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

Mitchell M. Tsai
Attorney At Law

139 South Hudson Avenue
Suite 200
Pasadena, California 91101

VIA E-MAIL

August 15, 2023

Dana Eady, Planning Division Manager
City of Santa Maria
110 South Pine Street, Suite 101
Santa Maria, CA 93458
Em: deady@cityofsantamaria.org

Carol Ziesenhenne, Senior Planner
City of Santa Maria
110 South Pine Street, Suite 101
Santa Maria, CA 93458
Em: cziesenhenne@cityofsantamaria.org

RE: City of Santa Maria's Broadway & Main Street Alvin Newton Mixed-Use Project & Downtown Permit DT2022-0022, Agenda Item 5a

Dear Dana Eady and Planning Commissioners,

On behalf of the Southwest Mountain States Regional Council of Carpenters ("**Southwest Mountain States Carpenters**" or "**SWMSRCC**"), my Office is submitting these comments on the Staff Report for the City of Santa Maria 's ("**City**") **August 16, 2023** Planning Commission meeting for the Broadway and Main Street Alvin Newton Mixed-Use Project ("**Project**").

According to the Planning Commission meeting agenda, the Project proposes to construct a six-story (6), 75,340-square-foot mixed-use building containing 5,760 square feet of ground floor commercial use, eighty-two (82) apartment units, a rooftop deck, outdoor plazas, parking, and a firefighter's memorial. The Project Applicant is seeking a Class 32 (In-Fill Development Projects) categorical exemption under section 15332 of the State California Environmental Quality Act ("**CEQA**") Guidelines ("**CEQA Guidelines**").

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 Project or its CEQA review prior to approval of the Project.[1] 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.

[1] The previously raised challenges to the Project, including, but not limited to, our 11/17/2022 Comment Letter re the City's violation of the Surplus Land Act in approving the Development Agreement for the Project, are applicable to the current approvals, and SWMSRCC fully incorporates those herein by reference as to these approvals. SWMRCC also requests that all such prior objections to the Project be included in the administrative record and be considered for the present approvals.

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.[2]

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.[3]

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.[4]

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.[5] Some municipalities have even tied local hire and

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[2] 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.

[3] 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.

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

[5] 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.

other workforce policies to local development permits to address transportation issues. Cervero and Duncan note that:

> In nearly built-out Berkeley, CA, the approach to balancing jobs and housing is to create local jobs rather than to develop new housing. The city's First Source program encourages businesses to hire local residents, especially for entry- and intermediate-level jobs, and sponsors vocational training to ensure residents are employment-ready. While the program is voluntary, some 300 businesses have used it to date, placing more than 3,000 city residents in local jobs since it was launched in 1986. When needed, these carrots are matched by sticks, since the city is not shy about negotiating corporate participation in First Source as a condition of approval for development permits.

Recently, the State of California verified its commitment towards workforce development through the Affordable Housing and High Road Jobs Act of 2022, otherwise known as Assembly Bill No. 2011 ("**AB2011**"). AB2011 amended the Planning and Zoning Law to allow ministerial, by-right approval for projects being built alongside commercial corridors that meet affordability and labor requirements.

The City should consider utilizing local workforce policies and requirements to benefit the local area economically and to mitigate greenhouse gas, improve air quality, and reduce transportation impacts.

II. THE CITY SHOULD IMPOSE TRAINING REQUIREMENTS FOR THE PROJECT'S CONSTRUCTION ACTIVITIES TO PREVENT COMMUNITY SPREAD OF COVID-19 AND OTHER INFECTIOUS DISEASES

Construction work has been defined as a Lower to High-risk activity for COVID-19 spread by the Occupations Safety and Health Administration. Recently, several construction sites have been identified as sources of community spread of COVID-19.[6]

[6] 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.

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.
- 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.[7]

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.[8]

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

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[7] *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.

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

a project. 14 California Code of Regulations ("**CEQA Guidelines**"), § 15002, subd. (a)(1).[9] At its core, its purpose is to "inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made." *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.

