From: noreply@civicplus.com
To: MPClerk
Subject: Online Form Submittal: City Council Written Communication
Date: Sunday, August 16, 2026 11:52:34 PM

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City Council Written Communication

Individuals can complete this form to submit written comments to the City Council for a particular agenda item or for general comments within the City Council`s subject matter jurisdiction. Please submit a separate form for each agenda item. Only one written comment per meeting for general public comments.

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Monterey Park Municipal Code Section 2.04 et seq. This is a public document and subject to disclosure.

Council Meeting Date	8/19/2026
Please check one:	General public comment
Agenda Item No.	3
Please check one:	For
First Name	Raymond

Last Name	Yu
Street Number	4400
Street Name	Marketplace
Street Type	Drive
Apt #	*Field not completed.*
City	Monterey Park
State	ca
Zip	91754
Phone Number	*Field not completed.*
Email Address	ramonyu@hotmail.com
Representing: (self, name of organization, or other party)	Dear Monterey Park City Councilmembers and Mayor, Your city and I require to demand to build and install a brand new long-awaited PANERA BREAD MP MARKETPLACE will be built to open to the public located at 4400 MP Marketplace Drive in your City of Monterey Park, California 91754-91755 which is gap & wedged between Buffalo Wild Wings and Ono Hawaiian BBQ when Montebello residents had to drive far down 5 miles 8 km radius distant to Panera Bread 8700 Washington Blvd. Pico Rivera 90660 and while your residents of MPK had to drive far away 5 miles to 8 miles radius up far northwest to Panera Bread 2300 West Commonwealth Avenue in NW Alhambra California 91801-91802-91803 further up to sister another Costco Stores in Alhambra from Costco Monterey Park. BREAKING NEWS When PANERA BREAD IS APPROVED, we will have an APPROVED DEVELOPMENT PERMIT to BUILD A NEW PANERA BREAD and WE WILL SERVE and PATRONIZE at PANERA BREAD and PANERA BREAD will serve everyone when it's open taking place at 4400 Marketplace Drive in your City of Monterey Park, California 91754. next door between Buffalo Wild Wings and Ono Hawaiian BBQ is existed present. This is why we need to fill in the vacant blank to require Panera Bread property with drink subscription system facility should be built and present at MPK Marketplace adjacent next to between Buffalo Wild Wings, Ono Hawaiian BBQ, Chick-Fil-A Sandwiches and In-N-Out Burgers all joint fast-food family / families altogether within Monterey Park Marketplace Costco and Home Depot.

This message is strictly seriously clear, we want Panera Bread built in the Monterey Park Marketplace for all of us please !!!

Expanding Panera Bread is coming to our Monterey Park Marketplace Opening Soon Moving Forward Ahead, to avoid between Pico Rivera Panera Bread, Alhambra Panera Bread and South Gate Panera Bread anymore. Panera Bread is in Expansion expanding to MPK Marketplace.

We are expanding Panera Bread is popping up into Monterey Park Marketplace outdoor tent temporary location until permanent Panera Bread is built to be opening permanently in MPK Marketplace between Buffalo Wild Wings and Chick-Fil-A.

Potrero Grande Business Center on Potrero Grande Avenue and Saturn Avenue tenants and landlords, property manangers want Panera Bread is grand Opening for business services coming into 4400 Monterey Park Marketplace Drive in your city in the future ahead. Panera Bread is coming soon and opening into MP Marketplace Costco Shopping Center ahead.

People are long-awaited for needing Panera Bread Expansion and we want a new Panera Bread to be built into MPK Marketplace when it opened 8 years ago since Summer or Fall 2016 with Costco and Home Depot openings, Chick-Fil-A and In-N-Out openings, we are missing and we are lacking of 4400 Marketplace Drive in your city when the dirt for the unbuilt property pad is vacant and empty fenced up and we need to have Coming Soon, Panera Bread is coming to open at Monterey Park Marketplace built between Buffalo Wild Wings and Ono Hawaiian BBQ, plus family with Chick-Fil-A sandwiches and In-N-Out Burgers altogether within the MPK Marketplace.

This message is strictly seriously verbally clear, we are coming after you the Panera Bread corporate headquarters staff members at Fenton Missouri where we are inviting and needing the people from Missouri to come to 4400 Monterey Park Marketplace Drive in your city to celebrate a groundbreaking ceremony with a Panera Bread pop-up before construction happens with we take action to hire the contractors to be building up, constructing a brand new Panera Bread property inside the MPK Marketplace until we are ready to celebrate a brand new GRAND-OPENING A NEW PANERA BREAD CEREMONY WILL BE OFFICIALLY OPEN TO THE PUBLIC, OPEN FOR BUSINESS, serving everyone with unlimited drink sip subscription iced-teas every single day, bread pastries and hot meals breakfast to dinner.

Potrero Grande Business Park tenants and property managers needing unlimited drinks and they are wanting a new era of Panera Bread coming to Monterey Park Marketplace opening

soon and people wanting to consume anything everything at Panera Bread when it was 8-10 year vacant lot, absent & property unbuilt, missing it, lacking it between Chick Fil A, Ono Hawaiian BBQ, vacant lot and Buffalo Wild Wings exist.

Costco and Home Depot opened 8 years ago since Summer Fall 2018, partially or nearly full, and still missing Panera Bread, we need to fill in the black one final blank, one final filled up store signage facing the 60 freeway will be Panera Bread could be will be fully occupied. 100% occupied with Panera Bread MPK Marketplace Immediately Now.

Expanding Planet Fitness is coming to our Monterey Park Marketplace or Atlantic Floral East Los Angeles College Shopping Center Opening Soon Moving Forward Ahead, to avoid between Planet Fitness Alhambra, Downey and South Gate. Planet Fitness is in Expansion expanding to MPK Marketplace or East LA College or Montebello Taylor Ranch Shopping Center replacing permanently closed Rite-Aid stores.

www.panerabread.com
www.planetfitness.com

Panera Bread needs your help, we need Panera Bread's help, we need Panera Bread in Monterey Park Marketplace. Panera Bread MPK Marketplace needs us to order and enjoy unlimited iced teas and drinks.

Written Communication

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BREAKING NEWS
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From:	Joe Martin
To:	Lo, Henry; Ngo, Vinh T.; Yang, Elizabeth; Wong, Thomas; Sanchez, Jose
Cc:	Igoe, Shawn; MPClerk
Subject:	Request to Pull Item 10.B from the Consent Agenda for the August 19 City Council Meeting
Date:	Tuesday, August 18, 2026 8:37:56 PM
Attachments:	20286.08.19 - Via Letter Council item 10.B.pdf

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To the Honorable Mayor and Members of the City Council,

On behalf of Via Transportation, I am writing to respectfully request that Council pull item 10.B from the consent calendar of tomorrow's City Council meeting and direct staff to issue a best-and-final offer request to all transit RFP respondents to ensure a consistent evaluation across all bidders.

I've attached a letter documenting our request and concerns. I plan to attend the City Council meeting tomorrow to document this request during public comment, but welcome any questions before then. We've sincerely appreciated our partnership with the City over the past few years and are proud of the work we've done to deliver meaningful transit improvements to the City. We appreciate your consideration.

Best,
Joe Martin

--
Joe Martin
Vice President, Partnerships | Via
Powering Public Mobility.™
M: +1 804-986-9292

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REQUEST TO PULL ITEM 10.B FROM THE CONSENT AGENDA

City of Monterey Park Transit Operations

To the Honorable Mayor and Members of the City Council,

Crosby Street Transit LLC (dba Via) respectfully requests that the Council pull Item 10.B from the Consent Calendar and direct staff to issue a best and final offer request to all responsive proposers, so that every proposal is evaluated against the same service specifications.

THE COMPARISON BEFORE THE CITY COUNCIL IS NOT "LIKE FOR LIKE"

The City received four proposals. Two were deemed non-responsive and two were fully evaluated. The two evaluated proposals were not priced against the same service specifications. The recommended proposal from Transdev / First Transit was not priced to several of the RFP's stated requirements, and each of those omissions lowered its price. When Via repriced its own proposal against the assumptions First Transit actually used, the difference between the two closed to a single digit percentage.

The cost comparison the Council is being asked to rely on treats adherence to the RFP's requirements as a pricing penalty. Two examples, both drawn from the recommended proposal:

Electrified Vehicle Fleet:

- The RFP required electrification. Page 15 and Appendix A describe the Council's resolution committing the City to introduce electric buses by 2026.
- Transdev / First Transit priced a compressed natural gas fleet, which does not meet that requirement.
- Via priced the accelerated zero-emission rollout the RFP called for, including battery electric vehicles and the charging infrastructure to support them.
- Electric vehicles carry materially higher capital and maintenance costs. Removing electrification alone would reduce Via's price by nearly $3 million.

Labor:

- California Labor Code section 1072(c)(1) requires the incumbent to provide, in writing and at least 30 days before proposals are due, with current employee wages, benefits, and job classifications.
- City Staff did not provide that information. Via requested it through the formal RFP Question and Answer process on June 4, 2026.
- Via priced wages & benefits conservatively to guarantee a complaint response. The incumbent priced its own known payroll precisely.
- Accurate wage and benefit information would have reduced Via's price by more than $2.5 million.

These are just two examples of multiple inconsistencies in the pricing evaluation. The total 4-year figures in the staff recommendation read as a difference in value when they actually reveal a materially different scope.

We respectfully ask that the Council direct staff to publish the operating specifications actually desired, including fleet type, staffing levels, and wage and benefit assumptions, and to **invite best and final offers from all proposers priced against that common basis**.

Every proposer would then be answering the same request, and the Council would be choosing on price and quality rather than on differing assumptions.

COMMITMENT TO THE CITY OF MONTEREY PARK

We write this letter because we believe that residents of Monterey Park will be best served by a proactive partner like Via, who will go out of our way to deliver safe and transformative transit.

Via has been a proud partner to the City of Monterey Park for the past few years. Beginning in spring 2025, we launched the MPK Transit Express service, which has provided nearly 25,000 rides and allowed the City to reimagine transit within Monterey Park.

Our successful operations for this service have allowed us to attain a cost per ride of $26, which is 43% lower than the City's average fixed route cost per ride. Moreover, we were thrilled to assume operations of the City's Dial-a-Ride service in spring 2026, where we realized 20% ridership growth compared to the Q2 monthly average.

RFP Cost Comparison

Our initial proposal was $1.75 million per year higher than the selected operator, Transdev / First Transit, but we were working with a fundamentally different set of assumptions.

After seeing the staff report on Monday, we identified that we could replicate Transdev / First Transit's model for a comparable price. Our analysis forecasts that we could come within a few percentage points of Transdev / First Transit's proposal, but we welcome a Best-and-Final-Offer process to present a robust like-for-like proposal.

Value Proposition for Monterey Park

Partnering with Via would represent a clear quality improvement for the City across key dimensions:

- **Service planning.** MPK Transit Express ridership is up 87 percent since April 2025, at $25.33 per ride, and it got there because we expanded the service zone and adjusted the program as the data came in rather than waiting to be asked. Dial-a-Ride ridership moved within three months of taking it over. The 2024 route restructuring is still new enough that the City needs an operator who can model a change before it goes live, which is what our planning team does for the fixed-route networks we run today.
- **Operators.** Monthly driver turnover across comparable Via services runs below 2 percent, and our accident rate last year was 0.24 per 100,000 miles, 35 percent below the FTA average. We will keep the Spirit Bus operators who know these routes, as Labor Code 1072 requires, and pay for the twelve drivers already working in Monterey Park to earn CDLs so one team can cover all three services. Operators complete more than 200 hours of training before carrying passengers.
- **Maintenance.** Our price funds in-house maintenance at a dedicated facility with ASE-certified technicians and an apprenticeship program, plus software that flags failing components before they become road calls. The maintenance figures in the First Transit / Transdev proposal are far below that, and we would ask staff to confirm on the record how those numbers were built and who pays if actual maintenance exceeds them.
- **Local presence.** Via runs seven services in LA County, including Metro Micro, Rosemead Go, and West Covina, so Spirit Bus riders can be connected to neighboring systems rather than stopping at the city line. In Monterey Park we have been at staff meetings, Council meetings, the Monster Mash, and the Public Works Open House, and we spoke with more than 180 residents about Dial-a-Ride at the Langley Center alongside the City's Mandarin translator. More than 70 percent of residents speak a language other than English at home, and our call center and rider materials are in English, Spanish, and Mandarin.

From:	Cindy
To:	Alvarez, Inez; MPClerk; Lo, Henry; Wong, Thomas; Sanchez, Jeffrey; Ngo, Vinh T.; Yang, Elizabeth
Subject:	Agenda Item 11-A - Goodview Property
Date:	Tuesday, August 18, 2026 3:59:58 PM

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Dear City Manager and City Councilmembers,

CVJ History in Monterey Park

There were three developers who lived in Monterey Park back in the 60s and 70s and called their company CVJ. The initial C stood for Bob and Betty Chu. The initial V stood for Frank and Martha Venti. The initial J stood for Mark and Leila Jabin. Decades later, Venti became our Millennial Mayor! With independent city council member Mitchell Ing, they convinced Betty Tom Chu, the retired founder and banker of East West Bank, to run for city council to help advance plans for the Market Place, which was held up by the Superfund List.

After CVJ Investments grew, they were looking for a sizable project to build homes that was once virgin soil in the hills of Monterey Park. They hired a geologist named Willie Lockman, a well-established soil engineer who had once served as our city's engineer. Mr. Lockman had his office on Potrero Grande just east of Garfield. Mr. Lockman was credited with convincing the Alhambra School District to fill up a canyon off Casuda and build an elementary school to alleviate the overcrowding at Fremont Elementary School.
Mr. Lockman's firm, hired by CVJ to conduct soil analysis, found the hill on Garvey between Abajo and Campanita Court unstable, calling it "a prehistoric landslide." Mr. Lockman's firm approved the hills in the Brightwood area as stable enough to build homes on Barnum Way, Nachi Way, and Jade Tree. Construction began in the mid-80s. The other parcel of land was sold off by CVJ, located off Cadiz, where the gated community exists today. These pioneer residents of Monterey Park never received the full credit for constructing valuable, sizeable single-family homes that gave our city a substantial property tax base.

I am sharing this history because the staff report mentions they do not have data (page 4), because this unsuitable property on Garvey has once again raised its ugly head by pre-owned developers who have had no success, washed their hands, and cut their losses as a bad investment, leaving a mess for our city to clean up with OUR TAX DOLLARS.
- K rails, weeds, and overgrown bushes that the city and owner neglected for years
- topsoil that sometimes falls onto the right lane onto Garvey
- $17 million wall on private property with a lien against the owner and extra funds required for cleanup

Note: property assessed value is slightly over $6M according to previous council meetings.
In late 2025, the city council took back the lien and confiscated this property and another CII-owned property in El Monte, along with future LIABILITIES to us, the taxpayers.

On Sunday, August 16, I had the opportunity to get a bird's-eye view of the Good Views property at

1688 West Garvey. I have lived in the Highlands area for over 50 years and know the history of that immediate site. That is why I included the history of CVJ, because it is vital to settling this eyesore permanently!

The BUILDABLE parcel is literally along ABAJO Drive, not Garvey! The Garvey side can only be used as an access road for entering and exiting Garvey Avenue. The senior housing on the corner of Garvey and Abajo was once a trailer park that was built into poor-quality condos with big windows that captured views of SGV. When the Whittier quake hit in 1987 with a magnitude of only 5.9, the water tank above the Goodview property was damaged, sending running water all the way down Sombrero, Casuda Cyn, and onto Garvey. The condos looked like some monster had walked by and punched holes in each one, and the residents never returned. After the cleanup, the large structure was shored up and rebuilt into senior housing.

Directly across the street from Abajo and Garvey, there are two large apartment buildings that were named Garvey West, owned by the Don family, in the city of Alhambra. The apartment building at the edge of the hill, looking down Monterey Pass Rd/Fremont, sustained major slippage, and residents were evacuated for a very long time until the building was back on its foundation.
This Wednesday's city council agenda item #11: the city wants to revert the zoning from R1 (18 lots) to R3 (186 high-density units). According to page 2H, Section 1, of the staff report notes from a city council meeting dated May 6, 2026, on their annual review of said property, the city directed staff to "initiate proceedings to repeal the Goodview's Specific Plan" and revert to R3 zoning.

Another interesting section (#5) regarding Limitations: the city council's analysis and evaluation "is based on the best information currently available." Why not ask two previous city mayors, Frank Venti and Betty Tom Chu, for their testimony? After all, they paid for the soil analysis back in the 70s. You can even reach out to Willie Lockman, who knows all the history of Highlands topography!
The city is so DESPERATE to build the state-mandated housing without regard to safety, history, general infrastructure planning, creating future overcrowded conditions in both schools and traffic on the Garvey corridor, and the liability of owning unstable and unsuitable property where soil movement occurs. Even the previous owner of Goodview changed plans from more lots to only 16 single-family homes. WHY?

Leave the zoning and tentative track map alone, OR turn it into a natural nature preserve, with walking trails for humans and pet dogs, that many residents have asked for, but the city has let them down again. Request a FULL and unbiased EIR to once and for all settle this ongoing property issue, in which the city attorney has been milking us, taxpayers, for years. Presently, we have heard reports of over ten 7.0 devastating earthquakes. All of the West Coast of the USA, including Monterey Park, is part of the Ring of Fire!

