout the duration of construction, will shield sensitive receptors located to the north and south of the project site. Hence, additional moveable barriers would not be necessary, as all receptors will be shielded throughout the entirety of construction with the installation of the block walls and temporary noise barriers regardless of where onsite equipment and activity is located.

Response to Comment 6-56

The commenter suggests that the proposed noise barrier shielding would not be effective against construction activity occurring above ground level during the construction of the building. It is acknowledged that as the height of noise increases, the effectiveness of ground level noise barriers decreases. However, the noise impact analysis shows that the worst-case construction noise generating activities would occur at ground level. This would include the operation of heavy equipment such as graders, excavators, tractors, cranes, etc. It is from these noise sources that the noise impact has been identified, and which the barrier walls will mitigate. Equipment that may operate above ground level, such as welders, are shown to be below the threshold of significance and would not need mitigation. As shown in Table 17 of the Noise Study, a welder would generate up to 64.0 dBA at 100 feet (unmitigated), which is significantly below the 80 dBA threshold of significance established by the FTA (Appendix H of the Draft IS/MND).

Response to Comment 6-57

The commenter is incorrect in stating that the Draft IS/MND does not show the amount of noise reduction achieved by the barrier shielding during construction. Section 4.3 (Noise) of the Draft IS/MND (p. 70) and Table

⁷ RK Engineering Group, Inc. Garden Grove Hotel Site B-2 Noise Impact Study. May 16, 2022.

⁸ Federal Transit Administration. Transit Noise and Vibration Impact Assessment Manual. September 2018.

17 of Noise Study (Appendix H of the Draft IS/MND) show that the required noise barrier shielding will reduce worst case noise levels to 75.9 dBA, which is below the significance threshold. The FHWA noise barrier reduction calculations are shown in Appendix D of the Noise Study (Appendix H of the Draft IS/MND).

Response to Comment 6-58

The commenter arbitrarily states that the 80 dBA 8-hour threshold of significance is very high, and questions whether it is applicable on days when construction were to occur longer than 8-hours but does not provide facts to support these claims. The Draft IS/MND utilizes significance thresholds established by the FTA, which recommends a criterion for noise assessment to help prevent adverse community reaction.⁹ The FTA threshold is widely cited as an industry standard and commonly used for CEQA analysis purposes. The 80 dB/8-hour threshold is a time-weighted average of the worst-case 8 hours of construction noise per day. Construction may occur longer than 8 hours a day, but it is limited to an 80 dBA equivalent noise level for 8 consecutive hours. Hence, the community would be protected against noise impacts throughout the entirety of the day while construction activities would occur.

Response to Comment 6-59

The commenter suggests that the City of Garden Grove has set high thresholds for operational noise impacts but does not provide any support to this claim. The noise limits set in the City's Municipal Code have been established to protect public health and prohibit nuisances from any loud, unnecessary, or unusual noise that disturbs the peace or quiet of any neighborhood, or that causes discomfort or annoyance to any person of normal sensitiveness. The City's Municipal Code noise standards are based on well-established thresholds from the County of Orange Noise Control Ordinance and have been widely adopted by other local agencies in the area. Additionally, the 3 dBA change threshold is also a widely cited threshold of significance under CEQA and is considered an industry standard. It is based on the FHWA Highway Traffic Noise Analysis and Abatement Policy and Guidance which found that a change in noise level of 3 dBA is considered barely perceptible.

Response to Comment 6-60

The commenter is incorrect in stating that the Draft IS/MND erroneously assumes that unless the project doubles the amount of traffic it will not cause more than a 3 dBA noise increase. The scientific explanation for this phenomenon is described in Sections 2.4 and 2.5 of the Noise Study (Appendix H of the Draft IS/MND) and referenced from the Caltrans Technical Noise Supplement to the Traffic Noise Analysis Protocol, September 2013. Decibels are measured on a logarithmic scale, and it takes a doubling of sound energy to produce a 3 dB increase. Hence, doubling of traffic volume along a roadway segment would equate to a doubling of sound energy and result in an approximate 3 dBA change in noise.

Response to Comment 6-61

The commenter appears to be confusing two separate issues here. The Draft IS/MND and Noise Study discuss both the proposed project's impact to the surrounding community and impacts from the built environment to the proposed project. The City's noise/land use compatibility guidelines and the future baseline noise environment are discussed within the context of evaluating whether the proposed project's building structure will meet the required interior noise standards. To the extent the latter analysis involves the environment's impact on the proposed project, which is not a CEQA issue, the analysis is provided for informational purposes.

Response to Comment 6-62

Please refer to response to comment 6-54 through 6-61 for detailed explanations.

⁹ Federal Transit Administration. Transit Noise and Vibration Impact Assessment Manual. September 2018. Page 179, "Assess Construction Noise Impact".

Response to Comment 6-63

The commenter inaccurately alleges that the analysis of transportation impacts is flawed because it does not address the issue of vacating a public street and alley. The analysis of transportation impacts has been prepared pursuant to the requirements of the City of Garden Grove Traffic Impact Analysis Guidelines for Vehicle Miles Traveled and Level of Service Assessment, May 2020 (Guidelines)¹⁰. The Guidelines do not require the analysis of public right of way vacation as part of the determination of transportation impacts under CEQA. However, for informational purposes, Thackery Drive was a local road, not listed on the City's Master Plan of Streets and Highways. In the baseline condition, it is fenced off and not open to the public. Hence, its vacation would not impact the City's broader street network or circulation policy.

Response to Comment 6-64

The Draft IS/MND follows the City's Guidelines⁸ for the evaluation of vehicle miles traveled (VMT). The proposed project is shown to result in a less than significant impact to VMT due to its location along a high-quality transit corridor. A 'high-quality transit corridor' means a corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours. CEQA Guidelines Section 15064.3(b)(1) state that projects within one-half mile of either an existing major transit stop or a stop along an existing high quality transit corridor should be presumed to cause a less than significant transportation impact. Harbor Boulevard qualifies as a high-quality transit corridor and the proposed project is located within ½ mile of a bus stop with 15-minute headways or less. Hence, the finding of a less than significant impact has been based on substantial evidence. Furthermore, the commenter provides no evidence to show how the use of Uber, Lyft and other means of transportation would double the number of trips to/from the project site. The Traffic Impact Study (Appendix I of the Draft IS/MND) estimated trip generation for the proposed project by utilizing the latest edition of the industry-wide standard Institute of Transportation Engineers (ITE) Trip Generation Manual. Trip generation rates from ITE are established based on nationwide surveys and empirical data of vehicle trips generated by various land uses, including Hotels. The ITE trip generation rates include trips from Uber, Lyft and other ride sharing services as part of the rate. Hence, the use of these services is accounted for in the Draft IS/MND and the commenter is incorrect to suggest that they would double the number of traffic traveling to/from the project site.

Response to Comment 6-65

The commenter inaccurately claims that the proposed project will result in impacts related to increased traffic congestion and reduced emergency access. An in-depth Traffic Impact Study¹¹ was prepared that analyzed project access, circulation and area-wide traffic congestion (refer to Appendix I of the Draft IS/MND). The findings of the analysis show that all project related traffic congestion will be addressed through various intersection improvements, including the installation of a new traffic signal at the main project access on Harbor Boulevard (shared access with Sheraton Hotel). The Traffic Study shows that this intersection will operate at an acceptable level of service with the new signal and provide adequate access for both the proposed project and the existing Sheraton Hotel. As stated previously, congestion is no longer a CEQA issue.

Additionally, as part of the conditions of approval of the proposed project, the site plan will be reviewed and approved by the Garden Grove Fire Department to ensure adequate emergency access is provided and all drive aisle and driveway standards are met, prior to obtaining building permits.

Response to Comment 6-66

All mitigation measures in the Draft IS/MND will be part of Mitigation Monitoring and Reporting Program which will be enforced by the City. It will be the City's responsibility to monitor and verify that all mitigation measures

¹⁰ City of Garden Grove. City of Garden Grove Traffic Impact Analysis Guidelines for Vehicle Miles Traveled and Level of Service Assessment, May 2020 (Guidelines).

¹¹ RK Engineering Group, Inc. Site "B-2" Hotel Traffic Impact Study, City of Garden Grove, CA. July 1, 2022.

are implemented properly and will be documented in the Mitigation Monitoring and Reporting Program. Please see prior responses regarding sufficiency of the project's mitigation measures.

Response to Comment 6-67

The Notice of Intent (NOI) for the Draft IS/MND review period was sent to the Superintendent of the Garden Grove Unified School District. Along with the NOI, the Superintendent also received a USB containing the Draft IS/MND. It should be noted that the three schools identified within the 0.25 miles of the project site are part of the Garden Grove Unified School District. The City has not received any comments or concerns regarding the proposed project from the Garden Grove Unified School District.

Response to Comment 6-68

Refer to response to comment 6-37.

Hauling trips associated with construction of the proposed project were analyzed as part of the Traffic Impact Study (refer to Appendix I of the Draft IS/MND). Table 10-1 of the Traffic Impact Study shows the daily construction trip generation for each of the construction phases. The total daily trips for each construction phase consist of worker trips, vendor trips and hauling trips (whichever apply), with the appropriate passenger car equivalent (PCE) factors applied. Table 10-2 shows the peak hour construction trip generation for each of the construction phases. The maximum construction trip generation occurs during the grading phase, when the proposed project is forecast to generate approximately 813 PCE-adjusted daily construction trips which include approximately 203 PCE-adjusted AM peak hour construction trips and approximately 203 PCE-adjusted PM peak hour construction trips.

Though congestion is no longer a CEQA issue, as concluded in the Traffic Impact Study, the proposed project's short-term construction traffic is forecast to not adversely affect the level of service of the study intersections (20 intersections).

The proposed project anticipates requiring a total export of approximately 60,720 cubic yards of earthwork material for grading purposes (refer to Appendix B of the Draft IS/MND). The analysis in the Draft IS/MND does take into account activities associated with site preparation (hauling, export, etc.) identified in the geotechnical investigation. These activities were included in the air quality/GHG emissions and traffic modeling, refer to Appendices B and I of the Draft IS/MND.

Response to Comment 6-69

Refer to response to comment 6-67.

Response to Comment 6-70

Comment acknowledged. Since this comment does not raise a specific concern or issue regarding the adequacy of the environmental analysis contained in the Draft IS/MND, no further response to this comment is required. Also, refer to response to comment 6-67.

Response to Comment 6-71

The Draft IS/MND accounts for the three schools within 0.25 miles from the project site. The Walton Intermediate School is located approximately 0.2 mile northwest of the project site; Warren Elementary School is located approximately 0.25 mile northeast of the project site; and Violette Elementary School is located approximately 0.25 mile southwest of the project site (Google Earth Pro, 2022). While the proposed project would use, store, and dispose limited quantities of hazardous materials during construction and operation, such as paints, solvents, cleaning agents, etc., such materials would be used, stored, and disposed in compliance with all federal, state, and local requirements. Therefore, hazardous material impact would be less than significant. (Draft IS/MND, p. 53).

