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VIA E-MAIL

February 3, 2023

Helen Jadali
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City of Los Angeles
201 North Figueroa Street, 4th Floor
Los Angeles, CA 90012
Em: helen.jadali@lacity.org

RE: City of Los Angeles' 3685 Vermont Avenue Project.

Dear Helen Jadali,

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 Los Angeles' ("**City**") February 2, 2023, City Council Hearing for the 3685 Vermont Avenue 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 incorporates by reference all comments raising issues regarding the Environmental Impact Report (EIR) submitted prior to

certification of the EIR for the Project. See *Citizens for Clean Energy v City of Woodland* (2014) 225 Cal.App.4th 173, 191 (finding that any party who has objected to the project's environmental documentation may assert any issue timely raised by other parties).

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

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

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

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

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

> [L]abor should be considered an investment rather than a cost—and investments in growing, diversifying, and upskilling California's workforce can positively affect returns on climate mitigation efforts. In other words, well-trained workers are key to delivering emissions reductions and moving California closer to its climate targets.[1]

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

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

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

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

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

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

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 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

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[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 work has been defined as a Lower to High-risk activity for COVID-19 spread by the Occupations Safety and Health Administration. Recently, several construction sites have been identified as sources of community spread of COVID-19.[5]

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.

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[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.

- There will be clear signage posted at the project site directing you through temperature screening.
- Provide hand washing stations throughout the construction site.

<u>Testing Procedures:</u>

- 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]

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[6] *See also* The Center for Construction Research and Training, North America's Building Trades Unions (April 27 2020) NABTU and CPWR COVIC-19 Standards for U.S Constructions Sites, *available at* https://www.cpwr.com/sites/default/files/NABTU_CPWR_Standards_COVID-19.pdf; Los Angeles County Department of Public Works (2020) Guidelines for Construction Sites During COVID-19 Pandemic, *available at* https://dpw.lacounty.gov/building-and-safety/docs/pw_guidelines-construction-sites.pdf.

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

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

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

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

A. Background Concerning the California Environmental Quality Act

The California Environmental Quality Act is a California statute designed to inform decision-makers and the public about the potential significant environmental effects of a project. 14 California Code of Regulations ("**CEQA Guidelines**"), § 15002, subd. (a)(1).[8] At its core, its purpose is to "inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made." *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.

1. *Background Concerning Environmental Impact Reports*

CEQA directs public agencies to avoid or reduce environmental damage, when possible, by requiring alternatives or mitigation measures. CEQA Guidelines, § 15002, subds. (a)(2)-(3); see also *Berkeley Keep Jets Over the Bay Committee v. Board of Port Comes* (2001) 91 Cal.App.4th 1344, 1354; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553; *Laurel Heights Improvement Assn.*, 47 Cal.3d at p. 400. The EIR serves to provide public agencies and the public in general with information about the effect that a proposed project is likely to have on the environment and to "identify ways that environmental damage can be avoided or significantly reduced." CEQA Guidelines, § 15002, subd. (a)(2). If the project has a significant effect on the environment, the agency may approve the project only upon finding that it has "eliminated or substantially lessened all significant effects on the environment where feasible" and that any unavoidable significant effects on the environment are

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

"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 informed public participation, thereby thwarting the statutory goals of the EIR process. 91 Cal.App.4th at p. 1355 (internal quotations omitted).

The preparation and circulation of an EIR is more than a set of technical hurdles for agencies and developers to overcome. *Communities for a Better Environment v. Richmond* (2010) 184 Cal.App.4th 70, 80 (quoting *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 449-450). The EIR's function is to ensure that government officials who decide to build or approve a project do so with a full understanding of the environmental consequences and, equally important, that the public is assured those consequences have been considered. *Id*. For the EIR to serve these goals it must present information so that the foreseeable impacts of pursuing the project can be understood and weighed, and the public must be given an adequate opportunity to comment on that presentation before the decision to go forward is made. *Id*.

A strong presumption in favor of requiring preparation of an EIR is built into CEQA. This presumption is reflected in what is known as the "fair argument" standard under which an EIR must be prepared whenever substantial evidence in the record supports a fair argument that a project may have a significant effect on the environment. *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602; *Friends of "B" St.* v. *City of Hayward* (1980) 106 Cal.3d 988, 1002.

