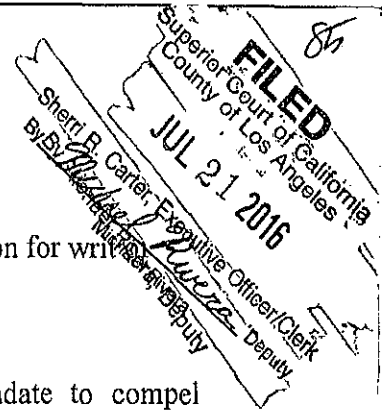


Stewards of Public Land v. City of  
Pasadena, BS 154299

Tentative decision on petition for writ  
mandate: denied



Petitioner Stewards of Public Land ("Stewards") seek writ of mandate to compel Respondent City of Pasadena ("City") to set aside the approval of the Project and the Ordinance and prepare an Environmental Impact Report for the Project.

The court has read and considered the moving papers, oppositions, and reply, and renders the following tentative decision.

**A. Statement of the Case**

Petitioner Stewards commenced this proceeding on March 4, 2015. The operative pleading is the First Amended Petition ("FAP") filed October 28, 2015. The FAP alleges in pertinent part as follows.

On February 3, 2015, Respondent City approved the Proposal for Lower Arroyo Archery Range and Deal Points for New Agreement with Pasadena Roving Archers ("Proposal"). As part of the Proposal, the City approved amendments to the Pasadena Municipal Code ("PMC") to authorize the City Manager to determine where archery is permitted within the City and to promulgate rules for archery activities on public lands. The City also approved the development of a new license and operating agreement with the Pasadena Roving Archers using the Deal Points, and directed the City Manager to work with the Pasadena Roving Archers and residents to pursue the identification of a suitable alternate site for archery activity in order to allow the southern range in the Lower Arroyo to be used for passive recreational uses on weekdays and roving archery on weekends. The City additionally approved a modification to existing language in the Lower Arroyo Master Plan ("LAMP") to remove references to the number of targets in the southern archery range (collectively, "Project"). The City determined that the Project was exempt from review under the California Environmental Quality Act ("CEQA"), and posted a Notice of Exemption ("NOE").

On September 28, 2015, Respondents adopted Ordinance No. 7452, an Ordinance of The City of Pasadena Amending Title 3, Chapter 3.24, Sections 3.24.030 (Administrative Jurisdiction), 3.24.110 (Prohibited Acts In Parks And Public Grounds), And 3.24.190 (Violation — Penalty), And Title 9, Chapter 9.76, Sections 9.76.020 (Weapons And Prohibited Equipment), And 9.76.030 (Violations — Penalty) of The Pasadena Municipal Code To Prohibit Activities In The Lower Arroyo Archery Range Inconsistent With Rules Promulgated By The City Manager And To Make Violations Punishable In An Amount Consistent With Other Penalty Provision In The Pasadena Municipal Code And According To The General Penalty Provisions of Chapter 1.24 ("Ordinance"). The City found that adoption of the Ordinance was within the scope of the February 3, 2015 Project approvals, and that there were no changes to the Project or to the circumstances which would warrant the need for evaluation of the Project under CEQA ("Ordinance Approvals").

The Lower Arroyo Seco Archery Range ("Archery Range") is located on the west side of the Los Angeles County flood control basin between the La Loma Street and Colorado Street bridges in the City. The Archery Range is a public facility licensed for use by the Pasadena Roving

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Archers.

The Project is proposed to be implemented within the Lower Arroyo Park, which runs from Colorado Street Bridge to the City's border with City of South Pasadena ("Project Site"). The Project Site is approximately 150 acres and includes the Archery Range, fly casting ponds, multi-use trails, and Ash Memorial Grove. The Project Site includes the Lower Arroyo Seco Historic District, a federal and state designated historical resource. The Project Site was designated a Cultural Heritage Landmark by the City in 1979.

Real Party-in-Interest Pasadena Roving Archers ("PRA") maintains and uses the Archery Range pursuant to an operating agreement between the PRA and the City. The operating agreement between PRA and the City expired in 2010. Since the last operating agreement, PRA membership and corresponding use of the Archery Range has increased dramatically. Conflicts between the PRA and nearby residents and other recreational users of the Project Site has increased accordingly.

The City exempted the Project from CEQA under CEQA Guidelines section 15301. The Project is ineligible to be exempt from CEQA under section 15301 as it is facially inconsistent with the exemption, will have a significant impact on a designated historical resource, and will have a significant effect on the environment due to unusual circumstances. The Project calls for significant physical alterations to the Project Site including the installation of natural barriers, signage, realignment of the archery targets, installation of additional archery targets to the Project Site, as well as removal of a hiking trail through the Project. The Project will expand use of the Project Site for archery, designating the site exclusively for archery use, and licensing the Project Site to the PRA for large events including archery classes and tournaments.

The Project also is ineligible for any CEQA exemption because it is a national, state and locally designated historical resource. Public Resources Code section 21084(e) provides that a "project that may cause a substantial adverse change in the significance of a historical resource... shall not be exempted from [CEQA]..." The Project imposes significant physical and use changes at the Project Site, installing natural barriers and signage, realigning existing archery targets, installing additional archery targets, removing a hiking trail running through the Project Site, and designating the Project Site exclusively for archery.

The Project and the Ordinance are ineligible to be exempt from CEQA as they will have a significant effect on the environment due to unusual circumstances. A dramatic increase in usage of the Project Site for Archery has caused the City to expand the Archery Range, install additional barriers and signage, reconfigure the Archery Range, and designate the Project Site exclusively for archery. Correspondingly, the Project will have significant impacts on recreational, aesthetic, and cultural resources.

Respondents violated CEQA by adopting findings and a NOE for the Project and Ordinance that are inadequate as a matter of law as they are not supported by substantial evidence in the record. Respondents prejudicially abused their discretion by making determinations or adopting findings that do not comply with the requirements of CEQA and approving the Project in reliance thereon.

The City committed a prejudicial abuse of discretion and failed to proceed in a manner required by law in approving the Project, which is inconsistent with the Arroyo Seco Public Land Ordinance, PMC sections 3.32.010-3.32.340, LAMP, the City of Pasadena Arroyo Seco Design Guidelines, and the City's General Plan. The Project is inconsistent with the LAMP, necessitating

amendments to the LAMP which themselves require environmental review. Adoption of the Project will require amending the Public Lands Ordinance to allow for the expansion of archery uses. The Project does not conform to the design principles set forth in the Design Guidelines, which include limiting the creation of man-made objects and preserving the historical and cultural elements of the Park.