Also, as determined in Section 4.3 (Air Quality) of the Draft IS/MND, the proposed project would result in a less than significant impact related to exposure of sensitive receptors (including children, the elderly, the acutely and chronically ill, and those with cardio-respiratory diseases). Sensitive receptors would not be exposed to substantial pollutant concentrations during construction or operation of the proposed project. In addition, the proposed project would be in compliance with applicable rules and regulations such as SCAQMD Rules 402 and 403. (Draft IS/MND, pp. 28-31).

The Draft IS/MND provides substantial evidence that the proposed project will not result in any significant impacts related to emitting hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of a school.

Response to Comment 6-72

Comment acknowledged. Refer to response to comment 6-68 through 6-71.

Response to Comment 6-73

Comment acknowledged. Refer to response to comment 6-74 and 6-75.

Response to Comment 6-74

The commenter is incorrect in stating that the Draft IS/MND is silent regarding the amount of export/import fill and number of trucks associated with this activity. The proposed project anticipates requiring a total export of approximately 60,720 cubic yards of earthwork material for grading purposes (refer to Appendix B of the Draft IS/MND). Hauling trips associated with construction of the proposed project were analyzed as part of the Traffic Impact Study (refer to Appendix I of the Draft IS/MND). Table 10-1 of the Traffic Impact Study shows the daily construction trip generation for each of the construction phases. The total daily trips for each construction phase consist of worker trips, vendor trips and hauling trips (whichever apply), with the appropriate PCE factors applied. Table 10-2 shows the peak hour construction trip generation for each of the construction phases. The maximum construction trip generation occurs during the grading phase, when the proposed project is forecast to generate approximately 813 PCE-adjusted daily construction trips which include approximately 203 PCE-adjusted AM peak hour construction trips and approximately 203 PCE-adjusted PM peak hour construction trips. As concluded in the Traffic Impact Study, the proposed project's short-term construction traffic is forecast to not adversely affect the level of service of the study intersections (20 intersections). It is anticipated the haul route would consist of several of these intersections, especially Harbor Boulevard.

Also, as determined in Section 4.3 (Air Quality) of the Draft IS/MND, the proposed project would result in a less than significant impact related to exposure of sensitive receptors (including children, the elderly, the acutely and chronically ill, and those with cardio-respiratory diseases). Sensitive receptors would not be exposed to substantial pollutant concentrations during construction or operation of the proposed project. In addition, the proposed project would be in compliance with applicable rules and regulations such as SCAQMD Rules 402 and 403. (Draft IS/MND, pp. 28-31).

Response to Comment 6-75

Refer to response to comment 6-74. The Draft IS/MND analyzed activities associated with the hauling of export/fill. The analysis in the Draft IS/MND takes into account activities associated with all phases of the proposed project, construction (site preparation, hauling, export, etc.) and operations. These activities were included in the air quality/GHG emissions and traffic modeling, refer to Appendices B and I of the Draft IS/MND. Therefore, the commenter is incorrect and the Draft IS/MND does not violate CEQA's piecemealing requirement. The comment does not provide substantial evidence supporting a fair argument.

Response to Comment 6-76

Comment acknowledged. Refer to response to comment 6-67 and 6-75.

Response to Comment 6-77

The Draft IS/MND appropriately addresses the environmental parameters under CEQA and the analysis concludes that all potential impacts would be considered less than significant. Significant impacts that were identified have been reduced to a less than significant level with the incorporation of mitigation measures. There is no omitted analysis that would trigger the need for recirculation of the Draft IS/MND or the need to prepare an EIR as the commenter suggests. It should be noted that an Errata to the Draft IS/MND will be prepared to clarify some of the Draft IS/MND content but none of the revisions would trigger recirculation. Therefore, the analysis and conclusions in the Draft IS/MND are adequate and would not require the recirculation.

Response to Comment 6-78

Comment acknowledged. The commenter states that the City is attempting to vacate two streets all in one action/hearing of approving the proposed project and without following the procedures of the Streets and Highways Code. The commenter is mistaken. The City intends to follow all legal and procedural requirements for the proposed street vacation, and the land use approvals for the proposed project are proposed to be contingent upon approval of said street vacation. A General Plan amendment is not needed or proposed. The Planning Commission's action of July 7, 2022, regarding the street vacation was to report to the City Council on conformance of the proposed vacation with the General Plan pursuant to Government Code Section 65402, not to consider or act on the street vacation itself. The City Council will separately consider and act on the street vacation proposal in accordance with applicable state law. The remainder of the comment does not raise a specific concern or issue regarding the adequacy of the environmental analysis contained in the Draft IS/MND, no further response to this comment is required.

Response to Comment 6-79

Comment acknowledged. The commenter alleges that the agenda descriptions for the July 7, 2022 Planning Commission meeting did not satisfy the Brown Act. The City disagrees. Regardless, since this comment does not raise a specific concern or issue regarding the adequacy of the environmental analysis contained in the Draft IS/MND, no further response to this comment is required.

Response to Comment 6-80

Comment acknowledged. Refer to response to comment 6-48 for street vacancy discussion and response to comment 6-52 for GP consistency discussion. The sale of alcohol is not inconsistent with the General Plan and is not a topic under CEQA that would need to be addressed in the Draft IS/MND.

Response to Comment 6-81

Comment acknowledged. Refer to response to comment 6-1 through 6-80.

Exhibit A

The commenter includes a Trial Court Ruling in *Aids Healthcare Foundation v. City of Los Angeles*, Case Number 19STCP05445, April 5, 2021, as an attachment to their comment letter. This comment is noted for the record and no further response to this comment is required. Exhibit A is included as Attachment B of this Final IS/MND.

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July 7, 2022

VIA EMAIL:

Planning Commission (public-comment@ggcity.org)
Maria Parra, Senior Planner (mariap@ggcity.org)
City of Garden Grove

**RE: Item C.2, Planning Commission Hearing Scheduled July 7, 2022;
Nickelodeon Hotel Project (12241 Harbor Blvd., Garden Grove, CA 92840);
Project Approvals PUD-141-01, SP-107-2022 & IS/MND (SCH No. 2022060174)**

Dear Planning Commission and Ms. Parra:

7-1

On behalf of UNITE HERE Local 11 (“**Local 11**”), this office respectfully provides the following comments¹ to the City of Garden Grove (“**City**”) with regard to the above-referenced item² involving the 500-room, 23-story hotel with 600-seat Nick Studio theater (“**Project**”) on a 3.72-acre site located at the northwest corner of Harbor Boulevard and Twintree Avenue (“**Site**”) proposed by Kam Sang Company (“**Applicant**”). Pursuant to the Gardena Municipal Code (“**GMC**” or “**Code**”), Applicant seeks a variety of land use approvals (e.g., Zone Change to Planned Unit Development No. PUD-141-01(A), Site Plan No. SP-107-2022, alcohol Conditional Use Permit, Development Agreement, etc.) (collectively “**Entitlements**”). Additionally, for the purpose of review under the California Environmental Quality Act (“**CEQA**”),³ the City is considering the adoption of the Mitigated Negative Declaration and associated approvals (“**MND**”).^{4, 5}

7-2

The MND fails to adequately analyze the Project’s impact on greenhouse gas (“**GHG**”) emissions and vehicle miles traveled (“**VMT**”) and, thus, fails to incorporate sufficient mitigation. Failure to do so infects not only the City’s CEQA findings but also the Code-required findings necessary to grant the Entitlements. There is a fair argument of CEQA impacts. This Project is expected to generate over 3 million annual VMTs, which is far too big for a MND. An Environmental Impact Report (“**EIR**”) should be prepared. Until the issues discussed herein are resolved, Local 11 respectfully urges the City to stay action on the Entitlements and MND (collectively “**Project Approvals**”).

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¹ Herein, page citations are either the stated pagination (i.e., “p. #”) or PDF-page location (i.e., “PDF p. #”).

² City (7/7/22) Planning Commission Staff Report (“**Staff Report**”), PDF p. 72 (start of Item C.2), <https://ggcity.org/sites/default/files/commissions/planning-commission/a07072022.PDF>.

³ Including “**CEQA Guidelines**” codified at 14 Cal. Code Regs. § 15000 et seq.

⁴ City (Jun. 2022) Draft Initial Study/MND Site B-2, https://ggcity.org/sites/default/files/2022-06/Site%20B2%20Hotel%20Project%20Draft%20Initial%20Study_Mitigated%20Negative%20Declaration.pdf.

⁵ Inclusive of all appendices (collectively “**APP**” or individually “**APP-##**”) compiled in the 1,364-page document available online. (See City [Jun. 2022] Technical Appendices [APP-A through APP-J], <https://ggcity.org/sites/default/files/2022-06/Site%20B2%20Hotel%20Project%20Technical%20Studies.pdf>).



I. STANDING

7-3

Local 11 represents more than 25,000 workers employed in hotels, restaurants, airports, sports arenas, and convention centers throughout Southern California and Phoenix—including roughly 400 members who live and/or work in the City. The union has a First Amendment right to petition public officials in connection with matters of public concern, including compliance with applicable zoning rules and CEQA, just as developers, other community organizations, and individual residents do. Protecting its members' interest in the environment, including advocating for the environmental sustainability of development projects and ensuring the availability of housing and hotels (in compliance with state and local rules), is part of Local 11's core function. Recognizing unions' interest and union members' interest in these issues, California courts have consistently upheld unions' standing to litigate land use and environmental claims. (See *Bakersfield Citizens v. Bakersfield* (2004) 124 Cal.App.4th 1184, 1198.) Furthermore, Local 11 has public interest standing to challenge the Project Approvals given the City's public duty to comply with applicable zoning and CEQA laws, which Local 11 seeks to enforce. (See e.g., *Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899, 914-916, n6; *La Mirada Avenue Neighborhood Assn. of Hollywood v. City of Los Angeles* (2018) 22 Cal.App.5th 1149, 1158-1159; *Weiss v. City of Los Angeles* (2016) 2 Cal.App.5th 194, 205-206; *Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 166, 169-170.)

