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VIA E-MAIL

August 1, 2023

Planning Commission
City of Santa Barbara
735 Anacapa Street
Santa Barbara, CA 93101

Em: PCSecretary@SantaBarbaraCA.gov

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RE: Agenda Item No. III: 101 Garden Street Project

Dear Chair Bonderson and Honorable Commissioners,

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 Project proposes to remove all existing structures, merge six lots, and construct a 178,919 square foot hotel containing 250 rooms, a subterranean parking lot, library, bar, lounge, market, salon, pool, spa, gym, meeting rooms, and roof deck.

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

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>

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 Occupational 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 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 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.

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 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.

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/>.

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 CITY SHOULD PREPARE AN ENVIRONMENTAL IMPACT REPORT FOR THE PROJECT

CEQA is a California statute designed to inform decision makers and the public about the potential, significant environmental effects of a project. 14 California Code of Regulations (“**CEQA Guidelines**”) § 15002(a)(1).⁸ At its core, “[i]ts 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.

To achieve this purpose, CEQA mandates preparation of an Environmental Impact Report (“**EIR**”) for projects so that the foreseeable impacts of pursuing the project can be understood and weighed. *Communities for a Better Environment v. Richmond* (2010) 184 Cal. App. 4th 70, 80. The EIR requirement “is the heart of CEQA.” CEQA Guidelines, § 15003(a).

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 agency must prepare an EIR 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.” Public Resources Code (“**PRC**”) § 21151; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal. App. 3d 68, 75; *Jensen v. City of Santa Rosa* (2018) 23 Cal. App. 5th 877, 884. Under this test, if a

⁸ The CEQA Guidelines, codified in Title 14 of the California Code of Regulations, section 15000 *et seq.*, are regulatory guidelines promulgated by the state Natural Resources Agency for the implementation of CEQA. (Cal. Pub. Res. Code § 21083.) The CEQA Guidelines are given “great weight in interpreting CEQA except when . . . clearly unauthorized or erroneous.” *Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 62 Cal. 4th 204, 217.

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(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. v. City of Los Angeles*, 13 Cal. 3d at 83 fn. 16; *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 Irrig. 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 v. County of Mendocino* (1988) 202 Cal. App. 3d 296, 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 v. City of Santa Rosa* (2018) 23 Cal. App. 5th 877, 886; *Clews Land & Livestock v. City of San Diego* (2017) 19 Cal. App. 5th 161, 183; *Stanislaus Audubon Soc'y, Inc. v. County of Stanislaus* (1995) 33 Cal. App. 4th 144, 150; *Brentwood Ass'n for No Drilling, Inc. v. City of Los Angeles* (1982) 134 Cal. App. 3d 491; *Friends of "B" St. v. City of Hayward* (1980) 106 Cal. App. 3d 988; CEQA Guidelines § 15064(f)(1).

As there is a fair argument that the Project may cause significant environmental impacts, as explained below, the low threshold is met and the City should prepare an EIR for the Project.

IV. 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 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.

Moreover, categorical exemptions are not absolute. Even if a project fits into a categorical exemption class, the agency must consider whether a codified exception to exemption applies. Guidelines § 15300.2. A project falling within a categorical exemption may require environmental review if the project is subject to exceptions-to-the-exemptions listed under CEQA Guidelines § 15300.2, which include projects involving: (a) locations involving environmental resources of hazardous or critical concern; (b) significant cumulative impact of successive projects of the same type in the same place; (c) reasonable possibility of significant environmental effect due to unusual circumstances; (d) damage to scenic resources on State scenic highways; (e) locations listed as a hazardous waste site; or (f) substantial adverse changes to a historical resource.

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**”) concedes that the current sewer capacity is not sufficient to serve the proposed Project as it provides that “[t]he Project will require specific improvements to extend utilities to the site, including upgrades to sewer utility infrastructure to serve the new development and increased demand.” Staff Report at 106.⁹ Thus, the lack of adequate utility service capacity indisputably renders the Class 32 exemption inapplicable.

Although the Staff Report attempts to rectify this fatal flaw by labeling its mitigation measures as conditions of approval and noting that the Project would have less than

⁹ The Staff Report can be found here:
https://santabarbaraca.gov/sites/default/files/filesync/Advisory_Groups/Planning_Commission/Current/02_Staff_Reports/2023-08-03_August_03_2023_Item_III_101_Garden_St_Staff_Report.pdf

significant impacts with “[t]he Conditions of Approval [which] would require the applicant to complete utility infrastructure improvements including the funding of offsite sewer infrastructure pipeline upgrades”, such assertion fails. *Id.* It is well established that the determination of whether a CEQA exemption applies must occur before applying mitigation measures. *See Salmon Protection & Watershed Network v. County of Marin* (2004) 125 Cal.App.4th 1098, 1102 [“If a project may have a significant effect on the environment, CEQA review must occur and only then are mitigation measures relevant. . . . Mitigation measures may support a negative declaration but not a categorical exemption”]; *see also Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 652 [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”].

