Letter B1 **Southwest Regional Council of Carpenters**
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July 20, 2021

LETTER B-1

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VIA E-MAIL

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Guillermo Arreola
City of Downey, Planning Division
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RE: Rancho Los Amigos South Campus Specific Plan Draft Environmental Impact Report (SCH No. 2019029057)

Dear Mr. Arreola,

On behalf of the Southwest Regional Council of Carpenters ("**Commenters**" or "**Carpenters**"), my Office is submitting these comments on the City of Downey's ("**City**" or "**Lead Agency**") Draft Program Environmental Impact Report ("**DEIR**") (SCH No. 2019029057) for the proposed Rancho Los Amigos South Campus Specific Plan ("**Project**").

1 The City proposes to adopt the Project, covering a 172-acre area owned by the County of Los Angeles in the southwest corner of the City, to promote future development of the Rancho Los Amigos Campus, focusing on a "diverse mixture of job-generating land uses," including transit-oriented development, residential, retail, and office uses. (DEIR, 2.0-14). The Project would allow for a maximum development of 700 dwelling units and 1,130,000 square feet of non-residential uses. (DEIR, 2.0-2). As part of the Project, the City would initiate a General Plan amendment, a zoning text amendment, and a zoning map amendment. Subsequent activities in the Project area would be examined in light of the final version of the Program Environmental Impact Report prepared for the Project.

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

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

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.

2

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

The City should require the Applicant provide additional community benefits such as requiring local hire and use of a skilled and trained workforce to build the Project. The City should require the use of workers who have graduated from a Joint Labor Management apprenticeship training program approved by the State of California, or have at least as many hours of on-the-job experience in the applicable craft which would be required to graduate from such a state approved apprenticeship training program or who are registered apprentices in an apprenticeship training program approved by the State of California.

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Community benefits such as local hire and skilled and trained workforce requirements can also be helpful to reduce environmental impacts and improve the positive economic impact of the Project. Local hire provisions requiring that a certain percentage of workers reside within 10 miles or less of the Project Site can reduce the

length of vendor trips, reduce greenhouse gas emissions and providing localized economic benefits. Local hire provisions requiring that a certain percentage of workers reside within 10 miles or less of the Project Site can reduce the length of vendor trips, reduce greenhouse gas emissions and providing localized economic benefits. As environmental consultants Matt Hagemann and Paul E. Rosenfeld note:

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

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

3 cont.

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

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

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

Cities are increasingly adopting local skilled and trained workforce policies and requirements into general plans and municipal codes. For example, the City of Hayward 2040 General Plan requires the City to "promote local hiring . . . to help

[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

achieve a more positive jobs-housing balance, and reduce regional commuting, gas consumption, and greenhouse gas emissions."[3]

In fact, the City of Hayward has gone as far as to adopt a Skilled Labor Force policy into its Downtown Specific Plan and municipal code, requiring developments in its Downtown area to requiring that the City "[c]ontribute to the stabilization of regional construction markets by spurring applicants of housing and nonresidential developments to require contractors to utilize apprentices from state-approved, joint labor-management training programs, . . ."[4] In addition, the City of Hayward requires all projects 30,000 square feet or larger to "utilize apprentices from state-approved, joint labor-management training programs."[5]

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

3 cont.

> People who live and work in the same jurisdiction would be more likely to take transit, walk, or bicycle to work than residents of less balanced communities and their vehicle trips would be shorter. Benefits would include potential reductions in both vehicle miles traveled and vehicle hours traveled.[6]

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

> In nearly built-out Berkeley, CA, the approach to balancing jobs and housing is to create local jobs rather than to develop new housing." The

[3] City of Hayward (2014) Hayward 2040 General Plan Policy Document at p. 3-99, *available at* https://www.hayward-ca.gov/sites/default/files/documents/General_Plan_FINAL.pdf.
[4] City of Hayward (2019) Hayward Downtown Specific Plan at p. 5-24, *available at* https://www.hayward-ca.gov/sites/default/files/Hayward%20Downtown%20Specific%20Plan.pdf.
[5] City of Hayward Municipal Code, Chapter 10, § 28.5.3.020(C).
[6] California Planning Roundtable (2008) Deconstructing Jobs-Housing Balance at p. 6, *available at* https://cproundtable.org/static/media/uploads/publications/cpr-jobs-housing.pdf
[7] Cervero, Robert and Duncan, Michael (2006) Which Reduces Vehicle Travel More: Jobs-Housing Balance or Retail-Housing Mixing? Journal of the American Planning Association 72 (4), 475-490, 482, *available at* http://reconnectingamerica.org/assets/Uploads/UTCT-825.pdf.

