APPEAL OF PLANNING COMMISSION ACTION

(The fee to file an Appeal is $617. Applicants who meet specific income guidelines may be eligible to waive this fee. A fee waiver application can be obtained from the Planning Department located at 315 E. Acequia. All Appeal forms with applicable fees or waivers must be submitted to the Office of the City Clerk at 220 N. Santa Fe St., within ten (10) days after the action which is the subject of the appeal. If the final day to file falls on a weekend or holiday the deadline to file is extended to the next business day by 5:00 p.m.)

Planning Commission Public Hearing Date: February 10, 2025

Appellant Name: Mitchell M. Tsai Law Firm / Carpenters Local Union #1109

Address: 139 S. Hudson Ave. Pasadena, CA 91101

Phone: (626) 314-3821

Please check the actions appealed and provide the action number. The action number may be obtained from the Planning Division at 713-4359.

- ☒ Conditional Use Permit No. 2024-26 (Section 17.02.145)
- ☐ Variance/Exception No. _____ (Section 17.02.145)
- ☐ Change of Zone No. _____ (Section 17.44.080)
- ☐ Tentative Subdivision Map _____ (Section 16.04.040)
- ☒ Tentative Parcel Map No. 2024-08 (Section 16.04.040)
- ☐ Site Plan Review Committee Determination _____ (Section 17.28.050)

In accordance with the Municipal Code of the City of Visalia, decisions by the Planning Commission may be appealed to the City Council within ten (10) days after the action which is the subject of the appeal. The appeal must state specifically where it is claimed that there was an error or abuse of discretion by the Planning Commission or whether the decision of the Commission is not supported by the evidence in the record.

List reason for appeal in accordance with the above requirements **(Additional pages and/or supporting documentation may be attached)**

See attached letter

Signature: _____ Date: 2/20/2025

Office Use Only

Received By: _____

Date: 2/20/25

Emailed to City Planner: 2/20/25

City Council Hearing Date: _____

Received

FEB 20 2025

City of Visalia
City Clerk's Office

Date Stamp

ORIGINAL CHECK HAS A COLORED BACKGROUND PRINTED ON CHEMICAL REACTIVE PAPER – SEE BACK FOR DETAILS

NATIONWIDE LEGAL, LLC.
CLIENT ADVANCE ACCOUNT
1609 JAMES M. WOOD BL
LOS ANGELES, CA 90015
(213) 249-9999

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WWW.BANKOFTHEWEST.COM
90-78/1211

210476

DATE 2-20-25

PAY TO THE ORDER OF ~~Clerk of the Court/Registrar-Recorder/Sheriff/SOS~~ City of Visalia $ 641.00

Six hundred forty one and 00/100 DOLLARS

DR# 636 CLIENT
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⑈210476⑈ ⑆121100782⑆ 06843018O⑈

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Mitchell M. Tsai
Law Firm

139 South Hudson Avenue
Suite 200
Pasadena, California 91101

VIA PERSONAL DELIVERY

February 20, 2025

City Clerk
City of Visalia
220 N. Santa Fe Street
Visalia, CA 93292

RE: City of Visalia, Shirk-Riggin Industrial Park Project (SCH# 2022080658) – Appeal of Planning Commission Approvals of Project Entitlements

Dear Mayor Poochigian and Distinguished Councilmembers,

On behalf of the Carpenters Local Union #1109 ("**Local 1109**"), our firm is submitting this appeal justification letter in connection with the February 10, 2025, approval by the City of Visalia's ("**City**") Planning Commission of the Conditional Use Permit ("**CUP**") and Tentative Parcel Map ("**TPM**") for the Shirk-Riggin Industrial Park Project ("**Project**").

The Project's Notice of Availability ("**NOA**") for the DEIR contains the following Project Description:

> The project applicant proposes to convert existing agricultural lands and develop the approximately 284-acre project site into an industrial park, consisting of eight industrial buildings used for warehouse, distribution, and light manufacturing; six flex industrial buildings; two drive-through restaurants; a convenience store; a recreational vehicle (RV) and self-storage facility; gas station; and a car wash. The total building footprint is approximately 3,720,149 square feet. The project site would include sufficient amounts of trailer stalls and car parking stalls to serve the proposed uses in accordance with applicable City requirements. The proposed project would also involve necessary infrastructure and improvements sufficient to serve the proposed uses. These would include detention basins on the east, west, and central portions of the project site and other necessary stormwater facilities to be sized and installed in

> accordance with all applicable requirements and standards. Access would be provided via three access points along Shirk Street, three access points along Riggin Avenue, and five access points along Kelsey Street. Clancy Street south of the project site would be extended to replace the existing private road and would traverse south to north of the site. On-site orchards would need to be removed, and appropriate landscaping and lighting would be incorporated into the overall site design consistent with applicable City requirements and guidelines.
>
> The proposed project would need to be annexed into the city limits, and upon annexation, would be served by the City of Visalia for purposes of water and wastewater. In addition, the other entitlements associated with this project include a Tentative Parcel Map and a Conditional Use Permit for some of the uses proposed (convenience store, drive-through lanes), some of the proposed lot sizes in the light industrial zoning, and lots without public street frontage.

NOA of DEIR, p. 1.

Local 1109 represents thousands of union carpenters in Tulare County and has a strong interest in well-ordered land use planning and in addressing the environmental impacts of development projects.

Individual members of Local 1109 live, work, and recreate in the City and surrounding communities and would be directly affected by the Project's environmental impacts.

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

Local 1109 incorporates by reference all comments related to the Project or its CEQA review, including the Environmental Impact Report. See *Citizens for Clean Energy v City of Woodland* (2014) 225 Cal.App.4th 173, 191 (finding that any party who has objected to the project's environmental documentation may assert any issue timely raised by other parties).

This appeal is filed pursuant to Visalia Municipal Code §§ 16.04.040 and 17.02.145. This appeal letter, and Local 1109's attached February 10, 2025 comments to the Planning

Commission (attached hereto as **Exhibit A**), demonstrate that the Planning Commission's decision to approve the CUP and TPM for the Project violated CEQA, in that the Planning Commission's approvals of the CUP and TPM were improperly conditioned upon (1) a finding that the entitlements were consistent with the analysis of the FEIR for the Project, (2) a finding that the FEIR was prepared consistent with CEQA and the City's Environmental Guidelines, and (3) a recommendation that the FEIR be certified by the City Council based on the FEIR's consistency with CEQA. (See Planning Commission Resolutions 2025-09 and 2025-10, at pp. 344-346 and 349 of Agenda and Staff Report to February 10, 2025, Planning Commission Agenda.)

