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VIA E-MAIL

November 27, 2023

Planning Commission
City of Arcadia
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RE: Agenda Item No. 1: The Derby Mixed-Use Project

Dear Ms. Flores and Honorable Commissioners,

On behalf of the Western States Regional Council of Carpenters ("**Western Carpenters**" or "**WSRCC**"), my Office is submitting these comments to the City of Arcadia ("**City**") for the November 28, 2023 Planning Commission meeting regarding the Final Environmental Impact Report ("**FEIR**") for the Derby Mixed-Use Project ("**Project**").

The Project proposes to demolish the existing Derby restaurant as well as the former Souplantation restaurant, and to construct a 6-story mixed-use development with a new 2-story Derby restaurant, two new commercial spaces, a 1,400 square-foot café, a 3,300 square-foot restaurant, and 214 rental units. The Project also seeks off-site improvements within the sidewalk and roadway rights-of-way along E. Huntington Drive and Gateway Drive. These improvements include modification and/or relocation of existing medians, curb cuts/driveways, and utility connections, removal of signage, street light relocation, sewer upgrades, and removal/replacement of street and median trees.

The Western Carpenters is a labor union representing about 90,000 union carpenters in 12 states, including California, and has a strong interest in well-ordered land use planning and in addressing the environmental impacts of development projects. Individual members of the Western Carpenters live, work, and recreate in the City and surrounding communities and would be directly affected by the Project's environmental impacts.

The Western Carpenters expressly reserves the right to supplement these comments at or prior to hearings on the Project, and at any later hearing and proceeding related to this Project. Gov. Code, § 65009, subd. (b); Pub. Res. Code, § 21177, subd. (a); see *Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal.App.4th 1184, 1199-1203; see also *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal.App.4th 1109, 1121.

The Western Carpenters incorporates by reference all comments raising issues regarding the Environmental Impact Report (EIR) submitted prior to certification of the EIR for the Project. See *Citizens for Clean Energy v City of Woodland* (2014) 225 Cal.App.4th 173, 191 (finding that any party who has objected to the project's environmental documentation may assert any issue timely raised by other parties).

I. THE CITY SHOULD REQUIRE THE USE OF A LOCAL WORKFORCE TO BENEFIT THE COMMUNITY'S ECONOMIC DEVELOPMENT AND ENVIRONMENT

The City should require the Project to be built using a local workers who have graduated from a Joint Labor-Management Apprenticeship Program approved by the State of California, have at least as many hours of on-the-job experience in the applicable craft which would be required to graduate from such a state-approved apprenticeship training program, or who are registered apprentices in a state-approved apprenticeship training program.

Community benefits such as local hire can also be helpful to reduce environmental impacts and improve the positive economic impact of the Project. Local hire provisions requiring that a certain percentage of workers reside within 10 miles or less of the Project site can reduce the length of vendor trips, reduce greenhouse gas emissions, and provide localized economic benefits. As environmental consultants Matt Hagemann and Paul E. Rosenfeld note:

> [A]ny local hire requirement that results in a decreased worker trip length from the default value has the potential to result in a reduction of construction-related GHG emissions, though the significance of the reduction would vary based on the location and urbanization level of the project site.

March 8, 2021, SWAPE Letter to Mitchell M. Tsai re Local Hire Requirements and Considerations for Greenhouse Gas Modeling.

Workforce requirements promote the development of skilled trades that yield sustainable economic development. As the California Workforce Development Board and the University of California, Berkeley Center for Labor Research and Education concluded:

> [L]abor should be considered an investment rather than a cost—and investments in growing, diversifying, and upskilling California's workforce can positively affect returns on climate mitigation efforts. In other words, well-trained workers are key to delivering emissions reductions and moving California closer to its climate targets.[1]

Furthermore, workforce policies have significant environmental benefits given that they improve an area's jobs-housing balance, decreasing the amount and length of job commutes and the associated greenhouse gas (GHG) emissions. In fact, on May 7, 2021, the South Coast Air Quality Management District found that that the "[u]se of a local state-certified apprenticeship program" can result in air pollutant reductions.[2]

Locating jobs closer to residential areas can have significant environmental benefits. As the California Planning Roundtable noted in 2008:

> People who live and work in the same jurisdiction would be more likely to take transit, walk, or bicycle to work than residents of less balanced communities and their vehicle trips would be shorter. Benefits would include potential reductions in both vehicle miles traveled and vehicle hours traveled.[3]

Moreover, local hire mandates and skill-training are critical facets of a strategy to reduce vehicle miles traveled (VMT). As planning experts Robert Cervero and

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[1] California Workforce Development Board (2020) Putting California on the High Road: A Jobs and Climate Action Plan for 2030 at p. ii, *available at* https://laborcenter.berkeley.edu/wp-content/uploads/2020/09/Putting-California-on-the-High-Road.pdf.

