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VIA EMAIL

June 26, 2023

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RE: Southwest Mountain States Regional Council of Carpenters' Comments Regarding the City of San Gabriel's June 26, 2023, Design Review Commission Hearing Item D - 330 West Las Tunas Drive Project.

Dear Ms. Tewasart, Ms. Song, and Commissioners:

On behalf of the Southwest Mountain States Regional Council of Carpenters (**SWMSRCC**), my Office is submitting these comments for the City of San Gabriel's ("**City**" or "**Lead Agency**") June 26, 2023, Design Review Commission (**DRC**) hearing for the 330 West Las Tunas Drive Project (Planning Case No. PPD21-008) ("**Project**").

The Project, entitled 'I Ter Medical Center' and proposed by Robert Montano of Adept Development ("**Applicant**" or "**Developer**"), involves the merger of two parcels of land totaling roughly 1.46 acres; the demolition of the existing one-story, 5,032-square-foot LabCorp building; and the construction of a five-story above-grade, two-story below-grade, 74,750-square-foot medical office building.

The Project is located at 330 West Las Tunas Drive in San Gabriel, California (APNs 5362-010-028, 5362-010-029) ("**Site**"), and currently hosts a medical office building and parking lot. A Request for Proposals (**RFP**) has been released to solicit qualified environmental consulting firms to perform environmental review pursuant to the California Environmental Quality Act (**CEQA**). Off-street parking including 299 parking spaced would be provided on the ground level and two subterranean levels.

The Site is zoned Medical Facilities (**MF**) within the Mission District Specific Plan (**MDSP**) and has a San Gabriel General Plan (**GP**) designation of Medical Facilities. Surrounding the Site are zoning and land use designations of: C-1 (Retail Commercial) commercial buildings to the north; MDSP: R-3A (Mission District Specific Plan, Arroyo Residential) multiple-family residences and potential sensitive receptors to the south and east; MDSP: C-1(Mission District Specific Plan, The Market Place) commercial buildings to the east; and MF restaurant buildings and medical office buildings to the west. The Site can be accessed by West Las Tunas Drive to the north and De Anza Street to the west.

The Project requires the approval of a Lot Line Adjustment (**LLA**) for the merger of two parcels, a Precise Plan of Design (**PPD**) for the architectural design of the building, and a Master Sign Plan (**MSP**) for exterior signs. The Project was reviewed for compliance with CEQA and deemed exempt pursuant to CEQA Guidelines, 15332, Class 32 (In-Fill Development). The Project now appears before the DRC for a determination as to the PPD only. The LLA will be reviewed administratively by Planning and Public Works. See Conditions of Approval (attached as Attachment A to Staff Report).

SWMSRCC is a labor union representing over 63,000 union carpenters in 10 states, including California, and has a strong interest in well-ordered land use planning and in addressing the environmental impacts of development projects. Some SWMSRCC members live, work, and recreate in the City and the surrounding communities and would be directly affected by the Project's environmental impacts.

SWMSRCC 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(b); PRC, § 21177(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.

SWMSRCC incorporates by reference all comments raising issues regarding the Project and its environmental review and associated documents and reports (including the City's Staff Report), or lack thereof. 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, SWMSRCC requests that the City provide notice for any and all notices referring or related to the Project issued under 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, subsection (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 that the Project be built using 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 program, or are registered apprentices in such a program.

Community benefits such as local hire can also be helpful to reduce environmental impacts and improve the positive economic impacts 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]

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[1] California Workforce Development Board (2020) Putting California on the High Road: A Jobs and Climate Action Plan 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

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 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 GHG emissions, improve air quality, and reduce transportation impacts.

II. THE CALIFORNIA ENVIRONMENTAL QUALITY ACT.

A. Background Concerning Environmental Impacts Reports.

The California Environmental Quality Act is a California statute designed to inform decision-makers and the public about the potential significant environmental effects of

[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.

a project. CEQA Guidelines, § 15002(a)(1).[5] 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.