Yours truly,
Cindy Yee

From: noreply@civicplus.com
To: MPClerk
Subject: Online Form Submittal: City Council Written Communication
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Council Meeting Date	8/19/2026
Please check one:	Agenda Item
Agenda Item No.	11A
Please check one:	Against
First Name	Cindy

Last Name	Yee
Street Number	298
Street Name	Barranca Dr
Street Type	*Field not completed.*
Apt #	*Field not completed.*
City	Monterey Park
State	CA
Zip	91754
Phone Number	6266880251
Email Address	pipsqkcyee@gmail.com
Representing: (self, name of organization, or other party)	Homeowner
Written Communication	CVJ History in Monterey Park There were three developers who lived in Monterey Park back in the 60s and 70s and called their company CVJ. The initial C stood for Bob and Betty Chu. The initial V stood for Frank and Martha Venti. The initial J stood for Mark and Leila Jabin. Decades later, Venti became our Millennial Mayor! With independent city council member Mitchell Ing, they convinced Betty Tom Chu, the retired founder and banker of East West Bank, to run for city council to help advance plans for the Market Place, which was held up by the Superfund List. After CVJ Investments grew, they were looking for a sizable project to build homes that was once virgin soil in the hills of Monterey Park. They hired a geologist named Willie Lockman, a well-established soil engineer who had once served as our city's engineer. Mr. Lockman had his office on Potrero Grande just east of Garfield. Mr. Lockman was credited with convincing the Alhambra School District to fill up a canyon off Casuda and build an elementary school to alleviate the overcrowding at Fremont Elementary School. Mr. Lockman's firm, hired by CVJ to conduct soil analysis, found the hill on Garvey between Abajo and Campanita Court unstable, calling it "a prehistoric landslide." Mr. Lockman's firm approved the hills in the Brightwood area as stable enough to build homes on Barnum Way, Nachi Way, and Jade Tree. Construction began in the mid-80s. The other parcel of land was sold off by CVJ,

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Council Meeting Date	8/19/2026
Please check one:	Agenda Item
Agenda Item No.	11.A.
Please check one:	Against
First Name	Jamie

Last Name	Hall
Street Number	8383
Street Name	Wilshire Blvd
Street Type	*Field not completed.*
Apt #	Suite 750
City	Beverly Hills
State	California
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Representing: (self, name of organization, or other party)	Save Our Slopes (“SOS”)
Written Communication	Please see the attached letter.
You can also upload your written communication	2026-08-18 SOS Comment Letter to City Council.pdf

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August 18, 2026

VIA ELECTRONIC MAIL AND UPLOAD

Mayor Henry Lo and Honorable Members of the City Council
City of Monterey Park
c/o Maychelle Yee, City Clerk
320 West Newmark Avenue
Monterey Park, CA 91754
mpclerk@montereypark.ca.gov

Re: Agenda Item No. 11.A (August 19, 2026): Objections to Proposed Ordinances Repealing Ordinance No. 2210 and Restoring High-Density Residential (R-3) Zoning at 1688 West Garvey Avenue, and Repealing Ordinance No. 2211 and Rescinding Development Agreement No. 21-01; Improper Reliance on the "Common Sense" Exemption (CEQA Guidelines § 15061(b)(3))

Dear Mayor Lo and Honorable Councilmembers:

This Firm represents Save Our Slopes ("SOS"), an unincorporated association of Monterey Park residents whose homes sit on and immediately above the hillside at 1688 West Garvey Avenue (APN 5254-002-903) (the "Property"). SOS is the petitioner in *Save Our Slopes v. City of Monterey Park*, Los Angeles Superior Court Case No. 21STCP02365, the pending CEQA challenge to the City's 2021 approval of the Goodviews Project.

SOS submits these comments and objections to Agenda Item No. 11.A, and specifically to the City's determination that the proposed actions are exempt from the California Environmental Quality Act ("CEQA") under CEQA Guidelines section 15061(b)(3), the so-called "common sense" exemption.

I. Introduction and Summary

It is important to be precise about what is, and what is not, in dispute. SOS does not oppose rescission and termination of Development Agreement No. 21-01. CII plainly failed to perform, and SOS takes no position on the City's contractual remedies against it.

What SOS opposes is the second component of this item, which the staff report treats as a mere clerical consequence of the first: the upzoning of a 6.22-acre, chronically unstable hillside from a specific plan that caps development at sixteen single-family homes to an R-3 designation that the City states will accommodate 155 dwelling units, and up to 186 dwelling units if voters approve the companion General Plan amendment the City has placed on the November 2026 ballot.[1] That is an increase in permitted density of nearly tenfold, on a slope with a documented, decades-long history of landslides, debris flows, wall failures, and street closures.

The City proposes to approve that upzoning with no environmental review of any kind. Its entire CEQA analysis consists of four sentences asserting that the actions "do not propose or approve any new development." That assertion cannot be reconciled with what the City tells its own Council two pages later: that restoring R-3 zoning "would allow greater development potential, broaden the potential buyer pool, and maximize the sale price as recommended by the study prepared by Kidder Mathews."[2] The City cannot tell decisionmakers that the purpose of the rezoning is to induce development while telling the public that it can be seen "with certainty" that there is "no possibility" the rezoning may affect the environment.

As set forth below, the common sense exemption is the narrowest and most demanding exemption in CEQA. The City bears the burden of demonstrating that it applies, and it must refute to a certainty any reasonable argument that the activity may have a significant effect. The City has not carried that burden, and on this record it cannot. It has performed no preliminary review and produced no evidence. It has no current analysis of a site whose physical condition it has itself substantially altered since the last environmental document was prepared. It has never studied what development at R-3 densities would require of that hillside. The California Department of Fish and Wildlife ("CDFW") advised the City that the loss of trees and nesting bird habitat at this site "would be considered significant under CEQA," and that objection has never been resolved. And the City Council sits, on this same agenda, as the Board of Directors of a Geologic Hazard Abatement District formed over this very parcel, a district that exists as a matter of law only because the Property presents an actual or threatened geologic hazard requiring permanent monitoring and maintenance.

One structural point should be made at the outset, because the staff report obscures it. The repeal of the Goodviews Specific Plan and the restoration of R-3 zoning are not two actions; they are one. Ordinance No. 2210 changed the zoning designation of the Property from R-3 to the 1688 West Garvey Avenue Specific Plan. The Specific Plan is the Property's zoning. Repealing it necessarily rezones the Property, which is why the draft ordinance must supply a replacement designation and amend the Zoning Map. The Specific Plan repeal therefore cannot be characterized

[1] City Council Staff Report, Agenda Item No. 11.A (August 19, 2026), "Analysis for Restoring the Zoning Designation of the Property." The Property is 6.22 acres. (Draft EIR, § 3.0 [Project Description].)

[2] City Council Staff Report, Agenda Item No. 11.A (August 19, 2026), "Executive Summary" and "Analysis for Restoring the Zoning Designation of the Property."

as administrative cleanup that follows automatically from terminating the Development Agreement.

Nor does terminating the Development Agreement require repealing the Specific Plan. A development agreement and the underlying zoning are legally distinct instruments. Government Code section 65865.1 authorizes a local agency to terminate or modify a development agreement upon a finding of non-compliance following annual review; it does not require, and does not authorize, an accompanying rezoning. The City may rescind Development Agreement No. 21-01 and leave the Specific Plan zoning undisturbed. It has chosen to couple the two because it wants the higher density, not because the law compels it.

SOS respectfully requests that the Council rescind the Development Agreement if it wishes, but continue the Specific Plan repeal and R-3 rezoning and direct staff to prepare an initial study.

II. The Proposed Rezoning Is a "Project" Subject to CEQA

A "project" is an activity directly undertaken by a public agency that may cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. (Pub. Resources Code, § 21065; CEQA Guidelines, § 15378(a); *San Lorenzo Valley Community Advocates for Responsible Educ. v. San Lorenzo Valley Unified Sch. Dist.* (2006) 139 Cal.App.4th 1356.) The Legislature intended CEQA "to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." (*Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259.)

Whether an activity is a project "is a categorical question respecting whether the activity is of a general kind with which CEQA is concerned, without regard to whether the activity will actually have environmental impact." (*Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372, 381.) In *Union of Medical Marijuana Patients, Inc. v. City of San Diego* (2019) 7 Cal.5th 1171, our Supreme Court held that a land use ordinance is a project where, as here, it may foreseeably result in new construction and associated physical changes.

The City does not appear to contend otherwise. By invoking an exemption, the City necessarily concedes that the rezoning is a project; exemptions operate only at the second tier of CEQA review, and are reached only after an agency determines that the activity is a project in the first place. (*Muzzy Ranch*, supra, 41 Cal.4th at pp. 380–381; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 74.)

III. The Legal Standard Governing the Common Sense Exemption

CEQA Guidelines section 15061(b)(3) provides that an activity 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." The provision is "phrased in absolute terms" for a reason, and applies "only in those situations where its absolute and precise language clearly applies"; that is, to projects that are "obviously exempt." (*Myers v. Board of Supervisors* (1976) 58 Cal.App.3d 413, 425–426.)

Three principles govern.

First, the burden rests on the agency, not the public. Because a common sense exemption determination is not backed by any implied finding of the Resources Agency, "the agency must itself provide the support for its decision before the burden shifts to the challenger." Placing that burden on the public "would frustrate CEQA's fundamental purpose of ensuring that government officials 'make decisions with environmental consequences in mind.'" (*Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, 116; accord, *Muzzy Ranch*, supra, 41 Cal.4th at p. 386 [applicability of the exemption "presents an issue of fact, and … the agency invoking the exemption has the burden of demonstrating it applies"].)

Second, the showing required of an objector is deliberately slight. As *Davidon* explains:

> "[T]he showing required of a party challenging an exemption under Guidelines section 15061, subdivision (b)(3) is slight, since that exemption requires the agency to be certain that there is no possibility the project may cause significant environmental impacts. If legitimate questions can be raised about whether the project might have a significant impact and there is any dispute about the possibility of such an impact, the agency cannot find with certainty that a project is exempt." (*Davidon*, supra, 54 Cal.App.4th at p. 117.)

A commenter need only "make[] a reasonable argument … to suggest a possibility that a project will cause a significant environmental impact"; once that occurs, "the agency must refute that claim to a certainty before finding that the exemption applies." (*Id.* at p. 118.) In *Davidon* itself, the objector argued only that the activity "would result in noise, dust, and visual impacts on surrounding residents, wildlife and plantlife." That was enough; the court held the city had failed to refute the claim to a certainty and had not proceeded in the manner required by law. (*Id.* at pp. 118–120.) Claims raised by project opponents "even if exaggerated or untrue" may suffice to defeat an exemption. (*Myers*, supra, 58 Cal.App.3d at p. 427.)

Third, an agency must actually conduct a preliminary review and build a record before it dispenses with CEQA. The *Davidon* court set aside an exemption determination on precisely this ground:

> "There is no indication that any preliminary environmental review was conducted before the exemption decision was made. The agency produced no evidence to support its decision and we find no mention of CEQA in the various staff reports. A determination which has the effect of dispensing with further environmental review at the earliest possible stage requires something more." (*Davidon*, supra, 54 Cal.App.4th at p. 117.)

Relatedly, where an agency has failed to investigate an area of possible impact, that failure does not insulate its decision; it enlarges the range of inferences that may be drawn against it. "CEQA places the burden of environmental investigation on government rather than the public. If the local agency has failed to study an area of possible environmental impact, a fair argument may be based on the limited facts in the record. Deficiencies in the record may actually enlarge the

scope of fair argument by lending a logical plausibility to a wider range of inferences." (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.)

IV. The City Has Not Carried, and On This Record Cannot Carry, Its Burden

A. The City Conducted No Preliminary Review and Has Produced No Supporting Evidence.

The staff report and the two draft ordinances contain a single, identical, four-sentence CEQA recital. It cites no study, no map, no technical analysis, no geotechnical opinion, and no biological survey. It does not mention the certified Final EIR for this very site, the mitigation measures adopted with it, or CDFW's comments. There is no initial study, no preliminary review memorandum, and no administrative record supporting the conclusion that the rezoning cannot possibly affect the environment.

A conclusion is not evidence. Under *Davidon*, "[a] determination which has the effect of dispensing with further environmental review at the earliest possible stage requires something more." (54 Cal.App.4th at p. 117.) The City has offered nothing more.

B. The Admitted Purpose of the Rezoning Is to Induce Development at Nearly Ten Times the Density Ever Studied.

The staff report is candid about why the City wants R-3 zoning restored. It states that the Goodviews Specific Plan "allows a maximum of 16 single-family residences," that R-3 "would allow a maximum of 155 dwelling units," and that restoring R-3 "would allow greater development potential, broaden the potential buyer pool, and maximize the sale price." It adds that if voters approve a High-Density General Plan designation, the Property could accommodate "a maximum of 186 dwelling units." And it states the objective plainly: to "market the Property for sale in a manner that maximizes the potential return to offset the substantial abatement costs it has incurred."[3]

The City is therefore not making a neutral, ministerial correction to its zoning map. It is deliberately increasing the development capacity of a hillside parcel by roughly a factor of ten for the express purpose of attracting a buyer who will build on it. That is the paradigm of a growth-inducing action, and CEQA requires that its reasonably foreseeable consequences be examined now.

An agency may not defer analysis of foreseeable development on the theory that no specific project is yet before it. "[W]hile [the City] need not predict the precise form, location and amount of commercial and residential development resulting from" its action, "it cannot pretend none will occur; it simply must assume the general form, location and amount of such development that now seems reasonable to anticipate … and evaluate that development by means of the EIR process." (*City of Antioch v. City Council* (1986) 187 Cal.App.3d 1325, 1338.) The court added that "the

[3] City Council Staff Report, Agenda Item No. 11.A (August 19, 2026), "Executive Summary" and "Analysis for Restoring the Zoning Designation of the Property."

fact that a particular development which now appears reasonably foreseeable may, in fact, never occur does not release it from the EIR process," and that "the fact that future development may take several forms does not excuse environmental review." (*Ibid.*)

Nor does the absence of a pending application help the City. "That further governmental decisions need to be made before a land use measure's actual environmental impacts can be determined with precision does not necessarily prevent the measure from qualifying as a project." (*Muzzy Ranch*, supra, 41 Cal.4th at p. 383.) And CEQA review is to occur "at the earliest possible stage," because "it is desirable that the precise information concerning environmental consequences which an EIR affords be furnished and considered" before commitments harden. (*Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 282.)

The City may invoke *Muzzy Ranch*, in which our Supreme Court sustained an agency's reliance on the common sense exemption for an airport land use compatibility plan. That decision confirms SOS's position rather than undermining it. The Court upheld the exemption there for one narrow reason: the plan "simply incorporate[d] existing general plan and zoning law restrictions on residential housing density," so that "any potential displacement the [plan] might otherwise have effected already ha[d] been caused by the existing land use policies and zoning regulations to which the [plan] is keyed." (41 Cal.4th at p. 389.) The plan changed nothing. Here the ordinance changes everything; it multiplies permitted density from 16 units to 155. The Court was explicit that "nothing inherent in the notion of displaced development places such development, when it can reasonably be anticipated, categorically outside the concern of CEQA." (*Id.* at pp. 382–383.)

C. The Record Before the City Establishes Far More Than a "Possibility" of Significant Effects.

This is not a case in which an objector must speculate about what might happen if a hillside is developed. The City has studied, litigated over, condemned, abated, and formed a special assessment district around this exact site. Its own documents supply the evidence that defeats the exemption.

1. The City Has Never Analyzed the Site as It Exists Today.

The Property has a documented history of instability spanning more than four decades. Development ceased in or around 1980 after slope failures. Debris flows damaged homes along Abajo Drive. By 1982 a portion of the crib wall and slope had failed, blocked West Garvey Avenue, and forced evacuation of an apartment complex across the street. Retaining walls failed in 1983 and 1985. In 1983 the City took emergency action to construct soil stabilization and drainage infrastructure. In 1991 the City issued a notice of violation declaring the site a public nuisance; in 1997 the City Council declared it a public nuisance and began abating it, with further abatement in 2000 and 2002. In late 2004 a progressive slope failure above Abajo Drive sent debris onto the street and migrated upslope until 2007.[4]

[4] Initial Study, § 2.0 [Environmental Setting]; Draft EIR, § 3.0 [Project Description] and § 5.3 [Geology and Soils]; 1688 West Garvey Avenue Specific Plan (March 2021), § 2 [Background]. The Final EIR, the Draft EIR and its appendices, the Initial Study, the Specific Plan, and the Project

SOS does not contend that the Property remains in the condition described in the 2020 Initial Study and the 2021 EIR. It does not. Beginning in 2022, after declaring an emergency, the City undertook the Goodviews Abatement Project and has since expended approximately $16 million on remedial grading and the construction of an engineered hillside stabilization system. That work is substantial and it is visible from West Garvey Avenue.[5]

That fact does not support the exemption. It defeats it, for three reasons.

First, it means the City has no current environmental analysis of this site at all. The Initial Study was prepared in 2020 and the EIR was certified in July 2021, both describing a physical setting that the City has since materially altered. CEQA measures a project's effects against the existing physical conditions. The City cannot rely on the 2021 record to describe conditions that no longer exist, and it has prepared nothing since. It has no analysis of the completed abatement work, of the stability of the reconstructed slope, of the capacity of the new system, or of what any of it means for future development. Where an agency has not studied an area of possible impact, that gap does not establish certainty; it "enlarge[s] the scope of fair argument by lending a logical plausibility to a wider range of inferences." (*Sundstrom*, supra, 202 Cal.App.3d at p. 311.)

Second, the abatement work was undertaken to abate a public nuisance, not to render the Property suitable for high-density residential development. The City has drawn that distinction itself. In its own filings enforcing the settlement agreement, the City distinguished between constructing "hillside stabilization according to Plan B" and constructing it "in such a manner that would accommodate a future residential development."[6] Plan B was the nuisance abatement remedy. Nothing in the record suggests it was engineered to carry 155 dwelling units, and the City has never said that it was. Whether the abatement as built can support development at R-3 densities, and what additional grading, shoring, foundation work, or slope reconstruction would be required, is precisely the question the City has not asked.

Third, and most tellingly, the City has formally and permanently designated this Property as a geologic hazard. On August 18, 2021, by Resolution No. 12267, the City formed the Monterey

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ordinances cited throughout this letter are available on the City's own website at https://www.montereypark.ca.gov/1409/1688-West-Garvey-Avenue. For purposes of Pub. Res. Code §21167.6(e)(7), the court in *Consolidated Irrig. Dist. v. Superior Court* (2012) 205 CA4th 697, 723, held that such evidence has been submitted to the agency "when the commenter has made the document readily available for use or study by lead agency personnel." The court concluded that citing the URL of a specific webpage amounts to submission of the document found on that page to the agency. As such, we expect all URL citations to be produced for consideration by decisionmakers.

[5] City Council Staff Report, Agenda Item No. 11.A (August 19, 2026), "Executive Summary" (City "declared an emergency in June 2022 and began direct abatement work under the Goodviews Abatement Project" and "incurred approximately $16 million in costs").

[6] *People of the State of California ex rel. Hensley v. Center Int'l Investments, Inc.* (LASC Case No. BC605788), Reply to Opposition to Motion to Enforce Settlement Agreement, p. 8.

Park Geologic Hazard Abatement District ("MPK GHAD") under Public Resources Code section 26500 et seq., covering this parcel. A GHAD may be formed only for "the prevention, mitigation, abatement or control of a geologic hazard" (Pub. Resources Code, § 26525), and a "geologic hazard" is "an actual or threatened landslide, land subsidence, soil erosion, earthquake, fault movement or any other natural or unnatural movement of land or earth" (id., § 26507). The MPK GHAD's stated responsibility is "to permanently monitor and maintain" improvements that include "drainage systems, including concrete ditches; storm drain inlets and outlets; subdrains and outlets; retaining walls; tiebacks; soil anchors; and reconstructed slopes," together with "maintenance, monitoring and repair responsibilities for slopes, which will include natural, reconstructed or partially reconstructed slopes."[7]

The Members of the City Council are the Board of Directors of the MPK GHAD. Indeed, this Council sits as that Board on the very agenda that contains Item 11.A. The Council is thus asked to find, with certainty, that there is no possibility of a significant environmental effect at a parcel over which it simultaneously presides as the governing board of a district whose legal existence depends on the continuing presence of an actual or threatened landslide there. Those two positions cannot comfortably coexist.

