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May 1, 2025

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RE: Planning Commission May 1, 2025, Meeting – Public Hearing Item No. 4 – City of Irvine's Planning Area 25 Residential Project (SCH#: 2023070463).

Dear Chair Pierson, Honorable Commissioners and Mr. Martin,

On behalf of the Western States Regional Council of Carpenters ("**Western Carpenters**" or "**WSRCC**"), our firm is submitting these comments in connection with the Planning Commission's May 1, 2025, meeting concerning the Planning Area 25 Residential Project ("**Project**"), located at 120 Academy Way, and the April 2025 Addendum (the "**EIR Addendum**") to the City of Irvine's ("**City**") 2045 General Plan Update ("**GPU**") Final Program Environmental Impact Report ("**GPU FEIR**") prepared in connection therewith.

The Western Carpenters is a labor union representing almost 90,000 union carpenters in 12 states, including California, and has a strong interest in well-ordered land use planning and in addressing the environmental impacts of development projects.

The proposed Project would amend the City's General Plan and Zoning Ordinance to permit development of a total of 2,500 housing units within the City's Planning Area 25 ("PA 25"), known as the University Research Park, specifically developing a 26.4-gross-acre parcel (APN: 455-241-09) within PA 25 into a 1,233-unit multi-family residential development across 3 separate apartment buildings while also permitting a second phase of future construction of an additional 1267 housing units within a

different sector of PA 25. The Project proposes a General Plan Amendment and Zone Change amending the land use designation of the Project Site from Research/Industrial to Multi-use and changing the zoning designation from 5.5 Medical & Science to 3.1I Multi-use, along with associated text revisions to allow up to 2,500 dwelling units within PA 25. The Project would also require approval of Vesting Tentative Tract Map (VTTM) No. 19355 to subdivide the 26.4-gross-acre parcel into five lots for the development of the multi-family residential project and a Master Plan for the development of up to 1,233 multi-family residential units with an Affordable Housing Plan comprised of a Development Agreement, Density Bonus Housing Agreement, and Regulatory Agreement. In connection with the proposed Project, the City has prepared an Addendum to the 2045 GPU FEIR.

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

The Western States Regional Council of Carpenters expressly reserves the right to supplement these comments at or prior to hearings on the Project, and at any later hearing and proceeding related to this Project. (Gov. Code, § 65009, subd. (b); Pub. Res. Code, § 21177, subd. (a); see *Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal.App.4th 1184, 1199-1203; see also *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal.App.4th 1109, 1121.)

The Western Carpenters incorporates by reference all comments raising issues regarding the Environmental Impact Report (EIR) submitted prior to certification of the EIR for the Project. See *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, the Western Carpenters requests that the City provide notice for any and all notices referring or related to the Project issued under the California Environmental Quality Act (**CEQA**) (Pub. Res. Code, § 21000 *et seq.*), and the California Planning and Zoning Law ("**Planning and Zoning Law**") (Gov. Code, §§ 65000–65010). California Public Resources Code Sections 21092.2, and 21167(f) and California 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.

I. THE CITY SHOULD REQUIRE THE USE OF A LOCAL WORKFORCE TO BENEFIT THE COMMUNITY'S ECONOMIC DEVELOPMENT AND ENVIRONMENT

The City should require the Project to be built using a local workers who have graduated from a Joint Labor-Management Apprenticeship Program approved by the State of California, 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 a state-approved apprenticeship training program.

Community benefits such as local hire 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 provide 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.

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

> [L]abor 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]

Furthermore, workforce policies have significant environmental benefits given that they improve an area's jobs-housing balance, decreasing the amount and length of job commutes and the associated greenhouse gas (GHG) emissions. In fact, on May 7, 2021, the South Coast Air Quality Management District found that that the "[u]se of a local state-certified apprenticeship program" can result in air pollutant reductions.[2]

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.[3]

Moreover, local hire mandates and skill-training are critical facets of a strategy to reduce vehicle miles traveled (VMT). As planning experts Robert Cervero and Michael Duncan have noted, simply placing jobs near housing stock is insufficient to achieve VMT reductions given that the skill requirements of available local jobs must match those held by local residents.[4] Some municipalities have even tied local hire and

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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.