The fair argument test stems from the statutory mandate that an EIR be prepared for any project that "may have a significant effect on the environment." PRC, § 21151;

see *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.App.3d 68, 75; accord *Jensen v. City of Santa Rosa* (2018) 23 Cal.App.5th 877, 884. Under this test, if a proposed project is not exempt and may cause a significant effect on the environment, the lead agency must prepare an EIR. PRC, §§ 21100 (a), 21151; CEQA Guidelines, § 15064 (a)(1), (f)(1). An EIR may be dispensed with only if the lead agency finds no substantial evidence in the initial study or elsewhere in the record that the project may have a significant effect on the environment. *Parker Shattuck Neighbors v. Berkeley City Council* (2013) 222 Cal.App.4th 768, 785. In such a situation, the agency must adopt a negative declaration. PRC, § 21080, subd. (c)(1); CEQA Guidelines, §§ 15063 (b)(2), 15064(f)(3).

"Significant effect upon the environment" is defined as "a substantial or potentially substantial adverse change in the environment." PRC, § 21068; CEQA Guidelines, § 15382. A project may have a significant effect on the environment if there is a reasonable probability that it will result in a significant impact. *No Oil, Inc.*, 13 Cal.3d at p. 83 fn. 16; see *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 309. If any aspect of the project may result in a significant impact on the environment, an EIR must be prepared even if the overall effect of the project is beneficial. CEQA Guidelines, § 15063(b)(1); see *County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1580.

This standard sets a "low threshold" for preparation of an EIR. *Consolidated Irrigation Dist. v. City of Selma* (2012) 204 Cal.App.4th 187, 207; *Nelson v. County of Kern* (2010) 190 Cal.App.4th 252; *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 928; *Bowman v. City of Berkeley* (2004) 122 Cal.App.4th 572, 580; *Citizen Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 754; *Sundstrom*, 202 Cal.App.3d at p. 310. If substantial evidence in the record supports a fair argument that the project may have a significant environmental effect, the lead agency must prepare an EIR even if other substantial evidence before it indicates the project will have no significant effect. See *Jensen,* 23 Cal.App.5th at p. 886; *Clews Land & Livestock v. City of San Diego* (2017) 19 Cal.App.5th 161, 183; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150; *Brentwood Assn. for No Drilling, Inc. v. City of Los Angeles* (1982) 134 Cal.App.3d 491; *Friends of "B" St.*, 106 Cal.App.3d 988; CEQA Guidelines, § 15064(f)(1).

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

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

The fair argument standard is a "low threshold" test for requiring the preparation of an EIR. *No Oil Inc.*, *supra*, 13 Cal.3d at p. 84; *County Sanitation Dist. No. 2 of Los Angeles County v. County of Kern* (2005) 127 Cal.App.4th 1544, 1579. It "requires the preparation of an EIR where there is substantial evidence that any aspect of the project, either individually or cumulatively, may cause a significant effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial[.]" *County Sanitation*, *supra*, 127 Cal.App.4th at p. 1580 (quoting CEQA Guidelines, § 15063(b)(1)). A lead agency may adopt an MND only if "there is no substantial evidence that the project will have a significant effect on the environment." CEQA Guidelines, § 15074(b).

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

Further, it is the duty of the lead agency, not the public, to conduct the proper environmental studies. "The agency should not be allowed to hide behind its own failure to gather relevant data." *Sundstrom*, 202 Cal.App.3d at p. 311. "Deficiencies in

the record may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences." *Id*; see also *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1382 (lack of study enlarges the scope of the fair argument which may be made based on the limited facts in the record).

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

Both the review for failure to follow CEQA's procedures and the fair argument test are questions of law, thus, the de novo standard of review applies. *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435. "Whether the agency's record contains substantial evidence that would support a fair argument that the project may have a significant effect on the environment is treated as a question of law. *Consolidated Irrigation Dist.*, 204 Cal.App.4th at p. 207; Kostka and Zischke, Practice Under the Environmental Quality Act (2017, 2d ed.) at § 6.76.

