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VIA E-MAIL

November 14, 2022

Mary Chang
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RE: City of Goleta's Heritage Ridge Residential Project (SCH# 2015041014).

Dear Mary Chang,

On behalf of the Southwest Regional Council of Carpenters ("**Southwest Carpenters**" or "**SWRCC**"), my Office is submitting these comments for the City of Goleta's ("**City**") November 14, 2022, Planning Commission Meeting for the Heritage Ridge Residential Project ("**Project**"). SCH# 2015041014).

The Southwest Carpenters is a labor union representing 57,000 union carpenters in six states, including California, and has a strong interest in well-ordered land use planning and in 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 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 Southwest 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 Southwest 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

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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

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 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

[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.

construction sites have been identified as sources of community spread of COVID-19.[5]

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

[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.

- 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.

Southwest 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.

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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 Southwest Carpenters's ICRA training program, *see* https://icrahealthcare.com/.

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

A. Background Concerning the California Environmental Quality Act

The California Environmental Quality Act 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, 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.

1. Background Concerning Environmental Impact Reports

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. 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

[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. Dept. of Fish & Wildlife* (2015) 62 Cal.4th 204, 217.

proponent in support of its position. *Berkeley Jets*, 91 Cal.App.4th at p. 1355 (quoting *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 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 EIR must be prepared 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; see *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.App.3d 68, 75; accord *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 768, 785. In such a situation, the agency must adopt a negative declaration. PRC, § 21080, subd. (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.*, 13 Cal.3d at p. 83 fn. 16; see *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 Irrigation 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*, 202 Cal.App.3d at p. 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,* 23 Cal.App.5th at p. 886; *Clews Land & Livestock v. City of San Diego* (2017) 19 Cal.App.5th 161, 183; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150; *Brentwood Assn. for No Drilling, Inc. v. City of Los Angeles* (1982) 134 Cal.App.3d 491; *Friends of "B" St.*, 106 Cal.App.3d 988; CEQA Guidelines, § 15064(f)(1).

2. Background Concerning Initial Studies, Negative Declarations and Mitigated Negative Declarations

CEQA and CEQA Guidelines are strict and unambiguous about when an MND may be used. 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)). A lead agency may adopt an MND only if "there is no substantial evidence that the project will have a significant effect on the environment." CEQA Guidelines, § 15074(b).

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 an MND context, courts give no deference to the agency. Additionally, the agency or the court should not weigh expert testimony or decide on the credibility of such evidence—this is one of the EIR's responsibilities. As stated in *Pocket Protectors v. City of Sacramento*:

> Unlike the situation where an EIR has been prepared, neither the lead agency nor a court may "weigh" conflicting substantial evidence to determine whether an EIR must be prepared in the first instance. Guidelines section 15064, subdivision (f)(1) provides in pertinent part: if a lead agency is 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. Thus, as *Claremont* itself recognized, [c]onsideration is not to be given contrary evidence supporting the preparation of a negative declaration.

(2004) 124 Cal.App.4th 903, 935 (internal citations and quotations omitted).

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.

3. Background Concerning CEQA Exemptions

Where a lead agency chooses to dispose of CEQA by asserting a CEQA exemption, it has a duty to support its CEQA exemption findings by substantial evidence, including evidence that there are no applicable exceptions to exemptions. This duty is imposed by CEQA and related case law. CEQA Guidelines, § 15020 (The lead agency shall not knowingly release a deficient document hoping that public comments will correct the defects.); see *Citizens for Environmental Responsibility v. State ex rel. 14th Dist. Agriculture Assn.* (2015) 242 Cal.App.4th 555, 568 (The lead agency has the burden of demonstrating that a project falls within a categorical exemption and must support the determination with substantial evidence.); accord *Association for Protection etc. Values v. City of Ukiah* (1991) 2 Cal.App.4th 720, 732 (The Lead agency is required to consider exemption exceptions where there is evidence in the record that the project might have a significant impact.)

