EXHIBIT J

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SOUTHERN CALIFORNIA EDISON COMPANY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

SOUTHERN CALIFORNIA EDISON COMPANY, a California Corporation,

Petitioner,

v.

CITY OF JURUPA VALLEY, CITY COUNCIL FOR THE CITY OF JURUPA VALLEY, and DOES 1 through 10, inclusive,

Respondents.

RICK BONDAR, an individual, ANTHONY P. VERNOLA, an individual and in his capacity as Trustee of the Anthony P. Vernola Trust U/D/T and Trustee of the Pat And Mary Ann Vernola Trust – Marital Trust, the ANTHONY P. VERNOLA TRUST U/D/T, the PAT AND MARY ANN VERNOLA TRUST – MARITAL TRUST, TREF JURUPA LLC, a Delaware limited partnership, REVX-APV, INC., a California Corporation, and ROES 11 through 20, inclusive,

Real Parties in Interest.

Case No. CIVDS1513522
(Related with Case No. CIVDS1512381)

(CEQA ACTION)

[Assigned to the Honorable Donald Alvarez – Department S23]

PETITIONER SOUTHERN CALIFORNIA EDISON COMPANY'S REPLY BRIEF IN SUPPORT OF VERIFIED PETITION FOR WRIT OF ADMINISTRATIVE MANDAMUS, WRIT OF MANDAMUS, AND INJUNCTIVE RELIEF

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I. SUMMARY OF ARGUMENT

Three basic tenets of the California Environmental Quality Act are at issue in this case—(1) CEQA's primary purpose of disclosing to the public and decision-makers all potential significant environmental impacts of a proposed project; (2) an EIR is required if a fair argument is made that the proposed project may cause a significant environmental impact; and (3) a lead agency is obligated to provide substantial evidence in support of its determination that a proposed project will not lead to significant environmental impacts. The City of Jurupa Valley's ("City") environmental review of the 397-unit apartment project ("Apartment Project") is plainly inconsistent with those CEQA principles. The City approved the Apartment Project through a mitigated negative declaration ("MND") that did not make a single reference to an electric transmission line proposed to be located on the same property as the Apartment Project, even though the City knew that an Environmental Impact Report had already been certified for that transmission line. The City also did not include any analysis of why it determined disclosure of the electric transmission line was not legally required under CEQA. That overarching legal defect caused the City to approve the Apartment Project without fully disclosing its potential environmental impacts and without substantial evidence to support its determination that the Apartment Project would not lead to significant environmental impacts.

The only explanation provided during the Apartment Project's entitlement process for the City's complete omission of the electric transmission line came not from the City, but from the Real Parties in Interest ("Real Parties") who argued that the transmission line was too "speculative" for the City to consider in the MND. The City provided no such explanation of its own in the administrative record. In their joint Opposition Brief the City and Real Parties now apparently abandon that alleged explanation altogether and state that the sole justification for the omission in the MND is that the electric transmission line and Apartment Project are allegedly "mutually exclusive."

Yet, the administrative record does not contain any evidence that the two projects are necessarily mutually exclusive. In fact, the record contains evidence that the electric transmission line route had been modified to accommodate other projects in the past. As the City was informed before it approved the Apartment Project, Southern California Edison Company ("SCE") previously modified the transmission line's route to accommodate a commercial project affiliated with the Real Parties.

Despite knowing the potential for the transmission line route to be modified, the City conducted no analyses, either in the MND or in any other document in the administrative record, as to whether the two projects could successfully co-exist. Instead, the City and Real Parties now provide only a post-hoc rationalization that the two projects cannot possibly co-exist.

The MND also provides no analysis of the two projects' potential cumulative impacts, which could occur if both projects proceed on the same project site. For example, with overlapping construction schedules the two projects could lead to potentially cumulative impacts related to air quality, noise, and traffic. Yet, the City's post-hoc conclusion that the two projects are necessarily mutually exclusive, without any supporting evidence in the administrative record, deprived the public and the decision-makers of any analysis of the Apartment Project's potential cumulative impacts.

