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VIA E-MAIL

June 28, 2022

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RE: City Council June 28, 2022 Meeting Agenda Item No. 8.A. 1 Baxter Way Mixed-Use and Multi-Family Residential Development Project

Dear Mayor Bob Engler, Honorable Councilmembers, and Carlos Contreras,

On behalf of the Southwest Regional Council of Carpenters ("**SWRCC**" or "**Southwest Carpenters**"), my Office is submitting these comments on the City of Thousand Oaks' ("**City**" or "**Lead Agency**") Final Environmental Impact Report ("**FEIR**") for The 1 Baxter Way Mixed-Use and Multi-Family Residential Development Project (the "**Project**") for the upcoming June 28, 2022 City Council meeting.

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.

The Southwest Carpenters expressly reserves 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. California Government Code ("**CGC**") § 65009(b); California Public Resources Code ("**PRC**") § 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.

SWRCC incorporates 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, SWRCC 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**"), PRC § 21000 *et seq*, and the California Planning and Zoning Law, CGC §§ 65000–65010. PRC §§ 21092.2, and 21167(f) and CGC § 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.

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.

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 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

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

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

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:

> 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

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[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.

trained workforce policies to local development permits to address transportation issues. As Cervero and Duncan note:

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

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).[8] "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

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

"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.

Second, CEQA directs public agencies to avoid or reduce environmental damage when possible by requiring alternatives or mitigation measures. CCR § 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." CCR § 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 § 21081. CCR § 15092(b)(2)(A–B).

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

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

The preparation and circulation of an EIR is more than a set of technical hurdles for agencies and developers to overcome. The EIR's function is to ensure that

government officials who decide to build or approve a project do so with a full understanding of the environmental consequences and, equally important, that the public is assured those consequences have been 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).

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

To afford the public an opportunity to review and comment on an EIR, "[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 PRC § 21092, and consult again pursuant to Sections 21104 and 21153 before certifying the environmental impact report" in accordance with PRC § 21092.1. CCR § 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)." CCR § 15088.5(a). Examples of significant new information requiring recirculation include "new significant environmental impacts from the project or from a new mitigation measure," "substantial increase in the severity of an environmental impact," "feasible project alternative or mitigation measure considerably different from others previously analyzed" as well as when "the draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded." *Id.*

An agency has an obligation to recirculate an environmental impact report for public notice and comment due to "significant new information" regardless of whether the agency opts to include it in a project's environmental impact report. *Cadiz Land Co. v. Rail Cycle* (2000) 83 Cal.App.4th 74, 95 [finding that in light of a new expert report disclosing potentially significant impacts to groundwater supply "the EIR should have been revised and recirculated for purposes of informing the public and governmental

agencies of the volume of groundwater at risk and to allow the public and governmental agencies to respond to such information."]. If significant new information was brought to the attention of an agency prior to certification, an agency is required to revise and recirculate that information as part of the environmental impact report.

C. 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); CCR § 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.

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.

[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.

- 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.
- 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 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]

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

[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.

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

SWRCC has also developed a rigorous Infection Control Risk Assessment ("**ICRA**") training program to ensure it delivers a workforce that understands how to identify and control infection risks by implementing protocols to protect themselves and all others during renovation and construction projects in healthcare environments.[11]

ICRA protocols are intended to contain pathogens, control airflow, and protect patients during the construction, maintenance and renovation of healthcare facilities. ICRA protocols prevent cross contamination, minimizing the risk of secondary infections in patients at hospital facilities.

The City should require the Project to be built using a workforce trained in ICRA protocols.

D. The EIR Fails to Consider and Analyze all Feasible, Practical and Effective Mitigation Measures for Significant and Unavoidable

Although the EIR recognizes impacts to noise, transportation, housing, and hazards as significant and unavoidable, it fails to consider all feasible, practical, and effective feasible mitigation measures under PRC §§ 21061, 21100(b)(3); see also *Napa Citizens for Honest Gov't v. Napa County Bd. Of Supervisors* (2001) 91 Cal.4th 1018, 1039.

The EIR is required to review all feasible, practical, and effective mitigation measures as the EIR concludes that the Project would have significant and unavoidable impacts to several domains identified in the EIR. However, the EIR fails to provide a feasibility analysis for mitigation measures that could conceivably reduce the Project's impacts to culture to less than significant levels. For example, the Project could adopt measures to mitigate noise rather than disrupt nearby sensitive receptors, or expand surrounding roads to increase ease of access and traffic. Without a feasibility analysis of more stringent mitigation measures, the EIR fails as an informational document.