1. Background Concerning Environmental Impact Reports

CEQA directs public agencies to avoid or reduce environmental damage, when possible, by requiring alternatives or mitigation measures. CEQA Guidelines, § 15002, subds. (a)(2)-(3); see also *Berkeley Keep Jets Over the Bay Committee v. Board of Port Comes* (2001) 91 Cal.App.4th 1344, 1354; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553; *Laurel Heights Improvement Assn.*, 47 Cal.3d at p. 400. The EIR serves to provide public agencies and the public in general with information about the effect that a proposed project is likely to have on the environment and to "identify ways that environmental damage can be avoided or significantly reduced." CEQA Guidelines, § 15002, subd. (a)(2). If the project has a significant effect on the environment, the agency may approve the project only upon finding that it has "eliminated or substantially lessened all significant effects on the environment where feasible" and that any unavoidable significant effects on the environment are "acceptable due to overriding concerns" specified in Public Resources Code section 21081. See CEQA Guidelines, § 15092, subds. (b)(2)(A)-(B).

While the courts review an EIR using an 'abuse of discretion' standard, the reviewing court is not to *uncritically* rely on every study or analysis presented by a project 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

[9] 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.

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 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).

IV. THE CITY SHOULD DETERMINE THAT THE PROJECT DOES NOT QUALIFY FOR THE CLASS 32 CEQA EXEMPTION

CEQA exemptions must be construed narrowly. See C*ounty of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 966. Regarding Class 32 exemptions for in-fill development projects, the project must 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.

In addition, Guidelines § 15300.2(b), (c), and (f), respectively, exclude categorical exemptions, where the project may have "cumulative impacts", significant effect due to "unusual circumstances", and impacts to "historical resources." *California Farm Bureau Federation v. California Wildlife Conservation Bd.* (2006) 143 Cal.App.4th 173, 185 ["The lead agency has the burden to demonstrate such substantial evidence."]. Arguments or speculation is not substantial evidence. (Guidelines § 15384.) Further, Guidelines § 15300.2(a), (d), and (e), respectively, disqualify categorical exemptions for location (Classes 3, 4, 5, 6, if the project may "impact on an environmental resource of hazardous

or critical concern where designated, precisely mapped, and officially adopted pursuant to law by federal, state, or local agencies"), impacts on scenic highways, and if the project is proposed on a hazardous waste site ("included in any list compiled pursuant to Section 65962.5 of the Government Code"). As our Supreme Court held, "an activity that may have a significant effect on the environment cannot be categorically exempt." *Mountain Lion Foundation v. Fish & Game Com.* (1997) 16 Cal.4th 105, 124.

Here, the Project fails to meet the required conditions for a Class 32 exemption, as explained below. Therefore, the Project does not qualify for a CEQA exemption.

A. The Project Is Not Consistent with the Applicable Zoning Designation and Regulation

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.

As a preliminary matter, even though the Class 32 exemption requires analysis of the Project's consistency with the applicable plans, including the City's General Plan, the City and its Staff Report for the Planning Commission provides no such analysis whatsoever. Yet, the City has a General Plan with its elements and – to make accurate and complete findings as to whether the Project qualifies for the Class 32 exemption – the City and decisionmakers needs to inquire into the Project's consistency with the General Plan and its Elements.[10] Tellingly, the City's General Plan Land Use Element shows the correlation between the Land Use Element, General Plan and Specific Plan:

[10] General Plan info, available at: https://www.cityofsantamaria.org/services/departments/community-development/planning-division/planning-policies-and-regulations/general-plan.

"13. Specific Plan. A detailed plan for the development of a specific area. It creates a bridge between the General Plan and individual development proposals and directs all facets of future development" and further provides, as relevant here: "2. **Intensity**. A concept which relates to the development of the land. It is often measured by the **height**, setbacks, and **floor-area ratios** of buildings on sites" (General Plan, Land Use Element, p. LU-56/pdf p. 60, emph. added)[11]

It is also critical that the City's General Plan and its CEQA review appear to be decades old. As such, the Project's proposed increased intensity has not been subject to any CEQA review within the scope of the City's General Plan and its impacts related to such density/intensity increases, including excess height, are unstudied. As such, the City cannot make a supported finding on the applicability of CEQA exemption without properly considering whether the Project complies with all the policies of the General Plan and its Elements.