The decisions/resolutions adopted by the Planning Commission in this regard are not supported by evidence in the record, as the FEIR for the Project remains subject to numerous deficiencies that violate CEQA and cannot permissibly be certified by the City in its current form. As discussed in greater detail below, those deficiencies include, but are not limited to, the EIR's failures to adequately analyze the Project's cumulative impacts, to adequately analyze and assess the Project's consistency with the City's General Plan and impacts on future conversion of agricultural lands, and to adequately mitigate the Project's significant impacts on agricultural resources and air quality.

The prior comments by Local 1109 and other concerned parties identified various flaws in the City's environmental analysis, and provided new information and substantial evidence demonstrating that the FEIR fails as an informational document under CEQA.

I. THE CITY'S MUNICIPAL CODE INDICATES THAT THE APPEAL HEARING SHALL BE DE NOVO

The City's Municipal Code §§ 16.04.040(C) and 17.02.145(C) note that the appeal hearings pertaining to Planning Commission approvals of CUPs and TPMs will be de novo. In holding a hearing on such an appeal, the City Council may receive and consider "any and all information pertinent to the matter, regardless of whether such information was first presented to the Planning Commission. In the case of decisions by the Planning Commission that followed a public hearing, the City Council shall hold a new public hearing on the matter." As such, the hearing for this appeal shall be considered a new hearing.

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

The City should require the Project to be built by contractors who participate in a Joint Labor-Management Apprenticeship Program approved by the State of California and make a commitment to hiring a local workforce.

Community benefits such as local hire can also be helpful to reduce environmental impacts and improve the positive economic impact of the Project. Local hire provisions requiring that a certain percentage of workers reside within 10 miles or less of the Project site can reduce the length of vendor trips, reduce greenhouse gas emissions, and provide localized economic benefits. As environmental consultants Matt Hagemann and Paul E. Rosenfeld note:

> [A]ny local hire requirement that results in a decreased worker trip length from the default value has the potential to result in a reduction of construction-related GHG emissions, though the significance of the reduction would vary based on the location and urbanization level of the project site.

March 8, 2021 SWAPE Letter to Mitchell M. Tsai re Local Hire Requirements and Considerations for Greenhouse Gas Modeling.

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

> [L]abor should be considered an investment rather than a cost—and investments in growing, diversifying, and upskilling California's workforce can positively affect returns on climate mitigation efforts. In other words, well-trained workers are key to delivering emissions reductions and moving California closer to its climate targets.[1]

---

[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.

Furthermore, workforce policies have significant environmental benefits given that they improve an area's jobs-housing balance, decreasing the amount and length of job commutes and the associated greenhouse gas (GHG) emissions. In fact, on May 7, 2021, the South Coast Air Quality Management District found that that the "[u]se of a local state-certified apprenticeship program" can result in air pollutant reductions.[2]

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

> People who live and work in the same jurisdiction would be more likely to take transit, walk, or bicycle to work than residents of less balanced communities and their vehicle trips would be shorter. Benefits would include potential reductions in both vehicle miles traveled and vehicle hours traveled.[3]

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

> In nearly built-out Berkeley, CA, the approach to balancing jobs and housing is to create local jobs rather than to develop new housing. The city's First Source program encourages businesses to hire local residents, especially for entry- and intermediate-level jobs, and sponsors vocational

---

[2] South Coast Air Quality Management District (May 7, 2021) Certify Final Environmental Assessment and Adopt Proposed Rule 2305 – Warehouse Indirect Source Rule – Warehouse Actions and Investments to Reduce Emissions Program, and Proposed Rule 316 – Fees for Rule 2305, Submit Rule 2305 for Inclusion Into the SIP, and Approve Supporting Budget Actions, *available at* http://www.aqmd.gov/docs/default-source/Agendas/Governing-Board/2021/2021-May7-027.pdf?sfvrsn=10.

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

[4] Cervero, Robert and Duncan, Michael (2006) Which Reduces Vehicle Travel More: Jobs-Housing Balance or Retail-Housing Mixing? Journal of the American Planning Association 72 (4), 475-490, 482, *available at* http://reconnectingamerica.org/assets/Uploads/UTCT-825.pdf.

> training to ensure residents are employment-ready. While the program is voluntary, some 300 businesses have used it to date, placing more than 3,000 city residents in local jobs since it was launched in 1986. When needed, these carrots are matched by sticks, since the city is not shy about negotiating corporate participation in First Source as a condition of approval for development permits.

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

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

III. THE PLANNING COMMISSION APPROVED PROJECT ENTITLEMENTS IN VIOLATION OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

A. Background Concerning the California Environmental Quality Act

The California Environmental Quality Act ("**CEQA**") is a California statute designed to inform decision-makers and the public about the potential significant environmental effects of a project. 14 California Code of Regulations ("**CEQA Guidelines**"), § 15002, subd. (a)(1).[5] At its core, its purpose is to "inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made." *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.

The preparation and circulation of an EIR is more than a set of technical hurdles for agencies and developers to overcome. *Communities for a Better Environment v. Richmond* (2010) 184 Cal.App.4th 70, 80 (quoting *Vineyard Area Citizens for Responsible Growth, Inc.*

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

v. City of Rancho Cordova (2007) 40 Cal.4th 412, 449-450). The EIR's function is to ensure that government officials who decide to build or approve a project do so with a full understanding of the environmental consequences and, equally important, that the public is assured those consequences have been considered. *Id.* For the EIR to serve these goals it must present information so that the foreseeable impacts of pursuing the project can be understood and weighed, and the public must be given an adequate opportunity to comment on that presentation before the decision to go forward is made. *Id.*

It is the duty of the lead agency, not the public, to conduct the proper environmental studies. "The agency should not be allowed to hide behind its own failure to gather relevant data." *Sundstrom, supra,* 202 Cal.App.3d at p. 311. "Deficiencies in the record may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences." *Ibid*; see also *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1382 (lack of study enlarges the scope of the fair argument which may be made based on the limited facts in the record).

While the courts review an EIR using an 'abuse of discretion' standard, the reviewing court is not to *uncritically* rely on every study or analysis presented by a project proponent in support of its position. *Berkeley Keep Jets, supra,* 91 Cal.App.4th at p. 1355 (quoting *Laurel Heights, supra,* 47 Cal.3d at pp. 391, 409 fn. 12) (internal quotations omitted). A clearly inadequate or unsupported study is entitled to no judicial deference. *Ibid.* Drawing this line and determining whether the EIR complies with CEQA's information disclosure requirements presents a question of law subject to independent review by the courts. *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 515; *Madera Oversight Coalition, Inc. v. County of Madera* (2011) 199 Cal.App.4th 48, 102, 131. As the First District Court of Appeal has previously stated, prejudicial abuse of discretion occurs if the failure to include relevant information precludes informed decision-making and informed public participation, thereby thwarting the statutory goals of the EIR process. *Berkeley Keep Jets, supra,* 91 Cal.App.4th at p. 1355 (internal quotations omitted).