For instance, the Project could correspond and coordinate with local sensitive receptors, such as the nearby preschools to determine the best times to perform loud construction so as not to substantially interfere with preschooler learning. The Project could also analyze its transportation impacts and determine the least-disruptive construction and transportation patterns, especially during rush-hour. Similarly,

[11] For details concerning SWRCC's ICRA training program, *see* https://icrahealthcare.com/.

transportation and importing or exporting of hazards should be analyzed with attunement to the nearby sensitive receptors, businesses, and impact during high-traffic hours. However, these issues were not addressed at the most recent June 8, 2022 Planning Commission meeting, and the Commission elected instead to reaffirm its prior analysis without addressing these concerns in greater detail and recommend to City Council an adoption of the FEIR. As such, SWRCC implores City Council to better attend to adequate mitigation measures before it follows through on the Planning Commission's recommendation.

E. The EIR Fails to Support Its Findings With Substantial Evidence

When new information is brought to light showing that an impact previously discussed in the EIR but found to be insignificant with or without mitigation in the EIR'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. CCR § 15064(b); *Cleveland Nat'l Forest Found. v. San Diego Ass'n of Gov'ts* (2017) 3 Cal.App.5th 497, 515; *Mission Bay Alliance v. Office of Community Inv. & Infrastructure* (2016) 6 Cal.App.5th 160, 206. And when there is evidence that an impact could be significant, an EIR cannot adopt a contrary finding without providing an adequate explanation along with supporting evidence. *East Sacramento Partnership for a Livable City v. City of Sacramento* (2016) 5 Cal. App. 5th 281, 302.

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

(2008) 43 Cal.App.4th 936, 956 (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).

Here, the most recent Staff Report does not address the comments of SWRCC's last letter, and as such SWRCC reincorporates its prior comments which are again set forth in this letter. Furthermore, these issues were not addressed at the most recent June 8, 2022 Planning Commission meeting, and the Commission elected instead to reaffirm its prior analysis without addressing these concerns in greater detail and recommend to City Council an adoption of the FEIR. As such, SWRCC implores City Council to better attend to adequate substantial evidence before it follows through on the Planning Commission's recommendation.

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

CCR § 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." CCR § 15064.4(c).

CCR §§ 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.

CCR §§ 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;

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 EIR concludes consistency with the SCAG's 2016-2040 statewide plans to reduce GHG emissions but does not identify consistency with the 2020-2045 plan (DEIR 4.7-17-24). However, the EIR 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 EIR. Additionally, as noted above, the EIR fails to analyze GHG emissions from sources outside of the "Focus Area" to which the EIR was limited. The EIR must be revised to consider the environmental impacts of GHG emissions from the whole project.

Although the Agenda indicates that it will attempt to prematurely adopt the Final Environmental Impact Report, it does so without having responded to the multitude of comments provided to the City concerning the Project. For instance, these issues were not addressed at the most recent June 8, 2022 Planning Commission meeting or at any time prior to SWRCC's comments, and the Commission elected instead to reaffirm its prior analysis without addressing these concerns in greater detail and recommend to City Council an adoption of the FEIR. As such, SWRCC implores City Council to better attend to adequate greenhouse gas impact analysis before it follows through on the Planning Commission's recommendation.

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

A fundamental purpose of an EIR is to identify ways in which a proposed project's significant environmental impacts can be mitigated or avoided. PRC §§ 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); CCR §§ 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" and find that 'specific overriding economic, legal, social, technology or other benefits of the project outweigh the significant effects on the environment." "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 EIR finds that the Project will have no significant and unavoidable impacts on air quality and greenhouse gas emissions, for several reasons, one of which is the consistency with the 2016 Ventura County AQMP population increase estimates. (DEIR ES 6-8) which is conclusory and evades the analysis under CEQA. 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 EIR adopt a finding of a significance and the adoption of all feasible mitigation measures to ameliorate this impact. Instead, the EIR again defers discussion of air quality and greenhouse gas emissions to the future, or never, and relies on the faulty inference that its impacts can be masked and assimilated under the guise of global climate change analysis.

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 EIR connecting the effect of compliance with regulatory requirements such that the impacts could be determined to be less than 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. It is insufficient to say that none is needed because the analysis would be subsumed by global climate change context.

