Letter O-3

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

Mitchell M. Tsai
Law Firm

139 S. Hudson Ave., Suite 200
Pasadena, California 91101

VIA E-MAIL

December 1, 2025

Mary Chang
Supervising Planner
City of Goleta
130 Cremona Drive
Goleta, CA 93117
Em: mchang@cityofgoleta.org

RE: City of Goleta's Draft Environmental Impact Report for Sandpiper Golf Course Renovation and New Clubhouse Project (SCH# 2024120923; 22-0001-CDHP; 22-0009-DP-CUP; 22-0032-DRB)

Dear Mary Chang,

On behalf of the Western States Regional Council of Carpenters ("**Western Carpenters**" or "**WSRCC**"), our firm is submitting these comments in connection with the City of Goleta's ("**City"**) Draft Environmental Impact Report ("**DEIR**") for the Sandpiper Golf Course Renovation and New Clubhouse Project ("**Project**").

The Project's DEIR summarizes the proposed Project as follows:

> The proposed project involves the demolition of the existing clubhouse; construction of a new, two-story clubhouse with basement; provision of additional parking spaces; modifications to and re-routing of the existing 18-hole golf course; landscaping and irrigation improvements; replacement of existing maintenance facilities; replacement of an existing comfort station; construction of the Rio Grande Coffee Shop adjacent to the historic Barnsdall Rio Grande Gas Station; adaptive reuse and restoration of the historic Barnsdall Rio Grande Gas Station to provide seating and bicycle amenities for the Rio Grande Coffee Shop; incorporation of the new clubhouse and comfort station into the Sphere of Influence area for the Goleta West Sanitary District (GWSD); right-of-way (ROW) vacation from the City; and improvements along Hollister

O-3.1

> Avenue, including revised entry points, a new public trail, undergrounding of electrical and utility lines, bus station relocation, and curb and sidewalk improvements.

DEIR, p. ES-2.

The Western Carpenters is a labor union representing over 90,000 union carpenters in twelve 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 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.

O-3.1 (cont.)

The Western Carpenters incorporates by reference all comments raising issues regarding the Notice of Preparation (NOP) and 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 FAILED TO PROVIDE WSRCC WITH THE REQUISITE AND REQUESTED STATUTORY NOTICE OF THE DEIR'S RELEASE

As prefatory matter, the City failed to provide our firm and WSRCC with the required advance notice of the release of the Project's Draft Environmental Impact Report on or about October 16, 2025, and the Environmental Hearing Officer Meeting for the Project on November 6, 2024. Our firm previously requested Advance Notice in connection with the Project via our February 17, 2025, California Public Records Act request and via our January 15, 2025, correspondence in connection with the City's release of the Project's Notice of Preparation of Draft Environmental Impact Report and Notice of Scoping Meeting. Despite these multiple prior written requests for Advance Notice pursuant to CEQA, PRC sections 21092.2, and 21167(f), and the California Planning and Zoning Law, Gov. Code section 659092, our firm and WSRCC received no such notification in connection with the DEIR's release. O-3.2

Given the City's failure to provide our firm with the statutorily-required advance notice of the release of the DEIR for this Project, we respectfully request the City's confirmation that it will extend the comment period for the DEIR in order to permit WSRCC the opportunity to provide timely written comments on the Project. Additionally, we reiterate our prior requests that, in the future, the City notify info@mitchtsailaw and jeremyh@mitchtsailaw of any hearings, updates, or environmental documents for the Project.

II. 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. O-3.3

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:

O-3.3 (cont.)

> [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]

---

[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.

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

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

O-3.3 (cont.)

> 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

[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.

negotiating corporate participation in First Source as a condition of approval for development permits.

O-3.3 (cont.)

Therefore, 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.

III. 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]

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.

O-3.4

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.

[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 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:

O-3.4 (cont.)

- 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]

O-3.4 (cont.)