CEQA directs public agencies to avoid or reduce environmental damage, when possible, by requiring alternatives or mitigation measures. CEQA Guidelines, § 15002(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 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

[5] 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. PRC, § 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.

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. *Ibid.* 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. *Ibid.*

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." Pub. Res. Code, § 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. Pub. Res. Code, §§ 21100, subd. (a), 21151; CEQA Guidelines, §§ 15064, subds. (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. Pub. Res. Code, § 21080, subd. (c)(1); CEQA Guidelines, §§ 15063, subd. (b)(2), 15064, subd. (f)(3).

"Significant effect upon the environment" is defined as "a substantial or potentially substantial adverse change in the environment." Pub. Res. Code, § 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, subd. (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, subd. (f)(1).

B. 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.*, *supra*, 13 Cal.3d at 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 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, subd. (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 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 1580 (quoting CEQA Guidelines, § 15063, subd. (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, subd. (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*, *supra*, 202 Cal.App.3d at 311. "Deficiencies in the record may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences." *Ibid*; 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. *Ibid.*

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.*, *supra*, 204 Cal.App.4th at 207; Kostka and Zischke, Practice Under the Environmental Quality Act (2017, 2d ed.) at § 6.76.

In the MND context, courts give no deference to the agency. The agency or the court should not weigh expert testimony or decide on the credibility of such evidence—this is the EIR's responsibility. 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. Bd. of Supervisors* (1972) 8 Cal.3d 247, 259.

C. 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 (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 (lead agency has the burden of demonstrating that a project falls within a categorical exemption and must support the determination with substantial evidence); accord *Assn. for Protection etc. Values v. City of Ukiah* (1991) 2 Cal.App.4th 720, 732 (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, subd. (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 Community, supra*).

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, subd. (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, subd. (b)(3) (common sense

exemption only where it can be seen *with certainty*); 15063, subd. (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 83-84 (significant impacts are to be interpreted so as to afford the fullest possible protection).

III. THE PROJECT IS LIKELY TO CAUSE ENVIRONMENTAL IMPACTS AND THUS REQUIRES CEQA-COMPLIANT ENVIRONMENTAL REVIEW.

Here, the Project involves the demolition of an existing medical office building and the new construction, use, and maintenance of a roughly 75,000-square-foot structure and parking for 299 automobiles. Considering these details, the Lead Agency must prepare and circulate a thorough, Project-specific EIR.

Section 15088.5, subsection (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.

The Project requires new feasible mitigation measures not specified in the original environmental analysis for the City's General Plan or the Mission District Specific Plan. Those analyses occurred, at the latest, in 2004—nearly 20 years ago. Specifically, the Project is slated to develop a new medical office building, yet the original

environmental analyses governing this Site and its use provide no specification nor mitigation measures identifying, for example, how many or which of the Project's parking spaces must be capable of supporting electric vehicle charging stations (**EVCS**) and ready to be compliant with the 2022 California Green Building Standards Code, Title 24, Part 11 (**CGBSC**), also known as CALGreen. In fact, there is no mention of electric vehicle (**EV**) accommodations anywhere in the original environmental analyses. Without revisions to the original environmental analyses, allowing the Project to commence without adequate and thorough CEQA review would result in significant and unavoidable impacts on the local community and environment as well as on global climate change due to cumulative GHG emissions from vehicle exhaust, among other things. Further, the Project would be out of compliance with CALGreen and could incur for Applicant and the City extensive litigation and unnecessary turbulence in the pursuit and completion of the Project.

CALGreen, which became effective January 1, 2023, requires new buildings to designate 20 percent of the total number of parking spaces as EV-capable. See CALGreen, § 5.106.5.31 (Nonresidential Mandatory Measures). Therefore, if the Project develops 299 additional parking spaces, 60 of those spaces must have electrical panel space and load capacity to support EV charging. Additionally, this must all be laid out with sufficient detail for the City and the public to thoroughly review, assess, and provide comments thereon.