If the City did believe the two projects were necessarily mutually exclusive, CEQA required, at a minimum, that the City disclose its conclusion and analysis that the Apartment Project would make the electric transmission line infeasible in the MND. The City obviously failed to do so because the transmission line is a public infrastructure project that will provide much needed electricity to the broader Riverside region, and the City's conclusion that the projects are mutually exclusive necessarily means that the Apartment Project could have significant impacts on regional energy supplies. Yet, the Apartment Project's potential impacts to energy resources were completely omitted from any analysis in the MND. In response, the City and Real Parties argue that the City was not required to consider such energy impacts because it evaluated the Apartment Project through an MND instead of an environmental impact report ("EIR"). That argument, however, is circular—even though a project's impact on energy resources may be significant and thereby require an EIR, no such analysis is required if an EIR is not prepared. CEQA does not countenance such gamesmanship—all potential environmental impacts must be analyzed whether an EIR or an MND is used.

The City and Real Parties attempt to explain the defect in the City's environmental review related to the Apartment Project's potential impacts to neighborhood traffic, alleging that residents' observations supporting a fair argument that the Apartment Project could lead to traffic impacts did not constitute substantial evidence. Yet, the residents surrounding the Apartment Project site are in a unique position to understand the true patterns of traffic that cut through their neighborhoods, and

courts have repeatedly recognized that such observations may constitute substantial evidence precisely because those observations can provide a unique perspective. The City readily acknowledged that its traffic study did not consider the Apartment Project's potential to add traffic that would cut through surrounding neighborhoods at all, and thus had no substantial evidence to support its conclusion that the local residents' observations were unfounded. Further, if the City had any evidence to balance against those traffic concerns from the local residents, CEQA recognizes that an EIR, not an MND, is the proper vehicle for a lead agency to weigh such conflicting evidence.

Finally, the City and Real Parties present another circular argument attempting to explain why the MND did not provide any analysis of the Apartment Project's consistency with specific goals or policies in the City's General Plan. Nearby residents and the City of Riverside raised concerns during the entitlement process suggesting a fair argument that the Apartment Project could conflict with policies in the City's General Plan promoting economic development. The City and Real Parties allege that the City was not required to evaluate those policies in the MND because the City adopted a General Plan Amendment for the Apartment Project. Yet, the City and Real Parties do not explain why a General Plan Amendment changes the City's obligations under CEQA to ensure that the Apartment Project is consistent with the specific goals and policies in the City's existing General Plan.

Given CEQA's primary public purpose to disclose a project's potential environmental impacts to the public and the decision-makers, the City's complete omission of the electric transmission line in the Apartment Project's MND and the other defects in the City's environmental review render the MND legally deficient under CEQA. Accordingly, SCE respectfully requests that the Court invalidate the City's MND and other project approvals for the Apartment Project to allow for a proper environmental review that will fully disclose the project's potential environmental impacts.

II. CITY'S AND REAL PARTIES' IMPROPER REQUEST FOR JUDICIAL NOTICE

In their Opposition Brief, the City and Real Parties recite facts concerning the electric transmission line (referred to as the Riverside Reliability Transmission Project ("RTRP")) that are contained in documents attached to the request for Judicial Notice ("RJN") filed by the City and Real Parties. Yet, those documents are irrelevant to the Court's evaluation of the City's environmental review of the Apartment Project for two independent reasons. (Opp. Brief, pp. 3-4.) As explained

further in Riverside and SCE's Objections to that RJN, those documents post-date the City's approval of the Apartment Project and, therefore, are not relevant to the adequacy of the evidence before the City at the time of its approval. Further, the City and Real Parties do not cite to any of the documents in their RJN in the legal argument section of their Opposition Brief (at pp. 4-19). Therefore, those documents are not relevant to the legal issues before this Court and cannot be judicially noticed. (See *Kilroy v. State of Cal.* (2004) 119 Cal.App.4th 140, 145.) For these reasons, SCE will not further address those documents in this brief.

III. STANDARD OF REVIEW

As SCE explained in its Opening Brief, the CEQA Guidelines explicitly state that 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." (Cal. Code Regs., tit. 14, § 15064(f)(1) [emphasis added]; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 75.) Further, under the "fair argument" standard, deference to the agency's determination is not appropriate and its decision not to require an EIR can be upheld only when there is no credible evidence to the contrary." (*Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1318 [emphasis added].) The City and Real Parties do not take issue with that fair argument standard.