Both the review for failure to follow CEQA's procedures and the fair argument test are questions of law, thus, the de novo standard of review applies. *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435. Whether the agency's record contains substantial evidence that would support a fair argument that the project may have a significant effect on the environment is treated

as a question of law. *Consolidated Irrigation Dist.*, *supra*, 204 Cal.App.4th at p. 207; Kostka and Zischke, Practice Under the Environmental Quality Act (2017, 2d ed.) at § 6.76.

1. CEQA Requires Subsequent or Supplemental Environmental Review When Substantial Changes or New Information Comes to Light

Section 21092.1 of the California Public Resources Code requires that "[w]hen significant new information is added to an environmental impact report after notice has been given pursuant to Section 21092 … but prior to certification, the public agency shall give notice again pursuant to Section 21092, and consult again pursuant to Sections 21104 and 21153 before certifying the environmental impact report" in order to give the public a chance to review and comment upon the information. (CEQA Guidelines § 15088.5.)

Significant new information includes "changes in the project or environmental setting as well as additional data or other information" that "deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative)." (CEQA Guidelines § 15088.5(a).) Examples of significant new information requiring recirculation include "new significant environmental impacts from the project or from a new mitigation measure," "substantial increase in the severity of an environmental impact," "feasible project alternative or mitigation measure considerably different from others previously analyzed" as well as when "the draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded." (*Id.*)

An agency has an obligation to recirculate an environmental impact report for public notice and comment due to "significant new information" regardless of whether the agency opts to include it in a project's environmental impact report. (*Cadiz Land Co. v. Rail Cycle* (2000) 83 Cal.App.4th 74, 95 [finding that in light of a new expert report disclosing potentially significant impacts to groundwater supply "the EIR should have been revised and recirculated for purposes of informing the public and governmental agencies of the volume of groundwater at risk and to allow the public and governmental agencies to respond to such information."].) If significant new information was brought to the attention of an agency prior to certification, ***an agency is required to revise and recirculate that information as part of the environmental impact report.***

B. The Entitlement Approvals Made by the Planning Commission Were Premised on its Determination of the EIR's Consistency with CEQA.

Resolutions 2025-09 and 2025-10 adopted by the Planning Commission at its February 10, 2025, meeting both state the following:

> NOW, THEREFORE, BE IT RESOLVED, that the Planning Commission of the City of Visalia finds that Final EIR for the Shirk & Riggin Industrial Park Project, State Clearinghouse No. 2022080658, was prepared consistent with the California Environmental Quality Act and City of Visalia Environmental Guidelines.

(Planning Commission Resolutions 2025-09 and 2025-10, at pp. 344-345 and 349 of Agenda and Staff Report to February 10, 2025, Planning Commission Agenda.)

Further, Resolutions 2025-09 and 2025-10 also indicate as follows:

> NOW, THEREFORE, BE IT FURTHER RESOLVED that the Planning Commission of the City of Visalia makes the following specific findings based on the evidence presented:
>
> . . .
>
> That [the Tentative Parcel Map and Conditional Use Permit are] consistent with the project description and the analysis contained in the Final Environmental Impact Report (FEIR) (SCH# 2022080658), specifically for development that is identified and described in the Shirk and Riggin Industrial Park Project, and for which said FEIR is recommended to be certified by the City Council precedent to the Planning Commission's consideration of this Conditional Use Permit request, consistent with the California Environmental Quality Act (CEQA) and City of Visalia Environmental Guidelines.

(Planning Commission Resolutions 2025-09 and 2025-10, at pp. 346 and 349 of Agenda and Staff Report to February 10, 2025, Planning Commission Agenda.)

However, for the reasons set forth herein below, and in the prior comments submitted by Local 1109 and other commenting parties concerning the Project, the EIR for the Project has not been prepared consistent with CEQA, such that the Planning Commission's approval of the foregoing entitlements on that basis is flawed and must now be reversed.

C. The FEIR Fails to Include Necessary Information, Analysis, and Mitigation Requested in Past Comment Letters.

In the FEIR, the City declined, without adequate justification, to address the concerns raised by Local 1109 and other interested parties regarding the Project's DEIR. Most notably, the FEIR dismissed and downplayed the deliberate failure and refusal of the EIR to consider in its cumulative impacts analysis the neighboring, recently-approved Shirk & Riggin Annexation Project (another approved large-scale industrial park project to be developed directly across the street from the Project – i.e., "significant new information" known to the City). The FEIR reasoned speciously and arbitrarily that, because the application for the Shirk & Riggin Annexation project had not been deemed complete prior to the release of the Project's NOP, the City need not consider the Shirk & Riggin Annexation project in the EIR's analysis of cumulative impacts. The City's conclusion in this regard is not supported in fact or law, and the absence of this analysis in the Project's EIR undermines the validity of the environmental review for the Project.

Additionally, the FEIR failed to address and resolve Local 1109's concerns regarding the Project's consistency with the City's General Plan and propensity to bring about further conversion of agricultural lands within the City and surrounding areas based on the anticipated population and employment growth that the Project is anticipated to induce. Indeed, the Project's EIR currently provides no analysis on the issues of the Project promoting growth and resulting in the conversion of further farmland to non-agricultural uses, summarily dismissing the concerns as "speculative" and/or concluding, without evidence and analysis, that the new employment needs generated by the Project would be primarily met by residents of the City and nearby surrounding areas. The FEIR's failure and refusal to conduct adequate analysis of these issues to support its assumptions and conclusions further renders it in violation of CEQA.

Further still, the FEIR has declined to make the requisite efforts to mitigate the Project's agricultural resources and air quality impacts, which it determined to be significant and unavoidable. To that end, Local 1109 provided reasonable suggestions for additional mitigation measures aimed at combatting the Project's significant agricultural resources impacts, and revision of the Project's air quality mitigation measure to ensure such mitigation occurs to the maximum extent feasible. In response, the FEIR summarily declined to implement any of the mitigation measures Local 1109 proposed for the Project's agricultural resources impacts, and offered only

arbitrary and unsupported justification for why MM AIR-2c cannot be revised to provide greater certainty and commitment to mitigating the Project's significant air quality impacts. Again, if a project has a significant effect on the environment, the agency may approve the project only upon finding that it has "eliminated or substantially lessened all significant effects on the environment where feasible" PRC §§ 21002; 21002.1, 21081; CEQA Guidelines §§ 15091, 15092(b)(2)(A). According to CEQA Guidelines, "[w]hen an EIR has been prepared for a project, the Responsible Agency shall not approve the project as proposed if the agency finds any feasible alternative or feasible mitigation measures within its powers that would substantially lessen or avoid any significant effect the project would have on the environment." CEQA Guidelines Section 15096(g)(2). The FEIR for the Project has failed to meet this fundamental CEQA standard.

