



P: (626) 314-3821
F: (626) 389-5414
E: info@mitschtsailaw.com

Mitchell M. Tsai
Attorney At Law

139 South Hudson Avenue
Suite 200
Pasadena, California 91101

VIA E-MAIL

April 5, 2023

Kathleen Kennedy
Project Planner
City of Santa Barbara
630 Garden Street
Santa Barbara, CA 93101
Em: KKennedy@SantaBarbaraCA.gov

Planning Commission
City of Santa Barbara
735 Anacapa Street
Santa Barbara, CA 93101
Em: PCSecretary@SantaBarbaraCA.gov

RE: April 6, 2023 Planning Commission Agenda Item No. III.B City of Santa Barbara's 101 Garden Street Project.

Dear Kathleen Kennedy and City of Santa Barbara Planning Commission,

On behalf of the **Southwest Mountain States Regional Council of Carpenters** (“**Southwest Mountain States Carpenters**” or “**SWMSRCC**”), my Office is submitting these comments for the City of Santa Barbara’s (“**City**”) 101 Garden Street Project (“**Project**”).

The Southwest Mountain States Carpenters is a labor union representing 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. Individual members of SWMSRCC live, work, and recreate in the City and surrounding communities and would be directly affected by the Project’s environmental impacts.

The Southwest Mountain States 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 Mountain States 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 local workers who have graduated from a Joint Labor-Management Apprenticeship Program approved by the State of California, have at least as many hours of on-the-job experience in the applicable craft which would be required to graduate from such a state-approved apprenticeship training program, or who are registered apprentices in a state-approved apprenticeship training program.

Community benefits such as local hire can also be helpful to reduce environmental impacts and improve the positive economic impact of the Project. Local hire provisions requiring that a certain percentage of workers reside within 10 miles or less of the Project site can reduce the length of vendor trips, reduce greenhouse gas emissions, and provide localized economic benefits. As environmental consultants Matt Hagemann and Paul E. Rosenfeld note:

[A]ny local hire requirement that results in a decreased worker trip length from the default value has the potential to result in a reduction of construction-related GHG emissions, though the significance of the reduction would vary based on the location and urbanization level of the project site.

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

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

[L]abor should be considered an investment rather than a cost—and investments in growing, diversifying, and upskilling California’s workforce

can positively affect returns on climate mitigation efforts. In other words, well-trained workers are key to delivering emissions reductions and moving California closer to its climate targets.¹

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

Locating jobs closer to residential areas can have significant environmental benefits. As the California Planning Roundtable noted in 2008:

People who live and work in the same jurisdiction would be more likely to take transit, walk, or bicycle to work than residents of less balanced communities and their vehicle trips would be shorter. Benefits would include potential reductions in both vehicle miles traveled and vehicle hours traveled.³

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

¹ California Workforce Development Board (2020) Putting California on the High Road: A Jobs and Climate Action Plan for 2030 at p. ii, *available at* <https://laborcenter.berkeley.edu/wp-content/uploads/2020/09/Putting-California-on-the-High-Road.pdf>.

² South Coast Air Quality Management District (May 7, 2021) Certify Final Environmental Assessment and Adopt Proposed Rule 2305 – Warehouse Indirect Source Rule – Warehouse Actions and Investments to Reduce Emissions Program, and Proposed Rule 316 – Fees for Rule 2305, Submit Rule 2305 for Inclusion Into the SIP, and Approve Supporting Budget Actions, *available at* <http://www.aqmd.gov/docs/default-source/Agendas/Governing-Board/2021/2021-May7-027.pdf?sfvrsn=10>.

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

⁴ Cervero, Robert and Duncan, Michael (2006) Which Reduces Vehicle Travel More: Jobs-Housing Balance or Retail-Housing Mixing? Journal of the American Planning Association 72 (4), 475-490, 482, *available at* <http://reconnectingamerica.org/assets/Uploads/UTCT-825.pdf>.

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 Occupational Safety and Health Administration. Recently, several construction sites have been identified as sources of community spread of COVID-19.⁵

Southwest Mountain States Carpenters recommend that the Lead Agency adopt additional requirements to mitigate public health risks from the Project's construction activities. SWMSRCC requests that the Lead Agency require safe on-site construction

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>.

work practices as well as training and certification for any construction workers on the Project Site.