3 cont.

> 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.

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

The City should also require the Project to be built to standards exceeding the current 2019 California Green Building Code to mitigate the Project's environmental impacts and to advance progress towards the State of California's environmental goals.

4

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

A. Background Concerning the California Environmental Quality Act

CEQA has two basic purposes. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project. 14 California Code of Regulations ("**CCR**" or "**CEQA Guidelines**") § 15002(a)(1).[5] "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.

[5] The CEQA Guidelines, codified in Title 14 of the California Code of Regulations, section 150000 *et seq*, are regulatory guidelines promulgated by the state Natural Resources Agency for the implementation of CEQA. (Cal. Pub. Res. Code § 21083.) The CEQA Guidelines are given "great weight in interpreting CEQA except when . . . clearly unauthorized or erroneous." *Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 62 Cal. 4th 204, 217.

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 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 unavoidable significant effects on the environment are "acceptable due to overriding concerns" specified in CEQA section 21081. CEQA Guidelines § 15092(b)(2)(A–B).

4 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:

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

The preparation and circulation of an EIR is more than a set of technical hurdles for agencies and developers to overcome. The EIR's function is to ensure that government officials who decide to build or approve a project do so with a full understanding of the environmental consequences and, equally important, that the public is assured those consequences have been 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).

4 cont.

B. The Planning Commission should Continue this Item Until the City Releases the Final Environmental Impact Report

Generally, CEQA requires decision-makers to review and consider the environmental impacts of projects before recommending or approving a particular project. Here, the Planning Commission is set to consider and make a recommendation that the City Council approve the Project and certify the Final Environmental Impact Report even before the Final Environmental Impact Report has been released.

Specifically, Section 5 of City Staff's resolution requests that the Planning Commission recommend that "City Council certify the Final Program Environmental Impact Report based on the Planning Commission's review of the Specific Plan and Draft Program Environmental Impact Report."

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Section 5 calls for the Planning Commission to speculate on the contents of a non-existent document in making its recommendation to City Council. Since the Final EIR for this Project has yet to have been released and the public comment period on the Draft EIR for this Project has yet to expire as of the date of the Planning Commission's July 21, 2021 meeting, it would be improper for the Planning Commission to recommend certification of the Final EIR for the Project without even knowing or having had an opportunity to review the contents of the Final EIR or the public comments made on the Draft EIR.

Numerous things could occur prior to the release of the Final Environmental Impact Report. Previously undisclosed environmental impacts could be discussed as part of the Final EIR. The Project could be changed in significant ways. The Draft EIR could even ben revised and recirculated if there was "significant new information" justifying another round of public notice and comment.

The Planning Commission recommending certification of the Final EIR based upon the Draft EIR would prematurely foreclose the CEQA environmental review process and defeat CEQA's mandate for informed environmental decision-making.

C. CEQA Requires Revision and Recirculation of an Environmental Impact Report 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.*

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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.

D. Due to the COVID-19 Crisis, the City Must Adopt a Mandatory Finding of Significance that the Project May Cause a Substantial Adverse Effect on Human Beings and Mitigate COVID-19 Impacts

CEQA requires that an agency make a finding of significance when a Project may cause a significant adverse effect on human beings. PRC § 21083(b)(3); CEQA Guidelines § 15065(a)(4).

Public health risks related to construction work requires a mandatory finding of significance under CEQA. Construction work has been defined as a Lower to High-risk activity for COVID-19 spread by the Occupations Safety and Health Administration. Recently, several construction sites have been identified as sources of community spread of COVID-19.[9]

SWRCC recommends that the Lead Agency adopt additional CEQA mitigation measures to mitigate public health risks from the Project's construction activities. SWRCC requests that the Lead Agency require safe on-site construction work practices as well as training and certification for any construction workers on the Project Site. 7

In particular, based upon SWRCC's experience with safe construction site work practices, SWRCC recommends that the Lead Agency require that while construction activities are being conducted at the Project Site:

Construction Site Design:

- The Project Site will be limited to two controlled entry points.
- Entry points will have temperature screening technicians taking temperature readings when the entry point is open.
- The Temperature Screening Site Plan shows details regarding access to the Project Site and Project Site logistics for conducting temperature screening.
- A 48-hour advance notice will be provided to all trades prior to the first day of temperature screening.

