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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

STEWARDS OF PUBLIC LAND, Plaintiff and Appellant, v. CITY OF PASADENA et al., Defendants and Respondents; PASADENA ROVING ARCHERS HERITAGE, INC. Real Party in Interest and Respondent.	B277996 (Los Angeles County Super. Ct. No. BS154299)

APPEAL from a judgment of the Superior Court of Los Angeles County. James C. Chalfant, Judge. Affirmed.

Mitchel M. Tsai for Plaintiff and Appellant.

Latham & Watkins LLP, James L. Arnone, Benjamin J. Hanelin and Lucas I. Quass, for Real Party in Interest and Respondent Pasadena Roving Archers Heritage, Inc.

The Sohagi Law Group, PLC, Margaret M. Sohagi, Nicole Hoeksma Gordon and Lauren K. Chang; Office of the City Attorney of the City of Pasadena, Michele Beal Bagneris, City Attorney, and Theresa E. Fuentes, City Attorney, for Defendants and Respondents City of Pasadena and City Council of the City of Pasadena.

Stewards of Public Land, a California Non-profit Corporation (Stewards), appeals from the judgment of the Los Angeles Superior Court denying Stewards' First Amended Petition for Writ of Mandate (the Petition). By the Petition, Stewards sought to overturn the approval by respondent City of Pasadena (City) acting through its City Council (Council) of a project in the Lower Arroyo Seco area of the City which Stewards contends was improperly approved by the City and for which the City erred in adopting and filing Notices of Exemption from the requirements of the California Environmental Quality Act (CEQA). Real Party in Interest, Roving Archers (RPI), has utilized parts of the Lower Arroyo for its field archery activities since approximately 1935. Finding no error in the City's actions, we affirm.

FACTUAL AND PROCEDURAL HISTORY[1]

The Lower Arroyo is an area within the City consisting of approximately 150 acres. Topographically, it extends for 1.75 miles along a portion of a larger area known as the Arroyo Seco, a canyon, broad at some points, narrow at others. The stream that once coursed through the Arroyo Seco is now confined within a cement channel. Vegetation of varying types and density, as well as broad open spaces, characterize the canyon. A series of "rubble walls [many built by the Works Progress Administration] [in the 1930s]. . . retain the slopes [of the canyon] [and] define [the] paths [and] multi-use trails" in the area. Historically a source of both wood and water for

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[1] RPI filed a motion to strike portions of Stewards' opening brief based on Stewards' citation there to portions of the supplemental administrative record which were indisputably not before the Council when it considered and approved the Project at its meeting on February 2 and 3, 2015. RPI correctly points out that Stewards' arguments with respect to the City's actions at that meeting can only be based on evidence then before the Council. (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 573.) This motion is granted.

The City filed a motion asking this court to take judicial notice of claimed facts as of a date subsequent to both actions by its Council. As Stewards argues, appellate courts do not take judicial notice of matter not presented to the trial court absent exceptional circumstances. (*Vons Companies, Inc v. Seabest Foods, Inc.* (1996) 14 Cal.4th 434, 444, fn. 3.) City's motion is denied. Stewards filed a motion to strike portions of the appellate briefs filed by City and by RPI. This motion is granted in part and denied in part. It is granted insofar as one or both of the briefs of the City or of RPI reference facts or circumstances occurring following the Council's action on September 28, 2015, and the subsequent filing of the NOE related thereto. Otherwise, the motion is denied.

In its June 4, 2108 response to a letter we had sent to all counsel, Stewards included a request that we take judicial notice of the City's General Plan. Except for the portions of that plan which are in the record on appeal, the request is denied. (See *Western States Petroleum Assn. v. Superior Court, supra,* 9 Cal.4th at p. 573.)

early settlers, and more recently a popular recreation area (e.g., the Rose Bowl and a golf course are located in the Arroyo Seco), in 2003 the City certified a Master Environmental Plan for the larger Arroyo Seco area, as well as "Master Plans" for sections of that area. One of the latter was the Lower Arroyo Master Plan (LAMP). In it the City addressed in considerable detail its plans for recreation and uses of the Lower Arroyo, including plans to protect, restore and develop certain features of the area while enhancing the safety of persons using the area.

The focus of the litigation among the parties to this appeal is an area adjacent to and within the southern archery range located in the area addressed in the LAMP. The LAMP describes this range as an "approximately 18 acre area on the west side of the flood control channel from just south of the Colorado Street Bridge south to the Loma Street Bridge." The range is divided into northern and southern sections. The northern range, which has no permanent targets, is used 13 times a year. The southern range has 26 permanent targets. (Two additional targets were removed with the intent to relocate them on City property after a survey concluded they were on private property.) An archery storage shed was located between the two ranges until it was destroyed by fire in 2000. The southern range, consisting of approximately 7.5 acres, is in daily use, between sunrise and sunset, with increased use on the weekends.

The LAMP states that RPI has had a "home" in the Lower Arroyo since 1935, its members utilizing the northern and southern archery ranges (and before its destruction, the clubhouse) for archery events and as a facility to

teach archery to members and non-members.[2] Over time, the City and RPI developed a working relationship for RPI to manage the archery ranges subject to the City's oversight.

Among the issues addressed in the LAMP is the safety of persons using the area in and adjacent to the southern archery range. To accomplish the goal of increasing the safety of persons in the area, the LAMP called for improvements to signs to notify and warn users of the trails about nearby archery activities and for separating users of the trails in the area from the archers by improvement and demarcation of certain trails, adjusting "shooting lanes" for each archery target, rebuilding targets, and limiting access to the targets. The LAMP also included proposals for habitat restoration. Boulders, native plantings and natural wooden posts were to be used to help delineate the new and realigned trails and surrounding terrain to discourage trail users from leaving the paths and entering the active shooting areas. These projects were to be carried out in a manner consistent with the goals of the LAMP, which included managing and maintaining the

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[2] Field archery is a sport in which roving archers shoot at successive fixed targets. By contrast, in target archery each archer is stationary and shoots at a fixed target.

RPI considers itself to be the oldest, continuously operating field archery club in its original location in the United States, making the Lower Arroyo the oldest continuously operating field archery range in the United States. RPI is a not-for-profit organization formed to operate a field archery club and to facilitate archery; it is run by volunteers. It has had an arrangement with the City for operation of an archery range in the Lower Arroyo for over 80 years. An exhibit, representing itself to be a history of RPI, entitled "First Fifty Pasadena Roving Archers, Inc. 1935 to 1985," describes the making of the first archery targets in the Arroyo Seco in 1935 and the fluctuations in RPI's membership, which reached "a peak period" in the 1940s when membership stood at 300.

area "to balance natural habitat values, recreational needs and public health and safety."[3]

The LAMP's extensive focus on safety of persons using the Lower Arroyo area was informed by a 2010 City Department of Public Works (DPW) report to the Recreation and Parks Commission (Commission) which included information that some of the informal and abandoned trail segments that formerly traversed areas within the southern archery range were still being used, creating a potential safety hazard when archers were active. DPW staff notified the Commission that to reduce the risk of non-archers being hit by arrows, DPW would be installing a temporary wood fence to separate the southern archery range from the range to the north. After doing so, the latter area, which contained 14 targets, would continue to accommodate full-time use for archery while the southern area would be available for occasional use. With this modification, the area south of the new fence would be open and accessible to the public for general use. Access to that area would be restricted when used for archery in accord with permits the City would issue, or according to an approved usage schedule. A total of 28 targets would

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[3] The Trails and Related Improvements section of the LAMP states that the separation of trails from other uses "will be especially important in certain areas of the archery range where archers and pedestrians will be in close proximity. [¶] Safety and aesthetic features such as natural separators and native landscape plantings will be included in the improvements . . . ."

Contrary to Stewards' claim that the LAMP called for improving a path that ran along the faces of the targets in the southern area to allow for "disabled access," the LAMP called instead for improving existing paths and lanes for ADA accessibility "where feasible." The path that had run in front of the targets in the southern range was omitted from the map that is part of the LAMP and was described elsewhere as unauthorized and to be removed because using it exposed persons to active shooting areas (from persons shooting at the targets past which this informal path ran). (See fn. 5, *post*.)

continue to be located in this southern area (including two targets removed from adjacent private property and to be relocated).[4] New signs would advise users to stay on established trails and warn them of the existence of the archery range and of its usage, including signs advising walkers that access to the southern range was prohibited during hours it was being used for archery. These new permanent signs would be considered "as part of the implementation of the Arroyo Seco master signage program."