II. SPECIFIC DEFICIENCIES WITH CEQA AND MANDATORY PROJECT FINDINGS

7-4

For background, CEQA has two primary purposes; to inform decision makers and the public about the potential, significant environmental effects of a project and reduce environmental damage by requiring implementation of environmentally superior alternatives and all feasible mitigation measures. (See CEQA Guidelines § 15002(a).) Because a more comprehensive EIR was not prepared, the Project is subject to the less deferential 'fair argument' standard, which requires a lead agency to prepare an EIR whenever substantial evidence in the record supports a fair argument that a project may have a significant effect on the environment. (See e.g., Pub. Res. Code §§ 21100, 21151; *Laurel Heights Improvement Ass'n v. Regents of the Univ. of Cal.* (1993) 6 Cal.4th 1112, 1123; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75.) 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.*, supra, 13 Cal.3d at 83 n. 16.) This is a "low threshold" requiring the preparation of an EIR and preference for resolving doubts in favor of environmental review, even if the overall effect of the project is beneficial. (*Meiia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 332; see also CEQA Guidelines § 15063(b)(1).) "[T]he existence of contrary evidence does not excuse a lead agency from its duty to prepare an EIR." (*Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 931; see also *Friends of "B" Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 1002; *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1318 ["decision not to require an EIR can be upheld only when there is no credible evidence to the contrary."].)

Hence, an MND may be used only where there is "clearly no significant effect on the environment would occur, and [] there is no substantial evidence in light of the whole record before the public agency that the project, as revised, may have a significant impact on the environment." (Pub. Res. Code § 21064.5 (emphasis added); see also CEQA Guidelines §§ 15070(b), 15369.5.) Substantial evidence includes facts, a reasonable assumption predicated upon fact, or expert opinion supported by fact; not argument, speculation, unsubstantiated opinion or narrative, clearly inaccurate or erroneous evidence, or evidence of social or economic impacts that do not contribute to, or are not caused by, physical impacts on the environment. (See e.g., Pub. Res. Code §§ 21080(e),



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21082.2(c); CEQA Guidelines §§ 15064(f)(5), 15384.) Courts will not blindly trust bare conclusions, bald assertions, and conclusory comments without the “disclosure of the ‘analytic route the . . . agency traveled from evidence to action.’” (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 404 405 [quoting *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515].)

Here, as discussed below, there is substantial evidence of a fair argument that the Project’s GHG and VMT impacts are significant—thus requiring the City to prepare an EIR.

A. MND’S GHG ANALYSIS IS FUNDAMENTALLY FLAWED AND THERE IS A FAIR ARGUMENT OF SIGNIFICANT GHG IMPACTS

7-5

The California Supreme Court demands a robust GHG analysis to assess a project’s impact on climate change. Lead agencies must provide “the contours of their logical argument,” leaving no “analytical gaps” in their analysis, and supporting determinations “through substantial evidence and reasoned explanation.” (*Center for Biological Diversity v. Cal. Dept. of Fish and Wildlife* (“*Newhall Ranch*”) (2015) 62 Cal.4th 204, 227; see also *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (“*Cleveland II*”) (2017) 3 Cal.5th 497, 504, 519 [analysis must be “based to the extent possible on scientific and factual data . . . stay[ing] in step with evolving scientific knowledge and state regulatory schemes.” (Quoting CEQA Guidelines § 15064(b)).]

7-6

Here, the MND claims the Project has no GHG impacts because it would comply with the multi-tiered GHG threshold proposed by South Coast Air Quality Management District (“SCAQMD”). In short, while acknowledging the Project’s mitigated GHG impact is 3,316 MTCO₂e/yr (exceeding SCAQMD’s Tier 3 threshold of 3,000 MTCO₂e/yr), the MND claims it is 42 percent less than the Project’s unmitigated GHG impact of 5,756 MTCO₂e/yr (purported below SCAQMD’s Tier 4 threshold of 30 percent below business as usual [“BAU”] comparison). (MND, p. 49; APP, PDF p. 75 [APP-B, pp. 7-2 – 7-3].) However, this BAU comparison is fatally flawed and improper. There is a fair argument of significant GHG impacts.

1. MND Applies Incorrect Tier-3 Threshold

7-7

Here, MND applies SCAQMD’s Tier-3 threshold for mixed-use projects (i.e., 3,000 MTCO₂e/yr). (MND, p. 49; APP, PDF p. 63.) However, the Project contains zero housing and proposes only commercial uses. Consistent with SCAQMD’s multi-tier recommendations,⁶ the MND should have used the 1,400 MTCO₂e/yr for commercial projects, just like the City has done for similar hotel projects.⁷

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⁶ See SCAQMD (Oct. 2008) Draft Guidance Document – Interim CEQA GHG Significance Threshold, pp. 3-10 – 3-16, [http://www.aqmd.gov/docs/default-source/ceqa/handbook/greenhouse-gases-\(ghg\)-ceqa-significance-thresholds/ghgattachmente.pdf](http://www.aqmd.gov/docs/default-source/ceqa/handbook/greenhouse-gases-(ghg)-ceqa-significance-thresholds/ghgattachmente.pdf); see also SCAQMD (12/5/08) Board Letter, p. 5, [http://www.aqmd.gov/docs/default-source/ceqa/handbook/greenhouse-gases-\(ghg\)-ceqa-significance-thresholds/ghgboardsynopsis.pdf?sfvrsn=2](http://www.aqmd.gov/docs/default-source/ceqa/handbook/greenhouse-gases-(ghg)-ceqa-significance-thresholds/ghgboardsynopsis.pdf?sfvrsn=2); SCAQMD (9/28/10) Minutes for the GHG CEQA Significance Threshold Stakeholder Working Group # 15, [http://www.aqmd.gov/docs/default-source/ceqa/handbook/greenhouse-gases-\(ghg\)-ceqa-significance-thresholds/year-2008-2009/ghg-meeting-15/ghg-meeting-15-minutes.pdf](http://www.aqmd.gov/docs/default-source/ceqa/handbook/greenhouse-gases-(ghg)-ceqa-significance-thresholds/year-2008-2009/ghg-meeting-15/ghg-meeting-15-minutes.pdf).
⁷ See e.g., City (10/24/18) Hilton Hotel Project MND, p. 42, https://ggcity.org/sites/default/files/2018-12/BNGroupInitialStudy_0.pdf.



2. MND Relies on Outdated Tier-4 BAU Methodology

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Here, as previously mentioned, the MND applies the 30 percent reduction below BAU comparison for SCAQMD's Tier-4 (i.e., Option 1). In 2008, the BAU methodology was one of the three options proposed by SCAQMD for Tier-4 compliance, based on the then-prevailing wisdom of applying the statewide GHG emission reduction percentage (i.e., 30 percent) as a project-level threshold.⁸ However, this perfunctory application of the statewide reduction goal as a project-level threshold has been rejected by the California Supreme Court. (See *Newhall Ranch*, supra at 225.) Like the *Newhall Ranch* EIR, the MND here assumes that the level of effort required at the state-level—30 percent reduction under AB 32 (i.e., 1990 emission levels by 2020) and 40 percent reduction under SB 32 (i.e., 40 percent below 1990 emission levels by 2030)—correlates to the level of effort required for this specific Project at this specific Site. (MND, pp. 51; APP, PDF p. 75.) Critically missing from the MND is any reasoned explanation justifying any “quantitative equivalence” between the statewide context and the Project-level context. (*Newhall Ranch*, supra at p. 227.) This reasoning violates *Newhall Ranch* and CEQA.

3. Project Exceeds SCAQMD Tier-4 Performance Standards

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Instead of the perfunctory BAU methodology, the appropriate performance standard under SCAQMD's Tier-4 analysis is the per capita efficiency standard of 4.8 and 3.0 MTCO₂e/yr per service population (“MTCO₂e/yr/sp”) for years 2020 and 2035 (respectively),⁹ which the City has acknowledged in recent CEQA reviews.¹⁰ Service population (“sp”) is defined as only the residents and employees served by a project.¹¹ Here, the Project includes zero housing (i.e., 0 residents), but the MND does not specify the anticipated employees generated by the Project beyond the reference to the demand for 98 employee parking spaces. (APP, PDF p. 1350 [APP-J, Tbl. 3].) Based on various data sources, the City of Los Angeles, for example, has used a job generation ratio of 0.50 jobs per hotel room for purposes of VMT modeling,¹² or in some cases 0.20 jobs per hotel room ratio.¹³ Hence, 100-250 employees generated by this 500-room Project is a reasonable estimate. When dividing 3,316 MTCO₂e/yr by a service population of 100 to 250, the Project would achieve an efficiency level of 33.16 to 13.2 MTCO₂e/yr/sp—which exceeds both the 4.8 and 3.0 MTCO₂e/yr/sp performance standards.

Despite being proposed prior to the State's adoption of more aggressive GHG reduction goals of 40 percent 1990 levels by 2030 (i.e., SB 32 and Executive Order B-30-15), SCAQMD's screening/efficiency thresholds are akin to and most consistent with bright-line/efficiency thresholds adopted by numerous other air districts in recent years, including Sacramento

⁸ SCAQMD Draft Guidance Document, supra fn. 6, p. 3-15.

⁹ SCAQMD Minutes, supra fn. 6, pp. 1-2.

¹⁰ City (8/18/21) Focused General Plan Update Draft EIR, p. 4.6-23, <https://ggcity.org/sites/default/files/2021-08/FGPUZA%20DEIR.pdf>.

¹¹ CAPCOA (Jan. 2008) CEQA & Climate Change, pp. 62-64, 71-72 (service population is defined as “the sum of the number of residents and the number of jobs supported by the project.”), <http://www.capcoa.org/wp-content/uploads/2012/03/CAPCOA-White-Paper.pdf>; SCAQMD, PDF p. 6 (“sp (service population) = population + employment population”).

¹² City of Los Angeles (May 2020) VMT Calculator Documentation, p. 11, https://ladot.lacity.org/sites/default/files/documents/vmt_calculator_documentation-2020.05.18.pdf.

¹³ City Hilton Hotel Project MND, supra fn. 7, pp. 4, 87 (25 full/part-time worker for 124-room hotel).



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Metropolitan AQMD,¹⁴ Bay Area AQMD,¹⁵ Placer County APCD,¹⁶ and San Luis Obispo County APCD.^{17, 18} Similarly, the Association of Environmental Professionals (“AEP”) has proposed a 2020 and 2030 land-use efficiency threshold of 4.7 and 2.6 MTCO₂e/yr/sp (respectively, which can also be interpolated during interim years), and based on SB 32 mid-term GHG reduction goals for 2030.¹⁹ By relying solely on the BAU methodology and failing to apply an appropriate performance standards (e.g., SCAQMD’s Tier-4 efficiency standard), the MND fails to stay in step with evolving scientific knowledge and regulatory schemes governing GHG, as required under *Cleveland II*. The bottom line is that this a very large Project and there is a fair argument of significant GHG impacts.

