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VIA E-MAIL

May 10, 2022

Elaine Lister, Director of Community Development
City of Mission Viejo
200 Civic Center
Mission Viejo, CA 92691
Em: elister@cityofmissionviejo.org

RE: City of Mission Viejo's City Council Meeting Concerning the Garden Plaza Redevelopment Project

Dear Elaine Lister,

I am writing on behalf of **Southwest Regional Council of Carpenters** ("SWRCC") regarding the City's upcoming May 10, 2022 City Council Meeting concerning The Garden Plaza Redevelopment Project (the "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. 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 (“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 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

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>

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.

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 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

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>.

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.

I. THE ACTIONS TAKEN BY THE COUNCIL AND VALUEROCK REALTY ARE IN VIOLATION OF CALIFORNIA PUBLIC RESOURCE CODE (CEQA) SECTION 15061(B)(3).

On March 2, 2022 the Mission Viejo City Council (the “Council”) unanimously approved the Project’s Developer, ValueRock Realty’s (“ValueRock”) request to initiate a zoning amendment (Development Code Amendment DCA2021-20) prior to the Project’s development application submission and prior to a general plan amendment. These actions requested by ValueRock and executed by the Council are in violation of several California Public Resource Code (“CEQA”) sections.

SWRCC echoes the concerns discussed by Ms. Lister in her memorandum submitted in anticipation of the Planning and Transportation Commission Staff Report (pp. 1-4). In it, she correctly identifies the implications of the Council approving the zone amendment at the March 2, 2022 meeting.

Specifically, amending the development code to include the mixed-use zone the Project would allow other projects throughout the city to obviate the requirements of California Code of Regulations, Title 14, §15061(b)(3). It states in relevant part: “a project is exempt from CEQA if the activity is covered by the common sense exemption that CEQA applies only to projects which have the potential for causing a significant effect on the environment. Where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment, the activity is not subject to CEQA.”

The Project cannot seek a CEQA exemption here because of the zoning change’s broad applicability that would allow other prospective projects within Mission Viejo that would conflict with the general plan and skirt the requirements of § 15061(b)(3).

II. THE PROPOSED ZONING ACTION CONSTITUTES UNLAWFUL “PIECEMEALING” UNDER SECTIONS 20165(A)-(C) AND 15060(C)(2), (3) AND 15378, *ET SEQ.*

The proposed zone change also qualifies as unlawful “piecemealing” under sections 20165(a)-(c), 15060(c)(2), (3), and 15378, *et seq.* and a legacy of case law (*see Laurel Heights Improvement Association v. Regents of University of California* (1988) 57 Cal. 3d 376; *Del Mar Terrace Conservancy, Inc. v. City Council* (1992) 10 Cal.App.4th 712; *City of Redlands v. County of San Bernardino* (2002) 96 Cal.App.4th 398; *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713; *Citizens for East Shore Parks v. State Lands Commission* (2011) 202 Cal.App.4th 549). Essentially, these sections define what a project is under CEQA, which is any action or activity taken by a public agency that would cause a direct physical change in the environment and that the project is defined by “the whole of the action.”

Here though, the proposed zoning change would break apart a significant aspect of the Project’s approval process by allegedly qualifying the Project for a CEQA exemption without first achieving a general plan amendment. The proposed zone change would also conflict with the Mission Viejo general plan (as noted by Ms. Lister p. 3).

III. THE ONLY ACCEPTABLE ACTION THE COUNCIL CAN TAKE AT THE MAY 10, 2022 MEETING IN ACCORDANCE WITH CALIFORNIA GOVERNMENT CODE SECTIONS 54960 AND 54960.1 (THE “BROWN ACT”) IS TO ADOPT RESOLUTION 22-XX WHICH DENIES THE DCA21-20 ZONE APPROVAL.

The only acceptable action the Council may take in accordance with CGC §§ 54960 and 54960.1 (the “Brown Act”) is to deny the zone approval sought by ValueRock. The Brown Act provides that all meetings of the legislative body of a local agency shall be open and public, and all persons shall be permitted to attend any meeting of the legislative body of a local agency. Various provisions of the Brown Act impose requirements on public agencies concerning meeting notice, availability of documents distributed to legislative body members in connection with matters for discussion at public meetings, the right of the public to take part in public meetings, procedures for hearing adjournments and continuances, and other matters related to meetings of

public agency legislative bodies, including enforcement of the Brown Act’s public meeting requirements.

Section 54960 of the Brown Act provides that “any interested person” may commence an action to stop or prevent violations of the Brown Act. Section 54960.1 of the Brown Act provides that “any interested person” may commence an action for a judicial determination that an action by a legislative body taken in violation of the Brown Act is null and void.

Here, the City can only take actions listed on the agenda, and the action listed is to deny the Project’s piecemeal zoning proposal that was approved at the March 2, 2022 meeting.

As such, SWRCC respectfully requests the Council adopt Resolution 22-XX which denies DCA21-20 and ensure the denial of the zone change requested at the March 2, 2022 meeting and revisit and cure the numerous CEQA violations illustrated above.

Lastly, SWRCC requests the City of Mission Viejo keep our office abreast of any meetings when this Project is considered.

Sincerely,



Jason A. Cohen

Attorneys for Southwest Regional Council of Carpenters