Neither is the Project compliant with the applicable Specific Plan for the area. First, the Staff Report states that the Project must meet all of the applicable Design Guidelines that are set forth in the City of Santa Maria Downtown Specific Plan ("**Downtown Specific Plan**") and then lists eight (8) of the Design Guidelines listed in the Specific Plan. However, the Staff Report leaves out a number of the other applicable Design Guidelines and address how the Project complies with each of those Guidelines. The omissions in the Staff Report are prejudicial and violate CEQA's requirements for good faith disclosures. CEQA Guidelines §§ 15151 (good faith disclosure in EIRs); 15020 ("public agency must meet its own responsibilities under CEQA and shall not rely on comments from other public agencies or private citizens as a substitute for work CEQA requires the Lead Agency to accomplish. For example, a Lead Agency is responsible for the adequacy of its environmental documents. The Lead Agency shall not knowingly release a deficient document hoping that public comments will correct defects in the document.")

As stated by our Supreme Court in *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 521:

[11] See, Land Use Element https://www.cityofsantamaria.org/home/showpublisheddocument/610/635488452782530000;

> To be sure, "'courts have looked not for perfection but for adequacy, completeness, and a good faith effort at full disclosure.'" (*In re Bay-Delta etc.* (2008) 43 Cal.4th 1143, 1175 [77 Cal. Rptr. 3d 578, 184 P.3d 709].) But basic CEQA principles dictate there must be a reasonable effort to put into a meaningful context the conclusion that the air quality impacts will be significant. Although the EIR generally outlines [****34] some of the unhealthy symptoms associated with exposure to various pollutants, it does not give any sense of the nature and magnitude of the "health and safety problems caused by the physical changes" resulting from the Project as required by the CEQA guidelines. (Guidelines, § 15126.2, subd. (a).) Perhaps it was not possible to do more. But even in that case, we would have found the EIR insufficient because it failed to explain why it was not feasible to provide an analysis that connected the air quality effects to human health consequences.

Here, the City's failure to disclose all Downtown Specific Plan's requirements and hence the Project's inconsistencies therewith violate CEQA's requirements for good faith disclosures and thorough investigation imposed on the agency.

Second, the Downtown Specific Plan's height requirements provide that buildings in the Gateway District, where the Project Site is located, cannot exceed seventy (70) feet in height. (Downtown Specific Plan, p. 42.) However, according to the Staff Report, the Project is proposed to be a total of eighty-five (85) feet in height. (Staff Report, p. 11.) While the Staff Report acknowledges the seventy (70) foot height limit, it asserts that the City may consider extra height on a case-by-case basis through the Downtown Permit process if the Project achieves superior design. (*Id.*) Further, the Staff Report asserts that the Project meets all of the applicable Design Guidelines set forth in the Downtown Specific Plan and claims that the additional height offers additional architectural interest and variation in roof planes to prevent an appearance of bulk. (*Id.*)

The City's analysis assumes that the only reason for the limit on the height of the building is to mitigate the aesthetic impacts. However, limitations on height are not only important for aesthetics – they are placed first and foremost to control the

density or intensity of the Project. As the City itself acknowledges in the Downtown Specific Plan:[12]

> "An important initiative of the Downtown Plan is to clearly **spell out development standards** that shape the desired urban form. This Plan **does not** dictate **specific intensities** such as **Floor Area Ratio** (FAR) and/or **residential density** measured in **Dwelling Units** per Acre (DU/AC), **rather** the Plan uses a **form based approach** to development. **Building intensities** are **regulated** through **conformance** to the prescribed **development standards** and **design guidelines**, i.e. **height**, setbacks, parking, form, and massing. These standards are designed to simplify, streamline, and provide customized solutions to site design." (Epmh. Added.)

Here, however, because the City's focus was primarily on aesthetics and whether the Project provides "architectural interest and variation in roof planes to prevent an appearance of bulk," it prejudicially fails to consider whether the Project's excess 15 feet over the maximum allowed is proper from the point of view of the thereby permitted density and intensity proposed by the Project. Stated differently, the City's narrow focus on aesthetics omitted review of the Project's other density-related impacts for purposes of CEQA, such as land use, traffic, air quality, GHG, open space, etc.