In particular, based upon Southwest Mountain States Carpenters' experience with safe construction site work practices, SWMSRCC recommends that the Lead Agency require that while construction activities are being conducted at the Project Site:

Construction Site Design:

- The Project Site will be limited to two controlled entry points.
- Entry points will have temperature screening technicians taking temperature readings when the entry point is open.
- The Temperature Screening Site Plan shows details regarding access to the Project Site and Project Site logistics for conducting temperature screening.
- A 48-hour advance notice will be provided to all trades prior to the first day of temperature screening.
- The perimeter fence directly adjacent to the entry points will be clearly marked indicating the appropriate 6-foot social distancing position for when you approach the screening area. Please reference the Apex temperature screening site map for additional details.
- There will be clear signage posted at the project site directing you through temperature screening.
- Provide hand washing stations throughout the construction site.

Testing Procedures:

- The temperature screening being used are non-contact devices.
- Temperature readings will not be recorded.
- Personnel will be screened upon entering the testing center and should only take 1-2 seconds per individual.

- Hard hats, head coverings, sweat, dirt, sunscreen or any other cosmetics must be removed on the forehead before temperature screening.
- Anyone who refuses to submit to a temperature screening or does not answer the health screening questions will be refused access to the Project Site.
- Screening will be performed at both entrances from 5:30 am to 7:30 am.; main gate [ZONE 1] and personnel gate [ZONE 2]
- After 7:30 am only the main gate entrance [ZONE 1] will continue to be used for temperature testing for anybody gaining entry to the project site such as returning personnel, deliveries, and visitors.
- If the digital thermometer displays a temperature reading above 100.0 degrees Fahrenheit, a second reading will be taken to verify an accurate reading.
- If the second reading confirms an elevated temperature, DHS will instruct the individual that he/she will not be allowed to enter the Project Site. DHS will also instruct the individual to promptly notify his/her supervisor and his/her human resources (HR) representative and provide them with a copy of Annex A.

Planning

- Require the development of an Infectious Disease Preparedness and Response Plan that will include basic infection prevention measures (requiring the use of personal protection equipment), policies and procedures for prompt identification and isolation of sick individuals, social distancing (prohibiting gatherings of no more than 10 people including all-hands meetings and all-hands lunches) communication and training and workplace controls that meet standards that may be promulgated by the Center for Disease Control, Occupational Safety and Health

Administration, Cal/OSHA, California Department of Public Health or applicable local public health agencies.⁶

The United Brotherhood of Carpenters and Carpenters International Training Fund has developed COVID-19 Training and Certification to ensure that Carpenter union members and apprentices conduct safe work practices. The Agency should require that all construction workers undergo COVID-19 Training and Certification before being allowed to conduct construction activities at the Project Site.

Southwest Mountain States Carpenters has also developed a rigorous Infection Control Risk Assessment (“**ICRA**”) training program to ensure it delivers a workforce that understands how to identify and control infection risks by implementing protocols to protect themselves and all others during renovation and construction projects in healthcare environments.⁷

ICRA protocols are intended to contain pathogens, control airflow, and protect patients during the construction, maintenance and renovation of healthcare facilities. ICRA protocols prevent cross contamination, minimizing the risk of secondary infections in patients at hospital facilities.

The City should require the Project to be built using a workforce trained in ICRA protocols.

III. THE PROJECT DOES NOT QUALIFY FOR THE CLASS 32 CEQA EXEMPTION.

CEQA exemptions must be construed narrowly. See *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 966; *Aptos Residents Ass’n v. Cty. of Santa Cruz*, (2018) 20 Cal. App. 5th 1039, 1046, 229 Cal. Rptr. 3d 605, 612. Public agencies utilizing CEQA exemptions must support their determination with substantial evidence. PRC § 21168.5; see *Fairbank v. City of Mill Valley* (1999) 75 Cal.App.4th 1243, 1251, as modified on denial of reh’g (Oct. 29, 1999) (“substantial evidence test governs our review of the city’s factual determination that a project falls within a categorical

⁶ See also The Center for Construction Research and Training, North America’s Building Trades Unions (April 27 2020) NABTU and CPWR COVID-19 Standards for U.S. Construction 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 Mountain States Carpenters’s ICRA training program, see <https://icrahealthcare.com/>.

exemption”); *Banker’s Hill, Hillcrest, Park W. Cmty. Pres. Grp. v. City of San Diego* (2006) 139 Cal.App.4th 249, 267; *Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, 115, as modified on denial of reh’g (Apr. 29, 1997) (“On review, an agency’s categorical exemption determination will be affirmed if supported by substantial evidence that the project fell within the exempt category of projects”); *Magan v. Cnty. of Kings* (2002) 105 Cal.App.4th 468, 475, as modified (Jan. 13, 2003) (an agency “only has the burden to demonstrate substantial evidence that the ordinance fell within the exempt category of projects”); *San Lorenzo Valley Cmty. Advocs. for Responsible Educ. v. San Lorenzo Valley Unified Sch. Dist.* (2006) 139 Cal.App.4th 1356, 1386; *Union of Med. Marijuana Patients, Inc. v. City of San Diego* (2019) 7 Cal.5th 1171, 1186; *Muzzy Ranch Co. v. Solano Cnty. Airport Land Use Com.* (2007) 41 Cal.4th 372, 380, 386-387, as modified (Sept. 12, 2007).