The need for improved safety measures in connection with the improvements noted in the LAMP was highlighted in a study of the Lower Arroyo by the Pasadena Police Department dated May 27, 2011 which reported: "The most significant of these conditions [to use of the archery range is that] hiking and other passive recreational uses must be prohibited . . . . Joint use by casual archers and passive recreational users creates an unacceptable level of risk . . . . If there shall be joint use by archers and passive recreational users, that joint use should not occur until additional safeguards can be developed." The Police Department report documented observations of hikers seen emerging from behind trees and bushes into the line of fire of targets, and that these hikers were not visible until they actually entered the line of fire. The Police Department made several recommendations for safety rules for archers, for the posting of warning signs and clearly delineating the archery range with placement of vertical posts along its perimeter to discourage entry by hikers and other

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[4] The total of 28 targets in the southern area was confirmed in a memo distributed to Commissioners in connection with their May 17, 2011 Commission meeting. A 1999 aerial photograph of the southern area confirms there were 28 targets rather than 14 on that archery range. There have been 28 targets in the southern archery range since approximately 1974 (including the two targets determined to be located on private property).

passive users, trimming of certain vegetation and closing the informal path that then ran close to the faces of the targets.[5] In addition, the Police Department report recommended that RPI no longer use this path to replace targets, recommending instead that persons must only approach each target along the line of fire of that target, rather than walk from target front to target front.

The February 2-3, 2015 Council Meeting.[6] The Council considered the proposal for addressing issues relating to the Lower Arroyo archery range at its February 2, 2015 meeting. A Report to the Council, accompanied by 17 exhibits, set out the elements proposed for the Project. The Report described the following physical and programmatic changes proposed for the Project: removing the unapproved path running in front of the targets in the southern range (which had been identified as dangerous); relocating 150 linear feet of a main trail to increase the distance of this trail from the area in which the roving archers operated; reorganizing shooting lines; relocating two targets from private to public property; limiting times of use of the southern archery range; establishing a mandatory safety training program for persons wishing

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[5] Stewards construes the LAMP as calling for maintenance of the path that ran along the faces of the archery targets in the southern area. A fair reading of the LAMP does not support this claim. Instead, the Trails and Related Improvements section of the LAMP states that separation of trails from archery activities "will be especially important in certain areas of the archery range area where archers and pedestrians will all be in close proximity." Moreover, this path is not designated as a permanent trail on the maps accompanying the LAMP, nor is this path part of the City's official trail system. Rather, it developed over time as part of the maintenance of archery targets. It appears as a red line in the 2013 "Reconfiguration Study" map, with the indication "Existing unofficial path. To be removed."

[6] The Council meeting began on February 2 and extended into the early morning of the next day.

to use the archery ranges; establishing and posting rules for use of the archery ranges; and placing native plants, stones, boulders and wooden fencing in locations to provide a natural barrier between paths and archery ranges. The Project would also include: (a) amending the Pasadena Municipal Code (PMC) to authorize the City Manager to determine where archery would be permitted and to promulgate rules for archery activities on City-owned lands; (b) approving development of a new operating agreement and license with RPI; (c) authorizing the City Manager to work with residents and RPI to identify a suitable alternative site for archery so that the southern range in the Lower Arroyo would be available for other recreational uses on weekdays and roving archery on weekends; (d) correcting what was described as a mistaken reference in the LAMP by deleting the number 14 as the number of targets in the southern archery range; and (e) adopting findings that (1) the actions comprising the Project were exempt from environmental review pursuant to CEQA Guidelines section 15301, (2) none of the exclusions to those exemptions apply, and (3) there is no reasonable possibility that these actions will have a significant effect on the environment due to unusual circumstances.

The Report and its attachments informed the Council that proposals for improving safety of the archery ranges had been discussed and developed over several years, noting that (a) the LAMP, adopted in 2003, contained discussion of the need for improved safety in the area; (b) in August 2010, users of the Lower Arroyo had expressed their concerns regarding safety on and near the archery ranges; and (c) between 2010 and 2013, the subject of public safety in this area had been discussed at more than 10 public meetings including Commission and Council meetings.

Also at this February 2015, meeting, the Council considered recommendations of the City's Design Commission regarding design concepts for archery related signage, natural barriers and archery target enclosures.

Consideration of the Project included comments from members of the public. Several people spoke in favor of the proposal, a lesser number spoke in opposition. Stewards' counsel was among the speakers in opposition. Just prior to the meeting, that counsel filed written comments consisting of a letter and over 1,300 pages of exhibits. Several thousand written (including email) communications "in support of archery," 28 letters in opposition, and 24 letters expressing "concern" about the Project, were received.

Following discussion among its members, the Council adopted the Project as proposed in the Agenda item, with the exception of the recommendation to look for an alternative site for archery in the southern range on weekdays to allow then for passive (non-archery related) recreation in the southern range.

In adopting the Project the Council made a finding the Project was exempt from CEQA (Pub. Resources Code, § 21000 et seq.).[7] The Notice of Exemption (NOE) concerning the City's February 2-3, 2015 action on the Project was timely filed on February 12, 2015. The NOE described the Project as consisting of "physical improvements to the Lower Archery Range and program and policy changes that further restrict the use of the Archery Range area. [¶] The proposed physical improvements consist of: [¶] 1. Removal of the unofficial path which bisects the interior of the range. [¶] 2. Relocation of approximately 150 linear feet of trail to relocate targets onto public property and maintain regulation shooting distances. [¶] 3. Posting

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[7] All subsequent undesignated statutory references are to the Public Resources Code.

rules for use of the archery range. [¶] 4. Installation of natural barrier, consisting of rocks and plants to separate archery and other park uses. [¶] The proposed program and policy changes consist of: [¶] 1. Approval of a correction to language in the Lower Arroyo Master Plan (LAMP) to remove references to the number of targets in the southern archery range. [¶] 2. Amendment of the Pasadena Municipal Code (PMC) to authorize the City Manager to determine where archery is permitted and promulgate rules for archery activities on public lands. [¶] 3. Approval of the development of a new license and operating agreement with the Pasadena Roving Archers (PRA) using the deal points contained in this report." The categorical exemption determination was also explained.

Activities culminating with the September 28, 2015 Council meeting

Following its February 2015 actions, the City began implementing the safety program and negotiated a new operating agreement with RPI, corrected the LAMP by deleting the number 14 from the description of the number of targets in the southern archery range[8] and drafted an ordinance containing amendments to the PMC to authorize the City Manager to determine where archery was to be permitted and to promulgate rules for archery activities on public lands. The new ordinance was read for the first time at a Council meeting on September 21, 2015. On that date, a fact sheet was issued concerning the actions proposed. The fact sheet notes that adoption of the ordinance "is within the scope of the previously approved action, and there are no changes to the Project or to the circumstances under

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[8] The consequence of this action was to confirm that the number of targets in the southern archery range was 28, consisting of 26 targets properly placed and two which had been determined to be located on private property and which needed to be moved to City-owned land.

which it is undertaken, or new information that would warrant the need for evaluation under CEQA."

At the September 28, 2015 Council meeting, the proposed ordinance was read for a second time. Members of the public made comments on the proposal. Stewards' counsel spoke in opposition and filed a 4,322 page letter (including exhibits) setting out its objections. The objections included the claim that the February 2-3, 2015 action and that proposed to be taken on September 28, 2015, would bring about significant adverse impacts to traffic, noise and other resources.

Following public comments and its deliberations, the Council adopted the ordinance, finding it to be "within the scope of the previously approved action, and there are no changes to the project or to the circumstances under which it is undertaken, or new information that would warrant the need for evaluation under CEQA."

The Ordinance amended Chapter 3.24 (Parks and Public Grounds) of the PMC to grant the City Manager certain authority, including the authority to promulgate rules and regulations for the conduct of persons using the Lower Arroyo Archery Ranges. Archery was now prohibited outside the boundaries of the range and all archers were required to complete a City-approved safety course, display proof of completion of the course on their clothing when in the archery range and comply with other safety regulations.

