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VIA E-MAIL & U.S. MAIL

August 27, 2019

Mr. David Bergman, Interim Director
Planning and Building Dept.
City of South Pasadena
1414 Mission Street
South Pasadena, CA 91030

Email Delivery to: dbergman@southpasadenaca.gov

RE: Comments to Draft Environmental Impact Report (SCH No. 2019011007) for the Mission Bell Mixed-Use Project (Project No. 2034-CUP, DRX, COA, VTPM)

Dear Mr. Bergman,

On behalf of **Southwest Regional Council of Carpenters** (“**Commenter**” or “**Southwest Carpenters**”), my Office is submitting these comments on the City of Santa Ana’s (“**City**” or “**Lead Agency**”) Draft Environmental Impact Report (SCH NO. 2019011007) for the Mission Bell Mixed-Use Project (Project No. 2034-CUP, DRX, COA, VTPM), located at 1101, 1107, and 1115 Mission Street comprising of approximately 0.7 acres of land which is currently being used for commercial purposes and as a parking lot (“**Project**”). The Project site is generally bound by Mission Street to the north, commercial uses to the east and south, and Fairview Avenue to the west.

The Project Applicant, Mission Bell Properties LLC (“**Applicant**”), is proposing to construct a two- and three-story mixed-use development at 1101-1107 Mission Street, rehabilitate the existing historic building at 1115 Mission Street for adaptive reuse as missed use, demolish a portion of the historic building at 1115 Mission Street to construct a two-story residential building, and construct two levels of subterranean parking beneath the Project site. DEIR, 2.0-4.

The Southwest Carpenters is a labor union representing 50,000 union carpenters in six states, including in southern California, and has a strong interest in well ordered land use planning and addressing the environmental impacts of development projects.

Individual members of the Southwest Carpenters live, work, and recreate in the City of South Pasadena and surrounding communities and would be directly affected by the Project's environmental impacts. Commenter expressly reserves the right to supplement these comments at or prior to hearings on the Project, and at any later hearings and proceedings related to this Project. Cal. Gov. Code § 65009(b); Cal. Pub. Res. Code § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.

Commenter incorporates by reference all comments raising issues regarding the EIR submitted prior to certification of the EIR for the Project. *Citizens for Clean Energy v. City of Woodland* (2014) 225 CA4th 173, 191 (finding that any party who has objected to the Project's environmental documentation may assert any issue timely raised by other parties).

Moreover, Commenter requests that the Lead Agency provide notice for any and all notices referring or related to the Project issued under the California Environmental Quality Act ("CEQA"), Cal Public Resources Code ("PRC") § 21000 *et seq*, and the California Planning and Zoning Law ("Planning and Zoning Law"), Cal. Gov't Code §§ 65000–65010. California Public Resources Code Sections 21092.2, and 21167(f) and Government Code Section 65092 require agencies to mail such notices to any person who has filed a written request for them with the clerk of the agency's governing body.

I. THE PROJECT WOULD BE APPROVED IN VIOLATION OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

A. Background Concerning the California Environmental Quality Act

CEQA has two basic purposes. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project. 14 California Code of Regulations ("CCR" or "CEQA Guidelines") § 15002(a)(1). "Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made. Thus, the EIR 'protects not only the environment but also informed self-government.' [Citation.]" *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 564. The EIR has been described as "an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological

points of no return.” *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm’rs.* (2001) 91 Cal. App. 4th 1344, 1354 (“*Berkeley Jets*”); *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

Second, CEQA directs public agencies to avoid or reduce environmental damage when possible by requiring alternatives or mitigation measures. CEQA Guidelines § 15002(a)(2) and (3). *See also, Berkeley Jets*, 91 Cal. App. 4th 1344, 1354; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553; *Laurel Heights Improvement Ass’n v. Regents of the University of California* (1988) 47 Cal.3d 376, 400. The EIR serves to provide public agencies and the public in general with information about the effect that a proposed project is likely to have on the environment and to “identify ways that environmental damage can be avoided or significantly reduced.” CEQA Guidelines § 15002(a)(2). If the project has a significant effect on the environment, the agency may approve the project only upon finding that it has “eliminated or substantially lessened all significant effects on the environment where feasible” and that any unavoidable significant effects on the environment are “acceptable due to overriding concerns” specified in CEQA section 21081. CEQA Guidelines § 15092(b)(2)(A–B).