In order for the Project to qualify for a Class 32 exemption to CEQA environmental review, the Project: (i) cannot be subject to the six exceptions to CEQA exemptions identified in CEQA Guidelines section 15300.2, and (ii) must also meet all of the conditions identified in CEQA Guidelines section 15332, as follows:

- (a) The project is consistent with the applicable general plan designation and all applicable general plan policies as well as with applicable zoning designation and regulations;
- (b) The proposed development occurs within city limits on a project site of no more than five acres substantially surrounded by urban uses;
- (c) The project site has no value, as habitat for endangered, rare or threatened species;
- (d) Approval of the project would not result in any significant effects relating to traffic, noise, air quality, or water quality; and
- (e) The site can be adequately served by all required utilities and public services.

Here, the Project fails to comply with all the required conditions. Therefore, the Project does not qualify for the Class 32 CEQA exemption.

- A. Current Sewer Capacity Is Not Sufficient To Serve The Proposed Project.

In order for the Project to qualify for the Class 32 exemption, the Project site must be adequately served by all required utilities and public services. CEQA Guidelines 15332. Here, the Planning Commission Staff Report (“**Staff Report**”) states that “current sewer capacity is not sufficient to serve the proposed project” and that, as a result, “a segment of the existing sewer line must be increased in size.” Planning Commission Staff Report, page 8. The Report further states that “a segment of the offsite sewer trunk line along Garden Street does not have sufficient capacity to serve the project and must be increased 48 inches.” *Id.* at 16. The Report continues: “A portion of the offsite sewer trunk line along Garden Street does not have current capacity sufficient to serve the development intensity of the project. The undersized portion is the 33-inch diameter segment that runs approximately 600 feet, from the Garden Street right-of-way to the easterly side of Laguna Channel. This segment must be increased to 48 inches to match the existing pipeline that runs southerly within the right-of-way of Garden and Yanonali Streets. The cost estimate of the improvement is \$5,505,060.” *Id.* at 23. Despite this, the Report erroneously concludes that the Project is able to be exempt from CEQA review under a Class 32 exemption in part because the “[t]he site can be adequately served by all required utilities and public services.” *Id.* at 15. Because the Project site must be adequately served by all required utilities and public services, it does not qualify for the Class 32 exemption.

B. The Project May Cause Significant Environmental Effects During Construction of the Sewage System Needed to Serve the Project.

The Project Applicant and City Staff should be required to provide as much information now about what buildouts will be necessary to adequately supply a sewage system to serve the Project site and what environmental effects such construction would produce before the City permits the Project to proceed. As stated above, the Report states that “[a] portion of the offsite sewer trunk line along Garden Street does not have current capacity sufficient to serve the development intensity of the project. The undersized portion is the 33-inch diameter segment that runs approximately 600 feet, from the Garden Street right-of-way to the easterly side of Laguna Channel. This segment must be increased to 48 inches to match the existing pipeline that runs southerly within the right-of-way of Garden and Yanonali Streets. The cost estimate of the improvement is \$5,505,060.” Such construction is not insubstantial and requires underground infrastructure that includes trench excavation. The construction may cause noise and traffic impediments as well as impacts to wildlife, especially considering there may be an upset in the pipe expansion process. Such construction needs to be included as part of a CEQA environmental review process to determine

environmental impacts and necessary mitigation measures before the Project is approved. As a result, the Project ineligible to be exempt from CEQA environmental review.

C. The Report Improperly Labels Mitigation Measures as “Conditions of Approval.”

The Staff Report improperly labels mitigation measures as “Conditions of Approval,” which the Staff Report purports will result in less than significant environmental impacts. For instance, with respect to noise, the Staff Report states that “[t]he project incorporates the recommendations from the Updated Noise Study (Dudek, February 15, 2022) to reduce long-term exterior and interior noise, and construction noise. Recommendations include the installation of barriers in selected balcony and pool areas; installation of mechanical ventilation and/or air conditioners, and the installation of a temporary sound barrier wall. Incorporation of these measures would result in less than significant noise impacts. The recommendations have been incorporated into the conditions of approval.”