4. MND’s Perfunctory Analysis of CARB’s 2017 Scoping Plan

Here, the MND improperly relies on its perfunctory BAU analysis to claim consistency with the California Air Resources Board (“CARB”) 2017 Scoping Plan. The MND fails to recognize the Scoping Plan’s explicit reliance on local land-use decisions and GHG reduction at the project-level:

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“Implementation of this change will rely, in part, on *local land use* decisions to reduce GHG emissions associated with the transportation sector, both at the *project level*, and in long-term plans (including general plans, climate action plans, specific plans, and transportation plans) and supporting sustainable community strategies developed

¹⁴ SMAQMD (May 2018) Guide to Air Quality Assessment in Sacramento County, pp. 6:1-3, 6:10-12 (“(GHG) emissions adversely affect the environment through contributing, on a cumulative basis, to global climate change ... *the District recommends that lead agencies address the impacts of climate change on a proposed project and its ability to adapt to these changes in CEQA documents* ... [thus urging] evaluating whether the GHG emissions associated with a proposed project will be responsible for making a cumulatively considerable contribution to global climate change.”[emphasis original]), <http://www.airquality.org/LandUseTransportation/Documents/Ch6GHGFinal5-2018.pdf>; see also SMAQMD Thresholds of Significance Table, <http://www.airquality.org/LandUseTransportation/Documents/CH2ThresholdsTable5-2015.pdf>.

¹⁵ BAAQMD (May 2017) CEQA Air Quality Guidelines, p. 2:1-4 (“No single project could generate enough GHG emissions to noticeably change the global average temperature [but rather] [t]he combination of GHG emissions from past, present, and future projects contribute substantially to the phenomenon of global climate change and its associated environmental impacts.”), http://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en.

¹⁶ PCAPCD (Oct. 2016) CEQA thresholds of Significance Justification Report, pp. E-2, 2, 17-22 (“CEQA requires that the lead agency review not only a project’s direct effects on the environment, but also the cumulative impacts of a project and other projects causing related impacts. When the incremental effect of a project is cumulatively considerable, the lead agency must discuss the cumulative impacts in an EIR. [citing CEQA Guidelines § 15064]”), <https://www.placer.ca.gov/DocumentCenter/View/2061/Threshold-Justification-Report-PDF>; see also PCAPCD (11/21/17) CEQA Thresholds And Review Principles, <http://www.placerair.org/landuseandceqa/ceqathresholdsandreviewprinciples>.

¹⁷ SLOAPCD (Mar. 28, 2012) GHG Threshold and Supporting Evidence, p. 5, 25-30, 42 (“No single land use project could generate enough GHG emissions to noticeably change the global average temperature. Cumulative GHG emissions, however, contribute to global climate change and its significant adverse environmental impacts. Thus, the primary goal in adopting GHG significance thresholds, analytical methodologies, and mitigation measures is to ensure new land use development provides its fair share of the GHG reductions needed to address cumulative environmental impacts from those emissions.”), <https://storage.googleapis.com/slocleanair-org/images/cms/upload/files/Greenhouse%20Gas%20Thresholds%20and%20Supporting%20Evidence%204-2-2012.pdf>.

¹⁸ See also AEP (Oct. 2016) Beyond Newhall and 2020, pp. 25 (Tbl. 2 identifying other air districts that have adopt/proposed similar screening/efficiency thresholds), https://califaep.org/docs/AEP-2016_Final_White_Paper.pdf.

¹⁹ Ibid., pp. 34, 40 40.



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under SB 375 ... *Local land use decisions play a particularly critical role* in reducing GHG emissions associated with the transportation sector, both at the *project level*, and in long-term plans, including general plans, local and regional climate action plans, specific plans, transportation plans, and supporting sustainable community strategies developed under SB 375. While the State can do more to accelerate and incentivize these local decisions, *local actions that reduce VMT are also necessary to meet transportation sector-specific goals and achieve the 2030 target under SB 32.*²⁰ (Emphasis added.)

To this end, CARB provides various GHG mitigation measures that could be considered by the City—but the MND fails to consider incorporating many of them here (see below list).²¹

B. Examples of potentially feasible mitigation measures that could be considered for individual projects under CEQA when the local jurisdiction is the lead agency.

Construction

- Enforce idling time restrictions for construction vehicles
- Require construction vehicles to operate with the highest tier engines commercially available
- Divert and recycle construction and demolition waste, and use locally-sourced building materials with a high recycled material content to the greatest extent feasible
- Minimize tree removal, and mitigate indirect GHG emissions increases that occur due to vegetation removal, loss of sequestration, and soil disturbance
- Utilize existing grid power for electric energy rather than operating temporary gasoline/diesel powered generators
- Increase use of electric and renewable fuel powered construction equipment and require renewable diesel fuel where commercially available
- Require diesel equipment fleets to be lower emitting than any current emission standard

Operation

- Comply with lead agency's standards for mitigating transportation impacts under SB 743
- Require on-site EV charging capabilities for parking spaces serving the project to meet jurisdiction-wide EV proliferation goals

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²⁰ 2017 Scoping Plan, pgs. 76, 100-101, https://ww2.arb.ca.gov/sites/default/files/classic/cc/scopingplan/scoping_plan_2017.pdf.

²¹ 2017 Scoping Plan, Appendix B-Local Action, p. 7-9, https://www.arb.ca.gov/cc/scopingplan/app_b_local_action_final.pdf



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Operation (continued)

- Allow for new construction to install fewer on-site parking spaces than required by local municipal building code, if appropriate¹
- Dedicate on-site parking for shared vehicles
- Provide adequate, safe, convenient, and secure on-site bicycle parking and storage in multi-family residential projects and in non-residential projects
- Provide on- and off-site safety improvements for bike, pedestrian, and transit connections, and/or implement relevant improvements identified in an applicable bicycle and/or pedestrian master plan
- Require on-site renewable energy generation
- Prohibit wood-burning fireplaces in new development, and require replacement of wood-burning fireplaces for renovations over a certain size developments
- Require cool roofs and "cool parking" that promotes cool surface treatment for new parking facilities as well as existing surface lots undergoing resurfacing
- Require solar-ready roofs
- Require organic collection in new developments
- Require low-water landscaping in new developments. Require water efficient landscape maintenance to conserve water and reduce landscape waste.
- Achieve Zero Net Energy performance targets prior to dates required by CALGreen
- Require new construction, including municipal building construction, to achieve third-party green building certifications, such as the GreenPoint Rated program or the LEED rating system
- Require the design of bike lanes to connect to the regional bicycle network
- Expand urban forestry and green infrastructure in new land development
- Require preferential parking spaces for park and ride to incentivize carpooling, vanpooling, commuter bus, electric vehicles, and rail service use
- Require a transportation management plan for specific plans which establishes a numeric target for non-SOV travel and overall VMT
- Develop a rideshare program targeting commuters to major employment centers
- Require the design of bus stops/shelters/express lanes in new developments to promote the usage of mass-transit
- Require gas outlets in residential backyards for use with outdoor cooking appliances such as gas barbeques if natural gas service is available
- Require the installation of electrical outlets on the exterior walls of both the front and back of residences to promote the use of electric landscape maintenance equipment
- Require the design of the electric boxes in new residential unit garages to promote electric vehicle usage
- Require electric vehicle charging station (Conductive/inductive) and signage for non-residential developments
- Provide electric outlets to promote the use of electric landscape maintenance equipment to the extent feasible on parks and public/quasi-public lands

¹ This is not to be confused with the Americans with Disabilities Act (ADA) requirements or other minimum parking requirements for dedicating space to clean air vehicles and/or EV charging infrastructure.

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Operation (continued)

- Require each residential unit to be "solar ready," including installing the appropriate hardware and proper structural engineering
- Require the installation of energy conserving appliances such as on-demand tank-less water heaters and whole-house fans
- Require each residential and commercial building equip buildings with energy efficient AC units and heating systems with programmable thermostats/timers
- Require large-scale residential developments and commercial buildings to report energy use, and set specific targets for per-capita energy use
- Require each residential and commercial building to utilize low flow water fixtures such as low flow toilets and faucets
- Require the use of energy-efficient lighting for all street, parking, and area lighting
- Require the landscaping design for parking lots to utilize tree cover
- Incorporate water retention in the design of parking lots and landscaping
- Require the development project to propose an off-site mitigation project which should generate carbon credits equivalent to the anticipated GHG emission reductions. This would be implemented via an approved protocol for carbon credits from California Air Pollution Control Officers Association (CAPCOA), the California Air Resources Board, or other similar entities determined acceptable by the local air district
- Require the project to purchase carbon credits from the CAPCOA GHG Reduction Exchange Program, American Carbon Registry (ACR), Climate Action Reserve (CAR) or other similar carbon credit registry determined to be acceptable by the local air district
- Encourage the applicant to consider generating or purchasing local and California-only carbon credits as the preferred mechanism to implement its off-site mitigation measure for GHG emissions and that will facilitate the State's efforts in achieving the GHG emission reduction goal

C. Additional References

- California Air Pollution Control Officers Association, "Model Policies for Greenhouse Gases in General Plans: A Resource for Local Government to Incorporate General Plan Policies to Reduce Greenhouse Gas Emissions", June 2009 – accessible here: <http://www.capcoa.org/wp-content/uploads/2012/03/CAPCOA-ModelPolicies-6-12-09-915am.pdf>
- California Air Pollution Control Officers Association, "Quantifying Greenhouse Gas Mitigation Measures: A Resource for Local Government to Assess Emission Reductions from Greenhouse Gas Mitigation Measures," August 2010 – accessible here: <http://www.capcoa.org/wp-content/uploads/2010/11/CAPCOA-Quantification-Report-9-14-Final.pdf>
- Governor's Office of Planning and Research, "General Plan Guidelines" – accessible here: https://www.opr.ca.gov/s_generalplanguidelines.php

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B. MND'S TRAFFIC ANALYSIS IS FUNDAMENTALLY FLAWED

CEQA requires analysis of VMT traffic impacts related to a project. (See *Kings County Farm Bureau v. Hanford* (1990) 221 Cal.App.3d 692, 727.) In particular, CEQA requires analysis of project-related traffic impacts in a manner that does not minimize cumulative impacts. (See e.g., *Cleveland National Forest Foundation v. San Diego Assn. of Governments* ("Cleveland III") (2017) 17 Cal.App.5th 413, 444-445 (on remand, traffic analysis based on methodology with known data gaps that underestimated traffic impacts necessarily prejudiced informed public participation and decisionmaking); *Kings County Farm Bureau*, supra at 718, 727 [rejecting determination that less



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than one percent to area emissions was less than significant because analysis improperly focused on the project-specific impacts and did not properly consider the collective effect of the relevant projects on air quality]; *Save Cuyama Valley v. County of Santa Barbara* (2013) 213 Cal.App.4th 1059, 1072 [upheld the use of same thresholds for immediate and cumulative impacts when its application was “undoubtedly more stringent cumulative-impact threshold”]; *Al Larson Boat Shop, Inc. v. Board of Harbor Comm’rs*, (1993) 18 Cal.App.4th 729, 749 [upheld where cumulative impacts were not minimized or ignored].) The relevant inquiry is not only the relative amount of increased traffic that the Project will cause, but whether any additional amount of Project traffic should be considered significant in light of the already serious problem. (See *Los Angeles Unified School District v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1025.)