Further, CALGreen requires new buildings to designate 25 percent of the total number of EV-capable parking spaces as EV spaces with Level 2 EV supply equipment (**EVSE**). *Id.* Hence, if the Project develops 299 additional parking spaces, 75 of those spaces must be equipped with a 208/240 volt 40-ampere branch circuit with the electric vehicle charging connectors, attachment plugs, and all other fittings, devices, and power outlets installed. *Id.* CALGreen also requires, among other things, that new construction of large, non-residential buildings of 50,000 square feet or larger be hold LEED Silver certification or have Alternate Reference Standard[6] per Section 101.10.2.

[6] According to Section 101.10.2 of the CGBSC, Developer may request to apply an alternate green building standard for the Project in lieu of the minimum standards per Table 101.10. In making a determination in response to an application under this section, the Building Official may allow an alternate standard if they find that the proposed alternative standard complies with all of the following: (A) Addresses a comprehensive scope of green building issues including energy efficiency, water efficiency, resource efficient materials, and healthy

This analysis is entirely absent from the prior environmental analyses or of any environmental analysis of the proposed Project, and as such they must be revised and recirculated to specify the additional EV mitigation requirements addressed above, or otherwise the DRC should deny the Design Review application and order the preparation and circulation of a Project-specific EIR.

IV. THE DESIGN STANDARDS APPLIED TO THE PROJECT ARE NOT OBJECTIVE AS THE PROJECT REQUIRES SUBJECTIVE DISCRETIONARY JUDGMENT.

Although the Project seeks a DRC Administrative Approval which the City asserts is an entirely ministerial decision, this does not necessarily preclude the Project from including discretionary aspects. As the California Second District Court of Appeal discussed in *Friends of Westwood, Inc. v. City of Los Angeles* (1987), "a municipality's classification of a certain approval process as ministerial is not conclusive. The applicability of CEQA cannot be made to depend upon the unfettered discretion of local agencies, for local agencies must act in accordance with state guidelines and the objectives of CEQA." 191 Cal.App.3d 259, 270 (hereinafter, "*Friends of Westwood*") (internal citations and quotations omitted). For example, *Friends of Westwood* cited to *People v. Dept. of Housing & Community Development* in which the court deemed the issuance of a mobile park construction permit to be a discretionary act that was subject to CEQA. *Id.* at 271 (citing *People v. Dept. of Housing & Community Development* (1975) 45 Cal.App.3d 185, 194 (hereinafter, "*Ramey*")). While the *Ramey* court acknowledged that the mobile home park approval process included numerous ministerial decisions that applied "'fixed design and construction specifications[,]'" the court noted that some of the other approval decisions involved "'relatively general'" standards. *Id.* at 271 (citing *Ramey* at 193). The *Ramey* court also noted that for the construction permit at issue there, the applicant must provide a description of the water supply, ground drainage, and method of sewage disposal; there must be a sufficient supply of artificial lighting; the water supply must be adequate and potable; and the site must be well-drained and graded. *Id.* (internal citations and quotations omitted). The *Ramey* court thus concluded that these decisions rendered the entire

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building practices; (B) applies standards that are, when taken as a whole, as stringent as the GPR and LEED standards; (C) includes a formalized certification process that incorporates third party verification; and, (D) the project will advance the purposes of this Chapter. See Ord. 22-2245, part, 2022; Ord. 19-2193, § 2 (part), 2019.

construction permit process discretionary for purposes of CEQA given that they required "relatively personal decisions addressed to the sound judgment and enlightened choice of the administrator." *Id.*

Here, the DRC is tasked with assessing the Project's design, layout, and location on the Project Site, and, in particular, making a determination as to the PPD. The DRC will then make a recommendation to the Planning Commission for approval. Given that the DRC must exercise its discretion in determining whether the Project's design features, including its FAR and height, are consistent with applicable codes and plans, including the MDSP, the Project should be deemed discretionary and reviewed accordingly.