[3] California Planning Roundtable (2008) Deconstructing Jobs-Housing Balance at p. 6, *available at* https://cproundtable.org/static/media/uploads/publications/cpr-jobs-housing.pdf

[4] 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.

other workforce policies to local development permits to address transportation issues. Cervero and Duncan note that:

> 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.

Recently, the State of California verified its commitment towards workforce development through the Affordable Housing and High Road Jobs Act of 2022, otherwise known as Assembly Bill No. 2011 ("**AB2011**"). AB2011 amended the Planning and Zoning Law to allow ministerial, by-right approval for projects being built alongside commercial corridors that meet affordability and labor requirements.

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

II. THE CITY SHOULD IMPOSE TRAINING REQUIREMENTS FOR THE PROJECT'S CONSTRUCTION ACTIVITIES TO PREVENT COMMUNITY SPREAD OF COVID-19 AND OTHER INFECTIOUS DISEASES

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.[5]

[5] 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.

Western Carpenters recommend that the Lead Agency adopt additional requirements to mitigate public health risks from the Project's construction activities. WSRCC 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 Western Carpenters' experience with safe construction site work practices, WSRCC 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.
- 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.[6]

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.

Western Carpenters 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.[7]

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.

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

The California Environmental Quality Act ("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**

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[6] *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.

[7] For details concerning Western Carpenters' ICRA training program, *see* https://icrahealthcare.com/.

Guidelines"), § 15002, subd. (a)(1).[8] At its core, its 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.)

A. Background Concerning Environmental Impact Reports Under CEQA.

CEQA directs public agencies to avoid or reduce environmental damage, when possible, by requiring alternatives or mitigation measures. CEQA Guidelines, § 15002, subds. (a)(2)-(3); see also *Berkeley Keep Jets Over the Bay Committee v. Board of Port Comes* (2001) 91 Cal.App.4th 1344, 1354; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553; *Laurel Heights Improvement Assn.*, 47 Cal.3d at p. 400. 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).

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, subd. (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 Public Resources Code section 21081. See CEQA Guidelines, § 15092, subds. (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. *Berkeley Jets*, 91 Cal.App.4th at p. 1355 (quoting

[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.

Laurel Heights Improvement Assn., 47 Cal.3d at pp. 391, 409 fn. 12) (internal quotations omitted). A clearly inadequate or unsupported study is entitled to no judicial deference. *Id.* 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. County 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*, 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. 91 Cal.App.4th at p. 1355 (internal quotations omitted).

The preparation and circulation of an EIR is more than a set of technical hurdles for agencies and developers to overcome. *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). 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. *Id.* 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. *Id.*

A public agency must prepare an EIR whenever substantial evidence supports a "fair argument" that a proposed project "may have a significant effect on the environment." Pub. Res. Code, §§ 21100, 21151; CEQA Guidelines, §§ 15002, subds. (f)(1)-(2), 15063; *No Oil, Inc.*, 13 Cal.3d at p. 75; *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 111-112. Essentially, should a lead agency be presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect. CEQA Guidelines, §§ 15064, subds. (f)(1)-(2); see *No Oil Inc., supra*, 13 Cal.3d at p. 75 (internal citations and quotations omitted). Substantial evidence includes "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." CEQA Guidelines, § 15384(a).

The fair argument standard is a "low threshold" test for requiring the preparation of an EIR. *No Oil Inc.*, *supra*, 13 Cal.3d at p. 84; *County Sanitation Dist. No. 2 of Los Angeles County v. County of Kern* (2005) 127 Cal.App.4th 1544, 1579. It "requires the preparation of an EIR where there is substantial evidence that any aspect of the project, either individually or cumulatively, may cause a significant effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial[.]" *County Sanitation*, *supra*, 127 Cal.App.4th at p. 1580 (quoting CEQA Guidelines, § 15063(b)(1)).

Evidence supporting a fair argument of a significant environmental impact triggers preparation of an EIR regardless of whether the record contains contrary evidence. *League for Protection of Oakland's Architectural and Historical Resources v. City of Oakland* (1997) 52 Cal.App.4th 896, 904-905. "Where the question is the sufficiency of the evidence to support a fair argument, deference to the agency's determination is not appropriate[.]" *County Sanitation*, 127 Cal.App.4th at 1579 (quoting *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1317-1318).

Further, it is the duty of the lead agency, not the public, to conduct the proper environmental studies. "The agency should not be allowed to hide behind its own failure to gather relevant data." *Sundstrom*, 202 Cal.App.3d at p. 311. "Deficiencies in the record may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences." *Id*; see also *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1382 (lack of study enlarges the scope of the fair argument which may be made based on the limited facts in the record).