[2] South Coast Air Quality Management District (May 7, 2021) Certify Final Environmental Assessment and Adopt Proposed Rule 2305 – Warehouse Indirect Source Rule – Warehouse Actions and Investments to Reduce Emissions Program, and Proposed Rule 316 – Fees for Rule 2305, Submit Rule 2305 for Inclusion Into the SIP, and Approve Supporting Budget Actions, *available at* http://www.aqmd.gov/docs/default-source/Agendas/Governing-Board/2021/2021-May7-027.pdf?sfvrsn=10.

[3] California Planning Roundtable (2008) Deconstructing Jobs-Housing Balance at p. 6, *available at* https://cproundtable.org/static/media/uploads/publications/cpr-jobs-housing.pdf

Michael Duncan have noted, simply placing jobs near housing stock is insufficient to achieve VMT reductions given that the skill requirements of available local jobs must match those held by local residents.[4] Some municipalities have even tied local hire and other workforce policies to local development permits to address transportation issues. Cervero and Duncan note that:

> In nearly built-out Berkeley, CA, the approach to balancing jobs and housing is to create local jobs rather than to develop new housing. The city's First Source program encourages businesses to hire local residents, especially for entry- and intermediate-level jobs, and sponsors vocational training to ensure residents are employment-ready. While the program is voluntary, some 300 businesses have used it to date, placing more than 3,000 city residents in local jobs since it was launched in 1986. When needed, these carrots are matched by sticks, since the city is not shy about negotiating corporate participation in First Source as a condition of approval for development permits.

Recently, the State of California verified its commitment towards workforce development through the Affordable Housing and High Road Jobs Act of 2022, otherwise known as Assembly Bill No. 2011 ("**AB2011**"). AB2011 amended the Planning and Zoning Law to allow ministerial, by-right approval for projects being built alongside commercial corridors that meet affordability and labor requirements.

The City should consider utilizing local workforce policies and requirements to benefit the local area economically and to mitigate greenhouse gas, improve air quality, and reduce transportation impacts.

II. THE CITY SHOULD IMPOSE TRAINING REQUIREMENTS FOR THE PROJECT'S CONSTRUCTION ACTIVITIES TO PREVENT COMMUNITY SPREAD OF COVID-19 AND OTHER INFECTIOUS DISEASES

Construction work has been defined as a Lower to High-risk activity for COVID-19 spread by the Occupations Safety and Health Administration. Recently, several

[4] Cervero, Robert and Duncan, Michael (2006) Which Reduces Vehicle Travel More: Jobs-Housing Balance or Retail-Housing Mixing? Journal of the American Planning Association 72 (4), 475-490, 482, *available at* http://reconnectingamerica.org/assets/Uploads/UTCT-825.pdf.

construction sites have been identified as sources of community spread of COVID-19.[5]

The Western Carpenters recommend that the City adopt additional requirements to mitigate public health risks from the Project's construction activities. The Western Carpenters requests that the City require safe on-site construction work practices as well as training and certification for any construction workers on the Project Site.

In particular, based upon the Western Carpenters' experience with safe construction site work practices, the Western Carpenters recommends that the City require that while construction activities are being conducted at the Project Site:

Construction Site Design:

- The Project Site will be limited to two controlled entry points.
- Entry points will have temperature screening technicians taking temperature readings when the entry point is open.
- The Temperature Screening Site Plan shows details regarding access to the Project Site and Project Site logistics for conducting temperature screening.
- A 48-hour advance notice will be provided to all trades prior to the first day of temperature screening.
- The perimeter fence directly adjacent to the entry points will be clearly marked indicating the appropriate 6-foot social distancing position for when you approach the screening area. Please reference the Apex temperature screening site map for additional details.
- There will be clear signage posted at the project site directing you through temperature screening.

