Vista Del Agua - City Council Comment Letter No. 1

Mitchell M. Tsai, Attorney
Southwest Regional Council of Carpenters (2-26-2020)

(Note: In an effort to conserve resources, Exhibits A and B and the AERSCREEN and CALEEMOD Models contained in Exhibit C attached to Comment Letter No. 1 are not included below; the entire Letter is attached electronically to these Responses)

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VIA HAND DELIVERY, U.S. MAIL & E-MAIL

February 26, 2020

Hand Delivered to February 26, 2020, City Council Hearing
City Hall Council Chamber
1515 Sixth Street
Coachella, CA 92236

Via E-Mail & U.S. Mail
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Planning Division
City of Coachella
53990 Enterprise Way
Coachella, CA 92236
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RE: Vista Del Agua Specific Plan and Final Environmental Impact Report (SCH # 2015031003)

Dear Honorable Mayor and City Council Members,

On behalf of the Southwest Regional Council of Carpenters ("**Commenters**" or "**Carpenters**"), my Office is submitting these comments on the City of Coachella's ("**City**" or "**Lead Agency**") Final Environmental Impact Report ("**FEIR**") (SCH No. 2015031003) for the Vista Del Agua Specific Plan, a proposed development of a maximum of 1,640 dwelling units including 1,026 single-family homes and 613 multi-family dwelling units on approximately 275 acres and includes two commercial planning areas that total approximately 25 acres in addition to approximately 30 acres of open space. ("**Project**"). The Project also proposes 29 acres of off-site infrastructure improvements. 1.1

The required entitlements for the Project include General Plan Amendment No. 14-01, Specific Plan No. 14-01, Change of Zone No. 14-01, Tentative Parcel Map No. 36872, Development Agreement and Environmental Impact Report (EA No. 14-01.) (DEIR, p. 1-1.) 1.2

The Southwest Carpenters is a labor union representing 50,000 union carpenters in six states, including in southern California, and has a strong interest in well-ordered land use planning and addressing the environmental impacts of development projects. 1.3

Commenters expressly reserve the right to supplement these comments at or prior to hearings on the Project, and at any later hearings and proceedings related to this Project. Cal. Gov. Code § 65009(b); Cal. Pub. Res. Code § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121. 1.4

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Commenters incorporate by reference all comments raising issues regarding the EIR submitted prior to certification of the EIR for the Project. *Citizens for Clean Energy v City of Woodland* (2014) 225 CA4th 173, 191 (finding that any party who has objected to the Project's environmental documentation may assert any issue timely raised by other parties). 1.6

Moreover, Commenter requests that the Lead Agency provide notice for any and all notices referring or related to the Project issued under the California Environmental Quality Act ("**CEQA**"), Cal Public Resources Code ("**PRC**") § 21000 *et seq*, and the California Planning and Zoning Law ("**Planning and Zoning Law**"), Cal. Gov't Code §§ 65000–65010. California Public Resources Code Sections 21092.2, and 21167(f) and Government Code Section 65092 require agencies to mail such notices to any person who has filed a written request for them with the clerk of the agency's governing body. 1.7

I. EXPERTS

This comment letter includes comments from air quality and greenhouse gas experts Matt Hagemann, P.G., C.Hg. and Paul Rosenfeld, Ph.D. concerning the FEIR. Their comments, attachments, and Curriculum Vitae ("CV") are attached hereto and are incorporated herein by reference. 1.8

Matt Hagemann, P.G., C.Hg. ("Mr. Hagemann") has over 30 years of experience in environmental policy, contaminant assessment and remediation, stormwater compliance, and CEQA review. He spent nine years with the U.S. EPA in the RCRA and Superfund programs and served as EPA's Senior Science Policy Advisor in the Western Regional Office, where he identified emerging threats to groundwater from perchlorate and MTBE. While with EPA, Mr. Hagemann also served as Senior Hydrogeologist in the oversight of the assessment of seven major military facilities undergoing base closer. He led numerous enforcement actions under provisions of the Resource Conservation and Recovery Act (RCRA) and directed efforts to improve hydrogeologic characterization and water quality monitoring. 1.9

For the past 15 years, Mr. Hagemann has worked as a founding partner with SWAPE (Soil/Water/Air Protection Enterprise). At SWAPE, Mr. Hagemann has developed extensive client relationships and has managed complex projects that include consultation as an expert witness and a regulatory specialist, and a manager of projects ranging from industrial stormwater compliance to CEQA review of impacts from hazardous waste, air quality, and greenhouse gas emissions. 1.10