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

[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.

all construction workers undergo COVID-19 Training and Certification before being allowed to conduct construction activities at the Project Site.

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]

O-3.4 (cont.)

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.

IV. 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 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).

O-3.5

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).

---

[7] For details concerning Western 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 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.

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).

O-3.5 (cont.)

Essentially, should a lead agency be presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect. CEQA Guidelines, §§ 15064(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.

O-3.5 (cont.)

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.

O-3.5 (cont.)

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 DEIR 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 DEIR. O-3.5 (cont.)

V. THE DEIR IS INADEQUATE UNDER CEQA AND SHOULD BE REVISED AND RECIRCULATED

A. The DEIR 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 DEIR but found to be insignificant with or without mitigation in the DEIR's analysis has the potential for a significant environmental impact supported by substantial evidence, the DEIR 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. O-3.6

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

B. The DEIR'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.

O-3.7

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 EIR's Mitigation Measures ("**MM**") for the Project are inadequate as follows:

1. MM BIO-10 Fails to Comport with CDFW Guidance Regarding Migratory Bird and Raptor Breeding Season

MM BIO-10 provides as follows, in pertinent part with regard to the mitigating the Project's anticipated impacts on roosting and breeding migratory birds and raptors:

> ***To avoid construction impacts to nesting birds and raptors, the construction contractor shall conduct vegetation removal and initial ground disturbance outside the bird and raptor breeding season, which is typically February 1 through September 1 but can vary based on local and annual climatic conditions. If construction begins within the breeding season, then not more than seven days before demolition, ground disturbance, and/or vegetation removal commences, a bird and raptor preconstruction survey shall be conducted by a City-approved biologist*** (retained by the project applicant) within the disturbance footprint, plus a 300-foot buffer.

DEIR, p. ES-21 (emphasis added). O-3.8

Despite acknowledging that the bird and raptor breeding seasons applicable to the Project would be subject to variability beyond the general range of "February 1 through September 1," the DEIR then fails to adequately specify the "breeding season" to be applied on the Project for purposes of preconstruction surveys to be conducted by the Project's approved biologist. This ambiguity renders the mitigation measures fatally uncertain, as the measure does not set adequate parameters to then assess and analyze the Project's potential impacts to birds and raptors.

Additionally, the date range of "February 1 through September 1" cited in MM BIO-10 runs counter to the California Department of Fish and Wildlife's ("**CDFW**") finding that **raptor** nesting may commence before and/or after this timeframe.[9]

Further investigation of the information contained on the CDFW's "California Outdoors Q&A" webpage reveals that the boundaries of bird nesting season in

[9] "…[S]ome species of raptors (e g. owls, hawks, etc.) may commence nesting activities in January." See CDFW November 18, 2021 letter to City of Adelanto, available at https://files.ceqanet.opr.ca.gov/273819-1/attachment/zo76RgD7dUdj5BLJTEhEMdf74g6f100RrKiWBQSquhFFe5l0X53rLsbLSGMPRXgXM4AaYnJSTfZB6JpY0

California are broad and variable: "[N]esting season can vary based on location and species of bird, and in some parts of the state, birds nest year-round."

Furthermore, as noted by the California Department of Fish and Wildlife in a November 18, 2021, letter to the City of Adelanto concerning a similar preconstruction nesting bird survey mitigation measure:

> CDFW is concern[ed] that [the mitigation measure] is conditioned to only require surveys during the peak bird nesting season considering that birds, such as hummingbirds may nest year-round. Furthermore, [the mitigation measure] defines bird nesting season as February 1 to August 31. Please note that nesting may commence before and/or after this timeframe. For example, some species of raptors (e g. owls, hawks, etc.) may commence nesting activities in January, and passerines may nest later than August 31. Fish and Game Code Section 3503 makes it unlawful to take, possess, or needlessly destroy the nest or eggs of any bird, except as otherwise provided by Fish and Game Code or any regulation made pursuant thereto.