As such, Local 1109 requests that the City Council grant this appeal, reversing the approvals of the Planning Commission for the Project, rejecting the Planning Commission determination that the EIR for the Project was prepared consistent with CEQA, and requiring, at minimum, the revision and recirculation of the Project's EIR.[Project Applicant to submit an AIA prior to any rehearing on the underlying entitlements and FEIR.

IV. CONCLUSION

Based on the foregoing, Local 1109 requests that the City Council grant this appeal, thereby reversing the Planning Commission's approval of the CUP and TPM for the Project, pending the required revision and recirculation of the FEIR to first address the areas of concern including the Project's cumulative impacts analysis, land use planning consistency and agricultural resources impacts analysis, and agricultural resources and air quality mitigation. Thank you for your consideration. If the City has any questions, please do not hesitate to contact our office.

Sincerely,

Jeremy Herwitt
Attorneys for Carpenters Local Union #1109

Attached:

February 10, 2025, Mitchell M. Tsai Law Firm Letter to City of Visalia Planning Commission [attachments omitted] (**Exhibit A**)

EXHIBIT A

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F: (626) 389-5414
E: info@mitchtsailaw.com

Mitchell M. Tsai
Law Firm

139 South Hudson Avenue
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VIA E-MAIL

February 10, 2025

Planning Commission
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Council Chambers, City Hall
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Visalia, CA 93291
Ph: (559) 713-4359
Em: planning@visalia.city

Brandon Smith, Project Manager
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Visalia, CA 93291
Ph: (559) 713-4636
Em: brandon.smith@visalia.city

RE: City of Visalia's February 10, 2025, Planning Commission Meeting Agenda Item No. 7 – Shirk-Riggin Industrial Project (SCH# 2022080658)

Dear Chair Beatie, Honorable Commissioners, and Brandon Smith,

On behalf of the Carpenters Local Union #1109 ("**Local 1109**"), our firm is submitting these comments in connection with the City of Visalia's ("**City**") February 10, 2025, Planning Commission meeting concerning the Shirk-Riggin Industrial Project (SCH#2022080658) ("Project") and the Draft Environmental Impact Report ("**DEIR**") and Final Environmental Impact Report ("**FEIR**") prepared in connection therewith.

The Project's Notice of Availability ("**NOA**") for the DEIR contains the following Project Description:

> The project applicant proposes to convert existing agricultural lands and develop the approximately 284-acre project site into an industrial park, consisting of eight industrial buildings used for warehouse, distribution, and light manufacturing; six flex industrial buildings; two drive-through restaurants; a convenience store; a recreational vehicle (RV) and self-storage facility; gas station; and a car wash. The total building footprint is approximately 3,720,149 square feet. The project site would include sufficient amounts of trailer stalls and car parking stalls to serve the proposed uses in accordance with applicable City requirements. The

> proposed project would also involve necessary infrastructure and improvements sufficient to serve the proposed uses. These would include detention basins on the east, west, and central portions of the project site and other necessary stormwater facilities to be sized and installed in accordance with all applicable requirements and standards. Access would be provided via three access points along Shirk Street, three access points along Riggin Avenue, and five access points along Kelsey Street. Clancy Street south of the project site would be extended to replace the existing private road and would traverse south to north of the site. On-site orchards would need to be removed, and appropriate landscaping and lighting would be incorporated into the overall site design consistent with applicable City requirements and guidelines.
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NOA of DEIR, p. 1.

The concurrently circulated DEIR contains the same project description. DEIR, pp. 1-2.

Local 1109 represents thousands of union carpenters in Tulare County and has a strong interest in well-ordered land use planning and in addressing the environmental impacts of development projects.

Individual members of Local 1109 live, work, and recreate in the City and surrounding communities and would be directly affected by the Project's environmental impacts.

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

Local 1109 incorporates by reference all comments related to the Project or its CEQA review, including the Environmental Impact Report. See *Citizens for Clean Energy v City of Woodland* (2014) 225 Cal.App.4th 173, 191 (finding that any party who has objected to the project's environmental documentation may assert any issue timely raised by other parties).

Moreover, Local 1109 requests that the City provide notice for any and all notices referring or related to the Project issued under the California Environmental Quality Act (**CEQA**) (Pub. Res. Code, § 21000 *et seq.*), and the California Planning and Zoning Law ("**Planning and Zoning Law**") (Gov. Code, §§ 65000–65010). California Public Resources Code Sections 21092.2, and 21167(f) and California Government Code Section 65092 require agencies to mail such notices to any person who has filed a written request for them with the clerk of the agency's governing body.

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

Local 1109 reiterates its prior comments that the City should require the Project to be built by contractors who participate in a Joint Labor-Management Apprenticeship Program approved by the State of California and make a commitment to hiring a local workforce.

Community benefits such as local hire can also be helpful to reduce environmental impacts and improve the positive economic impact of the Project. Local hire provisions requiring that a certain percentage of workers reside within 10 miles or less of the Project site can reduce the length of vendor trips, reduce greenhouse gas emissions, and provide localized economic benefits. As environmental consultants Matt Hagemann and Paul E. Rosenfeld note:

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See Exhibit A – March 8, 2021 SWAPE Letter to Mitchell M. Tsai re Local Hire Requirements and Considerations for Greenhouse Gas Modeling.

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

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

> People who live and work in the same jurisdiction would be more likely to take transit, walk, or bicycle to work than residents of less balanced communities and their vehicle trips would be shorter. Benefits would include potential reductions in both vehicle miles traveled and vehicle hours traveled.[3]

Moreover, local hire mandates and skill-training are critical facets of a strategy to reduce vehicle miles traveled (VMT). As planning experts Robert Cervero and

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[1] California Workforce Development Board (2020) Putting California on the High Road: A Jobs and Climate Action Plan for 2030 at p. ii, *available at* https://laborcenter.berkeley.edu/wp-content/uploads/2020/09/Putting-California-on-the-High-Road.pdf.

[2] South Coast Air Quality Management District (May 7, 2021) Certify Final Environmental Assessment and Adopt Proposed Rule 2305 – Warehouse Indirect Source Rule – Warehouse Actions and Investments to Reduce Emissions Program, and Proposed Rule 316 – Fees for Rule 2305, Submit Rule 2305 for Inclusion Into the SIP, and Approve Supporting Budget Actions, *available at* http://www.aqmd.gov/docs/default-source/Agendas/Governing-Board/2021/2021-May7-027.pdf?sfvrsn=10.

