

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



Mitchell M. Tsai
Law Firm

139 South Hudson Avenue
Suite 200
Pasadena, California 91101

VIA E-MAIL

December 2, 2024

City of Los Angeles
Planning and Land Use Committee
200 North Spring Street
Los Angeles, CA 90012
Ph: (213) 978-1078
Em: LACouncilComment.com

RE: City of Los Angeles' 3601 – 3615 Mission Road Project (Agenda Item No. 13; Council File No. 23-0796-S1).

Dear Committee Members,

On behalf of the **Western States Regional Council of Carpenters** (“**Western Carpenters**” or “**WSRCC**”), my Office is submitting these comments for the City of Los Angeles’ (“**City**”) Tuesday, December 3, 2024 Planning and Land Use Committee Meeting for Agenda Item No. 13, the 3601 – 3615 Mission Road Project (“**Project**”).

The Western States Regional Council of Carpenters is a labor union representing almost 90,000 union carpenters in 12 states, including California, and has a strong interest in well-ordered land use planning and in addressing the environmental impacts of development projects.

The appeal concerns the previously approved categorical exemption for the Project. The Project proposes the construction, use and maintenance of a new seven-story residential development with 184 residential units, including 47 Very Low Income units, above two levels of automobile parking under the Density Bonus program; for the properties located at 3601 - 3615 Mission Road; and 2010 - 2036 Lincoln Park Avenue.

Individual members of the Western Carpenters live, work, and recreate in the City and surrounding communities and would be directly affected by the Project’s environmental impacts.

The Western 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 Western 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 Western 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:

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>.

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

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

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.

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

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

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

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

Construction work has been defined as a Lower to High-risk activity for COVID-19 spread by the Occupational Safety and Health Administration. Recently, several construction sites have been identified as sources of community spread of COVID-19.⁵

Western Carpenters recommend that the Lead Agency adopt additional requirements to mitigate public health risks from the Project’s construction activities. Western Carpenters 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 Western Carpenters’ experience with safe construction site work practices, Western Carpenters 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.

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>.

- A 48-hour advance notice will be provided to all trades prior to the first day of temperature screening.
- The perimeter fence directly adjacent to the entry points will be clearly marked indicating the appropriate 6-foot social distancing position for when you approach the screening area. Please reference the Apex temperature screening site map for additional details.
- There will be clear signage posted at the project site directing you through temperature screening.
- Provide hand washing stations throughout the construction site.

Testing Procedures:

- The temperature screening being used are non-contact devices.
- Temperature readings will not be recorded.
- Personnel will be screened upon entering the testing center and should only take 1-2 seconds per individual.
- Hard hats, head coverings, sweat, dirt, sunscreen or any other cosmetics must be removed on the forehead before temperature screening.
- Anyone who refuses to submit to a temperature screening or does not answer the health screening questions will be refused access to the Project Site.
- Screening will be performed at both entrances from 5:30 am to 7:30 am.; main gate [ZONE 1] and personnel gate [ZONE 2]
- After 7:30 am only the main gate entrance [ZONE 1] will continue to be used for temperature testing for anybody gaining entry to the project site such as returning personnel, deliveries, and visitors.

- If the digital thermometer displays a temperature reading above 100.0 degrees Fahrenheit, a second reading will be taken to verify an accurate reading.
- If the second reading confirms an elevated temperature, DHS will instruct the individual that he/she will not be allowed to enter the Project Site. DHS will also instruct the individual to promptly notify his/her supervisor and his/her human resources (HR) representative and provide them with a copy of Annex A.

Planning

- Require the development of an Infectious Disease Preparedness and Response Plan that will include basic infection prevention measures (requiring the use of personal protection equipment), policies and procedures for prompt identification and isolation of sick individuals, social distancing (prohibiting gatherings of no more than 10 people including all-hands meetings and all-hands lunches) communication and training and workplace controls that meet standards that may be promulgated by the Center for Disease Control, Occupational Safety and Health Administration, Cal/OSHA, California Department of Public Health or applicable local public health agencies.⁶

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

⁶ See also The Center for Construction Research and Training, North America's Building Trades Unions (April 27 2020) NABTU and CPWR COVID-19 Standards for U.S. Construction Sites, available at https://www.cpw.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.