It must be also noted that, based on the adopted Downtown Specific Plan, the maximum 70-feet height is the highest allowed in the entire Downtown Specific Plan Area. (See, Downtown Specific Plan, pp. 42-43 and Figure 7.) While the Plan does mention in a footnote that extra height may be allowed, it fails to specify how much such deviation can be. However, arguably, the extra height allowable under the footnote in Figure 7 cannot be interpreted to allow an addition of 15 feet or one-story. Conversely, any Project developer can use that footnote in the Figure 7 in the Downtown Specific Plan and put three stories, as long as it provides an architectural design that is subjectively appealing to the majority of decisionmakers. That would conflict with the very intent of the Downtown Specific Plan to even put caps on the height.

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[12] See, Downtown Specific Plan, p. 40 (pdf p. 46), available at: https://www.cityofsantamaria.org/home/showpublisheddocument/12024/635984697508030000

The City's failure to consider the impacts of such fifteen-foot (15) excess density and intensity the Project adds to the Downtown area is further critical, since downtown areas are typically the densest and built-out areas in the City. Notably, the Project is located in the Downtown Specific Plan area where it will allow significant increases in density and intensity, where the Project Applicant is pursuing similar other sibling projects concurrent with this Project, and along with other developers, despite the fact that the public is concerned about the impacts of such dense developments. (See, **Exhibit F** [5/25/2023 Article in *Sun* re "Santa Maria makes headway on the decades-long Downtown Specific Plan, but residents are concerned about impacts on current neighborhoods and businesses"].)

Also, the record shows that the only time the City's Downtown Specific Plan itself was reviewed for CEQA was in 2008, whereas it was later adopted in 2015.[13] As such, the impacts of such overdevelopment, including excess height and thereby intensity of the Project have not been subject to any CEQA review as part of the Downtown Specific Plan.

The City's narrow focus on aesthetics and narrow interpretation of the case-by-case review allowed under the Plan also improperly renders the cap on building height surplusage, that is, useless or devoid of meaning. (*City and County of San Francisco v. Farrell* (1982) 32 Cal.3d 47, 54 [statutory interpretation that renders terms surplusage should be avoided].)

Lastly, although the Specific Plan does indicate that taller buildings may be evaluated on a case-by-case basis (Staff Report, p. 44), the Staff Report fails to show how additional architectural interest in variation in roof panes achieves this superior design. Thus, the Project's eighty-five-foot (85) building height violates the Downtown Specific Plan's seventy-foot (70) building maximum height requirement and therefore renders the Project inconsistent with the Downtown Specific Plan.

Therefore, the Project is not eligible for the Class 32 CEQA exemption as it is inconsistent with the Specific Plan and as there is no evidence of its consistency with the City's General Plan.

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[13] 2008 Downtown Specific Plan approvals on CEQA net, available at https://ceqanet.opr.ca.gov/Project/2007041105; Notice of determination showing that the Plan would have significant and unavoidable impacts for which in 2008 a statement of overriding considerations was adopted https://ceqanet.opr.ca.gov/2007041105/3

B. The Project May Have Significant Environmental Effects

In addition to being inconsistent with the applicable zoning regulations, the Project is also not eligible for the Class 32 CEQA exemption because it may have significant environmental effects, including but not limited to traffic, air, greenhouse gas emissions, noise, and water. CEQA Guidelines § 15332(d). 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, as follows.

1. The Project May Cause Significant Noise Impacts

The Project may have a significant noise impact. As a preliminary matter, although the Staff Report indeed *asserts* that the Project would not have a significant noise impact (Staff Report, p. 13), the Staff Report provides no factual basis to support this conclusion. In fact, given that the Project Site is situated within 500 feet of various residential apartment buildings, which are sensitive noise receptors, this indicates that the Project may in fact have a noise impact on those sensitive receptors.

Furthermore, the Staff Report states that

> "[a]ny noise generated by the project during construction activities would be temporary while the project is under construction. The noise levels generated by the residential and commercial development would be similar to the existing surrounding land uses and would not result in significant effects or an increase in the existing ambient noise levels of the developed area. Therefore, approval of the project would not result in significant effects relating to water quality, air quality, traffic, or **noise.** No further environmental review is required."

Staff Report, p. 17. [Emphasis added.]

However, yet again, the Staff Report provides no evidence to support the assertions that the noise levels that the Project will generate would be similar to the existing surrounding land uses and therefore that it would not significantly impact or increase the existing noise levels. As noted above, a number of residential apartment units, which are sensitive receptors, are located within a 500-foot vicinity of the Project Site,

which do not generate loud noises. Thus, the Staff Report's assertion that the noise levels would be similar is erroneous.