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

Michael Duncan have noted, simply placing jobs near housing stock is insufficient to achieve VMT reductions given that the skill requirements of available local jobs must match those held by local residents.[4] Some municipalities have even tied local hire and other workforce policies to local development permits to address transportation issues. Cervero and Duncan note that:

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

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

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

II. THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

CEQA is a California statute designed to inform decision-makers and the public about the potential significant environmental effects of a project. 14 California Code of Regulations ("**CEQA Guidelines**"), § 15002, subd. (a)(1).[5] At its core, its purpose

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[4] Cervero, Robert and Duncan, Michael (2006) Which Reduces Vehicle Travel More: Jobs-Housing Balance or Retail-Housing Mixing? Journal of the American Planning Association 72 (4), 475-490, 482, *available at* http://reconnectingamerica.org/assets/Uploads/UTCT-825.pdf.

[5] The CEQA Guidelines, codified in Title 14 of the California Code of Regulations, section 15000 et seq., are regulatory guidelines promulgated by the state Natural Resources Agency for the implementation of CEQA. Pub. Res. Code, § 21083. The CEQA Guidelines are

is to "inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made. Thus, the EIR 'protects not only the environment but also informed self-government[.]'" *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564 (internal citation omitted).

CEQA directs public agencies to avoid or reduce environmental damage, when possible, by requiring alternatives or mitigation measures. CEQA Guidelines, § 15002, subds. (a)(2)-(3); see also *Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners of the City of Oakland* (2001) 91 Cal.App.4th 1344, 1354; *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 400. The Environmental Impact Report (EIR) serves to provide public agencies and the public in general with information about the effect that a proposed project is likely to have on the environment and to "identify ways that environmental damage can be avoided or significantly reduced." CEQA Guidelines, § 15002, subd. (a)(2).

A public agency must prepare an EIR whenever substantial evidence supports a "fair argument" that a proposed project "may have a significant effect on the environment." Pub. Res. Code, §§ 21100, 21151; CEQA Guidelines, §§ 15002, subds. (f)(1)-(2), 15063; *No Oil, supra,* 13 Cal.App.3d at p. 75; *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 111-112. If the project has a significant effect on the environment, the agency may approve the project only upon finding that it has "eliminated or substantially lessened all significant effects on the environment where feasible" and that any unavoidable significant effects on the environment are "acceptable due to overriding concerns" specified in Public Resources Code section 21081. See CEQA Guidelines, §§ 15092, subds. (b)(2)(A)-(B).

Essentially, should a lead agency be presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect. CEQA Guidelines, §§ 15064(f)(1)-(2); see *No Oil, supra,* 13 Cal.App.3d at p. 75 (internal citations and quotations omitted). Substantial evidence includes "enough relevant information and reasonable inferences from this

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given "great weight in interpreting CEQA except when . . . clearly unauthorized or erroneous." *Center for Biological Diversity v. Dept. of Fish & Wildlife* (2015) 62 Cal.4th 204, 217.

information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." CEQA Guidelines, § 15384, subd. (a).

The EIR has been described as "an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return." *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm'rs.* (2001) 91 Cal. App. 4th 1344, 1354 (*"Berkeley Jets"*); *County of Inyo v. Yorty* (1973) 32 Cal. App. 3d 795, 810.

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

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

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

Cal.App.4th 768, 785. In such a situation, the lead agency *must* adopt a negative declaration. Pub. Res. Code, § 21080, subd. (c)(1); CEQA Guidelines, §§ 15063, subd. (b)(2), 15064, subd. (f)(3).

"Significant effect upon the environment" is defined as "a substantial or potentially substantial adverse change in the environment." Pub. Res. Code, § 21068; CEQA Guidelines, § 15382. A project may have a significant effect on the environment if there is a reasonable probability that it will result in a significant impact. *No Oil, supra, 13* Cal.App.3d at p. 83 fn. 16; see *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 309 (hereafter, "*Sundstrom*"). If any aspect of the project may result in a significant impact on the environment, an EIR must be prepared even if the overall effect of the project is beneficial. CEQA Guidelines, § 15063, subd. (b)(1); see *County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1580.

This standard sets a "low threshold" for preparation of an EIR. *Consolidated Irrigation Dist. v. City of Selma* (2012) 204 Cal.App.4th 187, 207; *Nelson v. County of Kern* (2010) 190 Cal.App.4th 252; *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 928; *Bowman v. City of Berkeley* (2004) 122 Cal.App.4th 572, 580; *Citizen Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 754; *Sundstrom, supra,* 202 Cal.App.3d at p. 310; *No Oil, supra,* 13 Cal.App.3d at p. 84; *County Sanitation, supra,* 127 Cal.App.4th at p. 1579. If substantial evidence in the record supports a fair argument that the project may have a significant environmental effect, the lead agency must prepare an EIR even if other substantial evidence before it indicates the project will have no significant effect. See *Jensen, supra,* 23 Cal.App.5th at p. 886; *Clews Land & Livestock v. City of San Diego* (2017) 19 Cal.App.5th 161, 183; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150; *Brentwood Assn. for No Drilling, Inc. v. City of Los Angeles* (1982) 134 Cal.App.3d 491; *Friends of "B" St.*, 106 Cal.App.3d 988; CEQA Guidelines, § 15064, subd. (f)(1). 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 p. 1580 (quoting CEQA Guidelines, § 15063, subd. (b)(1)).

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, supra,* 127 Cal.App.4th at p. 1579 (quoting *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1317-1318).

The agency or the court should not weigh expert testimony or decide on the credibility of such evidence—this is the EIR's responsibility. As stated in *Pocket Protectors v. City of Sacramento* (2004):

> 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 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. Thus, as *Claremont* itself recognized, [c]onsideration is not to be given contrary evidence supporting the preparation of a negative declaration.

124 Cal.App.4th 903, 935 (internal citations and quotations omitted).

In cases where it is not clear whether there is substantial evidence of significant environmental impacts, CEQA mandates 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. Bd. of Supervisors* (1972) 8 Cal.3d 247, 259.

Further, it is the duty of the lead agency, not the public, to conduct the proper environmental studies. "The agency should not be allowed to hide behind its own failure to gather relevant data." *Sundstrom, supra,* 202 Cal.App.3d at p. 311. "Deficiencies in the record may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences." *Ibid*; see also *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1382 (lack of study enlarges the scope of the fair argument which may be made based on the limited facts in the record).