Mr. Hagemann has a Bachelor of Arts degree in geology from Humboldt State University in California and a Masters in Science degree from California State University Los Angeles in California. 1.11

Paul Rosenfeld, Ph.D. ("Dr. Rosenfeld"), is a principal environmental chemist at SWAPE. Dr. Rosenfeld has over 25 years' experience conducting environmental investigations and risk assessments for evaluating impacts on human health, property, and ecological receptors. His expertise focuses on the fate and transport of environmental contaminants, human health risks, exposure assessment, and ecological restoration. Dr. Rosenfeld has evaluated and modeled emissions from unconventional oil drilling operations, oil spills, landfills, boilers and incinerators, process stacks, storage tanks, confined animal feeding operations, and many other industrial and agricultural sources. His project experience ranges from monitoring and modeling of pollution sources to evaluating the impacts of pollution on workers at industrial facilities and residents in surrounding communities. 1.12

Dr. Rosenfeld has investigated and designed remediation programs and risk assessments for contaminated sites containing lead, heavy metals, mold, bacteria, particular matter, petroleum hydrocarbons, chlorinated solvents, pesticides, radioactive waste, dioxins and furans, semi- and volatile organic compounds, PCBs, PAHs, 1.13

perchlorate, asbestos, per- and poly-fluoroalkyl substances (PFOA/PFOS), unusual polymers, fuel oxygenates (MTBE), among other pollutants, Dr. Rosenfeld also has experience evaluating greenhouse gas emissions from various projects and is an expert on the assessment of odors from industrial and agricultural sites, as well as the evaluation of odor nuisance impacts and technologies for abatement of odorous emissions. As a principal scientist at SWAPE, Dr. Rosenfeld directs air dispersion modeling and exposure assessments. He has served as an expert witness and testified about pollution sources causing nuisance and/or personal injury at dozens of sites and has testified as an expert witness on more than ten cases involving exposure to air contaminants from industrial sources. 1.13 cont.

Dr. Rosenfeld has a Ph.D. in soil chemistry from the University of Washington, M.S. in environmental science from U.C. Berkeley, and a B.A. in environmental studies from U.C. Santa Barbara. 1.14

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

A. Background Concerning the California Environmental Quality Act

CEQA has two basic purposes. First, CEQA is designed to inform decision-makers and the public about the potential, significant environmental effects of a project. 14 California Code of Regulations ("**CCR**" or "**CEQA Guidelines**") § 15002(a)(1). "Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made. Thus, the EIR 'protects not only the environment but also informed self-government.' [Citation.]" *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 564. The EIR has been described as "an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return." *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. 1.15

Second, CEQA directs public agencies to avoid or reduce environmental damage when possible by requiring alternatives or mitigation measures. CEQA Guidelines § 15002(a)(2) and (3). *See also, Berkeley Jets,* 91 Cal. App. 4th 1344, 1354; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553; *Laurel Heights Improvement Ass'n v. Regents of the University of California* (1988) 47 Cal.3d 376, 400. The EIR serves to provide 1.16

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(a)(2). If the project has a significant effect on the environment, the agency may approve the project only upon finding that it has "eliminated or substantially lessened all significant effects on the environment where feasible" and that any significant unavoidable effects on the environment are "acceptable due to overriding concerns" specified in CEQA section 21081. CEQA Guidelines § 15092(b)(2)(A–B). 1.16 cont.

While the courts review an EIR using an "abuse of discretion" standard, "the reviewing court is not to 'uncritically rely on every study or analysis presented by a project proponent in support of its position.' A 'clearly inadequate or unsupported study is entitled to no judicial deference.'" *Berkeley Jets*, 91 Cal.App.4th 1344, 1355 (emphasis added) (quoting *Laurel Heights*, 47 Cal.3d at 391, 409 fn. 12). Drawing this line and determining whether the EIR complies with CEQA's information disclosure requirements presents a question of law subject to independent review by the courts. (*Sierra Club v. Cnty. of Fresno* (2018) 6 Cal. 5th 502, 515; *Madera Oversight Coalition, Inc. v. County of Madera* (2011) 199 Cal.App.4th 48, 102, 131.)As the court stated in *Berkeley Jets*, 91 Cal. App. 4th at 1355: 1.17