The City filed its second NOE on October 13, 2015. This NOE addressed the newly adopted Ordinance (which also had been referenced in the February 2015 NOE). This second NOE gave notice the City had determined that the following actions of the Council, taken at its September meeting, were exempt from review under CEQA: (1) authorization of the City Manager to determine the location of archery activities in the Lower Arroyo

and to promulgate rules regulating archery activities on public lands; (2) adoption of a requirement that all persons who wished to use a City-designated archery range must first complete a City-approved safety and training program or competency exam and prominently display their credentials when using the archery range; and (3) establishing rules for the archery range and making violations of those rules punishable according to the general penalty provisions of Chapter 1.24 of the PMC.

This NOE also declared that these actions were exempt under the CEQA Class 1 categorical exemption for existing facilities (Cal. Code Regs., tit., 14, § 15301). It also stated: "The current proposed action is within the scope of the previously approved action, and there are no changes to the project or to the circumstances under which it is undertaken, or new information that would warrant the need for evaluation under CEQA."

In addition to the LAMP, as updated to February 2015, and other materials available to the Council, the administrative record now contained a letter from a consulting engineering firm arguing that there was no basis for the City "to approve the modification of the ordinance [as being] exempt from environmental review [under CEQA] [pursuant to CEQA Guidelines Section 15301 . . . the City has provided absolutely no evidence that archery activities would be limited to a scale that would not cause traffic and parking impacts in the area. . . . In a response to City Council request for additional information on 9-16-13, the City's Department of Public Works (DPW) indicated that the Lower Arroyo parking lot commonly fills during ordinary weekend use and especially when events are taking place and that this causes parking overflow into adjacent neighborhoods. . . . [¶] [A]rchery events involving competitions would pose potential for considerably greater traffic and parking impacts than ordinary usage." The consultant then referenced

traffic studies for archery events in Ventura, California and Noblesville, Indiana and concluded that "the proposed action is not exempt under [the Guidelines]."[9]

Facts Related to Designation of the Lower Arroyo as an Historic Landmark

The more than 150 acres of the Lower Arroyo are part of the larger Arroyo Seco; both are prominent in the cultural history of Pasadena. In 1979, the City recognized this heritage by designating the Lower Arroyo as a Landmark based on the unanimous recommendation of the City's Cultural Heritage Commission (CHC) under the then extant version of its City Ordinance, Municipal Code section 2.46.060, and upon recommendation of the City's Cultural Heritage Commission. The Landmark Designation Form containing the description of the area and reasons for the 1979 designation lists several architectural features, including those constructed by the United States Works Progress Administration in the 1930s, notes the presence of Arroyo boulder/stone retaining walls, lists as significant the association of the area with the "arts and crafts movement in California," and the adjacency of several homes "reflecting that movement." While a casting pool and bird sanctuary are listed, there is no mention of the archery range. The section headed "Other" states the Lower Arroyo "is the most natural section of the Arroyo Seco remaining and has been recognized as an area which should be preserved and maintained so far as possible as a natural park . . . ." The CHC also noted the Lower Arroyo had provided the "first settlers with a

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9 This information had not been presented to the Council in February when it approved the actions described in the first NOE. In footnote 1, *ante*, we sustained respondent's objections to use of this evidence in evaluating the arguments concerning adoption of the actions described in the February 2015 NOE.

water and lumber supply" [and] the area "remains, to a large extent, in its natural state. . . ." It noted the historic bed containing the stream flowing through the Arroyo had been replaced by a concrete channel and that the Pasadena Board of Directors (the predecessor to the Council) had passed a resolution in 1964 that this area should be preserved as a park. No mention of the trails in the area was included in the designation. In 2005, the City enacted the current "Pasadena Historic Preservation Ordinance" (HPO). Section 17.62.040 F of the HPO "grandfathers" designations made prior to its adoption.

In 2008, the City applied for registration with the United States Department of Interior National Parks Service of the Pasadena Arroyo Parks and Recreation District, comprised of the Lower Arroyo and the Central Arroyo. The City's application describes the historic and natural features of the area and mentions the presence of "several regional trail systems" that allow persons to traverse the area and connect with a system that eventually may link to the entire San Fernando Valley. The Narrative Description of the setting and features of the area submitted with the City's application notes the early history of the entire arroyo area in the life and development of Pasadena. It includes the following description with respect to the archery range: "Across the footbridge from the parking lot is an archery range. There are no permanent buildings or structures on the site. As such, *it is not counted as a contributing or noncontributing feature*. The range is operated by [RPI]. Founded in 1935, it was the second archery group to form in the Lower Arroyo . . . . A clubhouse constructed in 1945 was recently destroyed by fire." (Emphasis added.) Thus, designation as an historic resource was not sought, nor was it granted, for the archery range. Fourteen days later, "[a]s a result of being placed on the National Register [of Historic Places],

this property has also been listed in the California Register of Historic Resources . . . ."[10]

Stewards filed its Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief on March 4, 2015, followed by its First Amended Petition and Complaint on October 28, 2015, after the second NOE was issued. Following the trial court's rejection of its claims, Stewards filed a timely appeal.

CONTENTIONS

Stewards contends the trial court's judgment must be reversed for three reasons: (1) the City did not comply with its historic preservation ordinance; (2) in approving that ordinance, the City failed to comply with state planning and land use laws; and (3) the City wrongly determined the project was categorically exempt from compliance with CEQA.

DISCUSSION

I. Pasadena's Historic Preservation Ordinance

Stewards contends the Project approved by the Council affected historic resources as defined in the PMC and required evaluation according to the City's HPO and issuance of a Certificate of Appropriateness (C/A) to validate the Project. (PMC Ch. 17.62.) Because the City did not obtain a C/A, Stewards contends the Council's approvals of the Project are void. Stewards focused this contention in its response to a letter we sent to the parties to address this and other issues, restating its contention as follows: "The only issue is whether the area in or around the Archery Range, which indisputably

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[10] The letter from the California Office of Historic Preservation advising of the listing of the Pasadena Arroyo and Parks District on the state Register of Historical Resources referenced section 4851(a)(2). That citation was incorrect; the correct citation is to that section number but in Title 14 of California Code of Regulations. (Cal. Code Regs., tit., 14, § 4851.) The statutory basis for this listing is section 5024.1.

is within the Lower Arroyo, is a contributing or non-contributing historical element to the Lower Arroyo.

In defense of the actions taken by its Council, the City argues we must accord deference to its interpretation of the HPO. In its letter response the City points out that the agenda report for the February 2-3, 2015 Council meeting at which the Project was approved contained advice to the Council that, "The proposed project would not cause a substantial adverse change in the significance of a historic resource." This agenda report acknowledged the listing of the Pasadena Arroyo and Parks District, including the Lower Arroyo, in the National Register of Historic Places, but pointed out that the archery range "is not identified as a contributing element. In any event, the configuration [of that range] would not change under this proposal and instead the informal path would be removed to return the overall Archery range to its intended configuration." The City did not make any reference to the HPO in its agenda item, however, apparently relying solely on the materials supporting the federal designation. In its second letter brief, Stewards argues that in addition to changes in the configuration of the archery range, the Project "installs physical barriers, removes trails running through the archery range, changes the recreation uses permitted within the project site and removes limits on the number of archery targets allowed within the project site." For the reasons now discussed, we will conclude that Stewards' contentions are not supported by the record or by the ordinance it seeks to apply.

A. Standard of Review

Evaluating the contentions presented with respect to the HPO requires, first, that we construe provisions of the PMC, specifically its Chapter 17.62, which sets out the extant version of the HPO. In this regard, we do not agree

with the City that we should defer to its interpretation of the HPO as no such interpretation is presented. Indeed, underlying the City's April 16, 2018 response to our request for letter briefing is the premise that the City did not expressly rule on this issue. As we noted, *ante*, the City's sole reference to authority was to the federal regulation rather than to its own ordinance.

In this case, as with other circumstances in which an issue of interpretation of a statute or ordinance is presented, ultimate responsibility for interpretation of the relevant provisions rests with the court. In this case we find unpersuasive the City's argument that its apparent lack of consideration of the HPO in reaching its decision should preclude our de novo review. Moreover, had the City expressly considered the HPO in the process of taking the actions now reviewed, we still would determine the extent of deference, if any, to be extended to any such interpretation based on "'whether [the City] has a comparative interpretive advantage over the courts, and also whether [the City's] interpretation is likely to be correct.'" (*Tower Lane Properties v. City of Los Angeles* (2014) 224 Cal.App.4th 262, 276 (*Tower Lane*); citing *Yamaha Corp. of America v. State Bd.* of *Equalization* (1998) 19 Cal.4th 1, 12; see *Brown v. Fair Political Practices Com*. (2000) 84 Cal.App.4th 137, 150.) We would also consider whether the text of the ordinance is "'technical, obscure, complex, open-ended, or entwined with issues of fact, policy, and discretion.'" (*Tower Lane,* at p. 276; see *Brown v. Fair Political Practices Com*., *supra*, at p. 150.)