As demonstrated in SCE's Opening Brief and this brief, the administrative record contains substantial evidence that supports a fair argument that the Apartment Project would have a potentially significant environmental impact in the areas of cumulative impacts, traffic, energy and land use. Indeed, on a number of those issues, the administrative record simply contains no evidence that the City even considered those impacts, let alone provide substantial evidence that no significant impact would occur. Accordingly, the administrative record contains credible evidence that contradicts the City's conclusion that an EIR was not required in this case.

IV. THE CITY'S COMPLETE OMISSION OF THE RTRP IN THE MND VIOLATED CEQA'S REQUIREMENT TO FULLY DISCLOSE THE APARTMENT PROJECT'S POTENTIAL CUMULATIVE IMPACTS

A. The City Never Demonstrated That The Apartment Project And RTRP Were Mutually Exclusive During The Environmental Review Process

The only alleged justification that actually appears in the administrative record to support the City's complete omission of consideration of the RTRP in the MND for the Apartment Project is that the RTRP is too "speculative" because the RTRP had not yet received final approval from the California Public Utilities Commission ("CPUC"). (AR 4494-96.) That justification came only from a letter submitted to the City Council from Real Parties. (*Id.*) The City itself remained silent and did not provide a single reason in the administrative record to support its determination that it need not consider the RTRP in its MND.

In the *factual* section in the Opposition Brief, the City and Real Parties attempt to misdirect the Court by claiming that the RTRP was "speculative" based on documents concerning the CPUC process that occurred after the City approved the Apartment Project. (Opposition Brief ("Opp. Brief"), pp. 3-4.) Yet, the City and Real Parties do not make a single reference to the RTRP's processing at the CPUC or to any of the exhibits attached to their RJN in the *legal* argument section of their Opposition Brief, thus conceding that there is no legal basis to conclude the RTRP was too speculative to consider in the MND. (See Opp. Brief, pp. 4-12.) Further, while the City and Real Parties spend pages distinguishing the cases cited by SCE concerning when related projects may be too speculative to consider in a cumulative impacts analysis (Opp. Brief, pp. 9-11), the City and Real Parties do not contend in that section of their brief that the RTRP was speculative. Instead, the City and Real Parties state that the related projects in the cases cited by SCE were not mutually exclusive with the proposed projects at issue therein, which, in the City's and Real Parties' view, is the sole reason to distinguish those cases from the instant case. Consequently, the City and Real Parties have abandoned the legal argument that the RTRP was too speculative to consider as a related project.

Instead, the City and Real Parties now rely on the allegation that the Apartment Project and RTRP are mutually exclusive. However, the City and Real Parties cannot point to any substantial evidence in the administrative record to support their current position that the two projects cannot co-exist. The administrative record contains one summary statement in the staff report to the City's Planning Commission that the Apartment Project site "will be significantly affected if this transmission line project is implemented, and it will make the proposed residential project infeasible." (AR 3393.) The staff report to the City Council repeats that summary contention that the Apartment

Project may conflict with the RTRP, although it does not state that the two projects would be mutually exclusive. (AR 3475.) Finally, one City Planning Commissioner also stated at the Planning Commission hearing that the City needed to put something on the Apartment Project site if the City wanted to "stymie" the RTRP. (AR 3656-57.) Those summary statements, however, were all presented outside of the MND itself and do not constitute "substantial evidence" within the meaning of CEQA. (See Cal. Code Regs., § 15384 [emphasis added]; substantial evidence does not include "argument, speculation, or unsubstantiated opinion. . ."). Indeed, if the City believed that the two projects could be mutually exclusive, it had the duty to obtain the information and technical analysis that would support that opinion and provide it in the MND. (See *Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 399.)

With no evidence in the administrative record they can rely on, the City and Real Parties resort to summary conclusions in their Opposition Brief, stating simply that "it would be impossible to have apartment buildings with 230-kv transmission towers and lines running directly through them." (Opp. Brief, p. 7.) Yet, the City and Real Parties point to no evidence in the administrative record to support the conclusion that the RTRP would run "directly through" the apartment buildings. If anything, the City's own map of the proposed Apartment Project shows that the RTRP is proposed to run through the western edge of the Apartment Project site along the freeway, not directly through the Apartment Project site. (AR 3588-90.) Electric transmission lines and residential projects frequently co-exist throughout the region, and there is no evidence in the administrative record that the same could not apply for the Apartment Project and RTRP.