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

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

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

III. THE CITY SHOULD GRANT THE APPEALS FILED BY LINCOLN HEIGHTS PRESERVATION COALITION AND SAFER

CEQA has two basic purposes. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project. 14 California Code of Regulations (“**CCR**” or “**CEQA Guidelines**”) § 15002(a)(1). “Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR ‘protects not only the environment but also informed self-government.’ [Citation.]” *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 564. The EIR has been described as “an environmental ‘alarm bell’ whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.” *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm’rs.* (2001) 91 Cal. App. 4th 1344, 1354 (“Berkeley Jets”); *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

Second, CEQA directs public agencies to avoid or reduce environmental damage when possible by requiring alternatives or mitigation measures. CEQA Guidelines § 15002(a)(2) and (3). *See also, Berkeley Jets*, 91 Cal. App. 4th 1344, 1354; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553; *Laurel Heights Improvement Ass’n v. Regents of the University of California* (1988) 47 Cal.3d 376, 400. The EIR serves to provide public agencies and the public in general with information about the effect that a

⁷ For details concerning Western Carpenters’s ICRA training program, *see* <https://icrahealthcare.com/>.

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(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 CEQA section 21081. CEQA Guidelines § 15092(b)(2)(A–B).

A. CEQA Exemptions Are Narrowly Construed, and the Project Does Not Meet the Class 32 Exemption Requirements.

CEQA exemptions must be construed narrowly. See *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 966. With regard to 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.

Moreover, categorical exemptions are not absolute. Even if a project fits into a categorical exemption class, the agency must consider whether a codified exception to exemption applies. Guidelines § 15300.2. A project falling within a categorical exemption may require environmental review if the project is subject to exceptions-to-the-exemptions listed under CEQA Guidelines § 15300.2, which include projects involving: (a) locations involving environmental resources of hazardous or critical concern; (b) significant cumulative impact of successive projects of the same type in

the same place; (c) reasonable possibility of significant environmental effect due to unusual circumstances; (d) damage to scenic resources on State scenic highways; (e) locations listed as a hazardous waste site; or (f) substantial adverse changes to a historical resource.

Here, the Project fails to comply with all the required conditions, specifically the Project lacks consistency with the applicable general plan, has likely significant impacts on traffic, air quality, and noise, and fails to establish it can be adequately served by Public Utilities. Therefore, the Project does not qualify for the Class 32 CEQA exemption and the appeals must be granted.

1. *The Project Is Inconsistent with the General Plan and Applicable General Plan Policies, Development and Zoning Regulations.*

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

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

Here, the Project requests numerous departures from the ordinary limits permitted by the General Plan and zoning designations, including but not limited to a conditional use permit to increase the density beyond the allowable 35%, density bonus, floor area ratio increase based on calculation of the gross lot area along with highway dedications, side yard reductions, deviation from the 36 feet height limitation.

These and other deviations show that the Project is not consistent with the zoning regulations.

In addition, the Project is subject to the Housing Replacement Requirement, which, per the ZIMAS information, indicates that the Project site is listed in the Housing

Element.⁸ While the Project is providing affordable units, there is no information as to what is the Project's share per the Housing Element and whether the Project meets that share and thus is consistent with the Housing Element.

Moreover, given the number of deviations the Project Applicant seeks, it far exceeds the number of incentives and concessions under the State Density Bonus Law.

Thus, given that the incentives and conditional use permit have not yet been approved (and potentially would be impossible to approve) and they far exceed the number of allowable density increase or incentives under the state law or zoning regulations, and therefore the Project is inconsistent with the General Plan and all applicable zoning regulations, rendering it ineligible for a Class 32 CEQA exemption.

2. *The Project May Have Significant Environmental Effects, Including on Traffic/Circulation, Air Quality, Greenhouse Gas Emissions, Water, and Noise.*

To qualify for a Class 32 Exemption, CEQA Guidelines § 15332(d) require a showing that the Project may not have impacts to traffic, noise, air quality, and water. Similarly, 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 and therefore does not meet the requirement for a CEQA exemption.