The GHAD record also demonstrates concretely why density matters. The GHAD Engineer's Report is expressly built on the approved project: it assumes a "Total No. of Single Family Residential Units" of sixteen, and it sets an annual assessment limit of $17,190 per residential unit calculated by dividing the district budget by that unit count. The budget factors include "Site Geology," "Proposed Remedial Grading," and "Proximity of Geologic Hazards to Proposed Residences, Improvements or Structures," and it reserves for "a larger (approximately $689,000) repair event at 10-year intervals." The assessments "are to be levied in conjunction with the issuance of a Final Map for the area containing the habitable structures," and Vesting Tentative Map No. 21-01 has expired.[8]

Restoring R-3 zoning would permit roughly ten times the number of units on which that entire framework was calculated, in a different physical form, with a different footprint, on slopes the GHAD is charged with maintaining in perpetuity. Whether the Plan of Control remains adequate, whether the assessment methodology still funds the district, whether the reserve remains sufficient, and whether the reconstructed slopes can accommodate that intensity of development are all open questions. The City has answered none of them. Each is, at minimum, a "legitimate

[7] Engineer's Report, Monterey Park Geologic Hazard Abatement District, 1688 West Garvey Avenue (Geosyntec Consultants, Inc., Sept. 9, 2021), §§ 1, 2, 4, 5, approved and confirmed by the MPK GHAD Board on September 15, 2021. Available at https://www.montereypark.ca.gov/DocumentCenter/View/12327/Engineers-Report-MPK-GHAD-2021-signed

[8] *Id.*, §§ 6, 7 and Exhibit C (GHAD Budget). The City acquired title to the Property by Trustee's Deed Upon Sale recorded October 23, 2025. (*City of Monterey Park v. Center Int'l Investments, Inc.* (LASC Case No. 22STCV36603), Judgment entered January 30, 2026.) Engineer's Report available at https://www.montereypark.ca.gov/DocumentCenter/View/12327/Engineers-Report-MPK-GHAD-2021-signed

question[]" about which "there is … dispute about the possibility of" significant impact. Under *Davidon*, that means "the agency cannot find with certainty that a project is exempt." (54 Cal.App.4th at p. 117.)

2. Biological Resources and CDFW's Unresolved Objections.

CDFW, the State's trustee agency for fish and wildlife resources, submitted a comment letter on this site dated April 15, 2021. CDFW stated that although the sixteen-home project did not include tree removal, "there may still be impacts to trees and habitat for nesting birds," that the project "may result in the loss of both native and non-native trees and the reduction of nesting bird habitat," and, in terms the City cannot now wish away, that "these impacts would be considered significant under CEQA."[9]

The City rejected CDFW's recommended mitigation measures. But every one of its responses depended on features of the Specific Plan project that this ordinance eliminates. The City reasoned that the upper retaining wall would be "a poured in place concrete wall" requiring no disturbance upslope; that "[t]he oak trees on the Project site are located in portions of the upper slope that will not be impacted by grading"; that "existing native vegetation, including fescue grasses and California wildflowers, above the Upper Site Retaining Wall would remain"; and that "the proposed project Specific Plan includes a Master Landscape Plan that incorporates several native wildflower species and no invasive plants."[10] The record describes an upper slope "dominated by native trees and shrubs including toyon …, coast live oak (Quercus agrifolia), and laurel sumac," together with a coastal sage scrub area.

Once the Specific Plan is repealed, there is no poured-in-place upper wall, no commitment to leave the upper slope ungraded, no Master Landscape Plan, and no prohibition on invasive species. A 155-unit development on 6.22 acres cannot plausibly be built within the same graded footprint as sixteen detached homes. The City has not analyzed, and cannot presently know, whether the coast live oaks, the toyon and laurel sumac, the coastal sage scrub, and the nesting bird habitat above the retaining wall survive at R-3 densities. Nor has the City assessed what remains of these resources following the abatement work, or what the current vegetative condition of the upper slope is. CDFW's objection that impacts to these resources "would be considered significant under CEQA" remains squarely in the record and squarely unrefuted.

[9] Final EIR, § 2.0 [Responses to Comments on Draft EIR], Letter A-2 (Erinn Wilson-Olgin, Environmental Program Manager I, California Department of Fish and Wildlife, April 15, 2021), Response A-2.4. Available at https://www.montereypark.ca.gov/DocumentCenter/View/12032/1688-Garvey-FEIR

[10] Final EIR, § 2.0, Responses A-2.4 through A-2.9. Available at https://www.montereypark.ca.gov/DocumentCenter/View/12032/1688-Garvey-FEIR

3. Impacts That Were Never Studied at R-3 Densities.

The certified EIR analyzed a sixteen-unit gated community of detached single-family homes. Nothing in the record analyzes 155 units, still less 186. Among the impact areas the City has never examined at that scale:

- Transportation. Mitigation Measures TR-4 and TR-5 were calibrated to a sixteen-home private driveway, requiring a redesigned two-lane gated entry sized to contain queuing vehicles, and requiring the slope adjacent to the driveway to be "graded back to the fullest extent feasible" for sight distance on West Garvey Avenue. Neither measure was designed for, or evaluated against, the trip generation of a 155-unit multifamily project.

- Air quality. The Draft EIR's localized significance threshold analysis was run for a five-acre construction site associated with a sixteen-home project. Construction of a project ten times larger, involving substantially greater grading and export, was never modeled.

- Noise. Mitigation Measure N-1 restricted vibratory rollers to no less than 150 feet from the nearest sensitive receptor, a constraint premised on the grading footprint of the approved plan.

- Tribal cultural resources. Six mitigation measures (TCR-1 through TCR-6) govern Native American monitoring, discovery protocols, treatment of human remains and funerary objects, and professional standards for the ground-disturbing activities contemplated by the approved plan. A materially larger grading envelope was never assessed.

- Aesthetics and public services. The visual effect of multifamily construction on a prominent hillside, and the demand a 155-unit development would place on fire, police, water, sewer, and school services, are nowhere addressed.

The absence of analysis is not a defense. It is, under *Sundstrom*, a reason to draw the inferences against the City. (202 Cal.App.3d at p. 311.)

D. The Adopted Mitigation Monitoring Program Independently Defeats the Exemption.

When it certified the Final EIR in July 2021, the City adopted a Mitigation Monitoring Program containing sixteen mitigation measures: MM GEO-1; MM N-1; MM TR-1 through TR-5; MM TCR-1 through TCR-6; and MM BIO-1 through BIO-3. An agency does not adopt sixteen binding mitigation measures for an activity that has no possibility of a significant environmental effect. The existence of the adopted Mitigation Monitoring Program is itself substantial evidence that development of this Property may have significant effects. That is precisely the showing that forecloses the common sense exemption.

It bears emphasis that these measures were adopted for, and tied to, the approved sixteen-unit project, and that the project never proceeded. The work the City performed at the Property

was its own emergency nuisance abatement, undertaken under separate nuisance-abatement authority for the purpose of addressing an imminent threat to public health and safety, not as implementation of the Mitigation Monitoring Program. The biological, tribal cultural resource, transportation, and noise protections adopted in 2021 have never been applied to any residential construction at the site, because none has occurred.

There is a further, independent problem. The City's own Mitigation Monitoring Program prescribes what must happen before an adopted mitigation measure may be deleted:

> "[A] MM may be modified or deleted as follows: the enforcing department or agency, or the decision maker for a subsequent discretionary project related approval finds that the modification or deletion complies with CEQA, including CEQA Guidelines Sections 15162 and 15164, which could include the preparation of an addendum or subsequent environmental clearance, if necessary, to analyze the impacts from the modifications to or deletion of the MMs. Any addendum or subsequent CEQA clearance shall explain why the MM is no longer needed, not feasible, or the other basis for modifying or deleting the MM, and that the modification will not result in a new significant impact consistent with the requirements of CEQA."[11]

The City has not complied with that procedure, and it has not addressed the subject at all. Neither the staff report nor either draft ordinance says a word about the Mitigation Monitoring Program. The City has not decertified the Final EIR. Nor has it said whether the adopted measures survive the repeal of the Specific Plan and the Development Agreement, or what project they would attach to if they do.

That silence creates a dilemma, and either answer defeats the exemption. If the mitigation measures survive and would bind future development of the Property, then the City necessarily accepts that development here requires mitigation for geologic, biological, tribal cultural, transportation, and noise impacts. That is irreconcilable with a finding that there is no possibility of a significant effect. If instead the measures are effectively nullified because the entitlements they were adopted to condition no longer exist, then the City has extinguished its entire mitigation program without the addendum, subsequent clearance, explanation, or no-new-significant-impact finding that its own Mitigation Monitoring Program requires. The City cannot escape by declining to choose. Under *Davidon*, a determination dispensing with environmental review "requires something more" than silence. (54 Cal.App.4th at p. 117.)

V. AB 130 Makes Environmental Review Now Indispensable and Supplies No Exemption for This Rezoning

The staff report advises the Council that "under AB 130, certain qualifying projects may be deemed consistent with both [the General Plan and zoning] if they are consistent with either

[11] Final EIR, § 3.5 [Mitigation Monitoring Program]. Available at https://www.montereypark.ca.gov/DocumentCenter/View/12032/1688-Garvey-FEIR

one."[12] The invocation of AB 130 (Stats. 2025, ch. 22) does not assist the City. It makes SOS's case more urgent.

First, AB 130 does not exempt legislative acts. Public Resources Code section 21080.66, added by AB 130, exempts "any aspect of a housing development project … including any permits, approvals, or public improvements required for the housing development project." It is keyed to a specific housing development project as defined by Government Code section 65905.5(b). It does not exempt the adoption or repeal of a specific plan, a zone change, a General Plan amendment, or the rescission of a development agreement. Indeed, section 21080.66(a)(4)(A) conditions the exemption on the project being "consistent with the applicable general plan and zoning ordinance." A project that requires a rezoning in order to be approved is by definition not consistent with existing zoning and cannot qualify. The Legislature confirmed this structure in Government Code section 65905.5(d): "Nothing in this section supersedes, limits, or otherwise modifies the requirements of, or the standards of review pursuant to, [CEQA]." The City cannot bootstrap AB 130 into a justification for exempting the rezoning itself.

Second, and far more importantly, AB 130 is the reason this rezoning may be the last opportunity for any environmental review of hillside development at this site. Section 21080.66 confers a complete statutory exemption from CEQA on qualifying infill housing development projects. It is not a categorical exemption subject to the exceptions in CEQA Guidelines section 15300.2; it is a total exclusion. The Property appears to satisfy the statute's threshold criteria: it is 6.22 acres and thus well within the twenty-acre cap of section 21080.66(a)(1)(A); it lies within an incorporated municipality (§ 21080.66(a)(2)(A)); it has been previously developed with an urban use and is surrounded by urban uses (§ 21080.66(a)(3)); and R-3 zoning at twenty-five units per acre comfortably exceeds the density floor of section 21080.66(a)(5). Once R-3 zoning is restored, section 21080.66(a)(4)(B) supplies precisely the consistency finding the staff report flags: "[i]f the zoning and general plan are not consistent with one another, a project shall be deemed consistent with both if the project is consistent with one."

It is significant that neither section 21080.66 nor the site-exclusion list it incorporates from Government Code section 65913.4(a)(6) contains any exclusion for landslide hazards, for State Seismic Hazard Zones susceptible to earthquake-induced landsliding, for steep slopes, or for hillside areas. The only geologic exclusion is for delineated Alquist-Priolo earthquake fault zones, and even that yields to building code compliance. In other words, the very hazard that dominates this site, documented slope instability with a forty-five-year history of failures, is one that AB 130 would remove from CEQA's reach entirely at the project stage.

The consequence is stark. If the Council upzones this Property without review, and a developer subsequently proposes a qualifying housing development project, the environmental consequences of building 155 units on this slope may never be studied under CEQA at all. That is the classic circumstance in which review must occur at the legislative stage, "at the earliest possible stage," before the agency's discretion is foreclosed. (*Bozung*, supra, 13 Cal.3d at p. 282.)

[12] City Council Staff Report, Agenda Item No. 11.A (August 19, 2026), "Analysis for Restoring the Zoning Designation of the Property."

Third, the City should be aware of a tension it will need to resolve. Government Code section 65913.4(a)(6)(J), incorporated by section 21080.66(a)(6), excludes from eligibility any site that is "[h]abitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies." CDFW's April 15, 2021, letter and the biological resources record for this site place that question in dispute. That the City cannot presently answer it is not a reason to forgo review; it is precisely the kind of "legitimate question" that defeats a finding of certainty.

VI. Independent, Non-CEQA Defects in the Proposed Actions

Although SOS's principal objection is under CEQA, three further defects warrant the Council's attention.

A. The Proposed Zoning Is Inconsistent With the General Plan.

Government Code section 65860(a) requires that a city's zoning ordinances be consistent with its general plan, and section 65860(d) applies that requirement to charter cities notwithstanding section 65803. The staff report states that the General Plan land use designation for the Property "is currently Low-Density and would allow a maximum of 50 dwelling units," while the R-3 zoning the City proposes to restore "would allow a maximum of 155 dwelling units." The staff report expressly acknowledges "the current inconsistency" and states that it would be eliminated only "[i]f voters approve changing the General Plan land use designation to High-Density."[13]

The City therefore proposes to adopt, knowingly and deliberately, a zoning designation that is inconsistent with its own General Plan, in the hope that the electorate will cure the inconsistency in November. Yet Section 2.D of the draft ordinance asserts that "[t]he proposed action of restoring the Property's zoning designation is consistent with General Plan since the land use designation of the Property would remain as Low Density." That finding is contradicted by the staff report on the same agenda item and is not supported by substantial evidence.

B. The Specific Plan Repeal Was Not Referred to the Planning Commission for Its Recommendation.

Government Code section 65453(b) provides that "[a] specific plan may be repealed in the same manner as it is required to be amended," and section 65453(a) provides that a specific plan "shall be prepared, adopted, and amended in the same manner as a general plan." The general plan procedure requires a noticed public hearing before the planning commission (§ 65353) and a written commission recommendation adopted by a majority of the commission's total membership and transmitted to the legislative body (§ 65354). Section 65450, section 65454, and section 65455 apply to charter cities by force of section 65700(b).

Monterey Park has created a Planning Commission and has authorized it to "make recommendations to the city council regarding land use regulations including, without limitation, amendments to the General Plan or this code." (MPMC § 2.56.010(c).) The City may respond that

[13] *Ibid.*

MPMC section 2.56.020 permits the City Council to act as the planning agency. But the exceptions enumerated in section 2.56.020 are limited to projects requiring "a zone change; zone map amendment; or development agreement," to public projects requiring General Plan consistency findings under Government Code section 65402, to appeals, and to matters the Council designates by resolution for a particular project. Repeal of a specific plan is not among them. No Planning Commission hearing was held and no written recommendation was transmitted, as sections 65353 and 65354 require.

Separately, Government Code section 65867 requires that a public hearing on a development agreement "shall be held by the planning agency and by the legislative body," that is, two hearings before two bodies, and section 65868 requires that notice of intention to amend or cancel be given in the manner provided by section 65867.

C. The Rezoning May Require Voter Approval Under MPMC Chapter 21.42.

Monterey Park Municipal Code section 21.42.010 provides that no amendment of the land use element of the General Plan, the zoning map, or the Zoning Code, "or any other action of the City Council by which there would be permitted any use of land other than as presently defined," is "valid or effective for any purpose whatsoever" unless approved by a majority of the voters at a municipal election.

The exceptions in section 21.42.020 do not appear to apply. Subdivision (C) exempts only changes "which do not increase residential densities," and this change increases permitted density from 16 units to 155. Subdivision (E) exempts General Plan and zone changes "not exceeding one acre," and the Property is 6.22 acres. That the City has placed a companion General Plan amendment on the November 2026 ballot suggests the City is aware that Chapter 21.42 governs land use changes at this Property. SOS respectfully requests that the City Attorney address on the record why the zoning ordinance may be adopted by the Council without the voter approval that section 21.42.010 requires.

VII. Conclusion and Requested Action

The common sense exemption is reserved for activities that are obviously exempt, where CEQA Guidelines section 15061(b)(3)'s "absolute and precise language clearly applies." It has no application to a legislative act whose admitted purpose is to increase permitted residential density nearly tenfold on a hillside that the City has spent approximately $16 million stabilizing; that the City has permanently designated a geologic hazard by forming a Geologic Hazard Abatement District over it; whose current physical condition the City has never environmentally analyzed; whose stabilization was engineered to abate a nuisance rather than to carry high-density development; for which the City adopted sixteen mitigation measures that have never been applied to any residential construction; and as to which CDFW's advice that impacts to trees and nesting bird habitat "would be considered significant under CEQA" has never been answered.

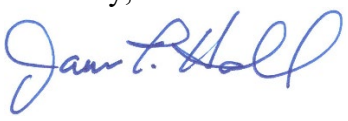
SOS respectfully requests that the City Council take one of the following actions:

1. Continue Item 11.A in its entirety and direct staff to prepare an initial study evaluating the reasonably foreseeable environmental effects of restoring R-3 zoning at the Property, including effects on slope stability and the adequacy of the completed abatement improvements at R-3 densities, the MPK GHAD Plan of Control and assessment methodology, biological resources, transportation, air quality, noise, tribal cultural resources, aesthetics, and public services; or

2. Sever the two actions. Introduce the uncodified ordinance repealing Ordinance No. 2211 and rescinding and terminating Development Agreement No. 21-01, an action that is genuinely severable, that requires no zoning change, and that SOS does not oppose, while continuing the ordinance that would repeal Ordinance No. 2210 and rezone the Property to R-3, pending CEQA-compliant review and referral to the Planning Commission. The Goodviews Specific Plan would remain in place in the interim. That imposes no hardship on the City: it owns the Property, and it may market it under existing zoning or return to the Council once environmental review is complete.

SOS requests that this letter and all documents cited herein[14] be made part of the administrative record for this matter. SOS further requests, pursuant to Public Resources Code sections 21092.2 and 21167(f), written notice of any determination that the proposed actions are exempt from CEQA, of the date on which any Notice of Exemption is filed, and of any subsequent hearings or determinations concerning the Property. Please direct all such notices to the undersigned at the address above. Thank you for your consideration of this matter.

Sincerely,



Jamie T. Hall

[14] The IS is available at https://www.montereypark.ca.gov/DocumentCenter/View/11027/e1688-Garvey-Screencheck-Initial-Study_070220.

The FEIR is available at https://www.montereypark.ca.gov/DocumentCenter/View/12032/1688-Garvey-FEIR.

The DEIR is available at https://www.montereypark.ca.gov/DocumentCenter/View/11754/MontereyPark_DEIR?bidId=

The Technical appendices are available at https://www.montereypark.ca.gov/DocumentCenter/View/11755/MontereyPark_DraftEIR_Apxs?bidId=

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To:	MPClerk
Cc:	"Jamie Hall"; "Accounting Dept. at Channel Law Group, LLP"; "Hannah Simon"
Subject:	City Council Agenda Item No. 11.A (August 19, 2026): Comment Letter from Save Our Slopes ("SOS")
Date:	Tuesday, August 18, 2026 5:40:47 PM
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August 18, 2026

VIA ELECTRONIC MAIL AND UPLOAD

Mayor Henry Lo and Honorable Members of the City Council
City of Monterey Park
c/o Maychelle Yee, City Clerk
320 West Newmark Avenue
Monterey Park, CA 91754
mpclerk@montereypark.ca.gov

Re: Agenda Item No. 11.A (August 19, 2026): Objections to Proposed Ordinances Repealing Ordinance No. 2210 and Restoring High-Density Residential (R-3) Zoning at 1688 West Garvey Avenue, and Repealing Ordinance No. 2211 and Rescinding Development Agreement No. 21-01; Improper Reliance on the "Common Sense" Exemption (CEQA Guidelines § 15061(b)(3))

Dear Mayor Lo and Honorable Councilmembers:

This Firm represents Save Our Slopes ("SOS"), an unincorporated association of Monterey Park residents whose homes sit on and immediately above the hillside at 1688 West Garvey Avenue (APN 5254-002-903) (the "Property"). SOS is the petitioner in *Save Our Slopes v. City of Monterey Park*, Los Angeles Superior Court Case No. 21STCP02365, the pending CEQA challenge to the City's 2021 approval of the Goodviews Project.