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

> Unlike the situation where an EIR has been prepared, neither the lead agency nor a court may "weigh" conflicting substantial evidence to determine whether an EIR must be prepared in the first instance. Guidelines section 15064, subdivision (f)(1) provides in pertinent part: if a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect. Thus, as *Claremont* itself recognized, [c]onsideration is not to be given contrary evidence supporting the preparation of a negative declaration.

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

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

3. Background Concerning CEQA Exemptions

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

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

1521 (finding city council findings conclusory, violating *Topanga Assn. for a Scenic Comm.*).

Further, CEQA exemptions must be narrowly construed to accomplish CEQA's environmental objectives. *Cal. Farm Bureau Federation v. Cal. Wildlife Conservation Bd.* (2006) 143 Cal.App.4th 173, 187; accord *Save Our Carmel River v. Monterey Peninsula Water Management Dist.* (2006) 141 Cal.App.4th 677, 697 ("These rules ensure that in all but the clearest cases of categorical exemptions, a project will be subject to some level of environmental review.")

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

B. The Project Would Be Approved in Violation of the California Environmental Quality Act Because the Proposed Marriott Hotel is Improperly Segmented from the Project's Alcoholic Beverages Permit. Therefore, the City Fails to Consider the Whole of an Action

CEQA provides that a public agency may not divide a single project into smaller individual subprojects to avoid responsibility for considering the environmental impact of the project as a whole. *Orinda Ass'n v Board of Supervisors* (1986) 182 Cal. App. 3d 1145, 1171. CEQA "cannot be avoided by chopping up proposed projects

into bite-sized pieces which, individually considered, might be found to have no significant effect on the environment or to be only ministerial." *Tuolumne County Citizens for Responsible Growth, Inc. v City of Sonora* (2007) 155 Cal App. 4th 1214; *Association for a Cleaner Env't v Yosemite Community College Dist.* (2004) 116 Cal. App. 4th 629, 638; *Plan for Arcadia, Inc. v City Council* (1974) 42 Cal. App. 3d 712, 726.

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

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

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

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

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

Before undertaking a project, the lead agency must assess the environmental impacts of all reasonably foreseeable phases of a project, and a public agency may not segment

a large project into two or more smaller projects. See e.g., *McQueen v. Bd. of Supervisors* (1988) 202 Cal.App.3d 1136, 1146-47. An agency may not limit its ability to consider feasible project alternatives or mitigation measures by approving project-related agreements before completion of a CEQA compliant review. See e.g. *Kings County Farm Bureau*, 221 Cal.App.3d at 736; *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116; *San Joaquin Raptor/Wildlife Rescue Center v. Cnty. of Stanislaus* (1994) 27 Cal.App.4th 713, 730 (held use of "truncated project concept" violated CEQA where EIR was otherwise adequate).

1. *The City Has Not Presented Substantial Evidence Or Findings Of The Project's Compliance With The City's Municipal Code Concerning The Sale Or Dispensing Of Alcoholic Beverages*

The City's Municipal Code requires a conditional use permit ("CUP" or "Conditional Use") for the sale or dispensing of alcoholic beverages, including beer and wine. LAMC § 12.24(W).

The City is required to deny a CUP unless 1) "the project will enhance the built environment in the surrounding neighborhood," 2) "the project's location, size, height, operations and other significant features . . . [are] compatible with and will not adversely affect or further degrade adjacent properties, the surrounding neighborhood, or the public health, welfare and safety" and 3) "the project substantially conforms with the purpose, intent and provisions of the General Plan, the applicable community plan, and any applicable specific plan."

In addition , the Municipal Code requires the City to deny a CUP if the sale or dispensing of alcohol will 1) "adversely affect the welfare of the pertinent community," 2) "result in an undue concentration of premises for the sale or dispensing for consideration of alcoholic beverages, . . . in the area of the City involves, giving consideration to applicable State laws and to the California Department of Alcoholic Beverage Control's guidelines for undue concentration . . ." and 3) will not detrimentally affect nearby residentially zoned communities in the area of the City involved." LAMC § 12.24(W)(1)(a).

The City's Staff Report fails to present evidence of or findings that the Project meets the municipal code requirements for its proposed land use entitlements.