In this case, however, as noted, there is no indication the City gave any consideration to the HPO in taking the actions now reviewed. Nor is the ordinance technical, etc. And no party offers any examples of past applications of the HPO or of interpretations or opinions issued by the Pasadena City Attorney of the meaning of the HPO that it argues should

guide us. (Cf., *Redding Medical Center v. Bonta* (1999) 75 Cal.App.4th 478, 484 [agency interpretation of a regulation does not control if alternative reading is compelled by the plain language of the provision].) While the parties offer their own *arguments* as to the meaning of the words of the ordinance they ask us to interpret, on the record in this matter, our review of the HPO and discerning its meaning are de novo. (*Woodland Park Management, LLC v. City of East Palo Alto Rent Stabilization Bd.* (2010) 181 Cal.App.4th 915, 919 [interpretation of an ordinance presents a question of law that is reviewed de novo].)

We interpret ordinances in the same manner as we construe statutes (*Anderson v. San Francisco Rent Stabilization & Arbitration Bd.* (1987) 192 Cal.App.3d 1336, 1343), and because questions of law—including the interpretation of a statute—are subject to de novo review, we accord no deference to the trial court's ruling on this issue. (*MacIsaac v. Waste Management Collection & Recycling, Inc.* (2005) 134 Cal.App.4th 1076, 1081-1082.)

As in any case involving statutory interpretation, "[o]ur first step is to scrutinize the actual words of the statute, giving them a plain and commonsense meaning." (*People v. Valladoli* (1996) 13 Cal.4th 590, 597.) We strive to give effect and significance to every word and phrase of a statute (*Steinberg v. Amplica, Inc.* (1986) 42 Cal.3d 1198, 1205) because we presume the enacting body intended "every word, phrase and provision . . . in a statute . . . to have meaning and to perform a useful function." (*Clements v. T.R. Bechtel Co.* (1954) 43 Cal.2d 227, 233; accord, *Save Our Heritage Organisation v. City of San Diego* (2015) 237 Cal.App.4th 163, 173-174.)

B. The Historic Preservation Ordinance

The Pasadena HPO is set out in Chapter 17.62 of the PMC. A C/A is required prior to undertaking "a major or minor project to a designated historic resource." (PMC § 17.62.090(B).) A C/A is not required, however, "for properties already entitled for . . . major alteration through an adopted Master Development Plan, Planned Development, Development Agreement, Adjustment Permit, Use Permit, Variance or similar land use approval—or for demolitions analyzed and cleared through an adopted negative declaration, mitigated negative declaration, or certified EIR." (PMC § 17.62.090(A).)

To properly construe this ordinance, we look to the definitions of the words "major" and "minor" set out in PMC section 17.080.02. Section 17.080.02 item 20 provides: "Project (Major). Includes any of the following:

"a. . . . removal of a significant feature of a historic resource . . . ."

. . .

Item 21 provides:

"Project (Minor). Includes any of the following:

. . .

"c. Any undertaking to the environmental setting of a designated historic resource that is individually designated as a landmark or historic monument or individually listed in the National Register if the environmental setting is significant to the historic resource and had been defined as significant in the designation report for the historic resource. . . ."

. . .

"f. Any undertaking not requiring a permit that materially alters significant features of a historic resource or that may have an adverse effect on the significance of a historic resource . . . ."[11]

C. Discussion

In determining whether a C/A was required in this case, we focus on these questions: (1) whether the southern archery range, or any element of the project at issue, is an historic resource; (2) if it is, whether the physical work described in the NOEs qualifies as either a major or minor project as those terms are defined in the PMC;[12] and (3) whether the NOEs themselves exempt the Project, elements of which Stewards complains, from the need for issuance of a C/A.

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[11] Most of the terms and descriptions in the HPO apply to buildings and other structures, some apply to landmark trees and areas or to views of exteriors of structures, suggesting that the HPO was to have only limited application to what is essentially a public park. We do not further explore this issue as it has not been raised by the parties.

[12] The trial court was of the opinion that the HPO did not apply to projects of public agencies. We do not agree as the PMC contains provisions indicating it does apply (and no relevant exclusionary language). For example, Table 6-5 "Review Authorities—Powers and Duties" specifies that the Planning Director is the reviewing authority as to applications for Certificates of Authority "for public projects . . . affecting historic resources." (PMC § 17.12.020(B)(1) & 17.70.030.) A second reference confirming the application of the PMC to public projects appears in PMC section 17.61.030(B)(6) headed "Public Projects." (This is not to suggest that every public project is therefore subject to the HPO.) Nor are we constrained to follow the logic applied by the trial court, as it is well established that we review the trial court's ruling rather than its reasoning. (*Muller v. Fresno Community Hospital & Medical Center* (2009) 172 Cal.App.4th 887, 906-907, citing *Davey v. Southern Pacific Co*. (1897) 116 Cal. 325, 329.)

The materials submitted to the United States Department of the Interior which resulted in the designation of the Lower Arroyo in the National Register of Historic Places as part of the Pasadena Arroyo Parks and Recreation District do not support Stewards' claims. Neither the path across the front of the targets, nor the archery range itself, was listed among the characteristics that resulted in the City obtaining this national registration and recognition. When the City applied for this designation it identified the archery range as neither a "contributing" nor a "noncontributing" attribute. Thus, alterations to the archery range do not implicate the historic designation granted. While the archery range has a history, neither it nor the path running along the faces of the targets in that range were deemed of any significance in the "historic" designations sought or obtained for area.[13] In fact, the path running along the face of the targets in the southern archery range is identified as a safety hazard in the Police Department Report and is omitted from maps designating authorized trails as of the time of preparation of the LAMP and was slated for removal to protect users of the range from danger.

It is correct to note that the presence of trails in the larger historic area of the Lower Arroyo was mentioned in the description of the uses of the area in the application for the federal designation. Thus, it can be argued that changes affecting the trail that runs near to, but outside, of the southern archery range, was part of an historically designated trail. We analyze the argument that this circumstance would support Stewards' claim that a C/A

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[13] There also is no evidence to support Stewards' theory (espoused by a former City employee) that the "1918 trail" referred to in the record is the path that runs along the face of the targets. The record instead indicates that this path along the faces of the targets was developed informally as a result of walking along the face of the target butts to replace targets from time to time.

was required with respect to relocating the 150-foot segment of this trail by looking at the definitions of "major" and "minor" set out in Section 17.80.020 of the PMC and applicable to the HPO. Doing so, we do not find merit in the argument that moving a 150-foot segment of a trail which extends more than 8,000 feet through the entire length of the Arroyo Seco, or by placing natural materials along the trail to deter persons from straying from the trail into a potentially dangerous field archery range, in any way "materially alters significant features of a history resource or [] may have an adverse effect on the significance of a historic resource . . . ." (PMC § 17.80.020(H)(21)(f) [defining a "minor" alteration].) Nor is the "environmental setting" of the over 8,000 foot trail significantly affected within the meaning of PMC section 17.080.020(H)(21)(c)) by the relocation of a 150-foot segment of that trail or by addition of natural material to delineate the trail from the adjacent archery range. It is simply de minimums.

The same facts and circumstances compel the conclusion that there is no merit to any claim that the Project involved a "major" alteration to a resource subject to the C/A provisions of PMC Chapter 17.62.