[5] Santa Clara County Public Health (June 12, 2020) COVID-19 CASES AT CONSTRUCTION SITES HIGHLIGHT NEED FOR CONTINUED VIGILANCE IN SECTORS THAT HAVE REOPENED, *available at* https://www.sccgov.org/sites/covid19/Pages/press-release-06-12-2020-cases-at-construction-sites.aspx.

- Provide hand washing stations throughout the construction site.

Testing Procedures:

- The temperature screening being used are non-contact devices.
- Temperature readings will not be recorded.
- Personnel will be screened upon entering the testing center and should only take 1-2 seconds per individual.
- Hard hats, head coverings, sweat, dirt, sunscreen or any other cosmetics must be removed on the forehead before temperature screening.
- Anyone who refuses to submit to a temperature screening or does not answer the health screening questions will be refused access to the Project Site.
- Screening will be performed at both entrances from 5:30 am to 7:30 am.; main gate [ZONE 1] and personnel gate [ZONE 2]
- After 7:30 am only the main gate entrance [ZONE 1] will continue to be used for temperature testing for anybody gaining entry to the project site such as returning personnel, deliveries, and visitors.
- If the digital thermometer displays a temperature reading above 100.0 degrees Fahrenheit, a second reading will be taken to verify an accurate reading.
- If the second reading confirms an elevated temperature, DHS will instruct the individual that he/she will not be allowed to enter the Project Site. DHS will also instruct the individual to promptly notify his/her supervisor and his/her human resources (HR) representative and provide them with a copy of Annex A.

Planning

- Require the development of an Infectious Disease Preparedness and Response Plan that will include basic infection prevention measures (requiring the use of personal protection equipment), policies and procedures for prompt identification and isolation of sick individuals, social distancing (prohibiting gatherings of no more than 10 people including all-hands meetings and all-hands lunches) communication and training and workplace controls that meet standards that may be promulgated by the Center for Disease Control, Occupational Safety and Health Administration, Cal/OSHA, California Department of Public Health or applicable local public health agencies.[6]

The United Brotherhood of Carpenters and Carpenters International Training Fund has developed COVID-19 Training and Certification to ensure that Carpenter union members and apprentices conduct safe work practices. The Agency should require that all construction workers undergo COVID-19 Training and Certification before being allowed to conduct construction activities at the Project Site.

The Western Carpenters has also developed a rigorous Infection Control Risk Assessment ("**ICRA**") training program to ensure it delivers a workforce that understands how to identify and control infection risks by implementing protocols to protect themselves and all others during renovation and construction projects in healthcare environments.[7]

ICRA protocols are intended to contain pathogens, control airflow, and protect patients during the construction, maintenance and renovation of healthcare facilities.

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[6] *See also* The Center for Construction Research and Training, North America's Building Trades Unions (April 27 2020) NABTU and CPWR COVIC-19 Standards for U.S Constructions Sites, *available at* https://www.cpwr.com/sites/default/files/NABTU_CPWR_Standards_COVID-19.pdf; Los Angeles County Department of Public Works (2020) Guidelines for Construction Sites During COVID-19 Pandemic, *available at* https://dpw.lacounty.gov/building-and-safety/docs/pw_guidelines-construction-sites.pdf.

[7] For details concerning Southwest Carpenters' ICRA training program, *see* https://icrahealthcare.com/.

ICRA protocols prevent cross contamination, minimizing the risk of secondary infections in patients at hospital facilities.

The City should require the Project to be built using a workforce trained in ICRA protocols.

III. THE CITY MUST REVISE THE FEIR FOR THE PROJECT

CEQA is a California statute designed to inform decision makers and the public about the potential, significant environmental effects of a project. 14 California Code of Regulations ("**CEQA Guidelines**") § 15002(a)(1).[8] At its core, "[i]ts purpose is to inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made." *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 564.

To achieve this purpose, CEQA mandates preparation of an Environmental Impact Report ("**EIR**") for projects so that the foreseeable impacts of pursuing the project can be understood and weighed. *Communities for a Better Environment v. Richmond* (2010) 184 Cal. App. 4th 70, 80. The EIR requirement "is the heart of CEQA." CEQA Guidelines, § 15003(a).

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).