[9] Santa Clara County Public Health (June 12, 2020) COVID-19 CASES AT CONSTRUCTION SITES HIGHLIGHT NEED FOR CONTINUED VIGILANCE IN SECTORS THAT HAVE REOPENED, *available at* https://www.sccgov.org/sites/covid19/Pages/press-release-06-12-2020-cases-at-construction-sites.aspx.

- The perimeter fence directly adjacent to the entry points will be clearly marked indicating the appropriate 6-foot social distancing position for when you approach the screening area. Please reference the Apex temperature screening site map for additional details.
- There will be clear signage posted at the project site directing you through temperature screening.
- Provide hand washing stations throughout the construction site.

Testing Procedures:

- The temperature screening being used are non-contact devices.
- Temperature readings will not be recorded.
- Personnel will be screened upon entering the testing center and should only take 1-2 seconds per individual.
- Hard hats, head coverings, sweat, dirt, sunscreen or any other cosmetics must be removed on the forehead before temperature screening.
- Anyone who refuses to submit to a temperature screening or does not answer the health screening questions will be refused access to the Project Site.
- Screening will be performed at both entrances from 5:30 am to 7:30 am.; main gate [ZONE 1] and personnel gate [ZONE 2]
- After 7:30 am only the main gate entrance [ZONE 1] will continue to be used for temperature testing for anybody gaining entry to the project site such as returning personnel, deliveries, and visitors.
- If the digital thermometer displays a temperature reading above 100.0 degrees Fahrenheit, a second reading will be taken to verify an accurate reading.
- If the second reading confirms an elevated temperature, DHS will instruct the individual that he/she will not be

7 cont.

allowed to enter the Project Site. DHS will also instruct the individual to promptly notify his/her supervisor and his/her human resources (HR) representative and provide them with a copy of Annex A.

Planning

- Require the development of an Infectious Disease Preparedness and Response Plan that will include basic infection prevention measures (requiring the use of personal protection equipment), policies and procedures for prompt identification and isolation of sick individuals, social distancing (prohibiting gatherings of no more than 10 people including all-hands meetings and all-hands lunches) communication and training and workplace controls that meet standards that may be promulgated by the Center for Disease Control, Occupational Safety and Health Administration, Cal/OSHA, California Department of Public Health or applicable local public health agencies.[10]

7 cont.

The United Brotherhood of Carpenters and Carpenters International Training Fund has developed COVID-19 Training and Certification to ensure that Carpenter union members and apprentices conduct safe work practices. The Agency should require that all construction workers undergo COVID-19 Training and Certification before being allowed to conduct construction activities at the Project Site.

E. The DEIR's Project Description is Not Accurate, Stable, and Finite

"[A]n accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient" environmental document. (*County of Inyo v. City of Los Angeles* (1977) 71 Cal. App. 3d 185, 200.) "A curtailed or distorted project description may stultify the objectives of the reporting process" as an accurate, stable and finite project description is necessary to allow "affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost,

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[10] *See also* The Center for Construction Research and Training, North America's Building Trades Unions (April 27 2020) NABTU and CPWR COVIC-19 Standards for U.S Constructions Sites, *available at* https://www.cpwr.com/sites/default/files/NABTU_CPWR_Standards_COVID-19.pdf; Los Angeles County Department of Public Works (2020) Guidelines for Construction Sites During COVID-19 Pandemic, *available at* https://dpw.lacounty.gov/building-and-safety/docs/pw_guidelines-construction-sites.pdf.

consider mitigation measures, assess the advantage of terminating the proposal (i.e., the "no project" alternative) and weigh other alternatives in the balance. (*Id.* at 192 – 93.) Courts determine *de novo* whether an agency proceeded "in a manner required by law" in maintaining a stable and consistent project description. (*Id.* at 200.)

A project description fails for not including sufficient detail when there is not enough information provided to accurately evaluate the project's environmental impacts. Here, the DEIR's project description is not accurate, stable, or finite, thus undermining much of the subsequent analysis in the DEIR. As discussed further below, the DEIR improperly narrowed its analysis to a 62.5-acre "Focus Area" when the Project itself is 172 acres. Furthermore, though the project description calls for 700 dwelling units and 1,130,000 square feet of "non-residential uses," the DEIR does not adequately describe the "non-residential uses" which will be built, only speculating as to the ultimate development in the area. As the DEIR itself concedes throughout, the ambiguity and uncertainty regarding the final use of the areas covered by the Project undercuts the DEIR's analysis of the Project's environmental impacts.