Finally, there are no facts supporting Stewards' underlying contention that the work proposed and approved "*substantially* alter[ed], demolish[ed], or relocate[d] a designated historic resource." (PMC § 17.62.090(C), emphasis added.) Accordingly, Stewards' HPO contention is without merit.[14]

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[14] Stewards also argues in its reply brief that the City's actions are contrary to the United States Secretary of the Interior's Standards for the Treatment of Historic Properties. This claim fails. First, Stewards does not provide a proper citation to this document to support its claim, but only a reference to an entire Part of the Code of Federal Regulations. We decline to search this entire Part of the Code of Federal Regulations for any section that might be relevant to Stewards' contention. Also, the few pages of the

II. PLANNING AND ZONING LAW

Stewards contends the City violated procedural requirements of the State Planning and Zoning Law (Govt. Code, § 65000 et seq. [the Planning Law]) when, in one of the actions taken in the resolutions adopted by the Council at its meeting on February 2-3, 2015, it "remove[ed] the 14-target limit on the number of [archery] targets in the Archery Range . . . without any of the required hearings under the [Planning Law]," resulting in prejudice. Stewards describes that prejudice as the likelihood that the result would have been different had proper notice and hearing requirements been observed. We do not agree.

We accept for purposes of resolving Stewards' Planning Law contention that this statute applies.[15] We also assume, arguendo, Stewart's claim that the LAMP is integrated into the City's General Plan.[16]

To evaluate Stewards' claims, we must determine the meaning of sections of the Planning Law, which we do de novo, as it is a judicial obligation to determine the meaning of statutes. (E.g., *California School Employees Assn. v. Governing Board* (1994) 8 Cal.4th 333, 340.)

Four sections of the Planning Law are of relevance. Government Code section 65358 provides that a general plan may be amended in the manner to be specified by the legislative body, here the Council. Government Code

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Department of Interior Manual on Historic Properties in the record on appeal do not support Stewards' claim.

[15] We appreciate the parties' letter briefs on this issue. We need not determine this issue, however, to resolve this appeal.

[16] Again, the City disagrees with Stewards' contention that the LAMP is a formal planning document which is subject to the Planning Law. We assume, arguendo, that the LAMP is such a document, nevertheless resolving this contention adverse to Stewards.

section 65453 provides that a "specific" or "general plan" may be amended in the same manner. (See also, Govt. Code, § 65359.) Thus, the amendment to the LAMP to delete the number 14 as descriptive of the number of targets in the Southern Arroyo was to be adopted in a manner specified by the Council.

Insofar as Stewards argues the right to review the proposal to delete the number of targets was materially flawed by the circumstance that interested parties were "denied *in their entirety* their right to review the actual text of the amended Lower Arroyo Master Plan document prior to [its] implementation," (emphasis in original) Government Code section 65094 requires only "a general explanation of the matter to be considered. . . ." Thus, the Agenda Report issued prior to the meeting at which the action was taken and which described the proposed action as deleting the number 14 as stating the number of targets in the Southern Arroyo, met this notice requirement. No more extensive description was required by statute. (Govt. Code, § 65094.)

Nor does PMC section 17.76.020, which requires 14 days notice of a proposed action by the City Council, validate Stewards' argument because it must be read together with Government Code section 65010, subdivision (b), which provides:

"No action, inaction, or recommendation by any public agency or its legislative body or any of its administrative agencies or officials on any matter subject to this title shall be held invalid or set aside by any court on the ground of the improper admission or rejection of evidence or by reason of any error, irregularity, informality, neglect, or omission (hereafter, error) as to any matter pertaining to petitions, applications, notices, findings, records, hearings, reports, recommendations, appeals, or any other matters of procedure subject to this title, unless the court finds that the error was

prejudicial and that the party complaining or appealing suffered substantial injury from that error and that a different result would have been probable if the error had not occurred. There shall be no presumption that error is prejudicial or that injury was done if the error is shown."

This extremely broad "harmless error" provision defeats Stewards' claim. Although Stewards cites this statute, it makes no argument with respect to any actual prejudice resulting from the Council's action. It only makes the unsupported—and unpersuasive—assertion that the result would have been different had proper notice been given.[17] Considerably more is required to establish the required prejudice. The action taken by the Council was to delete the number 14 from the description of the targets in the Southern Arroyo as listed in the LAMP. On its face, that act is hardly sufficient to meet Stewards' burden under this harmless error standard of review. The only evidence in the record is that inserting this number in this section of the LAMP was a mistake; and that instead it did correctly state the number of targets in the northern area.

Further, the record evidence is that the correct number of targets in the Southern Arroyo was either 26 or 28 depending on whether the two targets which were discovered to be on abutting private property are included. There was also considerable public discussion of the matter prior to the February 2015 action by the Council, including at a prior public meeting of the Council in 2013 and at prior public meetings of the Commission, in 2011 and in 2013. In each case the number 14 was acknowledged to have been inserted in error as a reference to targets in the southern area. An aerial photograph of the

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[17] Even if Government Code section 60510, subdivision (b), were inapplicable, the prejudicial error rule of the California Constitution (Cal. Const., art. VI, § 13) which permits reversal only when an error results in a miscarriage of justice, would bar reversal on the facts of this case.

area taken in 1999, and maps dated in 2003 and 2011 and earlier showed 26 (or 28) targets in the southern area and that this number had not changed. Thus there is no basis in fact to support reversal of this action.

The only case which Stewards cites in support of its claim is *Sounhein v. City of San Dimas* (1992) 11 Cal.App4th 1255 (*Sounhein*), in which the matter at issue was whether an ordinance, which had the effect of denying Sounhein the right to build a revenue producing second dwelling on his property, had been properly adopted by the City. (*Id*. at. p. 1258.) That controversy implicated both the outlay of the expense of constructing a rental unit on the plaintiff's property, and many years of revenue to the plaintiff once that unit was constructed and rented. While in that factual circumstance there was considerable evidence of potential injury (financial in nature), by contrast, here, there is no evidence of any revenue being implicated, nor of any other injury, let alone any "substantial injury."

Also, the facts of the present case differ materially from those in the case upon which Stewards relies. Here, there is no material change in the LAMP and the change that is made corrects a well-documented—and minor—mistake of fact. In this case, Stewards has not and cannot establish either mistake or any prejudice from the action of the Council. It has therefore failed to meet is burden to establish prejudice, substantial injury or the probability of a different result as required by Government Code section 65010, subdivision (b). (Accord, *Rialto Citizens for Responsible Growth v. City of Rialto* (2012) 208 Cal.App.4th 899, 919.)

III. CEQA ISSUES

Stewards contends the City erred in issuing a NOE as the basis for compliance with the requirements of CEQA (§ 21000 et seq.) and of its Guidelines (§ 21083; Cal. Code Regs., tit., 14, § 15000, et seq.) with respect to

the Project.[18] The Project, described in greater detail, *ante,* consists of relocation of 150 feet of one of the historic trails in the Lower Arroyo; removal of an unofficial path running along the face of the targets within the southern archery range in the Lower Arroyo; installation of barriers composed of natural materials adjacent to that trail; and strategically placing new signs to keep persons using this trail from entering the southern archery area and subjecting themselves to injury from arrows shot by archers as they move from target to target in the sport of field archery.[19]

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[18] CEQA defines a project as "'*the whole of an action* which has a potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment . . . .'" The term project has special significance in CEQA analysis: "It refers to the underlying 'activity' for which approval is being sought. [Citation.] The entirety of the project must be described, and not some smaller portion of it. [Citation.]" (*San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 654.)

[19] Stewards includes as part of the Project the amendments to the PMC authorizing the City Manager to promulgate rules regulating archery activities on City property, to determine locations at which archery is to be permitted, to require that persons engaging in archery on City-owned land first complete a safety and training course and display their credentials when using an archery range; and which makes violations of these additional archery rules subject to punishment under the general penalty provisions of the PMC (see *Union of Medical Marijuana Patients, Inc. v. City of Upland* (2016) 245 Cal.App.4th 1265, 1272 [ordinance passed by a city is an activity of a public agency and is potentially a project under CEQA].) However, Stewards makes only one reference to the ordinance in its opening brief and does not cogently explain how these changes might result in a direct or reasonably foreseeable indirect physical change in the environment. In failing to do so, Stewards waives any claim these elements of the Project have any actual impact on the environment, whether direct or indirect. (See, Cal. Code Regs., tit., 15, § 15060, subd. (c)(2) [whether the activity will result in a direct or reasonably foreseeable indirect physical change in the environment].)