[8] The CEQA Guidelines, codified in Title 14 of the California Code of Regulations, section 15000 *et seq*, are regulatory guidelines promulgated by the state Natural Resources Agency for the implementation of CEQA. (Cal. Pub. Res. Code § 21083.) The CEQA Guidelines are given "great weight in interpreting CEQA except when . . . clearly unauthorized or erroneous." *Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 62 Cal. 4th 204, 217.

Section 15088.5(a) of the CEQA Guidelines provides that an EIR must be recirculated whenever there is disclosure of significant new information. Significant new information includes: (1) disclosure of a new significant environmental impact resulting from the project or from a new proposed mitigation measure; (2) disclosure of a substantial increase in the severity of an environmental impact unless mitigation measures are adopted that reduce the impact to a level of insignificance; and (3) disclosure of a feasible project alternative or mitigation measure considerably different from others previously analyzed which would clearly lessen the significant environmental impacts of the project which the project proponents decline to adopt. *Id.*

Additionally, an EIR must be recirculated when it is so fundamentally inadequate and conclusory in nature that meaningful public review and comment is precluded. *Id.* [citing *Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043].

Here, as discussed both previously and as reiterated below, the FEIR is legally flawed in various parts because it fails to substantiate all of its conclusions to allow meaningful public review and comment, fails to provide adequate mitigation measures, and fails to fully assess all pertinent environmental factors. Accordingly, this comment letter discloses significant new information, necessitating revision and recirculation of the FEIR.

A. The FEIR's Alternatives Are Legally Inadequate

An EIR must discuss a reasonable range of alternatives to the project, which "shall include those that could feasibly accomplish most of the basic objectives of the project and could avoid or substantially lessen one or more of the significant effects." CEQA Guidelines § 15126.6(a)&(c). "[T]he discussion of alternatives shall focus on alternatives.... which are capable of avoiding or substantially lessening any significant effects of the project...." CEQA Guidelines § 15126.6(b). Further, an EIR is legally inadequate if it contains an overly narrow range of alternatives. *Watsonville Pilots Ass'n v. City of Watsonville* (2010) 183 Cal.App.4th 1059, 1087, 20190 [not considering a reduced development alternative was error].

Here, the Project proposes 214 residential units, *in addition* to commercial uses. It is common sense that 214 residential units may attract significant amount of traffic, resultant noise, air-quality, greenhouse gas emission ("**GHG**") and other impacts, as compared with any commercial uses in place. Moreover, the Project proposes General

Plan Amendments and Zone Changes to accommodate the density/intensity of the Project. These amendments may lead to land use impacts since they seek relief from the current restrictions on height and development standards that would otherwise control density and intensity of the Project and reduce environmental impacts.

Nevertheless, FEIR considered only 3 alternatives, where *both* of 2 build alternatives contain the same 214 units: (1) no project alternative; (2) a reduced commercial project alternative; and (3) a reduced commercial/no height overlay project. DEIR at 6-27. The FEIR's range of alternatives is inadequate.

The FEIR recognizes that both build alternatives it considered would continue to result in similar air quality, noise, cultural resources, energy, geology & soils, hazardous material, and hydrology and water quality impacts. FEIR at 2-304. Yet, CEQA requires to mitigate impacts of the Project rather than compare alternatives which would merely result in similar or more significant impacts. Accordingly, WSRCC maintains that the FEIR fails to consider a reasonable range of alternatives and must be revised to do so.

B. The FEIR Improperly Defers Its Mitigation Measures

If a project has a significant effect on the environment, an 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". CEQA Guidelines § 15092(b)(2)(A–B).

CEQA mitigation measures proposed and adopted are required to describe what actions will be taken to reduce or avoid an environmental impact. (CEQA Guidelines § 15126.4(a)(1)(B) [providing "[f]ormulation of mitigation measures should not be deferred until some future time."].) While the same Guidelines section 15126.5(a)(1)(B) acknowledges an exception to the rule against deferrals, such exception is narrowly proscribed to situations where it is impractical or infeasible to include those details during the project's environmental review.

Lastly, mitigation measures may not be vague or illusory; they must be specific, feasible and fully enforceable. PRC §§21081.6(b) ("fully enforceable"), 21157.5(a)(2) ("feasible" MMs must be incorporated in an MND); Guidelines §§15126.4(a)(1)-(2) (MMs must be "feasible," "fully enforceable"). "'Feasible' means capable of being accomplished in a successful manner within a reasonable period of time…." PRC §21061.1.