Thus, refusal to complete recommended studies lowers the already low threshold to establish a fair argument. The court may not exercise its independent judgment on the omitted material by determining whether the ultimate decision of the lead agency would have been affected had the law been followed. *Environmental Protection Information Center v. Cal. Dept. of Forestry* (2008) 44 Cal.4th 459, 486 (internal citations and quotations omitted). The remedy for this deficiency would be for the trial court to issue a writ of mandate. *Id.*

Both the review for failure to follow CEQA's procedures and the fair argument test are questions of law, thus, the de novo standard of review applies. *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435. "Whether the agency's record contains substantial evidence that would support a fair argument that the project may have a significant effect on the environment is treated

as a question of law. *Consolidated Irrigation Dist.*, 204 Cal.App.4th at p. 207; Kostka and Zischke, Practice Under the Environmental Quality Act (2017, 2d ed.) at § 6.76.

In cases where it is not clear whether there is substantial evidence of significant environmental impacts, CEQA requires erring on the side of a "preference for resolving doubts in favor of environmental review." *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 332. The foremost principle under CEQA is that the Legislature intended the act to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language. *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259; CEQA Guidelines § 15003(f).

B. Reliance on an Addendum to the 2024 Program FEIR for the City's General Plan Update Is Improper as There Is a Fair Argument the Planning Area 25 Residential Project May Have Significant Impacts Not Previously Addressed

For the original GPU project, the City had prepared and certified its GPU FEIR on August 13, 2024. Now, the Project Applicant seeks to implement the Project at issue (e.g., a significant new project) with only an Addendum to the prior GPU FEIR, rather than first pursuing separate and comprehensive environmental review of the Project.

However, it is settled that such an addendum is reviewed under the *fair argument* standard, similar to the FEIR it is an addendum to; accordingly, the case is reviewed *de novo*.

"An agency may prepare an addendum to a prior EIR to document its decision that a subsequent EIR is not required." CEQA Guidelines § 15164(b), (e). However, an addendum is prepared only for "minor technical changes," when changes to the EIR made by the addendum do not raise new issues; it is reviewed *with prior EIRs. Fund for Environmental Defense v. County of Orange* (1988) 204 Cal.App.3d 1538, 1553; CEQA Guidelines § 15164(a)-(b). "The addendum is the other side of the coin from the supplement to an EIR." *Save Our Heritage Organization v. City of San Diego* (2018) 28 Cal.App.5th 656, 664-665. An addendum to a previously certified EIR is prepared only where "some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred." CEQA Guidelines § 15164(b).

Contrary to these established legal principles, the Project here is seeking to create a "loophole" to suggest that the CEQA review now must be based only on the changes proposed by the Project, regardless of whether certain impacts were or were not adequately studied in the prior FEIR on the GPU. Stated differently, such an interpretation would yield to subversion of CEQA mandates, particularly in the context of a prior EIR to a General Plan Update, whereby any project applicant can seek approval of a specific smaller but still significant development project within the assorted planning areas encompassed by the GPU by applying a less focused environmental study to it, such as the Addendum at issue, and by disposing of a separate EIR for such a project. Yet, courts "choose the construction that comports most closely with the apparent intent of the lawmakers, with a view to promoting rather than defeating the general purpose of the statute. *Ibid.; Torres v. Parkhouse Tire Service, Inc.* (2001) 26 Cal.4th 995, 1003, 111 Cal.Rptr.2d 564, 30 P.3d 57. Any interpretation that would lead to absurd consequences is to be avoided. (*Ibid.*)" *Allen v. Sully-Miller Contracting Co.* (2002) 28 Cal.4th 222, 227. The intent of the lawmakers is embodied in CEQA Guidelines § 15003(f), whereby CEQA must be interpreted in a way to provide the fullest possible protection of the environment.

Moreover, an addendum is improper here since the Project is not just about a "minor" or technical change from the GPU FEIR, but rather a significant physical addition of multiple acres of urban development, with over 1200 units of housing, on previously undeveloped land that was not contemplated for development in the GPU. Indeed, the anticipated development of the Project site into large-scale housing was not studied or analyzed in any way in the GPU FEIR, and at present, the site has only been assessed and approved by the City for nonresidential land uses.