> A prejudicial abuse of discretion occurs "if the failure to include relevant information precludes informed decision-making and informed public participation, thereby thwarting the statutory goals of the EIR process. 1.18

The preparation and circulation of an EIR are more than a set of technical hurdles for agencies and developers to overcome. The EIR's function is to ensure that government officials who decide to build or approve a project do so with a full understanding of the environmental consequences and, equally important, that the public is assured those consequences have been considered. For the EIR to serve these goals, it must present information so that the foreseeable impacts of pursuing the project can be understood and weighed, and the public must be given an adequate opportunity to comment on that presentation before the decision to go forward is made. *Communities for a Better Environment v. Richmond* (2010) 184 Cal. App. 4th 70, 80 (quoting *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 449–450). 1.19

B. <u>CEQA Requires Revision and Recirculation of an Environmental Impact Report When Substantial Changes or New Information Comes to Light</u>

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. 1.20

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.* 1.21

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. 1.22

Based on the information set forth below, the City is required to consider the significant new information and revise the FEIR accordingly. Thereafter, the City must recirculate the revised FEIR. 1.23

C. <u>A Programmatic EIR Cannot Be Used as a Way to Avoid Fully Analyzing the Project's Impacts for Each and All of the Ten Planning Areas</u>

The EIR provides that a Program EIR because (1) the Project would be implemented over a large geographic area, and (2) final grading and construction plans and details have not been developed for each planning area. DEIR, 2-3. 1.24

A program EIR (like any EIR) must provide decision-makers with "sufficient analysis to intelligently consider the environmental consequences of the project," and designating the EIR as a program EIR in itself does not decrease the level of analysis otherwise required. (*Cleveland Nat'l Forest Found. v San Diego Ass'n of Gov'ts* (2017) 17 CA5th 413, 426.) A lead agency preparing a program EIR must disclose what it reasonably can, and any determinations that it is not feasible to provide specific information must be supported by substantial evidence. (*Id.* at 440 [rejecting air quality baseline discussion and impact analysis because substantial evidence did not support agency decision to omit more detailed analysis].) 1.25

A programmatic EIR is not a way to get around the requirement that the City adequately analyze the Project's impacts and mitigate them to the extent feasible. To the extent that the FEIR failed to provide substantial evidence to support all of the Project's impacts analyses, the City must prepare subsequent EIRs. 1.26

In this instance, the FEIR does not even know what all of the Project's development will entail – the Project proposes a total of ten (10) Planning Areas (PA) within the Vista Del Agua Specific Plan, which identifies a variety of residential and non-residential designations. (FEIR, p. 2-2.) The FEIR also discloses the possibility that PA 10, which is slated to be developed as Neighborhood Commercial land use covering 8.27 acres, could be developed into 41 single-family residential uses instead, although without increasing the Project's maximum of 1,640 residential units. (*Id.*) If PA 10 does not develop for commercial land uses as anticipated, then the Project's impacts would differ substantially, including but not limited to, traffic impacts. 1.27

When approving each of the ten PAs of the Specific Plan, the City must carefully consider whether subsequent EIRs or other CEQA analyses would be required. 1.28

D. <u>The FEIR Fails to Adequately Disclose, Analyze and Mitigate the Project's Significant Impacts on Air Quality, Health Risks and Greenhouse Gas Emissions</u>

As explained in full in the comment letter prepared by air quality and greenhouse gas experts, SWAPE (attached as Exhibit C), the FEIR failed to adequately evaluate the Project's air quality, health risk, and greenhouse gas impacts. According to SWAPE, 1.29

an updated EIR should be prepared to adequately assess the impacts described in its comment letter. 1.29 cont.

E. The FEIR Does Not Adequately Analyze and Mitigate the Project's Significant Impacts on Agricultural Resources

Most of the Project site, and the areas surrounding it, are or were used as farmland. Currently, the eastern 30% of the Project site is planted with vineyards. (FEIR, p. 4.3-2, 3.) Most significantly, the FEIR admits that "there is Farmland of Local Importance, Prime Farmland and Other Land on the Project site." (FEIR, p. 4.3-5 [Prime Farmland is classified as the best type of farmland].) The FEIR then concludes that the Project's impacts on agricultural resources will be significant and unavoidable. (*Id.* at pp. 4.3-8~12.) 1.30