The Project was approved by the City without receiving a Certificate of Appropriateness from the City's Planning Director or Historic Preservation Commission as required by the PMC. The Project Site was designated a Cultural Heritage Landmark by the City in 1979. PMC section 17.62.080(E) requires that all projects that may affect a designated historic resource receive a Certificate of Appropriateness before going forward.

The Project is inconsistent with the City Charter because it dedicates City parkland exclusively to one organization for a single recreational use. The City is required to maintain the Park for both park and recreational purposes. The City cannot license the Archery Range exclusively for archery purposes to the PRA without approval of a majority of the City's voters.

The Project unlawfully delegates legislative and discretionary authority to the City Manager, authorizing the City Manager to determine where archery is permitted and promulgate rules for archery activities on public lands, and enter into the Operating Agreement with the PRA.

#### **B. Standard of Review**

A party may seek to set aside an agency decision for failure to comply with CEQA by petitioning for either a writ of administrative mandamus (CCP §1094.5) or of traditional mandamus. CCP §1085. A petition for administrative mandamus is appropriate when the party seeks review of a "determination, finding, or decision of a public agency, made as a result of a proceeding in which by law a hearing is required to be given, evidence is required to be taken and discretion in the determination of facts is vested in a public agency, on the grounds of noncompliance with [CEQA]." Pub. Res. Code §21168. This is generally referred to as an "adjudicatory" or "quasi-judicial" decision. Western States Petroleum Assn. v. Superior Court, ("Western States") (1995) 9 Cal.4th 559, 566-67. A petition for traditional mandamus is appropriate in all other actions "to attack, review, set aside, void or annul a determination, finding, or decision of a public agency on the grounds of noncompliance with [CEQA]." Where an agency is exercising a quasi-legislative function, it is properly viewed as a petition for traditional mandamus. *Id.* at 567; Pub. Res. Code §21168.5.

The issue of whether Pub. Res. Code section 21168 for administrative mandamus or section 21168.5 for traditional mandamus applies to a particular case is essentially academic as the two statutes embody the same standard of review. Laurel Heights Improvement Assn. v. Regents of the University of California, ("Laurel Heights") (1988) 47 Cal.3d 376, 392, n.5. That standard is whether the agency's decision is supported by substantial evidence. Pub. Res. Code §§ 21168, 21168.5. An agency's decision that an action falls within a categorical exemption under CEQA also is reviewed under a substantial evidence standard. Banker's Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego, ("Banker's Hill") (2006) 139 Cal.App.4th 249, 261.

The interpretation of the scope of a categorical exemption is a question of law. Save Our Carmel River v. Monterey Peninsula Water Mgmt. District, (2006) 141 Cal.App.4th 677, 693. Categorical exemptions must be narrowly construed and their scope should not be unreasonably

expanded. Sehne v. County of Santa Clara, (1981) 115 Cal.App.3d 837, 842. A petitioner contending that an exception to a categorical exemption applies bears the burden of producing "substantial evidence that the project has the potential for a substantial adverse environmental impact." Banker's Hill, *supra*, 139 Cal.App.4th at 261. There is a split of authority whether the substantial evidence or fair argument test applies to the determination whether there are significant impacts associated with unusual circumstances which would negate a categorical exemption. Fairbank v. City of Mill Valley, ("Fairbank") (1999) 75 Cal.App.4th 1243, 1259.

Whether the agency abused its discretion must be answered with reference to the record. This standard requires deference to the agency's factual and environmental conclusions based on conflicting evidence, but not to issues of law. Laurel Heights Improvement Assn. v. Regents of University of California, ("Laurel Heights") (1988) 47 Cal.3d 376, 393, 409. Argument, speculation, and unsubstantiated opinion or narrative will not suffice. Guidelines, 15384(a), (b). Petitioner has the burden of showing a fair argument based on substantial evidence that there is a reasonable possibility that the Elevator Project may cause a significant effect on the environment sufficient to remove the project from the categorically exempt class. Fairbank v. City of Mill Valley, ("Fairbank") (1999) 75 Cal.App.4th 1243, 1251. "Substantial evidence" is defined as "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached. CEQA Guidelines §15384(a). Whether substantial evidence exists is a question of law. See California School Employees Association v. DMV, (1988) 203 Cal.App.3d 634, 644.

### C. CEQA

The purpose of CEQA (Pub. Res. Code §21000 *et seq.*) is to maintain a quality environment for the people of California both now and in the future. Pub. Res. Code §21000(a). "[T]he overriding purpose of CEQA is to ensure that agencies regulating activities that may affect the quality of the environment give primary consideration to preventing environmental damage." Save Our Peninsula Committee v. Monterey County Board of Supervisors, (2001) 87 Cal.App.4th 99, 117. CEQA must be interpreted "so as to afford the fullest, broadest protection to the environment within reasonable scope of the statutory language." Friends of Mammoth v. Board of Supervisors, (1972) 8 Cal.3d 247, 259. Public agencies must regulate both public and private projects so that "major consideration is given to preventing environmental damage, while providing a decent home and satisfying living environment for every Californian." Pub. Res. Code §21000(g). The Legislature chose to accomplish its environmental goals through public environmental review processes designed to assist agencies in identifying and disclosing both environmental effects and feasible alternatives and mitigations. Pub. Res. Code §21002.

CEQA does not require any particular procedure for agency approval of a project that it finds to be exempt from CEQA review. See Apartment Assn. Of Greater Los Angeles v. City of Los Angeles, (2001) 90 Cal.App.4th 1162. However, the Guidelines have established a three-tiered process to ensure that public agencies inform their decisions with environmental considerations. Davidson Homes v. City of San Jose, ("Davidson Homes") (1997) 54 Cal.App.4th 106, 112.

The first tier, which is jurisdictional, requires that an agency conduct a preliminary review in order to determine whether CEQA applies to a proposed activity. Guidelines §§15060, 15061. The Guidelines list 33 classes of projects that generally do not have a significant effect on the

environment and that may appropriately be exempted from CEQA for that reason. Pub. Res. Code §21084; Asuza Land Recl. Co. v. Main San Gabriel Basin Watermaster, (1997) 52 Cal.App.4th 1165.<sup>1</sup> Exemptions are to be narrowly construed. Santa Monica Chamber of Commerce v. City of Santa Monica, (2002) 101 Cal.App.4th 786, 793. Even if a defined categorical exemption applies, an agency may not find the activity categorically exempt if certain listed exceptions apply, including (1) “if the project may “impact an environmental resource of hazardous or critical concern that is designated, precisely mapped, and officially adopted by a federal, state or local agency pursuant to applicable law” (Guidelines §15300.2(a)), and (2) there is a reasonable possibility a project will have a significant effect on the environment due to “unusual circumstances.” Guidelines §15300.2(c). If the agency properly finds the project is exempt from CEQA, no further environmental review is necessary. The agency may prepare and file a notice of exemption, citing the relevant section of the Guidelines and including a brief statement of reasons to support the finding. Davidson Homes, supra, 54 Cal.App.4th at 113; Guidelines §§ 15061(d), 15062 (a)(3).