C. The Project Violates Community Redevelopment Law Because is not consistent with the CRL's Affordable Housing Requirements

According to the terms of the development and disposition agreement, "[f]uture use of the Property would be subject to environmental review compliance pursuant to CEQA and CRA/LA approval of the proposed project."[9]

1. *Legal Background on Community Redevelopment Law*

Under Community Redevelopment Law (CRL), Health and Safety Code sections 33000 *et seq*., redevelopment agencies were created to eliminate blight and increase the supply of affordable housing in a manner that cannot be accomplished by private enterprises alone. (Health & Safety Code §§ 33030, 33037, 33320.1.) The City created the Community Redevelopment Agency of the City of Los Angeles ("Former Agency").

All redevelopment agencies including the Former Agency dissolved as a matter of law on February 1, 2012, pursuant to legislation that amended the CRL ("Dissolution Law"). (*California Redevelopment Association v. Matosantos* (2011) 53 Cal.4th 231, 262.) The Dissolution Law established successor agencies to carry out the duties of the former redevelopment agencies. Successor agencies could retain the housing functions of the former redevelopment agency or transfer those responsibilities to another entity. (Health & Saf. Code § 34176.) On January 11, 2012, the City elected not to become the successor agency to the Former Agency, so the CRA/LA was appointed as a Designated Local Authority to wind down the Former Agency's operations.[10]

In 2012, the State passed legislation amending Section 34173 of the Health and Safety Code to allow the transfer of land use related functions of the Former Agency to the City that authorized the creation of the redevelopment agency. (Health & Saf. Code § 34173.) At this time, the City has considered, but not yet used, this legislation to transfer land use functions from CRA/LA to the City.

The Dissolution Law requires the successor agency to prepare an annual report on its housing activities, including any outstanding affordable housing obligations pursuant

[9] Request authority to execute the first amendment to the option agreement between the city and CRA/LA, a designated local authority, *available at,* https://clkrep.lacity.org/onlinedocs/2014/14-0425-S9_rpt_MAYOR_04-02-2019.pdf

[10] CRA/LA's Report dated November 29, 2012, to the Governing Board on Disposition of CRA/LA's Real Property Assets and Interests and Personal Property, *available at*, http://www.crala.org/internetsite/Meetings/Board_Agenda__2012/upload/Dec_13_2012_item_5.pdf

to Health and Safety Code Section 33413, its progress towards meeting those obligations, and its plans to meet the unmet obligations. (Health & Saf. Code § 34176.1 subd. (f).) CRL provides that the successor agency, in this case, CRA/LA, must meet obligations such as the requirement to ensure the production of affordable housing. (Health & Saf. Code §§ 34177 subd. (a) and 34177 subd. (c).) Thus, despite the dissolution of redevelopment agencies, the obligations of CRL regarding housing production remain in force.

To increase the supply of affordable housing, the CRL *requires*, rather than merely encourages, the inclusion of affordable housing units in new residential development within a redevelopment project area. (Health & Saf. Code § 33413 subd. (b)(2)(A)(i).) Fifteen percent of new units in the redevelopment area must be available and affordable too and actually occupied by, households with very low, low and moderate incomes. (Health & Saf. Code § 33413 subd. (b)(2)(A)(i).) Thus, the CRL requires 15% affordable units in all redevelopment areas no matter whether the City or CRA/LA has jurisdiction over them. While the CRL provides that "the agency may aggregate new or substantially rehabilitated dwelling units in one or more project areas," the agency must first find, "based on substantial evidence, after a public hearing, that the aggregation will not cause or exacerbate racial, ethnic, or economic segregation." (*Id.* at subd. (b)(2)(A)(v).)

To ensure affordable housing requirements were met, the Legislature directed agencies to develop a plan to meet these housing requirements and report on implementation every 5 years, or annually if the obligations were not met. (Health & Saf. Code § 33413 subd. (b)(4).) The Dissolution Law requires the CRA/LA to prepare an Annual Report on its housing activities, including any outstanding obligations pursuant to Section 33413, its progress towards meeting those obligations, and its plans to meet the unmet obligations. (Health & Saf. Code § 34176.1 subd. (f)).