The duty to support CEQA and exemption findings with substantial evidence is also required by the Code of Civil Procedure ("**CCP**") and case law on administrative or traditional writs. Under the CCP, an abuse of discretion is established if the decision is unsupported by the findings, or the findings are unsupported by the evidence. CCP, § 1094.5(b). In *Topanga Assn. for a Scenic Community v. County of Los Angeles*, our Supreme Court held that implicit in CCP section 1094.5 is a requirement that the agency which renders the challenged decision must set forth findings to bridge the analytic gap between the raw evidence and ultimate decision or order. (1977) 11 Cal.3d 506, 515 (internal citations and quotations omitted). The lead agency's findings may be determined to be sufficient if a court has no trouble under the circumstances discerning the analytic route the administrative agency traveled from evidence to action. *West Chandler Blvd. Neighborhood Assn. vs. City of Los Angeles* (2011) 198 Cal.App.4th 1506, 1521-1522 (internal citations and quotations omitted). However, "mere conclusory findings without reference to the record are inadequate." *Id.* at p. 1521 (finding city council findings conclusory, violating *Topanga Assn. for a Scenic Comm.*).

Further, CEQA exemptions must be narrowly construed to accomplish CEQA's environmental objectives. *Cal. Farm Bureau Federation v. Cal. Wildlife Conservation*

Bd. (2006) 143 Cal.App.4th 173, 187; accord *Save Our Carmel River v. Monterey Peninsula Water Management Dist.* (2006) 141 Cal.App.4th 677, 697 ("These rules ensure that in all but the clearest cases of categorical exemptions, a project will be subject to some level of environmental review.")

Finally, CEQA procedures reflect a preference for resolving doubts in favor of environmental review. See Pub. Res. Code, § 21080(c) (an EIR may be disposed of only if there is no substantial evidence, in light of the entire record before the lead agency, that the project may have a significant effect on the environment or revisions in the project); CEQA Guidelines §§ 15061(b)(3) (common sense exemption only where it can be seen *with certainty*); 15063(b)(1) (prepare an EIR if the agency determines that 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]; 15064, subd. (h) (the agency must consider cumulative impacts of past, current, and probable future projects); 15070 (a negative declaration may be prepared only if there is no substantial evidence, in light of the whole record, that the project may have a significant effect on the environment, or project revisions would avoid the effects or mitigate the effects to a point where clearly no significant effects would occur, and there is no substantial evidence, in light of the whole record, that the project as revised may have a significant effect on the environment); *No Oil, Inc., supra,* 13 Cal.3d at p. 83-84 (significant impacts are to be interpreted so as to afford the fullest possible protection).

B. <u>The Project Would be Approved in Violation of CEQA as the City Improperly Segmented the Project and the City Failed to Consider the Entire Project and Instead Divided it Three Separate Environmental Review Actions, Partially Subjecting the Project to Exemption from CEQA.</u>

CEQA provides that a public agency may not divide a single project into smaller individual subprojects to avoid responsibility for considering the environmental impact of the project as a whole. *Orinda Ass'n v Board of Supervisors* (1986) 182 Cal. App. 3d 1145, 1171. CEQA "cannot be avoided by chopping up proposed projects into bite-sized pieces which, individually considered, might be found to have no significant effect on the environment or to be only ministerial." *Tuolumne County Citizens for Responsible Growth, Inc. v City of Sonora* (2007) 155 Cal App. 4th 1214;

Association for a Cleaner Env't v Yosemite Community College Dist. (2004) 116 Cal. App. 4th 629, 638; *Plan for Arcadia, Inc. v City Council* (1974) 42 Cal. App. 3d 712, 726.

"'Project' means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment [including] [a]n activity directly undertaken by any public agency… ." 14 Cal. Code Regs. § 15378(a).

A project is defined broadly in order to maximize environmental protection. *City of Santee v. County of San Diego* (Santee) (1989) 214 Cal.App.3d 1438, 1452*; McQueen v. Board of Directors of the Mid-peninsula Regional Open Space District* (1988) 202 Cal.App.3d 1136, 1143 (disapproved on other grounds). A project must be defined and accurately described to ensure an "intelligent evaluation of the potential environmental effects of a proposed activity.*" Burbank-Glendale-Pasadena Airport Authority v. Hensler* (1991) 233 Cal.App.3d 577, 592 (citing *McQueen v. Bd. of Directors*, supra, 202 Cal.App.3d at 1143-44).

