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VIA E-MAIL

June 6, 2022

Christina Taylor
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**RE: Draft Environmental Impact Report for the Beaumont Summit Specific
Plan Project (SCH No. 2021090378)**

Dear Christina Taylor,

On behalf of the Southwest Regional Council of Carpenters ("SWRCC" or "Southwest Carpenters"), my Office is submitting these comments on the City of Beaumont's ("City" or "Lead Agency") Draft Environmental Impact Report ("DEIR") (SCH No. 2021090378) for the Beaumont Summit Specific Plan Project ("Project").

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. 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.

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"), Cal Public Resources Code ("PRC") § 21000 *et seq.*, and the

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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.

Q2-13

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:

Q2-14

[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:

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... 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

Q2-15

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

Q2-16

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

Q2-17

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.sqmd.gov/docs/default-source/Agendas/Governing-Board/2021/2021-May7-027.pdf?sfvrsn=10>

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).

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

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

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O2-19

⁶ California Planning Roundtable (2008) Deconstructing Jobs-Housing Balance at p. 6, available at <https://cprroundtable.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>

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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 "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. 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

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.

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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).

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.

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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. 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

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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).

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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.
- 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.

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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>.

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- 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

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

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SWROC 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.

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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 COVID-19 Standards for U.S. Construction Sites, available at https://www.cprw.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://dpm.lacounty.gov/building-and-safety/docs/pw_guidelines-construction-sites.pdf

¹¹ For details concerning SWROC’s ICRA training program, see <https://icrahealthcare.com/>.

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

II. THE ENVIRONMENTAL IMPACT REPORT IS INADEQUATE

A. The DEIR Fails to Properly Consider All Feasible Mitigation for Noise

CEQA requires that an environmental document identify and discuss the significant effects of a Project, alternatives and how those significant effects can be mitigated or avoided. CEQA Guidelines § 15126.2; PRC §§ 21100(b)(1), 21002.1(a). An environmental documents discussion of potentially significant effects must “provide an adequate analysis to inform the public how its bare numbers translate to create potential adverse impacts or it must adequately explain what the agency does know and why, given existing scientific constraints, it cannot translate potential health impacts further.” *Sierra Club v. County of Fresno* (2018) 6 Cal. 5th 502, 521; *see also citing Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 405; *see also* PRC §§ 21002.1(e), 21003(b).

The Court may determine whether a CEQA environmental document sufficiently discloses information required by CEQA *de novo* 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; CEQA Guidelines.

The DEIR states that the Project will have a significant and unavoidable impact on Noise on Cherry Valley Blvd at three locations, Project Access to Hannon Rd, Hannon Rd to Union St and Union St to Nancy Ave. The DEIR states however, that mitigation was determined to be infeasible to reduce mobile traffic noise to Normally Acceptable levels in accordance with the Land Use Compatibility standards. However, there is no information to demonstrate what mitigations were considered or how they were not feasible. The DEIR should be recirculated with demonstrations that mitigations are not feasible.

B. The DEIR Fails to Consider Any Mitigations for Transportation

An agency must adopt any and all feasible mitigation measures identified in the EIR that would mitigate or avoid the project’s significant environmental impacts. PRC §§ 21002.1(b); 21081(a)(1); CEQA Guidelines §§15021(a)(2), (3), 15091(a)(1).

The DEIR states the Project will have a significant and unavoidable impact having a

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higher VMT threshold than City's recommended thresholds. The DEIR concludes there is a significant and unavoidable impact because the reduction of VMT impacts cannot be assured. However, the DEIR does not consider or propose any mitigations at all. Despite claiming the impact would be significant and unavoidable, the City is required to consider all feasible mitigations. Here, the DEIR does not contain any mitigations at all.

C. The DEIR Fails to Analyze the Project's Impacts to Sensitive Receptors

The DEIR identifies the closest sensitive receptor as a residential building located 67 feet to the east of the project. The DEIR states that by follow Mitigations MM AQ-1 through MM AQ-6, the impact to the sensitive receptors would be less than significant. It concludes that following the mitigations will reduce the hazards to .0009 and .08 for residents and .0007 and .07 for workers. However, there is no analysis as to how the DEIR arrived that that conclusion. It just states it as a matter of fact. The DEIR should be recirculated with an analysis stating how the mitigation measures lower the levels to less than significant.

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III 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 (See *DeVita v. County of Napa* (1995) 9 Cal. App. 4th 763, 773), and serves as a "constitution" or "charter" for all future development. *Leshar Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal. App. 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.

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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

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general plan as a whole to become internally inconsistent. See DeVita, 9 Cal. App. 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) 136 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 Leshar, 52 Cal. App. 3d at 544.

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, 136 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 Leshar, 52 Cal. App. 3d at 544 (zoning ordinance restricting development conflicted with growth-oriented policies of general plan).

B. The City is Required to Review the Project’s Consistency with Regional Housing Plans, Sustainable Community Strategy and Regional Transportation Plans

CEQA Guidelines section 15125(d) requires that an environmental document “discuss any inconsistencies between the proposed project and applicable general plans, specific plans and regional plans. See also Golden Door Properties, LLC v. County of San Diego (2020) 50 Cal. App. 5th 467, 543.

The Project should thoroughly evaluate the consistency with the City’s General Plan, City’s Regional Housing Needs Assessment targets, Sustainable Community Strategy

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and Regional Transportation Plan. The Project fails to analyze consistency with any of these applicable plans.

IV. 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).

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