An EIR must also "discuss" and consider impacts of the mitigation measures. Guidelines §15126.4(a)(1)(D).

Here, the FEIR improperly defers several of its mitigation measures.

i. Noise Impacts and Measures

In order to mitigate Project noise impacts, the DEIR implements mitigation measure MM-NOI-1, which requires that:

> "An eight (8) foot tall temporary noise barrier shall be erected or installed along an extent of the northern Project site property line where it is adjacent to the nearest noise-sensitive receptor. The barrier can comprise one or more materials of construction and/or assembly, so long as the net sound transmission class (STC) is 15 or better, and thus expected to yield a minimum of 5 dB noise reduction when blocking direct sound paths between onsite Project construction noise-producing activities or equipment and the offsite receptor of concern." DEIR at 4.10-24.

However, such requirements fail to specify whether the barrier will also reduce noise levels at elevated sources above ground as the two-story budling construction progresses. Although the FEIR notes that "analyzing the [construction equipment] at a source height higher than 5 feet and up to the building height of 71 feet does not result in a cumulative 'with barrier' construction noise level greater than 85 dBA" (FEIR at 2-306), such assertion must be specified in the measure itself so that the public can meaningfully assess the scope of the construction noise being mitigated.

In addition, there is no indication that the temporary noise barrier will be also moveable to ensure it properly reduces the sound of the construction noise at its source. As noted by the court in AIDS HEALTHCARE FOUNDATION v. CITY OF LOS ANGELES, LASC Case Number: 19STCP05445 (April 5, 2021):

> "The City's response actually concedes the flaw in the efficacy of MM 1-2 as it is written. Effective mitigation to sensitive receptors requires the noise barrier systems to be moved. The City argues MM 1-2 is effective because 'the noise barriers are moveable, meaning that they move in concert with any piece of construction equipment to ensure the equipment does not operate with an unobstructed line of sight to a receptor.' (Opposition Brief 35:15-17.) The City recognizes the barriers

> must be moveable 'to shield construction activities, no matter where they occur onsite.' (Opposition Brief 35:18-19.)
>
> Despite the City's recognition the noise barriers must be moved throughout the Project during construction to effectively mitigate construction-related noise, MM 1-2 does not require such movement. It is not about wordsmithing-it is about enforceability and efficacy. The City's attempts to distinguish between 'Project boundaries' and 'property boundaries' is unpersuasive.24 Such a distinction-if there is one-does not resolve the ambiguity. Nothing in MM 1-2 requires any noise barriers to be moved.*25 Accordingly, the court finds substantial evidence does not support the City's conclusion MM 1-2 is an effective mitigation measure." (**Exhibit D**, p. 20 [Ruling].)

Absent such specifications or guarantees, the mitigation measure is legally inadequate as it cannot support a finding that the Project's significant impacts may be reduced to the level identified.

ii. Transportation Impacts and Measures

In addition to improperly deferring the Project's noise mitigation measure, the transportation mitigation measures are also improperly deferred. MM-TRA-1 provides that "[p]rior to the issuance of a grading permit, the Project applicant/developer shall coordinate with the City Engineer to prepare engineering plans that remove and reconfigure the raised median on E. Huntington Drive to extend the eastbound left-turn pocket to at least 75 feet." However, the measure fails to specify how such reconfiguration will be achieved nor whether such plans have been prepared yet. The FEIR's blanket conclusion that the measure "provides a clear trigger for compliance and monitoring" cannot rectify this crucial lack of information. FEIR at 2-308. The FEIR must be recirculated to provide the specifics of the reconfiguration or provide an in-depth explanation why doing so is infeasible at this time.

C. <u>The FEIR's Hazardous Material Findings and Analysis Are Insufficient</u>

CEQA requires that an EIR identify and discuss the significant effects of a Project, and how those significant effects can be mitigated or avoided. CEQA Guidelines § 15126.2; PRC §§ 21100(b)(1), 21002.1(a). If a project has a significant effect on the environment, an 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". CEQA Guidelines § 15092(b)(2)(A–B). Such findings must be supported by substantial evidence. CEQA Guidelines § 15091(b). The FEIR at hand fails to comply with these requirements.