See Paulek v. Department of Water Resources, "the court held that Respondents' attempts to proceed with multiple serial applications and exemptions is piecemealing and violates CEQA as a matter of law;" (2014) 231 Cal.App.4th 35, 46 *citing Arviv Enterprises, Inc. v. South Valley Area Planning Commission:*

> "the developer planned to build 21 homes. Rather than present the "whole" of its action (21 homes) for CEQA review, the developer chopped the project into pieces, one of 5 homes, another of 2 homes, and another of 14 homes. It then proceeded separately each via CEQA exemptions or MND. The developer argued it should not have to prepare an EIR for the whole project. (The trial court rejected and our Court of Appeal affirmed, holding: "The significance of an accurate project description is manifest, where, as here, cumulative environmental impacts may be disguised or minimized by filing numerous, serial applications.""

Arviv Enterprises, Inc. v. South Valley Area Planning Com. (2002) 101 Cal.App.4th 1333

Before undertaking a project, the lead agency must assess the environmental impacts of all reasonably foreseeable phases of a project, and a public agency may not segment a large project into two or more smaller projects. See e.g., *McQueen v. Bd. of Supervisors* (1988) 202 Cal.App.3d 1136, 1146-47. An agency may not limit its ability to consider feasible project alternatives or mitigation measures by approving project-related

agreements before completion of a CEQA compliant review. See e.g. *Kings County Farm Bureau*, 221 Cal.App.3d at 736; *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116; *San Joaquin Raptor/Wildlife Rescue Center v. Cnty. of Stanislaus* (1994) 27 Cal.App.4th 713, 730 (held use of "truncated project concept" violated CEQA where EIR was otherwise adequate).

According to the City's staff report for November 14, 2022 meeting, agenda item No. B.2. states that "the proposed vacation of roadway and slope easements and dedications (Right of Way Exchange) do not qualify as a "project" for the purposes of CEQA"[9]

However, the proposed vacation of roadway, as well as the 1.85 Acres park acquisition under agenda item B.3 are part of the Project and therefore not exempted from CEQA.

Therefore, the Environmental Impact Report should be amended and recirculated to include the consistency with the general plan determinations for both agenda items B.2 and B.3, so that the Project's cumulative environmental effects are analyzed in a whole action.

C. <u>The Project Would be Approved in Violation of The Brown Act And Due Process Through Its Prejudicially Defective Public Hearing Notice And Agenda; Cease And Desist Demand & Cure And Correct Request</u>

The Brown Act Cal. Govt. Code section 54954.2(a)(1) requires that an agenda containing a brief description of each item of business be posted at least 72 hours prior to the meeting. Govt. Code section 54954.2(a)(3), in turn, provides:

> (3) **No action** or **discussion** shall be undertaken on any item not appearing on the posted agenda, except that members of a legislative body or its staff may briefly respond to statements made or questions posed by persons exercising their public testimony rights under Section 54954.3. In addition, on their own initiative or in response to questions posed by the public, a member of a legislative body or its staff may ask a question for clarification, make a brief announcement, or make a brief report on his or her own activities. Furthermore, a member of a legislative body, or the body itself, subject to rules or procedures of the legislative body, may

[9] City of Goleta November 14, 2022 Planning Commission Meeting, Agenda Item B.2. Staff Report, Page 4.

> provide a reference to staff or other resources for factual information, request staff to report back to the body at a subsequent meeting concerning any matter, or take action to direct staff to place a matter of business on a future agenda.

(Govt. Code § 54954.2(a)(3), emph. added.)

As the Office of the Attorney General explained in 2003:

> The Act makes it clear that discussion items must be placed on the agenda, as well as items which may be the subject of action by the body. The purpose of the brief general description is to inform interested members of the public about the subject matter under consideration so that they can determine whether to monitor or participate in the meeting of the body.[10]

(The Brown Act, Open Meetings For Local Legislative Bodies, Office of the Attorney General, 2003, at pp. 16-17.)