8 cont.

An EIR must be "prepared with a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences." (*Dry Creek Citizens Coalition v. County of Tulare* (1999) 70 Cal.App.4th 20, 26.) An EIR's description of the project should identify the project's main features and other information needed for an assessment of the project's environmental impacts. (*Citizens for a Sustainable Treasure Island v City & County of San Francisco* (2014) 227 Cal.App.4th 1036, 1053.) The DEIR does not meet CEQA's requirements for an adequate project description.

F. The EIR Improperly Segments the Project and Fails to Consider the Whole of an Action

CEQA provides that a public agency may not divide a single project into smaller individual subprojects to avoid responsibility for considering the environmental impact of the project as a whole. (*Orinda Ass'n v Board of Supervisors* (1986) 182 CA3d 1145, 1171.) CEQA "cannot be avoided by chopping up proposed projects into bite-sized pieces which, individually considered, might be found to have no significant effect on the environment or to be only ministerial." (*Tuolumne County Citizens for Responsible Growth, Inc. v City of Sonora* (2007) 155 CA4th 1214; *Association for a Cleaner Env't v Yosemite Community College Dist.* (2004) 116 CA4th 629, 638; *Plan for Arcadia, Inc. v City Council* (1974) 42 CA3d 712, 726.)

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9 cont.

The Project is a Specific Plan covering 172 acres of land, but limits its analysis to only a 62.5 acre "Focus Area." (DEIR, 2.0-14). The Specific Plan area includes four distinct geographic "districts," yet the DEIR analyzes impacts only in three of the four districts. The Focus Area excludes a "Flex Tech/Bio Medical" district that constitutes the largest single designated Project area. (DEIR, 2.0-18) It would include not only office and medical office uses to complement the Rancho Los Amigos Rehabilitation Center, but also light industrial and research uses. (DEIR, 2.0-19). Also excluded from the DEIR's consideration are the Metro West Santa Ana Branch light rail transit project and the Downey Sports Complex already under construction. Though the DEIR purports to consider the environmental impacts of these developments within the Project area in its analyses of cumulative impacts, the fact remains that the Project was unreasonably piecemealed such that the putative programmatic DEIR only really covers analysis of less than 50% of the actual Project.

By segmenting what should have been one single project into three separate ones, the City violated CEQA by failing to consider the "whole of an action." As a result, the Project's DEIR improperly minimized the actual impacts that would occur if these three projects were analyzed as one single project.

G. CEQA Bars the Deferred Development of Environmental Mitigation Measures

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CEQA mitigation measures proposed and adopted into an environmental impact report are required to describe what actions that will be taken to reduce or avoid an environmental impact. CEQA Guidelines § 15126.4(a)(1)(B) [providing "[f]ormulation of mitigation measures should not be deferred until some future time."]. While the same Guidelines section 15126.5(a)(1)(B) acknowledges an exception to the rule against deferrals, but such exception is narrowly proscribed to situations where "measures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way." (Id.) Courts have also recognized a similar exception to the general rule against deferral of mitigation measures where the performance criteria for each mitigation measure is identified and described in the EIR. *Sacramento Old City Ass'n v. City Council* (1991) 229 Cal.App.3d 1011.

Impermissible deferral can occur when an EIR calls for mitigation measures to be created based on future studies or describes mitigation measures in general terms but the agency fails to commit itself to specific performance standards. *Preserve Wild Santee*

v. City of Santee (2012) 210 Cal. App. 4th 260, 281 [city improperly deferred mitigation to butterfly habitat by failing to provide standards or guidelines for its management]; *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal. App. 4th 645, 671 [EIR failed to provide and commit to specific criteria or standard of performance for mitigating impacts to biological habitats]; see also *Cleveland Nat'l Forest Found. v San Diego Ass'n of Gov'ts* (2017) 17 Cal. App. 5th 413, 442 [generalized air quality measures in the EIR failed to set performance standards]; *California Clean Energy Comm. v City of Woodland* (2014) 225 Cal. App. 4th 173, 195 [agency could not rely on a future report on urban decay with no standards for determining whether mitigation required]; *POET, LLC v. State Air Resources Bd.* (2013) 218 Cal. App. 4th 681, 740 [agency could not rely on future rulemaking to establish specifications to ensure emissions of nitrogen oxide would not increase because it did not establish objective performance criteria for measuring whether that goal would be achieved]; *Gray v. County of Madera* (2008) 167 Cal. App. 4th 1099, 1119 [rejecting mitigation measure requiring replacement water to be provided to neighboring landowners because it identified a general goal for mitigation rather than specific performance standard]; *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal. App. 4th 777, 794 [requiring report without established standards is impermissible delay].