The problem is that the FEIR concludes that "[n]o mitigation measures are proposed for agricultural resources since it has been determined the Project will result in a significant and unavoidable impact." despite finding significant impacts of the loss of agricultural resources. (FEIR, p. 4.3-12.) CEQA clearly requires that an EIR propose and describe mitigation measures to minimize the significant environmental effects identified in the EIR. (Pub. Res. Code § 21002.1(a); CEQA Guidelines § 15126.4.) The very reason for this requirement is due to CEQA's policy that agencies adopt feasible measures when approving a project to reduce or avoid their significant environmental effects. (Pub. Res. Code § 21002, 21081(a).) 1.31

Therefore, the FEIR violated CEQA by failing to mitigate the Project's significant impacts on agricultural resources because "the Project will result in a significant and unavoidable impact." (FEIR, p. 4.3-12.) 1.32

F. The FEIR Improperly Labels Mitigation Measures as "Project Design Features" or "Standard Conditions"

The EIR improperly labels mitigation measures for "Project Design Features" and "Standard Conditions" as follows: Aesthetics (SC-AES-1, SC-AES-2), Agricultural (SC-AG-1), Air Quality (SC-AQ-1), Biological Resources (SC-BIO-1 and SC-BIO-2), Hydrology (SC-HYD-1, SC-HYD-2, SC-HYD-3, SC-HYD-4), Traffic (SC-TR-1, -2, -3), Utilities (SC-UTIL-1, -2, -3, -4, -5, -6). And as the Staff Report for the February 26, 2020, City Council hearing show, the City equates "Standard Conditions" as "Project Design Features." (Staff Report, p. 231 [bike lanes and sidewalks are "project design features" which are incorporated into Standard Condition SC-UTIL-3], 271, 273, 352.) 1.33

However, it is established that "'[a]voidance, minimization and / or mitigation measure' . . . are not 'part of the project.' . . . compressing the analysis of impacts and mitigation measures into a single issue . . disregards the requirements of CEQA." (*Lotus v. Department of Transportation* (2014) 223 Cal. App. 4th 645, 656.) 1.33 cont.

When "an agency decides to incorporate mitigation measures into its significance determination, and relies on those mitigation measures to determine that no significant effects will occur, that agency must treat those measures as though there were adopted following a finding of significance." (*Lotus, supra*, 223 Cal. App. 4th at 652 [citing CEQA Guidelines § 15091(a)(1) and Cal. Public Resources Code § 21081(a)(1).].) By disguising mitigation measures. By labeling mitigation measures as project design features, the City violates CEQA by failing to disclose "the analytic route that the agency took from the evidence to its findings." (Cal. Public Resources Code § 21081.5; CEQA Guidelines § 15093; *Village Laguna of Laguna Beach, Inc. v. Board of Supervisors* (1982) 134 Cal. App. 3d 1022, 1035 [quoting *Topanga Assn for a Scenic Community v. County of Los Angeles* (1974) 11 Cal. 3d 506, 515.) 1.34

The FEIR's labeling its numerous mitigation measures as merely "Standard Conditions" or "Project Design Features" violates CEQA (FEIR, Chapter 4, Sections 4.2 to 4.15.) The FEIR concedes that the "potential impacts…can be reduced to a less than significant level **with implementation of standard conditions or, the mitigation measures identified in this EIR**." (FEIR, p. 1-3 [emphasis added].) 1.35

None of the standard conditions and project design features are included in the Mitigation Monitoring and Reporting Program Table, which is set to be approved by the City Council. (Staff Report, pp. 417-457.) Moreover, the EIR'S Summary of Impacts and Mitigation Measures don't list any of the standard conditions and project design features. This is especially important because CEQA requires lead agencies to adopt mitigation measures that are fully enforceable and to adopt a monitoring and/or reporting program to ensure that the measures are implemented to reduce the Project's significant environmental effects to the extent feasible. (Cal. Public Resources Code § 21081.6; CEQA Guidelines § 15091(d).) 1.36

G. The FEIR Fails to Adequately Analyze and Disclose the Project's Cumulative Impacts

The CEQA Guidelines define cumulative impacts as "two or more individual effects which, when considered together, are considerable or which compound or increase 1.37

other environmental impacts." (CEQA Guidelines §15355.) The individual effects may be changes resulting from a single project or more than one project. (CEQA Guidelines §15355(a).) Cumulative impacts may result from individually minor but collectively significant projects taking place over a period of time. (CEQA Guidelines §15355(b).) Even if the Project's impacts may not be significant, its incremental effects, when added to other past, present, and probable future projects, can be cumulatively significant. (CEQA Guidelines §§15065(a)(3), 15130(b)(1)(A), 15355(b).) Thus, in analyzing a Project's cumulative impacts, it's important to analyze not just impacts of the Project itself, but also consider impacts from all other related projects as well. However, the EIR fails to do so. 1.37 cont.