These added qualifications by CDFW regarding bird nesting season are consistent with, and underscore, CDFW's separate finding that birds and raptor nesting in the Project's geographic region can and does occur outside the more general bird nesting period of February-August sought by the DEIR in MM BIO-10. Moreover, CDFW's collective findings on this issue, coupled with the Project site's adjacency and/or very close proximity to undeveloped wildland and conservation areas confirm the inadequacy of the DEIR's analysis of the Project's potential biological resources impacts to nesting and migratory birds and the attempted mitigation thereof.

O-3.8 (cont.)

Accordingly, the nesting period and survey plan set forth in the MM BIO-10 is inadequate based on CDFW's own guidance, and this letter constitutes significant new information of the Project's potentially significant biological resources impacts notwithstanding the provisions of the mitigation measure. Thus, at a minimum, the DEIR must be revised and recirculated to demonstrate sufficient analysis, study, and mitigation of the Project's biological resources impacts based on substantial evidence to sufficiently reduce potential impacts below significant levels. Based on the positions set forth by CDFW in its guidance, the DEIR should further be revised to require that prior to construction of the Project, a sweep should be conducted verifying the absence of any nesting birds during both nesting and non-nesting

seasons in order to account for CDFW's findings pertaining to the bird/raptor nesting season within the Project's geographic region. Absent such revision, the proposed MM BIO-10 and, by extension, the DEIR will be in direct violation of the CEQA Guidelines.

O-3.8 (cont.)

2. The DEIR's Mitigation Measures Are Improperly Deferred

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.

O-3.9

i. Biological Resources Mitigation Measures

Further, MM BIO-7 concerning the Project's impacts to Biological Resources and the provision of a Monarch Roost Protection Plan provides as follows:

> ***The project applicant shall retain a qualified biologist to prepare a Monarch Roost Protection Plan prior to the start of construction activities.*** The Monarch Roost Protection Plan shall include the following:
>
> - Trees majorly impacted by construction, grading, and trenching of the project improvement elements within the monarch butterfly ESHA shall be replaced at a 3:1 ratio within the ESHA and as close to the impacted tree as is reasonably feasible.

- If understory vegetation that supports overwintering habitat is removed within monarch butterfly ESHA, as determined by a monarch specialist, the vegetation shall be replaced at a 1:1 ratio as close to the removed vegetation as is feasible.
- Grading or other activities that could alter the surface hydrology that sustains the groves of trees within monarch butterfly ESHA are prohibited within the ESHA buffer (50- or 100- feet depending on whether the site is transitory or overwintering habitat).

The qualified biologist shall submit the Monarch Roost Protection Plan to the City of Goleta's Planning and Environmental Review Director, or designee, for review and approval prior to the start of construction activities. The construction contractor shall implement the Monarch Roost Protection Plan for the duration of construction.

DEIR, p. ES-19.

This measure impermissibly defers the preparation of the Monarch Roost Protection Plan ("**MRPP**") until after the City has completed its CEQA review of the Project. The DEIR provides no indication of any conditions that would prevent the City from fully assessing, for example, which trees on the Project site and within the monarch butterfly ESHA are anticipated to be "majorly impacted by construction, grading, and trenching" for the Project, such that the MRPP cannot be prepared at this time. The DEIR and MM BIO-9 also fail to specify the methodology to be applied to any such tree replacement efforts and set forth an adequate analysis of the impacts and efficacy of such foliage replacement efforts. The City has failed to meet CEQA's preconditions and requirements concerning mitigation, and the deferment of the MRPP's preparation also underscores the DEIR's improper deferment of and constraints on study and analysis regarding the anticipated impacts of the Project to the monarch butterfly ESHA areas.

O-3.9 (cont.)