Specifically, the very nature of the Project, i.e. constructing a 7-story mixed-use residential building in an R3-1 zoning (R3 zoning and height district 1 [low]),⁹ in place of a current parking lot (thereby completely removing parking for the park and other businesses relying on it), and, in addition, adding more intensity and density and yet not providing the required parking per the Code, shows that the Project may have significant parking impacts, and, in turn, indirect impacts, related to air quality and greenhouse gas emissions. Parking impacts, especially their indirect impacts, are still a subject for CEQA's study. *Taxpayers for Accountable School Bonding v. San Diego Unified School Distr.* (2013) 215 Cal.App.4th 1013; *Covina Residents for Responsible Development v.*

⁸ See, <http://zimas.lacity.org/documents/zoneinfo/ZI2512.pdf>

⁹ See, summary of zoning and their development standards:
https://planning.lacity.org/odocument/eacdb225-a16b-4ce6-bc94-c915408c2b04/Zoning_Code_Summary.pdf

City of Covina (2018) 21 Cal.App.5th 712, 728 (“While *secondary parking* impacts caused by ensuing traffic congestion (“air quality, noise, safety, or any other impact associated with transportation”) *must* be addressed....” *Id.* at 728, *emph. added.*)

In addition, the Project – due to its mass and scale and location near the park – may create potentially significant *operational* traffic, air quality, water, and noise issues stemming from the sheer increase in density and intensity of land use on the Project site.

Coupled with the fact that the construction of the Project will reduce the available parking in the area and will encroach on public right of way, it may reasonably foreseeably involve significant road closures, street detours, and loud construction equipment, and therefore has the potential to cause significant *construction* traffic, air quality, water, and noise impacts.

Further, these impacts may be more significant since, the Project seeks construction next to power lines. To the extent the Project’s staging of heavy construction equipment may foreseeably occur in the public right of way and on top of utility connections, the Project may also have a significant impact on public utilities, traffic and circulation for those reasons. This may well translate into more air quality, greenhouse gas emissions, noise and other traffic-related impacts.

Without any Project-specific analysis quantifying the Project’s anticipated traffic, air quality, water and noise impacts, there is no substantial evidence to support the Project’s Class 32 exemption. Thus, the Class 32 CEQA exemption is improper.

3. *There Is No Evidence that The Project Site Can Be Adequately Served by All Required Utilities and Public Services.*

Under CEQA Guidelines section 15332(d), there must be evidence that the Project site can be adequately served by all required utilities and public services. Here, there is no evidence that the Project site is equipped to handle the additional energy, water, and waste consumption of new residential units in place of what has been historically a parking lot. In fact, the evidence points to the opposite conclusion since the sewer availability and waste drainage subsections of the Project permit have not yet been cleared by the Bureau of Engineering. Accordingly, the Project does not qualify for the Class 32 exemption, and the appeals must be granted.

B. The Project Is Subject to Exceptions to the Class 32 Exemption

Pursuant to CEQA Guidelines section 15300.2(c), “a categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.” Here, given the Project’s plan to excavate more than 5 feet deep and construct a building exceeding the maximum allowable 36 feet, as well as the Project’s location near the historic Lincoln Park and historic USC hospital, the Project presents unusual circumstances, with the possibility to result in significant environmental effects.

In addition, and critically, the Project – and its 86-foot tall building – is proposed *within* an active earthquake fault area. While such location is insignificant for the Project site’s existing use of a surface public lot, the Project may reasonably foreseeably exacerbate the environmental conditions and cause hazards impacts upon construction of an 86-foot tall building **within an active earthquake fault**. It is questionable if the Project is allowed, under the California Building Code and municipal regulations, to rise to that height and whether it is allowed, as it now seeks, to reduce the side yards and maximize Floor Area Ratio and density/intensity by counting street and alley dedications as part of its gross lot acreage while calculating base density and density bonus.

Thus, the Project’s unusual mass and scale, location next to the Lincoln Park and other historic places, next to Metro’s active construction, as well as siting in the active earthquake fault presents an undisputed unusual circumstance, which may exacerbate its impacts, including safety, hazards, traffic/emergency/evacuation, air, noise, and others.

Similarly, pursuant to CEQA Guidelines section 15300.2(b), all exemptions “are inapplicable when the cumulative impact of successive projects of the same type in the same place, over time is significant.” Here, per the Urbanize LA Article, there are several similar development projects being proposed or constructed directly near the Project (e.g., USC) which may result in cumulative impacts. In addition, there is Metro’s construction, which may have at the very minimum cumulative construction impacts.

The Project, along with these and other nearby projects, may collectively contribute to potentially significant cumulative impacts on air quality, noise, and traffic congestion in the neighborhood and next to Lincoln Park.

In addition, to the extent the Project's siting in the active earthquake fault may affect human beings, including visitors of the Park, as well as the future residents or visitors of the Project site or construction workers in the area, the Project also requires **mandatory findings of significance** and an **EIR** under CEQA Guidelines § 15065(a)(3) [cumulative impacts] and (4) [adverse impacts to human beings].

