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

Mitchell M. Tsai
Law Firm

139 South Hudson Avenue
Suite 200
Pasadena, California 91101

VIA E-MAIL

April 28, 2025

Planning Commission
City of Goleta
130 Cremona Drive
Goleta, California 93117
Ph: (805) 961-7505
Em: PERmeetings@cityofgoleta.org

Brian Hiefield, Associate Planner
City of Goleta
130 Cremona Drive, Suite B
Goleta, California 93117
Ph: (805) 961-7559
Em: bhiefield@cityofgoleta.org

RE: Planning Commission April 28, 2025, Meeting – Agenda Item B.1 Sywest Industrial Building Project (Case No. 17-121-DP) – Final Environmental Impact Report (SCH# 2023040690)

Dear Chair Fullerton, Honorable Commissioners, and Brian Hiefield,

On behalf of the Western States Regional Council of Carpenters ("**Western States Carpenters**" or "**WSRCC**"), our firm is submitting these comments in connection with the City of Goleta's ("**City**") April 28, 2025, Planning Commission meeting concerning the Sywest Industrial Building Project ("**Project**") and the Final Environmental Impact Report ("**FEIR**") associated therewith.

The Project, as proposed, would include construction of a 70,594 square foot industrial warehouse building with 60,939 square feet of landscaping, 101 parking spaces, six loading zones, and 10 bicycle parking spaces. The maximum building height would be 35 feet measured from the finished grade, with the site being raised 4-6 feet via soil fill to elevate the finished floor of the building above of the mapped 100-year floodplain encompassing the Project site. The floor area of the Project's industrial warehouse building could potentially be divided into up to four sections and would be available for use by up to four tenants. Additionally, the Project's original design request includes a buffer reduction of 75 feet (from 100' to 25') for the site's adjacent streamside protection area (SPA).

The Project would also require demolition of an existing drive-in theater on the Project site, including the freestanding movie screen, concessions stand, projector

building, two drive-through ticket booths, one walk-in ticket booth, and an agricultural box, and removal of one of the site's dewatering wells.

Access to and from the Project site would continue to be provided from South Kellogg Avenue via an existing access road that runs along the northeast project boundary. The east curb of the existing driveway would be widened in order to provide an adequate maneuvering area for delivery trucks to enter and exit the project site.

The Project would also involve construction of a detention basin for stormwater runoff at the southern border of the development area, with a new 18-inch outfall to be constructed in the existing San Jose Creek concrete channel wall. To account for stormwater runoff for the northeastern portion of the Project site, a vegetated drainage swale would be constructed along the eastern side of the entry driveway, where stormwater would collect prior to discharge to the site's existing storm drain outlet located approximately 115 feet south of the intersection of South Kellogg Avenue and the entry driveway.

See NOA, pp. 1-2.

WSRCC represents thousands of union carpenters in Santa Barbara County and has a strong interest in well-ordered land use planning and in addressing the environmental impacts of development projects.

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

WSRCC 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.

WSRCC incorporates by reference all comments related to the Project or its CEQA review, including the Environmental Impact Report. 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, WSRCC 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 by contractors who participate in a Joint Labor-Management Apprenticeship Program approved by the State of California and make a commitment to hiring a local workforce.

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

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

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

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

> [L]abor should be considered an investment rather than a cost—and investments in growing, diversifying, and upskilling California's workforce can positively affect returns on climate mitigation efforts. In other words,

> well-trained workers are key to delivering emissions reductions and moving California closer to its climate targets.[1]

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

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

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

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

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

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

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

[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.

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.[5]

[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.

The Western States Carpenters recommend that the City adopt additional requirements to mitigate public health risks from the Project's construction activities. The Western States Carpenters requests that the City 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 the Western States Carpenters' experience with safe construction site work practices, the Western States Carpenters recommends that the City require that while construction activities are being conducted at the Project Site:

Construction Site Design:

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

Testing Procedures:

- The temperature screening being used are non-contact devices.
- Temperature readings will not be recorded.