First, although the "Project has the potential to expose the public and the environment to hazards associated with the removal, transport and disposal of hazardous materials including asbestos, LBP, PCB-containing items, and universal wastes present in the buildings scheduled for demolition" (DEIR at 4.7-18), it appears as though no asbestos or lead testing has been conducted on the Project site. *Id.* [noting that sampling soils were conducted for VOCs, petroleum hydrocarbons, benzene, toluene, xylenes, oil and grease]. Instead, the Project relies on its mitigation measure, HAZ-MM-1, which provides that "[p]rior to the issuance of a demolition permit for any existing on-site structures, a qualified environmental specialist shall conduct a survey for asbestos-containing materials, lead-based paint, polychlorinated biphenyls, mercury, and other hazardous building materials, such as universal wastes and refrigerants, to document the presence of any potentially hazardous materials within the structures." DEIR at 4.7-24. The FEIR's lack of any lead or asbestos testing analyzing the quantities and locations of each renders the FEIR's finings unsupported by substantial evidence and merely speculatory.

Although the FEIR attempts to rectify such lack of analysis by noting that "testing for hazardous building materials is typically conducted prior to demolition of the buildings" (FEIR at 2-309), it provides no explanation why such testing is not feasible at this time.

Moreover, as the FEIR readily admits, there were "[total petroleum hydrocarbon] impacts identified during the prior soil sampling conducted at the site" and further "removal documentation for the gasoline [underground storage tanks ("**UST**")] has not been located". FEIR at 2-311. Such admission and lack of crucial documentation requires further attention and analysis as allowing a Project to be developed on a site that has contaminated soils or potential of vapor intrusion shows that the Project may have hazardous materials or exacerbate hazardous conditions that require disclosures and mitigation before any Project can be approved.

Nor can the FEIR's assertion that "the soil from the Project site would be removed from the site, thereby eliminating any contamination [and UST] concerns" stand given that the FEIR provides no clarity as to who will remove such soil and how impacts to

those individuals will be mitigated, where such soil will be removed to, and when such removal is anticipated. *Id.*

In sum, the FEIR must be revised and recirculated to provide all pertinent information and conduct sufficient analysis concerning the hazardous materials which may affect the public, construction workers, and surrounding environment before speculating that the impacts are less than significant.

D. The DEIR Fails to Support its Findings on Land Use with Substantial Evidence

Each California city and county must adopt a comprehensive, long-term general plan governing development. *Napa Citizens for Honest Gov. v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 352, citing Gov. Code §§ 65030, 65300. The general plan sits at the top of the land use planning hierarchy and serves as a "constitution" or "charter" for all future development. *DeVita v. County of Napa* (1995) 9 Cal.4th 763, 773; *Lesher Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 540.

General plan consistency is "the linchpin of California's land use and development laws; it is the principle which infused the concept of planned growth with the force of law." *Debottari v. Norco City Council* (1985) 171 Cal.App.3d 1204, 1213. It is well established that development projects may not be approved if they interfere with, or frustrate, the general plan's policies and objectives. *See Napa Citizens*, 91 Cal.App.4th at 378-79; *see also Lesher*, 52 Cal.3d at 544.

Further, CEQA requires any project EIR to analyze the consistency of such project with the General Plan. Guidelines § 15125(d); *See also, Families Unafraid to Uphold Rural El Dorado County v. El Dorado County Bd. of Sup'rs* (1998) 62 Cal.App.4th 1332, 1336. "Because an EIR must analyze inconsistencies with the general plan (14 Cal. Code Regs § 15125(d)), deficiencies in the plan may affect the legal adequacy of the EIR. If the general plan does not meet state standards, an EIR analysis based on the plan may also be defective. For example, in *Guardians of Turlock's Integrity v. Turlock City Council* (1983) 149 Cal.3d 584, 593, the general plan did not contain a noise element; thus "a necessary foundation" to acceptable analysis in the EIR was missing." 2 Kostka & Zischke, Practice Under the Cal. Environmental Quality Act, § 20.3, p. 20-9; *see also, Friends of "B" Street v. City of Hayward* (1980) 106 Cal.App.3d 988, 998–999.

Finally, under CEQA, a lead agency may not approve a project with significant unavoidable impacts unless it is "otherwise permissible under applicable laws and regulations." PRC § 21002.1(c).