3. *The EIR Provides Inadequate Population and Housing Impact Analysis*

The EIR provides inadequate analysis to housing impacts, despite the nearly 264 proposed units and 16 very-low income units that will significantly increase population density in the area. (DEIR ES 3/20-22) It is therefore necessary to perform a housing impact analysis, especially considering the site's existing vacant commercial building that will result in a significant population increase in the area, not only due to the housing development but also because of the additional patronage from the reintroduction of commercial uses and planned pedestrian access. An agency may not avoid its responsibility to prepare proper environmental analysis by failing to gather relevant data. *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311. Here, there are clear housing impacts because of the nature of the Project, and the City is obligated to include housing impacts in its environmental impact analysis.

While an analysis is provided, it indicates that the population increase is within the projected population estimates under the SCAG 2045 plan. However this estimate and analysis does not include the Project's contribution per annum and instead evaluates and estimates an approximate its overall increase and contribution increase of 1,121 residents of total growth until 2045, and which would constitute almost half of the Thousand Oaks 2021-2029 Housing Element allotment, while only providing an insignificant provision of low-income units for the area (DEIR 3.12-1-4).

Based on this, the EIR concludes the population growth would be within estimated SCAG regional forecast and impacts would be less than significant. (DEIR ES-20-22) However the Project's contribution per annum could be well in excess of annual contributions to population growth and occupies nearly half of the growth attributions in the Thousand Oaks Housing Element for the next seven years. As such, the City should attend to proper estimates of the Project's overall contributions.

F. The EIR's Transportation and Traffic Analysis Is Insufficient and Inconsistent

The EIR analyzes potential transportation and traffic impacts relating to the Project. (DEIR ES-22). It recognizes the existing street network and availability to public transit and adjacent highways, and specifically the 101 freeway to the south, and pedestrian networks. (DEIR 2-1; ES-22, 4-13) Despite this, the EIR provides insufficient analysis of transportation and traffic impacts caused by the Project.

For instance, the City of Thousand Oaks Active Transportation Plan lists as a goal the development of an active transportation friendly environment. (DEIR 3.5-7) However the Project is being built adjacent to a well-traveled road in Thousand Oaks and plans to add over 1000 residents and significant patronage who will require transportation either through public transit, car, or otherwise. These nontrivial increases will necessarily add stress to the nearby freeway and roads, and especially the already-congested Thousand Oaks Boulevard, Westlake Boulevard, and 101 Freeway nearby and the other businesses and schools identified surrounding the Project site. The EIR nonetheless concludes that impacts to transportation and traffic would be less-than-significant The An agency may not avoid its responsibility to prepare proper environmental analysis by failing to gather relevant data. *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311. The EIR is obligated to attend to these considerations but does not do so. SWRCC requests the City reconsider and incorporate deeper analysis as it pertains to transportation and traffic.

G. The EIR Fails to Adequately Disclose and Analyze the Project's Significant Noise Impacts

The EIR discloses that the Project will have significant and unavoidable noise impacts and proposes mitigation measures that provide no or insufficient mitigation to sensitive receptors and the Project's contribution to noise increases in the area. (DEIR ES-20).

The EIR fails to adequately analyze all of the Project's significant noise impacts. For example, the Project's analysis excludes the impacts of the at least four (4) nearby sensitive receptors, especially the Westlake High School and Los Robles Rehabilitation High SChool, and the excessive noise levels that will impact these many receptors, especially concerning the planned demolition and planned residential and commercial uses and increased pedestrian traffic (DEIR 3.11-1-36). These are significant noise

generating activities whose mitigation is missing entirely or defers mitigation through adjustments to construction equipment (DEIR 3.11-36). An agency may not avoid its responsibility to prepare proper environmental analysis by failing to gather relevant data. *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.

Despite recognizing the significant and unavoidable noise impacts to the nearby sensitive receptors for both the Project's construction and the day-to-day use of the Project upon completion, it nonetheless provides no additional mitigation and still concludes that none is required. (DEIR 3.11-36). The Project must provide sufficient mitigation for these significant noise impacts.

H. The EIR Fails to Adequately Disclose and Analyze the Project's Significant Hazards and Wildfire Impacts

The EIR identifies hazards and hazardous materials in its analysis (DEIR ES-3.8-22) and identifies nearby routes to transport hazards and hazardous materials outside of the Project site to the nearby 126, 118, 101, 1, and local roads, as well as recognizes the demolition of a building that is known to contain hazardous materials like asbestos and lead. Despite the presence of not only nearby sensitive receptors, businesses, and other residences, the EIR concludes no mitigation is required without also providing detailed analysis or Project specific metrics on the transportation and demolition of the building beyond consistency with steps outlined in the Thousand Oaks Municipal Code. (DEIR 3.8-16) An agency may not avoid its responsibility to prepare proper environmental analysis by failing to gather relevant data. *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311. The City must provide sufficient analysis to the transportation and management of hazards and hazardous materials given the proximity of the Project to nearby sensitive receptors, residential communities, and local businesses.