Here, the MND claims the Project has no VMT impacts because it is screened out based on the City’s Traffic Impact Analysis Guidelines (“TIA Guidelines”).²² (MND, pp. 81-82; APP, PDF pp. 897 [APP-I, pp. 17, 9-1 – 9-5].) In short, the MND claims that the Project is located in a Transit Priority Area (“TPA”) and meets four conditions (e.g., FAR greater than 0.75, not overparked, consistent with sustainable community strategy, does not replace affordable residential units). (Id.) However, this Project should not be screened out for several reasons discussed below.

1. Fails to show consistency with SCAG RTP/SCS

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Here, the MND claims without any discussion that “the proposed project is consistent with the applicable [Southern California Association of Governments (“SCAG”) 2020 Regional Transportation Plan/Sustainable Communities Strategy (“RTP/SCS”)], as determined by the City[.]” (MND, p. 82; APP, PDF p. 966 [APP-I, p. 9-4].) Such conclusory statements are not substantial evidence under CEQA. (See CEQA Guidelines § 15384.) There is no attempt to show consistency with any specific, binding requirements for local land-use projects identified in SCAG’s RTP/SCS. For example, there is no attempt to show the Project is consistent with any of the project-level mitigation measures identified in the RTP/SCS Program Environmental Impact Report.²³ Nor is there any attempt to show the Project would achieve any of the benchmarks presumed in the RTP/SCS, such as daily VMT per capita reductions from 24.1 (in 2016) to 22.3 (by 2045) for the County of Orange.²⁴ Here, the MND’s air quality/GHG modeling estimates the Project would generate 3,594,058 annual VMTs. (See APP, PDF p. 300.) The MND also assumes that light/medium-duty trucks and automobiles (“LDA(s)”) are roughly 91 percent of the Project’s vehicle mix. (Id.). Thus, the Project’s LDAs would generate roughly 8,960 VMTs per day or 35.8 VMTs per service population of 250²⁵—which exceeds the Orange County benchmark discussed above. This Project is far too big for a MND—an EIR should be prepared.

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²² City (May 2020) TIA Guidelines, <https://gardengrove.novusagenda.com/AgendaPublic/AttachmentViewer.ashx?AttachmentID=4377&ItemID=3092>.

²³ SCAG (Dec. 2019) Final Program EIR, pp. 2.0-18 – 2.0-71 (see “project-level mitigation measures” for air quality, GHG, and transportation impacts), https://scag.ca.gov/sites/main/files/file-attachments/fpeir_connectsocal_complete.pdf?1607981618.

²⁴ SCAG (9/3/20) 2020 RTP/SCS, p. 122, https://scag.ca.gov/sites/main/files/file-attachments/0903fconnectsocal-plan_0.pdf?1606001176.

²⁵ Calculated: $[(3594058 \text{ annual VMTs}) (91\%)] / [365] / (250 \text{ employees})$.



2. *There Is a Fair Argument That Project VMTs are Significant*

Under the City's TIA Guidelines, the TPA screening is appropriate only when there is "absent substantial evidence to the contrary."²⁶ Here, there is a variety of indicia showing the Project's VMTs are significant, such as:

- The Project would generate 5,122 average daily trips ("ADT(s)") compared to the Site's zero ADTs (MND, p. 71), which exceeds the City's 110 ADT screening threshold for small project's that is based on the VMT guidance provided by the Governor's Office of Planning and Research ("OPR");²⁷
- The Project is not a local-serving hotel or located in a low VMT area screening area (APP, PDF pp. 964-966);
- The MND's GHG Study shows the Project would generate 3,594,058 annual VMTs (i.e., 9,846 daily VMTs) as compared to zero VMTs generated by the vacant site (APP, PDF p. 300), which exceeds OPR's no net increase threshold for redevelopment projects;²⁸ and
- As discussed above, the Project would achieve 35.8 daily VMTs/sp, which exceeds SCAG's 2020 RTP/SCS assumption of 22.3 daily VMTs per capita.

In sum, substantial evidence demonstrates that this destination hotel Project will generate significant VMTs that warrant a full VMT analysis and mitigation, such as those recommended by CARB, SCAG, CAPCOA, and the City.²⁹ An EIR should be prepared.

C. CEQA ISSUES RUN COUNTER TO CODE-REQUIRED FINDINGS

The above-mentioned CEQA issues run contrary to various goals and policies under the City's General Plan (e.g., policies LU-1.5, LU-IMP-1C, LU-2.1, etc.)³⁰ as well as Code-required findings necessary to grant the entitlements (e.g., GCMC §§ 9.32.030-D.3.b [site plan review findings]; 9.12.030.02-F [planned unit development findings].) Findings need to be supported by substantial evidence that bridge the analytical gap between the raw evidence and City's decisions. (See e.g., *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal. 3d 506, 514-515; *Stolman v. City of Los Angeles* (2003) 114 Cal.App.4th 9(1974) 11 Cal.3d 506, 16, 923.) Until the CEQA issues discussed herein are corrected via a CEQA-compliant EIR, the City lacks substantial evidence to grant the Project Approvals.

/ / /

²⁶ City TIA Guidelines, supra fn. 22, p. 16.

²⁷ See City TIA Guidelines, supra fn. 22, p. 18; see also OPR (Dec. 2018) Technical Advisory: On Evaluating Transportation Impacts In CEQA, pp. 12, https://opr.ca.gov/docs/20190122-743_Technical_Advisory.pdf.

²⁸ OPR Technical Advisory, supra fn. 28, p. 17.

²⁹ 2017 Scoping Plan: Appendix B-Local Action, supra fn. 21; SCAG Final Program EIR, supra fn. 24; City TIA Guidelines, Attachment B-TDM Strategies, <https://gardengrove.novusagenda.com/AgendaPublic/AttachmentViewer.ashx?AttachmentID=4348&ItemID=3092>; CAPCOA (Dec. 2021) Handbook for Analyzing Greenhouse Gas Emission Reductions, Assessing Climate Vulnerabilities, and Advancing Health and Equity, https://www.airquality.org/ClimateChange/Documents/Final%20Handbook_AB434.pdf.

³⁰ City's Land Use Element, https://ggcity.org/internet/pdf/planning/chapter02_landuseelement.pdf.



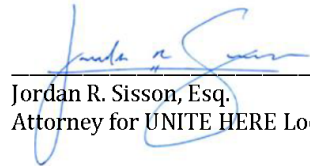
III. CONCLUSION

7-16

Local 11 appreciates the opportunity to provide these comments. We respectfully request the City reject the Project Approvals until the issues discussed herein are resolved in a CEQA-compliant review that adequately analyzes and mitigates the Project's GHG and VMT impacts. There is a fair argument of CEQA impacts. This Project is expected to generate over 3 million annual VMTs, which is far too big for a MND. An EIR should be prepared. Lastly, this office requests all notices concerning any CEQA/land use actions involving the Project and Project Approvals, as required under applicable law. (See Pub. Res. Code §§ 21092.2, 21167(f) and Gov. Code § 65092.) Please send all notices by electronic and regular mail.

Thank you for consideration of these comments. We ask that this letter be placed in the Project's administrative record.

Sincerely,



Jordan R. Sisson, Esq.
Attorney for UNITE HERE Local 11

Comment Letter 7: GK Law for the UNITE HERE Local 11

Response to Comment 7-1

Comment acknowledged.

Response to Comment 7-2

This comment summarizes the balance of the comments of the letter. Please see the following responses to comment.

Response to Comment 7-3

The comment cites California case law that speaks for itself.

Response to Comment 7-4

The comment cites various positions of California law, regulations, and cases that speak for themselves.

Response to Comment 7-5

The comment cites California case law that speaks for itself. The Draft IS/MND along with the Air Quality and Greenhouse Gas Impact Study (refer to Appendix B of the Draft IS/MND) provides an in-depth GHG technical analysis¹² that analyzes and discloses the proposed project's impacts related to GHG emissions.

Response to Comment 7-6

The GHG analysis utilizes the recommended thresholds of significance from the South Coast Air Quality Management District (SCAQMD) Draft Guidance Document – Interim CEQA Greenhouse Gas (GHG) Significance Thresholds, 2008. This is described on pages 5-2, 5-3 and Table 19 of the Air Quality and Greenhouse Gas Impact Study. The SCAQMD significance thresholds have been established for purposes of CEQA compliance. SCAQMD is charged with regulating air quality within the South Coast Air Basin including all of Orange County and the non-desert regions of Los Angeles County, San Bernardino County, and Riverside County. SCAQMD has provided guidance on determining significance for GHG emissions in CEQA documents. The Draft IS/MND adheres to SCAQMD's expert GHG guidance.

Response to Comment 7-7

The commenter is incorrect in stating that the Draft IS/MND incorrectly applies the SCAQMD Tier-3 Threshold of 3,000 MTCO₂e/yr. First, SCAQMD recommends that both residential and commercial projects may be analyzed using the 3,000 MTCO₂e/yr¹³. Secondly, since the proposed project was shown to exceed the SCAQMD's Tier 3 threshold, the proposed project was thus analyzed under SCAQMD's Tier 4 threshold, not Tier 3. Therefore, the Tier 3 threshold is not applicable.

Response to Comment 7-8

It is important to note that neither the CEQA statute nor the CEQA Guidelines prescribe thresholds of significance or particular methodologies for performing an impact analysis. This is left to lead agency judgment and discretion, based upon factual data and guidance from regulatory agencies and other sources where available and applicable. The Tier 4 BAU threshold is consistent with SCAQMD GHG Guidelines¹⁶. As described in the Office of Planning Research Discussion Draft CEQA and Climate Change Advisory, December 2018, in the absence of clearly defined thresholds for GHG emissions, such emissions must be disclosed and mitigated to the extent feasible whenever the lead agency determines that the project contributes to a significant, cumulative climate change impact. The determination has been made that the proposed project has the potential to

¹² RK Engineering Group, Inc. Garden Grove Hotel Site B-2, Air Quality and Greenhouse Gas Impact Study, City of Garden Grove. April 26, 2022.