If, however, the project does not fall within any exemption, the agency must proceed with the second tier and conduct an initial study. Guidelines §15063. If the initial study reveals that the project will not have a significant environmental effect, the agency must prepare a negative declaration, briefly describing the reasons supporting that determination. Guidelines §§15063(b)(2), 15070. Otherwise, the third step in the process is to prepare a full EIR on the proposed project. Guidelines §§15063(b)(1), 15080; Pub. Res. Code §§21100, 21151; Davidson Homes supra, 54 Cal.App.4th at 113.

The Class 1 exemption for “existing facilities” is found at CEQA Guidelines section 15031. The existing facility exemption applies when there are only minor alterations made to an existing structure that involve “negligible” or “no expansion” of the previous use. Guidelines §15301. The CEQA Guidelines list as an example of “minor alterations” that qualify for the Class 1 exemption “[i]nterior or exterior alterations involving such things as interior partitions, plumbing, and electrical conveyances.” Guidelines §15301(a).

A decision to exempt a project under section 15301 must be based on a baseline of the conditions existing at the time the local agency’s exemption decision is made. Citizens for East Shore Parks v. State Lands Commission, (2011) 202 Cal.App.4th 549, 560. A public agency has discretion when establishing an environmental baseline under CEQA. Fat v. County of Sacramento, (2002) 97 Cal. App. 4th 1270, 1278; Save Our Peninsula Comm. v. Monterey County Bd. Of Supervisors, (2001) 87 Cal. App. 4th 99, 125.

**D. Statement of Facts**<sup>2</sup>

<sup>1</sup>A project not exempt by statute or under the 33 categories in the Guidelines may be found to be exempt under the “common sense” exemption that a project is not subject to CEQA where it can be seen with certainty that there is no possibility that the activity in question may have a significant effect on the environment. Guidelines §15601(b)(3).

<sup>2</sup> Petitioner asks the court to judicially notice six exhibits: (1) Pasadena Zoning Code Chapter 17.62 (Ex. A); (2) Pasadena Zoning Code Chapter 17.80.020 (Ex. B); (3) Pasadena Municipal Code Chapter 3.32, Section 3.32.110 (Ex. C); (4) Pasadena City Charter Section 1703

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## **1. The Archery Range**

The Lower Arroyo is a stretch of parkland roughly 150 acres within the City, stretching approximately 1.75 miles from the Colorado Street Bridge to the City's border with the City of South Pasadena. It includes a fly-casting pond, trails for hiking, running, and horseback riding, the Ash Memorial Grove, and the Archery Range. AR 2663.

The Lower Arroyo is a local, state, and nationally-designated historical resource. It was designated a Cultural Heritage Landmark by the City on April 17, 1979 and subsequently entered into the National Register of Historic Places by the United States Department of the Interior on November 6, 2008. AR 1866, 153289. The State of California listed the Lower Arroyo in the California Register of Historical Resources on November 24, 2008. AR 5488.

The Archery Range is a public range in the Lower Arroyo, leased by Real Party PRA, a not-for-profit organization, and operated for over 80 years, since 1935. AR 5237-38, 5272-73. The Archery Range has been certified as safe for decades by the National Field Archery Association. AR 2127. The Range consists of two sections: a 4-acre Northern Range and a 7.5-acre Southern Range. AR 1165. The Northern Range is used only 13 days a year in connection with PRA events. AR 5304. When in use, the Northern Range contains 14 temporary targets (down from an original 28 "broadhead targets"). AR 1127, 6605, 2263.<sup>3</sup>

The Southern Range has contained 28 permanent target locations and 6 practice butts since 1942. AR 1127, 1201-02. The PRA uses the Southern Range for organized archery events pursuant to a City-approved schedule. AR 1091-92. At all other times, the Range is open to the public for archery use. AR 1091-92, 2058.

## **2. Recreational Activity**

Prior to the restrictions imposed by the Project, the Archery Range was a mixed-use recreational area allowing for archery, hiking, running, birdwatching, and equestrian activities. AR 6335. There are two existing hiking trails near the Archery Range. AR 1165.

Recently, there has been increased use of the Lower Arroyo for both archery and other

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(Ex. D); (5) Pasadena Municipal Code Chapter 17.61 (Ex. E); and (6) the Notice of Certification of Administrative Record (Ex. F). It is not necessary to judicially notice the certification of the administrative record. The requests are granted as to Exhibits A-E. Ev. Code §452(b).

The City asks the court to judicially notice six exhibits: (1) Pasadena Zoning Code Chapter 17.62 (Ex. A); (2) Pasadena Zoning Code Chapter 17.80.020 (Ex. B); (3) Pasadena Municipal Code, Title 2, Article III, Chapter 2.75.045 (Ex. C); (4) Pasadena Municipal Code Chapter 3.32, section 3.32.110 (Ex. D); (5) Pasadena Municipal Code Chapter 3.32, Section 3.32.120 (Ex. E); and (6) Pasadena Zoning Code sections 17.61.050, 17.68.070, 17.68.080, 17.74.040-17.74.080, and 17.60.030. The requests are granted. Ev. Code §452(b).

Real Party PRA moves to strike Petitioner's citations to the Supplemental Administrative Record ("SAR"), claiming that Petitioner has improperly cited evidence not before the City on February 2, 2015. A motion to strike is not a proper means of attacking a brief's improper citations. The court construes Real Party's motion as an objection to improper citations, and the objection is sustained. Petitioner argues that many of the same documents it cited in the SAR are also in the Administrative Record ("AR"). If so, Petitioner should have cited to the AR.

<sup>3</sup> The Project does not include changes to the Northern Range. AR 1097.

recreational uses such as hiking, running, and horseback riding due to nearby habitat restoration efforts. AR 410, 870.07-870.09. Archery activities in the Lower Arroyo have increased in recent years due to a renewed interest in the sport. AR 484, 834-37, 1213, 1506, 2355, 8029-30. Some Local residents have testified to a safety concern from arrows from the Archery Range landing in their yard. *See, e.g.*, AR 2372.