While the courts review an EIR using an “abuse of discretion” standard, “the reviewing court is not to ‘uncritically rely on every study or analysis presented by a project proponent in support of its position.’ A ‘clearly inadequate or unsupported study is entitled to no judicial deference.’” *Berkeley Jets*, 91 Cal.App.4th 1344, 1355 (emphasis added) (quoting *Laurel Heights*, 47 Cal.3d at 391, 409 fn. 12). Drawing this line and determining whether the EIR complies with CEQA’s information disclosure requirements presents a question of law subject to independent review by the courts. (*Sierra Club v. Cnty. of Fresno* (2018) 6 Cal.5th 502, 515; *Madera Oversight Coalition, Inc. v. County of Madera* (2011) 199 Cal.App.4th 48, 102, 131.) As the court stated in *Berkeley Jets*, 91 Cal. App. 4th at 1355:

A prejudicial abuse of discretion occurs “if the failure to include relevant information precludes informed decision-making and informed public participation, thereby thwarting the statutory goals of the EIR process.

The preparation and circulation of an EIR is more than a set of technical hurdles for agencies and developers to overcome. The EIR’s function is to ensure that government officials who decide to build or approve a project do so with a full understanding of the environmental consequences and, equally important, that the public is assured those consequences have been considered. For the EIR to serve these

goals it must present information so that the foreseeable impacts of pursuing the project can be understood and weighed, and the public must be given an adequate opportunity to comment on that presentation before the decision to go forward is made. *Communities for a Better Environment v. Richmond* (2010) 184 Cal.App.4th 70, 80 (quoting *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 449–450)

B. CEQA Requires Revision and Recirculation of an Environmental Impact Report When Substantial Changes or New Information Comes to Light

Section 21092.1 of the California Public Resources Code requires that “[w]hen significant new information is added to an environmental impact report after notice has been given pursuant to Section 21092 ... but prior to certification, the public agency shall give notice again pursuant to Section 21092, and consult again pursuant to Sections 21104 and 21153 before certifying the environmental impact report” in order to give the public a chance to review and comment upon the information. CEQA Guidelines § 15088.5.

Significant new information includes “changes in the project or environmental setting as well as additional data or other information” that “deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative).” CEQA Guidelines § 15088.5(a). Examples of significant new information requiring recirculation include “new significant environmental impacts from the project or from a new mitigation measure,” “substantial increase in the severity of an environmental impact,” “feasible project alternative or mitigation measure considerably different from others previously analyzed” as well as when “the draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.” *Id.*

An agency has an obligation to recirculate an environmental impact report for public notice and comment due to “significant new information” regardless of whether the agency opts to include it in a project’s environmental impact report. *Cadiz Land Co. v. Rail Cycle* (2000) 83 Cal.App.4th 74, 95 [finding that in light of a new expert report disclosing potentially significant impacts to groundwater supply “the EIR should have been revised and recirculated for purposes of informing the public and governmental agencies of the volume of groundwater at risk and to allow the public and governmental agencies to respond to such information.”]. If significant new

information was brought to the attention of an agency prior to certification, an agency is required to revise and recirculate that information as part of the environmental impact report.

C. The City Failed to Adequately Describe the Project

It is well-established that “[a]n accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR.” *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193. “A curtailed, enigmatic or unstable project description draws a red herring across the path of public input.” *Id.* at p. 198.