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

Planning

- Require the development of an Infectious Disease Preparedness and Response Plan that will include basic infection prevention measures (requiring the use of personal protection equipment), policies and procedures for prompt identification and isolation of sick individuals, social distancing (prohibiting gatherings of no more than 10 people including all-hands meetings and all-hands lunches)

> communication and training and workplace controls that meet standards that may be promulgated by the Center for Disease Control, Occupational Safety and Health Administration, Cal/OSHA, California Department of Public Health or applicable local public health agencies.[6]

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

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

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

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

III. THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

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

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

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

[8] The CEQA Guidelines, codified in Title 14 of the California Code of Regulations, section 15000 et seq., are regulatory guidelines promulgated by the state Natural Resources Agency

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[.]'" *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564 (internal citation omitted).

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

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 Commissioners of the City of Oakland* (2001) 91 Cal.App.4th 1344, 1354; *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 400. The Environmental Impact Report (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).

A public agency must prepare an EIR whenever substantial evidence supports a "fair argument" that a proposed project "may have a significant effect on the environment." Pub. Res. Code, §§ 21100, 21151; CEQA Guidelines, §§ 15002, subds. (f)(1)-(2), 15063; *No Oil, supra,* 13 Cal.App.3d at p. 75; *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 111-112. 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).

Essentially, should a lead agency be presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR

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for the implementation of CEQA. 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.

even though it may also be presented with other substantial evidence that the project will not have a significant effect. CEQA Guidelines, §§ 15064(f)(1)-(2); see *No Oil, supra,* 13 Cal.App.3d at p. 75 (internal citations and quotations omitted). Substantial evidence includes "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." CEQA Guidelines, § 15384, subd. (a).

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.

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.

Further, it is the duty of the lead agency, not the public, to conduct the proper environmental studies. "The agency should not be allowed to hide behind its own failure to gather relevant data." *Sundstrom, supra,* 202 Cal.App.3d at p. 311. "Deficiencies in the record may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences." *Ibid*; see also *Gentry v. City of*

Murrieta (1995) 36 Cal.App.4th 1359, 1382 (lack of study enlarges the scope of the fair argument which may be made based on the limited facts in the record).

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

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 Keep Jets*, *supra*, 91 Cal.App.4th at p. 1355 (quoting *Laurel Heights, supra,* 47 Cal.3d at pp. 391, 409 fn. 12) (internal quotations omitted). A clearly inadequate or unsupported study is entitled to no judicial deference. *Ibid.* 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 First District Court of Appeal has previously stated, prejudicial abuse of discretion occurs if the failure to include relevant information precludes informed decision-making and informed public participation, thereby thwarting the statutory goals of the EIR process. *Berkeley Keep Jets, supra*, 91 Cal.App.4th at p. 1355 (internal quotations omitted).

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

Section 15088.5(a) of the CEQA Guidelines provides that an EIR must be recirculated whenever there is disclosure of significant new information. Significant new information includes: (1) disclosure of a new significant environmental impact resulting from the project or from a new proposed mitigation measure; (2) disclosure

of a substantial increase in the severity of an environmental impact unless mitigation measures are adopted that reduce the impact to a level of insignificance; and (3) disclosure of a feasible project alternative or mitigation measure considerably different from others previously analyzed which would clearly lessen the significant environmental impacts of the project which the project proponents decline to adopt. *Id.*

Additionally, an EIR must be recirculated when it is so fundamentally inadequate and conclusory in nature that meaningful public review and comment is precluded. *Id.* (citing *Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043).

Here, as discussed below, the FEIR fails to substantiate all of its conclusions to allow meaningful public review and comment, provide adequate mitigation measures, and fully assess all pertinent environmental factors. Accordingly, this comment letter discloses significant new information, necessitating revision and recirculation of the FEIR.

IV. THE FEIR IS INADEQUATE UNDER CEQA AND SHOULD BE REVISED AND RECIRCULATED

A. The FEIR Fails to Support Its Findings with Substantial Evidence

CEQA requires that an EIR identify and discuss the significant effects of a Project, how those significant effects can be mitigated or avoided. CEQA Guidelines § 15126.2; PRC §§ 21100(b)(1), 21002.1(a). If a project has a significant effect on the environment, an 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." CEQA Guidelines § 15092(b)(2)(A–B). Such findings must be supported by substantial evidence. CEQA Guidelines § 15091(b).