For these reasons too, the Class 23 CEQA exemption is not applicable since the exceptions under CEQA Guidelines section 15300.2 apply.¹⁰

In sum, the prongs of the Class 32 Exemption are not met; the Project is also subject to at least unusual circumstances and cumulative impacts exceptions from exemption, making Class 32 exemption inapplicable here and mandating an EIR.

C. The City Should Prepare an EIR for the Project

A strong presumption in favor of requiring preparation of an EIR is built into CEQA. This presumption is reflected in what is known as the "fair argument" standard, under which an agency must prepare an EIR whenever substantial evidence in the record supports a fair argument that a project may have a significant effect on the environment. *Quail Botanical Gardens Found., Inc. v City of Encinitas* (1994) 29 CA4th 1597, 1602; *Friends of "B" St. v City of Hayward* (1980) 106 Cal.App.3d 988, 1002.

The fair argument test stems from the statutory mandate that an EIR be prepared for any project that "may have a significant effect on the environment." Pub Res C §21151; *No Oil, Inc. v City of Los Angeles* (1974) 13 C3d 68, 75; *Jensen v City of Santa Rosa* (2018) 23 CA5th 877, 884. Under this test, if a proposed project is not exempt and *may* cause a significant effect on the environment, the lead agency *must* prepare an EIR. Pub Res C §§21100(a), 21151; 14 Cal Code Regs §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 CA4th 768, 785. In such a situation, the agency must adopt a negative declaration. Pub Res C §21080(c)(1); 14 Cal Code Regs §§15063(b)(2), 15064(f)(3).

¹⁰ Per the Building Permits Info, the Project's activities will occur next to trees. As such, depending on the type and size of trees involved and whether they are protected or not, the Project may have an impact on biological resources and thereby make the Class 32 exemption improper or otherwise trigger an unusual circumstances exception.

"Significant effect upon the environment" is defined as "a substantial or potentially substantial adverse change in the environment." Pub Res C §21068; 14 Cal Code Regs §15382. See §13.2. A project "may" have a significant effect on the environment if there is a "reasonable probability" that it will result in a significant impact. *No Oil, Inc. v City of Los Angeles*, 13 C3d at 83 n16; *Sundstrom v County of Mendocino* (1988) 202 CA3d 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. 14 Cal Code Regs §15063(b)(1). See *County Sanitation Dist. No. 2 v County of Kern* (2005) 127 CA4th 1544, 1580.

This standard sets a "low threshold" for preparation of an EIR. *Consolidated Irrig. Dist. v City of Selma* (2012) 204 CA4th 187, 207; *Nelson v County of Kern* (2010) 190 CA4th 252; *Pocket Protectors v City of Sacramento* (2004) 124 CA4th 903, 928; *Bowman v City of Berkeley* (2004) 122 CA4th 572, 580; *Citizen Action to Serve All Students v Thornley* (1990) 222 CA3d 748, 754; *Sundstrom v County of Mendocino* (1988) 202 CA3d 296, 310. If substantial evidence in the record supports a fair argument that the project may have a significant environmental effect, the lead agency must prepare an EIR even if other substantial evidence before it indicates the project will have no significant effect. See *Jensen v City of Santa Rosa* (2018) 23 CA5th 877, 886; *Clews Land & Livestock v City of San Diego* (2017) 19 CA5th 161, 183; *Stanislaus Audubon Soc'y, Inc. v County of Stanislaus* (1995) 33 CA4th 144, 150; *Brentwood Ass'n for No Drilling, Inc. v City of Los Angeles* (1982) 134 CA3d 491; *Friends of "B" St. v City of Hayward* (1980) 106 CA3d 988. See also 14 Cal Code Regs §15064(f)(1).

There is a fair argument that the Project will have a significant effect on the environment, especially as it pertains to erroneous CEQA determination and exemption. As a result, the "low threshold" for preparation of an EIR has been met and the City must prepare an EIR.

IV. CONCLUSION

In sum, WSRCC requests that the City require a local workforce, that the City impose training requirements for the Project's construction activities, and ensure COVID-19 safe practices. WSRCC requests that the City grant the two appeals filed against the Project as the Class 32 Exemption is clearly not applicable to the Project. Further, WSRCC requests that the City require an EIR be prepared for the Project to adequately analyze and mitigate the Project's significant impacts. If the City has any questions, feel free to contact my office.

Sincerely,



Grace Holbrook
Attorneys for Western 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).