### **3. The 2003 LAMP**

In 1988, the City commissioned a master plan for the Lower Arroyo. AR 5238. This process began as a design study and gradually evolved into the Lower Arroyo Master Plan ("LAMP"). The City adopted the LAMP in 2003, following certification of an Environmental Impact Report ("EIR"). AR 5236-42, 24-31. The LAMP was completed in response to the principles and objectives of the City's General Plan. AR 5242. The LAMP "paint[s] a vision and a direction to work toward for the Arroyo Seco." AR 26.

The permitted Archery Range layout was revised as part of the LAMP. AR 5304-05. Prior to the LAMP, the Archery Range had between 14 and 28 permanently installed field targets as well as a varying number of practice butts and animal targets on both the Northern and Southern Ranges. AR 2527, 2560. The LAMP's vision for the Northern Range includes a significant reduction in archery use, and restoration of trails and paths for passive recreation. AR 5304. The LAMP provided for removal of all 14 permanent field targets from the Northern Range, allowing only temporary targets to be installed and used for archery up to 13 times per year. AR 5304.

In the Southern Range, the LAMP provides that "the layout... will remain the same, but the trails, paths and archery shooting lanes... would be improved." AR 5305. Specifically, "[a]rchery lanes will be defined with improved signage and clear separators between other users and archers" to "keep the archery activity separated from the other park uses and provide improved safety." *Id.*, AR 5307. Consistent with this direction, in 2005 the City established a new hiking trail between the Archery Range and the Westside Trail to discourage pedestrian use of the Range. AR 383. The LAMP includes a reference to "the 14 targets" on the Southern Range in a section discussing design standards for the range targets. AR 5305. This reference to 14 targets in the Southern Range appears to be an error based on the recollections of the staff members involved in the LAMP, and the memorandum describing the layout of the Southern Range that includes 28 targets. AR 1097-98.

The LAMP also defines the City's trail system. AR 5306. In addition to the trails, there is also an unofficial path that passes between the shooting positions and the targets on the Archery Range ("Interior Path"). AR 1165. This Interior Path is not an approved trail in the LAMP. AR 1188. Instead, it developed over time as a result of passive recreation use and Archery Range maintenance. *Id.* However, according to a local historian, the Interior Path "appears to be part of a trail system delineated in the 1918 Arroyo Park Plan." AR 14283.

The LAMP directed that the trails around the Archery Range be modified "with improved signage to alert non-archers when the range is in use." AR 5305. The existing archery paths and lanes were to be improved for ADA accessibility, where feasible. *Id.* A hiking trail on the eastern edge of the Southern Range was to be divided from the Westside Multi-Use Trail and the Archery Range by installing barriers. AR 5145.

### **4. Safety Concerns**

In August 2010, passive recreational users of the Lower Arroyo and members of the PRA expressed concerns regarding safety within the Range. AR 2257. In early 2011, the City began developing proposals to balance longstanding recreational uses in the Lower Arroyo with public safety concerns in a public process that involved both Range users and area residents, and creation of an ad hoc subcommittee. AR 370-82, 512, 694. At eleven public meetings from 2011 through September 2013, the City Council and the Recreation and Parks Commission considered various proposals to ensure public safety on the Archery Range, including mixed-use, single-use and division of the Southern Range for part-time archery. AR 1092-94, 1104, 370-71, 387-91, 402-03, 422-23, 509-10, 537-38, 592-93, 611-12, 871-73, 1070-72. Non-archery use of the Range was the least common activity, and safety considerations led to an archery-only solution for the Southern Range. AR 1094.

The Pasadena Police Department issued a memorandum evaluating the safety of the layout and current use of the Archery Range. AR 7289. The Police Department concluded that, as long as the Archery Range was open to all archers during daylight hours, hiking and other passive recreational uses must be prohibited from the Archery Range. AR 7289. Joint use by casual hikers and other passive recreational users created an unacceptable risk. AR 7289. During its study of the Archery Range, the Police Department noted that hikers were seen emerging from behind trees and bushes into prospective lines of fire, and were frequently not visible until actually in the line of fire. AR 7290. The Police Department further recommended that the City Council require that every person using the Archery Range attend a safety course provided by PRA. AR 7290.

#### **5. City Council Approval of the Project**

At a September 16, 2013 meeting, the City Council considered a proposal that would prohibit non-archery uses within the Southern Range at all times. AR 1104. The proposal would remove the Interior Path that is not part of the trail system, make minor alterations to the existing trail, relocate certain targets from private to public property. AR 1119. It would also approve a new license and operating agreement with PRA, correct the LAMP to remove references to the number of targets in the Southern Range, and amend the PMC to authorize the City Manager to determine where archery would be permitted and promulgate rules for archery activities. AR 1104.

The City Council did not take formal action and requested additional information, directing the Department of Public Works to present the new information to the Recreation and Parks Commission. AR 1093-94. Staff presented the requested information at two Recreation and Parks Commission meetings on December 3, 2013 and February 4, 2014. AR 1093, 1143-51, 1073-74. The information presented by staff clarified that the proposed actions "do not intensify the use" of the Range. AR 1119.

On February 2, 2015, the City approved the Lower Arroyo Archery Range and Deal Points for New Agreement with the Pasadena Roving Archers ("Project"). AR 2245-53. Specifically, the City (1) found that the Project was exempt from CEQA environmental review, (2) amended the PMC to authorize the City Manager to determine where archery is permitted and promulgate rules for archery activities on public lands, (3) approved developing a new license and operating agreement with PRA, (4) approved a correction of the LAMP to remove references to the number of targets in the Southern Range ("LAMP Amendment"),<sup>4</sup> and 5) directed the City Manager to

<sup>4</sup> The City opted to resolve the discrepancy regarding the number of targets permitted in



work with PRA and nearby residents to pursue the identification of a suitable site for additional archery activities. Id.

The Project involves physical and rules changes to the Southern Range of prohibiting non-archery use, removing the Interior Path, establishing a mandatory safety and training program for archery, relocating 150 linear feet of trail, relocating two targets from private to public property, installing barriers to separate archery from other park uses, and establishing rules for use of the Archery Range. AR 1095.

The City exempted the Project from CEQA environmental review under CEQA Guidelines section 15301, the Class 1 Existing Facilities Exemption. AR 1-2.

#### **6. The LAMP Amendment**

Pursuant to the February 2, 2015 Project approvals, staff amended the LAMP effective February 2, 2015. SAR 147. The LAMP Amendment deleted the reference to "14 targets" in the descriptions of the Southern Range. SAR 224, 274.

#### **7. The Operating Agreement**

In the information provided by staff to the Recreation and Parks Commission, the City acknowledged that the popularity of activities in the Lower Arroyo results in the Lower Arroyo parking lot commonly filling up during weekend use and also "is regularly filled when large events are held." SAR 7006. To mitigate this issue, the new Operating Agreement with PRA should require that PRA's marketing materials include information about offsite parking and carpooling. SAR 7006. The City also would continue to investigate alternate locations suitable for archery activity. Id.