In addition, the Project fails to consider the traffic noise during both the construction and the operation phase of the Project, in light of its added one additional story and height of fifteen (15) feet.

Neither does the City consider the fact that the Project proposes outdoor plazas and a roof-top deck, which can arguably host events, including loud ones, that may further increase noise levels and attract traffic and noise. Similarly, the City fails to consider the fact that the Project may have significant noise impacts in light of the "food" tenants or restaurants/cafes it proposes on the ground floor, which will arguably be open for longer hours, if not 24 hours.

Because the Project may have a significant noise impact, it does not qualify for the CEQA exemption and the City must prepare an EIR pursuant to CEQA that adequately analyzes and mitigates the Project's potential noise impacts.

2. The Project May Cause Significant Traffic Impacts

As a preliminary matter, the Project proposes to a 75,337-square-foot mixed-use building with a memorial plaza, which is to include eighty-two (82) residential units and 5,616 square feet of commercial space, outdoor plazas, ground-floor restaurants or "food" places, and a roof-top deck which can arguably be open to the general public and may host various events not limited to the residents of the building. Therefore, the increased intensity in use of the Project Site indicates that the Project may attract traffic into the Project site as compared with the current use (Staff Report, p. 14 [Exhibit A [Vicinity Map]]) showing that the Project site is vacant and used solely as a parking or driveway. Hence, the Project may reasonably have a significant traffic impact.

Next, the Staff Report refers to the Traffic and Circulation Study ("**Traffic Study**") that was prepared on March 16, 2023 for this Project and asserts that the Traffic Study indicates that the "area intersections would operate at acceptable levels of service, and according to the City's Environmental Procedures and adopted Vehicle Miles Traveled (VMT) thresholds, the project would result in VMT rates that are below the City's adopted thresholds." (Staff Report, p. 13.) Thus, the Staff Report concludes that the Project would not result in significant traffic impacts, among other

things and thus, that no further environmental review is required. (*Id.*) However, the referenced Traffic Study is defective for multiple reasons.

First, according to the Traffic Study, the Project is forecast to generate 1,023 average daily trips ("**ADT**"), with eighty-eight (88) AM peak hours and eighty-seven (87) PM peak hour trips. (Traffic Study, p. 9.) This in and of itself indicates that the Project may have a significant traffic impact requiring preparation of an EIR.

Second, the Staff Report's reliance on the levels of service at area intersections is misguided. In July 2020, Senate Bill ("**SB**") 743 took effect in order to help reduce transportation impacts. Specifically, SB 743 changed the standard for evaluating transportation impacts under CEQA from a Level of Service ("**LOS**") standard to Vehicle Miles Traveled ("**VMT**") standard. Thus, pursuant to CEQA Guidelines, section 15064.3(a), VMT "is the most appropriate measure of transportation impacts".

While not focused on traffic congestion as with LOS, the VMT standard imposes specific requirements to not exceed or even reduce VMT depending on the type of the project. Thus, according to the 2018 Governor's Office of Planning and Research ("**OPR**") Technical Advisory on Evaluating Transportation Impacts in CEQA ("**OPR Technical Advisory**"), "projects that generate or attract fewer than 110 trips per day generally may be assumed to cause a less-than-significant transportation impact."[14] It then follows that projects generating or attracting more than 110 trips, as here, may have significant impacts.

Therefore, that the Staff Report accepts the Traffic Study's use of LOS rather than VMT and that it considers the VMT levels as acceptable is error as a matter of law. VMT is the applicable standard here, and any reference to LOS should be disregarded.

Third, the Staff Report's assertion that the project would result in VMT levels that are under the City's adopted thresholds misstates what the Traffic Study says. Rather, the Traffic Study prepared for the Project attempts to completely circumvent conducting a VMT analysis altogether. The Traffic Study asserts that:

> "Consistent with the recommendations in the OPR Technical Advisory, Section 4.3.1 of the City of Santa Maria's CEQA Guidelines establishes

[14] Office of Planning and Research, *Technical Advisory on Evaluating Transportation Impacts in CEQA* (Dec. 2018), p. 12, *available at* https://opr.ca.gov/docs/20190122-743_Technical_Advisory.pdf (accessed on May 23, 2023.)