Indeed, there is evidence in the administrative record that the City knew that SCE modified the RTRP route to accommodate other projects in the past. For example, before the City Council considered the Apartment Project, the City received documentation showing that SCE previously modified the RTRP route to accommodate an existing commercial project called the "Vernola Marketplace," a project affiliated with the Real Parties in this case. (AR 6437-40.) The City and Real Parties point to no evidence in the administrative record to show that similar modifications could not have been made either to the RTRP or the Apartment Project to allow the projects to co-exist. Against that credible evidence and with no evidence to support their new "mutually exclusive" argument, the

City and Real Parties' argument amounts to nothing more than a post hoc rationalization for the City's complete failure to consider the RTRP as a related project in the MND.

In addition to the complete absence of evidence in support of their new argument, the City and Real Parties cannot explain how the complete omission of the RTRP in the City's MND complies with CEQA's primary purpose to fully inform the public and decision-makers. CEQA's fundamental purpose is to disclose the true extent of a project's potential environmental impacts and how those potential impacts might be mitigated. (Cal. Code Regs., tit. 14, § 15002(a); see also *Laurel Heights Improvement Assn., supra,* 47 Cal.3d at pp. 391-92; *Lincoln Place Tenants Assn. v. City of Los Angeles* (2007) 155 Cal.App.4th 425, 443-44 [emphasis added] [holding the "fundamental goals of environmental review under CEQA are information, participation, mitigation, and accountability"].) Despite that fundamental purpose of disclosure, the City's MND for the Apartment Project did not include a single reference to a project that is proposed for the very same site as the Apartment Project. The City and Real Parties can point to no provisions in CEQA or case law that justifies their position that CEQA does not require disclosure of environmental impacts attributable to developing a project on the same property where another project is slated for construction. Accordingly, the public and decision-makers were deprived of any analysis of the Apartment Project's potential impacts combined with the impacts of the RTRP or why the projects could not co-exist. Such a defect renders the City's MND legally inadequate as a disclosure document under CEQA.

B. The City's Failure To Consider The Apartment Project's Potential Cumulative Impacts With The RTRP Constitutes Prejudicial Error Under CEQA

In addition to arguing that the two projects are mutually exclusive, the City and Real Parties attempt to explain the City's complete omission of the RTRP from the MND by arguing the two projects are not "closely related" and could not have had led to cumulative impacts. Yet, the City and Real Parties provide no authority—in case law, CEQA or in the administrative record—to support that argument, and for good reason.[1] CEQA does not contain a definition of a "closely related" project or any provision that suggests that two projects proposed to be constructed on the same property would not be "closely related" for the purposes of a cumulative impacts analysis. Given the absence of law

[1] The City and Real Parties rely on cases that simply do not stand for the proposition that a project proposed for the same site is not a closely related project. (Opp. Brief, pp. 9-11.)

to support their novel position, the City and Real Parties instead assert that the RTRP is not a closely related project because, once built, it would not create any traffic or other impacts that when combined with Apartment Project's impacts would be cumulatively considerable. (Opp. Brief, p. 6.)

This argument, which again was never made by either the City of Real Parties during the administrative process, is simply contrary to common sense. For example, there is no evidence in the administrative record to suggest that the Apartment Project and RTRP would not have cumulative impacts, especially if the two projects proceed with overlapping construction schedules. Such overlapping construction schedules could lead to potentially cumulative impacts related to air quality, noise, and traffic, especially since the two projects are proposed for the same project site. The CEQA Guidelines even state that "factors to consider when determining whether to include a related project should include the nature of each environmental resources being examined, the location of the project and its type." (Cal. Code Regs., tit. 14, § 15130(b)(2) [emphasis added].) Given the location of the two proposed projects on the same project site, the RTRP should have been considered a related project in the Apartment Project's cumulative impacts analysis.