In *Carlson v. Paradise Unified School Dist.* (1971) 18 Cal.App.3d 196, the court interpreted the agenda requirements in the Education Code and the Brown Act's analogous principles, stating:

> There has been a long and vigorous battle found against secrecy in government. (See, e.g., Gov.Code, ss 54950 et seq.; Sacramento Newspaper Guild, Local 92, of American Newspaper Guild v. Sacramento County Bd. of Supervisors (1968) 263 Cal.App.2d 41, 49—50, 69 Cal.Rptr. 480; see also 37 Cal. State Bar J. 540.) It is now the rule that local governing bodies, elected by the people, exist to aid in the conduct of the people's business, and thus their deliberations should be conducted openly and with due notice with a few exceptions not applicable here. (See Gov.Code, ss 54950 et seq.; cf. 3 Witkin, Summary of Cal. Law, Constitutional Law, s 116, p. 1919; 70 Ops.Cal.Atty.Gen. 113.) The process of the education of our children is properly a matter of public concern. (See Brown v. Board of Ed. of Topeka (1955), 349 U.S. 294, 75 S.Ct. 753, 99 L.Ed. 1083; see also Robinson v. Sacramento City United School Dist. (1966) 245 Cal.App.2d 278, 53 Cal.Rptr. 781.)

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[10] The Brown Act, Open Meetings For Local Legislative Bodies, Office of the Attorney General, 2003, at pp. 16-17; See at https://oag.ca.gov/system/files/media/the-brown-act.pdf

(*Carlson v. Paradise Unified Sch. Dist.* (1971) 18 Cal.App.3d 196, 199.)

Drawing parallels between the Brown Act and the Education Code, the trial court emphasized that ". . . [a] list of items that will constitute the agenda for all regular meetings shall be posted. . . ." (*Carlson v. Paradise Unified School Dist.* (1971) 18 Cal.App.3d 196, 199.) In interpreting this section, the court reasoned:

> In the instant case, the school board's agenda contained as one item the language 'Continuation school site change.' This was entirely inadequate notice to a citizenry which may have been concerned over a school closure. On this point alone, we think the trial court was correct because the agenda item, though not deceitful, was entirely misleading and inadequate to show the whole scope of the board's intended plans. It would have taken relatively little effort to add to the agenda that this 'school site change' also included the discontinuance of elementary education at Canyon View and the transfer of those students to Ponderosa School.

(*Carlson v. Paradise Unified School Dist.* (1971) 18 Cal.App.3d 196, 200, see also 67 Ops.Cal.Atty.Gen. 84, 87 (1984).)[11]

As described by the Office of the Attorney General in 2003, the Planning Commission's November 14, 2022 agenda ("**Agenda**") here failed the purpose of the Brown Act's "brief general description" under Govt. Code § 54954.2(a) "to inform interested members of the public about the subject matter under consideration so that they can determine whether to monitor or participate in the meeting of the body." Also, as described by *Carlson v. Paradise Unified School Dist.,* the November 14, 2022 agenda provided "inadequate notice" to the citizenry and was "entirely misleading and inadequate to show the whole scope" of the Project and the Planning Commission's actions thereon.

- **Agenda's Failure to List All Items of Business, Action or Discussion**

[11] See also, *Moreno v. City of King* (2005) 127 Cal App 4th 17, 26-27 (the brief description of an item that the Council will consider or deliberate, cannot be ambiguous or misstate the item under discussion and an item on the agenda describing consideration of contract for Interim Finance Director was not sufficient notice of actually considering the termination of the sitting Finance Director; "The agenda's description [Public Employee (employment contract)] provided no clue that the dismissal of a public employee would be discussed at the meeting. The City argues that further specification would have violated Moreno's privacy rights. Not so.").

As explained above, based on the staff report for agenda items B.2 and B.3 November 14, 2022 meeting, the roadway vacation as well as the park acquisition, as well as their consistency determination with the general plan are not considered a Project under CEQA and therefore exempted from any environmental review under CEQA. The Notice does or the agenda do not mention that a CEQA exemption *determination* or *action* that is be taken by the Planning Commission – i.e., determination as to *whether* the Project is exempt from CEQA.

Therefore, the consideration of the CEQA exemption determination is an item of business to be acted upon at the Meeting and must be specifically disclosed on the Agenda. Yet, the Agenda did not provide the public with adequate notice as to the CEQA *action* or *determination* that was to take place on November 14, 2022.