10 cont.

Here, the DEIR defers the development of the following mitigation measures for potentially significant environmental impacts:

- MM TCR-1 proposes to retain a qualified archaeologist to conduct monitoring duties and develop treatment plan for inadvertently discovered archaeological resources without detailing any specific plan for resource monitoring that would be established using a generally accepted performance criteria or standard.

11

- MM CUL-8 calls for the development of a Long Term Preservation Plan to mitigate potential impacts on archaeological resources without detailing any specific plan that would be established using a generally accepted performance criteria or standard.
- MM CR-10 attempts to mitigate impacts caused by the unanticipated discovery of human remains during future Project developments, but does not detail any specific plan for final

treatment of such remains established using generally accepted performance criteria or standards.

- MM CR-11 through MM CR-14 propose mitigations for impacts on paleontological resources that rely on retention of a qualified paleontologist without specifying any specific plan for mitigation established using generally accepted performance criteria or standards.

11 cont.

The DEIR needs to be amended to include specific mitigation measures with any applicable performance standards. The DEIR needs to be revised to specify what the plan is and what performance standard or measure will be used that complies with any rule or regulation cited.

H. The DEIR 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 EIR 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.

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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 (fact that 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).

12 cont.

1. *The DEIR Fails to Support its Findings on Greenhouse Gas Impacts with Substantial Evidence.*

CEQA Guidelines § 15064.4 allow a lead agency to determine the significance of a project's GHG impact via a qualitative analysis (e.g., extent to which a project complies with regulations or requirements of state/regional/local GHG plans), and/or a quantitative analysis (e.g., using model or methodology to estimate project emissions and compare it to a numeric threshold). So too, CEQA Guidelines allow lead agencies to select what model or methodology to estimate GHG emissions so long as the selection is supported with substantial evidence, and the lead agency "should explain the limitations of the particular model or methodology selected for use." CEQA Guidelines § 15064.4(c).

CEQA Guidelines sections 15064.4(b)(3) and 15183.5(b) allow a lead agency to consider a project's consistency with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of GHG emissions.

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CEQA Guidelines §§ 15064.4(b)(3) and 15183.5(b)(1) make clear qualified GHG reduction plans or CAPs should include the following features:

(1) **Inventory**: Quantify GHG emissions, both existing and projected over a specified time period, resulting from activities (e.g., projects) within a defined geographic area (e.g., lead agency jurisdiction);

(2) **Establish GHG Reduction Goal**: Establish a level, based on substantial evidence, below which the contribution to GHG emissions from activities covered by the plan would not be cumulatively considerable;

(3) **Analyze Project Types**: Identify and analyze the GHG emissions resulting from specific actions or categories of actions anticipated within the geographic area;

(4) **Craft Performance Based Mitigation Measures**: Specify measures or a group of measures, including performance standards, that substantial evidence demonstrates, if implemented on a project-by-project basis, would collectively achieve the specified emissions level;

(5) **Monitoring**: Establish a mechanism to monitor the CAP progress toward achieving said level and to require amendment if the plan is not achieving specified levels;

13 cont.

Collectively, the above-listed CAP features tie qualitative measures to quantitative results, which in turn become binding via proper monitoring and enforcement by the jurisdiction—all resulting in real GHG reductions for the jurisdiction as a whole, and the substantial evidence that the incremental contribution of an individual project is not cumulatively considerable.

Here, the DEIR does not make any attempt to quantify the construction or operational GHG emissions of the Project, instead demurring to the idea that because the developments pursuant to the Project are as-yet unknown, the GHG emissions must be indeterminable. (DEIR, 4.6-12 through 4.6-15). However, the DEIR materials includes an Appendix B titled "Air Quality Monitoring," wherein some attempt at quantification via modelling was done. It includes what appear to be calculations of GHG emissions and CO2e numbers which are not discussed anywhere in the DEIR. Additionally, as noted above, the DEIR fails to analyze GHG emissions from sources outside of the "Focus Area" to which the DEIR was limited. The DEIR must be revised to consider the environmental impacts of GHG emissions from the whole project.