It is established that “[a]voidance, minimization and / or mitigation measure’ . . . are not ‘part of the project.’ . . . compressing the analysis of impacts and mitigation measures into a single issue . . . disregards the requirements of CEQA.” *Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 656. When “an agency decides to incorporate mitigation measures into its significance determination, and relies on those mitigation measures to determine that no significant effects will occur, that agency must treat those measures as though there were adopted following a finding of significance.” *Lotus, supra*, 223 Cal.App.4th at 652 [citing CEQA Guidelines § 15091(a)(1) and PRC § 21081(a)(1)].

By labeling mitigation measures as project design features, the City violates CEQA by failing to disclose “the analytic route that the agency took from the evidence to its findings.” PRC § 21081.5; CCR § 15093; *Village Laguna of Laguna Beach, Inc. v. Board of Supervisors* (1982) 134 Cal.App.3d 1022, 1035 (citing *Topanga Assn for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515).

The Staff Report’s use of “Conditions of Approval” further violates CEQA because such measures should be included in a Mitigation Monitoring and Reporting Program required by CEQA to adopt mitigation measures that are fully enforceable and to adopt a monitoring and/or reporting program to ensure that the measures are implemented to reduce the Project’s significant environmental effects to the extent feasible. PRC § 21081.6; CCR § 15091(d). Therefore, using Conditions of Approval in lieu of mitigation measures violates CEQA.

D. The City Lacks Substantial Evidence to Determine Whether the Project Would Have A Significant Impact on Noise.

The City is required to present substantial evidence to support its findings under CEQA. Section 15384(a) of the CEQA Guidelines notes that substantial evidence means “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion.” The Staff Report erroneously concludes that “[t]he project would not result in impacts related to...noise[.]” Staff Report, page 15. However, in other portions of the Staff Report, mitigation measures are used to reduce noise decibels to levels of no significant impact. For instance, “installation of barriers in selected balcony and pool areas; installation of mechanical ventilation and/or air conditioners, and the installation of a temporary sound barrier wall...would result in less than significant noise impacts.” *Id.* The inconsistency in the Staff Report’s findings between no noise impacts but utilization of mitigation measures to reduce noise impacts to less than significant indicate the Staff Report has not provided sufficient and reliable evidence to support its no impact finding.

Furthermore, the Staff Report reads that in order for the Project “[t]o comply with the Cabrillo Plaza Specific Plan recommended exterior maximum noise level of 60 dBA CNEL, noise barriers shall be required.” It also reads that in order “[t]o comply with the City’s 45 dB CNEL interior noise standard, the building shell for the portion of the southern hotel structure with direct exposure to the UPRR alignment shall have a composite STC rating of not less than 30” and “[m]echanical ventilation and/or air condition systems shall be provided for all guest rooms of the hotel such that windows may be kept in the closed position if desired by guests.” Staff Report, page 25. This means that without the implementation of these mitigation measures, the Project’s operations would cause significant impacts to noise levels. As a result, the City has not provided substantial evidence to support its finding of no noise impacts.

E. The City Lacks Substantial Evidence to Determine Whether the Project Would Have A Significant Impact on Water Quality.

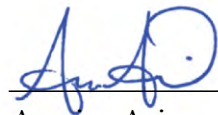
The Class 32 “Infill” Categorical Exemption (CEQA Guidelines Section 15332) exempts infill development within urbanized areas if it meets the criteria listed above. While a portion of the Project involves a hotel and extended stay development with amenities, another portion of the Project involves restoration of a vegetated drainage swale that qualifies as a “wetland.” Because wetlands are considered surface water, the

Project will cause significant impacts to water quality. *See* National Geographic, *Surface Water*, available at <https://education.nationalgeographic.org/resource/surface-water/>. The Staff Report reads that “coastal wetlands are present within a portion of the larger drainage feature” on the Project site and that the proposed project would result in “extensive wetland restoration and enhancement.” Staff Report, page 93. It states that “[t]he project proposes 1,998 SF of native wetland habitat, 8,816 SF of riparian/transitional habitat, and 11,755 SF of SF of native upland, for a total of 22,569 SF of native habitat within and around the Garden Street Drain. The proposed wetland enhancements would eliminate the giant reed and other weedy species and restore that area with a mix of native species, improving hydrologic function.” *Id.* It concludes that “[t]he wetland and wetland buffer would remain in a natural and significantly improved state as a result of the proposed native habitat restoration.” *Id.* As a result, the Project will have a significant impact on surface water quality.

IV. CONCLUSION

SWMSRCC requests that the City determine that the Project is not exempt from CEQA and to prepare an EIR for the Project. If the City has any questions, feel free to contact my Office.

Sincerely,



Armita Ariano, Esq.

Attorneys for Southwest Mountain States
Regional Council of Carpenters

Attached:

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

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

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