Specifically, as part of the entitlements sought for the Project, the Project would amend the City's General Plan to shift 2,500 housing units from the City's Planning Area 35 ("**PA 35**") to Planning Area 25 ("**PA 25**"). See EIR Addendum, p. 2. PA 35 denotes an area identified as Irvine Spectrum 2, which consists primarily of existing fully built-out commercial and industrial land uses. In that regard, to the extent the City's General Plan and the GPU FEIR contemplated the addition of the 2,500 housing units at issue to PA 35 rather than PA 25 (per the proposed Project), those housing units would have necessarily occurred via some form of in-fill development. Meanwhile, a significant portion of the proposed Project site within PA 25, namely URP-9, where 1,233 of the 2,500 housing units have been proposed for construction,

consists of open, undeveloped land within the City's Coastal Zone that includes and is adjacent to the Reserve Area lands falling within County of Orange's Natural Communities Conservation Plan/Habitat Conservation Plan ("NCCP/HCP"). As such, the potential environmental impacts of such development within PA 25 will be radically different than those presented by the in-fill housing development that would have otherwise occurred in PA 35. Moreover, proximity of the Project's proposed development site to the NCCP/HCP Reserve Area, the City's Coastal Zone, and the Environmentally Sensitive Habitat Area ("ESHA") of San Diego Creek warrants additional careful and focused study and assessment of the Project's potential impacts on biological resources that the EIR Addendum does not include or provide. For example, the Biological Technical Report prepared in connection with the EIR Addendum notes that the proposed Project would result in removal of approximately 8,000 individuals of southern tarplant, which is a special-status plant not otherwise covered by the NCCP/HCP. See Appendix A to EIR Addendum, p. 15. Additionally, the Biological Technical Report confirms observing the Coastal California Gnatcatcher within and adjacent to the Project site. See Appendix A to EIR Addendum, p. 16. Potential impacts to special-status species such as these were not considered in any way as a part of the GPU FEIR as in the context of the housing development contemplated for PA 35.

Accordingly, the specific attributes and impacts of the proposed Project were not considered in the prior GPU FEIR and do not qualify as minor or technical changes that would warrant an addendum. Rather, the Project is a substantial revision or modification to the GPU and implementation of it with an addendum is in violation of CEQA.

Lastly, an addendum is improper in this case in view of changes in the Project relative to the GPU, and *new information* about new impacts or new feasible mitigation measures. CEQA Guidelines Section 15162 requires *subsequent* CEQA review – distinct and different from an *addendum* – if changes occur in the project, changes occur in the circumstances of the project, or new information that was not and could not have been known before is now known that suggests the Project may have more impacts or there are more feasible mitigation measures available than considered before. CEQA Guidelines Section 15162(a)(1)-(3). The Guidelines Section 15162 exceptions apply here, as detailed below.

In sum, an addendum is wholly inappropriate in this case and the Project must have adequate CEQA review to evaluate the Project as "the whole of an action" and its impacts. A *new* CEQA review, rather than a *subsequent* one, should be ordered for the Project using a separate and independent environmental baseline for the specific Project site.

C. The Project Requires Preparation and Circulation of Its Own Supplemental EIR or Draft EIR.

Section 15088.5(a) of the CEQA Guidelines provides that an EIR must be recirculated whenever there is disclosure of significant new information. Significant new information includes: (1) disclosure of a new significant environmental impact resulting from the project or from a new proposed mitigation measure; (2) disclosure of a substantial increase in the severity of an environmental impact unless mitigation measures are adopted that reduce the impact to a level of insignificance; and (3) disclosure of a feasible project alternative or mitigation measure considerably different from others previously analyzed which would clearly lessen the significant environmental impacts of the project which the project proponents decline to adopt. (*Id.*)

Additionally, an EIR must be recirculated when it is so fundamentally inadequate and conclusory in nature that meaningful public review and comment is precluded. (*Id.* [citing *Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043].)

A lead agency must undertake supplemental CEQA review when substantial changes to a project or its circumstances require that lead agency to render new approvals that in turn require major revisions to a prior CEQA document due to new unstudied environmental impacts. (Pub. Res. Code §21166(a); CEQA Guidelines, §15162(a)(1); *Concerned Citizens of Costa Mesa v. 32nd Dist. Agricultural Association* (1986) 42 Cal.3d 929; *Fund for Environmental Defense v. County of Orange* (1988) 204 Cal.App.3d 1538. *Cf., Benton v. Board of Supervisors* (1991) 226 Cal.App.3d 1467, *Eller Media Company v. Community Redevelopment Agency* (2003) 108 Cal.App.4th 25.)