The Project proposes 36 residential units along with the commercial retail component. However, the DEIR does not specify whether the 36 residential units will be condominiums or apartment units. Moreover, the DEIR does not specify what the approximate rent and/or sale price for the residential units will be. In light of one of the Project Objectives to “[c]ontribute to meeting the City’s Regional Housing Needs Assessment (RHNA) goals through the construction of 36 new above moderate-income housing units,” it is important for the DEIR to adequately describe the Project in a way to ensure whether such objective and other objectives would indeed be met. DEIR, 2.0-1. Moreover, as discussed below, knowing whether the proposed residential units would be rentals or condominiums is crucial in determining whether the Project should incorporate affordable housing units to meet the General Plan goals.

Based on the inadequate project description set forth in the DEIR, it is impossible to determine whether Project Objectives and applicable General Plan goals and policies could be met here. The DEIR must be revised to provide an adequate project description.

D. The DEIR Inaccurately and Improperly Concluded that the Project Will Not Have Significant Impacts to Historical Resources

The DEIR admits that one of the buildings located on the Project Site is a historically protected resource. The Project Site encompasses addresses of 1101, 1107 and 1115 Mission Street. The Project Site is designated by the City’s General Plan as Mission Street Specific Plan (MSSP), and is zoned MSSP Core Area, District A. DEIR, 3.0-1

In particular, the two-story commercial and residential structure located at 1115 Mission Street (hereinafter referred to as “1115 Mission St.”) was built in 1921 that has been included in a list of historic structures in the 1996 Mission Street Specific

Plan, a 2003 reconnaissance level City-wide historic survey, and the 2015/16 City of South Pasadena Historic Resources Survey. DEIR, 4.2-23.

According to the City’s MSSP, Mission Street is South Pasadena’s historic core and without its historic resources, Mission Street could not retain its unique small town atmosphere and sense of identity. MSSP, p. 4. Therefore, the existing historical resources are critical to help maintain the City’s unique atmosphere and identity and must be protected.

Despite the recognized historical significance of 1115 Mission St., the Project proposes to make significant material alterations to the building by (1) “rehabilitating” the two-story commercial and residential portion (which accounts for one third of the entire building and (2) demolishing the rear two-thirds portion of the building the DEIR refers to as the “warehouse.” DEIR 4.2-23.

The DEIR admits that “[t]he proposed Project changes affect the appearance of the building façade and the footprint and massing of the building.” DEIR 4.2-24. The windows on the façade facing Mission Street will be replaced, windows will be added to the first story of the west façade, a solid door will replace a window and be added to the east façade, the south façade will be altered by the removal of the existing back building (and will be replaced with the construction of the new residential building). See *id.* Most critically, two-thirds of the building will be removed/demolished.

The DEIR inaccurately concludes that the Project is consistent with the Secretary of the Interior’s Standards (“the Standards”) and concludes that the Project’s direct impacts to historical resources would be less than significant. DEIR 4.2-24~25. In fact, the Project will cause a substantial adverse change in the significance of a historical resource pursuant to 15064.5 as a result of the direct impacts pursuant to the Standards. DEIR, 4.2-24, 25.

The problems with the DEIR’s consistency analysis for each of the relevant Standards will be provided in the table below:

	Standard’s Requirements	DEIR’s consistency analysis	Problems with DEIR’s consistency analysis
Standard 1	A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials,	Consistent. The property would be redeveloped as a commercial and residential use and would retain the commercial façade along Mission Street.	This is not a minimal change the façade including massing will be affected (admitted by DEIR) and two thirds of the building will be removed.