¹³ South Coast Air Quality Management District. Draft Guidance Document – Interim CEQA Greenhouse Gas (GHG) Significance Threshold. October 2008. Page 3-13 to 3-15.

contribute to a significant, cumulative climate change impact, and thus is required to provide substantial mitigation to reduce GHG emissions. The Court's ruling in the Newhall case is acknowledged, however, it was determined that the BAU reduction threshold is still the most appropriate measure for assessing impacts for the proposed project based on the following reasons: 1) the size and nature of the proposed project (i.e., being a hotel/customer based land use) do not lend themselves to using a screening level threshold or service population efficiency threshold (more discussion regarding the use of an efficiency threshold is provided in Response to Comment 7-9); 2) the BAU reduction threshold requires that substantial GHG reductions are required and enforced as mitigation; and 3) it promotes the goals and policies of the City's General Plan, including promote water conservation in new development (Policy CON-1.3), reduce total waste diverted to treatment or disposal at the waste source and through re-use and recycling (Goal CON-3), reduce dependency on non-renewable energy resources through the use of local and imported alternative energy sources (Goal CON-5), Green Building programs achieve water and energy efficiency, minimize raw resource consumption, and reduce the amount of waste placed in landfills while improving human health and quality of life in the City (Goal CON-6), provide efficient development that promotes alternative modes of transportation, while ensuring that economic development goals are not sacrificed (GP Goal AQ-4), and increased energy efficiency and conservation (GP Goal AQ-6).

The proposed project will achieve more than a 40 percent reduction in GHG emissions with the recommended mitigation measures and will promote the use of renewable energy sources and alternative modes of travel, including locating in close proximity to transit. Each of these features is aligned with the City's goals and broader regional and statewide climate change goals.

Response to Comment 7-9

The use of an efficiency threshold based solely on residents and employees is not appropriate for a hotel use because it does not take into account the effect hotel guests have on GHG contribution. Hotel guest are the main contributor of operational emissions from the proposed project, and the GHG Study accounts for these emissions as part of the analysis. However, the efficiency threshold only relates emissions to residents and/or employees of a site. So, for a hotel use, whose primary users are guests, the service population would be artificially low if only employees are counted. Thus, the use of the Tier 4 efficiency threshold is not appropriate in this case because it was not intended for customer based land use.

Response to Comment 7-10

The commenter is incorrect in stating that the proposed project fails to recognize the California Air Resources Board (CARB) Scoping Plan reliance on local land-use decisions and GHG reduction at the project level. The proposed project has demonstrated substantial reduction in GHG emissions which is consistent with the local land use thresholds for measuring significant GHG impacts (refer to Section 7.0 of the Air Quality and Greenhouse Gas Impact Study, Appendix B of the Draft IS/MND).

Response to Comment 7-11

The commenter lists several non-project specific mitigation measures referenced from CARB to reduce GHG, and inaccurately claims that the Draft IS/MND has failed to incorporate many of them. This statement is not accurate. Most of these mitigation measures will be included through construction design features (such as idling restrictions, higher tiered engines, waste recycling, and establishing electrical supplies) and building code requirements (such as EV & bicycle parking, compliance with CALGreen, cool roofs, low flow fixtures, drought tolerant landscaping, and energy star appliances). Additionally, many other mitigation measures and project design features are being included in the proposed project that are consistent with this list, such as meeting SB 743 requirements for vehicles miles traveled (VMT) reduction, implementing a vehicle trip reduction plan, installing rooftop solar, and prohibiting wood and natural gas burning fireplaces. Based on all of these facts, the Draft IS/MND concluded that GHG impacts would be less than significant with the implementation of mitigation measures.

Response to Comment 7-12

The analysis of transportation impacts has been prepared pursuant to the requirements of the City of Garden Grove Traffic Impact Analysis Guidelines for Vehicle Miles Traveled and Level of Service Assessment, May 2020 (Guidelines)¹⁴. The proposed project is shown to result in a less than significant impact to VMT due to its location along a high-quality transit corridor. A 'high-quality transit corridor' means a corridor with fixed route bus service with service intervals no longer than 15 minutes during peak commute hours. CEQA Guidelines Section 15064.3(b)(1) state that projects within one-half mile of either an existing major transit stop or a stop along an existing high quality transit corridor should be presumed to cause a less than significant transportation impact. Harbor Boulevard qualifies as a high-quality transit corridor and the proposed project is located within ½ mile of a bus stop with 15-minute headways or less. Hence, the Draft IS/MND's finding of a less than significant impact is consistent with CEQA Guidelines § 15064.3(b)(1) and is based on substantial evidence.

Response to Comment 7-13

The commenter inaccurately states that the proposed project is not consistent with the Southern California Association of Governments (SCAG) Regional Transportation Plan/Sustainable Communities Strategy (RTP/SCS) and provides unrelated VMT data out of the RTP/SCS that does not have bearing on the proposed project. For instance, one of the main goals of the RTP/SCS is to focus growth near high-quality transit areas and reduce GHG emissions. The proposed project meets these goals by locating along a high-quality transit corridor and implementing substantial GHG reduction measures, including the use of renewable energy sources. The proposed project also helps contribute to the Harbor Boulevard tourist job center and provides neighborhood scale mobility that encourage "walkability," active transportation and short, shared vehicular trips on a through increased density, mixed land uses, neighborhood design, enhanced destination accessibility and reduced distance to transit. These features are key goals of the RTP/SCS¹⁵ and demonstrate the proposed project's consistency with SCAG's plan. Furthermore, the City of Garden Grove recognizes the Orange County Transportation Model (OCTAM) as the most appropriate and accurate model for measuring VMT within the City. The VMT data provided by the commenter is not based on the OCTAM model and does not provide an accurate estimate of VMT within the City.

Response to Comment 7-14

The commenter is mistaken in stating that there is a fair argument that proposed project VMTs are significant. As previously stated in response to comment 7-12, the Draft IS/MND assesses VMT impacts pursuant to the City of Garden Grove Traffic Impact Analysis Guidelines for Vehicle Miles Traveled and Level of Service Assessment, May 2020 (Guidelines), and the proposed project is shown to result in a less than significant impact to VMT due to its location along a high-quality transit corridor. The City's guidelines and CEQA Guidelines are very clear in stating that if a project is located along a high-quality transit corridor, then it may be presumed to result in a less than significant impact to VMT. The bullet point items mentioned by the commenter do not impact whether the project meets the transit screening requirements.

Response to Comment 7-15

Comment acknowledged. Refer to responses to comments 7-5 through 7-14.

Response to Comment 7-16

Comment acknowledged. Contrary to the comment, CEQA contains no limitation on the size of projects that may be analyzed in a negative declaration. The commenter will be placed on requested public mailing/notification lists related to the proposed project.

¹⁴ City of Garden Grove. City of Garden Grove Traffic Impact Analysis Guidelines for Vehicle Miles Traveled and Level of Service Assessment, May 2020 (Guidelines).

¹⁵ Southern California Association of Governments (SCAG). Connect So Cal. The 2020-2045 Regional Transportation Plan/Sustainable Communities Strategies of the Southern California Association of Governments. September 3, 2020. Page 48-52, "Sustainable Communities Strategy".



LAND USE, ENVIRONMENTAL & MUNICIPAL LAWYERS

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July 27, 2022

VIA EMAIL & HAND DELIVERY:

City Clerk's Office, City of Garden Grove
c/o Andrea Vital, City Clerk's Office
c/o Maria Parra, Senior Planner
11222 Acacia Parkway
Garden Grove, California 92840
andreav@ggcity.org
mariap@ggcity.org

Judy Moore, Planning Commission Secretary
Community and Economic Development Department
City of Garden Grove
11222 Acacia Parkway
Garden Grove, CA 92840
judydm@ggcity.org

RE: **APPEAL OF NICKELODEON HOTEL PROJECT (12241 HARBOR BLVD., GARDEN GROVE, CA 92840);
PROJECT APPROVALS PUD-141-01, SP-107-2022, & IS/MND (SCH No. 2022060174);
ACTION ON ITEM C.2 & D.1 OF THE JULY 7, 2022 PLANNING COMMISSION HEARING**

Dear City of Garden Grove ("City") Clerk and Judy Moore:

In accordance with the appeal procedures authorized by the Garden Grove Municipal Code ("GGMC" or "Code"), UNITE HERE Local 11 ("Local 11") and City-resident Marlene Perez (collectively "Appellants"), hereby appeal ("Appeal") the City Planning Commission's ("Commission") approval of a 500-room, 23-story hotel with the 600-seat Nick Studio theater ("Project") at the 3.72-acre location referenced above ("Site") proposed by Kam Sang Company ("Applicant").¹ Specifically, at its July 7, 2022 hearing (i.e., Items 2c and D.1),² the Commission took the following actions in furtherance of the Project:

8-1

1. Adopted Resolution No. 6044-22 that (a) recommends City Council adopt the Project's Mitigated Negative Declaration and associated findings/determination ("MND"),³ and (b) recommends City Council approve an ordinance creating Planned Unit Development No. PUD-141-01(A) ("PUD");
2. Adopted Resolution No. 6045-22 conditionally approving Site Plan No. SP-107-2022 ("Site Plan"), subject to the City's Council approval of the PUD and the vacation/disposition of Thackery Drive and a public alley within the Project Site (i.e., Street Vacation No. SV-002-2022 ("Street Vacation"); and
3. Adopted Resolution No. 6046-22 finding and reporting to the City Council that the proposed Street Vacation is consistent with the City's General Plan.

// //

¹ Herein, page citations are either the stated pagination (i.e., "p. #") or PDF-page location (i.e., "PDF p. #").

² See City (7/7/22) Planning Commission Staff Report ("Staff Report"), PDF pp. 3-4, 72, 84, 289-299, <https://ggcity.org/sites/default/files/commissions/planning-commission/a07072022.PDF>.

³ https://ggcity.org/sites/default/files/2022-06/Site%20B2%20Hotel%20Project%20Draft%20Initial%20Study_Mitigated%20Negative%20Declaration.pdf.



8-2

This Appeal challenges all ripe project approvals, including but not limited to the aforementioned resolutions, MND, PUD, Site Plan, Street Vacation, and other local land use approvals in furtherance of the Project (e.g., alcohol Conditional Use Permit, Development Agreement, Tentative Tract Maps, etc.) (collectively “Project Approvals”). (See MND, p. 14.) In light of discussions with the City Clerk’s Office, it appears at a minimum that Resolution No. 6045-22 and 6046-22 are ripe for this Appeal. This Appeal is timely filed within the 21-day deadline. (See GGMC § 9.32.120.) This Appeal alleges that conditionally approving the **Site Plan**, Street Vacation findings, and other actions taken on the other Project Approvals violate the Code and the California Environmental Quality Act (“CEQA”).⁴ Appellants respectfully request the City grant this Appeal and deny the Project Approvals—particularly Resolution No. 6045-22 and 6046-22—until the issues raised herein, and elsewhere in the Project’s administrative record, are adequately addressed. If the City has questions or concerns about appealability or ripeness of any of the Project Approvals, please contact the undersigned.