New information triggers a supplemental EIR to inform an agency's new discretionary project approval if it (1) was not known and could not have been known at the time the initial EIR was certified as complete for an original project, (2) the information shows new or substantially more severe significant impacts, or demonstrates the feasibility of important mitigation measures or alternatives previously found infeasible,

or discloses important new mitigation measures or alternatives, and (3) the new information is of substantial importance to the project. §21166(c); Guidelines, §15162(a)(3).

Section 15164 of the CEQA guidelines provides: "The lead agency or a responsible agency shall prepare an addendum to a previously certified EIR if some changes or additions are necessary but none of the conditions described in Section 15162 calling for preparation of a subsequent EIR have occurred." (*Id.* subd. (a).) "When there are changes in a project after the certification of a Final Report, the agency can prepare an Addendum to the Report if the changes do not substantially modify the analysis in the original Report. The Addendum is acceptable, rather than a new or Supplemental EIR, when there are ***only minor technical changes or additions which do not raise important new issues about the significant effects on the environment***." (*Ventura Foothill Neighbors v. County of Ventura* (2014) 232 Cal.App.4th 429, 435(citing 9 Miller & Starr, Cal. Real Estate (3d ed.2011), § 25A:19, p. 25A–107, fns. omitted; emphasis added.))

1. *The Project Conflicts with Various Aspects of the City's GPU.*

Here, the Project reflects substantial changes from the GPU, such that the City's provision of the Addendum is not CEQA-compliant. Indeed, the sheer fact that the Project seeks a General Plan Amendment and Zone Change to accommodate for the change in land uses to which the Project site would be subject, in conjunction with the fact that the project is cited immediately adjacent to the NCCP/HCP Reserve Area, strongly suggests that the Project's environmental impacts were not fully and thoroughly considered by the GPU FEIR. Further, here, the Project contemplates constructing 1233 units in the City's Planning Area 25 and would allow construction of up to 2500 units in that planning area, all of which were contemplated under the GPU to be developed in Planning Area 35. See EIR Addendum, p. 2. The Project also would eliminate 521,747 gross square feet of remaining entitled building area within PA 25 currently within the 5.5 Medical and Science zoning district and Research/Industrial General Plan land use designation, in order to justify added residential construction in the undeveloped portions of PA 25 for purposes of the Project. See EIR Addendum, p. 6. Further still, the EIR Addendum includes ten (10) additional and significant technical studies for various CEQA impact categories associated with the Project that were not previously included in, or studied for, the

GPU EIR. These studies, both individually and collectively, constitute significant new information relative to the GPU FEIR, and are thus supportive of the Project receiving its own independent environmental review either via Supplemental EIR or via a standalone Draft Environmental Impact Report ("**DEIR**"). See Appendices C – L to EIR Addendum.

Where the lead agency of a project fails to analyze "'[s]ubstantial changes' in the project, requiring 'major revisions' in the EIR," courts find that such agencies have abused their discretion by failing to prepare a supplemental EIR. (*Ventura Foothill Neighbors, supra,* (2014) 232 Cal.App.4th at 436 (citing *Committee For Green Foothills v. Santa Clara County Bd. of Supervisors* (2010) 48 Cal.4th 32, 54).)

Based on the considerable changes to the City's General Plan sought by the Project, and the significant additional impact study and findings prepared in connect with EIR Addendum, the City cannot credibly contend that the Project fits neatly within the GPU's scope and results in no "substantial changes" to the Project relative to those contemplated in the GPU FEIR. Further analysis of the Project, by way of a supplemental EIR, is required in this instance.

2. *The City's MMRP for the Project Is Inadequate and Relies on Generic, Blanket, and Largely Unenforceable and Deferred Mitigation Measures.*

The Project's Mitigation Monitoring and Reporting Program ("MMRP") Matrix further confirms that no specific efficient and adequate mitigation is proposed for various impacts of the 1233-unit Project to support a EIR Addendum.

a. Air Quality

First, the MMRP Matrix provides certain unenforceable and ineffective mitigation measures for air quality, stating in relevant part::

> MM AQ-1: … The City shall require that applicants for new development projects with the potential to exceed the SCAQMD's adopted thresholds of significance to incorporate the measures listed below to reduce air pollutant emissions during construction activities. These identified measures shall be incorporated into all appropriate construction documents (e.g., construction management plans) submitted to the City and shall be verified by the City.