When new information is brought to light showing that an impact previously discussed in the EIR but found to be insignificant with or without mitigation in the EIR's analysis has the potential for a significant environmental impact supported by substantial evidence, the EIR must consider and resolve the conflict in the evidence. See *Visalia Retail, L.P. v. City of Visalia* (2018) 20 Cal. App. 5th 1, 13, 17; see also *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal. App. 4th 1099, 1109. While a lead agency has discretion to formulate standards for determining significance and the need for mitigation measures—the choice of any standards or

thresholds of significance must be "based to the extent possible on scientific and factual data and an exercise of reasoned judgment based on substantial evidence. CEQA Guidelines § 15064(b); *Cleveland Nat'l Forest Found. v. San Diego Ass'n of Gov'ts* (2017) 3 Cal. App. 5th 497, 515; *Mission Bay Alliance v. Office of Community Inv. & Infrastructure* (2016) 6 Cal. App. 5th 160, 206. And when there is evidence that an impact could be significant, an EIR cannot adopt a contrary finding without providing an adequate explanation along with supporting evidence. *East Sacramento Partnership for a Livable City v. City of Sacramento* (2016) 5 Cal. App. 5th 281, 302.

In addition, a determination that regulatory compliance will be sufficient to prevent significant adverse impacts must be based on a project-specific analysis of potential impacts and the effect of regulatory compliance. In *Californians for Alternatives to Toxics v. Department of Food & Agric.* (2005) 136 Cal. App. 4th 1, the court set aside an EIR for a statewide crop disease control plan because it did not include an evaluation of the risks to the environment and human health from the proposed program but simply presumed that no adverse impacts would occur from use of pesticides in accordance with the registration and labeling program of the California Department of Pesticide Regulation. *See also Ebbetts Pass Forest Watch v Department of Forestry & Fire Protection* (2008) 43 Cal. App. 4th 936, 956 (fact that Department of Pesticide Regulation had assessed environmental effects of certain herbicides in general did not excuse failure to assess effects of their use for specific timber harvesting project).

Here, for the reasons discussed in detail below, the FEIR fails to comply with the foregoing requirements.

1. The FEIR Omits Critical Information in Its Analysis of the Project's Cumulative Impacts

An EIR must discuss a cumulative impact if the project's incremental effect combined with the effects of other projects is "cumulatively considerable." 14 C.C.R. §15130(a). This determination is based on an assessment of the project's incremental effects "viewed in connection with the effects of ***past projects***, the effects of other current projects, and the effects of probable future projects." 14 C.C.R. §15065(a)(3)(emphasis added); *Banning Ranch Conservancy v City of Newport Beach* (2012) 211 CA4th 1209, 1228. See also 14 C.C.R. §15355(b).

The CEQA Guidelines require that an EIR implement the provisions of Pub. Res. Code §21083(b)(2), which specifies that the Guidelines must include criteria requiring

public agencies to find that a project may have a significant effect on the environment if its possible effects "are individually limited but cumulatively considerable."

The purpose of the cumulative impacts analysis is to avoid considering projects in a vacuum, because failure to consider cumulative harm may risk environmental disaster. *Whitman v Board of Supervisors* (1979) 88 Cal.App.3d 397, 408 (*citing Natural Resources Defense Council v Callaway* (2d Cir 1975) 524 F2d 79). Without this analysis, piecemeal approval of several projects with related impacts could lead to severe environmental harm. *Golden Door Props., LLC v County of San Diego* (2020) 50 Cal.App.5th 467, 527; *San Joaquin Raptor/Wildlife Rescue Ctr. v County of Stanislaus* (1994) 27 Cal.App.4th 713, 720; *Las Virgenes Homeowners Fed'n v County of Los Angeles* (1986) 177 Cal.App.3d 300, 306. An adequate analysis of cumulative impacts is particularly important when another related project might significantly worsen the project's adverse environmental impacts. *Friends of the Eel River v Sonoma County Water Agency* (2003) 108 CA4th 859.