MM BIO-7 sits in stark contrast to the Project's MM BIO-8 – Tree Protection Measures – which provides detailed and unequivocal requirements for tree protection efforts to be implemented in connection with the Project's construction. Simply put, the DEIR provides no evidence or justification for its failure to develop and circulate the MRPP prior to project approval, such that the City's decisionmakers and the public would then have a full and fair opportunity to assess the adequacy of it.

Additionally, MM BIO-9 – Preconstruction Semi-Aquatic Species Survey, Avoidance, and Relocation – is fatally uncertain and deferred, in that the DEIR fails to include and provide the Species Relocation and Exclusion Plan specified by the measure, and also does not provide adequate clarity regarding the duration any special-status semi-aquatic species detected during pre-constructions surveys will be given to "move out of the work area" before being captured and relocated by a retained qualified biologist. MM BIO-9 also fails to provide adequate detail and analysis regarding the proper criteria to assess whether or not habitat would be suitable for such special-status species relocation efforts.

O-3.9 (cont.)

Accordingly, MM BIO-7 and MM BIO-9 are improperly deferred, as they defers the formulation of components of their respective forms of mitigation to a later time. The DEIR further fails to analyze and explain how the measures will clearly reduce the Project's biological resources impacts to a level of insignificance.

ii. Cultural Resources and Tribal Cultural Resources Mitigation Measures

The Project's Cultural Resources MM CUL-2 provides as follows, in relevant part:

> Prior to ground disturbance activities, the project applicant shall retain an archaeologist who meets the Secretary of the Interior's Professional Qualification Standards (qualified archaeologist) and has experience in California prehistoric and historic resources (experience within City of Goleta or Santa Barbara County preferred). The project applicant shall provide proof of retainment of the qualified archaeologist to the City of Goleta's Planning and Environmental Review Director, or designee, prior to the issuance of Zoning Clearance for the grading permit. ***The qualified archaeologist shall prepare a Cultural Resource Monitoring and Inadvertent Discovery Plan (Plan)***, conduct archaeological monitoring, and address any inadvertent discoveries identified during project implementation (refer to Mitigation Measure CUL-4). ***The City of Goleta's Planning and Environmental Review Director, or designee, shall review and approve the Plan prior to the issuance of Zoning Clearance for the grading permit.***
>
> The Plan shall outline archaeological and Native American resource monitoring protocols, as well as a program for treatment and mitigation

O-3.10

> in the case of an inadvertent discovery of cultural resources during project-related ground-disturbance. The Plan shall also provide for the proper identification, evaluation, treatment, and protection of any cultural resources in accordance with CEQA throughout the duration of the project. The Plan shall be incorporated and referenced in all grading and construction plans intended for use by the construction contractor(s).

DEIR at p. ES-24 (emphasis added).

MM CUL-2, on its face, defers the preparation of the Cultural Resource Monitoring and Inadvertent Discovery Plan ("**CRMIDP**") until after the City's CEQA review of the Project has been completed, and the DEIR presents no justification for its failure to include the CRMIDP for public review at this time. The postponement of the preparation of the substance of this mitigation measure denies the public and the City's decisionmakers of the opportunity to assess the adequacy of the Project's cultural resources mitigation and monitoring plan, and the Project's overall impact on cultural resources with respect to ensuring such impacts are adequately mitigated and minimized. Moreover, the postponement of the preparation of the CRMIDP as specified by MM CUL-2 also impairs the adequacy of the Project's MM CUL-4 and its Tribal Cultural Resources Mitigation Measures TCR-1[10] and TCR-2, in that all three mitigation measures incorporate by reference and invoke the use of the CRMIDP during the Project's construction in reaching the conclusion that the Project's tribal cultural resources impacts will be less than significant with mitigation incorporated. Indeed, because of the DEIR improper deferment of the preparation of the CRMIDP for the Project, the City's decisionmakers have been denied the opportunity to fully consider the scope of the Project's potential impacts to cultural resources and tribal cultural resources and whether such impacts have been adequately mitigated, while the general public has also been denied the opportunity to assess and comment upon the associated impacts and the adequacy of the mitigation plans.