As shown below, the Agenda provided no adequate description of the *actions* to be taken as to CEQA, and limited the hearing:

Planning Commission		Agenda	November 14, 2022
B.2	22-544	**General Plan Conformity Determination for the vacation of Roadway and Landscape/Slope Easements and acceptance of Road Easements adjacent to Los Carneros Road and Calle Koral and Accept the Categorical Exemption for the General Plan Conformity Determination; APNs: N/A; Case No. 18-065-GC**	
	Recommendation:	It is recommended that the Planning Commission: Adopt Resolution 22-___, entitled "A Resolution of the Planning Commission of the City of Goleta, California, reporting that the vacation of Roadway and Landscape/Slope Easements and acceptance of Road Easements adjacent to Los Carneros Road and Calle Koral is in Conformance with the Goleta General Plan / Coastal Land Use Plan Pursuant to Section 65402 of the Government Code" (Attachment 1).	
	Staff:	Lisa Prasse, Current Planning Manager Mary Chang, Supervising Senior Planner	
B.3	22-545	**General Plan Conformity Determination for the acquisition of approximately 1.85-acre park parcel and approximately 0.15 acres of a public access easement for neighborhood park uses within the Heritage Ridge Development (proposed Lot 3) located on the northside of Camino Vista Drive between Calle Koral and Aero Camino and Accept the Categorical Exemption for the General Plan Conformity Determination; APN: n/a; Case No. 18-064-GC.**	
	Recommendation:	It is recommended that the Planning Commission: Adopt Resolution 22-___, entitle " A Resolution of the Planning Commission of the City of Goleta, California, Reporting that the Acquisition of an approximately 1.85-acre parcel for neighborhood park uses and approximately 1.85-acre of a public access easement for neighborhood park uses within the Heritage Ridge Development (proposed Lot 3) located on the northside of Camino Vista Drive between Calle Koral and Aero Camino is in Conformance with the Goleta General Plan/Coastal Land Use Plan Pursuant to Section 65402 of the Government Code" (Attachment 1).	
	Staff:	Lisa Prasse, Current Planning Manager Mary Chang, Supervising Senior Planner	
C. DIRECTOR'S REPORT			

Brown Act's requirement of a brief general description inherently requires that such description be accurate and not misleading. The Agenda here was misleading.

Thus, the omission of the CEQA exemption determination or recommendation was improperly omitted from the Agenda and yet such a distinct action is being considered during the November 14, 2022 meeting, in violation of the Brown Act Govt. Code § 54954.2(a)(1) & (3). (*See*, also *San Joaquin Raptor Rescue Center v. County of Merced, et al.* (2013) 216 Cal.App.4th 1167, 1179 ["Here, for example, the Commission could have easily complied with the agenda requirement by simply adding a few words, such as 'and consider adoption of a mitigated negative declaration' regarding the project. In any event, even assuming the County is correct that agendas disclosing CEQA documents as items of business are more cumbersome, we would still be required to apply the Brown Act in accordance with its clear terms, as we have done."])[12]

- **The City's Failure to Agendize a CEQA Exemption is a Violation of the Brown Act**

The Second District Court of Appeals recently ruled that adopting a CEQA exemption without listing that item on a city council meeting agenda at least 72 hours in advance is a violation of the Brown Act. (*G.I. Industries v. City of Thousand Oaks* (2022) Cal. Ct. App., Oct. 26, 2022, No. 2D CIV. B317201 2022 WL 14750209, at *1, *4 ["*G.I. Industries*"].) In rejecting the City's argument that City staff can make a CEQA exemption determination prior to the City's meeting, the Court stated that "the lead agency has the duty to determine whether a project qualifies for a CEQA exemption" and that "[t]he City can delegate its duty to staff to determine *whether a CEQA exemption applies*." (*Id.* at *6.) In supporting its finding, the Court asserted that "[t]he City cannot avoid the Brown Act simply by delegating its duty to its staff. Where a local agency at a regular meeting approves a project that is subject to a staff's

[12] The Brown Act's requirement to specify each item of business in the regular meeting agendas **equally** applies to the **special meeting** agendas. ((*Moreno v. City of King* (2005) 127 Cal.App.4th 17, 26 ["We cannot conceive of how a City could "specify" an item of business without providing a "brief general description" of that item of business. In our view, section 54956's requirement that the notice "specify" is intended to refer back to section 54954.2's requirement that an agenda provide a "description." Since the two statutes contain equivalent requirements, the trial court's finding that the special meeting agenda violated section 54954.2 was equivalent to a finding that it violated section 54956."])

determination of a CEQA exemption, it must give notice of the CEQA exemption on its agenda." (*Id.*)

Sincerely,

Mary Linares
Attorneys for 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).