SOS submits these comments and objections to Agenda Item No. 11.A, and specifically to the City's determination that the proposed actions are exempt from the California Environmental Quality Act ("CEQA") under CEQA Guidelines section 15061(b)(3), the so-called "common sense" exemption.

I. Introduction and Summary

It is important to be precise about what is, and what is not, in dispute. SOS does not oppose rescission and termination of Development Agreement No. 21-01. CII plainly failed to perform, and SOS takes no position on the City's contractual remedies against it.

What SOS opposes is the second component of this item, which the staff report treats as a mere clerical consequence of the first: the upzoning of a 6.22-acre, chronically unstable hillside from a specific plan that caps development at sixteen single-family homes to an R-3 designation that the City states will accommodate 155 dwelling units, and up to 186 dwelling units if voters approve the companion General Plan amendment the City has placed on the November 2026 ballot.[1] That is an increase in permitted density of nearly tenfold, on a slope with a documented, decades-long history of landslides, debris flows, wall failures, and street closures.

The City proposes to approve that upzoning with no environmental review of any kind. Its entire CEQA analysis consists of four sentences asserting that the actions "do not propose or approve any new development." That assertion cannot be reconciled with what the City tells its own Council two pages later: that restoring R-3 zoning "would allow greater development potential, broaden the potential buyer pool, and maximize the sale price as recommended by the study prepared by Kidder Mathews."[2] The City cannot tell decisionmakers that the purpose of the rezoning is to induce development while telling the public that it can be seen "with certainty" that there is "no possibility" the rezoning may affect the environment.

As set forth below, the common sense exemption is the narrowest and most demanding exemption in CEQA. The City bears the burden of demonstrating that it applies, and it must refute to a certainty any reasonable argument that the activity may have a significant effect. The City has not carried that burden, and on this record it cannot. It has performed no preliminary review and produced no evidence. It has no current analysis of a site whose physical condition it has itself substantially altered since the last environmental document was prepared. It has never studied what development at R-3 densities would require of that hillside. The California Department of Fish and Wildlife ("CDFW") advised the City that the loss of trees and nesting bird habitat at this site "would be considered significant under CEQA," and that objection has never been resolved. And the City Council sits, on this same agenda, as the Board of Directors of a Geologic Hazard Abatement District formed over this very parcel, a district that exists as a matter of law only because the Property presents an actual or threatened geologic hazard requiring permanent monitoring and maintenance.

One structural point should be made at the outset, because the staff report obscures it. The repeal of the Goodviews Specific Plan and the restoration of R-3 zoning are not two actions; they are one. Ordinance No. 2210 changed the zoning designation of the Property from R-3 to the 1688 West Garvey Avenue Specific Plan. The Specific Plan is the Property's zoning. Repealing it necessarily rezones the Property, which is why the draft ordinance must supply a replacement designation and amend the Zoning Map. The Specific Plan repeal therefore cannot be characterized

[1] City Council Staff Report, Agenda Item No. 11.A (August 19, 2026), "Analysis for Restoring the Zoning Designation of the Property." The Property is 6.22 acres. (Draft EIR, § 3.0 [Project Description].)

[2] City Council Staff Report, Agenda Item No. 11.A (August 19, 2026), "Executive Summary" and "Analysis for Restoring the Zoning Designation of the Property."

as administrative cleanup that follows automatically from terminating the Development Agreement.

Nor does terminating the Development Agreement require repealing the Specific Plan. A development agreement and the underlying zoning are legally distinct instruments. Government Code section 65865.1 authorizes a local agency to terminate or modify a development agreement upon a finding of non-compliance following annual review; it does not require, and does not authorize, an accompanying rezoning. The City may rescind Development Agreement No. 21-01 and leave the Specific Plan zoning undisturbed. It has chosen to couple the two because it wants the higher density, not because the law compels it.

SOS respectfully requests that the Council rescind the Development Agreement if it wishes, but continue the Specific Plan repeal and R-3 rezoning and direct staff to prepare an initial study.

II. The Proposed Rezoning Is a "Project" Subject to CEQA

A "project" is an activity directly undertaken by a public agency that may cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. (Pub. Resources Code, § 21065; CEQA Guidelines, § 15378(a); *San Lorenzo Valley Community Advocates for Responsible Educ. v. San Lorenzo Valley Unified Sch. Dist.* (2006) 139 Cal.App.4th 1356.) The Legislature intended CEQA "to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." (*Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259.)

Whether an activity is a project "is a categorical question respecting whether the activity is of a general kind with which CEQA is concerned, without regard to whether the activity will actually have environmental impact." (*Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372, 381.) In *Union of Medical Marijuana Patients, Inc. v. City of San Diego* (2019) 7 Cal.5th 1171, our Supreme Court held that a land use ordinance is a project where, as here, it may foreseeably result in new construction and associated physical changes.

The City does not appear to contend otherwise. By invoking an exemption, the City necessarily concedes that the rezoning is a project; exemptions operate only at the second tier of CEQA review, and are reached only after an agency determines that the activity is a project in the first place. (*Muzzy Ranch*, supra, 41 Cal.4th at pp. 380–381; *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 74.)

III. The Legal Standard Governing the Common Sense Exemption

CEQA Guidelines section 15061(b)(3) provides that an activity 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." The provision is "phrased in absolute terms" for a reason, and applies "only in those situations where its absolute and precise language clearly applies"; that is, to projects that are "obviously exempt." (*Myers v. Board of Supervisors* (1976) 58 Cal.App.3d 413, 425–426.)

Three principles govern.

First, the burden rests on the agency, not the public. Because a common sense exemption determination is not backed by any implied finding of the Resources Agency, "the agency must itself provide the support for its decision before the burden shifts to the challenger." Placing that burden on the public "would frustrate CEQA's fundamental purpose of ensuring that government officials 'make decisions with environmental consequences in mind.'" (*Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, 116; accord, *Muzzy Ranch*, supra, 41 Cal.4th at p. 386 [applicability of the exemption "presents an issue of fact, and … the agency invoking the exemption has the burden of demonstrating it applies"].)

Second, the showing required of an objector is deliberately slight. As *Davidon* explains:

> "[T]he showing required of a party challenging an exemption under Guidelines section 15061, subdivision (b)(3) is slight, since that exemption requires the agency to be certain that there is no possibility the project may cause significant environmental impacts. If legitimate questions can be raised about whether the project might have a significant impact and there is any dispute about the possibility of such an impact, the agency cannot find with certainty that a project is exempt." (*Davidon*, supra, 54 Cal.App.4th at p. 117.)

A commenter need only "make[] a reasonable argument … to suggest a possibility that a project will cause a significant environmental impact"; once that occurs, "the agency must refute that claim to a certainty before finding that the exemption applies." (*Id.* at p. 118.) In *Davidon* itself, the objector argued only that the activity "would result in noise, dust, and visual impacts on surrounding residents, wildlife and plantlife." That was enough; the court held the city had failed to refute the claim to a certainty and had not proceeded in the manner required by law. (*Id.* at pp. 118–120.) Claims raised by project opponents "even if exaggerated or untrue" may suffice to defeat an exemption. (*Myers*, supra, 58 Cal.App.3d at p. 427.)

Third, an agency must actually conduct a preliminary review and build a record before it dispenses with CEQA. The *Davidon* court set aside an exemption determination on precisely this ground:

> "There is no indication that any preliminary environmental review was conducted before the exemption decision was made. The agency produced no evidence to support its decision and we find no mention of CEQA in the various staff reports. A determination which has the effect of dispensing with further environmental review at the earliest possible stage requires something more." (*Davidon*, supra, 54 Cal.App.4th at p. 117.)

Relatedly, where an agency has failed to investigate an area of possible impact, that failure does not insulate its decision; it enlarges the range of inferences that may be drawn against it. "CEQA places the burden of environmental investigation on government rather than the public. If the local agency has failed to study an area of possible environmental impact, a fair argument may be based on the limited facts in the record. Deficiencies in the record may actually enlarge the

scope of fair argument by lending a logical plausibility to a wider range of inferences." (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.)

IV. The City Has Not Carried, and On This Record Cannot Carry, Its Burden

A. The City Conducted No Preliminary Review and Has Produced No Supporting Evidence.

The staff report and the two draft ordinances contain a single, identical, four-sentence CEQA recital. It cites no study, no map, no technical analysis, no geotechnical opinion, and no biological survey. It does not mention the certified Final EIR for this very site, the mitigation measures adopted with it, or CDFW's comments. There is no initial study, no preliminary review memorandum, and no administrative record supporting the conclusion that the rezoning cannot possibly affect the environment.

A conclusion is not evidence. Under *Davidon*, "[a] determination which has the effect of dispensing with further environmental review at the earliest possible stage requires something more." (54 Cal.App.4th at p. 117.) The City has offered nothing more.

B. The Admitted Purpose of the Rezoning Is to Induce Development at Nearly Ten Times the Density Ever Studied.

The staff report is candid about why the City wants R-3 zoning restored. It states that the Goodviews Specific Plan "allows a maximum of 16 single-family residences," that R-3 "would allow a maximum of 155 dwelling units," and that restoring R-3 "would allow greater development potential, broaden the potential buyer pool, and maximize the sale price." It adds that if voters approve a High-Density General Plan designation, the Property could accommodate "a maximum of 186 dwelling units." And it states the objective plainly: to "market the Property for sale in a manner that maximizes the potential return to offset the substantial abatement costs it has incurred."[3]

The City is therefore not making a neutral, ministerial correction to its zoning map. It is deliberately increasing the development capacity of a hillside parcel by roughly a factor of ten for the express purpose of attracting a buyer who will build on it. That is the paradigm of a growth-inducing action, and CEQA requires that its reasonably foreseeable consequences be examined now.

An agency may not defer analysis of foreseeable development on the theory that no specific project is yet before it. "[W]hile [the City] need not predict the precise form, location and amount of commercial and residential development resulting from" its action, "it cannot pretend none will occur; it simply must assume the general form, location and amount of such development that now seems reasonable to anticipate … and evaluate that development by means of the EIR process." (*City of Antioch v. City Council* (1986) 187 Cal.App.3d 1325, 1338.) The court added that "the

[3] City Council Staff Report, Agenda Item No. 11.A (August 19, 2026), "Executive Summary" and "Analysis for Restoring the Zoning Designation of the Property."

fact that a particular development which now appears reasonably foreseeable may, in fact, never occur does not release it from the EIR process," and that "the fact that future development may take several forms does not excuse environmental review." (*Ibid.*)

Nor does the absence of a pending application help the City. "That further governmental decisions need to be made before a land use measure's actual environmental impacts can be determined with precision does not necessarily prevent the measure from qualifying as a project." (*Muzzy Ranch*, supra, 41 Cal.4th at p. 383.) And CEQA review is to occur "at the earliest possible stage," because "it is desirable that the precise information concerning environmental consequences which an EIR affords be furnished and considered" before commitments harden. (*Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 282.)

The City may invoke *Muzzy Ranch*, in which our Supreme Court sustained an agency's reliance on the common sense exemption for an airport land use compatibility plan. That decision confirms SOS's position rather than undermining it. The Court upheld the exemption there for one narrow reason: the plan "simply incorporate[d] existing general plan and zoning law restrictions on residential housing density," so that "any potential displacement the [plan] might otherwise have effected already ha[d] been caused by the existing land use policies and zoning regulations to which the [plan] is keyed." (41 Cal.4th at p. 389.) The plan changed nothing. Here the ordinance changes everything; it multiplies permitted density from 16 units to 155. The Court was explicit that "nothing inherent in the notion of displaced development places such development, when it can reasonably be anticipated, categorically outside the concern of CEQA." (*Id.* at pp. 382–383.)

C. The Record Before the City Establishes Far More Than a "Possibility" of Significant Effects.

This is not a case in which an objector must speculate about what might happen if a hillside is developed. The City has studied, litigated over, condemned, abated, and formed a special assessment district around this exact site. Its own documents supply the evidence that defeats the exemption.

1. The City Has Never Analyzed the Site as It Exists Today.

The Property has a documented history of instability spanning more than four decades. Development ceased in or around 1980 after slope failures. Debris flows damaged homes along Abajo Drive. By 1982 a portion of the crib wall and slope had failed, blocked West Garvey Avenue, and forced evacuation of an apartment complex across the street. Retaining walls failed in 1983 and 1985. In 1983 the City took emergency action to construct soil stabilization and drainage infrastructure. In 1991 the City issued a notice of violation declaring the site a public nuisance; in 1997 the City Council declared it a public nuisance and began abating it, with further abatement in 2000 and 2002. In late 2004 a progressive slope failure above Abajo Drive sent debris onto the street and migrated upslope until 2007.[4]

[4] Initial Study, § 2.0 [Environmental Setting]; Draft EIR, § 3.0 [Project Description] and § 5.3 [Geology and Soils]; 1688 West Garvey Avenue Specific Plan (March 2021), § 2 [Background]. The Final EIR, the Draft EIR and its appendices, the Initial Study, the Specific Plan, and the Project

SOS does not contend that the Property remains in the condition described in the 2020 Initial Study and the 2021 EIR. It does not. Beginning in 2022, after declaring an emergency, the City undertook the Goodviews Abatement Project and has since expended approximately $16 million on remedial grading and the construction of an engineered hillside stabilization system. That work is substantial and it is visible from West Garvey Avenue.[5]

That fact does not support the exemption. It defeats it, for three reasons.

First, it means the City has no current environmental analysis of this site at all. The Initial Study was prepared in 2020 and the EIR was certified in July 2021, both describing a physical setting that the City has since materially altered. CEQA measures a project's effects against the existing physical conditions. The City cannot rely on the 2021 record to describe conditions that no longer exist, and it has prepared nothing since. It has no analysis of the completed abatement work, of the stability of the reconstructed slope, of the capacity of the new system, or of what any of it means for future development. Where an agency has not studied an area of possible impact, that gap does not establish certainty; it "enlarge[s] the scope of fair argument by lending a logical plausibility to a wider range of inferences." (*Sundstrom*, supra, 202 Cal.App.3d at p. 311.)

Second, the abatement work was undertaken to abate a public nuisance, not to render the Property suitable for high-density residential development. The City has drawn that distinction itself. In its own filings enforcing the settlement agreement, the City distinguished between constructing "hillside stabilization according to Plan B" and constructing it "in such a manner that would accommodate a future residential development."[6] Plan B was the nuisance abatement remedy. Nothing in the record suggests it was engineered to carry 155 dwelling units, and the City has never said that it was. Whether the abatement as built can support development at R-3 densities, and what additional grading, shoring, foundation work, or slope reconstruction would be required, is precisely the question the City has not asked.

Third, and most tellingly, the City has formally and permanently designated this Property as a geologic hazard. On August 18, 2021, by Resolution No. 12267, the City formed the Monterey

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ordinances cited throughout this letter are available on the City's own website at https://www.montereypark.ca.gov/1409/1688-West-Garvey-Avenue. For purposes of Pub. Res. Code §21167.6(e)(7), the court in *Consolidated Irrig. Dist. v. Superior Court* (2012) 205 CA4th 697, 723, held that such evidence has been submitted to the agency "when the commenter has made the document readily available for use or study by lead agency personnel." The court concluded that citing the URL of a specific webpage amounts to submission of the document found on that page to the agency. As such, we expect all URL citations to be produced for consideration by decisionmakers.

[5] City Council Staff Report, Agenda Item No. 11.A (August 19, 2026), "Executive Summary" (City "declared an emergency in June 2022 and began direct abatement work under the Goodviews Abatement Project" and "incurred approximately $16 million in costs").

[6] *People of the State of California ex rel. Hensley v. Center Int'l Investments, Inc.* (LASC Case No. BC605788), Reply to Opposition to Motion to Enforce Settlement Agreement, p. 8.

Park Geologic Hazard Abatement District ("MPK GHAD") under Public Resources Code section 26500 et seq., covering this parcel. A GHAD may be formed only for "the prevention, mitigation, abatement or control of a geologic hazard" (Pub. Resources Code, § 26525), and a "geologic hazard" is "an actual or threatened landslide, land subsidence, soil erosion, earthquake, fault movement or any other natural or unnatural movement of land or earth" (id., § 26507). The MPK GHAD's stated responsibility is "to permanently monitor and maintain" improvements that include "drainage systems, including concrete ditches; storm drain inlets and outlets; subdrains and outlets; retaining walls; tiebacks; soil anchors; and reconstructed slopes," together with "maintenance, monitoring and repair responsibilities for slopes, which will include natural, reconstructed or partially reconstructed slopes."[7]

The Members of the City Council are the Board of Directors of the MPK GHAD. Indeed, this Council sits as that Board on the very agenda that contains Item 11.A. The Council is thus asked to find, with certainty, that there is no possibility of a significant environmental effect at a parcel over which it simultaneously presides as the governing board of a district whose legal existence depends on the continuing presence of an actual or threatened landslide there. Those two positions cannot comfortably coexist.

The GHAD record also demonstrates concretely why density matters. The GHAD Engineer's Report is expressly built on the approved project: it assumes a "Total No. of Single Family Residential Units" of sixteen, and it sets an annual assessment limit of $17,190 per residential unit calculated by dividing the district budget by that unit count. The budget factors include "Site Geology," "Proposed Remedial Grading," and "Proximity of Geologic Hazards to Proposed Residences, Improvements or Structures," and it reserves for "a larger (approximately $689,000) repair event at 10-year intervals." The assessments "are to be levied in conjunction with the issuance of a Final Map for the area containing the habitable structures," and Vesting Tentative Map No. 21-01 has expired.[8]

Restoring R-3 zoning would permit roughly ten times the number of units on which that entire framework was calculated, in a different physical form, with a different footprint, on slopes the GHAD is charged with maintaining in perpetuity. Whether the Plan of Control remains adequate, whether the assessment methodology still funds the district, whether the reserve remains sufficient, and whether the reconstructed slopes can accommodate that intensity of development are all open questions. The City has answered none of them. Each is, at minimum, a "legitimate

[7] Engineer's Report, Monterey Park Geologic Hazard Abatement District, 1688 West Garvey Avenue (Geosyntec Consultants, Inc., Sept. 9, 2021), §§ 1, 2, 4, 5, approved and confirmed by the MPK GHAD Board on September 15, 2021. Available at https://www.montereypark.ca.gov/DocumentCenter/View/12327/Engineers-Report-MPK-GHAD-2021-signed

[8] *Id.*, §§ 6, 7 and Exhibit C (GHAD Budget). The City acquired title to the Property by Trustee's Deed Upon Sale recorded October 23, 2025. (*City of Monterey Park v. Center Int'l Investments, Inc.* (LASC Case No. 22STCV36603), Judgment entered January 30, 2026.) Engineer's Report available at https://www.montereypark.ca.gov/DocumentCenter/View/12327/Engineers-Report-MPK-GHAD-2021-signed

question[]" about which "there is … dispute about the possibility of" significant impact. Under *Davidon*, that means "the agency cannot find with certainty that a project is exempt." (54 Cal.App.4th at p. 117.)