Since the two projects could have cumulative impacts, analysis of the two projects' potential overlapping cumulative impacts would not have been meaningless as claimed by the City and Real Parties. Courts have long held that a defect such as a failure to conduct a meaningful cumulative impacts analysis constitutes a prejudicial error under CEQA. (See *Mountain Lion Coalition v. Cal. Fish & Game Commission* ("*Mountain Lion*") (1989) 214 Cal.App.3d 1043 1051-53.) In *Mountain Lion*, the Court invalidated the California Fish & Game Commission's environmental review for proposed regulations regarding mountain lion hunting because the environmental review document did not include an adequate cumulative impacts analysis, which made it "impossible for the public … to fully participate in the assessment of the cumulative impacts associated with this project." (*Id.* at p. 1051.) The *Mountain Lion* Court further held that a "cumulative impact analysis which understates information concerning the severity and significance of cumulative impacts impedes meaningful public discussion and skews the decisionmaker's perspective concerning the environmental consequences of the project, the necessity for mitigation measures, and the appropriateness of project approval." (*Id.*) Similarly in this case, the City's failure to conduct any analysis of the Apartment

Project's potential cumulative impacts with the RTRP constituted a prejudicial error that impeded a meaningful public discussion of the Apartment Project's environmental impacts. (See also *Friends of the Eel River v. Sonoma County Water Agency* (2003) 108 Cal.App.4th 859, 872 [emphasis added] [holding an EIR was "inadequate as an informational document" because that EIR did not consider the cumulative impacts of a river diversion project, stating "an error is prejudicial if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process"].) Given that prejudicial error, the MND for the Apartment Project cannot be upheld.

V. THE CITY FAILED TO SATISFY ITS OBLIGATIONS UNDER CEQA WHEN IT IGNORED THE APARTMENT PROJECT'S POTENTIAL IMPACTS TO REGIONAL ENERGY RESOURCES

The City committed yet another violation of CEQA's disclosure requirements when it failed to consider the Apartment Project's potential impacts to energy resources. The City and Real Parties bury their response to this issue in a single paragraph on page 18 of their twenty-page Opposition Brief, alleging no party exhausted the administrative remedies on this issue and that CEQA does not require such analysis. Neither argument is supported by CEQA or the administrative record.

Both Riverside and SCE brought the Apartment Project's potential impacts to regional energy resources to the City's attention before the City Council approved the Apartment Project.[2] In a letter to the City Council, Riverside explained that the RTRP is a "transmission/distribution project that will bring much-needed bulk power into the Riverside area for the purpose of supporting critical infrastructure, meeting the needs of educational institutions, supporting emergency services, and for other uses." (AR 4492.) Riverside's letter further explained that many of the services and facilities that the RTRP would serve "provide benefits to the greater-Riverside area, including residents and community within and adjacent to Jurupa Valley." (*Id.*) SCE similarly submitted a letter to the City Council explaining that the RTRP would include an electric transmission line on portions of the

[2] The exhaustion doctrine under California Code of Civil Procedure section 1094.5 does not require an objector to identify a "precise legal inadequacy." (*Save Our Residential Environment v. City of West Hollywood* (1992) 9 Cal.App.4th 1745, 1750.) Rather, an objector can satisfy the exhaustion doctrine by "fairly appris[ing]" a public agency of the defect in its environmental analysis. (*Id.*; see also *Santa Clarita Org. for Planning the Environment v. City of Santa Clarita* (2011) 197 Cal.App.4th 1042, 1052.)

property where the Apartment Project was proposed. (AR 4489.) Thus, the potential for the Apartment Project to adversely impact energy resources was fully exhausted.

The City and Real Parties' only other defense is that CEQA does not require lead agencies to consider potential impacts to energy resources when a negative declaration is prepared in lieu of an EIR. However, CEQA does not make that distinction. As SCE demonstrated in its Opening Brief, Appendix F explicitly states that a lead agency should consider a project's potential impacts to energy resources where applicable, and such environmental impacts may include:

> . . . (2) The effects of the project on local and regional energy supplies and on requirements for additional capacity. . . . [and] (5) The effects of the project on energy resources.

(Cal. Code Regs., tit. 14, CEQA Guidelines Appendix F, II(C) [emphasis added]; see also *Cal. Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, 209, 212.) The City and Real Parties do not dispute those requirements in Appendix F, but rely on the fact that Appendix F refers to the preparation of an "EIR." Yet the City and Real Parties cannot point to any authority to support the argument that a project's potential effects on local and regional energy supplies could constitute a significant environmental impact when a lead agency prepares an EIR, but not when a lead agency prepares a negative declaration. CEQA simply does not afford lead agencies the discretion to ignore certain environmental impacts when a lead agency prepares a negative declaration instead of an EIR.

