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Via Email

November 22, 2023

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Domenico Tallerico, Commissioner
Angela Hui, Commissioner
Marilynne Wilander, Commissioner
Vincent Tsoi, Commissioner
City Planning Commission
City of Arcadia
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Lisa Flores, Deputy Development Services
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Re: Comment on Final Environmental Impact Report, The Derby Mixed-Use Project (GPA 22-01, ZC 22-01, MUP 22-02, ADR 22-06); November 28, 2023 Planning Commission Meeting – Agenda Item No. 1

Dear Honorable Members of the Arcadia City Planning Commission:

This comment is submitted on behalf of **Supporters Alliance for Environmental Responsibility (“SAFER”)** regarding the Final Environmental Impact Report (“FEIR”) prepared for the Derby Mixed-Use Project (GPA 22-01, ZC 22-01, MUP 22-02, ADR 22-06), which proposes the construction of a six-story, mixed-use development of 214 units, a 1,400 square foot café, a 3,300 square foot restaurant, one level of subterranean parking for residents, and exterior and interior ground-level parking areas located at 233 and 301 E. Huntington Drive in the City of Arcadia (“Project”).

The FEIR fails as an informational document and fails to impose all feasible mitigation measures to reduce the Project’s impacts. SAFER requests that the City address these shortcomings in a revised draft environmental impact report (“RDEIR”) and recirculate the RDEIR prior to considering approvals for the Project.

SAFER reserves the right to supplement these comments during the administrative process. *Galante Vineyards v. Monterey Peninsula Water Management Dist.*, 60 Cal. App. 4th 1109, 1121 (1997).

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I. LEGAL STANDARD FOR FINAL EIR

The lead agency must evaluate comments on the draft EIR and prepare written responses in the final EIR. (PRC §21091(d)) The FEIR must include a “detailed” written response to all “significant environmental issues” raised by commenters. As the court stated in *City of Long Beach v. LA USD* (2009) 176 Cal.App.4th 889, 904:

The requirement of a detailed written response to comments helps to ensure that the lead agency will fully consider the environmental consequences of a decision before it is made, that the decision is well informed and open to public scrutiny, and that public participation in the environmental review process is meaningful.

The FEIR’s responses to comments must be detailed and must provide a reasoned, good faith analysis. (14 CCR §15088(c)) Failure to provide a substantive response to comment render the EIR legally inadequate. (*Rural Land Owners Assoc. v. City Council* (1983) 143 Cal.App.3d 1013, 1020).

The responses to comments on a draft EIR must state reasons for rejecting suggested mitigation measures and comments on significant environmental issues. “Conclusory statements unsupported by factual information” are not an adequate response. (14 CCR §15088(b, c); *Cleary v. County of Stanislaus* (1981) 118 Cal.App.3rd 348). The need for substantive, detailed response is particularly appropriate when comments have been raised by experts or other agencies. (*Berkeley Keep Jets v. Bd. of Port Comm’rs* (2001) 91 Cal.App.4th 1344, 1367; *People v. Kern* (1976) 72 Cal.App.3d 761). A reasoned analysis of the issue and references to supporting evidence are required for substantive comments raised. (*Calif. Oak Found. v. Santa Clarita* (2005) 133 Cal.App.4th 1219).

II. The FEIR Inadequately Responds to Comments.

A. The FEIR Inadequately Responds to CalTrans’ Traffic Comments.

The California Department of Transportation (“CalTrans”) submitted extensive comments on September 13, 2023. Yet the City failed to adequately respond to these agency comments in the Final EIR, rendering the FEIR legally inadequate.

CEQA now requires transportation to be analyzed using Vehicle Miles Travelled (“VMT”). CalTrans points out that the Draft EIR failed to conduct any VMT analysis. Instead, the DEIR stated that “VMT analysis is not required and impacts to VMT would be less than significant.” (DEIR p. 4.13-11). CalTrans stated that it is improper to assume that the Project will have insignificant VMT simply because it is located in a low VMT area. CalTrans stated, “only disclosing the Project VMT would then compare with the City’s VMT threshold of 13.2 to determine if the Project would cause any significant traffic impact. We

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highly recommend the City prepare the necessary VMT for this development for CalTrans review.”

Amazingly, rather than respond reasonably with the VMT analysis requested by the expert agency with jurisdiction over traffic, the Final EIR refused to conduct the VMT analysis requested by CalTrans. The FEIR falls far short of the “reasoned analysis” required by CEQA. A revised EIR is required to analyze the Project’s traffic impacts as requested by CalTrans and to consider the feasible mitigation measures requested by CalTrans, such as Transportation Demand Strategies (TDM) and Intelligent Transportation System applications.

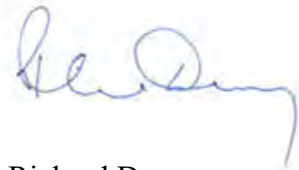
B. The FEIR Inadequately Responds to Comments on Possible Soil Contamination.

The Southwest Carpenters raised concerns about potential soil contamination at the Project site. The Project site contains two former gasoline service stations. One operated at the location of the closed Souplantation Restaurant from the 1950s through the early 1970s. The Phase I Environmental Site Assessment for this gas station indicates that the underground storage tanks may not have been removed, and that additional cleanup may be required. The second gas station operated adjacent to the Derby Restaurant from about 1938 through 1964. Again, there is no record of underground storage tank cleanup or removal. Both service stations operated at a time when leaks from underground storage tanks were almost universally common, and double-walled tanks were not in use. This is a particular concern for worker health and safety and also for the health of future residents of the Project.

Despite these concerns, the Final EIR does contain little if any additional analysis of soil contamination. It is critical for a CEQA document to identify an effective soil cleanup plan. (*Citizens for Responsible Equitable Envtl. Dev. v. City of Chula Vista* (“CREED”) (2005) 197 Cal.App.4th 327, 332-33 (absence of toxics cleanup plan from CEQA document creates per se significant impact).) The presence of hazardous substances is an environmental issue that must be addressed at a Project’s outset, and cannot be deferred to a future time to avoid CEQA review. (*McQueen v. Bd. of Directors* (1988) 202 Cal. App. 3d 1136, 1148.)

A Revised Draft EIR should be prepared to thoroughly analyze this issue and to propose a feasible and effective mitigation plan.

Sincerely,



Richard Drury
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