An EIR must discuss cumulative impacts when they are significant, and the project's incremental contribution is "cumulatively considerable." 14 C.C.R. §15130(a). A project's incremental contribution is cumulatively considerable if the incremental effects of the project are significant "when viewed in connection with the effects of ***past projects***, the effects of other current projects, and the effects of probable future projects." 14 C.C.R. §15065(a)(3) (emphasis added).

Here, the FEIR for the Project already notes that the Project is anticipated to have significant and unavoidable impacts singularly in the areas of Aesthetics, Biological Resources, Land Use and Planning, and Solid Waste and cumulatively in the impact area of Solid Waste. Despite the scope of significant impacts presented by the Project both individually and cumulatively, the FEIR contains no reference to or consideration whatsoever of several nearby ***past*** development projects (as required by 14 C.C.R. §15065(a)(3)) that have already been completed. Indeed, Table 3-1 of the FEIR lists the projects that the FEIR considered, in conjunction with the proposed Project, as part of its cumulative impacts analysis. See FEIR at pp. 3-3 – 3-4. However, the FEIR's Cumulative Projects list omits a number of previously-completed large-scale nearby projects within the operative radius of the Project, and their associated environmental impacts, including the Santa Barbara Airport, the Goleta Sanitary District wastewater treatment facility, the La Goleta Gas Field, and the University of California – Santa Barbara. Indeed, the FEIR does not consider, address, and incorporate the environmental review findings for any of the foregoing significant and

environmentally-impactful past development projects, despite the fact that these other major projects are all sited within approximately 1 mile of the proposed Project site. Moreover, the FEIR admits that its cumulative impacts analysis "was based on planned, pending, and reasonably foreseeable projects [in the vicinity of the Project area] at the time of the Notice of Preparation in April 2023," and without regard to any past major projects in that same geographic vicinity, all in direct contravention of the CEQA Guidelines, 14 C.C.R. §15065(a)(3). See FEIR, p. 3-2.

These significant omissions taint and effectively undermine the validity of much of the cumulative impacts analysis set forth in the FEIR. Indeed, the failure to consider these previously-completed, significant, large-scale, industrial and/or institutional development projects in the immediate vicinity of the proposed Project calls into question the FEIR's cumulative impacts analysis as a whole. The FEIR must now be revised with respect to each of the impact categories studied to incorporate any significant past projects within the operative cumulative projects radius, including the Santa Barbara Airport, the Goleta Sanitary District wastewater treatment facility, the La Goleta Gas Field, and the University of California – Santa Barbara, in its cumulative impacts analysis. Absent such revision, the FEIR in its current form violates CEQA and cannot permissibly be certified by the City.

B. The FEIR's Mitigation Measures Are Insufficient

A fundamental purpose of an EIR is to identify ways in which a proposed project's significant environmental impacts can be mitigated or avoided. Pub. Res. Code §§ 21002.1(a), 21061. To implement this statutory purpose, an EIR must describe any feasible mitigation measures that can minimize the project's significant environmental effects. PRC §§ 21002.1(a), 21100(b)(3); CEQA Guidelines §§ 15121(a), 15126.4(a).

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" PRC §§ 21002; 21002.1, 21081; CEQA Guidelines §§ 15091, 15092(b)(2)(A); and find that 'specific overriding economic, legal, social, technology or other benefits of the project outweigh the significant effects on the environment." PRC §§ 21002; 21002.1, 21081; CEQA Guidelines §§ 15091, 15092(b)(2)(B). "A gloomy forecast of environmental degradation is of little or no value without pragmatic, concrete means to minimize the impacts and restore ecological equilibrium." *Environmental Council of Sacramento v. City of Sacramento* (2006) 142 Cal.App.4th 1018, 1039.

CEQA mitigation measures proposed and adopted are required to describe what actions will be taken to reduce or avoid an environmental impact. (CEQA Guidelines § 15126.4(a)(1)(B) [providing "[f]ormulation of mitigation measures should not be deferred until some future time."].) While the same Guidelines section 15126.5(a)(1)(B) acknowledges an exception to the rule against deferrals, such exception is narrowly proscribed to situations where it is impractical or infeasible to include those details during the project's environmental review.