> screening criteria for certain projects that are exempt from performing a detailed VMT analysis and may be presumed to have a less than significant VMT impact. Section 4.3.1-A states that:
>
> > 'The following discretionary development projects are **not subject to VMT analysis**:
> >
> > > Affordable housing projects **where a minimum of 20 percent** of the units are deed restricted for low or very low income residents.'
>
> **25% of the residential portion of the Project consists of affordable housing. The residential portion of the Project therefore satisfies the screening criteria for affordable housing projects** and may be presumed to result in less than significant VMT impacts in accordance with the City of Santa Maria thresholds."

Traffic Study, p. 22. [Emphasis added.]

However, there is no evidence that this Project is in fact including any affordable housing units. First, there is no reference to affordable housing units or deed restrictions anywhere in the Staff Report for this Project. Second, the Traffic Study's Project Description completely lacks any indication that the Project is in fact seeking to include affordable housing units. Rather, the Traffic Study's Project Description merely states that the Project proposes "to construct a 5-story mixed-use building with 97 apartment units and 6,500 SF of ground-floor retail/restaurant space . . ." (Traffic Study, p. 1.) Finally, the City Planner assigned to this Project directly stated in correspondence with this Office that no affordable units are being proposed for the Project at this time. (See **Exhibit E**.)

Therefore, the Traffic Study's reliance upon Section 4.3.1-A of the City's CEQA Guidelines is erroneous as Section 4.3.1-A pertaining to affordable housing projects is clearly inapplicable to this Project.

Therefore, not only does the Staff Report improperly rely upon the Traffic Study's outdated and no longer applicable LOS analysis to conclude that there will be no significant traffic impact (Staff Report, p. 13), but it also erroneously relies upon the Traffic Study to conclude that the project would result in VMT rates below the City's adopted thresholds, which is not what the Traffic Study actually concludes. (*Id.*)

Lastly, under the OPR's issued its 2018 Technical Advisory on Evaluating Transportation Impacts in CEQA,[15] areas outside of metropolitan planning areas, especially rural counties, have fewer options for reducing VMT. (OPR Advisory, 15-16.) As such, VMT thresholds may be best determined on a case-by-case basis. (*Ibid.*) However, for non-rural areas, as here, the land use project VMT thresholds recommended by OPR for projects in metropolitan planning organization (MPO) areas are listed below:

> • For residential projects, OPR recommends a project threshold of 15 percent below the existing VMT per capita, either measured as a regional VMT per capita or as city VMT per capita. The VMT for the residential metric only includes VMT generated by residents, some of which starts and ends outside the area.
>
> • For office projects, OPR recommends a project threshold of 15 percent below the existing regional VMT per employee. The VMT for the office metric only includes VMT generated by workers employed in the area.
>
> • For retail projects, OPR recommends a project threshold of any net increase in total area VMT. Another VMT per capita threshold option is total VMT per service population (total of residents and employees). (*Ibid.* at 12-14.)

It does not appear the Project or its Traffic Study meets these thresholds either or were considered at all.

Therefore, a new Traffic Study must be prepared that analyzes the Project's impacts under the more recent and appropriate VMT standard. Furthermore, the City must prepare an EIR that adequately assesses and mitigates the Project's potential traffic impacts and conduct a VMT analysis for the Project.

3. The Project May Cause Significant Air Quality, Greenhouse Gas Emission, Water, Noise, Human Health, and Wildlife Impacts

For reasons stated above, the Project's traffic impacts are significantly and erroneously understated. This translates into understated traffic-related impacts, such as air quality GHG, noise, and others. There is an acknowledged direct correlation between the increase in traffic impacts and an increase in their associated air quality, greenhouse gas emission ("**GHG**"), and noise impacts. See e.g., *City of Redlands v. County of San*

[15] See, https://opr.ca.gov/docs/20180416-743_Technical_Advisory_4.16.18.pdf

Bernardino (2002) 96 Cal.App.4th 398, 413, "it is reasonable to assume" that a project enabling physical residential development would have reasonably foreseeable indirect air and other impacts.

