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VIA E-MAIL

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RE: City of San Luis Obispo Motel Inn Project

Dear Shawna Scott and Walter Oetzell,

On behalf of the **Southwest Regional Council of Carpenters** (“Southwest Carpenters” or “SWRCC”), my Office is submitting these comments to the City of San Luis Obispo’s (“City” or “Lead Agency”) regarding the Motel Inn Project (“Project”).

SWRCC is a labor union representing 50,000 union carpenters in six states, including California, 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.

SWRCC 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.

I. THE CITY SHOULD REQUIRE THE USE OF A LOCAL SKILLED AND TRAINED WORKFORCE

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 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. 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

Local skilled and trained workforce requirements and policies have significant environmental benefits since they improve an area’s jobs-housing balance, decreasing the amount of and length of job commutes and their associated greenhouse gas emissions. 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 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

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>.

²South 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>

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).

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.

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>.

II. THE CITY SHOULD PREPARE AN ENVIRONMENTAL IMPACT REPORT FOR THE PROJECT

CEQA is a California statute designed to inform decision makers and the public about the potential, significant environmental effects of a project. 14 California Code of Regulations (“**CEQA Guidelines**”) § 15002(a)(1).⁸ At its core, “[i]ts purpose is to inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made.” *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 564.

To achieve this purpose, CEQA mandates preparation of an Environmental Impact Report (“**EIR**”) for projects so that the foreseeable impacts of pursuing the project can be understood and weighed. *Communities for a Better Environment v. Richmond* (2010) 184 Cal. App. 4th 70, 80. The EIR requirement “is the heart of CEQA.” CEQA Guidelines, § 15003(a).

A strong presumption in favor of requiring preparation of an EIR is built into CEQA. This presumption is reflected in what is known as the “fair argument” standard, under which an agency must prepare an EIR whenever substantial evidence in the record supports a fair argument that a project may have a significant effect on the environment. *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal. App. 4th 1597, 1602; *Friends of “B” St. v. City of Hayward* (1980) 106 Cal. 3d 988, 1002.

The fair argument test stems from the statutory mandate that an EIR be prepared for any project that “may have a significant effect on the environment.” PRC § 21151; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. App. 3d 68, 75; *Jensen v. City of Santa Rosa* (2018) 23 Cal. App. 5th 877, 884. Under this test, if a proposed project is not exempt and may cause a significant effect on the environment, the lead agency must prepare an EIR. PRC §§ 21100(a), 21151; CEQA Guidelines § 15064(a)(1), (f)(1). An EIR may be dispensed with only if the lead agency finds no substantial evidence in the initial study or elsewhere in the record that the project may have a significant effect on the environment. *Parker Shattuck Neighbors v. Berkeley City Council* (2013) 222 Cal. App. 4th

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.

768, 785. In such a situation, the agency must adopt a negative declaration. PRC § 21080(c)(1); CEQA Guidelines §§ 15063(b)(2), 15064(f)(3).

"Significant effect upon the environment" is defined as "a substantial or potentially substantial adverse change in the environment." PRC § 21068; CEQA Guidelines § 15382. A project "may" have a significant effect on the environment if there is a "reasonable probability" that it will result in a significant impact. *No Oil, Inc. v. City of Los Angeles*, 13 Cal. 3d at 83 fn. 16; *Sundstrom v. County of Mendocino* (1988) 202 Cal. App. 3d 296, 309. If any aspect of the project may result in a significant impact on the environment, an EIR must be prepared even if the overall effect of the project is beneficial. CEQA Guidelines § 15063(b)(1). See *County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal. App. 4th 1544, 1580.

This standard sets a "low threshold" for preparation of an EIR. *Consolidated Irrig. Dist. v. City of Selma* (2012) 204 Cal. App. 4th 187, 207; *Nelson v. County of Kern* (2010) 190 Cal. App. 4th 252; *Pocket Protectors v. City of Sacramento* (2004) 124 Cal. App. 4th 903, 928; *Bowman v. City of Berkeley* (2004) 122 Cal. App. 4th 572, 580; *Citizen Action to Serve All Students v. Thornley* (1990) 222 Cal. App. 3d 748, 754; *Sundstrom v. County of Mendocino* (1988) 202 Cal. App. 3d 296, 310. If substantial evidence in the record supports a fair argument that the project may have a significant environmental effect, the lead agency must prepare an EIR even if other substantial evidence before it indicates the project will have no significant effect. See *Jensen v. City of Santa Rosa* (2018) 23 Cal. App. 5th 877, 886; *Clews Land & Livestock v. City of San Diego* (2017) 19 Cal. App. 5th 161, 183; *Stanislaus Audubon Soc'y, Inc. v. County of Stanislaus* (1995) 33 Cal. App. 4th 144, 150; *Brentwood Ass'n for No Drilling, Inc. v. City of Los Angeles* (1982) 134 Cal. App. 3d 491; *Friends of "B" St. v. City of Hayward* (1980) 106 Cal. App. 3d 988; CEQA Guidelines § 15064(f)(1).