According to CEQA Guidelines, "[w]hen an EIR has been prepared for a project, the Responsible Agency shall not approve the project as proposed if the agency finds any feasible alternative or feasible mitigation measures within its powers that would substantially lessen or avoid any significant effect the project would have on the environment." CEQA Guidelines Section 15096(g)(2).

Here, the FEIR's mitigation measures for the Project are inadequate as follows:

1. The FEIR's Mitigation Measures Are Improperly Deferred for Various Impact Categories

CEQA forbids deferred mitigation. Guidelines § 15126.4(a)(1)(B). CEQA allows deferral of details of a mitigation measure only "when it is impractical or infeasible to include those details during the project's environmental review." (*Id.*) CEQA further requires: "that the agency (1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) identifies the type(s) of potential action(s) that can feasibly achieve that performance standard…" Guidelines § 15126.4(a)(1)(B). Deferring formulation of a Project's actual mitigation measures to some undefined time after the Project's approval is improper and cannot be used as a substitute for proper mitigation under CEQA. Impermissible deferral can occur when an EIR calls for mitigation measures to be created based on future studies or describes mitigation measures in general terms but the agency fails to commit itself to specific performance standards. (*Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 281 [city improperly deferred mitigation to butterfly habitat by failing to provide standards or guidelines for its management].)

Here, the EIR improperly defers details of the Project's mitigation measures as discussed in detail below.

i. Biological Resources Mitigation Measures

The Project's Biological Resources Mitigation Measure BIO-3 provides as follows, in relevant part:

> To avoid and minimize impacts to jurisdictional aquatic resources, tidewater goby critical habitat, and Southern California steelhead critical habitat the Applicant/Permittee must:
>
> A. Develop and receive approval from the Planning and Environmental Review Director or designee of a Toxic Materials Control and Spill Response Plan for materials that may be used/stored on-site, such as petroleum-based products, fuel and lubricants, and other potentially toxic materials prior to the issuance of the Zoning Clearance for grading or construction activities whichever is permitted first.

FEIR at p. ES-12.

Further, the Project's Biological Mitigation Measure BIO-7 provides as follows, in relevant part:

> The City-approved biologist (retained by the Applicant/Permittee) shall prepare an Invasive Species Control Plan for all construction equipment and activities within 100 feet of San Jose Creek.
>
> …
>
> **Plan Requirements and Timing:** The Invasive Species Control Plan shall be approved by the Planning and Environmental Review Director, or designee, prior to issuance of the Zoning Clearance for grading or building permits, whichever occurs first.

FEIR at p. ES-14.

Further still, the Project's Biological Mitigation Measure BIO-9 provides as follows, in relevant part:

> Prior to issuance of a Zoning Clearance for the building construction, the Applicant/Permittee shall submit a Landscape Chemical and Pest Management Plan to the Planning and Environmental Review, or designee, for review and approval.

FEIR at p. ES-15.

The above mitigation measures, on their face, defer the preparation of the Project's Toxic Materials Control and Spill Response Plan (TMCSP), Invasive Species Control Plan ("ISCP"), and Landscape Chemical and Pest Management Plan ("LCPMP") until after the CEQA environmental review process for the Project is completed, thereby denying the public and the City's decisionmakers of the opportunity to assess the adequacy and comment upon said program/plan. Additionally, Mitigation Measures BIO-3, BIO-7, and BIO-9 improperly shift the burden of preparation of the mitigation plans to the Applicant, when it is in fact the City's responsibility, as lead agency, to ensure that the preparation and implementation of the TMCSP, ISCP, and LCPMP.

Thus, in the context of MM BIO-3, MM BIO-7, and MM BIO-9, the City has failed to meet CEQA's preconditions and requirements concerning mitigation, as the EIR has failed to show why the Project's TMCSP, ISCP, and/or LCPMP cannot be completed or achieved at this time prior to adoption of the EIR, what impacts the measures will have individually or cumulatively, if those would indeed be feasible, and the specific performance criteria the Applicant will have to meet with regard to the measures. Accordingly, the proposed mitigation measures are improperly deferred as they defer the formulation of components of the mitigation to a later time, shift the burden to the Applicant, and further do not explain how the measures will clearly reduce the Project's biological resources impacts to a level of insignificance.

ii. *Hazards and Hazardous Materials Mitigation Measures*

The Project's Hazards and Hazardous Materials Mitigation Measure HAZ-1 provides as follows, in relevant part:

> Prior to the issuance of Zoning Clearance associated with the demolition permit, the project applicant/Permittee shall prepare an asbestos abatement plan addressing the items/topics listed below. The asbestos abatement plan shall be reviewed and approved by the Santa Barbara County Air Pollution Control District (SBCAPCD). Proof of SBCAPCD approval shall be provided to the Planning and Environmental Review Director or designee.