Moreover, the mitigation measure 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, which is a condition precedent to the Project, is necessarily part of the Project and needs to be included as part of the Project’s CEQA environmental review process to determine environmental impacts and necessary mitigation measures before the Project is approved. Therefore, labeling and using Conditions of Approval as mitigation measures violates CEQA, and the Project admittedly may have impacts, excluding its eligibility for a Class 32 CEQA exemption.

B. The Project May Have Significant Environmental Impacts

CEQA exemptions are reserved for projects without potential to have significant environmental effects. *See Salmon Protection & Watershed Network v. County of Marin* (2004) 125 Cal.App.4th 1098, 1107 [“If a project may have a significant effect on the environment, CEQA review must occur”]. The Project at hand has the potential to cause a number of significant environmental effects, rendering the Class 32 CEQA exemption inapplicable.

Here, the Project has the potential to cause numerous environmental impacts:

i. Air Quality

The Project includes the removal and replacement of three onsite mature trees and 5 mature street trees. Such removal in and of itself indicates potential air quality impacts as it is well established that that “trees have to survive years before they offset [the] cost [of mature trees]. The largest environmental gain comes when trees mature, sometimes decades after they’re planted.”¹⁰

Moreover, the demolition and removal of the existing industrial structures on the Project site and the grading of an estimated 25,900 cubic yards and export of 4,600 cubic yards fill indicates significant air quality and public health impacts associated with the large amounts of dust, debris, and contaminated soil impacts. Staff Report at 2. Such impacts must be quantified and analyzed in a comprehensive EIR rather than speculating their nonexistence.

ii. Traffic & Noise

The very natures of the Project, i.e. replacing industrial and storage uses with a 250 room hotel project indicates significant traffic and noise impacts stemming from the sheer increase in density and intensity of land use on the Project site. Coupled with the fact that construction of the Project may involve road closures, street detours, and loud construction equipment, the Project has the potential to cause significant traffic and noise impacts, which the Staff Report in fact concedes. Staff Report at 106 [“During construction of the project, there will be additional vehicles in the vicinity of the project site, including construction equipment vehicles, deliveries, and contractor vehicles. . . Noise from construction operations would result in elevated noise levels”].

Again, although the Staff Report attempts to overcome these impacts by implementing mitigation measures such as transportation demand management improvements and noise barriers (see Staff Report at 14; 17), such measures cannot overcome the Project’s ineligibility for a Class 32 CEQA exemption based on its environmental impacts, as discussed above.

¹⁰ *Id.*

iii. Water Quality

As the Staff Report notes, a portion of the Project “contain[s] wetland hydrology and hydrophytic vegetation and is therefore classified as a coastal wetland.” Staff Report at 105. Thus, because wetlands are considered surface water, the Project may cause significant impacts to water quality which must be studied. See National Geographic, *Surface Water*, available at <https://education.nationalgeographic.org/resource/surface-water/>.

Moreover, wetlands present value as habitat for rare, endangered species and even qualify themselves as rare and endangered species under Guidelines §§ 15380(b)(2)(A)-(B), in light of their being species in decline, and reportedly amount to over 90% loss in California.¹¹ Thus, in addition to presenting water quality impacts, the existence of wetlands on the Project site renders the Project site valuable as habitat for endangered, rare or threatened species, further disqualifying a Class 32 exemption.

C. The Project Is Inconsistent with the General Plan and Zoning Regulations

Each California city and county must adopt a comprehensive, long-term general plan governing development. *Napa Citizens for Honest Gov. v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 352, citing Gov. Code §§ 65030, 65300. The general plan sits at the top of the land use planning hierarchy, and serves as a “constitution” or “charter” for all future development. *DeVita v. County of Napa* (1995) 9 Cal.4th 763, 773; *Lesher Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 540.

General plan consistency is “the linchpin of California’s land use and development laws; it is the principle which infused the concept of planned growth with the force of law.” *Debottari v. Norco City Council* (1985) 171 Cal.App.3d 1204, 1213. It is well established that development projects may not be approved if they interfere with, or frustrate, the general plan’s policies and objectives. See *Napa Citizens*, 91 Cal.App.4th at 378-79; see also *Lesher*, 52 Cal.3d at 544.

Here, the Project requests a parking modification to allow a departure from the ordinary limits permitted by the General Plan and zoning designations. Given that the

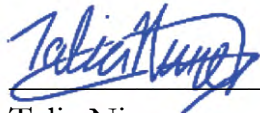
¹¹ See, statistical data at state official website:
https://mywaterquality.ca.gov/eco_health/wetlands/extent/loss.html#:~:text=How%20much%20wetland%20area%20has%20California%20lost%3F&text=Estimates%20of%20total%20historical%20wetland,disproportionately%20higher%20rates%20of%20loss.

modification has not yet been approved, there is a colorful argument that the Project is inconsistent with the General Plan and all applicable zoning regulations, further rendering it ineligible for a Class 32 CEQA exemption.

V. CONCLUSION

In sum, SWMSRCC requests that the City require a local workforce, that the City impose training requirements for the Project's construction activities to prevent community spread of COVID-19 and other infectious diseases, and that the City prepare an EIR for the Project and determine that the Project does not qualify for a Class 32 CEQA exemption for the aforementioned concerns. If the City has any questions, feel free to contact my Office.

Sincerely,



Talia Nimmer

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.