Mitigation measures to reduce construction-related emissions could include, but are not limited to:

- Require fugitive-dust control measures that exceed SCAQMD's Rule 403 requirements, such as:
  - Use of nontoxic soil stabilizers to reduce wind erosion.
  - Apply water every four hours to active soil-disturbing activities.
  - Tarp and/or maintain a minimum of 24 inches of freeboard on trucks hauling dirt, sand, soil, or other loose materials.
- Use construction equipment rated by the United States Environmental Protection Agency as having Tier 3 (model year 2006 or newer) or Tier 4 (model year 2008 or newer) emission limits, applicable for engines between 50 and 750 horsepower.
- Ensure that construction equipment is properly serviced and maintained to the manufacturer's standards.
- Limit nonessential idling of construction equipment to no more than five consecutive minutes.
- Limit on-site vehicle travel speeds on unpaved roads to 15 miles per hour.
- Install wheel washers for all exiting trucks or wash off all trucks and equipment leaving the project area.
- Use Super-Compliant VOC paints for coating of architectural surfaces whenever possible. A list of Super-Compliant architectural coating manufactures can be found on the SCAQMD's website.

MM AQ-2: … Mitigation to reduce operational impacts depends on the specific project, but may include measures such as, but not limited to:

- Demonstrate net zero energy expenditure consistent with the goal of net zero expenditure.

- Implementation of transportation demand management measures.
- Prohibit the installation of woodstoves, hearths, and fireplaces in new construction facilitated by the General Plan Update.
- Expand and facilitate completion of planned networks of active transportation infrastructure for projects that are required to provide public improvements related to that infrastructure.
- Implement electric vehicle charging infrastructure beyond requirements set forth in the 2022 CALGreen mandatory measures, such as Tier 2 voluntary measures set forth in 2022 CALGreen (or future more stringent) standards.
- Implement traffic demand measures, such as unbundling parking fees from rent/lease options, encouraging/developing a ride-share program for the community, and provide car/bike sharing services, that will reduce daily individual car usage and reduce project vehicle miles traveled (VMT).

(MMRP Matrix, pp. 1-6, emph. added.)

Based on the wording of the foregoing mitigation measures, each of which the MMRP Matrix deemed "Applicable" to the Project, the Project currently includes no tangible commitment whatsoever to the mitigation of the above aspects of its air quality impacts. Indeed, the EIR Addendum does not set forth any specifics of the air quality mitigation measures to actually be deployed in connection with the Project, despite determining that mitigation of the Project's potentially significant air quality impacts is required. Instead, the EIR Addendum merely puts for optional/potential forms of air quality mitigation that the applicant may choose to deploy, without any system or safeguards in place to ensure that such mitigation actually occurs. The failure of the EIR Addendum to commit to definitive, certain, and mandatory mitigation measures in this regard violates CEQA, and necessitates preparation of a standalone EIR for the Project.

b. Biological Resources Impacts

Second and similarly, the MMRP provides unenforceable and ineffective mitigation measures for biological resources, stating in relevant part:

> MM BIO-4: If construction activities are not initiated immediately after focused surveys have been completed, ***additional pre-construction special status species surveys may be required to assure impacts are avoided or minimized to the extent feasible***. If preconstruction activities are required, a qualified biologist would perform these surveys as required for each special status species that is known to occur or has a potential to occur within or adjacent to the proposed development project area.
>
> No burrowing owls were detected during focused surveys conducted for the URP-9 Master Plan; however because suitable habitat is present and burrowing owl may colonize the site in the future, ***a pre-construction burrowing owl survey is recommended*** consistent with GPU EIR MM BIO-4…
>
> MM BIO-7: If sensitive biological resources are known to occur within or adjacent to the proposed development project area, a project-specific contractor training program shall be developed and implemented to educate project contractors on the sensitive biological resources within and adjacent to the proposed development project area and measures being implemented to avoid and/or minimize impacts to these species. A qualified biologist shall develop and implement the contractor training program.

(MMRP Matrix, pp. 8, 11, emph. added.)