"Every redevelopment agency shall comply with and fulfill its obligations with regard to the provision of affordable housing ... prior to the time limit on the effectiveness of the redevelopment plan." (Health & Saf. Code § 33333.8 subd. (a).) The applicable obligations include "The obligation to provide inclusionary housing pursuant to Section 33413...." (Health & Saf. Code § 33333.8 subd. (a)(1)(F).) "If an agency fails to comply with its obligations pursuant to this section, any person may seek judicial relief. The court shall require the agency to take all steps necessary to comply with those obligations, including, as necessary, the adoption of an ordinance,

to incur debt, to obtain tax increments, to expend tax increments, and to enter into contracts as necessary to meet its housing obligations under this part." (Health & Saf. Code § 33333.8 subd. (f).) A redevelopment plan is subject to ordinary rules of statutory construction, and, as a general rule, the various parts of a legislative scheme must be harmonized. (*County of Santa Clara v. Redevelopment Agency* (1993) 18 Cal.App.4th 1008, 1014.)

2. Community Redevelopment Law Requires a Minimum of 15 Percent Affordable Units in New Residential Developments in Redevelopment Areas.

Specifically, CRL requires a portion of new or substantially rehabilitated residential units constructed in redevelopment areas to be set aside for low or moderate-income families or persons. Health and Safety Code Section 33413 mandates:

> Prior to the time limit on the effectiveness of the redevelopment plan established pursuant to Sections 33333.2, 33333.6, and 33333.10 *at least 15 percent of all new and substantially rehabilitated dwelling units developed within a project area under the jurisdiction of an agency by public or private entities or persons other than the agency shall be available at affordable housing cost to, and occupied by, persons and families of low or moderate-income.*

(Health & Saf. Code § 33413 subd. (b)(2)(A)(i), emphasis added.) This requirement is hereinafter referred to as the "15% Requirement." Furthermore, the CRL requires that "not less than 40 percent" of the 15% of units shall be available to and occupied by very low-income households. (*Id.*)

The California Supreme Court recognized that redevelopment areas are one of two types of geographic areas within the state where affordable housing units are explicitly required. (*Cal. Building Industry Assn. v. City of San Jose* (2015) 61 Cal.4th 435, 445-446, emphasis added.)

Under CRL, the Project falls within the geographic scope of the 15% Requirement because it is "new…units developed within a project area under the jurisdiction of an agency…" because it is located within the Hollywood Redevelopment Plan area. (Health & Saf. Code § 33413 subd. (b)(2)(A)(i)) Further, the 15% Requirement applies to the Project because the development is being proposed by applicant Bethune Hotel Ventures, LLC; also known as Orion Capital Ventures, LLC , which is a "…private entit[y]…other than the agency."

3. The City and CRA/LA Failed to Implement and Make Necessary Findings Regarding Their Compliance With and Consistency with the CRL's 15% Requirement

Despite the desperate need for affordable housing within the City, the City and CRA/LA failed to comply with the 15% Requirement under the CRL for the Project. Under CRL, at least 15%, of the total residential units of the Project should be dedicated as affordable units. However, the Project dedicates none, that is 15% of the total units short of the "at least 15%" requirement under CRL. And of that 15% required units, the CRL requires at least 40% of the units, to be for very low-income households. Because the Project dedicates no affordable housing units, the Project is inconsistent with the requirement.

There is no question that the Project does not meet the requirements of the CRL because the Project does not set aside 15 percent of its total proposed units to affordable housing.

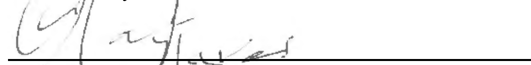
In addition to failing to comply with the 15% Requirement, the Project fails to analyze the its consistency with the CRL's affordable housing requirements.

Further, the CRL additionally requires express findings before a Lead Agency could choose to "aggregate" the percentage requirements. Specifically, the CRL provides that "the agency may aggregate new or substantially rehabilitated dwelling units in one or more project areas," the agency must first find, "based on substantial evidence, after a public hearing, that the aggregation will not cause or exacerbate racial, ethnic, or economic segregation." (*Id.* at subd. (b)(2)(A)(v).)

However, the Project fails to make any findings, let alone provide substantial evidence, that its proposed aggregation of the 15% Requirement "will not cause or exacerbate racial, ethnic, or economic segregation." (*Id.*) As such, the Proposed project can not aggregate its 15% Requirement and it is required to impose it on the Project.

In sum, the Project does not comply with the CRL 15% affordable housing Requirement.

Sincerely,



Mary Linares

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).