8-3

APPELLANTS’ STANDING: Local 11’s members live and/or work in the vicinity of the Project Site, breathe the air, suffer traffic congestion, and suffer other environmental impacts of the Project. Local 11 has approximately 400 members who live and/or work in the City. Therefore, Local 11 is committed to ensuring responsible development in the City, that local land-use rules/regulations are followed, and informed decision-making by public officials regarding projects that may significantly impact the environment in the City. Appellant Marlene Perez lives in the City within one-quarter mile of the Project Site and is regularly in the vicinity of the Project Site. Granting this Appeal will confer a substantial benefit to Local 11, Ms. Perez, and the public, including citizens, residents, businesses, and taxpayers affected by the Project, and will result in the enforcement of important public rights. In sum, Appellants are *interested parties* to this land use action Appeal with *public interest* standing to raise and litigate the land use and environmental claims at issues here. (See GGMC § 9.32.110; see e.g., *Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899, 914-916, n6.)

8-4

SPECIFIC POINTS AT ISSUE IN APPEAL: As specifically raised in Local 11’s comment letter dated July 7, 2022 (attached hereto as *Exhibit A* and incorporated in its entirety by this reference), the MND fails to adequately analyze the Project’s impact on greenhouse gas (“GHG”) emissions and vehicle miles traveled (“VMT”). For example, the Project will generate over 3 million annual VMTs and generate GHG emissions that exceed relevant thresholds of the regional air district, which warrants greater mitigation measures—particularly those that promote carpooling, public transit, and other strategies that reduce and/or offset mobile emissions. This is substantial evidence of a fair argument that the Project will have significant VMT and GHG impacts, particularly to residential communities near and/or adjacent to the Project Site. (See MND, Fig. 3.) These impacts require further analysis, mitigation, and consideration of project alternatives in a CEQA-compliant **Environmental Impact Report (“EIR”)**—instead of the MND. Additionally, the unmitigated CEQA impacts are inconsistent with policies and goals under the City’s General Plan,⁵ and invalidate the findings required under state and local law when granting the Project Approvals.⁶

⁴ Pub. Res. Code § 21000 et seq. and 14 Cal. Code Regs. (“CEQA Guidelines”) § 15000 et seq.

⁵ See e.g., Land Use Element (Policies LU-2.1, LU-2.4, LU-9.5), https://ggcity.org/internet/pdf/planning/chapter02_landuseelement.pdf and Air Quality Element (Policies, AQ-1.2, AQ-IMP-1B, AQ-2.2, AQ-3.1, AQ-4.1, AQ-5.3, AQ-IMP-5A, Goals AQ-3, AQ-4), https://ggcity.org/internet/pdf/planning/chapter08_airqualityelement.pdf.

⁶ See e.g., GGMC §§ 9.32.030-D.3.b (Site Plan findings), 9.12.030.02-F (PUD findings), and Gov. Code § 65402 (Street Vacation finding).



8-5

In accordance with GGMC § 9.32.130, this Appeal incorporates in its entirety all submitted **comments by Local 11 and other commenters, including but not limited to Local 11's previously** submitted written comment (attached hereto as Exhibit A) and verbal comments made by other commenters.⁷ Appellants reserve the right to supplement these comments and specific appeal points in the future. (See *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1120 [CEQA litigation not limited only to claims made during the EIR comment period].)

8-6

Lastly, this office requests all notices concerning this Appeal, hearings and any CEQA/land use actions involving the Project and Project Approvals, as required under applicable law. (See Pub. Res. Code §§ 21092.2, 21167(f) and Gov. Code § 65092 and GGMC § 9.32.100.G.) Please send all notices by electronic and regular mail.

Sincerely,



Jordan R. Sisson
Attorney for Appellant

8-7

Exhibit A: Local 11 Comment Letter (7/7/22)

⁷ <https://ggcity.org/commissions/planning-commission#>.



Comment Letter 8: GK Law for the UNITE HERE Local 11

Response to Comment 8-1

Comment acknowledged.

Response to Comment 8-2

Comment acknowledged.

Response to Comment 8-3

Comment acknowledged.

Response to Comment 8-4

Comment acknowledged. Refer to response to comment 7-1 through 7-16 (Comment Letter 7).

Response to Comment 8-5

Comment acknowledged.

Response to Comment 8-6

Comment acknowledged. The commenter will be placed on requested public mailing/notification lists related to the proposed project.

Response to Comment 8-7

Refer to Comment Letter 7.

3 ERRATA

This section identifies revisions to the Site B-2 Hotel Draft IS/MND to incorporate clarifications, corrections, or additions prepared in response to comments on the Draft IS/MND. These changes include minor errors or editorial correction identified through subsequent review. Additions are shown in underline. Deletions are shown in ~~strike through~~. Commentary Notes are shown in *italics type* where needed.

None of the revisions below represents a substantial increase in the severity of an identified significant impact or the identification of a new significant impact or mitigation considerably different from those already considered in the Draft IS/MND.

Draft IS/MND Section IV. Biological Resources

(Page 32, Discussion a), 1st paragraph, 1st sentence)

Due to the built-out nature of the City and surrounding area, biological resources in the City are almost non-existent (City of Garden Grove, 2021a, 2021b, & 2008).

(Page 34, Discussion c), 1st paragraph, 1st sentence)

As discussed above, due to the built-out nature of the City and surrounding area, biological resources in the City are almost non-existent (City of Garden Grove, 2021a, 2021b, & 2008).

(Page 36, Sources)

City of Garden Grove. 2021a. Focused General Plan Update and Zoning Amendments Draft Environmental Impact Report. Page 4.2-1. August 18, 2021. Adopted November 9, 2021. Available at: <https://ggcity.org/sites/default/files/2021-08/FGPUZA%20DEIR.pdf> (accessed March 2022).

----. 2021b. Garden Grove General Plan, Chapter 2 Land Use Element, Public Review Draft – October 2021. Page 2-2. Adopted November 9, 2021. Available at: [Housing Element Update | City of Garden Grove \(ggcity.org\)](https://ggcity.org/sites/default/files/2021-08/HousingElementUpdate.pdf) (accessed March 2022).

----. 2020. Garden Grove Municipal Code. Available at: <http://qcode.us/codes/gardengrove/> (accessed June 2021).

----. 2008. Garden Grove General Plan, Chapter 10, Conservation Element, Public Review Draft – May 2008. Page 10-3. Available at: https://ggcity.org/internet/pdf/planning/chapter10_conservation.pdf (accessed March 2022).

Draft IS/MND Section V. Cultural Resources

(Page 37, Discussion a), 4th sentence)

~~13~~Thirteen properties within 0.25 miles of the project site are listed on California's State Built Environment Resources Directory, however, none of these are located on the project site.

Draft IS/MND Section VIII. Greenhouse Gas Emissions

(Page 49, 3rd paragraph, 5th sentence)

With implementation of Mitigation Measures GHG-1 through GHG-7 shown below, the total estimated GHG emissions generated by the proposed project would be ~~3,583.533~~ 3,316.08 MTCO₂e/year, reflecting a ~~54~~ 42 percent reduction.

(Page 50, GHG Mitigation Measure GHG-7, List Number 5)

5. Hotel management/concierge should provide information that promotes walking, bicycling and public transit options to nearby attractions. This should include information on local bus routes and schedules, regional transportation options, such as the Anaheim Regional Transportation Intermodal Center (ARTIC) and Orange Metrolink Station, and wayfinding to the existing transit stops along Harbor Boulevard.

Draft IS/MND Section XI. Land Use and Planning

(Page 64, 1st sentence)

Therefore, the proposed project would not cause a significant environmental impact due to a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect.

Draft IS/MND Section XIII. Noise

(Page 70, Construction Noise Reduction Mitigation Measure, N-1, 1st bullet)

- All construction equipment shall be equipped with mufflers and other suitable noise attenuation devices (e.g., engine shields).

Draft IS/MND Appendix I Traffic Impact Study

As response to comment 4-3, the Traffic Impact Study has been updated to include HCM level of service and queue reports for intersections within the Caltrans right-of-way, including intersection #7, #8, #18, and #20. Tables 6-1, 6-2, 6-3, and 6-4 of the Traffic Impact Study (see pp. 67-70) have been updated with the summary LOS results and HCM calculation worksheets and queue reports are provided in Appendices C, D, F, and G. The updated Traffic Impact Study is included as Attachment C of this Final IS/MND.

4 MITIGATION MONITORING AND REPORTING PROGRAM

This Mitigation Monitoring and Reporting Program (MMRP) identifies Mitigation Measures required to be implemented for the proposed project. These Mitigation Measures were identified in the Site B-2 Hotel Final IS/MND. For each Mitigation Measure, the MMRP identifies the potentially significant impact per environmental category, the related mitigation measure, the implementation entity, the monitoring and verification entity, and timing requirements.

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IDENTIFIED IMPACT	MITIGATION MEASURES/PDFs	MONITORING			VERIFICATION	
		Implementation Entity	Monitoring and Verification Entity	Timing Requirements	Signature	Date
AESTHETICS						
Light and Glare						
Introduce new source of substantial light or glare	AES-1 Prior to final site plan approval, a site specific light and glare study shall be prepared and approved by the Community and Economic Development Director, or his or her designee, to ensure that the proposed project will be in compliance with the City’s Zoning Code related to lighting designs. The light and glare study shall include technologically advanced hotel/resort lighting measures in its detailed design plans. These measures may include, without limitation, installation of exterior screening such as shielding attached to the luminaire, building, or site structures; using anti-reflective glass or glass treated with an anti-reflective coating; and shielding lights with visors to reduce light trespass, glare impact and visual distraction. Additionally, the light and glare study shall incorporate measures necessary for the proposed project’s compatibility with the goals and policies (i.e., Policy SAF-2.1 and SAF-IMP-2A) in the General Plan for providing adequate lighting to maintain a safe public environment. These measures may include, without	Project Applicant	Community and Economic Development Department/ Public Works Department	Prior to final site plan approval		

IDENTIFIED IMPACT	MITIGATION MEASURES/PDFs	MONITORING			VERIFICATION	
		Implementation Entity	Monitoring and Verification Entity	Timing Requirements	Signature	Date
	limitation, placement of pedestrian-level lighting throughout the project site; and provision of signage and markings within the project site for pedestrian safety.					
BIOLOGICAL RESOURCES						
MBTA Nesting Birds						
Raptors and other nesting birds protected under the federal Migratory Bird Treaty Act encountered during tree removal activity	<p>BIO-1 With the potential for nesting birds protected under the Migratory Bird Act Treaty (MBTA) and California Fish and Game Code (CFGF) to occur in ornamental trees within the project site and surrounding area, tree removal during construction shall occur outside of the nesting bird season (generally, February 15 through September 1). If avoiding the nesting season is not practicable, the following additional measures shall be employed:</p> <p>a. A pre-construction nesting bird survey shall be conducted by a qualified biologist within 3 days prior to the start of construction activities to determine whether active nests are present within or directly adjacent to the construction zone. All active nests found shall be recorded.</p>	Project Applicant	Community and Economic Development Department /Public Works Department	Prior to grading and building construction		