See FEIR at p. ES-18.

Additionally, Hazards and Hazardous Materials Mitigation Measure HAZ-2 provides as follows, in relevant part:

> Prior to the issuance of a Zoning Clearance associated with the demolition permit, the project applicant/Permittee shall prepare a lead based paint abatement plan. This plan can be combined with the plan required in Mitigation Measure HAZ-1. The lead based paint plan shall be reviewed and approved by the Planning and Environmental Review Director or designee.

FEIR at p. ES-19.

Further, Hazards and Hazardous Materials Mitigation Measure HAZ-3 provides as follows, in relevant part:

> Prior to issuance of Zoning Clearance for construction or grading, the project applicant shall retain a qualified environmental consultant (Professional Geologist [PG] or Professional Engineer [PE]) to conduct a groundwater investigation of groundwater at the project site for potential contaminants of concern. The PG or PE shall prepare a groundwater investigation report, which shall be submitted to the City's Director of Planning and Environmental Review for review and approval prior to the issuance of the Zoning Clearance associated with grading permits.

FEIR at p. ES-19.

Further still, Hazards and Hazardous Materials Mitigation Measure HAZ-5 provides as follows, in relevant part:

> The project applicant shall retain a qualified environmental consultant (Professional Geologist or Professional Engineer) approved by Santa Barbara County Environmental Health Services to prepare a Site Management Plan (SMP) prior to the issuance of Zoning Clearance associated with grading permit. The SMP, or equivalent document, shall be prepared to address on-site handling or management of impacted soils or groundwater if such soils or impacted wastes are encountered during the groundwater investigation or soil remediation, and reduce hazards to construction workers and offsite receptors during construction. The project applicant shall submit the SMP to the Santa

> Barbara County Environmental Health Services who shall review and approve the SMP. The project applicant shall submit proof of Santa Barbara County Environmental Health Services' approval of the SMP to the Director of Planning and Environmental Review or Designee.

FEIR at p. ES-20.

The above mitigation measures, on their face, defer the preparation of the Project's Asbestos Abatement Plan ("AAP"), Lead-Based Paint Abatement Plan ("LBPAP"), Site Management Plan ("SMP") and groundwater investigation until after the CEQA environmental review process for the Project is completed, thereby once again denying the public and the City's decisionmakers of the opportunity to assess the adequacy and comment upon such plans.

In the context of MM HAZ-1, HAZ-2, HAZ-3, and HAZ-5, the City has again failed to meet CEQA's preconditions and requirements concerning mitigation, as the FEIR has failed to show why a AAP, LBPAP, SMP, and/or a groundwater investigation cannot be completed or achieved at this time prior to adoption of the EIR, what impacts the measures will have individually or cumulatively, if those would indeed be feasible, and the specific performance criteria the Applicant will have to meet with regard to the measures. Accordingly, the proposed mitigation measures are improperly deferred as they defers the formulation of components of the mitigation to a later time, shift the burden to the Applicant, and further do not explain how the measures will clearly reduce the hazards impacts to a level of insignificance.

iii. *Noise Mitigation Measures*

The Project's Noise Mitigation Measure NOI-1 provides as follows, in relevant part:

> The construction contractor shall prepare and submit a Construction Noise Control Plan to the City of Goleta Planning and Environmental Review Director or designee for review and approval prior to issuance of a Zoning Clearance for a grading permit/demolition permit. The Construction Noise Control Plan shall specify the noise reduction measures to be implemented during project construction to ensure noise levels do not exceed 65 dBA at nearby sensitive receptors at the Rancho Goleta mobile home community to the east. The measures specified in the Construction Noise Control Plan shall be included on the building and grading plans and shall be implemented by the construction

> contractor during construction. Measures in the Construction Noise Control Plan may include, but would not be limited to, the following:

See FEIR at p. ES-22.