PRA and the City entered into Operating Agreement No. 22,139 ("Agreement") on September 1, 2015. SAR 6613-24. The Agreement is for one year commencing August 1, 2015. SAR 6619. The Operating Agreement may be extended by mutual agreement for four additional one-year terms. Id.

Pursuant to the Agreement, PRA is responsible for administering a City-approved safety training program. AR 6616. An individual archer is required to complete this program or a competency examination to use the Archery Range. Id. PRA is not permitted to alter any existing structures or construct additional structures without the written approval of the City Manager. SAR 6619. PRA is required to obtain liability insurance in the amount of not less than \$1,000,000. SAR 6620. Both the City and any property owners abutting the Range must be included as additional insured under the liability insurance policy. SAR 6621.

#### **8. The Ordinance**

The Ordinance amends Chapter 3.24 (Parks and Public Grounds) of the PMC to specify that the City Manager shall determine where archery is permitted and promulgate rules and regulations for the Southern Range. SAR 5. The Ordinance also amends Chapter 9.76 (Weapons-Prohibited Equipment) to prohibit any archery activity in the Southern Range which violates the rules promulgated by the City Manager. SAR 10. The Ordinance does not allow the City Manager

the Southern Range by directing City staff to remove the LAMP's reference to 13 targets in the Southern Range. Id.

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to reconfigure or add targets to the Southern Range. SAR 3-17.

The City conducted a first reading of the Ordinance on September 21, 2015. SAR 26-27, 73-74. A second reading was conducted on September 28, 2015. SAR 129-30. At the September 28 meeting, Petitioner's counsel objected that the Project would result in impacts to traffic, noise, and other resources due to the alleged increase in archery activities at the Archery Range due to the Project. SAR 6881-82, 10210-16.

After considering all comments, the City Council adopted the Ordinance and determined it was "within the scope of the previously approved [February 2, 2015] action, and there are no changes to the project or to the circumstances under which it is undertaken, or new information that would warrant the need for evaluation under CEQA." SAR 57, 115-16.

On October 13, 2015, the City filed a NOE for the Ordinance. SAR 1-2.

**9. The City Manager's Rules**

Pursuant to the Ordinance, the City Manager adopted rules and regulations for the Southern Range prohibiting all non-archery activities, including passive recreation such as hiking, running, and horseback riding. SAR 11197. The rules also prohibit archery outside the boundaries of the Range, and require archers to display proof of City-issued archery credentials and take other safety precautions. Id.

**E. Analysis**

Petitioner argues that the Project approval and subsequent passage of the Ordinance violates CEQA and other state and local laws. Petitioner seeks a writ of mandate compelling the City to set aside the Project approvals and conduct an EIR for the Project.<sup>5</sup>

**1. CEQA Exemption**

The City determined that the Project was exempt from CEQA environmental review because it fit within the Class 1 Exemption. Petitioner argues that the Project does not qualify for the Class 1 Exemption, the Project will cause substantial environmental impacts, and the Project will cause a substantial adverse effect on a designated historical resource. Pet. Op. Br. at 7-10.

**a. Does the Project Qualify for a Class 1 Exemption?**

The City relied on the Class I Minor Change in Existing Use or Facility Exemption, Guidelines section 15301, to avoid CEQA for both the Project and the Ordinance. AR 1-3. The existing facility exemption applies when there are only minor alterations made to an existing structure that involve "negligible" or "no expansion" of the previous use. Guidelines §15301. The CEQA Guidelines list as an example of "minor alterations" that qualify for the Class 1 exemption

<sup>5</sup> The FAP also alleges that approval of the Project is inconsistent with the City Charter because it dedicates City parkland exclusively to one organization for a single recreational use, and unlawfully delegates legislative and discretionary authority to the City Manager. Petitioner's opening brief does not pursue these arguments, which are waived. See Solomont v. Polk Development Co., (1966) 245 Cal.App.2d 488 (point made which lacks supporting authority or argument may be deemed to be without foundation and rejected).

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“[i]nterior or exterior alterations involving such things as interior partitions, plumbing, and electrical conveyances.” Guidelines §15301(a).

Petitioner note that the Class 1 exemption is intended for projects that are minor in scope, and the expansion or improvement of a facility does not meet that test. Azusa Land Reclamation Co. v. Main San Gabriel Basin Watermaster, (1997) 52.Cal.App.4<sup>th</sup> 1165, 1194. Petitioner argues that the baseline previous use to which the Project should be compared is the 2003 LAMP description of the Archery Range. According to Petitioner, the Project removes the limits on the number of targets on the Southern Range that were in the 2003 LAMP and authorizes the City to further revise the layout of the Archery Range and add additional targets without public review. Pet. Op. Br. at 8. To support its position that the 2003 LAMP’s reference to 14 targets was correct, Petitioner relies on the testimony of Claire Bogaard, a local resident who participated in formulating the 2003 LAMP and who says that “14 targets was the agreed upon number of targets.....” AR 7037. Pet. Op. Br. at 8.

The Project involves no expansion of use. The evidence demonstrates that there have been 28 targets at the Southern Range since at least 1999. AR 1175. As the City explained, the reference in the 2003 LAMP to 14 targets on the Southern Range appears to be a typographical error. The 2003 LAMP specifically provides that “the layout of the southern range... will remain the same”, and clearly contradicted itself by referring to 14 targets. AR 5305. This statement that the layout would remain the same could not be accurate if half of the existing targets were being eliminated from the Southern Range. The statement of Claire Bogaard is inconsistent with that of Rosa Laveaga, one of the two primary authors of the 2003 LAMP, who stated that there are aerial maps from 2003 showing 28 targets at the Southern Range and that she recalled no discussion about reducing the number of targets from 28 to 14. AR 6315-16. She stated that the reference to 14 targets was an “unfortunate typo”. AR 6315. The fact that no party ever took action to enforce a 14 target limit support Ms. Laveaga’s and the City’s position that the 2003 LAMP did not intend to reduce the number of targets.

Even if *arguendo* a reduction was intended, it was never implemented. It is undisputed that the number and layout of targets at the Southern Range has remained mostly stable since 1999. This is the baseline for CEQA purposes. Given that the continued use of 28 targets at the Southern Range in the same configuration is the baseline, the Project cannot be reasonably said to significantly expand use of the Southern Range.<sup>6</sup>

Petitioner contends that the removal of the Interior Path constitutes a significant change from the 2003 LAMP, which contemplated improvements to the existing paths within the Archery Range and that they would be better defined. This includes the “historical Interior Trail”. Pet. Op. Br. at 8. The Interior Path provides passive recreation users the opportunity to hike alongside the hillside (AR 812-13, 815), and the City admits that the Interior Path is used by walkers in that area. AR 2018.