V. THE PROJECT IS NOT EXEMPT FROM CEQA REVIEW PURSUANT TO THE CLASS 32 CATEGORICAL EXEMPTION.

With regard to Class 32 CEQA exemptions, an agency must find, amongst other things, that "[a]pproval of the project *would not* result in *any* significant effects relating to traffic, noise, air quality, *or* water quality." CEQA Guidelines, § 15332, subd. (d) (emphasis added). Accordingly, if a project *may* have a significant effect on *any* of the specified environmental factors, CEQA review must occur. *Salmon Protection & Watershed Network v. County of Marin* (2004) 125 Cal.App.4th 1098, 1107 (an activity that may have a significant effect on the environment cannot be categorically exempt and it is the mere *possibility* of a significant effect which is determinative of the project's qualification for an exemption).

CEQA places the duty to investigate the Project's impacts on the City. CEQA Guidelines, § 15144 (an agency must use its best efforts to find out and disclose such impacts); *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311 (agency should not be allowed to hide behind its own failure to gather relevant data). "An agency's duty to provide such factual support 'is all the more important where . . . opponents of the project have raised arguments" about impacts. *Muzzy Ranch Co. v. Solano County Airport Land Use Commission* (2007) 41 Cal.4th 372, 386.

In reviewing an agency's Class 32 exemption determination, courts should assess whether the agency made a "*definitive finding*" and whether it met its initial burden to support its finding by substantial evidence. *Banker's Hill, Hillcrest, Park W. Cmty. Pres. Grp. v. City of San Diego* (2006) 139 Cal.App.4th 249, 268 (the urban in-fill exemption calls for the agency to make a *definitive finding*, at the preliminary review stage, as to

whether or not there will be a significant environmental effect). Further, "the significant effect element of the urban in-fill exemption, does not require *unusual circumstances*, but instead, by its terms, applies to a significant effect on traffic, noise, air quality, or water quality caused by *any* circumstance." *Id.* at 269, fn. 17.

The City cannot ignore and unload its *initial* burden to investigate the Project's impacts to another and must *itself* support its Class 32 *no impact* findings with substantial evidence—a requirement which has not occurred here.

According to the Staff Report: (1) the Project has been deemed consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designations and regulations; (2) occurs within City limits on a project site of no more than five acres substantially surrounded by urban uses; the Site has no value as habitat for endangered, rare, or threatened species; (4) approval of the Project would not result in any significant effects relating to traffic, noise, air quality, or water quality; and, (5) the Site can be adequately served by all required utilities and public services.

The environmental review for the Project, including technical studies relating to traffic, air quality, GHG, and noise were prepared by Michael Baker Intl. Unfortunately, this environmental analysis and its accompanying studies have not been provided to this Office for scrutiny or comment in violation of CEQA. This Office has received at least three Public Records Act productions between August 2022 and April 2023—none of which have included the environmental review documents or studies upon which the City has based the Project's CEQA-exempt status.

According to CEQA Guidelines, section 15201:

> Each public agency should include provisions in its CEQA procedures for wide public involvement, formal and informal, consistent with its existing activities and procedures, in order to receive and evaluate public reactions to environmental issues related to the agency's activities.

As far as the public is concerned, the City's environmental review and technical studies related to the Project's environmental impacts have not occurred. Given that the Project involves a demolition and construction of a five-story-high building in an area surrounded by other developments and sensitive receptors, a thorough and Project-specific EIR is necessary. The City's failure to provide for public review and

commentary the environmental analyses and studies upon which it rests its CEQA determination constitutes a prejudicial abuse of discretion. See *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184 (hereinafter, "*Bakersfield Citizens*"). "Failure to comply with the information disclosure requirements constitutes a prejudicial abuse of discretion when the omission of relevant information has precluded . . . informed public participation[.]" *Dry Creek Citizens Coalition v. Cnty. Of Tulare* (1999) 70 Cal.App.4th 20, 26; accord *Assoc. of Irritated Residents v. Cnty. of Madera* (2003) 107 Cal.App.4th 1383, 1391. Further, "the ultimate decision of whether to approve a project, be that decision right or wrong, is a nullity if based upon an [environmental determination] that does not provide the . . . public with the information about the project that is required by CEQA." *Santiago Cnty. Water Dist. v. Cnty. of Orange* (1981) 118 Cal.App.3d 818, 829. Consequently, the Project approvals and associated land use entitlements also must be voided and an EIR prepared and circulated. See *Bakersfield Citizens*, *supra*, 124 Cal.App.4th at 1221 (citing *Friends of the Eel River v. Sonoma Cnty. Water Agency* (2003) 108 Cal.App.4th 859, 868).