2. Biological Resources and CDFW's Unresolved Objections.

CDFW, the State's trustee agency for fish and wildlife resources, submitted a comment letter on this site dated April 15, 2021. CDFW stated that although the sixteen-home project did not include tree removal, "there may still be impacts to trees and habitat for nesting birds," that the project "may result in the loss of both native and non-native trees and the reduction of nesting bird habitat," and, in terms the City cannot now wish away, that "these impacts would be considered significant under CEQA."[9]

The City rejected CDFW's recommended mitigation measures. But every one of its responses depended on features of the Specific Plan project that this ordinance eliminates. The City reasoned that the upper retaining wall would be "a poured in place concrete wall" requiring no disturbance upslope; that "[t]he oak trees on the Project site are located in portions of the upper slope that will not be impacted by grading"; that "existing native vegetation, including fescue grasses and California wildflowers, above the Upper Site Retaining Wall would remain"; and that "the proposed project Specific Plan includes a Master Landscape Plan that incorporates several native wildflower species and no invasive plants."[10] The record describes an upper slope "dominated by native trees and shrubs including toyon …, coast live oak (Quercus agrifolia), and laurel sumac," together with a coastal sage scrub area.

Once the Specific Plan is repealed, there is no poured-in-place upper wall, no commitment to leave the upper slope ungraded, no Master Landscape Plan, and no prohibition on invasive species. A 155-unit development on 6.22 acres cannot plausibly be built within the same graded footprint as sixteen detached homes. The City has not analyzed, and cannot presently know, whether the coast live oaks, the toyon and laurel sumac, the coastal sage scrub, and the nesting bird habitat above the retaining wall survive at R-3 densities. Nor has the City assessed what remains of these resources following the abatement work, or what the current vegetative condition of the upper slope is. CDFW's objection that impacts to these resources "would be considered significant under CEQA" remains squarely in the record and squarely unrefuted.

[9] Final EIR, § 2.0 [Responses to Comments on Draft EIR], Letter A-2 (Erinn Wilson-Olgin, Environmental Program Manager I, California Department of Fish and Wildlife, April 15, 2021), Response A-2.4. Available at https://www.montereypark.ca.gov/DocumentCenter/View/12032/1688-Garvey-FEIR

[10] Final EIR, § 2.0, Responses A-2.4 through A-2.9. Available at https://www.montereypark.ca.gov/DocumentCenter/View/12032/1688-Garvey-FEIR

3. Impacts That Were Never Studied at R-3 Densities.

The certified EIR analyzed a sixteen-unit gated community of detached single-family homes. Nothing in the record analyzes 155 units, still less 186. Among the impact areas the City has never examined at that scale:

- Transportation. Mitigation Measures TR-4 and TR-5 were calibrated to a sixteen-home private driveway, requiring a redesigned two-lane gated entry sized to contain queuing vehicles, and requiring the slope adjacent to the driveway to be "graded back to the fullest extent feasible" for sight distance on West Garvey Avenue. Neither measure was designed for, or evaluated against, the trip generation of a 155-unit multifamily project.

- Air quality. The Draft EIR's localized significance threshold analysis was run for a five-acre construction site associated with a sixteen-home project. Construction of a project ten times larger, involving substantially greater grading and export, was never modeled.

- Noise. Mitigation Measure N-1 restricted vibratory rollers to no less than 150 feet from the nearest sensitive receptor, a constraint premised on the grading footprint of the approved plan.

- Tribal cultural resources. Six mitigation measures (TCR-1 through TCR-6) govern Native American monitoring, discovery protocols, treatment of human remains and funerary objects, and professional standards for the ground-disturbing activities contemplated by the approved plan. A materially larger grading envelope was never assessed.

- Aesthetics and public services. The visual effect of multifamily construction on a prominent hillside, and the demand a 155-unit development would place on fire, police, water, sewer, and school services, are nowhere addressed.

The absence of analysis is not a defense. It is, under *Sundstrom*, a reason to draw the inferences against the City. (202 Cal.App.3d at p. 311.)

D. The Adopted Mitigation Monitoring Program Independently Defeats the Exemption.

When it certified the Final EIR in July 2021, the City adopted a Mitigation Monitoring Program containing sixteen mitigation measures: MM GEO-1; MM N-1; MM TR-1 through TR-5; MM TCR-1 through TCR-6; and MM BIO-1 through BIO-3. An agency does not adopt sixteen binding mitigation measures for an activity that has no possibility of a significant environmental effect. The existence of the adopted Mitigation Monitoring Program is itself substantial evidence that development of this Property may have significant effects. That is precisely the showing that forecloses the common sense exemption.

It bears emphasis that these measures were adopted for, and tied to, the approved sixteen-unit project, and that the project never proceeded. The work the City performed at the Property

was its own emergency nuisance abatement, undertaken under separate nuisance-abatement authority for the purpose of addressing an imminent threat to public health and safety, not as implementation of the Mitigation Monitoring Program. The biological, tribal cultural resource, transportation, and noise protections adopted in 2021 have never been applied to any residential construction at the site, because none has occurred.

There is a further, independent problem. The City's own Mitigation Monitoring Program prescribes what must happen before an adopted mitigation measure may be deleted:

> "[A] MM may be modified or deleted as follows: the enforcing department or agency, or the decision maker for a subsequent discretionary project related approval finds that the modification or deletion complies with CEQA, including CEQA Guidelines Sections 15162 and 15164, which could include the preparation of an addendum or subsequent environmental clearance, if necessary, to analyze the impacts from the modifications to or deletion of the MMs. Any addendum or subsequent CEQA clearance shall explain why the MM is no longer needed, not feasible, or the other basis for modifying or deleting the MM, and that the modification will not result in a new significant impact consistent with the requirements of CEQA."[11]

The City has not complied with that procedure, and it has not addressed the subject at all. Neither the staff report nor either draft ordinance says a word about the Mitigation Monitoring Program. The City has not decertified the Final EIR. Nor has it said whether the adopted measures survive the repeal of the Specific Plan and the Development Agreement, or what project they would attach to if they do.

That silence creates a dilemma, and either answer defeats the exemption. If the mitigation measures survive and would bind future development of the Property, then the City necessarily accepts that development here requires mitigation for geologic, biological, tribal cultural, transportation, and noise impacts. That is irreconcilable with a finding that there is no possibility of a significant effect. If instead the measures are effectively nullified because the entitlements they were adopted to condition no longer exist, then the City has extinguished its entire mitigation program without the addendum, subsequent clearance, explanation, or no-new-significant-impact finding that its own Mitigation Monitoring Program requires. The City cannot escape by declining to choose. Under *Davidon*, a determination dispensing with environmental review "requires something more" than silence. (54 Cal.App.4th at p. 117.)

V. AB 130 Makes Environmental Review Now Indispensable and Supplies No Exemption for This Rezoning

The staff report advises the Council that "under AB 130, certain qualifying projects may be deemed consistent with both [the General Plan and zoning] if they are consistent with either

[11] Final EIR, § 3.5 [Mitigation Monitoring Program]. Available at https://www.montereypark.ca.gov/DocumentCenter/View/12032/1688-Garvey-FEIR

one."[12] The invocation of AB 130 (Stats. 2025, ch. 22) does not assist the City. It makes SOS's case more urgent.

First, AB 130 does not exempt legislative acts. Public Resources Code section 21080.66, added by AB 130, exempts "any aspect of a housing development project … including any permits, approvals, or public improvements required for the housing development project." It is keyed to a specific housing development project as defined by Government Code section 65905.5(b). It does not exempt the adoption or repeal of a specific plan, a zone change, a General Plan amendment, or the rescission of a development agreement. Indeed, section 21080.66(a)(4)(A) conditions the exemption on the project being "consistent with the applicable general plan and zoning ordinance." A project that requires a rezoning in order to be approved is by definition not consistent with existing zoning and cannot qualify. The Legislature confirmed this structure in Government Code section 65905.5(d): "Nothing in this section supersedes, limits, or otherwise modifies the requirements of, or the standards of review pursuant to, [CEQA]." The City cannot bootstrap AB 130 into a justification for exempting the rezoning itself.

Second, and far more importantly, AB 130 is the reason this rezoning may be the last opportunity for any environmental review of hillside development at this site. Section 21080.66 confers a complete statutory exemption from CEQA on qualifying infill housing development projects. It is not a categorical exemption subject to the exceptions in CEQA Guidelines section 15300.2; it is a total exclusion. The Property appears to satisfy the statute's threshold criteria: it is 6.22 acres and thus well within the twenty-acre cap of section 21080.66(a)(1)(A); it lies within an incorporated municipality (§ 21080.66(a)(2)(A)); it has been previously developed with an urban use and is surrounded by urban uses (§ 21080.66(a)(3)); and R-3 zoning at twenty-five units per acre comfortably exceeds the density floor of section 21080.66(a)(5). Once R-3 zoning is restored, section 21080.66(a)(4)(B) supplies precisely the consistency finding the staff report flags: "[i]f the zoning and general plan are not consistent with one another, a project shall be deemed consistent with both if the project is consistent with one."

It is significant that neither section 21080.66 nor the site-exclusion list it incorporates from Government Code section 65913.4(a)(6) contains any exclusion for landslide hazards, for State Seismic Hazard Zones susceptible to earthquake-induced landsliding, for steep slopes, or for hillside areas. The only geologic exclusion is for delineated Alquist-Priolo earthquake fault zones, and even that yields to building code compliance. In other words, the very hazard that dominates this site, documented slope instability with a forty-five-year history of failures, is one that AB 130 would remove from CEQA's reach entirely at the project stage.

The consequence is stark. If the Council upzones this Property without review, and a developer subsequently proposes a qualifying housing development project, the environmental consequences of building 155 units on this slope may never be studied under CEQA at all. That is the classic circumstance in which review must occur at the legislative stage, "at the earliest possible stage," before the agency's discretion is foreclosed. (*Bozung*, supra, 13 Cal.3d at p. 282.)

[12] City Council Staff Report, Agenda Item No. 11.A (August 19, 2026), "Analysis for Restoring the Zoning Designation of the Property."

Third, the City should be aware of a tension it will need to resolve. Government Code section 65913.4(a)(6)(J), incorporated by section 21080.66(a)(6), excludes from eligibility any site that is "[h]abitat for protected species identified as candidate, sensitive, or species of special status by state or federal agencies." CDFW's April 15, 2021, letter and the biological resources record for this site place that question in dispute. That the City cannot presently answer it is not a reason to forgo review; it is precisely the kind of "legitimate question" that defeats a finding of certainty.

VI. Independent, Non-CEQA Defects in the Proposed Actions

Although SOS's principal objection is under CEQA, three further defects warrant the Council's attention.

A. The Proposed Zoning Is Inconsistent With the General Plan.

Government Code section 65860(a) requires that a city's zoning ordinances be consistent with its general plan, and section 65860(d) applies that requirement to charter cities notwithstanding section 65803. The staff report states that the General Plan land use designation for the Property "is currently Low-Density and would allow a maximum of 50 dwelling units," while the R-3 zoning the City proposes to restore "would allow a maximum of 155 dwelling units." The staff report expressly acknowledges "the current inconsistency" and states that it would be eliminated only "[i]f voters approve changing the General Plan land use designation to High-Density."[13]

The City therefore proposes to adopt, knowingly and deliberately, a zoning designation that is inconsistent with its own General Plan, in the hope that the electorate will cure the inconsistency in November. Yet Section 2.D of the draft ordinance asserts that "[t]he proposed action of restoring the Property's zoning designation is consistent with General Plan since the land use designation of the Property would remain as Low Density." That finding is contradicted by the staff report on the same agenda item and is not supported by substantial evidence.

B. The Specific Plan Repeal Was Not Referred to the Planning Commission for Its Recommendation.

Government Code section 65453(b) provides that "[a] specific plan may be repealed in the same manner as it is required to be amended," and section 65453(a) provides that a specific plan "shall be prepared, adopted, and amended in the same manner as a general plan." The general plan procedure requires a noticed public hearing before the planning commission (§ 65353) and a written commission recommendation adopted by a majority of the commission's total membership and transmitted to the legislative body (§ 65354). Section 65450, section 65454, and section 65455 apply to charter cities by force of section 65700(b).

Monterey Park has created a Planning Commission and has authorized it to "make recommendations to the city council regarding land use regulations including, without limitation, amendments to the General Plan or this code." (MPMC § 2.56.010(c).) The City may respond that

[13] *Ibid.*

MPMC section 2.56.020 permits the City Council to act as the planning agency. But the exceptions enumerated in section 2.56.020 are limited to projects requiring "a zone change; zone map amendment; or development agreement," to public projects requiring General Plan consistency findings under Government Code section 65402, to appeals, and to matters the Council designates by resolution for a particular project. Repeal of a specific plan is not among them. No Planning Commission hearing was held and no written recommendation was transmitted, as sections 65353 and 65354 require.

Separately, Government Code section 65867 requires that a public hearing on a development agreement "shall be held by the planning agency and by the legislative body," that is, two hearings before two bodies, and section 65868 requires that notice of intention to amend or cancel be given in the manner provided by section 65867.

C. The Rezoning May Require Voter Approval Under MPMC Chapter 21.42.

Monterey Park Municipal Code section 21.42.010 provides that no amendment of the land use element of the General Plan, the zoning map, or the Zoning Code, "or any other action of the City Council by which there would be permitted any use of land other than as presently defined," is "valid or effective for any purpose whatsoever" unless approved by a majority of the voters at a municipal election.

The exceptions in section 21.42.020 do not appear to apply. Subdivision (C) exempts only changes "which do not increase residential densities," and this change increases permitted density from 16 units to 155. Subdivision (E) exempts General Plan and zone changes "not exceeding one acre," and the Property is 6.22 acres. That the City has placed a companion General Plan amendment on the November 2026 ballot suggests the City is aware that Chapter 21.42 governs land use changes at this Property. SOS respectfully requests that the City Attorney address on the record why the zoning ordinance may be adopted by the Council without the voter approval that section 21.42.010 requires.

VII. Conclusion and Requested Action

The common sense exemption is reserved for activities that are obviously exempt, where CEQA Guidelines section 15061(b)(3)'s "absolute and precise language clearly applies." It has no application to a legislative act whose admitted purpose is to increase permitted residential density nearly tenfold on a hillside that the City has spent approximately $16 million stabilizing; that the City has permanently designated a geologic hazard by forming a Geologic Hazard Abatement District over it; whose current physical condition the City has never environmentally analyzed; whose stabilization was engineered to abate a nuisance rather than to carry high-density development; for which the City adopted sixteen mitigation measures that have never been applied to any residential construction; and as to which CDFW's advice that impacts to trees and nesting bird habitat "would be considered significant under CEQA" has never been answered.

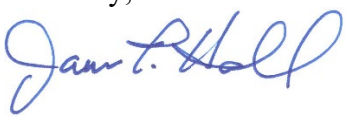
SOS respectfully requests that the City Council take one of the following actions:

1. Continue Item 11.A in its entirety and direct staff to prepare an initial study evaluating the reasonably foreseeable environmental effects of restoring R-3 zoning at the Property, including effects on slope stability and the adequacy of the completed abatement improvements at R-3 densities, the MPK GHAD Plan of Control and assessment methodology, biological resources, transportation, air quality, noise, tribal cultural resources, aesthetics, and public services; or

2. Sever the two actions. Introduce the uncodified ordinance repealing Ordinance No. 2211 and rescinding and terminating Development Agreement No. 21-01, an action that is genuinely severable, that requires no zoning change, and that SOS does not oppose, while continuing the ordinance that would repeal Ordinance No. 2210 and rezone the Property to R-3, pending CEQA-compliant review and referral to the Planning Commission. The Goodviews Specific Plan would remain in place in the interim. That imposes no hardship on the City: it owns the Property, and it may market it under existing zoning or return to the Council once environmental review is complete.

SOS requests that this letter and all documents cited herein[14] be made part of the administrative record for this matter. SOS further requests, pursuant to Public Resources Code sections 21092.2 and 21167(f), written notice of any determination that the proposed actions are exempt from CEQA, of the date on which any Notice of Exemption is filed, and of any subsequent hearings or determinations concerning the Property. Please direct all such notices to the undersigned at the address above. Thank you for your consideration of this matter.

Sincerely,



Jamie T. Hall

[14] The IS is available at https://www.montereypark.ca.gov/DocumentCenter/View/11027/e1688-Garvey-Screencheck-Initial-Study_070220.

The FEIR is available at https://www.montereypark.ca.gov/DocumentCenter/View/12032/1688-Garvey-FEIR.

The DEIR is available at https://www.montereypark.ca.gov/DocumentCenter/View/11754/MontereyPark_DEIR?bidId=

The Technical appendices are available at https://www.montereypark.ca.gov/DocumentCenter/View/11755/MontereyPark_DraftEIR_Apxs?bidId=

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August 19, 2026

Via Electronic Mail and U.S. Mail

Jamie T. Hall, Esq.
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Re: Agenda Item No. 11.A — Response to Save Our Slopes' August 18, 2026 Comment Letter (Repeal of the Goodviews Specific Plan and Restoration of R-3 Zoning at 1688 West Garvey Avenue; Rescission of Development Agreement No. DA-21-01)

Dear Mr. Hall:

Thank you for your letter submitted for Save Our Slopes ("SOS") on August 18, 2026, regarding to Agenda Item No. 11.A. While the letter will be provided to the City Council for consideration, there will not be a recommendation that the matter be continued.

First, this is not new information to SOS. On May 11, 2026, the Assistant City Attorney emailed you directly, told you that the Development Agreement and the zoning changes obtained by the prior developer were considered at the May 6, 2026 City Council meeting, and attached the complete agenda packet — including the detailed staff report. That staff report recommended, in plain terms, that the Council find the developer in default under Government Code § 65865.1, initiate proceedings to rescind Development Agreement No. DA-21-01, and initiate proceedings to repeal the Goodviews Specific Plan "including any necessary zone change to restore prior zoning designations." The report's executive summary tied the recommendation to the December 3, 2025 marketing public presentation by Kidder Mathews to the City Council and to the City's goal of identifying the property's highest and best use. During the settlement discussions that followed, the City again confirmed — in writing on May 22, 2026 and July 9, 2026 — that it had "already initiated the process of rescinding DA 21-01 at the May 6, 2026 City Council meeting" and directed you to the full packet. The City Attorney's office has kept SOS informed of this plan for more than three months. The characterization of the rezoning as a surprise the City sought to obscure is false: the City's intentions have been public and apparent since December 2025.