	features, spaces, and spatial relationships.		<p>The Applicant's own consultant, ESA, recommended that the entire building be retained and to retain window openings on the eastern façade of the building. ESA concluded that the entire building including the warehouse is a primary character defining feature.</p> <p>Moreover, the 3 story building of the Project will alter the spatial relationships in the historic core of Mission Street.</p>
Standard 2	The historic character of a property will be retained and preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.	Consistent. Although the property is not eligible for designation as a local landmark or inclusion in a historic district, the Project proposes to retain some of the building's original features. These features include: the enameled brick of the main façade; the decorative brick course between the first and second stories; recessed sign area; the cornice; frieze; and angled window sills. The distinctive materials and features of the store front would be retained. A new structure would be attached at the rear which would be architecturally consistent with the character of the retained front of the building.	<p>There is no question that this is a historically significant building.</p> <p>The Project will have significant, material change affecting the façade including massing will be affected (admitted by DEIR) and two thirds of the building will be removed.</p> <p>The Applicant's own consultant, ESA, recommended that the entire building be retained and to retain window openings on the eastern façade of the building. ESA concluded that the entire building including the warehouse is a primary character defining feature.</p>
Standard 9	New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property, the new work shall be differentiated from the old and shall be compatible with the massing, size, scale,	Consistent. The proposed new construction would be differentiated from the existing portion of the building fronting Mission Street. The new building to be attached at the rear will be a two story residential building designed at a scale	The "rehabilitation" and partial demolition will "destroy historic materials" that are primary and contributing character defining features. The proposed partial demolition

	and architectural features to protect the historic integrity of the property and its environment.	and mass similar to the existing being retained and renovated.	will also destroy the historic integrity of the building.
Standard 10	New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.	Consistent. The Project would remove the single story warehouse from the rear façade and a new two story residential structure would be constructed in its place. The new construction, if removed at some later time, would not impair the essential form and integrity of the retained portion of the building fronting Mission Street.	The “rehabilitation” and partial demolition of a historical resource and building a large 3 story modern structure in a historical core will alter the integrity of the historic property and its environment.

As shown in the Table above, the Project’s proposed rehabilitation and removal of two-thirds of the building at 1115 Mission St. are not consistent with the Standards. Most suspiciously, the DEIR fails to reflect the Applicant’s own consultant’s (ESA) recommendations hidden in Appendix C and F that (1) the entire building including the warehouse portion of the building should be retained as it is a “primary” character defining feature of the building and (2) the replacement of two windows on the eastern façade should not be undertaken as the windows are “contributing” character defining features of the building. See Appendix F recommendations. The DEIR not only ignored its consultant’s recommendations and characterization of the historical features of the building but also cleverly hid these recommendations out of the main DEIR document.

According to Appendix C’s “Historical Resource Assessment” by ESA on p. 39:

Primary character-defining features are by definition the most important and should be considered for retention in order to preserve and protect the eligibility of the Subject Property. Alteration or removal of these features should be avoided.

Contributing character-defining features add to the character of a historic property and should be retained to the greatest extent feasible and rehabilitated as appropriate....

Consistent with the goal to preserve and protect primary and contributing character-defining features of the building and ESA's recommendations, the entirety of 1115 Mission St. must be retained and its primary and contributing character-defining features must be preserved.

Moreover, 1115 Mission St.'s (Parcel No. 5315-008-043) parcel information shows that there is one continuous, connected building on the property. See DEIR Appendix C, Figure 2. Moreover, the entirety of the existing structure existed at least from 1927. See DEIR Appendix C, Figures 5, 6, 7, 8 (shown in 1927, 1930, 1951, 1971 respectively). Figures 9 and 10 show that there is no division between "front" and "back" buildings and that there is just one building. DEIR Appendix C, Figures 9 and 10.

The MSSP's Table 9 of Historic Resources lists the entirety of 1115 Mission St., also referred to as "Luttrell's Building," as a historical resource. There is no indication that only a portion of that building is considered historically significant. Moreover, the DEIR does not provide any information indicating that 1115 Mission St.'s building is severable and that the historical significance is only applicable to a portion of the building. As such, it is amply established that the entirety of the structure at 1115 Mission St. is a historical resource that must be protected.

Finally, the proposed rehabilitation and demolition of the majority of 1115 Mission St. does not meet one of the Project Objectives to implement the MSSP, which includes "a. Preserve, renovate, and reuse the historic building located at 1115 Mission Street through rehabilitation of the building for new uses" since the Project proposes to remove primary character defining features of the building by demolishing two-thirds of it. See DEIR at ES-1.

In conclusion, the DEIR erroneously concluded that the proposed rehabilitation and partial demolition of 1115 Mission St. would have an insignificant impact to cultural resources.