We do not discuss Stewards' claim that the correction of the LAMP

In Stewards' view the Project does not come within the categorical exemption upon which the City relied, that for minor alterations of existing facilities set out in CEQA Guidelines section 15301.[20] (Cal. Code Regs., tit., 14, § 15301.) Rather, Stewards contends the project requires further CEQA analysis because two exclusions to this categorical exemption apply: the exclusion for historical resources (§ 21084, subd. (e) & Cal. Code Regs., tit., 14, 15300.2, subd. (f)) and that for "unusual circumstances." (Cal. Code Regs., tit., 14, § 15300.2, subd. (c).)

A. Relevant CEQA Principles

CEQA was enacted to advance four related purposes: to (1) inform the government and the public about a proposed activity's potential environmental impacts; (2) identify ways to reduce or avoid environmental

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deleting the number 14 to identify the number of targets in the southern archery range is cognizable under CEQA. It is clear from the record, as discussed in section II of this opinion, *ante*, that this change merely corrected a typographical error. Correction of such a clerical error does not support a claim under CEQA.

[20] Title 14 California Code of Regulations section 15301, commonly referred to as the Class 1 Exemption for Minor Alteration of Existing Facilities, exempts—unless an exclusion from its application otherwise requires—"minor alteration[s] of existing public . . . facilities . . . [and] topographical features [] involving negligible or no expansion of use beyond that existing at the time of the lead agency's determination." The non-exclusive list of examples of actions within Class 1 includes existing pedestrian trails (subd. (c)) and safety and health protection devices (subd. (f)). "The key consideration is whether the project involves negligible or no expansion of an existing use." (Cal. Code Regs., tit., 14, § 15301.)

The Guidelines are afforded great weight, even though they are characterized as interpretative aids rather than regulatory mandates. (See *Citizen of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564, fn. 3, citing *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 391, fn. 2.)

damage; (3) prevent environmental damage by requiring project changes by way of alternatives or mitigation measures when feasible; and (4) disclose to the public the rationale for governmental approval of a project that may significantly affect the environment. (*Tomlinson v. County of Alameda* (2012) 54 Cal.4th 281, 285-286 (*Tomlinson*).)

To implement these goals, CEQA requires agencies to follow a three-step process when planning an activity that may come within its scope. (See Guidelines, § 15002, subd. (k).) First, the public agency must determine whether a proposed activity is a "project," i.e., an activity that is undertaken, supported, or approved by a public agency and that "'may cause either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.'" (*Muzzy Ranch Co. v. Solano County Airport Land Use Com.* (2007) 41 Cal.4th 372, 380-381 (*Muzzy Ranch*); § 21065; Guidelines, § 15060, subd. (c)(3).)

Second, if the proposed activity is a project, the agency must decide whether the project is exempt from the CEQA review process based on either a statutory exemption (see § 21080) or a categorical exemption set forth in the CEQA Guidelines (see § 21084, subd. (a); Guidelines, § 15300, et seq.) If the agency determines the project is exempt, there is no further environmental review. (*Muzzy Ranch, supra*, 41 Cal.4th at pp. 381-382.) Instead, the agency may file a notice of exemption, but is not required to do so. (Guidelines, § 15062, subd. (a); see *Apartment Assn. of Greater Los Angeles v. City of Los Angeles* (2001) 90 Cal.App.4th 1162, 1171.) "If the project is not exempt, the agency must determine whether the project may have a significant effect on the environment." If the agency decides the project will not have such an effect, [the agency] "must 'adopt a negative declaration to that effect,' (§21080, subd. (c); see Cal Code Regs., tit. 14,

§ 15070; [Citation.].) Otherwise, the agency must proceed to the third step, which entails preparation of an environmental impact report before approval of the project. (§§ 21100, subd. (a), 21151, subd. (a).)" (*Tomlinson, supra*, 54 Cal.4th at p. 286.)

The Guidelines. Section 21084, subdivision (a) provides for the promulgation of regulations to "include a list of classes of projects which have been determined not to have a significant effect on the environment and which shall, therefore, be exempt from the provisions of CEQA." (*Ibid*., Cal. Code Regs., tit., 14, § 15300.) The adopted Guidelines are set out in Title 14, California Code of Regulations, sections 15301 et seq. They include 33 classes of categorical exemptions. (Guidelines, §§ 15301-15333.) Each "class" embodies a "finding by the Resources Agency that the project will not have a significant environmental impact." (*Davidon Homes v. City of San Jose* (1997) 54 Cal.App.4th 106, 116 (*Davidon Homes*).) Our Supreme Court has described these Guidelines as being entitled to great weight when interpreting CEQA unless they are unauthorized or erroneous. (*Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 428, fn. 5.)

The Class 1 Guideline Exemption. The Class 1 Guideline exemption upon which the City relied for issuance of the February 12, 2015 NOE[21] was that for existing facilities. (Cal. Code Regs., tit., 14, § 15301) This Guideline provides in pertinent part:

"Class 1 consists of the operation, repair, maintenance . . . or minor alteration of existing pubic . . . structures, facilities, . . . or topographical features, involving negligible or no expansion of use beyond that existing at

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21 The October 13, 2015 NOE relied on the same exemption, adding that the actions then proposed were "within the scope of the previously approved action."

the time of the lead agency's determination." The types of 'existing facilities' to which this exemption may apply include but are not limited to "(c) Existing . . . bicycle and pedestrian trails, and similar facilities (this includes road grading for the purpose of public safety); [¶] . . . [¶] (f) Addition of safety or health protection devices . . . in conjunction with existing structures, facilities . . . or topographical features . . . . ; [¶] (g) New copy on existing on and off-premise signs; [and] [¶] (h) Maintenance of existing landscaping, native growth . . . ."

Historical resource exception. "CEQA and the Guidelines define the 'environment' to include 'objects of historic or aesthetic significance.' (§ 21060.5; Guidelines, § 15360.) The fact that an object of historic significance was man-made does not preclude it from being part of the environment protected by CEQA. (Guidelines, § 15360.) 'A project that may cause a substantial adverse change in the significance of an historical resource is a project that may have a significant effect on the environment.' (§ 21084.1.) Such a project would require the preparation of an environmental impact report (EIR) or a mitigated negative declaration. (§§ 21151, 21100, 21080, subd. (c)(2), 21064; *League for Protection of Oakland's etc. Historic Resources v. City of Oakland* (1997) 52 Cal.App.4th 896, 904.)" (*Valley Advocates v. City of Fresno* (2008) 160 Cal.App.4th 1039, 1051 (*Valley Advocates*).)

The first of the two exceptions upon which Stewards relies is that for historical resources, set out in Guidelines section 15300.2, subdivision (f). This section provides: "A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a[n] historical resource."

In this case, the listing by the State Historical Resources Commission of the Lower Arroyo in the California Register of Historical Resources (based on the prior designation of the same area in the National Register of Historical Places), is a necessary and sufficient basis upon which Stewards may, and does, contend that we must determine whether this exception applies. (See, *Valley Advocates, supra,* 160 Cal.App.4th at p. 1053 [designation as historic resource by the State Historical Resources Commission is sufficient to require analysis of propriety of application of historical resources exception].) When a resource is so designated, it is presumed to be historically (or culturally) significant "unless the preponderance of the evidence demonstrates that the resource is not historically or culturally significant." (§ 21084.1) We apply these principles after setting out the parameters of the second exception upon which Stewards relies.

Unusual circumstances exception. Guidelines section 15300.2, subdivision (c), provides: "'A categorical exemption shall not be used for an activity where there is a reasonable possibility that the activity will have a significant effect on the environment due to unusual circumstances.' "The plain language of this provision supports the view that, for the exception to apply, it is not alone enough that there is a reasonable possibility the project will have a significant environmental effect; instead, in the words of the Guidelines, there must be 'a reasonable possibility that the activity will have a significant effect on the environment *due to unusual circumstances.*' (Guidelines, § 15300.2, subd. (c), italics added.)" (*Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086, 1097-1098 (*Berkeley Hillside*).)

As our Supreme Court observed in *Berkeley Hillside*, ". . . CEQA specifies that environmental review through preparation of an EIR is required only '[i]f there is substantial evidence . . . that the project may have a significant effect on the environment.' (§ 21080, subd. (d).) As a corollary to this principle, CEQA also specifies that, if '[t]here is no substantial evidence, in light of the whole record before the lead agency, that the project may have a significant effect on the environment,' then the proposed project is not subject to further CEQA review. (§ 21080, subd. (c)(1).) Guidelines section 15061, subdivision (b)(3), is similar, specifying: '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 activity is not subject to CEQA.'" (*Berkeley Hillside*, *supra*, 60 Cal.4th at pp. 1098-1099.)