2. *The DEIR is Required to Consider and Adopt All Feasible Air Quality and GHG Mitigation Measures*

14

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"[11] and find that 'specific overriding economic, legal, social, technology or other benefits of the project outweigh the significant effects on the environment."[12] "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.

Here, the DEIR finds that the Project will have significant and unavoidable impacts on air quality and greenhouse gas emissions, but fails to provide any adequate discussion of potential mitigations, especially operational mitigations. Even assuming the Project may take credit for all the claimed VMT reductions it outlines, the Project will still have a significant GHG emissions impact which requires that the DEIR adopt a finding of a significance and the adoption of all feasible mitigation measures to ameliorate this impact. Instead, the DEIR again defers discussion of air quality and greenhouse gas emissions to the future, and relies on the idea that future development within the Project area will comport with regulations and plans established by SCAQMD, SCAG, and other governmental organizations.

14 cont.

The City is merely making a conclusory statement about future compliance with the law and does not commit itself to any specific or binding course of action which is project-specific. 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. There is no analysis in the DEIR connecting the effect of compliance with regulatory requirements such that the impacts could be determined to be less than

[11] PRC §§ 21002, 21002.1, 21081; CEQA Guidelines §§ 15091, 15092(b)(2)(A)
[12] PRC §§ 21002, 21002.1, 21081; CEQA Guidelines §§ 15091, 15092(b)(2)(B)

14 cont.

significant. The City is essentially requesting a good-faith assumption that regulatory compliance will serve as a backstop without developing any mitigation measures. The City must identify mitigations; sufficiency cannot be assumed based on compliance alone.

3. *The DEIR Fails to Support its Findings on Population and Housing Impacts with Substantial Evidence.*

15

The DEIR finds that the Project will have less-than-significant impacts on substantial population growth in the area. However, the DEIR recognizes that the Project could potentially increase the City's population by approximately 2,324 new persons, or 2.1 percent. (DEIR, 4.11-7). This does not include any influx of residents that might occur due to the 3,000 jobs created or relocated by the County of Los Angeles, and the 1,932 projected new jobs created by non-County development within the Project area. (DEIR, 4.2-16). The DEIR simply concludes that the new jobs might be filled by the City's unemployed population, (DEIR, 4.11-7), but again does not account for the fact that many of these jobs will be relocated from elsewhere within the County. Many County employees whose jobs were relocated may similarly decide to relocate to the City, adding to the new resident count. These new residents may place additional strain on City services and resources. The City should reconsider and revise the DEIR's conclusion on the Project's impacts on population and housing.

II. THE PROJECT VIOLATES THE STATE PLANNING AND ZONING LAW AS WELL AS THE CITY'S GENERAL PLAN

A. Background Regarding the State Planning and Zoning Law

16

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

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.

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 achievement of its policies is invalid and cannot be given effect. *See Lesher*, 52 Cal.3d at 544.

16 cont.

State law requires that all subordinate land use decisions, including conditional use permits, be consistent with the general plan. See Gov. Code § 65860(a)(2); *Neighborhood Action Group*, 156 Cal.App.3d at 1184.

A project cannot be found consistent with a general plan if it conflicts with a general plan policy that is "fundamental, mandatory, and clear," regardless of whether it is consistent with other general plan policies. *See Endangered Habitats League v. County of Orange* (2005) 131 Cal.App.4th 777, 782-83; *Families Unafraid to Uphold Rural El Dorado County v. Bd. of Supervisors* (1998) 62 Cal.App.4th 1332, 1341-42 ("*FUTURE*"). Moreover, even in the absence of such a direct conflict, an ordinance or development project may not be approved if it interferes with or frustrates the general plan's policies and objectives. *See Napa Citizens*, 91 Cal.App.4th at 378-79; *see also Lesher*, 52 Cal.3d at 544 (zoning ordinance restricting development conflicted with growth-oriented policies of general plan).

As explained in full below, the Project is inconsistent with the City's General Plan, Vision 2025 ("General Plan"). As such, the Project violates the State Planning and Zoning law.