Instead, CEQA obligates lead agencies to consider all potential environmental impacts of a project, including impacts to energy resources, regardless of what type of environmental review document the agency prepares. Specifically, CEQA Guideline 15126.4 requires that lead agencies consider "energy conservation measures" that could minimize significant adverse impacts where appropriate, including the energy conservation measures provided in Appendix F. (See Cal. Code Regs., tit. 14, § 15126.4(a)(1).) CEQA does not limit the requirement that lead agencies consider all relevant mitigation measures to matters where the lead agency prepares an EIR. Nor do courts differentiate between the type of environmental review documents—a negative declaration or an EIR—when evaluating whether an agency considered the appropriate mitigation measures. (See *Parker Shattuck Neighbors v. Berkeley City Council* (2013) 222 Cal.App.4th 768, 778 [applying CEQA Guideline 15126.4 to evaluate the adequacy of mitigation measures considered in a mitigated

negative declaration].) The City and Real Parties do not provide any authority to the contrary.

Further, the City and Real Parties' argument is circular. Under their logic, if the City had conducted an analysis of the Apartment Project's potential impacts to energy resources, the City may have determined that the Apartment Project would lead to significant environmental impacts, which should have required preparation of a full EIR. However, because the City did not prepare an EIR, it was not required to analyze the Apartment Project's impact on energy resources. Such a tautology cannot excuse the City's failure to discharge its duties under CEQA to disclose fully all potential environmental impacts to the public. (See *Laurel Heights Improvement Assn., supra,* 47 Cal.3d at pp. 402-03 [describing "CEQA's fundamental goal of fostering informed decision making"].)

VI. THE CITY FAILED TO COMPLY WITH CEQA'S REQUIREMENT TO EVALUATE THE APARTMENT PROJECT'S POTENTIAL TO ADD TRAFFIC THAT WOULD CUT THROUGH SURROUNDING NEIGHBORHOODS

The City and Real Parties attempt to explain another defect in the City's review related to the Apartment Project's potential traffic impacts that will cut through surrounding neighborhoods by attacking the quality of the observations made by such residents on that topic. The City and Real Parties' argument misses the point. CEQA mandates that the City evaluate the Apartment Project's potential traffic impacts in full, including traffic impacts in surrounding neighborhoods. (See *Taxpayers for Accountable School Bond Spending v. San Diego Unified School Dist.* (2013) 215 Cal.App.4th 1013, 1054-55.) During the entitlement process for the project, the City readily acknowledged that its traffic study did not evaluate any potential for the traffic generated from the Apartment Project to cut through neighborhoods surrounding the Apartment Project site. As the City explained in a response to a written comment from a concerned resident, "[p]roject traffic was not assigned to streets within the adjacent community identified by the [commenter], as any cut-through traffic is expected to be nominal and, if any, would be well below 50 peak hour thresholds that warrants analysis." (AR 3574 [emphasis added].) In addition to assigning the traffic trips from the Apartment Project to *only* the major streets and intersections, the City's traffic study did not include any traffic counts in the neighborhood streets to determine the existing level of cut through traffic. (AR 2575-77, 2615-16, 2626-30.) Thus, the only evidence in the administrative record to support the City's conclusion that the Apartment Project would not lead to any potential traffic impacts in surrounding

neighborhoods is that one summary, conclusory sentence (with no citations to the City's traffic study).

During the City's approval process for the Apartment Project, several residents commented in writing and at the public hearings that traffic is already cutting through their neighborhoods that surround the Apartment Project site and that they were concerned the Apartment Project would worsen the problem. (See AR 3580, 3582, 3639, 3640, 3648, 3720, 3725.) Courts recognize that such personal observations can constitute substantial evidence of potential environmental impacts because of the residents' unique position to best understand the circumstances in their neighborhood. (See *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 932 [emphasis added] [holding personal observations from "neighbors familiar with the [project] site" constituted substantial evidence of a fair argument].) As the testimony of the residents in the neighborhood surrounding the Apartment Project confirms, they were in the best position to relay the facts on the ground concerning traffic that cuts through their neighborhood.