Here, in violation of CEQA and planning and zoning law, the FEIR fails to analyze the consistency of the Project's requested entitlements with the General Plan. Specifically, amongst other entitlements, the Project requires a general plan amendment, zone change, minor use permit, and lot line adjustment. DEIR at ES-2. However, rather than analyzing the consistency of such departures from the general plan, the FEIR merely provides that "upon the approval of the requested entitlements, the Project would be consistent and permissible for construction and operation on the Project site." FEIR at 2-312. Arguably, the land use limitations, including as the height limit, were adopted by the General Plan and Zoning Ordinance to reduce the intensity or density of any potential development on the Project Site and to thereby mitigate any potential impacts. As such, removing such limitation may have a significant land use impact that needs to be studied.

Without conducting consistency analysis of the Project's entitlements, the FEIR's less than significant finding is unsupported. For this reason too, the FEIR must be revised and recirculated to provide accurate and good faith disclosures of the Project's land use impacts and consistency with the General Plan.

E. The FEIR's Biological Resource Findings Are Unsupported

Although the FEIR provides that the Project's biological resource impacts will be less than significant, it fails to adequately support such conclusion. Rather, the DEIR establishes that "[t]he Project site area includes 66 on-site trees, as well as seven (7) off-site street-trees adjacent to the Project's southern boundary line. Sixty-four (64) on-site trees would be removed and two (2) would be encroached upon as a result of Project implementation." DEIR at 5-11. Critically, however, the FEIR fails to specify or quantify whether nesting birds rely upon such trees and instead merely concludes that impacts to nesting birds will not occur because the Project will be required to comply with the "Migratory Bird Treaty Act and Sections 3503, 3503.5, and 3513 of the California Fish and Game Code, requiring pre-construction nesting bird surveys. FEIR at 2-312. Such conclusion fails to several reasons.

First, the FEIR's sole reliance on regulatory measures cannot rectify its lack of information and analysis as it is well established that determinations that regulatory

compliance will be sufficient to prevent significant adverse impacts must be based on a project-specific analysis of potential impacts and the effect of regulatory compliance. See *Californians for Alternatives to Toxics v. Department of Food & Agric.* (2005) 136 Cal. App. 4th 1; *Ebbetts Pass Forest Watch v Department of Forestry & Fire Protection* (2008) 43 Cal. App. 4th 936, 956. Thus, the FEIR cannot rely on regulatory compliance in lieu of Project specific analysis.

Second, the FEIR notes that the nesting season "generally runs from February 1 through August 31 and as early as February 1 for raptors". FEIR at 2-312. However, such timeframe is contrary to the California Department of Fish and Wildlife's finding that nesting may commence before and/or after this timeframe. "For example, some species of raptors (e g. owls, hawks, etc.) may commence nesting activities in January, and passerines may nest later than August 31."[9]

Finally, the measure is not actually included in the list of Project mitigation measures. The FEIR must be revised to conduct analysis as to what and how many nesting birds rely upon the trees being removed and incorporate a pre-construction nesting bird survey mitigation measure, which accurately reflects the nesting season for all relevant species.

IV. CONCLUSION

In sum, WSRCC again requests that the City require a local workforce, that the City impose training requirements for the Project's construction activities to prevent community spread of COVID-19 and other infectious diseases, and that the City revise and recirculate the FEIR for the Project to address the aforementioned concerns. If the City has any questions, feel free to contact my Office.

[9] See CDFW November 18, 2021 letter to City of Adelanto, available at https://files.ceqanet.opr.ca.gov/273819-1/attachment/zo76RgD7dUdj5BLJTEhEMdf74g6f100RrKiWBQSquhFFe5l0X53rLsbLSGMPRXgXM4AaYnJSTfZB6JpY0

Sincerely,

Talia Nimmer
Attorneys for Western States
Regional Council of Carpenters

Attached:

March 8, 2021, SWAPE Letter to Mitchell M. Tsai re Local Hire Requirements and Considerations for Greenhouse Gas Modeling (Exhibit A);

Air Quality and GHG Expert Paul Rosenfeld CV (Exhibit B);

Air Quality and GHG Expert Matt Hagemann CV (Exhibit C); and

Ruling in AHF v. City of Los Angeles (Exhibit D).