1. The FEIR Fails to Adequately Analyze and Disclose the Project's Cumulative Air Quality Impacts

The DEIR fails to adequately analyze and disclose the Project's potentially significant cumulative air quality impacts. While acknowledging that "[e]ven with the incorporation of Mitigation Measures MM-AQ-10 through MM-AQ-13 the Project will have a significant and unavoidable [operational air quality] impact," the DEIR curiously concludes that "operation of the proposed Project **would not** create a significant cumulative impact to global climate change." (DEIR, pp. 4.4-59, 60 [emphasis added].) The FEIR does not alter these conclusions. These conclusions in the EIR are irreconcilable, and as a result, the EIR"s conclusion that the Project will have less than significant cumulative air quality impacts is flawed and unsupported. 1.38

2. The FEIR Fails to Adequately Analyze and Disclose the Project's Cumulative Hazards Impacts

The DEIR fails to adequately analyze and disclose the Project's potentially significant cumulative hazards impacts. (DEIR, p. 4.8-18.) The DEIR concludes, without analyzing actual cumulative hazards impacts of the Project along with related projects in the area, that "[s]ince the Project is below the established thresholds, cumulative impacts will remain less than significant." (*Id.*) Moreover, the FEIR did not change or add to any of the deficient cumulative impacts analysis. 1.39

Simply put, the conclusion that the Project has less than significant Project-level impacts is not synonymous with whether even the incremental Project impacts could be cumulatively considerable. 1.40

3. The FEIR Fails to Adequately Analyze and Disclose the Project's Cumulative Impacts Regarding Utilities

Similar to the way the FEIR fails to adequately analyze and disclose the Project's cumulative air quality and hazard impacts as described above, the FEIR fails to adequately analyze and disclose the Project's cumulative impacts pertaining to Utilities and Service Systems Impacts. 1.41

The FEIR concluded that "cumulative impacts to landfill capacity will be less than significant due to the Project's construction debris and operational waste representing a less than substantial cumulative increment with adherence to" standard conditions. (FEIR, p. 4.15-40.) However, even a small, less than significant Project impact could still be considered cumulatively considerable when analyzed along with related Projects. As such, the FEIR's cumulative impacts analysis regarding Utilities and Services is inadequate and violates CEQA. 1.42

H. The FEIR Improperly Defers Mitigation Based on a Future Study

MM-HAZ-4 defers the soil sampling necessary to determine the residual concentrations of pesticides. The EIR acknowledges that "[t]he presence of pesticides in the soil may represent a health risk to tenants or occupants on the Property and the soil may require specialized handling and disposal." (DEIR, p. 4.8-17.) Despite the potential health risks, and without knowing the extent of residual pesticides that are present on the Project site, MM-HAZ-4 allows the City to approve the Project by improperly deferring the necessary soil investigation. 1.43

CEQA prohibits impermissible deferral of mitigation, which occurs when an EIR calls for mitigation measures to be created based on future studies or describe mitigation measures in general terms, but the agency fails to commit itself to specific performance standards. (*California Clean Energy Comm. v. City of Woodland* (2014) 225 Cal.App.4th 173, 195 [agency could not rely on the future report on urban decay with no standards for determining whether mitigation required]; *Cleveland Nat'l Forest Found. v. San Diego Ass'n of Gov'ts* (2017) 17 Cal.App.5th 413, 442 [generalized air quality measures failed to set performance standards].) 1.44

III. THE PROJECT IS INCONSISTENT WITH THE GENERAL PLAN

Each California city and county must adopt a comprehensive, long-term general plan governing development. (*Napa Citizens for Honest Gov. v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 352, citing Gov. Code §§ 65030, 65300.) The general plan 1.45

sits at the top of the land use planning hierarchy (*see DeVita v. County of Napa* (1995) 9 Cal.4th 763, 773) and serves as a "constitution" or "charter" for all future development. (*Lesher Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 540.) 1.45 cont.