The City and Real Parties argue that those unique perspectives from the nearby residents did not constitute substantial evidence. Yet, in the cases cited by the City and Real Parties asserting that such personal observations do not constitute substantial evidence, the lead agencies had substantial evidence in the form of expert reports that contradicted the personal observations made in those cases. (See *Banker's Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego* ("*Banker's Hill*") (2006) 139 Cal.App.4th 249, 274 [citing to a study conducted by a traffic engineer that contradicted the personal observations related to safety hazards at a particular intersection]; see also *Leonoff v. Monterey County Bd. of Supervisors* ("*Leonoff*") (1990) 222 Cal.App.3d 1337, 1351-52 [citing to a study conducted by an engineer that addressed the concerns from personal observations related to sight distance and appropriate speed limit at a particular driveway].) Unlike the circumstances in *Banker's Hill* and *Leonoff*, however, the City and Real Parties cannot point to any evidence in the administrative record to show that the City conducted any technical or expert analysis of the Apartment Project's potential to add traffic that would cut through surrounding neighborhoods.

Even if weight were given to the City's one, conclusory statement about cut-through traffic in its responses to public comments, the City should have prepared a full EIR to weigh any evidence it had that conflicted with the neighbors' personal observations. (See Cal. Code Regs., tit. 14, §

15064(f)(1) [stating, "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"]; see also *Pocket Protectors, supra,* 124 Cal.App.4th at p. 935 [holding "[i]t is the function of an EIR, not a negative declaration, to resolve conflicting claims, based on substantial evidence, as to the environmental effects of a project"].) At a minimum, the personal observations from the residents should have been accorded the same weight as the City's one, conclusory statement under the fair argument standard. That fair argument standard requires the preparation of an EIR.

VII. THE CITY FAILED TO FOLLOW ITS OBLIGATIONS UNDER CEQA TO EVALUATE THE APARTMENT PROJECT'S POTENTIAL CONFLICTS WITH THE CITY'S GENERAL PLAN

Faced with a flaw in its CEQA review arising from the Apartment Project's potential conflict with the City's General Plan, the City and City and Real Parties again present a response that is not supported by CEQA or the administrative record. The City and Real Parties first assert that there was no exhaustion of this issue and further argue that no additional analysis was required because the Apartment Project approvals included a General Plan amendment that made the project consistent with the General Plan. Neither argument has merit.

Several residents alerted the City to the potential conflicts between the Apartment Project and the City's land use policies, both in written comments and in public testimony presented at the hearings. Many residents noted that commercial development on the project site, as opposed to residential units, could bring the type of economic opportunities to create permanent, long-term jobs that are called for by policies in the General Plan. (See, e.g., AR 3580, 3641-42.) (Prior to project approval, the Apartment Project site was zoned "Light Industrial" and "Industrial Park"; AR 101.) Other residents commented at the City's public hearings that the Apartment Project site is an ideal location near the I-15 freeway for commercial uses that could attract local and commuter consumers to the area. (See AR 3639, 3641-42, 3650, 4514.) In a letter to the City Council, Riverside also stated that there is a "fair argument that significant land use conflicts" will result from the project. (AR 4493 [emphasis added].) Thus, the City was placed on notice before its approval that the Apartment Project could lead to potential land use impacts.

The City's next argument—that the Apartment Project was necessarily consistent with the City's General Plan because the project approvals included a General Plan amendment—is not supported by CEQA. As part of the analysis of a project's potential environmental impacts, CEQA requires lead agencies to examine "whether the project would be consistent with existing zoning, plans, and other applicable land use controls." (Cal. Code Regs., tit. 14, § 15063(d)(5).) As SCE explained in its Opening Brief, to be consistent with an applicable general plan, a lead agency must show that a project is "compatible with the objectives, policies, general land uses, and programs specified in the applicable plan." (*Sequoyah Hills Homeowners Assn. v. City of Oakland* ("*Sequoyah Hills*") (1993) 23 Cal.App.4th 704, 717-18.) Additionally, "[a]n action, program, or project is consistent with the general plan if, considering all its aspects, it will further the objectives and policies of the general plan . . . ." (*Friends of Lagoon Valley v. City of Vacaville* ("*Friends of Lagoon Valley*") (2007) 154 Cal.App.4th 807, 817.)

In their Opposition Brief, the City and Real Parties do not attempt to distinguish the well-established standard in *Sequoyah Hills* or *Friends of Lagoon Valley* concerning land use consistency. Instead, the City and Real Parties rely on the circular argument that the City approved a General Plan amendment and therefore the Apartment Project is necessarily consistent with the City's General Plan (Opp. Brief, pp. 17-18.) Yet, that amendment does not excuse the City from complying with its obligations under CEQA to evaluate the project's potential conflicts with applicable land use policies.