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

While the courts review an EIR using an 'abuse of discretion' standard, the reviewing court is not to *uncritically* rely on every study or analysis presented by a project proponent in support of its position. *Berkeley Keep Jets, supra*, 91 Cal.App.4th at p. 1355 (quoting *Laurel Heights, supra*, 47 Cal.3d at pp. 391, 409 fn. 12) (internal quotations omitted). A clearly inadequate or unsupported study is entitled to no judicial deference. *Ibid.* Drawing this line and determining whether the EIR complies with CEQA's information disclosure requirements presents a question of law subject to independent review by the courts. *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 515; *Madera Oversight Coalition, Inc. v. County of Madera* (2011) 199 Cal.App.4th 48, 102, 131. As the First District Court of Appeal has previously stated, prejudicial abuse of discretion occurs if the failure to include relevant information precludes informed decision-making and informed public participation, thereby thwarting the statutory goals of the EIR process. *Berkeley Keep Jets, supra*, 91 Cal.App.4th at p. 1355 (internal quotations omitted).

Both the review for failure to follow CEQA's procedures and the fair argument test are questions of law, thus, the de novo standard of review applies. *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435. Whether the agency's record contains substantial evidence that would support a fair argument that the project may have a significant effect on the environment is treated as a question of law. *Consolidated Irrigation Dist., supra*, 204 Cal.App.4th at p. 207; Kostka and Zischke, Practice Under the Environmental Quality Act (2017, 2d ed.) at § 6.76.

III. THE EIR IS INADEQUATE UNDER CEQA

A. The EIR Fails to Support Its Findings with Substantial Evidence

When new information is brought to light showing that an impact previously discussed in the DEIR but found to be insignificant with or without mitigation in the DEIR's analysis has the potential for a significant environmental impact supported by

substantial evidence, the DEIR must consider and resolve the conflict in the evidence. See *Visalia Retail, L.P. v. City of Visalia* (2018) 20 Cal. App. 5th 1, 13, 17; see also *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal. App. 4th 1099, 1109. While a lead agency has discretion to formulate standards for determining significance and the need for mitigation measures—the choice of any standards or thresholds of significance must be "based to the extent possible on scientific and factual data and an exercise of reasoned judgment based on substantial evidence. CEQA Guidelines § 15064(b); *Cleveland Nat'l Forest Found. v. San Diego Ass'n of Gov'ts* (2017) 3 Cal. App. 5th 497, 515; *Mission Bay Alliance v. Office of Community Inv. & Infrastructure* (2016) 6 Cal. App. 5th 160, 206. And when there is evidence that an impact could be significant, an EIR cannot adopt a contrary finding without providing an adequate explanation along with supporting evidence. *East Sacramento Partnership for a Livable City v. City of Sacramento* (2016) 5 Cal. App. 5th 281, 302.

In addition, a determination that regulatory compliance will be sufficient to prevent significant adverse impacts must be based on a project-specific analysis of potential impacts and the effect of regulatory compliance. In *Californians for Alternatives to Toxics v. Department of Food & Agric.* (2005) 136 Cal. App. 4th 1, the court set aside an EIR for a statewide crop disease control plan because it did not include an evaluation of the risks to the environment and human health from the proposed program but simply presumed that no adverse impacts would occur from use of pesticides in accordance with the registration and labeling program of the California Department of Pesticide Regulation. *See also Ebbetts Pass Forest Watch v Department of Forestry & Fire Protection* (2008) 43 Cal. App. 4th 936, 956 (the fact that the Department of Pesticide Regulation had assessed environmental effects of certain herbicides in general did not excuse failure to assess effects of their use for specific timber harvesting project).

1. The DEIR and FEIR Improperly Omit Critical Information in Their Analysis of the Project's Cumulative Impacts

Table 3-1 of the DEIR lists the projects that the DEIR considered, in conjunction with the proposed Project, as part of its cumulative impacts analysis. However, the DEIR's Cumulative Projects list omits the Shirk & Riggin Annexation Project (1,553,080 sq. ft. – approved by the City via MND on 5/22/24; the "Shirk-Riggin Annexation"), for which the City has just adopted a MND approving the annexation of a 75-acre tract of prime agricultural land directly across Riggin Avenue from the Project site. Moreover, the Shirk & Riggin Annexation is anticipated to be developed

into over 1.5 million square feet of light industrial/warehouse space. However, despite the intended uses of this adjacent project, the DEIR completely omits the Shirk & Riggin Annexation from its analysis of the Project's cumulative impacts.

In response to Local 1109's comments on this issue, the FEIR completely dismisses the concerns raised regarding the inadequacy of the DEIR's cumulative impacts analysis. To that end, the City speciously claims that, because the Shirk & Riggin Annexation project (which has now been approved by the City and the Tulare County LAFCo) purportedly did not have a complete application on file at the time of the publication of the Project's NOP, the City was not legally required to consider the Shirk & Riggin Annexation project in the DEIR's cumulative impacts analysis for the Project. The City's position in response to the comments on this issue is arbitrary, disingenuous, and unsupported by fact and law. Indeed, while the City may have had some degree of discretion in identifying a baseline of the environmental conditions for the Project, that discretion did not relieve the City from following the mandates of CEQA Guidelines § 15130 concerning the requirements for the EIR's discussion of cumulative impacts.

Specifically, for purposes of preparing the Project's cumulative impacts analysis, the City elected to include and assess a list of "past, present, and ***probable future projects***" (emphasis added), pursuant to CEQA Guidelines § 15130(b)(1)(A). The FEIR acknowledges that the City was aware of the application for the Shirk & Riggin Annexation project at the time of the release of the Project's NOP. Further, CEQA Guidelines § 15130(b)(1) provides that an EIR's discussion of cumulative impacts "should be guided by the standards of practicality and reasonableness, and should focus on the cumulative impacts to which the identified other projects contribute..." The City has failed to meet and abide by this standard in deeming the Shirk & Riggin Annexation project outside the scope of the Project's environmental baseline. Put another way, it was and is patently unreasonable for the City to exclude the Shirk & Riggin Annexation project from the EIR's discussion of the Project's cumulative impacts, particularly given that the adjacent Shirk & Riggin Annexation project has been granted final approval by the City prior to the City's final approval of the Project at issue. Indeed, similar to the fact that the DEIR has relied on various studies purporting to reflect the environmental setting of the Project site that were prepared and/or completed after the Project's NOP, the City must also fully consider those other projects known to the City prior to the publication of the DEIR and that are

reasonably likely to bear upon the cumulative impacts associated with the Project. The limitation that the City has applied to the scope of "reasonably foreseeable future projects" as including projects that were "being processed pursuant to a formal application that had been submitted by or before" the date of the NOP's publication is arbitrary and capricious.