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<sup>6</sup> Petitioner argues that the Project’s elimination of an express number of targets presents “the possibility of expansion beyond 28 targets.” The City should have replaced LAMP’s 14 target limit with 28 targets if its intent was for the LAMP to conform with the existing Southern Range. Reply at 3. While the City could have imposed an express number of targets for the Southern Range, it chose to delegate the number to the City Manager. The mere possibility of expansion is not sufficient to take the Project out of the categorical exemption.

Petitioner also argues that the Project would shift the focus of the Archery Range from a mixed-use to a single-use facility. A project that changes the focus or use of a project site is not a minor alteration under the Class 1 exemption. County of Amador v. El Dorado County Water Agency, (1999) 76 Cal.App.4<sup>th</sup> 931 967 (project changing 17,000 acre feet of water from irrigation to consumption was a change in focus not subject to existing facilities exemption). The Project permits the installation of barriers separating the Southern Range and relocates 150 linear feet of hiking trail, reducing a multi-use property to expand the Range's capacity to accommodate archery as a single use. Pet. Op. Br. at 9-10.

Although Petitioner characterizes the Interior Path as a historical walking trail, it does not appear on the official trail maps. AR 5306. While Petitioner is correct that the Interior Path will no longer be useable, there is not significant evidence that the mixed use status of the Lower Arroyo will be significantly affected. The use of archery is limited to the 7.5 acres of the Southern Range, an area already designated for archery use. Walking and hiking and other passive recreational activities remain available throughout the remainder of the Lower Arroyo, including two separate trails adjacent to the Southern Range. AR 2108-09. Restricting passive recreation users from using the unofficial trail that runs directly through the line of fire on the Southern Range is a sensible safety precaution that will not substantially restrict the ability of non-archers to enjoy the general Lower Arroyo area.

There is substantial evidence to support the City's determination that the Project meets the definition of the Class 1 Exemption.

**b. Do Unusual Circumstances Prevent Application of a Categorical Exemption?**

Even if a defined categorical exemption applies, an agency may not find the activity categorically exempt if there is a reasonable possibility a project will have a significant effect on the environment due to "unusual circumstances." Guidelines §15300.2(c). There are two established methods for demonstrating unusual circumstances: (1) demonstrating "some feature of the project... distinguishes the project from other features in the exempt class," or (2) demonstrating that the project "will have a significant environmental effect". Citizens for Environmental Responsibility v. State ex. rel. 14th Dist. Agricultural Assoc., 242 Cal. App. 4th 555, 574-576. When it is shown that a project otherwise covered by a categorical exemption will have a significant effect on the environment, it necessarily follows that the project presents unusual circumstances. Berkeley Hillside, supra, 60 Cal.4<sup>th</sup> at 1114. But a petitioner may not rely on evidence that a project merely may have a significant effect to show unusual circumstances; the Secretary has already considered that prospect in exempting the category. Id. at 1115. Instead, the petitioner must show that the project does have unusual circumstances, and the court reviews the agency's decision that it does not under the substantial evidence standard. Id. at 1114-15. Only when unusual project circumstances are established must the agency then must review potential environmental effects under the fair argument standard. Id. at 1116.

Petitioners argue that the proximity of the Southern Range to residential property and the recent increase in archery interest constitute unusual circumstances that should prevent application of the Class 1 Categorical Exemption. Pet. Op. Br. at 10-13.

Petitioners first contend that the residential property located near the Southern Range is subject to a "barrage" of arrows because the targets on the Southern Range are near the residences. AR 870.07; 1442, 1834, 1852, 2355, 2368, 2372. Pet. Op. Br. at 10-11.

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To support its argument that the residences present an unusual circumstance, Petitioner relies on Lewis v. 17th District Agricultural Association, ("Lewis") (1985) 165 Cal.App.3d 829, in which the court found unusual circumstances barred an agency from permitting auto racing to occur at an existing racetrack under a categorical exemption as "there is no question of the existence of unusual circumstances — the adjacency of residential areas to the racetrack." In Lewis, a dirt racetrack had been used for races for 15 years. When a banked track was built to allow for higher powered car races, residents complained about the greater amounts of noise and dust. The court held that the noise and dust, and adjacency of the residences, provided the necessary unusual circumstances to prevent application of the categorical exemption. Id. at 823, 826.

A recent case has criticized Lewis's conclusion about the residences, finding that "although the [Lewis court] called the adjacency of the residences an unusual circumstance, without the added noise and dust, the project presented no circumstances that were different from the preexisting normal operations of the fairground, including previous auto races." Citizens for Environmental Responsibility v. State ex rel. 14th Dist. Ag. Assn., ("Citizens") (2015) 242 Cal.App.4th 555, 584-85. Instead, it was the changed circumstance of dust and noise from the modified stock car races that were the unusual circumstance. Id. at 585 (horse and cattle manure from rodeo did not involve more horses than other events and presented no unusual circumstances).

The Citizens court's analysis is apt. The proximity of residences above the Southern Range is not an unusual circumstance. Both the residences and the Southern Range have existed in proximity for many years. There is nothing about this proximity that presents any circumstance different for the Project than the previous operation of the Southern Range.

Moreover, the safety concern from the proximity of residences to the Southern Range appears overstated. The average residence is approximately 510 feet west and 140 feet above the Archery Range. AR 8776. There apparently has never been an injury from operation of the Archery Range, and it would take a mighty archer indeed to misfire 140 above his or her target. There also has been only one police report regarding errant arrows from the Archery Range coming onto private property, and the arrows were in poor condition and appeared to have been in the resident's brush for many years. AR 2170, 2359, 2369. Additionally, the Project's purpose is to decrease, not increase, any risk that archers may pose by missing their targets. The Agreement requires PRA to provide training to archers and liability insurance naming nearby residential property owners as insureds. SAR 6621. The Project does not create an unusual circumstance based on the proximity of the Southern Range to residential property.

Petitioner argues that the "explosive growth" in the popularity of archery at the Southern Range is an unusual circumstance. Pet. Op. Br. at 12. While the evidence does not support a characterization of explosive growth, there has been increased use of the Lower Arroyo for both archery and other recreational uses such as hiking, running, and horseback riding due to nearby habitat restoration efforts. AR 410, 870.07-870.09. Archery activities have increased in recent years due to a renewed interest in the sport. AR 484, 834-37, 1213, 1506, 2355, 8029-30. But Petitioner does not explain why an increase in interest in archery is an unusual circumstance. The Project will not expand the archery capacity of the Southern Range, which was already available for archery uses during all daylight hours. Petitioner provides no citation to support its claim that an increase in popularity of an activity, standing alone, can demonstrate an unusual circumstances.