As stated in the Office of Planning Research's ("OPR") technical advisory in 2018:

> "VMT and Greenhouse Gas Emissions Reduction. Senate Bill 32 (Pavley, 2016) requires California to reduce greenhouse gas (GHG) emissions 40 percent below 1990 levels by 2030, and Executive Order B-16-12 provides a target of 80 percent below 1990 emissions levels for the transportation sector by 2050. The transportation sector has three major means of reducing GHG emissions: increasing vehicle efficiency, reducing fuel carbon content, and reducing the amount of vehicle travel."[16]

Similarly, there is an acknowledged nexus between the increase of traffic and an increase in related air quality, GHG impacts, noise, water/flooding impacts and impacts on human health and natural environment, including wildlife and waterways. As described in the 2018 OPR Technical advisory:

> "VMT and Other Impacts to Health and Environment. VMT mitigation also creates substantial benefits (sometimes characterized as "co-benefits" to GHG reduction) in both in the near-term and the long-term. Beyond **GHG emissions**, **increases** in **VMT** also impact **human health** and the **natural environment**. Human health is impacted as increases in **vehicle travel** lead to **more vehicle crashes**, **poorer air quality**, increases in chronic diseases associated with reduced physical activity, and worse mental health. Increases in vehicle travel also negatively affect other road users, including pedestrians, cyclists, other motorists, and many transit users. The **natural environment** is **impacted** as **higher VMT** leads to more collisions with wildlife and fragments habitat. Additionally, development that leads to more vehicle travel also tends to consume **more energy**, **water**, and **open space** (including farmland and sensitive

[16] Office of Planning and Research, *2018 Technical Advisory on Evaluating Transportation Impacts in CEQA* (Dec. 2018) at 2*, available at* https://opr.ca.gov/docs/20190122-743_Technical_Advisory.pdf

habitat). This increase in impermeable surfaces **raises** the **flood risk** and **pollutant transport** into **waterways**."[17]

As such, the Project does not qualify for the CEQA exemption since it may have traffic, air quality, GHG, energy, water quality, noise, and other impacts, including impacts on human beings and the natural environment.

C. The Project is Not Exempt Since Exceptions to the Exemption Apply

Unlike statutory exemptions, categorical exemptions are not absolute. When a project fits into a categorical exemption class, the agency must consider whether a codified exception 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.

Even if an exemption applies, the Project would nevertheless fall under several exceptions requiring it to undergo environmental review under CEQA.

1. The Project Will Have Cumulative Impacts with Other Related Projects

Yet another reason the Project should not qualify for a Class 32 exemption is because it may have cumulative impacts with other related projects that the City failed to consider. According to the Environmental Clearance Form submitted to the City for the Project, the Applicant states that the Project was "designed in a manner to be complementary to the Town Center West Redevelopment occuring [sic] to the southwest." (See **Exhibit D**.) Furthermore, the Project's Traffic Study identifies at least four (4) other Projects in its cumulative analysis, including the Town Center Drive/Main Street project, the Miller Street/Main Street project, the Broadway/Cook Street project, and the Miller Street/Cook Street. (See, Traffic Study, p. 14.)

There is also evidence that the City is seeking to revitalize the Downtown Specific Plan area and there are currently numerous projects in the pipeline, including by the same

[17] *Id.* at p. 3.

Project applicant as here. (See, **Exhibit F**.) There is also evidence that such impacts of Downtown revitalization were not subject to any CEQA review.

Therefore, the Project's cumulative impacts with other related projects further disqualify it from a Class 32 exemption.

2. The Project Is Not Exempt In Light of Its Potential Impacts to the Historical Resource

Class 32 exemption is also inapplicable in this case under CEQA Guidelines § 15300.2(f) since the Project Site includes a historical resource of the Firefighter Memorial monument. The Staff Report provides in non-specific terms:

> "Firefighter Memorial
>
> Mr. William Alvin Newton was a reserve Santa Maria Firefighter and police officer who perished in the Bradley Hotel Fire on April 25, 1970, on the site where this project is proposed. As a tribute to his memory, the applicant, City Staff and Firefighter stakeholders including the Newton Family and Santa Maria Firefighters Local 2020 have met on several occasions to discuss and plan for the renewal of the memorial. **Currently** on site is a **memorial bronze plaque** with the Fireman's Prayer. Discussions and planning are underway for the **creation** of the **memorial**, such as a **large bronze statue**, as well as a **large memorial foundation** for the **future placement** of the **memorial** in the **center** of the **plaza** area. A **condition** of **approval** (No. 2) has been incorporated into the Downtown Permit to require **submittal** of plans for the memorial to the City for review and approval **prior** to **building permit** issuance. Additionally, a public access easement or dedication to the Recreation and Parks Department is required to cover the plaza area and is required to be recordable prior to building occupancy." (Staff Report, p. 12, emph. added.)