In applying the unusual circumstances exception, more is required than merely a fair argument that the proposed activity may have a significant effect on the environment. (*Berkeley Hillside*, *supra*, 60 Cal.4th at p. 1102.) When there is "'some information or evidence in the record that the project might have a significant environmental effect,'" the agency must consider the issue of significant effects. (*Berkeley Hillside, supra*, at p. 1103; *Association for Protection, etc. Values v. City of Ukiah* (1991) 2 Cal.App.4th 720, 732.)

A party challenging the application of a categorical exemption has the burden of producing evidence supporting the claimed exception to that exemption. (*Berkeley Hillside, supra, supra*, 60 Cal.4th at p. 1105; *Davidon Homes, supra,* 54 Cal.App.4th at p. 115.) "[T]o establish the unusual circumstances exception, it is not enough for a challenger merely to provide substantial evidence that the project *may* have a significant effect on the environment, because that is the inquiry CEQA requires absent an

exemption. (§ 21151.) Such a showing is inadequate to overcome the Secretary's determination [in promulgating the Guidelines] that the typical effects of a project within an exempt class are not significant for CEQA purposes. On the other hand, evidence that the project *will* have a significant effect *does* tend to prove that some circumstance of the project is unusual. An agency presented with such evidence must determine, based on the entire record before it—including contrary evidence regarding significant environmental effects—whether there is an unusual circumstance that justifies removing the project from the exempt class." (*Berkeley Hillside, supra*, at p. 1105.)

As pointed out in *Berkeley Hillside*, a court reviewing the application of the unusual circumstances exception applies two somewhat different tests, the first with respect to whether a particular project presents circumstances that are unusual for a project in an exempt class; ". . . as to this question, the agency serves as 'the finder of fact' (*Save Our Peninsula Committee v. Monterey County Bd. of Supervisors* (2001*)* 87 Cal.App.4th 99, 117), and a reviewing court should apply the traditional substantial evidence standard that section 21168.5 incorporates. (*Save Our Peninsula Committee,* at p. 117.) Under that relatively deferential standard of review, the reviewing court's "'role'" in considering the evidence differs from the agency's. (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 576.) "'Agencies must weigh the evidence and determine 'which way the scales tip,' while courts conducting [traditional] substantial evidence . . . review generally do not.'" (*Ibid.*) Instead, reviewing courts, after resolving all evidentiary conflicts in the agency's favor and indulging in all legitimate and reasonable inferences to uphold the agency's finding, must affirm that finding if there is any substantial evidence, contradicted or uncontradicted, to

support it. (*Id.* at p. 571; see *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 393 (*Laurel Heights I*) [reviewing court's 'task is not to weigh conflicting evidence and determine who has the better argument' or whether 'an opposite conclusion would have been equally or more reasonable'].)" (*Berkeley Hillside*, *supra*, 60 Cal.4th at pp. 1114-1115.)

For the second test, with respect to whether there is "'a reasonable possibility'" that an unusual circumstance will produce 'a significant effect on the environment' (Guidelines, § 15300.2, subd. (c)), a different approach is appropriate, both by the agency making the determination and by reviewing courts. . . . Accordingly, when there are 'unusual circumstances,' it is appropriate for agencies to apply the fair argument standard in determining whether 'there is a reasonable possibility [of] a significant effect on the environment due to unusual circumstances.' (Guidelines, § 15300.2, subd. (c).) As to this question, the reviewing court's function 'is to determine whether substantial evidence support[s] the agency's conclusion as to whether the prescribed "fair argument" could be made.' (*Friends of "B" Street,* [(1980)] 106 Cal.App.3d [988,] 1002.)" (*Berkeley Hillside*, *supra*, 60 Cal.4th at p. 1105; *Davidon Homes, supra*, 54 Cal.App.4th at p. 115.)

The focus of our inquiry in this case is the propriety of the determination by the Council to proceed by issuance of a NOE.[22] As noted, a NOE is issued when a public agency has determined that an activity is a project as defined by CEQA, and also that it is exempt from further analysis

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[22] Stewards' arguments in support of its contention that issuance of a NOE was in error focus only on the aspects of the Project identified in the NOE filed February 12, 2015. No arguments are presented with respect to the October 13, 2015 NOE. Accordingly, we limit our discussion to those arguments and that NOE.

under CEQA due to (a) its qualification under one of the categorical exemptions and (b) the absence of any bar to application of that categorical exemption by one of the exceptions set forth in Section 15300.2."[23] (Guidelines, § 15061, subd. (b)(2).)

B. Standard of review of CEQA determinations

"In reviewing compliance with CEQA, we review the agency's action, not the trial court's decision. [Citation.] In doing so, our 'inquiry "shall extend only to whether there was a prejudicial abuse of discretion." [Citation.]' [Citation.] Abuse of discretion is established 'if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence.' [Citation.] Substantial evidence in this context means 'enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached.'" (*Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 80; *Walters v. City of Redondo Beach* (2016) 1 Cal.App.5th 809, 816-817 (*Walters*).)

Questions concerning the proper interpretation or application of the requirements of CEQA are matters of law. (*Save Our Peninsula Committee v. Monterey County Bd. of Supervisors, supra,* 87 Cal.App.4th at p. 118.) Thus, we review de novo the scope and application of both exemptions and exclusions. (See *North Coast Rivers Alliance v. Westlands Water Dist.* (2014) 227 Cal.App.4th 832, 851 and *Del Cerro Mobile Estates v. City of Placentia* (2011) 197 Cal.App.4th 173, 179.)

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23 A project may also be exempt from CEQA based on a *statutory* exemption. In that circumstance, there is no additional analysis of exemptions and of exceptions to such exemptions. (*World Business Academy v. Calif. State Lands Commission* (2018) 24 Cal.App.5th 476, 490-491.)

C. Discussion

The written materials distributed for the February 2-3, 2015 Council meeting included recommendations for adoption of the changes addressed in the NOE by the Commission and by the City's Design Commission. Among the documents addressing the Project was an "Attachment P," a three-page single spaced memorandum from the Environmental Coordinator, Planning & Community Development Department to the Parks and Natural Resources Administrator in the City's Department of Public Works regarding "Exemption Status of the Proposed Lower Arroyo Archery Range Project" (the Exemption Memorandum). The Exemption Memorandum discussed whether the project, which it described as consisting of "physical improvements to the Lower Arroyo Range Program and policy changes that further restrict the use of the Archery Range area," qualified for a categorical exemption from CEQA, concluding that the Project met the Class 1 exemption criteria and that none of the relevant exceptions applied. At this Council Meeting, well over 20 people spoke in favor of the Project while a smaller number spoke in opposition. Following discussion among members of the Council, the Project was approved. The NOE was timely filed thereafter.

Stewards challenges the determination reached by the Council and reflected in the NOE that the Class 1 categorical exemption was proper, arguing the Council's actions of "removing the 14-target limit allowed under the LAMP, removing . . . trails that were originally slated to be improved . . . and changing the Archery Range area of the Lower Arroyo from a mixed-use area to a single-use area dedicated exclusively to [a]rchery" required further "CEQA environmental review," i.e., analysis, in an EIR.

Stewards errs both factually and legally. The reasons upon which Stewards relies are more relevant to its claim that the historical and unusual

circumstances exceptions apply than to a claim that the Class 1 exemption lacks merit. For this reason, we address the bulk of those arguments, *post*, explaining in the next section of this opinion that Stewards' claims do not detract from the conclusion that the City has met its burden to demonstrate by substantial evidence that the project qualified for a Class 1 categorical exemption. (Guidelines, §15301.)[24] (*Davidon Homes, supra,* 54 Cal.App.4th at p. 113; see *World Business Academy v. Calif. State Lands Commission, supra,* 24 Cal.App.5th at pp. 491-492.)