The area of Thousand Oaks is especially sensitive to wildfires, and therefore particular attention needs to be paid to this analysis. As the EIR recognizes, the Project site is in a "Very High" Fire Severity Zone. (EIR ES-24) Yet the EIR only indicates consistency with state and local fire and hazard mitigation and emergency plans and that impacts would be less-than-significant and no mitigation would be required. (EIR ES-24) The Project and its corresponding construction will involve the demolition of a large and abandoned commercial building, increase traffic congestion with obstructing construction vehicles, and will otherwise increase fire danger through various construction activities. The EIR needs to provide Project-specific analysis and details

to adequately attend to fire and emergency protocols to protect the surrounding sensitive receptors and local residences and businesses. An agency may not avoid its responsibility to prepare proper environmental analysis by failing to gather relevant data. *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.

I. The EIR Fails to Adequately Disclose and Analyze the Project's Significant Biological Impacts

The EIR finds that the Project will have less than significant impacts despite recognizing the presence of thirty-one City Protected oak trees present on the Project site (EIR ES-11, Staff Report pg. 8) and attention to the City's Oak Tree Preservation and Protection Guidelines and Oak and Landmark Tree Ordinance. The mitigation indicates impact in the form of removal of 31 oak trees and potential presence of nesting birds (EIR ES-10). The City defers to mitigation in the form of replacing the trees at a 3:1 ratio pursuant to code to the City's Tree Protection Guidelines. However, although six oak trees will be removed and 63 oak trees and 18 sycamore trees are planned to be planted in their stead, there is no analysis done on the likelihood of the planted oaks reaching maturity to fully account for the removal of the six oak trees, or what preservation measures will be done to ensure the survival and livelihood of the remaining four oak trees. A full analysis of the oak tree mitigation measure, as well as finding non-deferred mitigation An agency may not avoid its responsibility to prepare proper environmental analysis by failing to gather relevant data. *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.

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

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 CGC § 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.

State law requires that all subordinate land use decisions, including conditional use permits, be consistent with the general plan. See CGC § 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 Central City Community Plan, ("Community Plan"). As such, the Project violates the State Planning and Zoning law.

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

The EIR fail to establish the Project's consistency with several Community Plan goals, policies, and programs including the following (EIR ES-19; 3.10-10):

- To provide and maintain a system of natural open space and trails;
- To develop appropriate additional tools enabling commercial, industrial and residential development to flourish in an efficient and compatible manner.
- To provide high quality environment, healthful and pleasing to the senses, which values the relationship between maintain of ecological systems and people's general welfare.
- The City's unique natural setting will be a guide to its future physical shape … the City will support and encourage open space/greenbelt buffers around it, separating the City from adjoining communities.
- Low profile and aesthetically designed signage shall be allowed for all developments; no billboards shall be allowed.
- Strive to provide a balanced range of adequate housing for Thousand Oaks Planning Area residents in a variety of locations for all individuals regardless of age, income, ethnic background, marital status, physical or developmental disability.
- Provide a wide range of housing opportunities for persons of all income levels.
- Provide housing opportunities for persons with special needs.
- A City-wide system of pedestrian and bicycle facilities that provide safe, continuous accessibility to all residential, commercial, and industrial areas, to the trail system and to the scenic bike route system shall be provided and maintains.

- Achieve and maintain an environment in which noise-sensitive uses are not disturbed by noise that exceeds exposure guidelines in this Noise Element.

The Project fails to discuss its conformity with each of the aforementioned Goals, Policies, and Programs laid out in the City's Community 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 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 EIR should be amended to include analysis of the Project's comportment with the Goals, Policies, and Programs listed above.

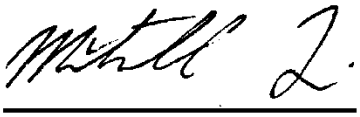
B. The EIR Should be Revised to Consider the Project's Consistency with the Upcoming Revisions to the City's Housing Element

The EIR includes discussion of the Project's consistency with the City's present housing element. However, the City recently adopted housing element on January 22, 2022 of the 2021-2029 Housing Element. As development of the Project area will take place during the upcoming planning period and not the current period, the EIR should include an analysis of the Project's consistency with the upcoming Housing Element update and its various policies and programs.

III. CONCLUSION

The Southwest Carpenters 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.

Sincerely,



Mitchell M. Tsai
Attorneys for the Southwest
Regional Council of Carpenters

Attached:

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

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

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