Under CEQA Guidelines § 15164, an addendum to an IS/MND is justified when "minor technical changes or additions" have occurred in the project description since the IS/MND was adopted. The lead agency is required to explain the decision not to prepare a subsequent EIR pursuant to State CEQA Guidelines Sections 15162, which demands preparation of a subsequent EIR when proposed changes in the addendum would require major revisions because of new, significant environmental effects or a substantial increase in the severity of previously-identified significant effects.

As will be discussed, there would be a substantial increase in the severity of previously-identified significant effects, and as such an EIR is required.

As there is a fair argument that the Project may cause significant environmental impacts, as explained below, the low threshold is met and the City should prepare an EIR for the Project.

1. *The Project Is Likely to Cause Significant Air Quality, Noise, and GHG Impacts*

The adopted IS/MND identified potential significant impacts as to the construction and operational phases of the Project. Although the IS/MND concluded it had established adequate mitigation measures pursuant to the San Luis Obispo Air Pollution Control District in attending to the increase of total lodgings (Addendum p. 3), it misconstrues the impact of that increase. While the total increase is from 81 to 83, a presumably “minor” increase, the Project apparently would now involve the construction of five new two-story bungalow guestroom buildings, and elimination of a 23-space recreational vehicle park at the eastern portion of the site, to be replaced with fourteen (14) one-story bungalow guestroom buildings, each being approximately 15 feet in height for the one-story buildings and 25 feet in height for the two-story buildings). It is unclear from the addendum whether these changes had been previously adopted pursuant to the prior IS/MND or if these new changes are being first proposed in the addendum. If such changes are proposed for the first time in the addendum, this would create a significant increase in construction activity because of the construction of five new two-story buildings and elimination of a vehicle park in favor of an additional fourteen buildings. Although SWRCC is open to being corrected here, no reference to these significant changes and additional structures is mentioned anywhere in the original and adopted IS/MND. For the same reasons, significant increases in construction activity for these additional buildings would cause commensurate noise and GHG impacts due to the unspecified increase in construction time due to these additional structures, as well as clarity on the 81 to 83 lodging unit increase as to be reconciled with the additional structures proposed in the Cultural Resources section (Addendum p. 4) or the Greenhouse Gas Emissions section which claims a reduction of total lodging units from 81 to 76 (Addendum p. 5).

These discrepancies as far as SWRCC can tell, these discrepancies have not been reconciled and as such, the public has no way to readily determine what changes are being proposed, and whether those changes can be evaluated as significant when the addendum itself contains numerous contradictions to whether proposed structural increases would increase by two, upwards of fourteen, or decrease by five.

2. *The Project is Likely to Cause Significant Utilities and Service Systems Impacts*

While the addendum indicates a “marginal increase” of the total number of lodging units from 81 to 83 (Addendum p. 7), it does not consider the current drought climate in an assessment of the strain on the City’s utilities and water systems. It is unclear whether the unsupported assertions that the “City maintains adequate, diverse water supply (and excess supply) to meet Citywide water demands during single- and multiple-dry years through 2035 (built-out of the General Plan).” (Addendum p. 7). However no data is presented that accounts for updated drought levels and whether the City or this Project can be adequately serviced in the current climate. 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. Mere mention of the adequacy of the Cold Canyon Landfill is insufficient as justification for service to the Project’s additional changes, as there is no analysis to whether the remaining capacity of 13,000,000 cubic yards would adequately service the Project’s additional changes. As such, the Utilities and Service Systems impacts have not been properly assessed given the current and likely future drought climates impacting California. Therefore, the addendum cannot properly conclude that the Project would not create any new impacts, would not increase the severity of any impact, or that impacts would remain less than significant.

3. *Due to the COVID-19 Crisis, the Project May Cause Significant Environmental Effects on Human Beings*

CEQA establishes that environmental effects also encompass adverse effects on human beings stemming from a project. Cal. Code Regs. 14 § 15065(a)(4). Public health risks related to construction work constitutes adverse effects on human beings as it has been defined as a Lower to High-risk activity for COVID-19 spread by the Occupations Safety and Health Administration. In fact, several construction sites have been identified as sources of community spread of COVID-19.⁹ Accordingly, the Project may cause significant environmental effects on human beings, which the City should consider in an EIR along with feasible mitigation measures. In particular, based upon SWRCC’s experience with safe construction site work practices, SWRCC

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>.

recommends that the City require the following 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.
- A 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.
- 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 entrances from 5:30 am to 7:30 am.

- After 7:30 a.m., 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, the individual will be instructed that he/she will not be allowed to enter the Project Site. The individual will also be instructed to promptly notify his/her supervisor and his/her human resources (HR) representative.

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), 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. Likewise, the City should require that all construction workers undergo COVID-19 Training and Certification


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/wp-content/uploads/publications/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.

before being allowed to conduct construction activities at the Project Site. For this reason too, the Project should not be subject to the Class 32 CEQA exemption.

III. CONCLUSION

SWRCC requests that the City require a local and skilled workforce for the Project. SWRCC further requests that the City determine that the Project is not exempt from CEQA and prepare an EIR for the Project. If the City has any questions, feel free to contact my Office.

Sincerely,



Jason A. Cohen
Attorneys for Southwest Regional
Council of Carpenters

Attached:

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

Exhibit B: Air Quality and GHG Expert Paul Rosenfeld CV; and

Exhibit C: Air Quality and GHG Expert Matt Hagemann CV.