IDENTIFIED IMPACT	MITIGATION MEASURES/PDFs	MONITORING			VERIFICATION	
		Implementation Entity	Monitoring and Verification Entity	Timing Requirements	Signature	Date
	b. If active nests are detected during the survey, the qualified biologist shall establish an appropriate buffer and monitor the active nests within the buffers at a minimum of once per week to determine whether the birds are being disturbed. If signs of disturbance or stress are observed, the qualified biologist shall immediately implement adaptive measures to reduce disturbance. These measures shall be determined by the qualified biologist and could include, without limitation, increasing buffer distance, temporarily halting construction activities until fledging is confirmed, or placing visual screens or sound dampening structures between the nest and construction activity.					
CULTURAL RESOURCES						
Archaeological Resources						
Archaeological resources encountered during ground-disturbing activities	CR-1 In the event archeological resources are found during construction, all attempts will be made to preserve in place or leave resources in an undisturbed state in compliance with all applicable laws. In the event that	Project Applicant	Community and Economic Development Department /Public Works Department	During grading and building construction		

IDENTIFIED IMPACT	MITIGATION MEASURES/PDFs	MONITORING			VERIFICATION	
		Implementation Entity	Monitoring and Verification Entity	Timing Requirements	Signature	Date
	archeological resources are identified and cannot be preserved in place, a qualified archaeologist will be contacted to evaluate and determine appropriate treatment for the resource in accordance with Public Resources Code (PRC) Section 21083.2(i). Work in the vicinity of the discovery (15-meter radius) will halt until the appropriate assessment and treatment of the resource is determined by the archaeologist (work can continue elsewhere on the project site).					
Human Remains Discovery						
Unknown and unanticipated human remains encountered during ground-disturbing activities	CR-2 If human remains are discovered, work in the immediate vicinity of the discovery shall be suspended and the Orange County Coroner shall be contacted. If the remains are deemed Native American in origin, the Coroner will contact the NAHC and identify a Most Likely Descendant pursuant to PRC Section 5097.98 and California Code of Regulations Section 15064.5. Work will only commence after consultation and treatment have been concluded. Work may continue on other parts of the project site while	Project Applicant	Community and Economic Development Department /Public Works Department	During grading and building construction		

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	consultation and treatment are conducted.					
ENERGY						
Inefficient or wasteful energy consumption or conflict with the City's energy goals	Refer to Mitigation Measures GHG-2 through GHG-6					
GEOLOGY AND SOILS						
Paleontological Resources						
Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature	G-1 In the event paleontological resources are found during construction, all attempts will be made to preserve in place or leave resources in an undisturbed state in compliance with applicable laws. In the event that fossil specimens are encountered on the site and cannot be preserved in place, a qualified paleontologist will be contacted and work in the vicinity of the discovery (15-meter radius) will halt until the appropriate assessment and treatment of the resource is determined by the paleontologist (work can continue elsewhere on the project site). If recommended by the project paleontologist, monitoring	Project Applicant	Community and Economic Development Department /Public Works Department	During grading and building construction		

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	may be implemented, collection of specimens or appropriate sediment samples may be conducted, and remains may be curated at a repository, in accordance with Society of Vertebrate Paleontology guidelines.					
GREENHOUSE GAS EMISSIONS						
Generate greenhouse gas emission, either directly or indirectly, that may have a significant impact on the environment or conflict with Assembly Bill 32 or California Air Resources Board's 2017 Scoping Plan Update	GHG-1 The number of large diesel trucks coming to the site (i.e., for deliveries, trash collection or other services) shall be limited to 20 trucks per day or less. This restriction is specifically applicable to trucks classified as medium-heavy duty and heavy-heavy duty with gross vehicle weight (GVW) greater than 19,500 pounds.	Project Applicant	Community and Economic Development Department /Public Works Department	During grading and building construction / On going		
	GHG-2 Onsite renewable energy sources (i.e., solar panels) shall be installed capable of generating up to 25% of the project's total electricity demand.	Project Applicant	Community and Economic Development Department /Public Works Department	During grading and building construction / On going		
	GHG-3 Prior to receiving a Certificate of Occupancy, the proposed project shall demonstrate to the satisfaction of the Garden Grove Building and Safety Division that water conservation strategies have been implemented, including low flow fixtures and toilets,	Project Applicant	Community and Economic Development Department /Public Works Department	Prior to receiving a Certificate of Occupancy		

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	water efficient irrigation systems, drought tolerant/native landscaping, and pool water recycling systems.					
	GHG-4 Waste management, recycling and composting programs shall be implemented to divert up to 50% of waste away from a landfill.	Project Applicant	Community and Economic Development Department /Public Works Department	During grading and building construction / On going		
	GHG-5 Electric landscaping equipment, such as leaf blowers and pressure washers shall be used.	Project Applicant	Community and Economic Development Department /Public Works Department	During grading and building construction / On going		
	GHG-6 No onsite natural gas fireplaces or fire pits shall be installed.	Project Applicant	Community and Economic Development Department /Public Works Department	During grading and building construction / On going		
	GHG-7 Trip reduction measures and project design features shall be implemented to reduce the number of auto-based trips generated by the project and to encourage the use of transit, bicycling, and walking through the following measures.	Project Applicant	Community and Economic Development Department /Public Works Department	During grading and building construction / On going		

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	<ol style="list-style-type: none"> 1. Improve the walkability and design of the project by providing pedestrian and bicycling connections within the project site and to adjacent off-site facilities (i.e., sidewalks, crosswalks, wayfinding signage, etc.). 2. Provide traffic calming measures (i.e., marked crosswalks, raised crosswalks, raised intersections, count-down signal timers, curb extensions, speed tables, median islands, tight corner radii, roundabouts or mini-circles, on-street parking, planter strips with street trees, chicanes/chokers, etc.) 3. Provide secure onsite bicycle racks and provide bicycle rentals for hotel guests. 4. Provide transit/shuttle service for guests to local area attractions. The shuttle service shall operate on a regular daily basis and be offered to all guests staying at the hotel. 5. Hotel management/concierge should provide information that promotes walking, bicycling and public transit options to nearby 					

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	attractions. This should include information on local bus routes and schedules, <u>regional transportation options, such as the Anaheim Regional Transportation Intermodal Center (ARTIC) and Orange Metrolink Station</u> , and wayfinding to the existing transit stops along Harbor Boulevard.					
NOISE						
Construction Noise Reduction						
Generate temporary noise levels in exceedance of ambient conditions at the residential uses surrounding the project site	<p>N-1 Prepare and submit a construction management plan to the City of Garden Grove prior to starting construction. The construction management plan shall ensure all contractors implement construction best management practices to reduce construction noise levels. Best management practices shall include, but not be limited to, the following:</p> <ul style="list-style-type: none"> • All construction equipment shall be equipped with mufflers and other suitable noise attenuation devices (e.g., engine shields). • Where feasible, electric hook-ups shall be provided to avoid the use of generators. If electric service is determined to be infeasible for the 	Project Applicant	Community and Economic Development Department / Public Works Department	Prior to grading and building construction		

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	<p>site, only whisper-quiet generators shall be used (i.e., inverter generators capable of providing variable load.)</p> <ul style="list-style-type: none"> • Use electric air compressors and similar power tools rather than diesel equipment, where feasible. • Locate staging area, generator areas, and stationary construction equipment as far from the adjacent residential homes, as feasible. • Construction-related equipment, including heavy-duty equipment, motor vehicles, and portable equipment, shall be turned off when not in use for more than 5 minutes. • Provide notifications and signage in readily visible locations along the perimeter of construction sites that indicate the dates and duration of construction activities, as well as provide a telephone number where neighbors can inquire about the construction process and register complaints to a designated construction noise disturbance coordinator. 					

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	<ul style="list-style-type: none"> All construction activities shall take place during daytime hours, between 7:00 a.m. to 8:00 p.m., per the requirements of the City of Garden Grove conditions of approval. No impact pile driving or blasting activities shall be permitted on the project site during construction. 					
	N-2 Construct the eight (8) foot high masonry block noise barrier wall along the western and northwestern property lines during the first phase of construction, prior to performing any excavation or grading activities.	Project Applicant	Community and Economic Development Department / Public Works Department	During the first phase of construction, prior to performing any excavation or grading activities		
	N-3 Install a temporary noise barrier wall along the northern and southern property lines of the project site to shield adjacent sensitive receptors from construction noise. The temporary barrier should be installed at the first phase of construction, prior to performing any excavation or grading activities and shall remain till the construction is completed. The temporary noise barrier shall be a minimum of six (6) feet high and present a solid face area such as by	Project Applicant	Community and Economic Development Department / Public Works Department	During the first phase of construction, prior to performing any excavation or grading activities		

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	installing sound absorptive material or blankets which can be installed in multiple layers for improved noise insulation.					
TRANSPORTATION						
Left-Turn Queue						
Substantially increase hazards due to a geometric design or incompatible uses	TR-1	Coordinate with the City of Anaheim to determine if the project is required to make a fair-share contribution to extend the left-turn capacity up to 266 feet at the intersection of Harbor Boulevard and Orangewood Avenue.	Project Applicant	Public Works Department	Prior to final building permits	
	TR-2	Pay full cost to extend the left-turn capacity up to 169 feet at the intersection of West Street and Chapman Avenue.	Project Applicant	Public Works Department	Prior to final building permits	
	TR-3	Pay full cost to extend the left-turn capacity up to 105 feet at the intersection of Harbor Boulevard and Lampson Avenue.	Project Applicant	Public Works Department	Prior to final building permits	
	TR-4	Pay full cost to extend the left-turn capacity up to 133 feet at the intersection of Haster Street and Lampson Avenue.	Project Applicant	Public Works Department	Prior to final building permits	
	TR-5	Pay full cost to extend the left-turn capacity up to 381 feet at the intersection of Harbor Boulevard and Trask Avenue.	Project Applicant	Public Works Department	Prior to final building permits	

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TRIBAL CULTURAL RESOURCES						
Substantial adverse change in the significance of a tribal cultural resource pursuant to Public Resources Code § 21074	TCR-1 If any tribal cultural resources are encountered within the project site, interested Native American parties established in the contact program, in compliance with Assembly Bill 52 (AB 52), will be notified. The City of Garden Grove will coordinate with interested Native American parties, as established during AB 52 consultation, to determine whether the resources constitute tribal cultural resources and solicit any comments the Native American parties may have regarding appropriate treatment and disposition of the resources. All attempts will be made to preserve tribal cultural resources in place or leave resources in an undisturbed state in compliance with all applicable laws. Work in the vicinity of the discovery (15-meter radius) will halt until the appropriate assessment and treatment of the resource is determined in consultation with Native American parties (work can continue elsewhere on the project site).	Project Applicant	Community and Economic Development Department / Public Works Department	During grading and building construction		

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