General plan consistency is "the linchpin of California's land use and development laws; it is the principle which infused the concept of planned growth with the force of law." (*See Debottari v. Norco City Council* (1985) 171 Cal.App.3d 1204, 1213.) 1.46

State law mandates two levels of consistency. First, a general plan must be internally or "horizontally" consistent: its elements must "comprise an integrated, internally consistent and compatible statement of policies for the adopting agency." (See Gov. Code § 65300.5; *Sierra Club v. Bd. of Supervisors* (1981) 126 Cal.App.3d 698, 704.) A general plan amendment thus may not be internally inconsistent, nor may it cause the general plan as a whole to become internally inconsistent. (*See DeVita*, 9 Cal.4th at 796 fn. 12.)

Second, state law requires "vertical" consistency, meaning that zoning ordinances and other land-use decisions also must be consistent with the general plan. (See Gov. Code § 65860(a)(2) [land uses authorized by zoning ordinance must be "compatible with the objectives, policies, general land uses, and programs specified in the [general] plan."]; *see also Neighborhood Action Group v. County of Calaveras* (1984) 156 Cal.App.3d 1176, 1184.) A zoning ordinance that conflicts with the general plan or impedes the achievement of its policies is invalid and cannot be given effect. (*See Lesher*, 52 Cal.3d at 544.) 1.47

The Subdivision Map Act, Government Code §§ 66410, *et seq*, ("Subdivision Map Act" or "Act") also requires local agencies to review and approve all land subdivisions. The Act regulates both the process for approving subdivisions and sets substantive requirements for approval of land subdivisions. 1.48

The Act requires that a local agency deny approval of a land subdivision, referred to as a tentative map or a parcel map, if "(a) **That the proposed map is not consistent with applicable general and specific plans** . . . (b) That the design or improvement of the proposed subdivision is not consistent with applicable general and specific plans. (c) That the site is not physically suitable for the type of development. (d) That the site is not physically suitable for the proposed density of development. (e) That the design of the subdivision or the proposed improvements are likely to cause substantial 1.49

environmental damage or substantial and avoidably injure fish or wildlife or their habitat. (f) That the design of the subdivision or type of improvements is likely to cause serious public health problems. (g) That the design of the subdivision or type of improvements will conflict with easements, acquired by the public at large, for find as part of approving a subdivision map that accesses through or use of, property within the proposed subdivision." (Gov. Code § 66474 [emphasis added].) 1.49 cont.

The Project is inconsistent with General Plan Goals and Policies pertaining to agricultural resources: Goal 5 (Agricultural Preservation. Viable, productive local agricultural lands and industry), Policy 5.8 (Buffers between agricultural and urban uses. Require new developments, whether they are new urban or new agricultural uses, in which urban and agriculture would be adjacent to maintain a protective buffer that ensures land-use conflicts do not occur, Policy 5.9 (Right to Farm. Support the right of existing farms to continue operations). (FEIR, P. 4.3-8.) The FEIR does not adequately analyze and disclose the Project's inconsistencies with these Goals and Policies, even outright ignoring the buffer and right to farm policies to protect agricultural operations. (*Id.*, p. 4.3-9.) 1.50

Next, the Project is also inconsistent with General Plan Policy 6.14 pertaining to proximity to pollution sources, including "agricultural land where pesticides and chemical fertilizers are used regularly." (FEIR, p. 4.10-22.) However, the Project site is comprised of agricultural land with residual pesticides remaining, which the City does not require the Applicant to test until after Project approval (see the argument regarding improper deferral of mitigation above.) 1.51

In sum, the Project is inconsistent with several goals and policies of the City's General Plan. 1.52

IV. CONCLUSION

Commenters request that the City revise and recirculate the Project's environmental impact report to address the aforementioned concerns. If the City has any questions or concerns, feel free to contact my Office. 1.53

Sincerely,

Mitchell M. Tsai
Attorneys for Southwest Regional Council of Carpenters

Attached:

Air Quality and GHG Expert, Matt Hagemann, P.G., C.Hg. – C.V. (**Exhibit A**);

Air Quality and GHG Expert, Paul Rosenfeld, Ph.D. – C.V. (**Exhibit B**);

Letter from Hagemann and Rosenfeld to Mitchell M. Tsai re Comments on the Final Environmental Impact Report for the Vista del Agua Specific Plan Project with
Exhibits (February 25, 2020) (**Exhibit C**)

1.54

EXHIBIT A

1.55

EXHIBIT B

1.56