The City also argues that the only General Plan policies applicable to the project site are economic in nature and not intended to mitigate or avoid environmental impacts, thus rendering this section of the Initial Study Checklist inapposite.[3] (Opp. Brief, pp.18.) Yet, the one-page discussion of this issue in the City's MND fails to cite to, let alone describe, any specific applicable goal or policy in the City's General Plan, instead making only conclusory statements about the purported polices in the General Plan. (AR 192.) (That same defect also infects the City's findings in support of the General

[3]Section X(b) in the Initial Study Checklist (CEQA Guidelines, Appendix G) provides that a lead agency must consider whether a project will "[c]onflict with any applicable land use plan, policy, or regulation of any agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect."

Plan amendment and the other entitlements approved for the Apartment Project; AR 6-9.)[4] Thus, while the City and Real Parties assert that the record is "replete" with evidence on this issue (Opp. Brief, pp. 17-18), their cites are to the same one page in the MND, two pages in a staff report and two pages in a hearing transcript that do not discuss any specific goals and policies of the General Plan. Without any analysis of specific goals or policies, the MND did not inform the public or the decision-makers of how the Apartment Project is consistent (or inconsistent) with the City's General Plan. Given the absence of that required analysis, the City's MND violated CEQA and must be invalidated.[5]

VIII. CONCLUSION

It was prejudicial error for the City to certify a CEQA disclosure document that did not disclose the RTRP as a related project proposed for the same site as the Apartment Project, and to not conduct any analysis of the potential cumulative impacts of those two projects. Nor can the City legally justify its failure to analyze the Apartment Project's impact on energy resources, particularly when the City now claims that the Apartment Project would render the RTRP infeasible. The City's use of an MND instead of an EIR is also improper because evidence in the record demonstrates that there is a fair argument that the Apartment Project may cause significant traffic and land use impacts, and the City and Real Parties provided no evidence, substantial or otherwise, to the contrary. Accordingly, the City's MND and its approvals of the Apartment Project should be invalidated.

Dated: February 16, 2016

ALSTON & BIRD LLP

By _____

Edward J. Casey
Attorneys for Petitioner
SOUTHERN CALIFORNIA EDISON COMPANY

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[4] Nor can the City and Real Parties' record citations on this issue save their General Plan Amendment from State law (see SCE's Second Cause of Action) since they cite only to speculative predictions made by the developer and staff that are not supported by any technical analysis. (Opp. Brief, pp.19-20; AR 3711-14, 3474-77.)

[5] The City and Real Parties argue that SCE is precluded from asserting this CEQA claim because it did not also make a claim under planning and zoning law. Yet, land use consistency is an independent claim under CEQA as confirmed by the CEQA Guidelines, Checklist and case law (see *supra*, pp. 13-14.) That same case law also confirms that the fair argument standard applies to this issue and not the more deferential standard of review cited by the City and Real Parties. (See *Pocket Protectors*, *supra*, 124 Cal.App.4th at p. 930-31.)

PROOF OF SERVICE

I, Dana Camacho, declare:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is Alston & Bird LLP, 333 South Hope Street, Sixteenth Floor, Los Angeles, California 90071. I am over the age of eighteen years and not a party to the action in which this service is made.

On February 16, 2016, I served the document(s) described as **PETITIONER SOUTHERN CALIFORNIA EDISON COMPANY'S REPLY BRIEF IN SUPPORT OF VERIFIED PETITION FOR WRIT OF ADMINISTRATIVE MANDAMUS, WRIT OF MANDAMUS, AND INJUNCTIVE RELIEF** on the interested parties in this action by enclosing the document(s) in a sealed envelope addressed as follows:

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☒ BY ELECTRONIC MAIL TRANSMISSION WITH ATTACHMENT: On this date, I transmitted the above-mentioned document by electronic mail transmission with attachment to the parties at the electronic mail transmission address set forth on the attached service list.

☒ [State] I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ [Federal] I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 16, 2016, at Los Angeles, California.

Dana Camacho

Dana Camacho

Southern California Edison Company v. City of Jurupa Valley, et al.
San Bernardino County Superior Court
Case No. CIVDS1513522
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