B. The Project is Inconsistent with the General Plan, and thus the DEIR's Conclusions Regarding Impacts on Land Use and Planning are Unsupported by Substantial Evidence

The DEIR fail to establish the Project's consistency with several General Plan goals, policies, and programs including the following:

- Policy 1.1.1, Program 1.1.1.4: Discourage non-industrial uses into areas designated for industrial uses, (General Plan, 1-16);
- Policy 2.1.1, Program 2.1.1.1: Maintain intersections and street segments at acceptable service levels and not worsen those intersections and street segments currently operating at unacceptable levels, (General Plan, 2-12);
- Policy 2.1.2: Promote improvements in the street system through the development process, (General Plan, 2-12);
- Program 2.1.2.5: Discourage projects that generate high amounts of traffic onto local and collector streets (General Plan, 2-13);
- Policy 2.2.3: Reduce the number and length of vehicle trips generated by land use in Downey, (General Plan 2-16);[13]
- Goal 2.3: Reduce adverse impacts from truck traffic, (General Plan, 2-21 through 2-22);
- Goal 2.4: Reduce adverse impacts onto city streets from traffic traveling through the region, (General Plan, 2-24 through 2-25);
- Policy 4.5.2, establishing a policy of improving air quality through land use decisions, including:
  - Discouraging the placement of air-sensitive uses in close proximity to areas with concentrated pollutants, such as congested traffic intersections;
  - Reducing the number and length of vehicle trips by promoting the provision of services needed by residents locally; and
  - Discouraging land uses known as major sources of air pollution. (General Plan, 4-19).

17

The Project fails to discuss its conformity with each of the aforementioned Goals, Policies, and Programs laid out in the City's General Plan, even though the Project will have reasonably foreseeable impacts on land use, traffic, vehicle trip generation, air quality, and emissions. This discussion is relevant not only to compliance with land use

[13] The DEIR identified Policy 2.2.4, but erroneously labelled it as Policy 2.2.3.

17 cont. and zoning law, but also with the contemplation of the Project's consistency with land use plans, policies, and regulations adopted for the purpose of avoiding or mitigating environmental impacts. The DEIR should be amended to include analysis of the Project's comportment with the Goals, Policies, and Programs listed above.

C. The DEIR Should be Revised to Consider the Project's Consistency with the Upcoming 6th Cycle Revisions to the City's Housing Element

18 The DEIR includes discussion of the Project's consistency with the City's present housing element. However, the City will soon be required to revise its housing element for the October 15, 2021 through October 25, 2029 planning period. As development of the Project area will take place during the upcoming planning period and not the current period, the DEIR should include an analysis of the Project's consistency with the upcoming Housing Element update and its various policies and programs.

III. FAILURE TO INCLUDE CONSULTATION AND PREPARATION SECTION

CEQA requires all EIRs contain certain contents. *See* CEQA Guidelines §§ 15122 – 15131. CEQA expressly requires an EIR "identify all federal, state, or local agencies, other organizations, and private individuals consulted in preparing the draft EIR, and the persons, firm, or agency preparing the draft EIR, by contract or other authorization." CEQA Guidelines § 15129. This information is critical to demonstrating a lead agency fulfilled its obligation to "consult with, and obtain comments from, each responsible agency, trustee agency, any public agency that has jurisdiction by law with respect to the project, and any city or county that borders on a city or county within which the project is located …." PRC § 21104(a).

19 Failure to provide sufficient information concerning the lead agency's consultation efforts could undermine the legal sufficiency of an EIR. Courts determine *de novo* whether a CEQA environmental document sufficiently discloses information required by CEQA as "noncompliance with the information disclosure provisions" of CEQA is a failure to proceed in a manner required by law. PRC § 21005(a); *see also Sierra Club v. County of Fresno* (2018) 6 Cal. 5th 502, 515.

Here, the DEIR fails to identify which federal agencies, state agencies, local agencies, or other organizations, if any, that were consulted in the preparation of this DEIR other than individuals from Kimley-Horn and Associates, Inc. (DEIR, 8.0-1). The DEIR should be revised to identify the organizations the City consulted with in the

19 cont. preparation of the DEIR in compliance with Section 21104(a) of the Public Resources Code.

IV. CONCLUSION

21 Commenters request that the City revise and recirculate the Project's DEIR and/or prepare an environmental impact report which addresses the aforementioned concerns. If the City has any questions or concerns, feel free to contact my Office.

Sincerely,

Mitchell M. Tsai
Attorneys for Southwest Regional Council of Carpenters

Attached:

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

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

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

Response B1-1