O-3.10 (cont.)

Thus, in the context of MM CUL-2, MM TCR-1, and MM TCR-2, the City has failed to meet CEQA's preconditions and requirements concerning mitigation, as the DEIR has failed to show why the Project's CRMIDP, and a comprehensive analysis of the Project's anticipated impacts on such cultural resources and tribal cultural resources,

[10] MM TCR-1 incorrectly references the CRMIDP as being required under MM CUL-1, when in fact the preparation of a CRMIDP is required under MM CUL-2. See DEIR, p. ES-41; compare DEIR, p. ES-24.

cannot be completed or achieved at this time prior to adoption of the EIR. The deferment of this study and analysis also improperly constrains the DEIR's assessment of the impacts that the measure will have individually or cumulatively, and the specific performance criteria the Applicant will have to meet with regard to the measures. Accordingly, the proposed mitigation measure is improperly deferred as it defers the formulation of components of the mitigation to a later time and further does not explain how the measure will clearly reduce the Project's cultural resources impacts and tribal cultural resources impacts to a level of insignificance.

O-3.10 (cont.)

Given the historic resources implicated by the Project (e.g., the Barnsdall-Rio Grande Gas Station), and the potential impacts to them are well known at this juncture,

iii. Geology and Soils Mitigation Measures

The Project's Geology and Soils Mitigation Measure GEO-2 provides as follows, in relevant part:

> Prior to the commencement of any grading activities, the project applicant shall retain a qualified professional paleontologist as defined in the Society of Vertebrate Paleontology's *Standard Procedures for the Assessment and Mitigation of Adverse Impacts to Paleontological Resources* (2010). ***The qualified professional paleontologist shall prepare a Paleontological Resources Impact Mitigation Program consistent with the guidance provided in the Standard Procedures for the Assessment and Mitigation of Adverse Impacts to Paleontological Resources. The Paleontological Resources Impact Mitigation Program shall be reviewed and approved by the City's Planning and Environmental Review Director or designee prior to the issuance of a Zoning Clearance for a grading permit.***

O-3.11

DEIR at p. ES-32.

Much like the Project's MM CUL-2, the above mitigation measure impermissibly defers the preparation of any actual mitigation associated with the Project's potential paleontological resources impacts by postponing the preparation of the required Paleontological Resources Impact Mitigation Program ("**PRIMP**"). The deferment of the preparation of the Project's PRIMP, coupled with MM GEO-2's lack of requisite specificity of the full scope of measures to be included in the PRIMP to combat potential impacts to paleontological resources, render the mitigation measure

improperly deferred and uncertain. In this regard, the mitigation measure does not clearly and adequately commit to mitigation on this issue, which is required by CEQA.

Thus, in the context of MM GEO-2, the City has failed to meet CEQA's preconditions and requirements concerning mitigation, as the DEIR has failed to develop and present the PRIMP for public review at this time that details the Project's response plan in the event that paleontological resources are discovered during construction. Accordingly, the proposed mitigation measure, as currently constituted, violates CEQA and must be appropriately revised and recirculated.

O-3.11 (cont.)

iv. Hazards and Hazardous Materials Mitigation Measures

The Project's Hazards and Hazardous Materials Mitigation Measure HAZ-1 provides as follows, in relevant part, with regard to Asbestos Containing Materials Abatement:

> ***Prior to the issuance of Zoning Clearance associated with the demolition permit, the project applicant shall prepare an asbestos abatement plan addressing the items/topics listed below.*** The asbestos abatement plan shall be reviewed and approved by SBCAPCD.

DEIR at p. ES-33 (emphasis added).