Local 1109 reiterates that the omission of the Shirk & Riggin Annexation project from the Project's cumulative impacts analysis in the DEIR and FEIR significantly taints and effectively undermines the validity of much of the EIR's cumulative impacts analysis. Indeed, the failure to consider and account for a significant, large-scale, industrial development directly across the street from the Project that has already been approved by the City (i.e., the lead agency) and Tulare County LAFCo (i.e., responsible agency) exposes the inadequacy of the EIR's cumulative impacts analysis in impact categories such as agricultural resources, air quality, energy use, greenhouse gases, transportation, noise, hydrology and water quality, public services, utilities and service systems, and aesthetics. Local 1109 maintains that the EIR must now be revised with respect to each of the foregoing impact categories (and potentially others) to incorporate the approved Shirk & Riggin Annexation project in its cumulative impacts analysis. Absent such revision, Local 1109 resubmits that the EIR in its current form violates CEQA and cannot permissibly be certified by the City.

2. The DEIR and FEIR Fail to Adequately Analyze the Project's Consistency with the City's General Plan

The EIR does not discuss or analyze the Project's cumulative impacts with respect to potential conflict with the Land Use Buildout Scenario under the City's General Plan. Table 1-4: Non-Residential Floor Area within the General Plan projected new development of 9,690,000 square feet of industrial uses between 2010 and 2030. Table 1-5: Employment by Sector projects the associated creation of 9,670 jobs in the industrial sector. The EIR does not provide any information or analysis on the buildout conditions of the General Plan. Further, the EIR has not provided evidence that the growth generated by the proposed Project and others in the surrounding area was anticipated by the General Plan, RTP/SCS, or AQMP.

The whole of the action proposed by the Project proposes the development of 3,720,149 square feet of industrial uses, which is 38.4% of the City's industrial buildout accounted for by a single project. The DEIR must include this analysis, and also provide a cumulative analysis discussion of projects approved since General Plan

adoption and projects "in the pipeline" to determine if the project will exceed the General Plan buildout scenarios.

For example, other recent industrial projects such as Shirk & Riggin Annexation Project (1,553,080 sq. ft. – approved by the City via MND on 5/22/24; the "Shirk-Riggin Annexation") and its other adjacent related projects all being pursued by the same developer (YS Industries) propose 2,507,328 square feet of industrial uses directly across Riggin Avenue from the proposed Project. Combined with those other nearby industrial projects, the proposed Project will cumulatively generate 6,327,328 square feet of light industrial space. This represents 64% of the City's industrial buildout through 2030 accounted for by only five recent projects. The total industrial buildout increases even further after adding in other industrial developments approved, submitted, or "in the pipeline" since the City's General Plan adoption. Despite that, the EIR fails to include a cumulative analysis on his topic, which Local 1109 reiterates is required.

Further, Table 1-5: Employment by Sector within the General Plan indicates that the Industrial land use designation will allow for the creation of 9,670 new jobs from 2010-2030. Meanwhile, the whole of the action proposed by the Project will create 5,094 new jobs (utilizing the General Plan's employment generation ratio), which is 52.7% of the City's industrial job buildout accounted for by a single project. The EIR fails to include this analysis and any cumulative analysis discussion of projects approved since General Plan adoption and projects "in the pipeline" to determine if the project will exceed the General Plan buildout scenarios.

Indeed, other recent industrial projects such as the Shirk-Riggin Annexation and its related adjacent projects being pursued by YS Industries discussed above (2,507,328 total sf; 3,344 total jobs utilizing General Plan employment generation ratio) combined with the proposed project will cumulatively generate 8,438 industrial jobs. This represents 87% of the City's industrial job buildout through 2030 accounted for by only five recent projects. These totals increase when other industrial development approved, submitted, or "in the pipeline" since General Plan adoption are added to the total. Yet, the DEIR contains no analysis of these potential cumulative impacts with respect to the Project's potential conflict with the City's existing land use plans.

In responding to comments on this Land Use Planning consistency issue, the FEIR summarily dismisses the need for further analysis of these statistics relative to the city's long range planning for population and employment purpose. The City's

apparent justification for failing to conduct the analysis is that it "is reasonable to assume, given the nature of the local employment population combined with the nature of the project, that employment needs generated by the proposed project would be able to be filled primarily by employees who live within the City and nearby unincorporated areas in the County." (FEIR at p. 2-500.) However, the City offers no evidence or data whatsoever in support of this significant assumption. Simply put, more is required in order to demonstrate the Project's required consistency with the City's long range land use planning efforts as related to local population, employment, and anticipated future residential development.

Accordingly, Local 1109 resubmits that the EIR has failed to adequately analyze the Project's impacts (both individual and cumulative) with respect to its consistency with the City's General Plan, and it must now be revised and recirculated to contain a detailed analysis of these issues. Absent provision of proper analysis, the public and the City's decisionmakers will not be properly informed regarding the Projects potential impacts that might otherwise run afoul of the City's General Plan.

3. The DEIR and FEIR Omit Critical Supporting Information Regarding the Project's Agricultural Resources Impacts and Improperly Find that the Project's Impact AG-5 Would Be Less Than Significant

The DEIR reaches the conclusion on Impact AG-5 that the Project would have a less than significant impact as to potential "changes in the existing environment which, due to their location or nature, could result in conversion of Farmland, to nonagricultural use." (DEIR at pp. 3.2-14-15.) However, the DEIR premises that determination, in part, on the following unsupported conclusion in its analysis: "It would be speculative to determine that the project would promote growth and result in the conversion of adjacent lands to non-agricultural uses." (DEIR at p. 3.2-14.)

As noted in Section 2, *supra*, the Project is anticipated to generate thousands of new jobs in the local economy. Indeed, a specific aim of the City's operative General Plan is to foster such growth via projects like this one. In that regard, it is entirely reasonable to expect and conclude that the Project will promote growth and lead to conversion of additional agricultural lands to non-agricultural uses. An analysis in the DEIR of the Project's anticipated impacts on regional population and economic growth, and the secondary impacts posed by the potential development of additional agricultural lands for the purpose of uses such as additional housing and services, is warranted here. The

current absence of that analysis in the DEIR, and the refusal by the FEIR to conduct that analysis, is noteworthy and improper. It is well established under California law that the City cannot permissibly hide behind its failure to gather relevant data and conduct requisite analysis as a basis for determining that no significant impacts would result from the Project.

The DEIR and FEIR fail to consider the economic and population growth that the Project will foster within the City, and the potential impacts of that growth on surrounding agricultural lands. Local #1109 reiterates that the EIR must be revised and recirculated to provide adequate analysis of this issue.