Second, the City and SOS agree on more than your letter acknowledges. SOS does not oppose rescinding and terminating Development Agreement No. DA-21-01. The City will proceed with that rescission. SOS is also correct that Assembly Bill 130 does not, by itself, exempt a legislative rezoning from the California Environmental Quality Act ("CEQA"); the City has never contended otherwise and does not rely on AB 130 to exempt the rezoning. Your client's real complaint is quite limited: whether the City may repeal the Specific Plan and restore the property's prior R-3 zoning in reliance on the common-sense exemption, CEQA Guidelines § 15061(b)(3), without first preparing an initial study. It may.

1. Restoring the property's prior R-3 zoning approves no development and changes nothing on the ground

SOS's central premise is that the rezoning will cause a "nearly tenfold" increase in density and must therefore be studied now. That premise misstates what the draft ordinance, if adopted, accomplishes.

The action before the Council would repeal the Goodviews Specific Plan and restore the zoning designation that applied to the property before 2021 — High-Density Residential (R-3). It approves no project. It authorizes no grading, no construction, and no ground disturbance of any kind. It permits no one to build anything. As the City's determination states, the recommended actions "involve the termination of existing land use entitlements and do not propose or approve any new development."

CEQA measures a project's effects against the existing physical conditions on the site. An action that returns the property to a pre-existing regulatory designation, and that authorizes no physical change, has no cognizable environmental effect to study. The California Supreme Court applied exactly this reasoning in upholding the common-sense exemption in (*Muzzy Ranch Co. v. Solano Cnty. Airport Land Use Com*. (2007) 41 Cal.4th 372): because the land-use action there "simply incorporate[d] existing general plan and zoning provisions," any development potential it carried "already ha[d] been caused by the existing land use policies and zoning regulations to which the [plan] is keyed." Restoring R-3 zoning is keyed to the property's own pre-2021 designation in precisely that way.

A zoning designation "is a template for development"; "actual construction would, of course, have to be separately approved." (*S. Orange Cnty. Wastewater Auth. v. City of Dana Point* (2011) 196 Cal. App. 4th 1604). Where a rezoning "contemplate[s] no change at all in the environment," no environmental review is required, and imposing review based on the site's pre-existing physical condition rather than on any change the action causes "is thus prohibited." That is this case. The restoration of R-3 zoning changes the property's regulatory label; it does not touch the hillside.

2. No development is reasonably foreseeable from the rezoning alone, and any future project must undergo its own CEQA review

SOS argues that the "admitted purpose" of the rezoning is to induce dense development, so its effects must be examined now. The City's public, years long, candor about wanting to market the property for its highest and best use does not convert a regulatory restoration into an approval of development. No application is pending. No developer has been selected. No project design, unit count, footprint, or grading plan exists. The specific development SOS asks the City to study does not yet exist in any form the City could analyze. Indeed, any hypothetical sale of the property would require multiple steps requiring CEQA review including, without limitation, a Surplus Lands Act analysis.

This is not a loophole; it is how CEQA sequences review. The Supreme Court has recognized that "it is relevant" to a common-sense determination "that future effects will themselves require analysis under CEQA." (*Muzzy Ranch Co. v. Solano Cnty. Airport Land Use Com*.). Here they plainly will. Before any private party could build on this hillside, it would need to not only acquire title but also obtain a new, discretionary entitlement — and, as the City has already told you in writing, "any future private development of this parcel will physically and legally require a brand-new discretionary approval process and at least a supplemental CEQA environmental review." At that stage, when a real project with real dimensions exists, the City must analyze its effects against the site's then-existing conditions, and SOS may present expert evidence and, if it chooses, challenge the approval by a new petition for writ of mandate. SOS's interests are fully protected — at the stage where the analysis can be meaningful.

3. The site's physical condition, the abatement work, and the Geologic Hazard Abatement District do not defeat the exemption

SOS identifies the property's landslide history, the approximately $16 million in abatement work, and the Monterey Park Geologic Hazard Abatement District ("MPK GHAD") to argue that significant effects are not merely possible but documented. These facts describe the existing condition of the site. They do not describe any change the rezoning would cause — and CEQA is concerned with the effect of a project on the environment, not the effect of the environment on a project that has not been proposed.

The abatement work does not cut the other way, as SOS suggests. The City agrees the work was undertaken to abate a public nuisance, and it agrees the site's physical baseline has changed. Those are reasons the City is not relying on the aging 2021 environmental record to approve any future development; they are not reasons to study a development that has not been proposed. The MPK GHAD likewise continues in force and continues to monitor and maintain the hillside regardless of the property's zoning label. Whether a future project is compatible with the GHAD's Plan of Control, its assessment methodology, or its reserves are questions that arise if a

project is proposed — and they must be answered then, against the project's actual design. The rezoning presents none of them for decision now.

4. The prior mitigation measures and CDFW's comments are tied to a project that was never built and will be addressed at the project stage

SOS contends that the sixteen mitigation measures the City adopted with the 2021 Final EIR, and the California Department of Fish and Wildlife's ("CDFW") April 15, 2021 comment, independently defeat the exemption. Both were adopted for the sixteen-unit Goodviews project. That project never proceeded, its entitlements are being rescinded, and the abatement work the City actually performed was separate nuisance-abatement work, not implementation of that mitigation program. The mitigation measures and CDFW's comment were calibrated to a specific development that no longer exists as an approved project.

The City is not decertifying the Final EIR, and its underlying studies remain available to inform future review as applicable. But those measures and comments speak to the impacts of developing the hillside — the very analysis that must occur when a development is proposed. The City has already committed, in writing, that it will consult with CDFW as a trustee agency where the law requires consultation for a future project. Neither the mitigation program nor CDFW's comment identifies an effect of the rezoning itself, which is the only action before the Council.

5. AB 130 does not change the analysis, and it does not make review at the rezoning stage the "last chance"

SOS is correct that Public Resources Code § 21080.66 does not exempt a legislative rezoning. By its terms, the exemption applies to "any aspect of a housing development project… including any permits, approvals, or public improvements required for the housing development project." The definition the statute incorporates expressly separates project-level actions from legislative acts: a qualifying "hearing" "does not include a hearing to review a legislative approval… including… a general plan amendment, a specific plan adoption or amendment, or a zoning amendment." (Gov't Code § 65905.5). And the Legislature preserved CEQA in full: "Nothing in this section supersedes, limits, or otherwise modifies the requirements of, or the standards of review pursuant to," CEQA. (Gov't Code § 65905.5). The City agrees with all of this. It is not invoking AB 130 to exempt the rezoning.

SOS's further argument — that AB 130 makes the rezoning the last opportunity for CEQA review of hillside development — does not follow. The statutory exemption reaches only a "housing development project" that satisfies every one of the statute's conditions. (Pub. Res. Code § 21080.66). Those conditions include the site-eligibility exclusions incorporated from Government Code § 65913.4(a)(6), which disqualify, among other sites, land that is "[h]abitat for protected species identified as candidate, sensitive, or species of special status," land "[w]ithin a very high fire hazard severity zone," and other sensitive sites. SOS's own letter

emphasizes CDFW's view that this hillside provides nesting-bird and native-tree habitat — a contention that, if correct, would tend to disqualify a future project from the AB 130 exemption, not shield it. Whether a future project qualifies for or is excluded from that exemption is a question for the project stage, on a real record. It is not a reason to study a non-existent project now.

6. The procedural objections do not bar the actions

SOS argues that restored R-3 zoning would be inconsistent with the property's current Low-Density General Plan designation. A temporary inconsistency of this kind does not invalidate the zoning. Government Code § 65860(c), expressly contemplates that a zoning ordinance may be inconsistent with the General Plan "for a reasonable time" and directs that it be conformed within that time. (Gov't Code § 65860). The California Supreme Court confirmed (*City of Morgan Hill v. Bushey* (2018) 5 Cal.5th 1068) that section 65860(c) "contemplates some temporary inconsistency between the zoning ordinance and the general plan for a reasonable time." The Legislature has likewise directed that General Plan amendments and the zoning changes needed to implement them be processed together "to the extent possible." (Gov't Code § 65862). The "invalid ab initio" rule on which SOS's argument depends applies only to an ordinance inconsistent with the General Plan in effect when it is enacted; the Supreme Court has since confirmed that a zoning designation valid when enacted may lawfully remain temporarily out of conformity while the jurisdiction completes the alignment. In Monterey Park, the Land Use and Urban Design Element of the General Plan may only be amended by voters. Achieving consistency between the proposed zoning regulations and the General Plan, therefore, will require a General Plan amendment approved by voters; this will not occur in 2026 (Measure HOM which will be considered by voters in the November does not specifically affect this property).

SOS argues the Specific Plan repeal required a separate Planning Commission hearing and written recommendation. The Monterey Park Municipal Code authorizes the City Council to act as the planning agency, and the public hearing that California law requires has been provided before the Council. As the City has already explained to you, the advisory function is satisfied when the Council conducts that hearing, and the City will not agree to bind itself or future Councils to a procedure the law does not require.

The City's termination of Development Agreement No. DA-21-01 rests on Government Code § 65865.1, which authorizes a local agency, after periodic review and on a finding supported by substantial evidence that the developer "has not complied in good faith with terms or conditions of the agreement," to "terminate or modify the agreement." The Council made that non-compliance finding as to the prior developer. SOS does not oppose this action, and the City will complete it.

7. The City will not continue or sever the item, but SOS's rights are preserved

For the reasons above, the City disagrees that it must prepare an initial study before restoring the property's prior zoning, and it will not continue Item 11.A on that basis. Nor will it sever and defer the rezoning: the repeal of the Specific Plan and the restoration of R-3 zoning are how the City removes the failed developer's entitlements and returns the property to a marketable, pre-existing status. The City may lawfully proceed with both components together.

The City is not relying on the 2021 Final EIR to authorize any future development; any future project will require its own discretionary approval and its own CEQA review; the City will consult CDFW where the law requires; and SOS retains its full right to comment on, and to challenge, any future entitlement or environmental document for this property.

The City appreciates SOS's engagement and remains willing to continue the parties' settlement discussions. Please direct any further correspondence on this matter to my office.

Very truly yours,

Karl H. Berger
City Attorney

From:	Jamie Hall
To:	MPClerk
Cc:	CLG Staff; Berger, Karl H.
Subject:	City Council Agenda Item No. 11.A (August 19, 2026): Further Comment Letter from Save Our Slopes ("SOS")
Date:	Wednesday, August 19, 2026 4:25:37 PM
Attachments:	SOS Reply to City Attorney Letter.pdf

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Good afternoon,

Please see the attached. Please confirm receipt.

Please ensure that this is submitted to the City Council and made part of the administrative record for this agenda item.

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August 19, 2026

VIA ELECTRONIC MAIL

Mayor Henry Lo and Honorable Members of the City Council
City of Monterey Park
c/o Maychelle Yee, City Clerk
320 West Newmark Avenue
Monterey Park, CA 91754
mpclerk@montereypark.ca.gov

Re: Agenda Item No. 11.A (August 19, 2026): Response to the City Attorney's August 19, 2026 Letter; Renewed Objection to Reliance on the "Common Sense" Exemption (CEQA Guidelines § 15061(b)(3))

Dear Mayor Lo and Honorable Councilmembers:

This Firm represents Save Our Slopes ("SOS"). We write in response to the letter from City Attorney Karl H. Berger dated today, August 19, 2026, responding to our comment letter of August 18, 2026 on Agenda Item No. 11.A.

We appreciate the City Attorney's engagement with the substance of our objections. His letter, however, does not carry the City's burden. In several respects it makes SOS's case for it.

I. The Burden Is Now the City's, and It Must Be Carried With Evidence

The procedural posture matters more than any single argument, so we begin there.

Under *Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, the initial burden of demonstrating that the common sense exemption applies rests with the agency, because an exemption under CEQA Guidelines section 15061(b)(3) carries no implied finding of the Resources Agency behind it. "Without the benefit of such an implied finding, the agency must itself provide the support for its decision before the burden shifts to the challenger." (*Id.* at p. 116.) The showing required of an objector is "slight." (*Id.* at p. 117.) Once "a reasonable argument is made to suggest a possibility that a project will cause a significant environmental impact, the

agency must refute that claim to a certainty before finding that the exemption applies." (*Id.* at p. 118, emphasis added.) Accord, *Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372, 386 [applicability of the exemption "presents an issue of fact, and … the agency invoking the exemption has the burden of demonstrating it applies"].

SOS's August 18 letter made that showing many times over. It identified a hillside with a documented history of landslides, debris flows, wall failures, and street closures; an Initial Study that found potentially significant landslide, erosion, and slope-instability impacts; a Draft EIR placing a large portion of the site within a State Seismic Hazard Zone susceptible to earthquake-induced landsliding; sixteen adopted mitigation measures; an unresolved CDFW objection that impacts to trees and nesting bird habitat "would be considered significant under CEQA"; and a Geologic Hazard Abatement District formed over the parcel whose statutory premise is a continuing landslide hazard. The threshold is a reasonable argument suggesting a possibility. That threshold was crossed.

The burden accordingly rests with the City to refute those claims to a certainty. The City Attorney's letter does not attempt that. It argues that the effects need not be studied yet. That is a different proposition, and it is not the standard. An agency does not satisfy section 15061(b)(3) by explaining why analysis can wait; it satisfies it only by demonstrating, with certainty, that there is no possibility of a significant effect.

Two further points follow. First, the City Attorney's letter is advocacy of counsel, not evidence, and it is not a preliminary review. It was transmitted to this office at 2:34 p.m. on the day of the hearing. It cites no study, no geotechnical opinion, no biological survey, and no analysis of any kind prepared by or for the City in connection with this action. *Davidon* set aside an exemption on precisely this record: "There is no indication that any preliminary environmental review was conducted before the exemption decision was made. The agency produced no evidence to support its decision and we find no mention of CEQA in the various staff reports. A determination which has the effect of dispensing with further environmental review at the earliest possible stage requires something more." (54 Cal.App.4th at p. 117.)

Second, where an agency has not investigated an area of possible impact, the gap is construed against it. "CEQA places the burden of environmental investigation on government rather than the public. If the local agency has failed to study an area of possible environmental impact, a fair argument may be based on the limited facts in the record. Deficiencies in the record may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences." (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.)

II. The City's Own Concessions Defeat the Exemption

The City Attorney's letter concedes three things that, taken together, are dispositive.

It concedes that "the site's physical baseline has changed." It concedes that the City is "not relying on the aging 2021 environmental record." And it concedes that AB 130 does not exempt a legislative rezoning, and that the City "does not rely on AB 130 to exempt the rezoning."

The first two concessions establish that the City has no current environmental analysis of this Property. The 2020 Initial Study and the 2021 EIR describe a site the City has since altered at a cost of approximately $16 million, and the City now disclaims reliance on them. Nothing has replaced them. There is no initial study, no preliminary review, no updated geotechnical assessment, and no biological survey reflecting post-abatement conditions.

An agency that concedes it has no current environmental information about a site cannot simultaneously certify that it knows, with certainty, that there is no possibility of a significant effect there. Certainty is an evidentiary claim. It requires a basis. The City has disclaimed the only environmental record it ever had and has put nothing in its place.

III. The City Misapplies the CEQA Baseline

The City Attorney argues that restoring R-3 "changes nothing on the ground" because it returns the Property to "a pre-existing regulatory designation." This is the letter's central argument, and it rests on a baseline error.

CEQA measures a proposed action against existing conditions, not against hypothetical or historical conditions. In *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, our Supreme Court set aside a negative declaration because the agency compared the project "to what could happen, rather than to what was actually happening," thereby setting the baseline "not according to established levels of a particular use, but by merely hypothetical conditions allowable under the permits." (*Id.* at p. 322.) The Court was explicit that "an initial study or negative declaration must focus on impacts to the existing environment, not hypothetical situations." (*Ibid.*) The environmental setting is measured by conditions "as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced." (*Id.* at p. 320.)

The existing regulatory condition of this Property is the Goodviews Specific Plan, which caps development at sixteen single-family residences. That is what governs the Property today. R-3 is not the existing condition; it is a designation that was superseded in 2021 and has not applied for five years. Measured against the actual baseline, the ordinance increases permitted density from sixteen units to 155. Describing that as a restoration does not change what it does.

The City cannot invoke a changed baseline when it is convenient and deny baseline principles when it is not. Its letter relies on the changed physical baseline to escape the 2021 EIR, then relies on a five-year-old regulatory baseline to argue that nothing is changing. Both propositions cannot be true at once.

IV. *Muzzy Ranch* Does Not Support the City, and the City's Quotations Are Incomplete

The City relies on *Muzzy Ranch*. SOS anticipated that reliance and addressed it at pages 6 and 7 of the August 18 letter. The distinction is dispositive and the City Attorney's letter does not engage it.

The Supreme Court upheld the exemption in *Muzzy Ranch* for one reason: the land use plan at issue "simply incorporate[d] existing general plan and zoning law restrictions on residential housing density," so that "any potential displacement the [plan] might otherwise have effected already ha[d] been caused by the existing land use policies and zoning regulations to which the [plan] is keyed." (41 Cal.4th at p. 389.) The operative word is "*existing."* The plan there was keyed to law that was in force. It changed nothing because it enacted nothing new.

This ordinance is keyed to a designation that is not in force and has not been for five years, and it multiplies permitted density by a factor of nearly ten. That is the opposite of the *Muzzy Ranch* facts. The Court was explicit that "nothing inherent in the notion of displaced development places such development, when it can reasonably be anticipated, categorically outside the concern of CEQA." (*Id.* at pp. 382–383.)

We must also note that the City's quotation from *Muzzy Ranch* on the significance of future CEQA review is incomplete in a material respect. The City's letter quotes the Court as recognizing that "it is relevant" to a common sense determination "that future effects will themselves require analysis under CEQA." The Court's actual sentence reads: "In addition, it is relevant, *although by no means determinative,* that future effects will themselves require analysis under CEQA." (41 Cal.4th at p. 388 (emphasis added).) The omitted qualifier is the part that matters here. The prospect of later review is not determinative, and it cannot substitute for the certainty the exemption requires now.

V. The City's AB 130 Argument Is Refuted by the City's Own Record

The City Attorney offers a considered answer to SOS's argument that AB 130 may make this the last opportunity for environmental review. He argues that a future housing development project would be disqualified from the exemption in Public Resources Code section 21080.66 by the site-eligibility exclusions incorporated from Government Code section 65913.4(a)(6), and he identifies two: land that is "[h]abitat for protected species identified as candidate, sensitive, or species of special status," and land "[w]ithin a very high fire hazard severity zone."

The City's own certified record forecloses both.

As to special status species, Response A-2.15 in the Final EIR states, in the City's own words, that "there are no special status species identified on the Project site and that no special status species are likely to occur on-site." As to fire hazard, the Draft EIR and Initial Study both state that CAL FIRE does not identify the City as a Very High Fire Hazard Severity Zone, and that the nearest such zone lies outside the City. The City cannot rely tonight on two disqualifiers that its own environmental documents affirmatively negate.