As such, the Site currently contains a historical resource – a bronze plaque, which has been considered as a historical marker for years. (See, **Exhibit G.**) Arguably, in light of its low-intensive use of the Project Site as part of a public park (see, **Exhibit D**), the bronze plaque was visible and served its purpose of commemorating the fallen 35-year-old brave firefighter in 1970. However, the Project proposes an 85-story building on the site, will move the bronze plaque,

and promises to provide a bronze statue in memory of the fallen firefighter. Yet, there is no indication as to whether this historical resource of a bronze plaque or even its successor bronze statue will indeed preserve its historical significance or whether its historical significance will be overshadowed and overpowered by the busy and intensive uses proposed on the Project Site including but not limited to the food places in the outdoor plazas. Moreover, there is no design or form or even size of the statue that is proposed – such details, per the Staff Report, will be developed only at the time of issuing building permits, i.e., outside of the public review and long after the Project approval.

For this reason too, the Project does not qualify for the Class 32 exemption since it will affect the significance of the historical resource and marker on site, without the assurance that such effect may be fully mitigated and historical significance regained by virtue of a new bronze statue, the design, size or form of which is yet unknown and will be known only upon issuance of the building permits to the Developer, outside of public scrutiny and review.

3. The Project Will Have Impacts Due to Unusual Circumstances

The Project is unusual in its mass and scale since it exceeds the maximum highest ever limit of 70 feet in the Downtown Specific Plan area by fifteen (15) feet. There is no proper procedure or incentive for the City to allow such excess height.

Furthermore, the Project is unusual in that its top level provides for a rooftop deck which will arguably be open and may have additional impacts, including the potential to host events at various times of the day and even night and not limited to the residents of the Project Site. Notably, the Project contemplates having "food" tenants on the ground floor, which may present more significant impacts, including energy, traffic, GHG, air quality, water, sewage, waste, fire/police public services, etc.

The Project is also unusual in that it is proposed at a site which has been long used as part of a public park and contained a historical resource on site. The Project proposes to replace the historical bronze plaque with a bronze statue, but fails to provide any details as to the location of the statute and hence fails to show whether the Project will or will not affect and detract the historical significance of the site or the resource therein.

Lastly, the Project provides unusual circumstances in that it proposes outdoor plazas and outdoor events that will draw additional traffic and activity, including for 24 hours,

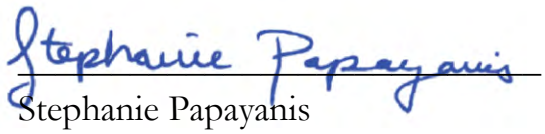
which impacts were not studied in any compliant and recent CEQA document. As noted above, the Project's underlying Downtown Specific Plan was last subject to CEQA review in 2008, and the Project's General Plan is decades old as well. Further, the Project's traffic studies appear to have been based on erroneous assumptions that it may have no impacts or acceptable impacts.

For these reasons as well, the Project presents unusual circumstances excepting the use of the CEQA exemption in this case.

V. CONCLUSION

Based on the foregoing, the City should deny the Project's proposed Class 32 CEQA exemption and require that an Environmental Impact Report be prepared pursuant to CEQA to mitigate the Project's impacts on the environment and comply with state laws, including CEQA.

Sincerely,



Stephanie Papayanis
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);

Air Quality and GHG Expert Matt Hagemann CV (Exhibit C);

Environmental Clearance Application (Exhibit D);

August 9, 2023 Email from Project Planner (Exhibit E);

Santa Maria Sun May 25, 2023 Article re Downtown Specific Plan and the Project (Exhibit F); and

Abstract from the Historical Marker Database re William Alvin Newton Historical Marker (Exhibit G).

EXHIBIT A