Petitioner has failed to establish that unusual circumstances prevent the City from applying

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a categorical exemption.<sup>7</sup>

**c. Does the Project Cause an Adverse Change in the Significance of a Designated Historical Resource?**

A second exception to application of a categorical exemption is where the project may "cause a substantial adverse change in the significance of a historical resource." Guidelines §15300.2(f). Petitioner argues that the Lower Arroyo is a local, state, and nationally designated historical resource, and there is a fair argument supported by substantial evidence that the proposed physical and use changes to the Project Site will cause a substantial adverse change in the historical significance of the Lower Arroyo. Petitioner argues that the removal of the Interior Path, realignment of an existing hiking path, and installation of targets and barriers will significantly impact the historical landscape of the Lower Arroyo. The City's General Plan states that the Lower Arroyo is an example of a "modified open space" characterized by hiking trails, archery course, casting pond, and restored stream habitat." SAR 7170.

A local historian, Ann Scheid, testified that it would do so. Specifically, Ms. Scheid stated that closing off the western portion of the Lower Arroyo from the general public and dedicate it to the exclusive use of PRA violates the ordinances and laws protecting the Lower Arroyo as an historic resource. AR 14282. The City's installation of boulders, milled wooden posts, telephone pole logs, chains, and intrusive signs failed to consider the Arroyo Seco Design Guidelines, and the proposed boundary installation impacts the native oak woodland by disrupting the natural landscape. AR14283. Ms. Scheid also criticized the removal of the "historic trail" within the Southern Range, which "appears to be part of a trail system delineated in the 1918 Arroyo Park Plan" the removal of which would adversely affect the Lower Arroyo's historical significance. AR 14283. Pet. Op. Br. at 13-14.

In 1979, the City declared the Lower Arroyo a Cultural Heritage Landmark, and it subsequently was entered into the National Register of Historic Places as well as the California Register of Historical Resources in 2008. The Project involves physical changes to the Southern Range of removing the Interior Path, relocating 150 linear feet of trail, relocating two targets from private to public property, and installing barriers to separate archery from other park uses. AR 1095.

The historical resources exception to a categorical exemption only applies if the physical changes will impact the features that make the resource historically significant. Gentry v. City of Murrieta, (1995) 36 Cal.App.4th 1359, 1418-19 (widening of road would not impact its historical

<sup>7</sup> Even if Petitioner had shown an unusual Project circumstance, there is not substantial evidence supporting a fair argument of potential environmental effects. Petitioner argues that there are potential noise, traffic, and safety impacts, but Daniel T. Smith, a traffic engineer, concluded that the Project is likely to increase the traffic and parking impacts surrounding the Archery Range. Petitioner also cites to the comments of Neil A. Shaw, a sound engineer, who concluded that an unlimited number of targets and large-scale events would result in significant noise impacts for the surrounding neighborhood. Pet. Op. Br. at 12-13. The comments of these experts mistakenly are based on the prospect of increased usage and of archery competitions. The Project does not involve increased usage of the Southern Range, and archery competitions occur at the Northern Range.

*add at Southern Range*

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significance because project did not impair road features that made it historically significant).

The Archery Range does not directly affect the Lower Arroyo's historical status. The Range is not mentioned in the rationale for the Landmark designation of the Lower Arroyo (AR 2472-73), and it is identified in the National Register as having no permanent buildings or structures and not counted as either a "contributing or noncontributing" element to the area's historical significance. AR 5424-25. The Interior Path also is not identified as contributing to the historical significance. Nor could it, since the Interior Path is contained within the Southern Range. There also is little evidence that the Interior Path was ever a recognized trail as opposed to a path developed over time as a result of recreation use and Archery Range maintenance. AR 1188.

Nor will the Project's physical changes indirectly affect the historical significance of the Lower Arroyo. The general public remains welcome on the Southern Range so long as it is used for archery purposes and they comply with the safety rules. AR 1091-92. The two official trails in the area will remain open to all passive recreation users. AR 5298. The existing trails on either side of the Southern Range will remain in place, and Ms. Scheid's criticism of the proposed boundary installation as disrupting the natural landscape is undermined by the plan for a natural barrier consisting of Arroyo-sourced stones and native landscape plantings. AR 1189. The remainder of the Lower Arroyo will be completely unaffected by the Project.

Petitioner has failed to establish that the Project will cause an adverse change in the significance of the Lower Arroyo because none of the physical changes identified in the Project will directly or indirectly affect the historical nature of the Lower Arroyo.

## **2. Historical Preservation Process**

PMC section 17.62.090(B) requires that all projects that may affect a designated historical resource obtain a Certificate of Appropriateness ("Historical Certificate") prior to approval. The application process for a Historical Certificate is intended to ensure that a project complies with all applicable historical standards and would not cause a significant adverse effect to a historical resource as defined under the CEQA Guidelines or the U.S. Secretary of the Interior's Standards for the Treatment of Historical Properties ("US. Historical Standards"). PMC §17.62.090(E)(3); 14 CCR §15300.2(f); AR 15353-612.

The application process for a Historical Appropriateness Certificate is outlined under PMC Chapters 17.62 and 2.75. "No person, owner or other entity shall undertake a major or minor project to a designated historic resource without first obtaining [a Historical Certificate]..." PMC §17.62.090(B). Projects in designated resources such as the Lower Arroyo undergo what is called Category 1 review, in which the City's Director of Planning or the City's Historic Preservation Commission must approve the Historical Certificate based upon either CEQA's Guidelines or the U.S. Historical Standards. PMC §17.62.090(E)(3). Major projects affecting City-Owned Historic Resources must be required by the City's Historic Preservation Commission. PMC §17.62.110; PMC §2.75.

Petitioner argues that the City failed to comply with its own Historical Preservation Process in approving the Project and Ordinance. The Arroyo Seco Design Guidelines, which are part of LAMP, require that all improvements within the Lower Arroyo receive a Historical Certificate prior to approval. Pet. Op. Br. at 16.