This leaves the City with a dilemma, and both horns favor review now. If the City is correct that this hillside is habitat for candidate, sensitive, or special status species, then it has conceded a significant biological resource issue that the rezoning's growth-inducing effect squarely implicates, and the exemption fails. If the City's certified EIR is correct that no such species are present, then the AB 130 exclusion does not apply, a qualifying infill housing project may be entirely exempt from CEQA under section 21080.66, and the environmental consequences of

building at R-3 densities on this slope may never be examined at all. The City cannot occupy both positions, and neither one supports a finding of certainty.

We note also that the Surplus Land Act, Government Code section 54220 et seq., is not a CEQA process. It governs the priorities and notice procedures for disposition of surplus public land. It supplies no environmental review and cannot be counted as a future opportunity for it.

VI. The City's "We Will Review It Later" Argument Has Been Squarely Rejected

The organizing premise of the City Attorney's letter is that review can wait: no application is pending, no developer selected, no design exists, and any future project will carry its own CEQA obligation. Our Supreme Court has considered and rejected that reasoning, in a case this Firm litigated.

In *Union of Medical Marijuana Patients, Inc. v. City of San Diego* (2019) 7 Cal.5th 1171, the City of San Diego adopted an ordinance amending its zoning regulations to permit medical marijuana dispensaries. San Diego made the identical argument Monterey Park makes tonight: that the ordinance approved no development, that every dispensary would separately require a conditional use permit, and that environmental review therefore belonged at the permit stage. The Court held the ordinance was a project requiring CEQA review.

The Court's reasoning applies directly here. A zoning change "is capable of causing indirect physical changes in the environment," because "such a policy change could foreseeably result in new retail construction to accommodate the businesses." (*Id.* at p. 1199.) The causal connection exists because adoption of the ordinance was "an essential step culminating in action … which may affect the environment." (*Ibid.*, quoting *Fullerton Joint Union High School Dist. v. State Bd. of Education* (1982) 32 Cal.3d 779, 797.) Restoring R-3 zoning so that the Property can be marketed to a buyer who will build on it is an essential step of exactly that kind.

The Court also disposed of the speculation objection the City Attorney presses. It held that framing the inquiry around the absence of a specific development proposal "put[s] the cart before the horse," and explained: "at this stage of the CEQA process virtually any postulated indirect environmental effect will be 'speculative' in a legal sense … because little or no factual record will have been developed." (*Id.* at pp. 1199–1200.) That the City has not yet selected a developer is therefore not an answer. It is the ordinary condition of legislative CEQA review, and it did not excuse San Diego.

Save Tara v. City of West Hollywood (2008) 45 Cal.4th 116 makes the same point from the other direction. The Court warned that "the later the environmental review process begins, the more bureaucratic and financial momentum there is behind a proposed project, thus providing a strong incentive to ignore environmental concerns that could be dealt with more easily at an early stage of the project." (*Id.* at p. 130.) It held that agencies must not "take any action" that significantly furthers a project "in a manner that forecloses alternatives or mitigation measures that would ordinarily be part of CEQA review." (*Id.* at p. 138.)

That is precisely what is proposed. The City owns this Property. It intends to sell it. It has been advised that higher density will "broaden the potential buyer pool" and "maximize the sale

price." Once the zoning is changed and the Property is sold to a buyer who paid for R-3 density, the practical ability of any future decisionmaker to consider a lower-intensity alternative will be substantially diminished. The momentum *Save Tara* describes is not hypothetical here; the City has told the Council that generating it is the point.

VII. The General Plan Inconsistency: Section 65860(c) Does Not Apply, and *Morgan Hill* Holds the Opposite

The City Attorney concedes that restored R-3 zoning would be inconsistent with the Property's Low-Density General Plan designation. He argues the inconsistency is permissible as temporary under Government Code section 65860(c) and *City of Morgan Hill v. Bushey* (2018) 5 Cal.5th 1068. Both authorities cut the other way.

Section 65860(c)(1) provides: "In the event that a zoning ordinance becomes inconsistent with a general plan by reason of amendment to the general plan, or to any element of the plan, the zoning ordinance shall be amended within a reasonable time so that it is consistent with the general plan, as amended." The subdivision is triggered only where the inconsistency arises by reason of an amendment to the general plan. Subdivision (c)(2) is keyed the same way, to inconsistency arising "due to amendment to the general plan." So is section 65862, which addresses inconsistency arising "as a result of adoption of or amendment to a general plan."

That is not this case. The City is not amending its General Plan. It is amending its zoning, and thereby creating the inconsistency itself. Section 65860(c) provides a grace period for conforming zoning to a general plan that has already moved. It does not authorize a city to enact zoning that departs from a general plan that has not moved at all.

Morgan Hill confirms this reading rather than undermining it. The Supreme Court there described section 65860(c) as "contemplat[ing] some temporary inconsistency between the zoning ordinance and the general plan for a 'reasonable time' when the general plan is modified." (5 Cal.5th at p. 1076.) The concluding clause is the Court's own gloss, and it matches the statutory text.

More fundamentally, *Morgan Hill* was a referendum case. The question was whether voters could refer a zoning amendment adopted to conform to a prior general plan amendment, and the holding is expressly confined to preserving the electorate's power to reject an enactment: "Rather than 'reviving' an inconsistent zoning ordinance, a successful referendum is merely the rejection of an amendment before it takes effect." On the question actually before this Council, the Court said the opposite of what the City's letter suggests: "Section 65860, subdivision (a) preempts any local zoning ordinance that is inconsistent with the general plan when enacted," and any such inconsistent zoning ordinance "is invalid at the time it is passed." (*Id.* at p. 1079.)

The City's letter then supplies the fact that makes this worse rather than better. It states that the Land Use and Urban Design Element "may only be amended by voters," that achieving consistency "will require a General Plan amendment approved by voters," that "this will not occur in 2026," and that "Measure HOM which will be considered by voters in the November does not specifically affect this property."

By the City's own account, then, there is no pending measure that would cure this inconsistency, no scheduled vote that could cure it, and no date by which it will be cured. The City proposes to enact zoning that is inconsistent with its General Plan, knowingly, with no identified path to consistency and no timetable. Whatever "reasonable time" means, it does not describe an inconsistency with no cure in sight. Section 65860(d) makes the consistency requirement applicable notwithstanding section 65803.

This concession also sharpens the question SOS raised under Monterey Park Municipal Code Chapter 21.42. The City Attorney confirms that the General Plan's land use element may be amended only by the voters. Section 21.42.010 by its terms reaches not only the land use element but also "the zoning map and/or the Zoning Code," and any other Council action "by which there would be permitted any use of land other than as presently defined." The City's letter does not address that language. SOS renews its request that the City Attorney state on the record why voter approval is required to change the General Plan designation of this Property but not to increase its permitted density from sixteen units to 155 by ordinance.

VIII. The Planning Commission Requirement Remains Unanswered

The City Attorney responds that the Municipal Code authorizes the Council to act as the planning agency and that "the advisory function is satisfied when the Council conducts that hearing." He cites no authority for that proposition, and he does not address the statute SOS actually invoked.

Government Code section 65453(b) provides that "[a] specific plan may be repealed in the same manner as it is required to be amended," and section 65453(a) provides that a specific plan "shall be prepared, adopted, and amended in the same manner as a general plan." The general plan procedure requires that "[t]he planning commission shall make a written recommendation on the adoption or amendment of a general plan," by affirmative vote of not less than a majority of its total membership, and "shall send its recommendation to the legislative body." (§ 65354.) For zoning, section 65855 requires that the commission "render its decision in the form of a written recommendation to the legislative body," and that the recommendation "include the reasons for the recommendation, the relationship of the proposed ordinance or amendment to applicable general and specific plans."

That last requirement is not incidental here. The statute directs the commission to address on the record the relationship between the proposed zoning and the applicable general plan. That is the precise question the City concedes it cannot presently answer in the affirmative. No written recommendation was prepared, and none was transmitted.

Monterey Park has an established Planning Commission and has authorized it to "make recommendations to the city council regarding land use regulations including, without limitation, amendments to the General Plan or this code." (MPMC § 2.56.010(c).) The exceptions in MPMC section 2.56.020 permitting the Council to act as the planning agency are enumerated, and they extend to projects requiring "a zone change; zone map amendment; or development agreement." Repeal of a specific plan is not among them. If the City's position is that section 2.56.020

nonetheless displaces sections 65453 and 65354, it should say so expressly and identify the provision it relies upon.

IX. The City's Reliance on the *Dana Point* Decision Is Misplaced

The City Attorney relies on *South Orange County Wastewater Authority v. City of Dana Point* (2011) 196 Cal.App.4th 1604, quoting it for the propositions that a zoning designation "is a template for development," that "[a]ctual construction would, of course, have to be separately approved," and that review premised on a site's pre-existing physical condition "is thus prohibited." We have now reviewed the decision. It does not support the City's position, and in three respects it undercuts it.

First, and most importantly, the City of *Dana Point* did exactly what SOS asks this Council to do. Its planning commission staff "began the environmental review process required by" CEQA, prepared an initial study "to ascertain whether the project could have a significant adverse effect on the environment," and issued a mitigated negative declaration, which was then "revised and reissued … after the staff analyzed the effects of development more thoroughly." (*Id.* at p. 1609.) *Dana Point* is not authority for dispensing with environmental review of a rezoning. It is a case in which the agency performed that review, and the resulting document was upheld. The City cites it for the proposition that no initial study is required while quoting from a decision in which one was prepared.

Second, *Dana Point* amended its general plan concurrently with the rezoning. The application there had three components: "amending the City's general plan, to create a new, mixed-use land use designation"; adding a new zone to the zoning code; and rezoning the site under that new zone. (*Id.* at p. 1608.) The zoning and the general plan moved together. Here the City proposes to move the zoning alone and to leave the General Plan designation in place, which is the source of the inconsistency discussed in Section VII above.

Third, the two quoted phrases do not mean what the City's letter suggests. Both derive from the court's discussion of *Baird v. County of Contra Costa* (1995) 32 Cal.App.4th 1464, and both address a question SOS has not raised. The *Dana Point* court framed its own opinion this way at the outset: "We confront here the converse of our usual [CEQA] issue. Here, we are asked to order an environmental impact report, not to assess the impact of a proposed project on the present environment, but to assess the impact of the present environment upon a proposed project." (*Id.* at p. 1608.) The plaintiff was the operator of an adjacent sewage treatment plant, and its complaint was that the City had failed to analyze how the existing plant would affect future residents of the rezoned site. It was in rejecting that reverse-CEQA claim that the court said review premised on "preexisting environmental conditions rather than an adverse change in the environment" is "thus prohibited." (*Id.* at p. 1615.)

SOS makes no such claim. SOS does not ask the City to study the effect of the hillside on future residents. SOS asks the City to study the effect of the rezoning on the hillside, which is the ordinary direction of CEQA inquiry and the direction *Dana Point* expressly contrasts with the claim before it.

The phrase "a zoning ordinance is a template for development" likewise appears not in a CEQA holding but in the court's general plan consistency analysis, addressing whether a newly created zoning category had to specify mitigation for the unique circumstance of adjacency to a sewage plant. (*Id.* at p. 1621.) It says nothing about whether an upzoning that increases permitted density nearly tenfold requires environmental review.

X. Conclusion

The City Attorney's letter confirms that the City has changed the physical condition of this hillside, that it no longer relies on the only environmental analysis it ever prepared for the site, that it has prepared nothing to replace it, and that it intends to enact zoning it knows to be inconsistent with its General Plan with no identified means of curing that inconsistency. It then asks the Council to find, with certainty, that there is no possibility that increasing permitted density on that hillside from sixteen units to 155 may have any significant effect on the environment.

That finding cannot be made on this record. The burden is the City's, the standard is certainty, and neither is met by an assurance that the analysis will be done later by someone else.

SOS renews the requests made in its August 18 letter. The Council may rescind Development Agreement No. 21-01 tonight, an action SOS does not oppose and which requires no zoning change. It should continue the ordinance repealing Ordinance No. 2210 and rezoning the Property to R-3, and direct staff to prepare an initial study and to refer the matter to the Planning Commission.

SOS requests that this letter, the City Attorney's August 19, 2026 letter, and all documents cited in either, be made part of the administrative record for this matter. SOS further requests, pursuant to Public Resources Code sections 21092.2 and 21167(f), written notice of any determination that the proposed actions are exempt from CEQA and of the date on which any Notice of Exemption is filed.

Thank you for your consideration of this matter.

Sincerely,



Jamie T. Hall
Channel Law Group, LLP

cc: Karl H. Berger, City Attorney (kberger@bwslaw.com)

From: noreply@civicplus.com
To: MPClerk
Subject: Online Form Submittal: City Council Written Communication
Date: Wednesday, August 19, 2026 4:28:59 PM

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Please check one:	Agenda Item
Agenda Item No.	11.A
Please check one:	Against
First Name	Jamie

Last Name	Hall
Street Number	8383 Wilshire
Street Name	Suite 750
Street Type	Blvd.
Apt #	*Field not completed.*
City	Beverly Hills
State	CA
Zip	90211
Phone Number	3109821760
Email Address	jamie.hall@channellawgroup.com
Representing: (self, name of organization, or other party)	Save Our Slopes
Written Communication	Please see the attached objection letter.
You can also upload your written communication	SOS Reply to City Attorney Letter.pdf

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August 19, 2026

VIA ELECTRONIC MAIL

Mayor Henry Lo and Honorable Members of the City Council
City of Monterey Park
c/o Maychelle Yee, City Clerk
320 West Newmark Avenue
Monterey Park, CA 91754
mpclerk@montereypark.ca.gov

Re: Agenda Item No. 11.A (August 19, 2026): Response to the City Attorney's August 19, 2026 Letter; Renewed Objection to Reliance on the "Common Sense" Exemption (CEQA Guidelines § 15061(b)(3))

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We appreciate the City Attorney's engagement with the substance of our objections. His letter, however, does not carry the City's burden. In several respects it makes SOS's case for it.

I. The Burden Is Now the City's, and It Must Be Carried With Evidence

The procedural posture matters more than any single argument, so we begin there.

Under *Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, the initial burden of demonstrating that the common sense exemption applies rests with the agency, because an exemption under CEQA Guidelines section 15061(b)(3) carries no implied finding of the Resources Agency behind it. "Without the benefit of such an implied finding, the agency must itself provide the support for its decision before the burden shifts to the challenger." (*Id.* at p. 116.) The showing required of an objector is "slight." (*Id.* at p. 117.) Once "a reasonable argument is made to suggest a possibility that a project will cause a significant environmental impact, the

agency must refute that claim to a certainty before finding that the exemption applies." (*Id.* at p. 118, emphasis added.) Accord, *Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372, 386 [applicability of the exemption "presents an issue of fact, and … the agency invoking the exemption has the burden of demonstrating it applies"].

SOS's August 18 letter made that showing many times over. It identified a hillside with a documented history of landslides, debris flows, wall failures, and street closures; an Initial Study that found potentially significant landslide, erosion, and slope-instability impacts; a Draft EIR placing a large portion of the site within a State Seismic Hazard Zone susceptible to earthquake-induced landsliding; sixteen adopted mitigation measures; an unresolved CDFW objection that impacts to trees and nesting bird habitat "would be considered significant under CEQA"; and a Geologic Hazard Abatement District formed over the parcel whose statutory premise is a continuing landslide hazard. The threshold is a reasonable argument suggesting a possibility. That threshold was crossed.

The burden accordingly rests with the City to refute those claims to a certainty. The City Attorney's letter does not attempt that. It argues that the effects need not be studied yet. That is a different proposition, and it is not the standard. An agency does not satisfy section 15061(b)(3) by explaining why analysis can wait; it satisfies it only by demonstrating, with certainty, that there is no possibility of a significant effect.

Two further points follow. First, the City Attorney's letter is advocacy of counsel, not evidence, and it is not a preliminary review. It was transmitted to this office at 2:34 p.m. on the day of the hearing. It cites no study, no geotechnical opinion, no biological survey, and no analysis of any kind prepared by or for the City in connection with this action. *Davidon* set aside an exemption on precisely this record: "There is no indication that any preliminary environmental review was conducted before the exemption decision was made. The agency produced no evidence to support its decision and we find no mention of CEQA in the various staff reports. A determination which has the effect of dispensing with further environmental review at the earliest possible stage requires something more." (54 Cal.App.4th at p. 117.)

Second, where an agency has not investigated an area of possible impact, the gap is construed against it. "CEQA places the burden of environmental investigation on government rather than the public. If the local agency has failed to study an area of possible environmental impact, a fair argument may be based on the limited facts in the record. Deficiencies in the record may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences." (*Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311.)

II. The City's Own Concessions Defeat the Exemption

The City Attorney's letter concedes three things that, taken together, are dispositive.

It concedes that "the site's physical baseline has changed." It concedes that the City is "not relying on the aging 2021 environmental record." And it concedes that AB 130 does not exempt a legislative rezoning, and that the City "does not rely on AB 130 to exempt the rezoning."

The first two concessions establish that the City has no current environmental analysis of this Property. The 2020 Initial Study and the 2021 EIR describe a site the City has since altered at a cost of approximately $16 million, and the City now disclaims reliance on them. Nothing has replaced them. There is no initial study, no preliminary review, no updated geotechnical assessment, and no biological survey reflecting post-abatement conditions.

An agency that concedes it has no current environmental information about a site cannot simultaneously certify that it knows, with certainty, that there is no possibility of a significant effect there. Certainty is an evidentiary claim. It requires a basis. The City has disclaimed the only environmental record it ever had and has put nothing in its place.

III. The City Misapplies the CEQA Baseline

The City Attorney argues that restoring R-3 "changes nothing on the ground" because it returns the Property to "a pre-existing regulatory designation." This is the letter's central argument, and it rests on a baseline error.

CEQA measures a proposed action against existing conditions, not against hypothetical or historical conditions. In *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, our Supreme Court set aside a negative declaration because the agency compared the project "to what could happen, rather than to what was actually happening," thereby setting the baseline "not according to established levels of a particular use, but by merely hypothetical conditions allowable under the permits." (*Id.* at p. 322.) The Court was explicit that "an initial study or negative declaration must focus on impacts to the existing environment, not hypothetical situations." (*Ibid.*) The environmental setting is measured by conditions "as they exist at the time the notice of preparation is published, or if no notice of preparation is published, at the time environmental analysis is commenced." (*Id.* at p. 320.)

The existing regulatory condition of this Property is the Goodviews Specific Plan, which caps development at sixteen single-family residences. That is what governs the Property today. R-3 is not the existing condition; it is a designation that was superseded in 2021 and has not applied for five years. Measured against the actual baseline, the ordinance increases permitted density from sixteen units to 155. Describing that as a restoration does not change what it does.

The City cannot invoke a changed baseline when it is convenient and deny baseline principles when it is not. Its letter relies on the changed physical baseline to escape the 2021 EIR, then relies on a five-year-old regulatory baseline to argue that nothing is changing. Both propositions cannot be true at once.

IV. *Muzzy Ranch* Does Not Support the City, and the City's Quotations Are Incomplete

The City relies on *Muzzy Ranch*. SOS anticipated that reliance and addressed it at pages 6 and 7 of the August 18 letter. The distinction is dispositive and the City Attorney's letter does not engage it.