Again, the EIR Addendum has failed to commit to definitive and mandatory mitigation in the context of biological resources impacts. Indeed, MM BIO-4 contains optional language as to a pre-construction burrowing owl survey being "recommended, " rather than required, while MM BIO-7 defers the preparation of the purported contractor training program regarding the Project's sensitive biological resources to an unknown time, with no applicable certainty or enforceability. These

mitigation measures once again fail to meet CEQA's requirement that mitigation not be deferred, and that it be certain, mandatory, and enforceable. To that end, the EIR Addendum violates CEQA and should be recirculated as a Supplemental EIR to specifically address the Project's impacts and the mitigation thereof.

c. Cultural Resources and Geology & Soils Impacts

Third, MM CUL-2 and MM GEO-1 set forth in the MMRP Matrix are also inadequate because they provide open-ended compliance requirements for the Applicant and defer the determination regarding the mitigation that will actually occur as to the Project's potential cultural resources impacts and geology and soils impacts.

Specifically, the mitigation measure MM CUL-2 states as follows, in pertinent part:

> Prior to project approval or the issuance of grading permits (whichever is applicable and comes first), the City of Irvine Director of Community Development, or designee, acting in a similar capacity shall require applicants for future proposed ground disturbing projects to ***either (1) provide a technical cultural resources assessment*** consisting of a record search, survey, background context and project specific recommendations performed by a qualified archaeologist meeting Secretary of the Interior Standards and certified by the County of Orange ***or (2) agree to full-time monitoring by an archaeologist and a designated representative from the tribe/group(s) who is culturally linked to the site. If resources are known or reasonably anticipated, the applicant shall be required to provide and follow a detailed mitigation plan*** which shall require monitoring during grading and other earthmoving activities in undisturbed sediments.

(MMRP Matrix, pp. 14-15, emph. added.)

Meanwhile, MM GEO-1 states as follows, in pertinent part:

> Prior to issuance of grading permits, applicants for future proposed ground disturbing projects in undisturbed sediments ranked moderate or above shall be required to ***either (1) provide a technical paleontological assessment*** consisting of a record search, survey, background context and project specific recommendations performed by a qualified paleontologist (with a graduate degree and a specialization in vertebrate paleontology) to the City of Irvine Department of Community

> Development *or (2) agree to monitoring all excavations below five feet. If resources are known or reasonably anticipated the recommendations shall provide a detailed mitigation plan* requiring monitoring during grading and other earthmoving activities in undisturbed sediments. …

(MMRP Matrix, pp. 15-16, emph. added.)

The foregoing measures provide no certainty as to how cultural resources impacts and/or geology and soils impacts presented by the Project will be mitigated. Moreover, the measures defer the preparation of the detailed mitigation plans that would be required if resources are reasonably anticipated to be encountered, such that there is no way at present to assess whether the mitigation plans will adequately mitigate any potential impacts. To provide certainty, as well as an opportunity for the public and governing body to assess the adequacy of the mitigation efforts on these issues, the Project should require that the technical cultural resources assessment and/or the technical paleontological assessement and any attendant mitigation plans be prepared prior to Project approval by the City. Given that these measures are, once again, uncertain, non-mandatory, and deferred, the EIR Addendum's reliance on these measures as currently framed violates CEQA.

In sum, the Project's EIR Addendum and its MMRP Matrix fail to impose specific and enforceable mitigation measures and ensure that the Project's impacts are accurately disclosed or mitigated to the level of insignificance, as required for EIR Addendum.

For these reasons too the Project does not qualify for an EIR Addendum and requires an EIR.

IV. CONCLUSION

Western Carpenters submits that the City is required by CEQA to, at a minimum, circulate either a separate Supplemental EIR for the Project, or a standalone DEIR for the Project, in order to address the aforementioned concerns. Absent doing so, any approval of this Project under the previously certified GPU FEIR would violate CEQA and subvert the public environmental review process.

Accordingly, the Planning Commission should deny the Master Plan and Vesting Tentative Tract Map proposed for the Project, and recommend that the City County deny the General Plan Amendment, Zone Change, and Development Agreement proposed for the Project, pending the City's completion of proper environmental

review for the Project. If the City has any questions or concerns regarding the foregoing, please do not hesitate to contact this office.

Sincerely,

Jeremy H. Herwitt
Attorneys for Western States 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**).