"When the informational requirements of CEQA are not complied with, an agency has failed to proceed in 'a manner required by law.'" *Save Our Peninsula Committee v. Monterey Cnty. Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 118. As a result of the City's omissions, "meaningful assessment of the true scope of numerous potentially serious adverse environmental effects was thwarted." *Bakersfield Citizens*, *supra*, 124 Cal.App.4th at 1220-1221. As such, the City's Class 32 CEQA exemption is unfounded, in violation of the law, must be reversed, and an EIR produced and circulated.

VI. THE PROJECT ENTITLEMENTS MUST BE APPROVED SIMULTANEOUSLY TO CEQA REVIEW.

Legal precedent has established that Project entitlements must be approved simultaneously to a project's CEQA review. See *Coalition for Clean Air v. City of Visalia* (2012) 209 Cal.App.4th 408, 423-425, fn. 18 (noting that a CEQA document cannot be approved, and Notice of Exemption filed, before the underlying project is approved); see also *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 963, fn. 16. This is particularly relevant where, as here, the entitlement under review is the Project's design review. A project's environmental review cannot and should not occur prior to the project plans being submitted and its design review taking place, especially given that a project's environmental review must

hinge on the final project design and development plan. For this reason, the DRC must not make any recommendation to the Planning Commission related to the Project's design, but instead advise that the City revise and recirculate the original EIRs governing the General Plan and Specific Plan governing the Site's use and environmental impacts, or produce a new, Project-specific EIR.

VII. THE APPLICATION MATERIALS MUST INCLUDE AN ADEQUATE DESCRIPTION OF THE PROJECT.

A project description must be stable and finite in order to afford a lead agency and the public an adequate opportunity to assess and comment on the project and its impacts. "[A]n accurate, stable and finite project description is the sine qua non of an informative and legally sufficient" environmental document. *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 200. "A curtailed or distorted project description may stultify the objectives of the reporting process" as an accurate, stable, and finite project description is necessary to allow "affected outsiders and public decision-makers balance the proposal's benefit against its environmental cost, consider mitigation measures, assess the advantage of terminating the proposal (i.e., the "no project" alternative) and weigh other alternatives in the balance. *Id.* at 192-93.

CEQA Guidelines, section 15124 requires that a description describe the project in enough detail to allow for evaluation of its potential environmental impacts: (a) the project's precise location and boundaries; (b) a clearly written statement of objectives sought by the proposed project; (c) a description of the project's technical, economic, and environmental characteristics; and, (d) a statement describing a list of agencies, permits, and approval which the project expects to use.

Here, SWMSRCC respectfully requests that the Project application include an adequate and compliant Project description with the details listed above, including objectives sought, the Project's economic characteristics, and more. The City should demand that Applicant resubmit its application materials with CEQA-compliant parameters should the materials fail to comply with the CEQA Guidelines.

VIII. CONCLUSION.

A detailed and thorough review of the Project's impacts must be studied, supported by substantial evidence, and mitigated against where necessary. Without this in-depth analysis and a higher standard for the quantity and quality of evidence supporting it, it

is impossible to determine, with a high degree of certainty, the magnitude and extent of the Project's environmental impacts.

In light of the aforementioned, SWMSRCC respectfully requests that the City: (1) deem the Project not exempt from CEQA; (2) prepare and circulate a thorough, project-specific EIR which focuses heavily on the Project's impacts to the environment and nearby sensitive receptors; (3) order Applicant to revise the Project to ensure its consistency with all applicable laws and regulations especially those addressing human and environmental health; and, (4) require a local and skilled workforce for the Project. Should the City have any questions or concerns, it should feel free to contact my office.

Sincerely,

Reza Bonachea Mohamadzadeh
Attorneys for Southwest Mountain
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).