Once again, the above mitigation measure, on its face, defers the preparation of the Project's Noise Control Plan ("NCP") until after the CEQA environmental review process for the Project is completed, thereby denying the public and the City's decisionmakers of the opportunity to assess the adequacy and comment upon such plans.

In the context of MM NOI-1, the City has again failed to meet CEQA's preconditions and requirements concerning mitigation, as the EIR has failed to show why a NCP cannot be completed or achieved at this time prior to adoption of the EIR, what impacts the measure will have individually or cumulatively, if those would indeed be feasible, and the specific performance criteria the Applicant will have to meet with regard to the measure.

Further, the proposed mitigation measure is illusory given that it only requires that the Project Applicant submit the NCP at some future point which the City may then review. The measure further places the burden on the Applicant to "ensure" that the proposed changes result in a reduction of the Project's noise impacts. Simply put, the FEIR includes no definitive and measurable commitment to noise mitigation at all. Even under the EIR-related CEQA Guidelines section 15126.4(a)(1)(B), this is improper since, *inter alia*, the City does not commit to mitigation, but rather, relies on the Applicant to mitigate and leaves the entire scope of the noise mitigation to be deployed on the Project in the Applicant's discretion. This approach to mitigation further violates CEQA's non-delegation provision. See CEQA Guidelines, § 15025, subd. (b)(2) (Delegation of Responsibilities).

Accordingly, the proposed mitigation measure is improperly deferred and illusory as it defers the formulation of components of the mitigation to a later time, shifts the burden and discretion over mitigation to the Applicant, and further does not analyze or explain how the measure will clearly reduce the Project's noise impacts to a level of insignificance.

C. The City Should Not Adopt the Project as Proposed, and Should Only Consider Potential Adoption of Project Alternative 2

Notwithstanding the deficiencies in the FEIR identified above, as part of its alternative analysis for the Project, the FEIR included analysis of a Project Alternative 2, which provided for construction of a project of the same size, but while incorporating the required 100-foot setback for the Streamside Protection Area ("SPA") adjacent to the Project, rather than the original Project's pursuit of/request for relief from the required 100-foot SPA buffer to allow construction as close as 25 feet from the SPA. See FEIR, pp. 6-4 – 6-7. In considering the relative impacts of Alternative 2 as compared to the Project as originally proposed, the FEIR ultimately found as follows:

> Alternative 2 would reduce the proposed project's significant and unavoidable impact to biological resources to a less than significant level by complying with the 100-foot SPA buffer. Alternative 2 would result in a greater noise impact compared to the proposed project and would marginally increase greenhouse gas emissions and energy use during construction compared to the proposed project, although impacts would remain less than significant with mitigation. Alternative 2 would result in similar impacts to all other issue areas, including significant and unavoidable impacts related to aesthetics and solid waste disposal. However, unlike Alternative 3, Alternative 2 would fulfill all of the project objectives.

See FEIR, p. 6-112.

Given that the FEIR has determined that Alternative 2 would fulfill all of the Project's objectives, while also reducing the Project's significant and unavoidable biological resources impacts to a less than significant level, WSRCC submits that the City must reject the Project as proposed, and should only consider approval of the Project as constituted in Alternative 2, subject to correction of the other deficiencies in the FEIR as identified herein. In this regard, any adoption by the City of a Statement of Overriding Considerations for the Project as originally proposed will lack the requisite evidentiary support and result in a superficial violation of CEQA.

V. CONCLUSION

Based on the foregoing concerns, the City should require revision and recirculation of the FEIR for the Project pursuant to CEQA. Absent doing so, the FEIR in its current form directly violates CEQA in multiple respects. Further still, the City should not approve the Project as proposed based on the environmentally-superior alternatives set forth in the FEIR. If the City should have any questions or concerns, please do not hesitate to contact this office.

Sincerely,

Jeremy Herwitt
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**);

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