1. *The City properly relied on the Class 1 categorical exemption*

There is substantial evidence to support the conclusion that the Project qualifies as a Class 1 project and thus is properly categorically exempt (unless either the historical or unusual circumstances exceptions apply). (*Communities for a Better Environment v. City of Richmond, supra*, 184 Cal.App.4th at p. 80.) Thus, the Project consists of the repair, maintenance and minor alteration of existing public topographical features "involving negligible or no expansion of use beyond that existing at the time of [the City Council's] determination." And, the facilities affected include pedestrian trails and similar facilities (Guidelines, § 15301, subd. (b)) to which safety improvements are being made (Guidelines, § 15301, subd. (f)). As we discussed in section II**,** *ante*, the realignment of 150 feet of the historic trail

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[24] The February NOE characterizes the Project as encompassing only a "minor alteration." In *Muzzy Ranch, supra*, our Supreme Court first pointed out that the agency should provide a more complete explanation of the reasons for its conclusions that a NOE is appropriate, and then determined that the agency involved there had reached the correct result even though it had not fully articulated its reasons for doing so. (*Muzzy Ranch, supra*, 41 Cal.4th at p. 387.) For the reasons we discuss in the text of this opinion, we have a similar record here; and we reach a similar conclusion: on this record, we determine the City reached the correct result.

through the Lower Arroyo together with the installation of berms of natural materials, etc. constitute minor alterations and were approved as measures to improve public safety. Stewards' contrary evidentiary claims (discussed, *post*, in connection with its arguments that the historic and unusual circumstances exceptions apply) do not rise to the level that they support a different conclusion.[25]

2. Stewards' reliance on the historic resource exception is misplaced

Stewards contends Guidelines section 15300.2, subdivision (f) applies, making inapplicable the Class 1 exemption upon which City relies. We disagree.

Section 15300.2, subdivision (f) provides: "Historical Resources. A categorical exemption shall not be used for a project which may cause a substantial adverse change in the significance of a[n] historic resource."

The essence of Stewards' contention is "Evidence presented to the City establishes a fair argument that the physical changes, which includes [sic] landscape barriers and the removal of a trail from the Archery Range, would affect the historical significance of the Lower Arroyo." These claims proceed from a fatally flawed premise. As discussed in section I, *ante*, the archery

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[25] Stewards' argument that the Project cannot be a Class 1 project because it increases the number of permitted targets in the southern archery range from 14 lacks factual basis. As we discuss in section II, *ante*, the number 14 was a typographical error and there is more than substantial evidence that there had been 26 targets in the southern archery range (or 28 if the targets discovered to be on private property are included) for decades. Certain other alleged facts were not set out in the submission Stewards' filed the day of the February 2015 Council meeting, but instead appeared for the first time in its September 2015 submission. As we explained in footnote 1, *ante*, consideration of those materials is precluded by their tardy submission.

range upon which Stewards bases its claim is not an historic resource. Indeed, it was expressly omitted as a factor of any significance in both the 1979 Landmark designation by the City and in City's later application for historical designation of the Lower Arroyo in the National Register of Historic Places.[26] Further, the LAMP makes clear that the path that runs along the face of the targets in the southern archery range is of no historic significance and was slated for obliteration as part of the LAMP. The over 8,000-foot long trail that runs the approximate length of the Lower Arroyo, and in part adjacent to this range, is of historic note. An argument might be made that relocating 150 feet of its length to improve public safety—and in conjunction therewith using natural materials to deter persons on the trail from wandering into potential danger in the southern archery range; however, that argument lacks convincing force. It is highly unlikely that these alterations might cause a substantial—or any significant—adverse change in the significance of either the actual historic trail, or of the Lower Arroyo, as historic resources.

The burden of proof to establish application of an exception such as this is on Stewards. (*World Business Academy v. California State Lands Commission, supra,* 24 Cal.App.5th at p. 491.) Stewards' arguments that there may be a significant impact on an historic resource are unpersuasive. In our view, there is no factual basis upon which to conclude that the movement of a 150-foot section of the historic trail through the Lower Arroyo

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[26] The historic resources designation by the State of California of the Lower Arroyo was entirely derivative of the materials filed with the United States Department of Interior, as noted in section I, *ante*. The archery range happens to be located in an area designated as of historic value—for reasons that have not included archery.

and installation of natural barriers may cause a change in this historic resource which is "significant."

3. *The unusual circumstances exception*. We set out, *ante*, the two tests to be used to determine if the unusual circumstances exception to a categorical exclusion is applicable. As with the historical resources exception, the burden is on Stewards to establish that the project presents an unusual circumstance and thus precludes City from relying on the Class 1 (or any) categorical exemption. (*Berkeley, supra*, 60 Cal.4th at p. 1105; *Davidon Homes, supra,* 54 Cal.App.4th at p. 115.) However, "[i]t is not enough for a challenger merely to provide substantial evidence that the project *may* have a significant effect on the environment, because that is the inquiry CEQA requires absent an exemption." (§ 21151.) Such a showing is inadequate to overcome the Secretary's determination that the typical effects of a project within an exempt class are not significant for CEQA purposes. On the other hand, evidence that the project *will* have a significant effect *does* tend to prove that some circumstance of the project is unusual. An agency presented with such evidence must determine, based on the entire record before it—including contrary evidence regarding significant environmental effects—whether there is an unusual circumstance that justifies removing the project from the exempt class." (*Berkeley*, *supra*, 60 Cal.4th at p. 1105; emphasis in original.)

Stewards argues that the proximity of the archery range to private homes is an unusual circumstance. That argument has no merit. There is nothing unusual about the circumstance that the southern archery range is now adjacent to private residences—that private residences were built immediately adjacent to it in the verdant setting of the Lower Arroyo and its adjacent lands–and Stewards offers no evidence the proximity is unusual.

Given the history of the development of the Pasadena area described in the LAMP, in the Lower Arroyo Master Plan, and in the City's application for listing of the Lower Arroyo in the Register of Historic Places, it is evident that the archery range predated many of the adjacent residences. The mere presence of the residences adjacent to the preexisting southern archery range is not an unusual circumstance.

Stewards' reliance on *Lewis v. Seventeenth Dist. Agricultural Assn.* (1985) 165 Cal.App.3d 823, is misplaced. As our Division Six colleagues reasoned in *Walters, supra,* 1 Cal.App.5th at page 822, the court in *Lewis* did not have occasion to analyze the unusual circumstances prong of this exception. And, in *Walters*, our Division Six colleagues rejected Walters' claim that the proximity of the residences there to the car wash about which that appellant was complaining constituted an unusual circumstance. The *Walters* court concluded that "appellants have not identified substantial evidence supporting a finding of usual circumstances based on the [development of the car wash]." (*Id.* at p. 822.)

In this case, Stewards relies upon the circumstance that there are residences adjacent to the archery range. As noted, it does not proffer any admissible evidence that their proximity is unusual. And, such a claim would render meaningless the concept of categorical exemptions. As noted, *ante*, it is "not enough for a challenger merely to provide substantial evidence that a project *may* have a significant effect on the environment," because that is the inquiry CEQA requires absent an exemption. (§ 21151.) Such a showing is inadequate to overcome the secretary's determination that the typical effects of a project within an exempt class are not significant for CEQA purposes." (*Berkeley Hillside, supra*, 60 Cal.4th at p. 1105.) Nor do we agree that the location of the targets presents a significant impact on the environment.

Stewards' concern about the issue of arrows ending up on the property of nearby residents—a matter of safety—was addressed in the new ordinance which requires that archers complete a safety course before using the range. Insofar as Stewards relies upon circumstances predating the removal of two targets from private property and prior to the realignment of the shooting lanes, it ignores the requirement that the analysis must be based on present conditions. (See Cal. Code Regs., tit., 14, § 15125, subd. (a); *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 448 [EIR environmental setting is normally based on conditions at the time the environmental assessment is made].) The City Council thus addressed this issue in an appropriate way; it was within the Council's discretion to do so in this manner rather than close the archery range.

Just as the general effects of operating a business cannot serve as unusual circumstances in and of themselves, operating the southern archery range does not present an unusual circumstance. (See *Walters, supra*, 1 Cal.App.5th at p. 821, citing *Fairbank v. City of Mill Valley* (1999) 75 Cal.App.4th 1243, 1260.)

We conclude that Stewards has not met its burden to establish that there is sufficient basis to apply the unusual circumstances exception. Accordingly, we conclude that the City's reliance on the Class 1 exemption is fully supported by the record and neither of the claimed exceptions applies.

DISPOSITION

The judgment is affirmed. The parties shall bear their own costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.*
GOODMAN

We concur:

_____, Acting P.J.
ASHMANN-GERST

_____, J.
CHAVEZ

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* Retired Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.