4. The EIR's Analysis of Agricultural Resources Impacts Fails to Consider and Deploy All Feasible Mitigation Measures

A fundamental purpose of an EIR is to identify ways in which a proposed project's significant environmental impacts can be mitigated or avoided. Pub. Res. Code §§ 21002.1(a), 21061. To implement this statutory purpose, an EIR must describe any feasible mitigation measures that can minimize the project's significant environmental effects. PRC §§ 21002.1(a), 21100(b)(3); CEQA Guidelines §§ 15121(a), 15126.4(a).

If the project has a significant effect on the environment, the agency may approve the project only upon finding that it has "eliminated or substantially lessened all significant effects on the environment where feasible" PRC §§ 21002; 21002.1, 21081; CEQA Guidelines §§ 15091, 15092(b)(2)(A); and find that 'specific overriding economic, legal, social, technology or other benefits of the project outweigh the significant effects on the environment." PRC §§ 21002; 21002.1, 21081; CEQA Guidelines §§ 15091, 15092(b)(2)(B). "A gloomy forecast of environmental degradation is of little or no value without pragmatic, concrete means to minimize the impacts and restore ecological equilibrium." *Environmental Council of Sacramento v. City of Sacramento* (2006) 142 Cal.App.4th 1018, 1039.

According to CEQA Guidelines, "[w]hen an EIR has been prepared for a project, the Responsible Agency shall not approve the project as proposed if the agency finds any feasible alternative or feasible mitigation measures within its powers that would substantially lessen or avoid any significant effect the project would have on the environment." CEQA Guidelines Section 15096(g)(2). The DEIR concludes that the Project will have significant Agricultural Resources impacts (both at the project level and cumulative), in the form of converting Prime Farmland to non-agricultural use, but

in response, proposes no mitigation measures to ameliorate those impacts. The DEIR then goes on to conclude the Project's Agricultural Resources impacts associated are "significant and unavoidable" and no mitigation measures are feasible. DEIR at pp. ES-8, 3.2-12. In support of its determination that no mitigation measures would be feasible, the DEIR states the following:

> Because, however, Policy LU-P-34 does not apply to Tier 1 lands and further because there is no adopted Agricultural Preservation Ordinance, there is no feasible method to mitigate the loss of this Important Farmland.

DEIR at p. 3.2-12.

In shrugging off the ability to mitigate the Agricultural Resources impacts of the project, the DEIR appears to rely upon the fact that the Project site's land has been considered for industrial zoning and development by the City's General Plan. However, an impact can only be labeled as significant-and-unavoidable after all available, feasible mitigation is considered and, here, the EIR lacks substantial evidence to support a finding that no other feasible mitigation existed to mitigate Project's significant impacts on this issue. Indeed, the DEIR failed to even consider, let alone analyze, mitigation measures such as (1) the applicant's purchase and/or grant of agricultural easements on other productive farmland at a 1:1 mitigation ratio, (2) payment of a mitigation fee, (3) protection of part of the Project site for continuing agricultural uses, (4) establishing adequate buffering for the Project to ensure that neighboring agricultural areas are not interfered with, and/or (5) recordation of a Right to Farm certificate.

The DEIR contains no discussion of any of the foregoing mitigation concepts, and FEIR improperly dismisses these proposed reasonable mitigation measures without any substantive discussion or analysis regarding their applicability or feasibility. Absent doing so, the EIR cannot reach credible determinations that no mitigation measures for the agricultural resources impacts are feasible or that the Project's agricultural resources impacts are significant and unavoidable. Local 1109 resubmits that the EIR must be revised and recirculated to include this requisite analysis and discussion so that the public and the agency decisionmakers are adequately and accurately apprised of the Project's potential significant impacts.

5. The EIR's Air Quality Mitigation Fails to Consider and Deploy All Feasible Mitigation Measures

Similar to the Agricultural Resources impacts discussed above, the DEIR concludes that the Project will have significant Air Quality impacts, since the proposed Project "would exceed applicable thresholds despite compliance with all applicable rules, regulations, and mitigation measures during construction and operation," and "[l]ocalized operational emissions … also present a potentially significant impact after incorporation of identified mitigation." DEIR, p. 3.3-57. The Project proposes to follow certain regulatory requirements and proposes various mitigation measures to further reduce construction and operational air quality impacts. DEIR at pp. 3.3-57-60. Notwithstanding, the DEIR concludes the Project's air quality impacts associated are "significant and unavoidable" DEIR at p. 3.3-60.

However, an impact can only be labeled as significant-and-unavoidable after all available, feasible mitigation is considered and the EIR lacks substantial evidence to support a finding that no other feasible mitigation existed to mitigate Project's significant impacts. Here, mitigation measure MM AIR-2c, includes optional language ("subject to the same being commercially practicable") in the context of "all on-site off-road and on-road service equipment will utilize zero-emission technology" in the construction of the project. DEIR at p. ES-11.

In response to Local 1109's comments on this issue, the FEIR stands firm on the Project's flawed mitigation measure, providing a litany of excuses why the EIR cannot commit to definitive mitigation in the form of zero-emission technology for the Project's on-site off-road and on-road service equipment. The City's justification for maintaining the mitigation measure as-is purportedly stems from uncertainty as to the nature of emission technology that will be available when the Project is constructed. However, the City's concerns are not properly reflected in the language of MM AIR-2c. Specifically, the use of the term "commercially practicable" is so vague and ambiguous that it renders the entire mitigation measure uncertain and potentially meaningless. Local #1109 submits that, were MM AIR-2c to be revised to state "…subject to the same being commercially **available**…" this qualification set forth in the mitigation measure would be reasonable and acceptable. However, the City has yet to demonstrate any inclination to make a clear and greater commitment to mitigation on this issue in the form of zero-emission technology.

Once again, given that the current anticipated air quality impacts of the Project are considered substantial and unavoidable, such air quality-preserving mitigation measures should not be framed as optional or deferred for a later decision. Rather, the mitigation measure should confirm that such service vehicles at the Project will utilize zero-emission technology without any qualification. Local 1109 maintains that, at a minimum, the EIR should be revised and recirculated to incorporate these items as mandatory components of mitigation measure MM AIR-2c.

IV. CONCLUSION

Based on the foregoing concerns, the City should require revision and recirculation of the DEIR for the Project pursuant to CEQA. Absent doing so, the DEIR in its current form directly violates CEQA in multiple respects. If the City should have any questions or concerns, please do not hesitate to contact this office.

Sincerely,

Jeremy Herwitt
Attorneys for Carpenters Local Union #1109

Attached:

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

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

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