Additionally, the Project's MM HAZ-2 provides the following, in pertinent part, with regard to Lead-Based Paint ("**LBP**") Abatement:

> ***Prior to the issuance of Zoning Clearance associated with the demolition permit, the project applicant shall prepare an LBP abatement plan. This plan can be combined with the plan required in Mitigation Measure HAZ-1.*** The LBP abatement plan shall be reviewed and approved by the City of Goleta's Planning and Environmental Review Director, or designee. During proposed project construction and demolition activities, the project applicant shall follow the measures outlined in the LBP abatement plan.

O-3.12

DEIR at p. ES-33 (emphasis added).

The Project's Mitigation Measures MM HAZ-1 and MM HAZ-2 improperly and unjustifiably defer preparation of both the Asbestos Abatement Plan ("**AAP**") and the LBP Abatement Plan ("**LBPAP**") until after the Project has been approved by the City and shortly before construction is to commence. The preparation of the AAP and LBPAP in connection with the Project's hazards mitigation efforts has been

established as a required, unconditional mitigation effort in connection with the Project. As such, there is simply no valid explanation for the DEIR's failure to prepare and include the required AAP and LBPAP as part of the appendices for the Project's environmental review, thereby providing the City and the general public with and full and appropriate opportunity to assess the adequacy of the Project's hazards mitigation plans in this regard. The DEIR's failure to prepare and provide this information at this time once again violates CEQA.

Thus, with respect to MM HAZ-1 and MM HAZ-2, the DEIR has once again failed to meet CEQA's preconditions and requirements concerning mitigation by deferring the further study, analysis and preparation of mitigation measures and plans to address the Project's anticipated Hazards impacts. The DEIR's cannot permissibly constrain its assessment of the individual and cumulative impacts of these measures, or withhold reporting of the specific performance criteria the Applicant will have to meet with regard to the measures, particularly when there is nothing to prevent current further study of these impacts and the preparation of the required mitigation plan vis-à-vis the AAP and LBP. Once again, the DEIR has violated CEQA by deferring the formulation of critical aspects of its hazards mitigation to a later time, such that revision and recirculation of the DEIR to supply this necessary study and information is now required.

O-3.12 (cont.)

v. Noise Mitigation Measures

The Project's MM 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 that uses heavy-duty equipment within 400 feet of residences, which may include improvements to the golf course (e.g., grading of the course), maintenance yard, Barnsdall area, and Hollister Avenue to ensure noise levels do not exceed 65 dBA at nearby sensitive receptors at the nearest residences.

O-3.13

DEIR, p. (emphasis added).

Once again, the DEIR has improperly deferred its mitigation efforts, this time on the issue of the Project's construction noise impacts. To that end, and despite the Project's close proximity to numerous sensitive residential receptors, the DEIR has impermissibly deferred the preparation of the Project's Construction Noise Control Plan ("CNCP") until after the City has completed its environmental review and approval of the Project. As discussed at length above with respect to various other impact categories for which mitigation has been deferred on the Project, such deferring of full and complete development of the Project's mitigation measures undermines public review and assessment of the Project's overall impacts and violates CEQA.

O-3.13 (cont.)

Accordingly, the DEIR must be revised and recirculated to provide the City's decisionmakers and the public with an opportunity to assess the adequacy of the Project's CNCP prior to approval of the Project. Additionally, the DEIR must also fully study and analyze the measures to be implemented as part of the CNCP, and assess any further potential environmental impacts that could potentially result from the implementation of such measures. Absent doing so, the Project's noise mitigation specified in the DEIR will remain in violation of CEQA.

VI. CONCLUSION

Based on the foregoing concerns, the City should require revision and recirculation of the DEIR for the Project pursuant to CEQA. Absent doing so, the DEIR in its current form directly violates CEQA in multiple respects. The WSRCC further requests that the City consider utilizing a local workforce and implementing Covid-19 safety measures in connection with the Project's development. If the City should have any questions or concerns, please do not hesitate to contact this office.

O-3.14

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); and

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