II. THE PROJECT IS INCONSISTENT WITH THE GENERAL PLAN

The DEIR analyzes whether the Project is consistent with applicable land use plan, policy or regulation. However, the DEIR inaccurately analyzes the Project's consistencies with the General Plan and also fails to analyze the Project's consistency with the Housing Element Update of the General Plan.

A. The Project is Inconsistent with the Goals and Policies Pertaining to Preserving Historic Resources of the General Plan

Goal 7 of the General Plan requires the City “[t]o preserve South Pasadena’s historic character, scale, and ‘small town’ atmosphere.” Goal 9 of the General Plan requires the City “[t]o conserve and preserve the historic “built” environment of the city by identifying the architectural and cultural resources of the city, by encouraging their maintenance and/or adaptive reuse, and by developing guidelines for new and infill development assuring design compatibility.”

The DEIR erroneously concluded that the Project is consistent with Goal 7 and Goal 9 since demolishing a large portion of a historically significant building like 1115 Mission St. and changing important historical characteristics of such a building would run afoul of the goals of preserving historic character of the City. Especially based on the Applicant’s own consultant’s recommendation to retain the entire building at 1115 Mission St. and to not remove two windows from the eastern façade, the Project is inconsistent with Goals 7 and 9 of the General Plan.

B. The Project is Inconsistent with the Housing Element Update of the General Plan

One of the Project’s Objectives is to “[c]ontribute to meeting the City’s Regional Housing Needs Assessment (RHNA) goals through the construction of 36 new above moderate-income housing units.” DEIR 2.0-1. However, the DEIR does not explain how the City’s RHNA goals could be met. The DEIR does not describe whether the Project’s residential units will be rental apartments or condominiums and how much the rent or the sale price would be. Moreover, the DEIR completely ignores whether there indeed is a housing need for the above moderate income group that has not already been satisfied by recent mixed-use projects in the area. 2014 Housing Element Update, Table VI – 25, p. 33 (showing 25 new units needed for above moderate income group for years 2014-2021 as compared with 48 new units needed for very low income to moderate income groups). Therefore, the DEIR’s conclusion that the Project Objective relating to contributing to meeting the City’s RHNA’s goal is unsupported by any evidence.

Moreover, the DEIR fails to analyze the Project’s consistency with Goal 3, Policy 3.1 of the General Plan Housing Element Update. Goal 3 of the General Plan Housing Element Update requires the City to provide for adequate residential sites. More

specifically, Policy 3.1 requires the City to “[p]romote mixed-use developments by continuing to allow development of residential uses above commercial uses in the GC zoning district and the MSSP zoning district and encourage the development of affordable housing within the residential component of mixed use projects through the use of affordable housing incentives and planned development permits as provided for in the City’s Zoning Code. Conduct early consultations with developers of mixed-use projects to encourage the development of affordable housing units in these projects.”

The DEIR fails to analyze whether the City promoted that the Project’s inclusion of affordable housing in the residential component of the Project. As a result, the Project is not consistent with Goal 3 and Policy 3.1 of the General Plan Housing Element Update.

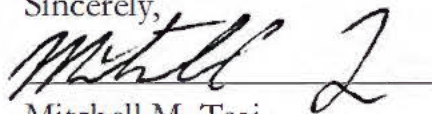
C. The Project’s Inconsistency with the General Plan Also Violates CEQA

Under the CEQA Guidelines, an environmental impact report (EIR) must discuss “any inconsistencies between the proposed project and applicable general plans, specific plans, and regional plans.” CEQA Guidelines §15125(d). By failing to analyze the Project’s inconsistencies with the Housing Element of the General Plan, the Project also violates CEQA.

III. CONCLUSION

Commenters request that the City revise and recirculate the Project’s environmental impact report to address the aforementioned concerns. If the City has any questions or concerns, feel free to contact my Office.

Sincerely,



Mitchell M. Tsai

Attorneys for Southwest Regional Council of Carpenters