The Supreme Court upheld the exemption in *Muzzy Ranch* for one reason: the land use plan at issue "simply incorporate[d] existing general plan and zoning law restrictions on residential housing density," so that "any potential displacement the [plan] might otherwise have effected already ha[d] been caused by the existing land use policies and zoning regulations to which the [plan] is keyed." (41 Cal.4th at p. 389.) The operative word is "*existing."* The plan there was keyed to law that was in force. It changed nothing because it enacted nothing new.

This ordinance is keyed to a designation that is not in force and has not been for five years, and it multiplies permitted density by a factor of nearly ten. That is the opposite of the *Muzzy Ranch* facts. The Court was explicit that "nothing inherent in the notion of displaced development places such development, when it can reasonably be anticipated, categorically outside the concern of CEQA." (*Id.* at pp. 382–383.)

We must also note that the City's quotation from *Muzzy Ranch* on the significance of future CEQA review is incomplete in a material respect. The City's letter quotes the Court as recognizing that "it is relevant" to a common sense determination "that future effects will themselves require analysis under CEQA." The Court's actual sentence reads: "In addition, it is relevant, *although by no means determinative,* that future effects will themselves require analysis under CEQA." (41 Cal.4th at p. 388 (emphasis added).) The omitted qualifier is the part that matters here. The prospect of later review is not determinative, and it cannot substitute for the certainty the exemption requires now.

V. The City's AB 130 Argument Is Refuted by the City's Own Record

The City Attorney offers a considered answer to SOS's argument that AB 130 may make this the last opportunity for environmental review. He argues that a future housing development project would be disqualified from the exemption in Public Resources Code section 21080.66 by the site-eligibility exclusions incorporated from Government Code section 65913.4(a)(6), and he identifies two: land that is "[h]abitat for protected species identified as candidate, sensitive, or species of special status," and land "[w]ithin a very high fire hazard severity zone."

The City's own certified record forecloses both.

As to special status species, Response A-2.15 in the Final EIR states, in the City's own words, that "there are no special status species identified on the Project site and that no special status species are likely to occur on-site." As to fire hazard, the Draft EIR and Initial Study both state that CAL FIRE does not identify the City as a Very High Fire Hazard Severity Zone, and that the nearest such zone lies outside the City. The City cannot rely tonight on two disqualifiers that its own environmental documents affirmatively negate.

This leaves the City with a dilemma, and both horns favor review now. If the City is correct that this hillside is habitat for candidate, sensitive, or special status species, then it has conceded a significant biological resource issue that the rezoning's growth-inducing effect squarely implicates, and the exemption fails. If the City's certified EIR is correct that no such species are present, then the AB 130 exclusion does not apply, a qualifying infill housing project may be entirely exempt from CEQA under section 21080.66, and the environmental consequences of

building at R-3 densities on this slope may never be examined at all. The City cannot occupy both positions, and neither one supports a finding of certainty.

We note also that the Surplus Land Act, Government Code section 54220 et seq., is not a CEQA process. It governs the priorities and notice procedures for disposition of surplus public land. It supplies no environmental review and cannot be counted as a future opportunity for it.

VI. The City's "We Will Review It Later" Argument Has Been Squarely Rejected

The organizing premise of the City Attorney's letter is that review can wait: no application is pending, no developer selected, no design exists, and any future project will carry its own CEQA obligation. Our Supreme Court has considered and rejected that reasoning, in a case this Firm litigated.

In *Union of Medical Marijuana Patients, Inc. v. City of San Diego* (2019) 7 Cal.5th 1171, the City of San Diego adopted an ordinance amending its zoning regulations to permit medical marijuana dispensaries. San Diego made the identical argument Monterey Park makes tonight: that the ordinance approved no development, that every dispensary would separately require a conditional use permit, and that environmental review therefore belonged at the permit stage. The Court held the ordinance was a project requiring CEQA review.

The Court's reasoning applies directly here. A zoning change "is capable of causing indirect physical changes in the environment," because "such a policy change could foreseeably result in new retail construction to accommodate the businesses." (*Id.* at p. 1199.) The causal connection exists because adoption of the ordinance was "an essential step culminating in action … which may affect the environment." (*Ibid.*, quoting *Fullerton Joint Union High School Dist. v. State Bd. of Education* (1982) 32 Cal.3d 779, 797.) Restoring R-3 zoning so that the Property can be marketed to a buyer who will build on it is an essential step of exactly that kind.

The Court also disposed of the speculation objection the City Attorney presses. It held that framing the inquiry around the absence of a specific development proposal "put[s] the cart before the horse," and explained: "at this stage of the CEQA process virtually any postulated indirect environmental effect will be 'speculative' in a legal sense … because little or no factual record will have been developed." (*Id.* at pp. 1199–1200.) That the City has not yet selected a developer is therefore not an answer. It is the ordinary condition of legislative CEQA review, and it did not excuse San Diego.

Save Tara v. City of West Hollywood (2008) 45 Cal.4th 116 makes the same point from the other direction. The Court warned that "the later the environmental review process begins, the more bureaucratic and financial momentum there is behind a proposed project, thus providing a strong incentive to ignore environmental concerns that could be dealt with more easily at an early stage of the project." (*Id.* at p. 130.) It held that agencies must not "take any action" that significantly furthers a project "in a manner that forecloses alternatives or mitigation measures that would ordinarily be part of CEQA review." (*Id.* at p. 138.)

That is precisely what is proposed. The City owns this Property. It intends to sell it. It has been advised that higher density will "broaden the potential buyer pool" and "maximize the sale

price." Once the zoning is changed and the Property is sold to a buyer who paid for R-3 density, the practical ability of any future decisionmaker to consider a lower-intensity alternative will be substantially diminished. The momentum *Save Tara* describes is not hypothetical here; the City has told the Council that generating it is the point.

VII. The General Plan Inconsistency: Section 65860(c) Does Not Apply, and *Morgan Hill* Holds the Opposite

The City Attorney concedes that restored R-3 zoning would be inconsistent with the Property's Low-Density General Plan designation. He argues the inconsistency is permissible as temporary under Government Code section 65860(c) and *City of Morgan Hill v. Bushey* (2018) 5 Cal.5th 1068. Both authorities cut the other way.

Section 65860(c)(1) provides: "In the event that a zoning ordinance becomes inconsistent with a general plan by reason of amendment to the general plan, or to any element of the plan, the zoning ordinance shall be amended within a reasonable time so that it is consistent with the general plan, as amended." The subdivision is triggered only where the inconsistency arises by reason of an amendment to the general plan. Subdivision (c)(2) is keyed the same way, to inconsistency arising "due to amendment to the general plan." So is section 65862, which addresses inconsistency arising "as a result of adoption of or amendment to a general plan."

That is not this case. The City is not amending its General Plan. It is amending its zoning, and thereby creating the inconsistency itself. Section 65860(c) provides a grace period for conforming zoning to a general plan that has already moved. It does not authorize a city to enact zoning that departs from a general plan that has not moved at all.

Morgan Hill confirms this reading rather than undermining it. The Supreme Court there described section 65860(c) as "contemplat[ing] some temporary inconsistency between the zoning ordinance and the general plan for a 'reasonable time' when the general plan is modified." (5 Cal.5th at p. 1076.) The concluding clause is the Court's own gloss, and it matches the statutory text.

More fundamentally, *Morgan Hill* was a referendum case. The question was whether voters could refer a zoning amendment adopted to conform to a prior general plan amendment, and the holding is expressly confined to preserving the electorate's power to reject an enactment: "Rather than 'reviving' an inconsistent zoning ordinance, a successful referendum is merely the rejection of an amendment before it takes effect." On the question actually before this Council, the Court said the opposite of what the City's letter suggests: "Section 65860, subdivision (a) preempts any local zoning ordinance that is inconsistent with the general plan when enacted," and any such inconsistent zoning ordinance "is invalid at the time it is passed." (*Id.* at p. 1079.)

The City's letter then supplies the fact that makes this worse rather than better. It states that the Land Use and Urban Design Element "may only be amended by voters," that achieving consistency "will require a General Plan amendment approved by voters," that "this will not occur in 2026," and that "Measure HOM which will be considered by voters in the November does not specifically affect this property."

By the City's own account, then, there is no pending measure that would cure this inconsistency, no scheduled vote that could cure it, and no date by which it will be cured. The City proposes to enact zoning that is inconsistent with its General Plan, knowingly, with no identified path to consistency and no timetable. Whatever "reasonable time" means, it does not describe an inconsistency with no cure in sight. Section 65860(d) makes the consistency requirement applicable notwithstanding section 65803.

This concession also sharpens the question SOS raised under Monterey Park Municipal Code Chapter 21.42. The City Attorney confirms that the General Plan's land use element may be amended only by the voters. Section 21.42.010 by its terms reaches not only the land use element but also "the zoning map and/or the Zoning Code," and any other Council action "by which there would be permitted any use of land other than as presently defined." The City's letter does not address that language. SOS renews its request that the City Attorney state on the record why voter approval is required to change the General Plan designation of this Property but not to increase its permitted density from sixteen units to 155 by ordinance.

VIII. The Planning Commission Requirement Remains Unanswered

The City Attorney responds that the Municipal Code authorizes the Council to act as the planning agency and that "the advisory function is satisfied when the Council conducts that hearing." He cites no authority for that proposition, and he does not address the statute SOS actually invoked.

Government Code section 65453(b) provides that "[a] specific plan may be repealed in the same manner as it is required to be amended," and section 65453(a) provides that a specific plan "shall be prepared, adopted, and amended in the same manner as a general plan." The general plan procedure requires that "[t]he planning commission shall make a written recommendation on the adoption or amendment of a general plan," by affirmative vote of not less than a majority of its total membership, and "shall send its recommendation to the legislative body." (§ 65354.) For zoning, section 65855 requires that the commission "render its decision in the form of a written recommendation to the legislative body," and that the recommendation "include the reasons for the recommendation, the relationship of the proposed ordinance or amendment to applicable general and specific plans."

That last requirement is not incidental here. The statute directs the commission to address on the record the relationship between the proposed zoning and the applicable general plan. That is the precise question the City concedes it cannot presently answer in the affirmative. No written recommendation was prepared, and none was transmitted.

Monterey Park has an established Planning Commission and has authorized it to "make recommendations to the city council regarding land use regulations including, without limitation, amendments to the General Plan or this code." (MPMC § 2.56.010(c).) The exceptions in MPMC section 2.56.020 permitting the Council to act as the planning agency are enumerated, and they extend to projects requiring "a zone change; zone map amendment; or development agreement." Repeal of a specific plan is not among them. If the City's position is that section 2.56.020

nonetheless displaces sections 65453 and 65354, it should say so expressly and identify the provision it relies upon.

IX. The City's Reliance on the *Dana Point* Decision Is Misplaced

The City Attorney relies on *South Orange County Wastewater Authority v. City of Dana Point* (2011) 196 Cal.App.4th 1604, quoting it for the propositions that a zoning designation "is a template for development," that "[a]ctual construction would, of course, have to be separately approved," and that review premised on a site's pre-existing physical condition "is thus prohibited." We have now reviewed the decision. It does not support the City's position, and in three respects it undercuts it.

First, and most importantly, the City of *Dana Point* did exactly what SOS asks this Council to do. Its planning commission staff "began the environmental review process required by" CEQA, prepared an initial study "to ascertain whether the project could have a significant adverse effect on the environment," and issued a mitigated negative declaration, which was then "revised and reissued … after the staff analyzed the effects of development more thoroughly." (*Id.* at p. 1609.) *Dana Point* is not authority for dispensing with environmental review of a rezoning. It is a case in which the agency performed that review, and the resulting document was upheld. The City cites it for the proposition that no initial study is required while quoting from a decision in which one was prepared.

Second, *Dana Point* amended its general plan concurrently with the rezoning. The application there had three components: "amending the City's general plan, to create a new, mixed-use land use designation"; adding a new zone to the zoning code; and rezoning the site under that new zone. (*Id.* at p. 1608.) The zoning and the general plan moved together. Here the City proposes to move the zoning alone and to leave the General Plan designation in place, which is the source of the inconsistency discussed in Section VII above.

Third, the two quoted phrases do not mean what the City's letter suggests. Both derive from the court's discussion of *Baird v. County of Contra Costa* (1995) 32 Cal.App.4th 1464, and both address a question SOS has not raised. The *Dana Point* court framed its own opinion this way at the outset: "We confront here the converse of our usual [CEQA] issue. Here, we are asked to order an environmental impact report, not to assess the impact of a proposed project on the present environment, but to assess the impact of the present environment upon a proposed project." (*Id.* at p. 1608.) The plaintiff was the operator of an adjacent sewage treatment plant, and its complaint was that the City had failed to analyze how the existing plant would affect future residents of the rezoned site. It was in rejecting that reverse-CEQA claim that the court said review premised on "preexisting environmental conditions rather than an adverse change in the environment" is "thus prohibited." (*Id.* at p. 1615.)

SOS makes no such claim. SOS does not ask the City to study the effect of the hillside on future residents. SOS asks the City to study the effect of the rezoning on the hillside, which is the ordinary direction of CEQA inquiry and the direction *Dana Point* expressly contrasts with the claim before it.

The phrase "a zoning ordinance is a template for development" likewise appears not in a CEQA holding but in the court's general plan consistency analysis, addressing whether a newly created zoning category had to specify mitigation for the unique circumstance of adjacency to a sewage plant. (*Id.* at p. 1621.) It says nothing about whether an upzoning that increases permitted density nearly tenfold requires environmental review.

X. Conclusion

The City Attorney's letter confirms that the City has changed the physical condition of this hillside, that it no longer relies on the only environmental analysis it ever prepared for the site, that it has prepared nothing to replace it, and that it intends to enact zoning it knows to be inconsistent with its General Plan with no identified means of curing that inconsistency. It then asks the Council to find, with certainty, that there is no possibility that increasing permitted density on that hillside from sixteen units to 155 may have any significant effect on the environment.

That finding cannot be made on this record. The burden is the City's, the standard is certainty, and neither is met by an assurance that the analysis will be done later by someone else.

SOS renews the requests made in its August 18 letter. The Council may rescind Development Agreement No. 21-01 tonight, an action SOS does not oppose and which requires no zoning change. It should continue the ordinance repealing Ordinance No. 2210 and rezoning the Property to R-3, and direct staff to prepare an initial study and to refer the matter to the Planning Commission.

SOS requests that this letter, the City Attorney's August 19, 2026 letter, and all documents cited in either, be made part of the administrative record for this matter. SOS further requests, pursuant to Public Resources Code sections 21092.2 and 21167(f), written notice of any determination that the proposed actions are exempt from CEQA and of the date on which any Notice of Exemption is filed.

Thank you for your consideration of this matter.

Sincerely,



Jamie T. Hall
Channel Law Group, LLP

cc: Karl H. Berger, City Attorney (kberger@bwslaw.com)

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August 19, 2026

VIA ELECTRONIC MAIL

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Re: Agenda Item No. 11.A (August 19, 2026) — Response to Save Our Slopes' August 19, 2026 Letter; the City's Continued Reliance on the Common Sense Exemption (CEQA Guidelines § 15061(b)(3))

Dear Mr. Hall:

Thank you for your most recent letter sent via email to the City Council at 4:34 p.m. this afternoon. For the most part, please reference my letter from earlier today which is unchanged. In short, repeal of Ordinance No. 2210 and restoration of the property's R-3 zoning designation may lawfully be found exempt from the California Environmental Quality Act (CEQA) under the commonsense exemption.

I reiterate the observation already made by Assistant City Attorney Timothy Campen via email and my letter from earlier this afternoon: the City has been upfront with your client regarding its intent. This has been well-publicized and, certainly since December 2025, implemented. The untimely flurry of activity by your client to interfere with the City's intent – when this has been planned for more than eight months – is disappointing.

The most recent letter once again seeks to recast a legislative decision about a regulatory designation as though it were the approval of a development. It is not. No structure is authorized tonight, no grading is authorized, no permit issues, and nothing on the hillside changes.

The activity is the restoration of a zoning classification — a regulatory instrument that permits, but does not compel or approve, any particular development. The Supreme Court has squarely rejected the premise that every zoning amendment carries environmental consequences: whether the enactment or amendment of a regulation denominated a 'zoning ordinance' carries the potential for environmental change depends entirely on the nature of the particular regulation, and a potential environmental effect cannot be presumed solely from the label applied to it. The pertinent question is what the draft ordinance, if adopted by the City Council, does. It re-establishes a residential zoning designation on a parcel the City already owns. It builds nothing. The physical environment of the hillside the morning after adoption will be identical to the physical environment the morning before.

Because the ordinance authorizes no physical change, the City can say with the certainty section 15061(b)(3) requires that the ordinance itself has no possibility of a significant effect on the environment. The landslide, erosion, and habitat concerns SOS catalogs are concerns about future development. They are real subjects for CEQA review — but that review attaches to a development project when one is proposed, not to the legislative act of restoring a zoning designation.

The environmental characteristics of this site — its geology, its slope stability history, its biological conditions — have been the subject of long and intense public discussions including a 2020 Initial Study and a 2021 Environmental Impact Report, and the parcel sits within a Geologic Hazard Abatement District formed to address slope stability. Just the tip of the City's consideration of this hillside can be easily found (*see, e.g.*, www.montereypark.ca.gov/1409/1688-West-Garvey-Avenue). SOS is fully aware of such studies – not only because it sued the City based upon them – but also because the City forwarded staff reports, etc. to SOS more than three months ago. The City has considered the environmental setting of this hillside in far greater depth than the agency in *Davidon Homes*, which considered it not at all. The point of the exemption finding is not that these conditions are unknown; it is that restoring the R-3 designation does not disturb them.

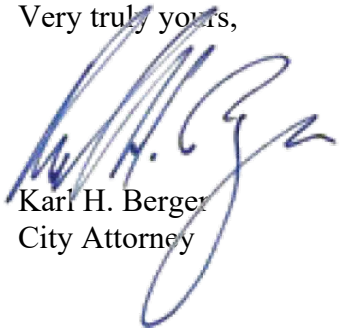
This letter will not – once again – address SOS's arguments made last week and addressed in my letter earlier today. In short, the ordinance (if adopted) changes nothing: the slope is the same slope, and the parcel remains undeveloped and City-owned. There is no inconsistency in the City's position: the City relies on the physical baseline throughout, and it is SOS that seeks to substitute a regulatory metric for it.

The upshot is that a future development of this hillside remains subject to CEQA review, and the hypothetical dilemma SOS constructs dissolves once the regulatory requirements that attach to any future – theoretical development – are examined.

Jamie T. Hall, Esq.
August 19, 2026

The action before the Council is the restoration of a residential zoning designation on a City-owned parcel; the zoning designation existed for years before the project challenged by SOS in a CEQA lawsuit was approved. Ironically, it is the same zoning designation as existed before the SOS challenged project! SOS did not challenge the zoning before 2021 and offers no reason that it seeks to challenge that same zoning now.

Very truly yours,



Karl H. Berger
City Attorney