The requirement that a person or entity obtain a Historical Certificate applies only to projects that substantially alter, demolish, or relocate a historical resource. PMC §17.63.090(B),

(C); City RJN Ex. A. The Project does not demolish or relocate the Lower Arroyo. The issue is whether it substantially alters the Lower Arroyo. A project is an 'alteration/substantial alteration' for purposes of Historic Preservation if it is a "physical modification or change to the exterior of a structure, site, object, or designated interior that may have a significant adverse effect on character-defining features of a historic resource." City RJN Ex. B. A "significant adverse effect" is "[a]n activity or action that may potentially diminish the significance of a historic resource." *Id.*

The Project requires a Historical Certificate if it constitutes a physical modification that may potentially diminish the significance of a character-defining feature of the Lower Arroyo. As Petitioner argues, any project affecting a designated historical resource must go through the Historical Certificate process to determine if it would affect the historical value of the resource. Reply at 12. The Project does involve physical modifications in the Lower Arroyo -- the realignment of an existing hiking path, removal of the Interior Path, and installation of barriers in the Southern Range. However, not every project must be evaluated for its impact on a historical resource; it must potentially diminish the resource's significance. As discussed *ante*, the Southern Range is neither a contributing nor a noncontributing element to the Lower Arroyo's historical significance. AR 5424-25. Hence, the Project necessarily will not affect the Lower Arroyo's historical significance. Because the Project will not have any direct or indirect significant adverse effect on the Lower Arroyo, no Historical Certificate was required.<sup>8</sup>

Petitioner has not demonstrated that the City violated the Historical Preservation Process.

### 3. Public Lands Ordinance

The Arroyo Seco Public Lands Ordinance ("Public Lands Ordinance") protects the Lower Arroyo as a natural preservation area, barring expansion of permitted recreational uses including archery, as well as excavation and landfill activities and the use of fertilizer within the Lower Arroyo. PMC §§ 3.32.100, 3.32.120(C), 3.32.120(G). Petitioner argues that the Project and Ordinance ignore the Public Lands Ordinance by expanding the use and physical footprint of the Archery Range. The Project also requires excavation and landfill activities as well as the use of fertilizer at the Project Site, all of which violate the Public Lands Ordinance. AR 1189. Pet. Op. Br. at 16-17.

As City correctly points out (Opp. at 16), the Project and the Ordinance do not contain any provisions expanding the use or size of the Southern Range. Petitioner further fails to prove that there will be any fertilizer use as part of the Project; the citation provided (AR 1189) does not support Petitioner's claim. Finally, the Public Lands Ordinance's prohibition on excavation applies only to the slope banks of the Arroyo Seco. PMC §3.32.120(G); City RJN Ex. E. All of the minor excavation activities described in the Project will occur on the Southern Range, which is not on the slope banks. AR 1189.

Petitioner has not demonstrated that the City violated its Public Lands Ordinance.

### 4. State Planning and Land Use Law

<sup>8</sup> The Project further does not meet the definition of "major project" in PMC section 17.80.020 such that review by the City's Historic Preservation Commission is required. City RJN Ex. B. *See also* AR 1090 (designs for signage, barriers, and target enclosures were submitted to the Design Commission).

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Petitioner contends that the City failed to follow the State Planning and Zoning Law when it amended the LAMP. The Planning and Zoning Law (Government Code §65000 *et seq.*) imposes a number of procedural requirements on land use plan amendments, including public hearings and findings. Govt. Code §§ 65350-65362, 65453(a). The City has adopted this process. PMC §§ 17.60.030, 17.74.040-17.74.080, 71.68.070-17.68.080, 17.61.0501. According to Petitioner, the LAMP is integrated into and required to be consistent with the City's General Plan. AR 14427 (Lower Arroyo master plan, among others, "will be incorporated into the Green Space Element [of the General Plan]). AR 14427. *See* AR 14426 (Lower Arroyo "has an existing Master Plan to govern development and protection of this unique part of the Arroyo."). The LAMP provides a blueprint for how the City intends to carry out and implement the General Plan. Reply at 2.

Petitioner contends that the City violated the land use amendment process by not presenting the LAMP Amendment to the Planning Commission, City Council, and the public. The LAMP Amendment deleted the reference to "14 targets" in the descriptions of the Southern Range. SAR 224, 274. According to Petitioner, the limit on the number of targets was a crucial portion of the Public Land Use Ordinance's prohibition on expansion of recreational uses in the Lower Arroyo. PMC §3.32.110(c). Removal of the number of permissible targets in the LAMP Amendment was both curious and contrary to LAMP's own policy of requiring detail. Pet. Op. Br. at 17-18.

Petitioner's argument is based on the premise that the LAMP is part of the City's zoning law. Petitioner shows that the LAMP is incorporated into the City's General Plan and governs development of the Lower Arroyo. When the City adopted the LAMP in 2003, it was approved by the Department of Public Works, the City Manager, and the City Council. AR 24, 30. The LAMP states that it was "completed in response to the principles, objectives, and policies set forth in the City of Pasadena's Comprehensive General Plan." AR 5242.

The court accepts, for purposes of argument, that the LAMP is a land use planning document subject to state and City procedures. However, the subject of the LAMP Amendment -- deletion of the reference to 14 targets for the Southern Range -- was presented during the public hearing process for the Project. The proposed amendment was part of the discussion at the September 16, 2013 City Council meeting (AR 1104), and the December 3, 2013 Recreation and Parks Commission meeting. AR 1143. The proposed amendment was on the February 2, 2015 City Council agenda (AR 1085-86), and in the staff agenda report. AR 1097-98. At the February 2, 2015 meeting, the City Council in fact approved a correction of the LAMP to remove references to the number of targets in the Southern Range. AR 2245.

Thus, the City did present the proposed LAMP Amendment at the public hearings as part of the Project approval. State zoning law requires a noticed planning commission hearing (§65854), and a City Council hearing (§65856). The City did not comply with state law because the amendment was not presented to the Planning Commission, and the actual LAMP Amendment deleting the reference to 14 targets in the Southern Range was not presented to the City Council. Nonetheless, the public had notice of, and the City Council acted, on the LAMP Amendment. There was no need to do so a second time. There is no probability of a different result if the City fully complied with zoning amendment procedure, and no resulting prejudice. Govt. Code §65010(b). For this reason, the case cited by Petitioner, Sounhein v. City of San Dimas, (1992) 11 Cal.App.4<sup>th</sup> 1255, 1259-60, where the property owners had notice of an ordinance banning second unit apartments but the public did not, is distinguishable. *See* Reply at 7.

Petitioner has not established that the City failed to follow land use planning and zoning

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law.

**F. Conclusion**

The petition for writ of mandate is denied. Respondent City's counsel is ordered to prepare a proposed judgment, serve it on Petitioner's counsel for approval as to form, wait 10 days after service for any objections, meet and confer if there are objections, and then submit the proposed judgment along with a declaration stating the existence/non-existence of any unresolved objections. An OSC re: judgment is set for August 25, 2016 at 9:30 a.m.

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